



Administration and Human Services **Standing Committee Meeting Agenda**

Monday, November 15, 2021

**Immediately upon adjournment of earlier committee, or
5:00 p.m. if no earlier committee meeting.**

Location:

Name

Absent

Commissioner Angela Markley, Chair

☐

Commissioner Melissa Bynum

☐

Commissioner Christian Ramirez

☐

Commissioner Mike Kane

☐

Commissioner Jane Philbrook

☐

I. Call to Order/Roll Call

II. Revisions to November 15, 2021 Agenda

Item No. 1 - NEW ITEM NO. 4 - 211180 - RESOLUTION: APPROVING EXECUTION AND DELIVERY OF AGREEMENT TO ASSIGN UG OPIOID CLAIMS TO KANSAS ATTORNEY GENERAL

Synopsis: A resolution approving the execution of the agreement to release and assign the Unified Government's Opioid litigation claims to the Kansas Attorney General, submitted by James Bain, Legal Counsel.

Tracking #: 211180

III. Approval of standing committee minutes from July 26 and September 27, 2021

IV. Committee Agenda

Item No. 1 - RESOLUTION: PARTNERSHIP AND GRANT AGREEMENT FOR BANK ON PROGRAM

Synopsis: An agreement between the UG and Credit & Homeownership Empowerment Services, Inc. (CHES) to support the Bank On program, which promotes financial stability through access to banking accounts, submitted by Patrick Waters, Deputy Chief Counsel.

Tracking #: 211147

Item No. 2 - REQUEST FOR PUBLIC HEARING: NEIGHBORHOOD STABILIZATION PROGRAM (NSP1) CLOSEOUT

Synopsis: Request to conduct a public hearing on November 18, 2021 to complete the close-out of the Neighborhood Stabilization Program (NSP1), submitted by Wilba Miller, Director of Community Development. The public hearing is required by the State of Kansas

Department of Commerce.

It is requested that this item be fast tracked to the November 18, 2021 full commission meeting.

Tracking #: 211161

Item No. 3 - PRESENTATION: MUSEUM UPDATE

Synopsis: Departmental update on the Museum, submitted by Amy Loch, Museum Manager.

For information only.

Tracking #: 211034

V. Public Agenda

VI. Adjourn

**AGENDA UPDATE
ADMINISTRATION & HUMAN SERVICES
STANDING COMMITTEE MEETING
MONDAY, NOVEMBER 15, 2021**

IV. COMMITTEE AGENDA

NEW ITEM

ITEM NO. 4 – 211180...RESOLUTION: APPROVING EXECUTION AND DELIVERY OF AGREEMENT TO RELEASE AND ASSIGN UG OPIOID CLAIMS TO THE KANSAS ATTORNEY GENERAL

Synopsis: A resolution approving the execution of the agreement to release and assign the Unified Government's Opioid litigation claims to the Kansas Attorney General, submitted by James Bain, Legal Counsel.



Staff Request for Commission Action

Tracking No. 211180

Full Commission Meeting Date: 12/02/2021

Committee: Administration & Human Services

Date of Standing Committee Action: 11/15/2021
(If none, please explain):

Publication Required: No

<u>Date:</u> 11/12/2021	<u>Contact Name:</u> James Bain	<u>Contact Phone:</u> x5077	<u>Contact Email:</u> jbain@wycokck.org	<u>Department/Division:</u> Legal
<u>Item Description:</u> Resolution				
<u>Action Requested:</u> Approve and forward to full commission				
<u>Budget Impact: (if applicable)</u> Amount: Source: Included In Budget: Other (explain):				
<u>Attachments List:</u> Resolution (Release and Assign Opioid Claims), Agreement to Release and Assign Opioid Litigation Claims (AG - 2021)				

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE EXECUTION AND DELIVERY
OF AN AGREEMENT TO RELEASE AND ASSIGN THE UNIFIED
GOVERNMENT’S OPIOID CLAIMS TO THE KANSAS ATTORNEY
GENERAL.**

WHEREAS, in 2018, the Unified Government of Wyandotte County/Kansas City, KS (the “UG”), put out a Notice of Need for the retention of outside counsel to determine whether the UG sustained damages related to the opioid epidemic and, if applicable, to file suit to recover such damages; and

WHEREAS, the UG sustained damages related to the opioid epidemic; and

WHEREAS, the UG joined hundreds of other local governments filing a lawsuit to recover damages sustained by the UG related to the opioid epidemic (the “Claims”); and

WHEREAS, in 2021, the Kansas Legislature enacted the Kansas Fights Addiction Act (the “Act”), authorizing litigating municipalities such as the UG to access opioid litigation settlement funds and become eligible for certain state grants by entering an agreement releasing the litigating municipality's opioid litigation claims to the Attorney General and assigning any future opioid litigation claims to the Attorney General (the “Agreement”); and

WHEREAS, the UG desires to enter an Agreement releasing and assigning its Claims to the Attorney General in order to access opioid litigation settlement funds and become eligible for certain state grants;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF
THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY,
KANSAS AS FOLLOWS:**

Section 1. Authorization of the Agreement. The UG is hereby authorized to enter into the Agreement by and between the Attorney General and the ug in substantially the form presented to and reviewed by the Board of Commissioners at this meeting, with such changes therein as shall be approved by the Chief Counsel, the UG’s outside counsel, and the Administrator. Such officials’ signatures thereon being conclusive evidence of their approval thereof and the same are hereby approved in all respects.

Section 2. Execution of the Agreement. The Administrator, Chief Counsel and UG Clerk are hereby authorized and directed to execute, seal, attest and deliver the Agreement in substantially the form presented to and reviewed by the Board of Commissioners at this meeting and such other settlement agreements, documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of and as the act and deed of the UG.

Section 3. Certification of Costs and Expenses. The UG hereby certifies that it has incurred costs and expenses related to substance abuse or addiction mitigation and abatement in

excess of \$500, the UG anticipates incurring future costs and expenses related to substance abuse or addiction mitigation and abatement in excess of \$500, and the UG can utilize the opioid litigation settlement funds for lawful purposes. The Administrator and Chief Counsel are hereby authorized to execute, seal, attest and deliver such other documents, certificates and instruments as may be necessary and desirable to certify these costs and expenses or similar costs and expenses, for and on behalf of and as the act and deed of the UG.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its adoption.

**ADOPTED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED
GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS THIS 2ND
DAY OF DECEMBER 2021.**

David Alvey, Mayor/CEO

ATTEST:

Unified Government Clerk

Agreement to Release and Assign Claims

BETWEEN:

The Unified Government of Wyandotte County/Kansas City, KS (the “Assignor”), a municipality as defined by Kansas Statutes Annotated §12-105a, or other Political Subdivision, located within the State of Kansas, with its principal business office located at:

701 N. 7th St.
Kansas City, KS 66101

AND:

Derek Schmidt, the duly elected Attorney General of the State of Kansas, with a principal business office located at:

The Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

FOR VALUE CONTEMPLATED, consistent with **Kansas Opioids Memorandum of Understanding between the Attorney General, the League of Kansas Municipalities, and the Kansas Association of Counties**, as adopted by resolution passed by the Assignor on December 2, 2021, the Assignor hereby releases its legal claims, and transfers and assigns to the Assignee, his successors, assigns, deputies, assistants, and personal representatives, any and all claims, demands, and cause or causes of actions on any kind whatsoever which the undersigned has or may have against any opioid manufacturer, distributor, and/or pharmacy, or entity within the Pharmaceutical Supply Chain, arising from the following type of claim:

Any and all claims arising out of “covered conduct” and “opioid litigation” as defined by 2021 Kansas House Bill No. 2079, and any and all claims on file by Assignor in MDL Case No. 1:17-md-2804, if any.

Assignor’s counsel will remain as counsel for any Assignor claims that have been filed. Any filed claims that the Attorney General does not pursue are not “covered conduct” and will revert back to the filing Assignor. These will revert when the Attorney General informs the Assignor that they will not be pursued or if the claim has not reached resolution by January 1, 2026, whichever occurs first. If the Attorney General informs the Assignor by December 31, 2025 that it still intends to pursue a claim that has not yet resolved, then the claim will not revert back at that time and the time for resolution will be extended by six months. This extension will continue to be available to the Attorney General as long as they deem necessary to resolve a claim.

Further, if any Court orders discovery to be conducted on any of Assignor’s filed claims, Assignor shall be allowed to conduct such discovery that is necessary to keep the claim viable until such time that it reaches a resolution or reverts back to Assignor.

And the undersigned may in the name of the State of Kansas and for the benefit of the State of Kansas as defined by state law, 2021 House Bill No. 2079, and consistent with **Kansas Opioids Memorandum of Understanding between the Attorney General, the League of Kansas Municipalities, and the Kansas Association of Counties**, prosecute, collect, settle, compromise and grant releases on said claim as in

his sole discretions deems advisable.

IN WITNESS THEREOF, the parties have executed this Assignment on the day and year first above written.

Signed, sealed and delivered in the presence of:

ASSIGNOR

ASSIGNEE

Authorized Signature

Authorized Signature

Douglas G. Bach
Administrator
Unified Government of Wyandotte
County/Kansas City, KS

Derek Schmidt
Attorney General
Office of the Kansas Attorney General

ADMINISTRATION AND HUMAN SERVICES
STANDING COMMITTEE MINUTES
Monday, July 26, 2021

The meeting of the Administration and Human Services Standing Committee was held on Monday, July 26, 2021 at 5:45 p.m., remotely via Zoom or by phone. The following members were present: Commissioner Markley, Chairman; Commissioners Philbrook, Kane, Ramirez, and Bynum. The following officials were also in attendance: Melissa Sieben, Emerick Cross and Alan Howze, Assistant County Administrators; Bridgette Cobbins, Interim Assistant County Administrator; Kathleen VonAchen, Chief Financial Officer; Misty Brown, Chief Counsel; Crystal Sprague, CARES Act Team Leader; Angie Lawson, Deputy Chief Counsel; Henry Couchman; Senior Attorney; Jeff Conway, Assistant Counsel; Lori Wilson, License Department; Patrick Waters, Senior Attorney; Jon Khalid, Assistant Counsel; Julianna VanLiew, Director of Health Department; and John Droppelmann, Chief with the Fire Marshal's Office.

Chairman Markley said before I call this meeting to order, I want to announce that due to COVID-19 some committee members, staff and public are attending remotely via Zoom as well as on site. All participants joining by phone should mute their phones when not speaking to avoid background noise.

During the meeting, please make sure you announce yourself by name and title every time you speak so the public that is observing knows who is speaking. This is critical given the number of remote participants and is current guidance from the Kansas Attorney General.

The public is allowed to participate by Zoom or submit comments by email prior to the meeting, and those comments will be included in the record of the meeting. The public may also indicate their intent to provide remote public comment by contacting the Clerk's Office by 5:00 p.m. the Thursday before the meeting. The public also will have an opportunity to provide brief comments either by telephone or via zoom from the lobby of the Municipal Office Building.

Chairman Markley called the meeting to order.

Roll call was taken and all members were present as shown above.

Chairman Markley said there are no revisions to tonight's agenda.

Approval of standing committee minutes from April 26, 2021. **On motion of Commissioner Bynum, seconded by Commissioner Ramirez, the minutes were approved.** Roll call was taken and there were five "Ayes," Philbrook, Kane, Ramirez, Bynum, Markley.

Committee Agenda:

Item No. 1 – 21929...ORDINANCE: AMENDING THE MUNICIPAL CODE SALE OF ALCOHOLIC LIQUOR

Synopsis: An ordinance changing the Sunday start time from noon to 9 a.m. for the sale of alcoholic liquor in the original package and cereal malt beverages in Kansas City, Kansas, submitted by Jeff Conway, Assistant Counsel.



Jeff Conway, Assistant Counsel, said it's a very simple ordinance. Basically, the Kansas Legislature, in the last session, did many things one of which allowed locals to move that Sunday sales time up from noon to 9:00. You could move it anywhere in that period, but the extreme would be 9:00. So, that's basically what it does. The ordinance moves up that window to 9:00 for alcoholic liquor. The second piece is for CMB or Cereal Malt Beverage, and that's basically what it does.

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Ordinance to Authorize Earlier Sunday Liquor Sales

- HB 2137 allows cities and counties to change the start time of Sunday liquor sales, and to permit the sale of liquor on the holidays of Memorial Day, Independence Day, and Labor Day.
- The UG previously made the change to allow sales on the 3 holidays in O-59-05.

House Bill 2137 did all that. It also allowed liquor sales on the so-called summer holidays: Memorial Day, Independence Day, and Labor Day. The UG had already done that a few years back and that was in Ordinance No. O-59-05. We didn't have to do that even though they allowed us to do that, so that piece was already taken care of.

Ordinance to Authorize Earlier Sunday Liquor Sales

- Any change to the Sunday start time must allow for a 60-day waiting period to file petitions to put the question on the ballot.
- If there are no petitions filed, the ordinance takes effect on the 61st day.

Now one thing that is very important is that the Legislature set it up so that there is a 60-day waiting period to see if there's any petitions that will be filed. If not, then the ordinance will go into effect on the 61st day. There is also a requirement to publish twice. So, that kind of lays out the timeline for this particular ordinance.

Ordinance to Authorize Earlier Sunday Liquor Sales

- Proposed ordinance moves the start time for Sunday sales from noon to 9 AM.
- Applies to sale of both liquor and cereal malt beverage (CMB).

Again, it just basically moves it up from noon until 9:00 a.m. and it's for both types, the liquor and the CMB.

I do want to point out one quick thing, and this is only something an old bill drafter would love. I want to show, if you have the hard copy there, in Sec. 1(b), it says, “no person shall sell” blah, blah, blah.” On Sunday not earlier...and not later than.” It feels like tortured language. I tracked the state statute exactly. My guess is it may have been a drafter error in Topeka. At this point, we can fix that up and my suggestion is to eliminate the two words “not and not” in the Sub. 1 there. That would make it a little bit tighter grammatically. That's your choice. You can perpetuate what's possibly a drafter error in Topeka by the way it's written right now or we can fix it, either way. I'd take your lead on that. That's the first piece of this alcohol package we have tonight.

I did want to mention that Lori Wilson, with the Business Licensing Division of the UG, is also available as we get into these. If you have questions about how the UG is taxing things and how we enforce all of this; she's available as well.

Chairman Markley said I vote for fixing the Topeka error and not perpetuating it. Other questions from committee members?

Commissioner Ramirez said the only question I have, and it's based from an email that we commissioners received a little bit before this meeting, what's the reasoning for us to change the time to 9:00 a.m.? What prompted us to want to change that time?

Mr. Conway said it just simply—the Legislature allowed the locals to move it if they want to. I think there was some talk. Maybe the industry may have talked to Business Licensing. There might have been some talk that we might as well move it with respect to

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competition with other jurisdictions. I think they intend to move it. There were some people that asked, do I have to; do I have to open at 9:00? You don't. It just simply broadens the window and allows you to if you want, but you can't open any earlier than 9:00.

Commissioner Ramirez said you don't have to open at 9 a.m.; it's just giving you the possibility. **Mr. Conway** said, correct.

Commissioner Ramirez said okay. I think the business owner that reached out to us, I think they're taking the understanding that they have to open at 9:00 am. I think if we're having something like this, we need to make sure that we're vocalizing it correctly too, especially our small business owners because they're afraid of the competition within the county itself with big box stores and bigger liquor stores. I think we need to make sure that we are messaging it right to them that they know that this is just the option to open, it's not required to. With that, that was the only question and comments that I had concerning this ordinance. Thank you.

Commissioner Bynum said I have a couple of questions. I'm on the same topic as Commissioner Ramirez. We did hear from a long-time family-owned liquor store owner in the community. I'm not believing so much that they don't know they can't open at 9 as believing that, if others, if we change the law to 9, others will open while the smaller family-owned businesses might not be able to staff as easily as a larger chain store and, therefore, puts them at a disadvantage, which I believe they have been at a disadvantage ever since we, the state, changed the law allowing for the stronger beer sales in places like grocery stores. All of that to say two things. I'm not terribly crazy about changing this part of our ordinance for that reason. My question is, as of right now, without this change, nobody sells alcoholic liquor prior to noon on a Sunday. Is that correct in Wyandotte, or I should say in Kansas City, Kansas? **Mr. Conway** said that's correct, Commissioner.

Commissioner Bynum said okay. I have another question on your slide that speaks to the petition. Are you able to share with us what that petition process would look like in terms of who would request the petition and by what, like for example, by what date would it have to be submitted to make it's way onto a ballot and how many ballot signatures and things like that. Can you tell us about that process?

Mr. Conway said I am at a little bit of a loss at that. I think it might be-it's geared to the last presidential election and it's percentage. I don't know about the exact dates. I believe, let's

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say they file the petition and get enough signatures and it happens in that 60-day window, then there's two options. One is a special election. I think we've gone past that possibility and because we are so close to the general election, then it would probably be put on the general election ballot.

Commissioner Bynum said I have no idea if anyone would be interested in such a petition. I guess, I think, it's important for anyone that might not want this change to understand the one last remaining step they would be able to take prior to the change in the ordinance.

Mr. Conway said I could see if I could pull that up in the next couple of minutes. It depends on when you'd like that answer. **Commissioner Bynum** said if you think you can get to that answer, I'm going to guess that's either through our Election Commissioner or possibly even the Secretary of State's Office that governs elections. If you think you can get there, that would be fine for me to know but that's my remaining question. If I were so opposed to it that I actually wanted to begin a petition process, I think I need to understand do I have to have that done within the 60-day period, that sort of thing. What ballot would it appear on, etc? If you don't mind taking a minute to look while we maybe either talk more about this or move to the next one.

Henry Couchman, Senior Attorney, said I just wanted to point out Section 4 of the draft ordinance specifies how that procedure for a vote on Sunday sales would be conducted. I don't know if you guys have looked at that or not, but you have to file a petition within 60-days following the second publication. It has to be signed by qualified voters of the city equal in number to not less than 5% of the voters of the city who voted for the office of President at the last proceeding general election. It's filed with the Wyandotte County Election Commissioner and in that case, the ordinance would become effective only if and when approved by the majority of electors voting thereon. I can't tell you when that will occur, but I would assume it would be coming up.

Commissioner Bynum said I really appreciate that. I did not make my way to that section of the ordinance. It could possibly be in the upcoming general election or some election after that, I guess. The petition days start counting after second publication of the notice? **Mr. Couchman** said, yes. **Commissioner Bynum** said I appreciate you finding that for us. Thank

you. **Mr. Conway** said thanks, Henry. **Commissioner Bynum** said that's all I have. Thank you.

Commissioner Philbrook said Commissioner Bynum asked my question so I didn't need to. Thank you.

Action: **Commissioner Kane made a motion to approve.**

Chairman Markley said I have a motion. Is there a second or additional questions? **Mr. Couchman** said I would point out one more thing. I think the motion to move to approve should be with the changes suggested by Jeff in the language. **Chairman Markley** said correcting the Topeka changes. **Mr. Couchman** said yes. There are two places in the ordinance where that needs to be done. One for the alcohol and one for the cereal malt beverages.

Commissioner Kane said I want to add whatever Henry said, but I want you folks to realize that the liquor stores this year worked their tails off to make this modification so they could sell if they chose to open up at 9:00. They would be able to sell more alcohol like Missouri does instead of everyone going over there. I make the modifications that Henry talked about with my motion. Thank you.

Chairman Markley said a modified motion, we'll need a second. **Commissioner Philbrook** said second and then a question. If it goes by us, then this goes to full Commission and be open for another conversation? **Mr. Couchman** said correct. **Commissioner Philbrook** said be prepared guys. There will be questions, more of them. Thank you.

Chairman Markley asked did we have any comments to the Clerk's Office. **Ms. Kimble** said there were no communications received in the Clerk's Office.

Roll call was taken on the motion and there were four "Ayes," Philbrook, Kane, Ramirez, Markley and one "no," Bynum.

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Item No. 2 – 21930...ORDINANCE: AMENDING THE MUNICIPAL CODE RELATED TO ALCOHOLIC LIQUORS AND CEREAL MALT BEVERAGES

Synopsis: An ordinance amending the Municipal Code to conform to numerous changes made to the Kansas Liquor Control Act (KLCA) and the Club and Drinking Establishment Act (CDEA) by the Kansas Legislature in HB 2137 during the 2021 regular legislative session, submitted by Jeff Conway, Assistant Counsel.



Jeff Conway, Assistant Counsel, said this is basically the bulk of House Bill 2137. So, the Legislature dropped a whole bunch of different changes into their statutes. Really, the way to explain it is we have code provisions some of which follow the state statutes. In many instances, we're silent, so then it just defaults to the state statute. Then, those places where we do have code provisions that track the state statute, we need to make sure that it's synced up with whatever the statute is, and if they change it, then we have to change it as a ripple. I'm just going to walk through this. None of this really is major, but I just wanted to show what changes they did, and what we have to do to correspond.

2021 Changes to Kansas Alcohol Statutes	
Changes in HB 2137	Comparable Provisions in the UG Code
Moves Sunday sales start time to 9 am from noon	Amending 4-111 and 4-233
Permits liquor sales on Memorial Day, Independence Day, and Labor Day	Already allowed by UG Ordinance O -59-05
Specifies that the effective date of special order shipping licenses starts on the date listed in the license.	N/A
Allows sale of refillable and sealable containers of beer and CMB (cereal malt beverage) by retailers, class A and B clubs, and drinking establishments	Amending 4-7—permits possession of liquor in public places, as provided in state law.

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So, for instance, they did the Sunday sales and so we've already addressed that in the previous one. I broke it out that way because that's the only piece that needed that 60-day waiting period. The rest of these do not. These are all just basic straight up changes that we can address tonight.

Like I said, the three summer holidays, that was already addressed so we can skip right over that. They've got the effective date of the special order shipping licenses. We don't have a comparable provision, so it doesn't matter. They had sale of refillable and sealable containers. In shorthand, you can call that liquor to go. We had some rule changes during the pandemic that tried to allow some of that, so we do have a code provision for 4-7, but I didn't want to go into all of that of how it syncs up with the language and all that type of thing. I basically, put in 4-7 that except is otherwise provided in state law. That way we're not tripping over the statute, but we are complying with the changes they made. In 4-7, it's possession. I just didn't want us to have people get into trouble if they're walking around and they're complying with state law with respect to walking out with a refillable and sealable container, then they get hit with possession on the local basis, so that should take care of that. You'll see that in sub B, and in sub C.

2021 Changes to Kansas Alcohol Statutes		
Changes in HB 2137	Comparable Provisions in the UG Code	
• Allows liquor retail licensees to sell CMB and beer to licensed CMB retailers	Adds corresponding references and	4-97 4-105
• Sale of CMB by the drink	conforming	4-106
• Allows removal of unconsumed CMB from a club or drinking establishment ("liquor to go")	amendments to UG	4-108
• Allows temporary holders of permits to sell CMB	Code provisions in:	4-109 4-110
• Allows consumption of CMB in common consumption areas		4-139 4-141
• Allows clubs to offer for sale and serve liquor to those outside of members, families, and guests		4-178 4-179 4-181 4-203 4-204 4-232

Now the next cluster is—they did a lot of things with cereal malt beverage and you can see the comparable provisions over in the UG Code. It basically amounted to trying to treat CMB the same as liquor in many different situations. It was just simply adding a reference to CMB in the code provisions.

2021 Changes to Kansas Alcohol Statutes	
Changes in HB 2137	Comparable Provisions in the UG Code
Allows sale of mixed alcoholic beverages in pitchers	Amends 4-105
Permits the transfer of alcohol for canning and bottling in bulk containers	N/A
ABC can suspend, cancel, or revoke under the KCLA and CDEA for violation of Director's rules	N/A
Allows person to receive a license where applicant is the spouse of a law enforcement officer	Amends 4-139

They had a change where they allowed mixed alcohol alcoholic beverages in pitchers. In order to allow that on the local level, then we amended the 4-105 to allow that. The next two provisions we don't have a comparable provision in the code. They changed it, and we didn't have to, we just defer to the state law. Allows a person to receive a license where the spouse of a law enforcement officer, so we made that change in 4-193.

2021 Changes to Kansas Alcohol Statutes	
Changes in HB 2137	Comparable Provisions in the UG Code
- Eliminates the residency requirements for certain liquor licensees: - Retailer - Manufacturer - Distributor - Microbrewery - Microdistillery - Farm Winery - Requires a resident agent - Allows ABC to require a nonresident applicant submit documentation and a background check	Amends 4-137 and 4-139

The next chunk has to do with the residency requirements. At first glance, you think, why are we getting rid of the residency requirements. Well, the state was a little bit concerned about challenges brought by out-of-state liquor wholesalers, liquor distributors, etc., on the basis of the dormant commerce clause. That's basically the notion that you can't really restrict the free flow of commerce within the United States based on where you are, and where maybe someone is selling from. The Legislature decided this is probably a good time to just knock out all of those residency requirements before we get lawsuits on that basis.

There's several places in 4-137 and 4-139 where we have residency requirements because we've just borrowed that from the state statutes, so if they knock it out, then we have to knock it out as well.

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I just wanted to make a point just because you don't have a residency requirement for a lot of these categories, you still have to have a resident agent here in the county, so it's the subject of a litigation, there is somebody that can represent that company here.

Also, it doesn't mean they get off scot-free. The ABC can require a non-resident to submit documentation, do background checks, etc., etc., so that's under state law.

2021 Changes to Kansas Alcohol Statutes	
Changes in HB 2137	Comparable Provisions in the UG Code
Authorizes 2-year fulfillment house license applications; payment of fee; provide information; retain records	N/A
Farm winery licenses: allows bulk containers; allows fortified wine with added wine spirits	N/A
Allows anyone with beneficial interest in a licensed manufacturer to be issued one drinking establishment license	Amends 4-141
Requires application for retailer's license be approved if already holding a license as a vineyard	N/A

I promise this isn't going to go on forever. The next slide authorizes a fulfillment house license application. We don't have something like that. They talk about farm winery licenses. We don't have that, we would defer to the state law.

Anyone with a beneficial interest in license manufacturer can get one drinking establishment license. We did have something like that, so I put in the tweak to correspond with the state change. The application for retailer's license be approved if you already have a vineyard and we don't have that.

2021 Changes to Kansas Alcohol Statutes	
Changes in HB 2137	Comparable Provisions in the UG Code
	Updates Code by adding references to powdered alcohol in 4-105
	Updates Code by permitting free samples, as authorized by state law, in 4-105
	Updates Code by adding references to RV resorts in 4-204

Then, I just wanted to make sure to say that there were some references already in state law to powdered alcohol. Our code didn't have that, so we kind of had to update, so I did that in 4-105.

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There's also a reference to preventing free samples already authorized by state law and that was in 4-105, I made that tweak as well.

I don't have anything about RV resorts, but the state decided to create a new category for that and so to update ours, I dropped that in to 4-204. If anybody wants to do that, now they can, I guess. I don't know where an RV resort would show up in Wyandotte or KCK, but we're ready, I guess.

So, that's that. It's a whole cluster of different changes, trying to sync up with the state statutes. Much of it is just mainly references and clean-up. Any questions?

Commissioner Kane said they work these bills every which way you could possibly work a bill trying to generate more money to the state of Kansas, that's why we changed it. Like I said, we didn't want them going to Missouri or somewhere else to get their alcohol.

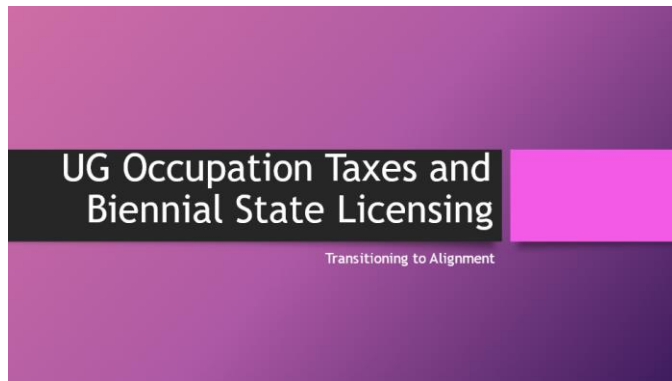
Action: **Commissioner Kane made a motion, seconded by Commissioner Philbrook, to approve.**

Chairman Markley asked did we receive any comments from the public? **Ms. Kimble** said the Clerk's Office received no communication from the public.

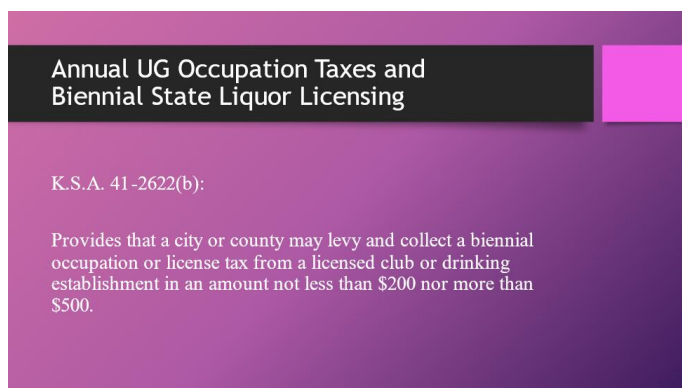
Roll call was taken on the motion and there were five "Ayes," Philbrook, Kane, Ramirez, Bynum, Markley.

Item No. 3 – 21931...ORDINANCE: AMENDING THE MUNICIPAL CODE RELATED TO OCCUPATION TAXES FOR CLUBS & DRINKING ESTABLISHMENTS

Synopsis: An ordinance amending the Municipal Code to align the occupational tax with the state biennial alcohol licensing schedule for licensees in Kansas City, Kansas, submitted by Jeff Conway, Assistant Counsel.



Jeff Conway, Assistant Counsel, said actually the title probably is longer than the time you're going to spend on this. Oddly enough, the state moved from an annual licensing structure to a bi-annual. In other words, every two years. They did that in 2010, but we didn't really make that adjustment and so our code has references to annual. It's not a local licensing, but the state allows us to levy an occupation tax and so that's the form it takes on the local level.



Talking to the industry it doesn't make a lot of sense for them to have a biennial schedule for their licensing, but yet have to pay every year to the local level, and so it's probably about time to sync those up, and that's what this does. In other words, 2010, we had the biennial, we got the annual on the local. You can see, here's the statute. It provides a window of \$200 to \$500. We currently do that. Like I said, Lori Wilson is online to talk about any of the details about that.

Annual UG Occupation Taxes and Biennial State Liquor Licensing

K.S.A. 41-310(j):

Provides that a city may levy and collect a biennial occupation or license tax on the listed categories of licensees, not to exceed the statutory amounts for each category.

(Generally, the UG levies an annual occupation tax on the listed categories that amounts to half the statutory biennial amounts.)

Another statute talks about the biennial occupation license tax. We have a schedule in the code, and it basically amounts to half of the statutory biennial amounts. Those numbers line up nicely.

Annual UG Occupation Taxes and Biennial State Liquor Licensing

K.S.A. 41-310(l):

Provides that a city may levy and collect a biennial occupation or license tax on retailers of not less than \$200 nor more than \$600.

(Generally, the UG levies an annual occupation tax on retailers of \$300, and \$100 on CMB retailers for both consumption on premises and off.)

Again, there's a window for the retailers of not less than \$200, nor more than \$600. Kind of an odd one is the CMB retailer's where it's just \$100 for both consumption on premises or off. Those kind of generally line up.

Annual UG Occupation Taxes and Biennial State Liquor Licensing

The proposed ordinance also:

- Brings nearly all categories of alcohol licensees under a biennial occupation tax;
- Transitions existing licensees from annual to biennial occupation taxes, aligning UG occupation taxes due with the state licensure period; and
- Retains the annual occupation tax for CMB retailers.

So, we would try to take all these categories and work them into a biennial occupation tax, so it's at the same time as the state.

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We need to transition right now to try to get them over to a biennial step. That will take a while and it's basically a transition period, and then once the date rolls around for the state licensing and then our local date is the same, then it will just go on from there. Whenever the state license is up, they'll pay both the state and local at the same.

For some reason, the state has decided to do annual for CMB. We would keep the annual occupation tax for CMB retailers. That's about it for that. If there's any questions?

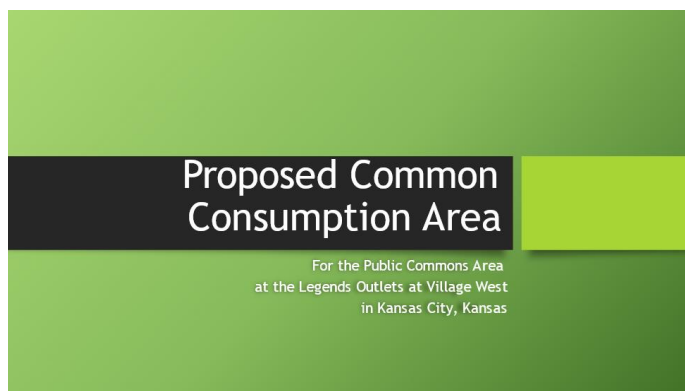
Action: Commissioner Kane made a motion, seconded by Commissioner Ramirez, to approve.

Chairman Markley asked any comments received from the public? **Ms. Kimble** said the Clerk's Office received no communication.

Roll call was taken on the motion and there were five "Ayes," Philbrook, Kane, Ramirez, Bynum, Markley.

Item No. 4 – 21932...ORDINANCE: AUTHORIZING THE ESTABLISHMENT OF A COMMON LIQUOR CONSUMPTION AREA FOR LEGENDS OUTLET IN VILLAGE WEST

Synopsis: An ordinance authorizing the establishment of a common alcohol liquor consumption area on certain property located in the Legends Outlets in Village West in Kansas City, Kansas, submitted by Jeff Conway, Assistant Counsel.



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Common Consumption Area at Legends Outlets

K.S.A. 41-2659. Common consumption areas; cities and counties permits duties and liabilities rules and regulations (a) (1) A city or a county may establish one or more common consumption areas within the limits of the city or within the unincorporated portion of the county, as applicable, by ordinance or resolution, respectively, and authorize the possession and consumption of alcoholic liquor within the common consumption area. The ordinance or resolution shall designate the boundaries of any common consumption area and prescribe the times during which alcoholic liquor may be consumed therein. The ordinance or resolution shall require that any public street or roadway that lies within a common consumption area shall be blocked from motorized traffic during the hours in which alcohol is consumed.

(2) The city or county shall immediately notify the director of the division of alcoholic beverage control of the establishment of a common consumption area and submit a copy of the ordinance or resolution along with such notice.

Jeff Conway, Assistant Counsel, said here's an excerpt from the statute that authorizes this, so it allows locals to set up common consumption areas. Most of the time you've probably seen it where you can designate blocks of a city and you'd block off the traffic, you put sawhorses out and do that for festivals and things like this. That's the notion, but here's the statute that authorizes that. The situation here is a little bit different. It's the Legend's area and I think in the maps it shows it's this area, it's kind of a public commons area, kind of towards the west end of the Legend's Outlet's. It's kind of got artificial turf with some chairs and things like that. Most of the time it will be used just the way it is now, but the Legend's wanted to be able to apply for an ABC license and then the permit would be granted through ABC. They might open it up a few times a year. They might open it up for events and that area would be roped off and would be a consumption area. ABC would enforce that.

The UG wouldn't be involved in that very much at all, but we have to kick off the process. We have to have a resolution that says, yes, we authorize that and then that resolution is sent to ABC, and then ABC would go through all of the details of what the permit would be and how it's going to be enforced and all that type of thing.

Common Consumption Area at Legends Outlets

K.S.A. 41-2659. Common consumption areas; cities and counties permits duties and liabilities rules and regulations

(g) For the purposes of this section, "common consumption area" shall mean a defined indoor or outdoor area not otherwise subject to a license issued pursuant to the Kansas liquor control act or the club and drinking establishment act where the possession and consumption of alcoholic liquor is allowed pursuant to a common consumption area permit. The boundaries of any common consumption area must be clearly marked using a physical barrier or any apparent line of demarcation.

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If you're wondering what a Common Consumption Area is, here's the definition. It's indoor/outdoor area, not otherwise licensed, etc. It has to be clearly marked. Usually for the permit purposes, you have to have your own enforcement and security. The glasses have to be clearly marked that that's part of that, so it's not confused with anything else.



Here's the location. You can see the north. The north would be to the north, I mean yes, the north would be to the top, sorry.



Here's the areas and that's kind of what it looks like. That would be looking at roughly to the southwest.

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Then here's another view of how it would probably be marked off once they get it up and running.

Again, this is just to start the process to get the resolution sent into ABC with their application and then, basically, it would be a relationship between the Legend's and ABC from then on. Our police would be available, but we wouldn't have the main enforcement.

Action: **Commissioner Kane made a motion, seconded by Commissioner Philbrook, to approve.**

Commissioner Philbrook said okay, so you say that our law enforcement wouldn't be primary. Does that mean our law enforcement would be told of this activity ahead of time so they can have time to prepare if they think they need to? **Mr. Conway** said, Commissioner Philbrook, yes, that's the idea. There is a provision in there, required security. The applicant would be working with KCK Police Department, probably keep them apprised of the events and work with them much the same way liquor laws are enforced now in different establishments. The main enforcement would be—you wouldn't want to lose this permit. You wouldn't want to get shut down. ABC would keep an eye on whether the permit is being complied with.

Commissioner Philbrook said I know you keep saying ABC. The problem with acronyms is a lot of folks out there don't know what these are. I had to look at them and go, oh, alcohol beverage. It doesn't say in there how much ahead of time that the city gets, does it, anywhere? **Mr. Conway** said it does not. I borrowed some language from other ordinances, and it says something like "we'll work closely with KCK", so we could add that. **Commissioner Philbrook** said could you? I don't know what a good leeway time would be, but we always have to plan ahead of how we're going to schedule folks. I'm sure they would arrange months

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ahead of that. If we could maybe put in, I don't know, three to four weeks leeway head time so our folks can—I know I'm micromanaging, but I will tell you what, a lot times people don't make those things happen fast enough for us to be able to come in line to make it work well. Thanks, Jeff.

Commissioner Philbrook said you have to have a motion to accept that modification, I imagine, from the person who—is that correct, Jeff? **Mr. Conway** said, yeah, we can do it that way. **Commissioner Philbrook** asked, do you want to bring it back to full Commission that way? **Mr. Conway** said it's whatever your preference is. If the idea is as simple as, let's say, four weeks' notice before the event. **Commissioner Philbrook** said, yeah. **Mr. Conway** said I can write that in there.

Chairman Markley said, Commissioner Kane, Commissioner Philbrook has suggested some amendments and I'm curious whether you will amend your motion accordingly?

Action: **Commissioner Kane made a motion, seconded by Commissioner Philbrook, to approve with amendments.** Roll call was taken on the motion and there were five "Ayes," Philbrook, Kane, Ramirez, Bynum, Markley.

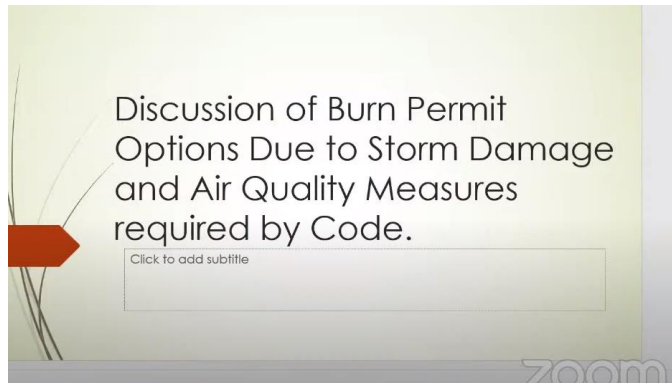
Item No. 5 – 21939...DISCUSSION OF BURN PERMIT OPTIONS FOR TREES KNOCKED DOWN BY STORM DAMAGE AND THE NECESSITY OF AIR QUALITY CONTROL MEASURES

Synopsis: A discussion regarding what options residents and businesses have when trees are knocked down by storms outside the normal burn season dates, and what air quality control measures, if any, must be utilized, submitted by Patrick Waters, Senior Attorney.

Patrick Waters, Senior Attorney, said on June 11th there was a microburst storm in the Piper neighborhood. This led the County Administrator to authorize a temporary extension of the burn permits for the neighborhood so long as people obtained permits from the Health Department and the Fire Department. There have been some questions regarding what people are allowed to do with the storm damage and what air quality control measures may be required. So, I'm going to give a brief presentation tonight. I'm actually going to introduce one of the newest of our

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office, Jon Khalil, he will start the presentation followed by members of the Health Department and Fire Department.



Wyandotte County Municipal Code
Section 3-17(h)(1)(a)

- Fires set for the disposal of nonresidential waste, or extraordinary yard waste may be permitted when it can be shown that such open burning is absolutely necessary and in the public interest
 - Yard waste is currently deemed to be extraordinary if it encompasses more than 100 sq. feet or may not be burned completely in three consecutive days between the hours of 7:00am and 6:00pm
 - The burning of land clearing debris, including trees, brush and vegetation is normally considered as being necessary and in the public interest

Jon Khalil, Assistant Counsel, said like Patrick said, we're going to go over some of the municipal code around open burning in the county. The first thing is Wyandotte County Municipal Code Section 3-17(a) provides that no person shall dispose of residential waste for refuse by opening burning or cause, allow or commit with opening burning for residential waste or refuse. There are two exceptions to this rule. There are permits that may be granted for non-residential waste and extraordinary yard waste, and organic yard waste. Section 3-17(h) (1a) provides that fires set for the disposal of non-residential waste or extraordinary yard waste may be permitted when it can be shown that such open burning is absolutely necessary in the public interest.

Currently, extraordinary-yard waste is currently being deemed extraordinary if it encompasses for than 100 sq. ft. or may not be burned completely in three consecutive days between the hours of 7 a.m. and 6 p.m.

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The burning of land clearing debris including trees, brush, and vegetation is normally considered as being necessary and in the public interest provided that an applicable air curtain open pit destructor of suitable design and capacity is used to accomplish the burning. Using this type of air curtain requires an additional permit to be obtained from the Director prior to its use.

Kansas Department of Health and Environment Policy

- According to the KDHE policy statement dated July 27, 2020, KDHE will continue to allow the open burning of trees and brush without air pollution controls at most locations.
 - **KDHE however, encourages and may require emission controls at some sites located in sensitive areas or near population centers**
 - KDHE prefers to allow open burning only in a manner that guarantees the least number of people will be adversely affected by the burn

Currently, KDHE allows opening burning of trees and brush with air pollution controls at most locations. However, they do encourage, and may require emission controls at some sites located in sensitive areas near population centers. KDHE prefers to allow open burning only in a manner that guarantees the least number of people will be adversely affected by any given burn.

2007 Kansas City Ozone Maintenance Plan

- The Kansas City Maintenance Area ("KCMA") was previously determined by the US Environmental Protection Agency to be a non-attainment area for ozone pursuant to the Federal Clean Air Act
 - The Kansas City Maintenance Area consists of five counties within the large bi-state Kansas City Metropolitan Area: Johnson and Wyandotte counties in Kansas, and Jackson, Clay and Platte counties in Missouri
- In June of 2005, the EPA formally redesignated the Kansas City area from "unclassifiable" to "attainment" for the 8-hour ozone NAAQS
- After reaching attainment in the KCMA was required to adopt a contingency plan for the continued maintenance of attainment which was to be effective for 10 years after attainment was initially designated

This also gets us into the potential issues with the EPA. So, in the past the Kansas City metro maintenance area, which includes Kansas City, Kansas and Kansas City, Missouri, has been deemed with what's called a non-attainment area, which means that the area hasn't met the national primary or secondary ambient air quality standards. As a result of this, the area was placed into—over the years, it's been placed into several different plans to become to reach attainment.

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Contingency Planning

Jon Khalil

- Section 110(a)(1) of the Federal Clean Air Act requires that maintenance plans include VOC and Nox control measures necessary to assure prompt action to correct any violation of the standard which occurs after the area reaches attainment
 - For attainment areas, additional controls are to be implemented in response to ozone violations, and/or increases in VOC or Nox emission that threaten the standard after an area is redesignated
 - The purpose of these controls in attainment areas is to achieve sufficient VOC and/or Nox emission reductions to eliminate further ozone violations.
 - Failure to implement these controls may lead to a redesignation to nonattainment status

In June 2005, attainment was reached in the Kansas City metro area which then triggered a contingency plan to be adopted by the metro area to ensure that attainment would be maintained for the next ten years. This plan was adopted in 2007, so the plan was completed in 2017 because Kansas City, Kansas and Kansas City, Missouri have maintained attainment in that time. This contingency planning required the area have certain controls in place that if there were increases in volatile organic compounds or nitrogen oxide emissions that threaten the standard that these would be reduced and eliminated down to attainment.

Now a failure to continue to implement these controls may leave the EPA to redesignate the Kansas City maintenance area back into non-attainment status. Being redesignated could lead to potential penalties from the EPA which include them issuing an order to the Unified Government to comply with the requirements or prohibitions of an implementation plan. They also have the ability to issue administrative penalties which are likely fines of up to \$48,762 per occurrence, which is capped at \$392,000 or they can file a civil action against the Unified Government.

Additional Considerations

Julian Van L...

- Local ordinance 3-17 is not designed to accommodate the removal of multiple entire trees. Its intent is to allow for the clean up of small amounts of yard waste.
- Prior to local ordinance changes made in 1997, Wyandotte County residents could burn in their yard year-round
 - This caused significant air quality issues that had public health and ozone consequences
- When organic yard waste is burned, they produce smoke, which contains vapors and particulate matter.
 - People exposed to these air pollutants can experience eye and nose irritation, difficulty breathing, coughing, and headaches. People with heart disease, asthma, emphysema or other respiratory diseases are especially sensitive to air pollutants. Other health problems aggravated by burning include lung infections, pneumonia, bronchiolitis, allergies, and COVID-19.

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Juliann VanLiew, Director of Health Department, said many of you know Rollin Sachs who previously was our Director of Environmental Health and Air Quality Division. Rollin left us a couple of weeks ago to seek a new opportunity, but he is by far one of the best experts in the county on air quality and our local ordinances. He has graciously agreed to come back this evening and speak to you all about the Health Department's concern on this matter. I'm actually going to throw it over to Rollin to speak to our side of things. Thanks Rollin.

Rollin Sachs said additional considerations in this is that this local ordinance for the portion that is the spring and fall residential burning opportunities was never really designed for the removal of entire trees. It was simply designed as a tool for maintenance for yard waste in small amounts to be disposed of by the homeowner.

Prior to '97, prior to the unification, the ordinance had allowed for open burning the first weekend of every month and with that, it contributed to our ozone issues as was previously explained. It contributed, and as part of those control measures for the state implementation plans, we redid the ordinance and simply allowed the two time periods that we currently have.

So, the major issues with open burning of this type, it creates significant health issues for residents in the presence of the smoke. The smoke has volatile organic compounds in it and particulate matter. People with any health issues, heart related, respiratory related, are going to experience difficulties with it. Even people that are not necessarily compromised to that don't want to be in the presence of the smoke. The smoke is our biggest issue coming from this. The use of an air curtain destructor that was pictured earlier simply, in EPA standards, this would be an incinerator and using the incinerator reduces the potential for smoke to the public in an efficient manner. They operate about 1,800 degrees usually and can efficiently and quickly eliminate large volumes of material. We've used them in the past for a lot of development in the county. It's something that's stood the test of time.

So, there's a reason that we use the air curtain destructors. In fact, many other municipalities across the metro area requires the use of them for open burning in residential areas. With that, Juliann, I'll throw it back to you for the next slide.

Health Department Recommendation

Julian Van Liew

- The UGPHD recommends no changes to section 3-17 of the Unified Government code of ordinances.
- The UGPHD already provides exceptions to allow small amounts of open burning to happen outside of the spring and fall windows.

Ms. VanLiew said so given Rollin's submission there of the Health Departments concern, we'd like to go on record that we are not recommending any changes be made to Section 3-17 of the Unified Government Code of Ordinances this evening. We believe the fall and spring windows allow for an adequate amount of burning to take place, and we do have exceptions that come up every year that we do allow, if they're using, again, with this air curtain destructor. With that, I'll hand it over to Mr. Droppelmann with the Fire Department.

FIRE DEPARTMENT'S ROLE IN ISSUING BURN PERMITS

Julian Van Liew

- All burn permit request must be initiated through the Department of Air Quality
- Once the Department of Air Quality approves the application, the permit is forwarded to the Fire Department for approval.
 - Must meet the International Fire Code requirements
 - ✦ Required distances, Attendance, Control Measures
 - ✦ Site visits made for content and distances
 - Must meet the Unified Government's Code of Ordinance requirements
 - Some requirements during April/Oct/Nov seasons have been 'relaxed'
 - If approved by FD, permit is signed, logged and sent back to Air Quality

Chief John Droppelmann, Fire Marshal's Office, said the first one here just kind of explains how the residential process works. It was developed between Rollin Sachs and I to more efficiently get burn permits out to people. Every time somebody calls the Fire Department saying I need a burn permit, it doesn't start with the Fire Department, it starts with Air Quality. They're the ones that determine whether or not the burning can occur, period, whether it qualifies under the state statutes and under the city ordinances because it is under Chapter 3 of what and when you can burn. The Fire Department's role is to make sure it's done safely if the Air Quality Department allows it.

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RESIDENTIAL OPEN BURNING DURING APRIL & OCTOBER/NOVEMBER PERIODS

- Department of Air Quality has given blanket approval for the Fire Department to issue these permits
 - ❖ Must be compliant with UG Code of Ordinances
 - ❖ If violation is discovered, permit must be revoked/denied
- Fire Department issued these permits by in-person visits to Fire Stations through Oct/Nov 2019 burn season
- GIS/Knowledge department created an On-Line portal for the 2020 burn seasons.
 - ❖ 95% of applicants use this portal; FD can still issue from the stations
 - ❖ Improved compliance with Air Quality Code
 - ❖ Allows for better tracking of permits and habitual offenders

The residential open burn periods that were developed in April and then October 16th through November 15th. At one point, we were issuing around 1,200 of those during each of those 30-day periods. There was no way for one person in Air Quality and myself to be able to handle that volume, so Air Quality kind of gave us a blanket approval during that time period. Look, if you stick by the rules and by what these seasonal permits requires, then you've got our blessing, make sure you're doing it that way. If you have any questions, stop and we'll look over specific ones. So, we did that on paper all the way through, I believe, the fall 2019 burn season. Luckily, during that time, we tried to figure out a way to make it more easily accessible for the residents which in 2020 COVID hit so the fire stations we're kind of off limits to the public for a while, so this portal was developed by the GIS and Knowledge Department, it came online in fall of 2020. The April burn season was canceled. I think at the County Administrator's recommendation because of the respiratory virus from the COVID and this would possibly exacerbated by open burning, so we started this online portal and basically the residents fill in the burn permit requirements and it automatically kicks them out one within 24 hours.

SPRING/FALL BURN PERMIT TOTALS

YEAR	APRIL	OCT/NOV	TOTAL
2017	975	1375	2350
2018	1018	921	1939
2019	1029	918	1947
2020	N/A-COVID	657	657
2021	539		

These are our burn permit totals that I went back to. They're actually in a computer database from 2017 through this past spring. You can see kind of the numbers stay around about 1,000. 2020, of course, we didn't issue any in April because it was not allowed during that time. I don't

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know why October and November was down from the rest. I think a lot of residents were happy it was.



When the Fire Department was asked by the Air Quality Office, hey, do you have any issues with open burning all the storm debris from the June 11th storm and I, at the time, said I can see where there's going to be some problems, but personally I don't, I don't like to see landfills fill up with this stuff. So, I drafted a letter and sent it to them about the concerns that I had. They asked if the residential portal for applying for them could be modified so that the residents could use that. I said I'll check with GIS so they were able to do that. Hopefully, we can get it reset back for October because it did take quite a bit of work and testing to do this. As of today, actually, you can change that applied four to eight of them. I gave out another one today. Six of them have been issued, one of them was denied. You can see the reason there. It was actually filled out by a neighbor, wasn't filled out by the person. When you fill these out, you're signing on there that you have read the rules and regulations, it's your property, and you're going to be responsible for what happens on it. So, the permit was falsified and they were already actually burning before I could even deliver the permit to them.

Last one, which I believe is why we're here today, is one of them is still under review, it's a large agricultural property. They demanded to be able to burn all 60 days because they had so many trees down and I could offer them was one and technically, I really couldn't even offer them that because it's agricultural property. It doesn't fall under the residential open burn requirements.

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CONCERNS FOR STORM DEBRIS RESIDENTIAL OPEN BURNING John Dropp

- Storm debris is typically 'green' with ample foliage
 - ❖ Difficult to start, may have to use volatile fluids
 - ❖ Creates large amounts of smoke
 - ❖ May contain poison ivy due to growing season
- Large trees that have fallen can burn past 6pm deadlines
 - ❖ Restart fire with now wet green wood
- Distance requirements follow the IFC regulations
- More complaints from areas not allowed to burn than those actually permitted.

Here is some of the excerpts of the letter I sent to Air Quality when they asked for my opinion on it. When you hit this storm debris, most of this stuff that's brought down—and I had two large trees in my yard, plus a bunch of other branches that came down with this storm, it's green. It can be full of vines and other stuff. If you're going to try and burn that stuff in the first month or so that it falls, all you're going to do is smoke the neighborhood up. It's going to take probably a large amount of gasoline or diesel or whatever somebody is going to try to ignite this stuff, so there's a life safety problem there that I would consider. It's also because if it's outside of the residential burn periods of April and October, it falls under the normal International Fire Code rules. Our April and October burn season, the city has adjusted the city ordinances to allow for a 100 sq. ft. base fire to occur within 15 ft. of any structure. I don't know about you all, but you know if you light a bonfire that big, 15 ft. from your house, you're probably going to set the siding on fire. I don't know where those rules came from. The International Fire Code says 50 ft. minimum, so that's the requirements during this time because these are pretty large piles of storm debris is what I was predicting. The 50 ft. rule came into effect in the International Fire Code that the city has adopted.

As of this time, I have actually taken more complaints from people that have not been allowed to burn because they were designated outside this zone and those people that want to burn, let's say we've only issued eight of these so far.

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UNAUTHORIZED BURNING COMPLAINTS John Doppel...

YEAR	COMPLAINTS	TOTAL FD INCIDENTS
2017	548	31,433
2018	416	32,291
2019	358	31,949
2020	469	32,158
2021	134/268	16,223/32,450

The number one complaint that I get from the Fire Department is people burning and I get them from most of the commissioners, from their secretaries or whoever you guys report to, your constituents are fed up with the neighborhood consistently burning or whatever. Usually, it gets to me because they threaten to go to the media or something over it. I go and pay the offender a visit. I use whatever's in the code that allow me to either cite them or warn them, that here's the repercussions if you open burn. You can see the numbers have started to come down. I think we've made a good conscientious effort to handle these. My investigators that are on 24/7, they'll go to these things in the middle of the night or day as long as they are reported to 911. You can see we brought the numbers down. Now, 2020, I think is anomaly there because we weren't allowed to burn in April, so I think people just went ahead and did it. That's why you're seeing that increased number there, but for the most part, I think we're starting to get the number one complaint to the Fire Department about people burning and smoking out neighborhoods a little bit more under control over the last four years or so.

FIRE DEPARTMENTS RECOMMENDATIONS John Doppel...

- The Fire Department is **not** recommending any changes to the current 'Open Burning' ordinances.
- The Fire Departments #1 complaint from the public is smoke from illegal and legal open burning operations
- From the data, the Fire Department believes it is seeing a reduction in these complaints
 - ❖ Any loosening of the current ordinances would reduce the ability of the Fire Department to ensure compliance with open burning.

The Fire Department right now is not recommending any changes to the open burning ordinance. I don't believe there is any reason for it. I think we can continue to see that downward trend, you know, your constituents complaints coming in. I'm happy to have those devices at my disposal to help minimize all those complaints. I'll turn it back over to Jon.

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FIRE DEPARTMENTS RECOMMENDATION

John Drappel, Fire

- The Fire Department is **not** recommending any changes to the current 'Open Burning' ordinances.
- The Fire Departments #1 complaint from the public is smoke from illegal and legal open burning operations
- From the data, the Fire Department believes it is seeing a reduction in these complaints
 - ❖ Any loosening of the current ordinances would reduce the ability of the Fire Department to ensure compliance with open burning.

Mr. Khalil said the Legal Department was asked to put together some options for the Commission moving forward. The first option would be to leave Section 3-17(h)(1)(a) as it is and continue to require an air curtain open pit destructor of suitable design and compacity to be used to accomplish the burning.

The second option would be to amend Sec 3-17(h)(1)(a) to remove the air curtain open pit destructor requirement. The third option would be to modify Sec 3-17(h)(1)(a) to provide greater digression to the Health Director regarding the use of air curtains.

Burn Permit Ordinance Options (4)

Jon Khalil

- Option 3: Amend Section 3-17(h)(1)(a) with the language below:
 - a. *Nonresidential waste and extraordinary organic yard waste.* Fires set for the disposal of nonresidential waste extraordinary organic yard waste may be permitted only when it can be shown by a person that such open burning is absolutely necessary and in the public interest. The Director may determine whether the burning of nonresidential waste such as land clearing debris, including trees, brush and vegetation as well as extraordinary organic yard waste such as trees that are felled by severe storm damage, is considered necessary and in the public interest. The Director also may determine what, if any, precautions are needed ensure air quality standards are maintained. The burning of land-clearing debris, including trees, brush and vegetation only, shall normally be considered as being necessary and in the public interest, provided that an approvable air curtain open-pit destructor of suitable design and capacity is used to accomplish the burn and further provided that such device is installed maintained, and operated at maximum efficiency. An additional permit shall be obtained from the director prior to the use of an air-curtain-destructor. A fee in the amount established by the county administrator or his designee shall be paid for such permit.
 - (f) If an air curtain open pit destructor is required by the director, it shall be of suitable design and capacity to be used to accomplish the burning and such device shall also be installed maintained and operated at maximum efficiency at all times.
 - (g) An additional permit shall be obtained from the director prior to use of an air curtain open pit destructor. A fee in the amount established by the county administrator or his designee shall be paid for such permit.

This is potential language for option 3 which would be amending Sec 3-17(h)(1)(a). This would say that non-residential waste and extraordinary organic yard waste fire set for the disposal of non-residential waste or extraordinary or organic yard waste would be permitted only when it can be shown by a person that such open burning is absolutely necessary and in the public interest. The Director may determine the burning of non-residential waste such as land clearing debris, including trees, brush, and vegetation as well as extraordinary organic yard waste such as trees that are felled by severe storm damage is considered necessary and in the public interest.

The Director may also determine what, if any, precautions are needed to ensure air quality standards are maintained. Then the sub points here is just a continuation of—if an open pit destructor is required by the Director, that would be a suitable design and capacity to be used to accomplish the burning and installed and maintained and operated at maximum efficiency at all times and that a permanent permit shall be obtained from the Director prior to the use of an air curtain open pit destructor.

Chairman Markley said thank you very much John and team and particularly Rollin, thank you for joining us tonight. Good to see your face again. I know we do have a member of the public here to address the committee. Are there questions anyone has they would like to ask before that presentation?

Commissioner Kane said I have been working on this for an extended period of fire time. Staff just talked for 20 minutes. Mr. Budd will not be able to get this done in short order, so he needs an extended period of time. One of the things that's disturbing is we have to remember that we represent us. I'm disappointed how this was handled. We shouldn't be where we're at right now. I want Mr. Budd to get an extended period of time. They took 20 minutes. He can't get this done in short order. It's going to take him a little bit of time to explain what's going on.

Chairman Markley said I think we can definitely work as a committee to make an extension whether that is an advance or as it comes to that three minutes, we can make a motion and second for that extension of time.

Commissioner Philbrook said, well, my question is, does it have to be written that it's the Health Department Director that makes the total decision. Can it be done in conjunction with our Fire Department and the Marshal, you know what I'm saying, for that? I'm just, not that I don't trust our Health Department, but it seems like a dual responsibility between our Fire Marshal and our Health Department. I'm just asking. This is something that I want to understand or does it all have to be with one department.

Mr. Khalil said I believe we could change the language of the ordinance to include input from the Fire Marshal if that's what the Commission would like to do. **Commissioner Philbrook** said, well, I don't know what the Commission wants to do. Just not knowing as much as I would like to know, really, about the whole process. It just seems that it would appear to the public that it would be a collaborative decision that way and both would be responsible for that decision. Am I wrong about that if we put them together? **Ms. VanLiew** said I have no problem with that being codified into code largely because that's how it operates in practice right now. When we got this case that's being disputed, the first thing we do is call the Fire Marshal. We don't issue denials on our own, we do it in concert with one another and we're almost always in agreement. In the rare cases that we do have to deny a request because we're really on the same page on this topic. The Health Department would be fine sharing those responsibilities as written in code, but it does happen in practice. **Commissioner Philbrook** said we're blessed that it is happening that way, but it doesn't mean it has to happen that way. You know what I'm saying, we're happy that it does, but there's no requirement that it does, is there? **Mr. Khalil** said not at this time.

Chairman Markley asked any additional questions before I jump to our public presenter?

Don Budd, 4021 N. 129th, KCK, said I guess I appreciate the members of the syndicate that were here tonight to present what they're going to call facts in this case. The first and most glaring one that was presented to you that's an absolute, I'd call it a falsehood, but it's an outright lie. The case they're talking about tonight is mine. I got a letter right here in front of me that says, it's dated July 9th from the Health Department, from Juliann. It says this letter is to inform you that your request for burn permit for 4021 N. 129th is denied. It goes on to further explain statutes and things that probably me and you, as commissioners, don't quite understand. That's one of probably 10 absolute bold face lies that was presented by the Fire Marshal tonight. I don't want to get into that. I don't want to get into personalities. I'm going to explain to you the facts of what's happened. The facts that I'm going to present you are from people who were there. I have witnesses.

On June 11th there was a microburst in western Wyandotte County. A few days after, the Mayor, Mayor Alvey, a member of the Mayors' staff, Commissioner Kane from the 5th District,

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and a Public Works official toured my property which is directly to the south of Dub's Dread Golf Course, as well as other properties. All were understandably upset about what had happened. Obviously, a proclaimed microburst. I didn't cut the trees down, Dub's Dread Golf Course didn't cut the trees down, my neighbor didn't cut the trees down. There's no insurance to cover this type of damage. There's no damage to structures. Almost all of those properties were AG properties. **Ms. Sparks** said you have one minute remaining. **Mr. Budd** said now, air curtains is something that probably until tonight, a lot of you have never seen before. I've used it a lot on the development side of my business. I can tell you today to get a air curtain set up, the minimum cost is \$15,000 and it goes up from there for however long it takes you to burn. If we want to put that kind of burden on the taxpayers, I think that is as close to criminal as we possibly can suggest.

I have a letter here dated June 21st from the Public Works Department and the KCK Fire Department teams on Public Works letterhead and I'm going to read it to you because I'm going to believe most of you've never seen this letter and it's short and sweet. "On June 11th your area experienced a substantial microburst that resulted in many downed trees, broken limbs, branches, and other difficult to dispose of yard waste. Public Works understands this may have created a challenge situation for you and your neighbors. **Ms. Sparks** said your time is up.

Commissioner Kane, seconded by Commissioner Bynum, moved for extension. Motion carried. **Chairman Markley** said you may proceed Mr. Budd.

Mr. Budd said working in conjunction with the Kansas City, Kansas Fire Department we are pleased to announce that the County Administrator approved a special open burn permit period for your area. The special open burn period will last until August 21st in the area roughly bound by Leavenworth Rd. to Hollingsworth Rd. from 115th to 131st St. Residents and property owners within this area may participate in a special open burn permit burn period until the following conditions. Residents and property owners must obtain a burn permit from the Kansas City, Kansas Fire Department. Before approving the permit, the Fire Department will perform a site inspection to ensure only storm debris is burnt and that life safety requirements are followed. At the discretion of the Fire Chief, Fire Marshal, Deputy Chief, or their designee, a special open burn period may be canceled or otherwise paused when ozone alerts are issued.

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To obtain an open burn permit visit any Kansas City, Kansas Fire Department Station or visit the KCKFD website. Please feel free to reach out to us by calling 311 or visiting wycokck.org. Public Works and KCK Fire Department teams.” With this letter, it’s very simple. All of this is very elementary. These people are trying to cloud the issues with the EPA. The EPA does not even get concerned with agricultural properties. They don’t get concerned with AG burning near as much as they do commercial burning, development burning, even burning where your close proximity to residents. You’ve got to understand that this property, my specific property, and many, many others out here in the county in the western side, we got on the south side, the southwest side, about every commissioner as AG properties in their district. AG properties is not 100 sq. ft. or a 60 sq. ft. lot. It’s a piece of property that’s several acres, not several hundred acres, so we’re not talking about building a fire next to your neighbor’s house and catching the siding on fire. That’s not what we’re talking about here.

All the people that came out said they absolutely understand what we’re dealing with, and they wanted to help in any way that they could. I want to reiterate that. I then applied to the KCK Fire Department online. Fire Marshal Droppelmann made two visits out there. I had two different piles on different sides of the property because I didn’t want the property to—or the piles to get too big on the property, so I split them up, with the understanding that these trees, there were 28 of them, because when the Mayor and the Commissioner and the other people were out there, we counted them. I took the trunks of the trees. Now, you got to understand some of the trunk of these trees were 28 inches around. I had my guys out there for 2 ½ weeks. We chain sawed them. We used the equipment. We took the bulk of the tree and put them in piles and I’ve been giving them away to people for firewood. They’re coming over and I’m loading them on their trailer and they’re taking them away, we’re not burning those. I made that very clear to them. What we have left are these branches. These piles are insignificant in the scheme of things that the syndicate members are trying to get you to buy into, it’s an absolute falsehood what they’re doing. Juliann, you may say my hardship is being humorous, I don’t.

The one thing that Chief Droppelmann did say that is the truth, after more onsite inspections, I was offered a 3-day permit. Well, understanding the consequence of the guidelines that I had, I said I can’t simply comply with that. We’ve got a 60-day burn period, I got equipment here. It’s not like I’m going to burn. I’ve got big equipment to keep this monitored.

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After that point is when I started getting denial letters from the Health Department and places like that.

On July 9th I got the denial letter from the Health Department that I read you the one sentence excerpt from. It goes on to cite many of the same things that they were citing here.

Many of the glaring excuses in this whole thing is the reason they wouldn't give me the permit is because I was zoned agriculture. I've been zoned agricultural since I bought this property in 1997. Now, I haven't changed that, the same cows are living there, we don't have the same fence, we had to put a new fence up since the storm. In this letter, the Fire Marshal's letter and the Health Department's letter, they simply say that my organic yard waste as being zoned AG is not the same yard waste as residential yard waste.

Now, just to go a little bit further to tell you how illogical this is, my neighbor to the east which owns 6 or 7 acres, we had two joint trees. I was not in town when this happened. He was gracious enough to clean up the trees that were on our property line together. He took those trees, now you have to understand the same tree we shared, half was on his property, half was on mine, that was not included in the 28. He applies for the burn permit. He gets it and he burns the same trees. I know this story seems so illogical and so unreal, you can't believe that people are telling these untruths and you can't believe it's happening. I've given you such minimal examples of what's happened during this process. I didn't create this devastation. I did not want to clean these trees up. I was asked very specifically by the Mayor, the 5th District Commissioner, and the Public Works Director, don't put—because we had the opportunity to put them at the curb. I could have taken all trees and put them at the curb and it would have cost you \$100,000+ according to your people to remove these trees, so I didn't do that. I didn't do what your current ordinance and your current Health Department Director and your current Fire Marshal wanted me to do, suggest that I do.

You got to understand that an AG use in this county and every other county in the state of Kansas are people that are farmers, they're people that have cattle. They're not people that have horses, horses are not classified as agricultural. They got hay ground. They got row crops. Those are farmers. We got thousands and thousands of acres of it in Wyandotte County. I've contacted many of those users. They weren't even aware of it because these guys are much like myself, we don't want what's happening in the western United States to happen here. If we get a

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disease or dead tree, we're going to cut it down, we're going to cut it in a reasonable size, we're going to put it in a pile and we're going to burn it when it comes time.

I'll give you an example, as I talked to these other guys it brought to something to light because them, such as myself, they've got property, AG property, in other counties in the state of Kansas.

In neighboring Leavenworth County, we'll start there, the one that is just on the other side of 7 Highway this is how it works. You call the Sheriff's Department, you're an AG user, I'd like to burn today. What are you going to burn? We're going to burn brush and trees. Okay, is there any construction materials, is there anything else in there? No. They checked the air quality, they said okay, you can burn, you've got four days to burn, six days to burn, depends on how big your pile is. If you need that time extended, please call us back and we'll come out with an extension of time if we deem it necessary.

Neosho County is exactly the same. It's more of a courtesy in Neosho County. They don't even mandate that you call.

In Butler County, most of us have been around Butler County, we've driven down the turnpike and have driven the beautiful Flint Hills here in Kansas. We're going to burn 23,000 acres, 23,000 acres of blue stem grass. KDOT came out. You see the signs, don't drive, dense smoke when this happens. It's not a fire, it's a smoke event. They do that to control what we're not going to have in the western part of the United States, which are total disasters and our AG properties that will affect then our residential areas.

At some point during these processes, we've got to use common sense to govern. You commissioners know this, and most staff, most of these syndicate staff members don't care. They present these facts to you that are untrue, then they want you to make a decision based on the untruths. Well, most of the public does not realize that you, as commissioners, really don't have a lot of power in this day-to-day business. You don't have power on personnel issues. I realize this. You don't have power in doing this. You got power, which is where you're at tonight, where your asses are sitting in these seats, this is when you can vote. This is what you can do to send messages to the public that we're going to protect you and we're going to use a little common sense to do that.

What I'm asking you to do tonight is to adopt the ordinance as Mayor Alvey brought it forward. I'm asking you to add one simple line, to also add in all AG uses. If a farmer wants to

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burn in his pasture so he's got a little bit of control and better grass for his cows next year, we ought to let him do that. If a guy has taken these diseased trees down and put them in the middle of the pasture and he wants to burn those, we ought to let him do that because if not, I feel like we're going to have a chamber full of farmers here at the Commission meeting that are going to get up and take the same time that I'm trying to take, with just as much passion, and we don't need that because once again, right is right and wrong is wrong. Thank you for your time and I'll be happy to answer any questions I possibly can.

Commissioner Kane said I have a question for staff. This is huge. It's huge for me, huge for Mr. Budd, huge for the farmers. I think this should be seen by all of the commissioner's. How do we do it? **Mr. Waters** said, Commissioner Kane, we can just advance this to full Commission for discussion over full Commission.

Action: **Commissioner Kane made a motion, seconded by Commissioner Philbrook, to move this to full Commission on September 16.**

Commissioner Kane said I would respectfully request, Mr. Budd, that you reach out to some of the other commissioner's because you've left out some of the stuff that happened with you in this particular ordeal that you're going through. Then, I respectfully request staff to always treat everyone the same. You got one guy that's got to burn something and he's right next door to you, you let the other guy burn something, it would seem that you had some sort of bone to pick with that particular person.

Mr. Budd said can I ask a question, Commissioner Markley, since you're the chair of this. When does this go to full Commission or when would it go to full Commission if you chose to? **Chairman Markley** said probably staff is best able to answer that question. They probably have that date right off the top of their head. I will, while staff is finding us that date, Commissioner Bynum has her hand up. We do have a motion on the table. Let's see Commissioner Bynum's comment and then we'll see what happens from there.

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Commissioner Bynum said my comment is a question about the technicality of the item because it is a discussion with no ordinance proposed and no vote proposed. **Mr. Waters** said I think if we advanced it, we would advance it for discussion as we're having tonight. At that time, a proposal for any amendments could be made and staff could bring that final ordinance based on comments made by the public and the commissioner's. **Chairman Markley** said the same form that we saw tonight. **Mr. Waters** said, Commissioner, we just presented an initial option tonight. I think one commissioner had a comment about a different change or a modification. So, anything is on the table and we could bring back a final version after a discussion was held.

Mr. Budd asked, Patrick, are you Legal, is that what you are? **Mr. Waters** said, yes sir. **Mr. Budd** asked, when would it go to the full Commission whichever way this committee decides to move forward? **Mr. Waters** said I believe August 12th, is. Is that a Thursday? **Ms. Cobbins** said, August 12th is the date. You're right Patrick. **Mr. Budd** said the thing I'd like to say upfront here is I leave this next Tuesday. I go to compete every year in the World Trapshooting Championships. I'm gone that day, so I would not be able to attend that meeting. I certainly would like the opportunity to attend the meeting. **Commissioner Kane** said we could postpone it to a different date that you would be in town. **Mr. Budd** said I hate to ask that question, but there's just no possible way—**Commissioner Kane** said we want to resolve the issue. **Chairman Markley** asked, can Commissioner Kane make his motion with a specific date tied to it perhaps? **Mr. Waters** said August 26th? **Commissioner Kane** said August 26th, but yet, the Mayor has to say it's okay to put it on the agenda? That would be my motion.

Commissioner Philbrook said a quick question, Mike. You want this before full Commission, or do you want to have a lively debate on the 5th floor meeting like a special session or do you want a full Commission? **Chairman Markley** said, I mean technically, I don't think this committee can mandate that something goes to a special session. **Commissioner Philbrook** said, but we can ask. **Chairman Markley** said, I think the Mayor could make a proposal if you would prefer it to come back.

Emerick Cross, Assistant County Administrator, said the Special Session schedule right now is extremely tight due to the budget. **Commissioner Philbrook** said I just wanted some clarification on directions we could go, that's all. **Mr. Budd** said I would be available almost the

entire month of September if that would help out. **Commissioner Kane** said we'll find an available date in September so we can work on the budget and that gives you time, Mr. Budd, to go around and talk to the other commissioner's and stuff like that because there are some underlying issues. I think that it would be best not to hurry it along and give everyone time. That would give you time to talk to some of the other Commissioners about the same issue. Is that okay? September 16th, that's the motion.

Commissioner Bynum said I'm sorry, but you're bringing up another question in my mind by suggesting that we bypass standing committee on this item, take it straight to the Commission. Are we also suggesting that at a Commission meeting where we have a discussion about adopting a change to an existing ordinance or two that we allow for public comment on that item? **Commissioner Kane** said we have done this in the past where the Committee, said you know hey, this is bigger than just the four or five of us, so we want to share with the rest. It hasn't happened very often, but it has happened. Obviously, you've got Legal here saying we could do it. I think this is the second one in 16 years I've asked for. I don't think that's an unusual request. We're trying to resolve an issue that's going to come back in the next storm, you know, so you might as well address it now instead of waiting and, no we're not bypassing it. Believe it or not, we've had more stress come from the other folks than we brought to them. **Commissioner Bynum** said I'm not questioning the topic so much as the process. If there's clarification that the process allows for that, then I'm fine with it.

Mr. Waters said make sure I'm hearing it correctly. The motion is to advance this to the September 16th full Commission for discussion. If there are proposed changes that are requested at that date, staff would make those changes and we would bring back a formal ordinance. **Commissioner Bynum** said at what point, technically during this process, do we usually bring public comment to the discussion? That's the question I'm trying to get the answer to. **Mr. Waters** said tonight and at the full Commission as well. Every step of the way, public comment is always appropriate and allowed. We could have public comment on the 16th and if there were changes made and we came back to the next meeting with more public comment then. **Commissioner Bynum** said, okay, that's what I'm trying to understand, thank you.

Chairman Markley said I see no more hands at this moment. I still have a motion without a second. Is there a second? **Commissioner Philbrook** said second.

Roll call was taken on the motion and there were five “Ayes”, Philbrook, Kane, Ramirez, Bynum, Markley.

Adjourn

Chairman Markley adjourned the meeting at 6:55 p.m.

tk

**ADMINISTRATION AND HUMAN SERVICES
STANDING COMMITTEE MINUTES
Monday, September 27, 2021**

The meeting of the Administration and Human Services Standing Committee was held on Monday, September 27, 2021, at 5:31 p.m., remotely via Zoom or by phone. The following members were present: Commissioner Bynum, Chairman; Commissioners Philbrook, Kane, Ramirez, and McKiernan (substituting for Commissioner Markley). Commissioner Markley was absent. The following officials were also in attendance: Alan Howze, Melissa Sieben and Bridgette Cobbins, Assistant County Administrators; Misty Brown, Chief Counsel; Jeff Conway, Assistant Counsel; Alley Porter, Commission Liaison; Kathleen VonAchen, Chief Financial Officer; Renee Ramirez, Director of Human Resources; Katherine Carttar, Director of Economic Development; Carol Godsil, Deputy UG Clerk.

Chairman Bynum said before I call this meeting to order, I want to announce that due to COVID-19, some committee members, staff and our public are attending remotely by Zoom as well as some on site. All participants joining by phone should mute when you are not speaking to avoid background noise.

During the meeting, please make sure you announce yourself with name and title every time you speak so the public knows who is speaking. This is critical given the number of remote participants and it is current guidance from our Kansas Attorney General.

The public is allowed to participate by Zoom or submit comments by email and those comments are included in the record of the meeting. The public may also indicate their intent to provide remote public comment by contacting our Clerk Office by 5 p.m. the Thursday prior to the meeting. The public will also have an opportunity to provide brief comments, either by phone or Zoom from the lobby of the Municipal Office Building.

Chairman Bynum called the meeting to order.

Roll call was taken, and all members were present as shown above.

Chairman Bynum said, we do have one revision to tonight's agenda. Item No. 2 is added. It's an amendment to the Legends West Lawn Development Agreement. Staff is requesting this item be fast tracked to this Thursday's full commission meeting.

Chairman Bynum said, our first order of business is, there are minutes from our May 2021 meeting.

Action: **Commissioner Kane made a motion, seconded by Commissioner Philbrook, to approve minutes from May 24, 2021.** Roll call was taken and there were five "Ayes," Philbrook, Kane, Ramirez, McKiernan, Bynum.

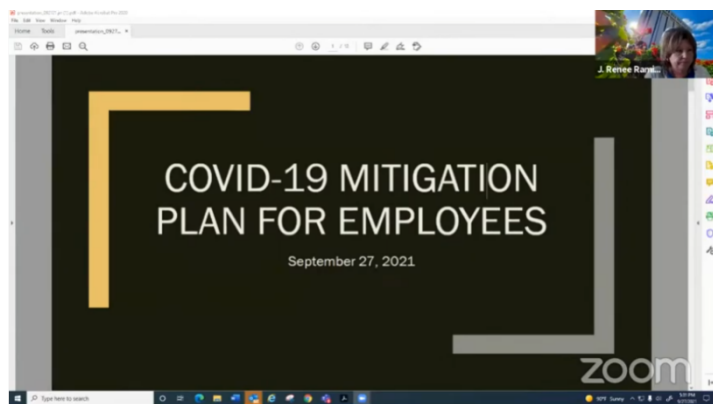
Committee Agenda:

Item No. 1 – 211031...RESOLUTION: UNIFIED GOVERNMENT MITIGATION PLAN FOR STAFF RELATED TO COVID-19 AND ARPA ALLOCATION

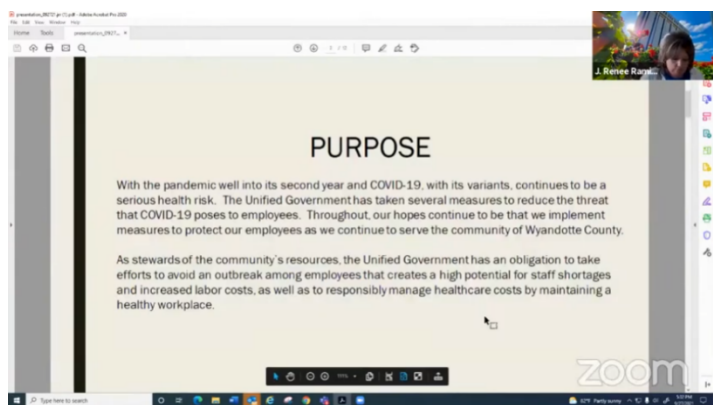
Synopsis: A resolution approving the Unified Government Mitigation Plan for staff related to COVID-19 and the allocation of American Rescue Plan Act (ARPA) funds, submitted by J. Renee Ramirez, Director of Human Resources.

Chairman Bynum said, staff has requested that this item also be fast tracked to this Thursday's full commission meeting.

Renee Ramirez, Director of Human Resources, said, with me this evening, I have two members of the HR team. Shakeeva Christian, our HR Manager, and Dave Wimberly, our Risk Manager.

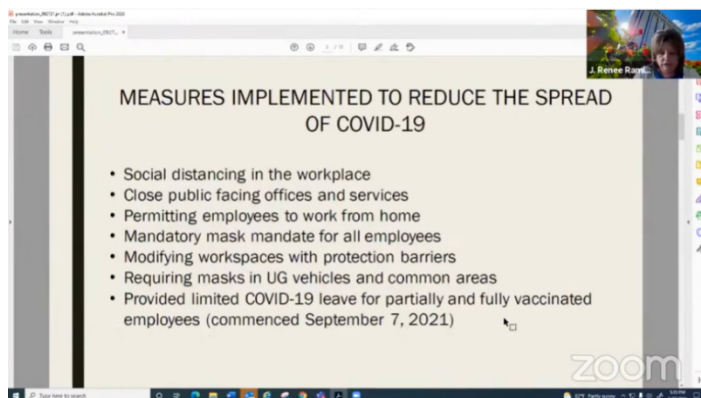


We are well into our second year of dealing with the COVID-19 with its variants continuing to be a serious health risk for our community and for our employees. We have taken several measures to reduce threat that poses to our employees. Some of those things I will outline here.

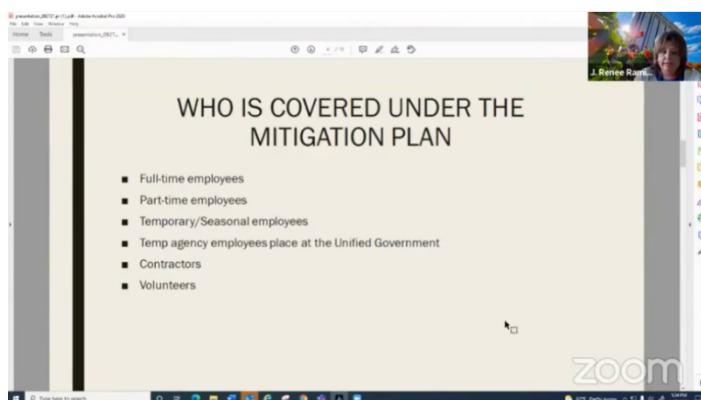


As stewards of the community's resources and the UG being an employer, we have an obligation to take efforts to avoid an outbreak amongst our employees. That creates a serious potential for staff shortages and increased labor costs, as well as to responsibly manage our healthcare costs which, as you know, is a self-insurance plan for our insurance premiums—and by maintaining a healthy workplace.

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Some of the measures that we've actually taken and implemented in our workforce here is the social distancing in our workplace. We've had to close public-facing offices and services. We've had to permit employees to work from home. We've had mandatory mask mandates for all employees, modifying workspaces with protection barriers. We've required masks in UG vehicles and common areas. We've also provided limited COVID-19 leave for partially and fully vaccinated employees. That is one provision that was a carryover to the FFCRA, which was the federal mandate that we previously had in place in 2020 when COVID commenced. We did start this program again on September 7th of 2021.

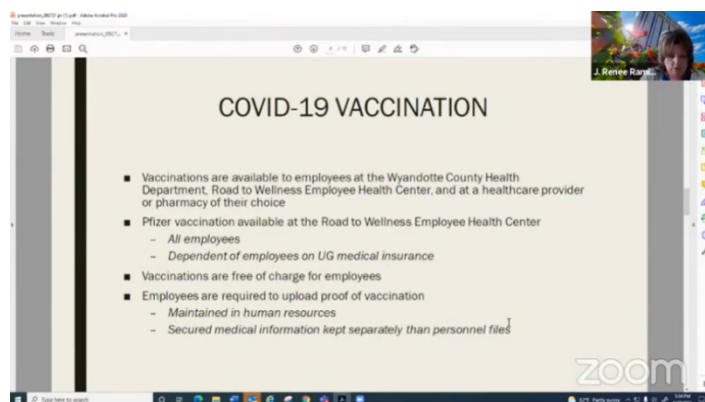


With the mitigation plan, we wanted to identify who was covered under this plan. This will be for full time employees, part time employees, temporary seasonal employees, temp employees that are placed at the Unified Government, any contractors, and any volunteers that we would have here working for us at the Unified Government.

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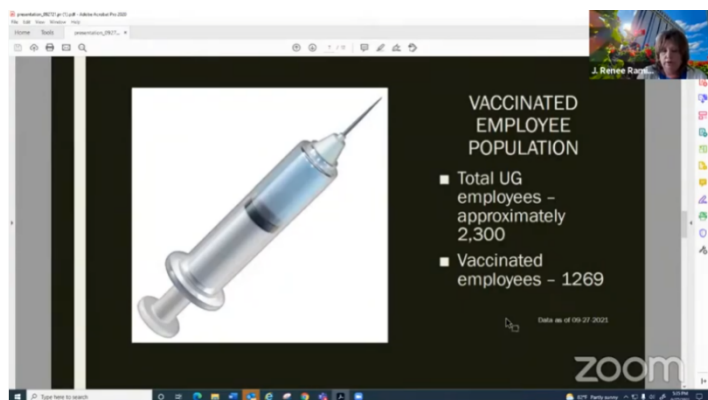
Earlier this summer, the mask mandate was lifted for a short time, but because of the rising cases in our community, it was reintroduced to our workforce for employee safety on August the 6th of 2021.



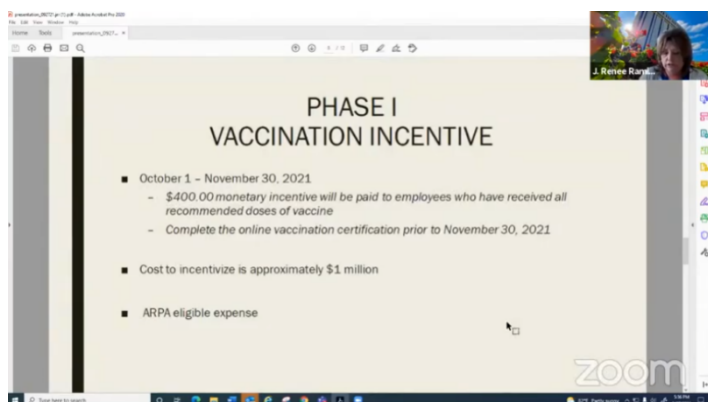
It currently is still in place for employees and for visitors. So, the mitigation plan has outlined COVID 19 vaccinations. Vaccinations are available to employees at the Employee Wellness Center. They are available at the Wyandotte County Health Department, and at any healthcare provider or pharmacy of our employees' choice.

Currently, the Road to Wellness Employee Health Center does have the Pfizer vaccination that is available to all employees, and it's also available to dependents of UG employees who are on our medical plan. Vaccinations are free of charge for employees, and employees are required to upload proof of their vaccination. The Human Resources Department is the department that is maintaining those vaccination certifications, and it is being held as secured medical information being kept separately from employee personnel files.

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A little update on the number of employees that are currently vaccinated throughout the Unified Government. Out of 2,300 employees, we have approximately 1,269 employees who have currently updated their vaccination certifications for us.



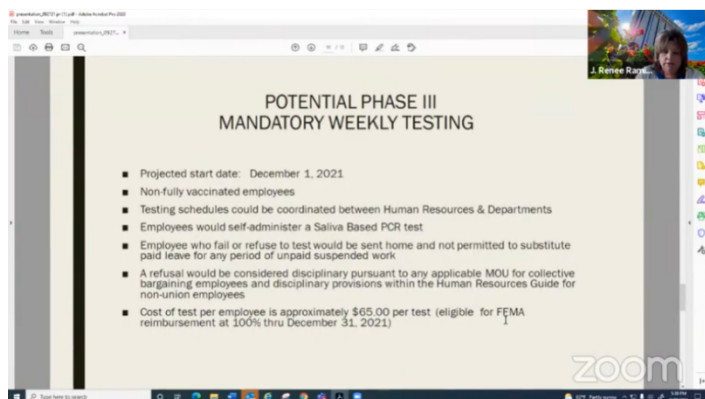
So, in the mitigation plan, we wanted to introduce this in a phased approach. So, Phase I of the mitigation plan is a vaccination incentive. So, October 1 through November 30 of 2021, we are wanting to provide a \$400 monetary incentive to be paid to employees who have received all recommended doses of the vaccine. So, that would be the two doses of Pfizer, the two doses of Moderna, and the one dose of the Johnson & Johnson.

Again, employees would have to complete the online verification for vaccination prior to November 30, 2021, to be eligible for this \$400 monetary incentive. The cost to incentivize for all employees—and I would be using the 2300 number that we have here at the Unified Government employed—is about \$1M, and these funds are ARPA eligible expenses.

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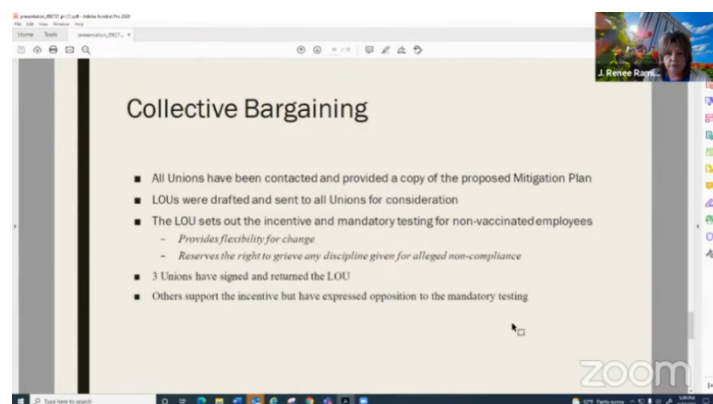


The next phase would be the vaccination incentive for the COVID-19 booster vaccinations as recommended by our public health officials. There's still discussion on when we will be bringing that vaccination on board here, but the dates will be announced upon guidance from the Health Department and Julianne and her staff. Employees would be eligible for a one-time \$100 monetary incentive for the booster. So, this would give our employees a total of \$500 between the initial—the two doses—and then the \$100 for the booster vaccination. The booster incentive would expire December 31st of 2022.



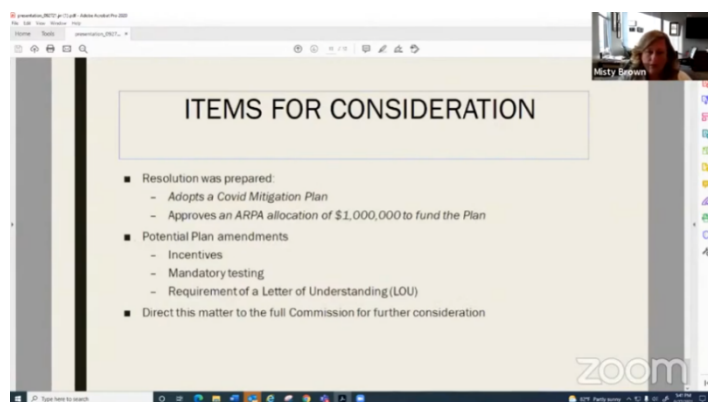
The next phase is the potential phase, which we're calling Phase III, which is mandatory weekly testing. The projected date for this phase would start December 1 of 2021, which would be after the deadline, giving the employees an opportunity to get vaccinated between October 1st and November 30th of 2021. The mandatory weekly testing would be for non-fully vaccinated employees and testing schedules could be coordinated between Human Resources and departments. Employees would self-administer a saliva-based PCR test. Employees who fail or refuse to test would be sent home and not permitted to substitute paid leave for any period of unpaid suspended work.

A refusal would be considered disciplinary, pursuant to any of our applicable memorandum of understandings for collective bargaining employees and disciplinary provisions within the Human Resources Guide for those employees who are non-union employees. The cost of testing, doing the saliva-based testing, for employees is approximately \$65 per test, and these expenses are also eligible for FEMA reimbursement at 100% through December 31st of 2021. I'll turn it over to Misty Brown, Chief Legal Counsel.



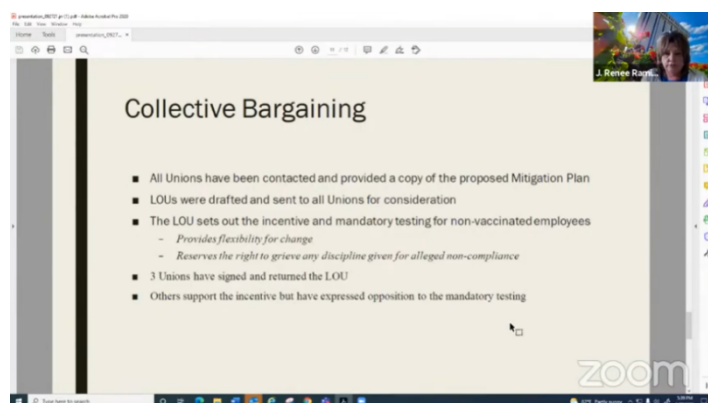
Misty Brown, Chief Counsel, said, this slide here is called our collective bargaining slide, so as staff has went through to work up a potential COVID mitigation plan, we have reached out to the unions and provided a copy of the proposed plan and sought some feedback from the unions. In addition, LOUs were drafted with all of the unions and sent over for consideration that set out the terms of the plan, and also the potential piece for the mandatory testing. The advantage of the LOU is that it provided some flexibility for change and that the testing frequency could change, or the type of testing could change. Right now, it's imagined that it would be, you know, a saliva test.

Then, it also specifically reserved the rights of all of the unions to grieve any discipline that may be issued for non-compliance. As of now, I believe three unions, three of our trade unions, have signed and returned the LOU to the Unified Government. Others have issued some support for the incentive, but they have expressed concern and are opposed to any type of mandatory testing. I believe another union was in accord with everything but didn't believe that an LOU was actually necessary in order to do this. So, that's where we are at with our union outreach, and I think this would take me to the next slide.



So, our items for consideration tonight, and there are—this is quite a bit to consider, actually, is that you have in front of you a resolution that would adopt a COVID mitigation plan and also approve an ARPA allocation of up to \$1M to fund the incentive. This is all done with the understanding that there could be direction from the commission that will result in amendments to the plan, such as what does the commission wish to incentivize the vaccine, what are the thoughts on the mandatory testing.

As we had this discussion with the unions whether or not one should require a letter of understanding and in that piece being meaningful, and that there's some thought that if a union does not sign and return an LOU, that members of that bargaining unit would not be entitled to the incentive even if they were vaccinated. So, these are all items that the commission needs to consider. With that in mind, this is an action item, but a potential action that could occur tonight would be a direction that this matter be sent to full commission for further consideration. So, that concludes our presentation.

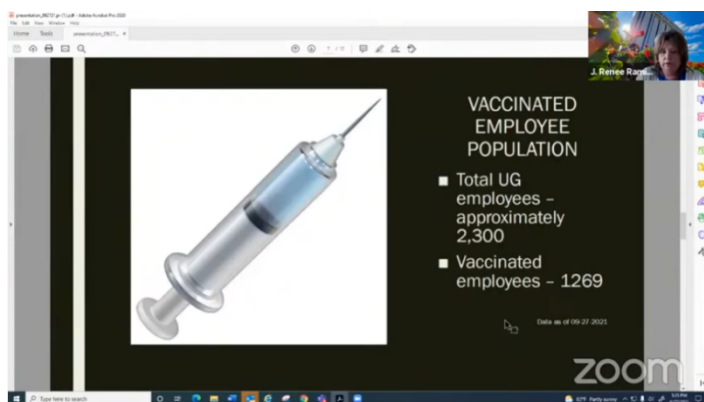


Commissioner Kane asked, could you go back a slide, please? One, I think given the money is good, but the mandatory testing and the fact that we need to negotiate this with the unions, not

dictate it to them. I think that we should have went to the bargaining table and say here we are, this is what we got, how can you help us or how can you not help us because I just don't think it's right to shove something down somebody's throat. If our unions were outside where they could go on strike, they would. I went on a 17 day strike at General Motors over some stuff that management was pulling and didn't need to be done; and remember, General Motors just went on some 70-some-odd day strike for some stuff that shouldn't have been done.

I don't think we should just dictate to our unions that they ought to have to do this. I think we should have sat down with them in the first place and say we're going to come up with a plan and why don't you help us come up with a plan, instead of saying all right, we have a plan whether you like it or not. I can guarantee you the Fire Department has not followed the guidelines as far as when somebody got sick where they had to use their own sick leave and stuff like that, so this just adds fuel to the fire, and I don't like it.

Commissioner Ramirez said, to just echo the words of what Commissioner Kane was just saying. I have a couple of questions. The \$1M allocation that we're making from ARPA, if we're basing it off—can you go back to that slide where it talks about the employee count?



So, we have an approximate amount of 2,300 employees and we're basing the ARPA allocation off that approximation. Shouldn't we have an exact amount? What are the plans—let's say not all 2,300 employees get the incentive. Where does the remainder of the ARPA funds go?

Ms. Brown said, I think that's a good question, Commissioner. When we did the \$1M allocation, this was considered being optimistic knowing not everybody would take us up on the opportunity to get the incentive with the vaccine. So, any funds that weren't expended for this would then come back to the Unified Government Commission to allocate in another way.

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Commissioner Ramirez said, that needs to happen, but I also think it needs to be said in the resolution, explicitly saying all remaining funds that have not been used should revert back to whatever fund that the ARPA funds currently are held in.

Ms. Brown said, that's a good point, Commissioner. Thank you.

Commissioner Ramirez said, that was the one thing I have—that I had an issue about with the \$1M allocation, is ensuring that what's left over goes back to where it originally came from.

With the LOU, why weren't we given a copy of that LOU as part of our packet? If that was given to our unions to sign, why haven't we been able to review that?

Ms. Brown said, well, Commissioner, we started working on these last week and put together a draft to circulate. It was sent to the unions with the understanding that commission approval would be required before any action could be taken on it. So, at this time, I would say they were more in draft form and then they were simply stating yes, we're going to do the incentive and the piece of the testing. So, if it's something that the commission wishes to proceed with, then the LOUs will come in front of the commission.

Commissioner Ramirez said, okay. No, I do think it would be a good idea for us to have a copy of that when we meet as a commission because I do agree that this needs to go to the full commission for a more in-depth conversation, but for us to have that conversation, I think we need to have a copy of that LOU so that we know what our unions are looking at. So, those are the only two things that I had questions or comments on. I support that this go to the full commission for a more in-depth conversation.

Commissioner Philbrook said, so, just to carry on a little bit with the other several conversations that we've had so far. I know that you sent out drafts to the bargaining units, and so all of them were the same. If they come back to us with other suggestions, are they modified, or does everybody have to sign the same thing? Do you understand what I'm saying, Misty?

Ms. Brown said, I do, Commissioner. So, everybody got a personalized draft, you know, with their union's information on it. Some of them were signed off on as is. Others have proposed drafts. Others have expressed displeasure with the testing. So, I've only seen the three

from the trade unions that came back and were signed, and then there's been emails back and forth about what pieces different unions liked or did not like.

Commissioner Philbrook asked, so, with that negotiation process, does that mean that there's a possibility that the different unions will have different agreements?

Ms. Brown said, I would not recommend that. **Commissioner Philbrook** said, I know, but I'm just asking. There could be a possibility.

Ms. Brown said, there is always that possibility, yes.

Commissioner Philbrook said, so, having said that, what happens if—I agree we need to move this forward for the full commission to have conversation about. What happens if during our conversation, we decide that the bargaining units need to have more time to consider and we don't move this on through on Thursday? What happens? I mean, what is going to happen if we don't move it through?

Ms. Brown said, well, I think it would also depend on the direction of the commission. If they're interested in doing this. The entire project plan could be scrapped if that is the desire. If there was a desire to take more time with it, then timelines could be adjusted depending on what portions or all of the plan the commission were interested in entertaining.

Commissioner Philbrook said, well, I just wanted to make sure there wasn't a drop-dead date that would say oh well, we can't get our hands on the million to put into this project, you know, or things like that. That's why I'm asking, Misty.

Alan Howze, Assistant County Administrator, said, the part of the goal here is protecting the—for safety and health of the workforce and the public, so trying to use the incentive to encourage vaccinations and to get our numbers up. We have, as you can see on the slide here, just under 1,300 employees who have reported that they are vaccinated. We anticipate that there is some number above that that just hasn't submitted their paperwork yet, but certainly below that 2,300. So, the more folks that we can get vaccinated, the safer they will be, the safer their families will be, the safer the public will be. It will also reduce our liability, or potential exposure on our health plan, since, as a self-insured employer, that any costs for COVID-related

health treatments are borne by the entire workforce, right? So, there's a number of reasons to want to get as many folks in the workforce vaccinated as possible.

So, that's sort of part of it. I guess the other part in the testing, and this is part of why we wanted to bring it to Standing Committee and the commission for discussion, is how does testing fit into that? There's clearly more sort of angst around testing for certain portions of the employee population. I'll note that Johnson County to the south has now, for the month of September, been doing testing for non-vaccinated employees on a weekly basis and without incident. Jackson County is moving to that at the end of this month. You've heard from the federal government that they're also kind of moving in this sort of two-pronged direction where you're vaccinated, or you get tested on a weekly basis. We don't reside under that OSHA sort of guidance. We're outside of that, so there's options that are available to us as an organization and to you all as commissioners in terms of which direction you want to go. So, we wanted to kind of get your sense of that as we go through this, but also keeping in mind that really top of mind on this is how do we protect the health and safety of the workforce and the employees, and then the public that they're serving.

Commissioner Philbrook said, so, Alan, with that in mind—and this might be an answer from Misty because this gets into legalities—is it possible to put through the memorandum without the ones that have not—the bargaining units that have not signed off to do this? Is it possible to put through what we can and negotiate with the bargaining units?

Mr. Howze said, and I'll let Misty answer in just a second, but I mean there's also, I think, on legal ground where we approach this in terms of dealing with bargaining units in a cooperative manner. We wanted their cooperation because this is a workforce safety issue, and so from a purely legal perspective, there's not a requirement necessarily to go down the LOU route. So, there is a legal sort of standing as an employer to simply go forward with this, but didn't want to do that, kind of approaching this in the spirit of cooperation to engage with our bargaining units to get their input on this.

Commissioner Philbrook said, so, I want an answer from her, and then I'm going to answer your comment, Alan.

Ms. Brown said, so, Alan is correct. We did talk about whether or not this is a mandatory condition of bargaining, and I think one union said that this isn't necessarily needing to be in an LOU. So, back to your question, could you pass, you know, adopt LOUs with some of the unions and come back with the rest. Yes, you could do that. You could vote to have incentives without mandatory testing. There's a variety of options that the commission could choose to take.

Commissioner Philbrook said, okay. So, then, Alan, comment back to you. With what you said about us wanting to be in the spirit of cooperation, my comment to that is then if we're going to be cooperating with the unions, then we don't need to just be in the spirit. We just need to do it, which means then there may be a delay; I don't know. There may be a delay in how the unions come back to this, but I mean, I would like to see folks vaccinated and I'd like to see them get the carrot instead of the stick. I would like to see us being a lot safer because for myself, I know I don't want it and I've had to see too many patients who have lost loved ones because of some of these issues. So, I just wanted to make a comment to that. So, that's the direction I'm going in.

Commissioner Kane said, this isn't an issue just here at the Unified Government, this is an issue across the United States. For 21 years, I was on a joint program at General Motors and I didn't make any decision without my management counterpart. I think that we need to slow down a little bit, sit down with the bargaining unit, and I do want—let me just back up a second. I want everyone to get the shots. All of them, but I think when we sit down at the table and say all right guys or gals, here's what we'd like to do. Not, you're going to do this whether you like it or not and you're not going to get paid, and this is going to happen, you're going to get disciplined and everything else because I'm telling you, the Tuesday after we talked about this, a gentleman walked in and quit. We're already losing people leaving to go to different areas in Johnson County and then across now in Missouri because they don't like what they're being dictated to. So, it's frustrating for me working where I worked. I can be difficult at times, but I sat down with management every single day and worked out whatever issue we needed to work out. They never rammed it down our throat except when we went on strike. So, there was reaction that our

employees can't do, and some of them wish they could. So, I think until we sit down with them, that this is useless.

Commissioner Ramirez said, I see that there's two separate issues here. I'm not going to speak for the whole committee, but I'm sure that all of us support the incentive package that we're trying to provide to our employees, but it seems that the collective bargaining with the unions is what's being contentious, and I think there needs to be two completely separate plans. I understand that we're doing this for workplace safety and we're trying to do what we can to ensure that we don't have an outbreak and we ensure the health and safety of our community and our employees, especially, but our unions have rights as an organized union. To go about the regular and the proper channels of bargaining for this rather than, as Commissioner Kane said, instead of shoving it to them, we need to do what's in their MOUs. So, that's why I think we need to separate these two plans into two parts so that the incentive doesn't get jeopardized by the other, and vice versa. That is my suggestion that I have.

Commissioner McKiernan said, I will say that in broad strokes, I agree with everything that's been said so far. First of all, I completely support moving this forward to the full commission for further discussion and potential resolution. I do support the incentive. I think we should encumber that money out of ARPA funds and if we don't use it all, that's great. We have more to spend on other aspects of ARPA funding. I don't know that necessarily we need to have a November 30th deadline, I believe that was the deadline I saw in here. We could be flexible. We could, as a commission, as a Unified Government, decide on a different deadline. We might extend that deadline a little bit, but I do support the incentive and encumbering that money right now for that.

I will say that I don't think that we should have a fractured approach to testing. Now frankly, myself, for a different job I got tested weekly last year. There's no big deal to it to me, but I understand some people have a real issue with that, but I don't think that there should be a dissimilarity. Either everyone's going to do it, or I would say no one's going to do it. I would like to see it uniform across the entirety of our workforce knowing that there is a lot of pushback, at least among some people to the idea of a mandate to get tested. So, support the incentive. I think we can be flexible on deadlines. I think that testing needs to be uniform across the entirety

of our organization, and I think it should go forward to full commission for more discussion. Thank you.

Chairman Bynum asked, other comments by commission or committee members or staff? I do see in the attendees list there is a gentleman by the name of Mark Milstead and on my computer his hand goes up and down, up and down, and I think that might just be a technical issue I'm having.

Mark Milstead said, I have a few concerns. I don't know how well aware you guys are with the VAERS system, the Vaccine Adverse Events Reporting System. I'll just start off with the question that I already have planned here. If those who have been vaccinated can still get infected and transmit COVID, why do they then not have to be tested, no matter the vaccine breakthrough case rate? Does it not concern you, or anybody here, that the VAERS system prior to this COVID-19, the research has shown only one percent gets reported to the VAERS system? It is currently reporting 726,963 adverse events and of those, 15,386 deaths was reported since September 17, 2021. Are you going to be taking the liability upon for say, deaths or the adverse effects of the vaccine if, say, someone chooses to get vaccinated?

Chairman Bynum asked, are those your comments, sir? **Mr. Milstead** said, yes.

Chairman Bynum said, I don't know if we have a commissioner or a staff person that would like to respond quickly. If not, what we can do is see if there is a motion to be made that would move this forward. I would state that I tend to agree with the position of moving this forward to the full commission for a further discussion. I tend to believe that our primary role here through all of our efforts during COVID-19 and frankly, all of our efforts prior, has always been keep our public safety personnel as safe as possible, keep our entire workforce as safe as possible, serve our public and put plans in place that allow for the continuation of government operations, especially during times like these. So, with that said, is there a motion to be made at this time?

Action: **Commissioner Philbrook made a motion, seconded by Commissioner McKiernan, to fast track to full commission on September 30, 2021.**

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Chairman Bynum said, Misty Brown, I guess I'll turn to you. Is that enough direction?

Ms. Brown said, yes, it is, Commissioner. The rules of procedure does allow action in the form of directing a matter to the commission for further consideration.

Roll call was taken and there were four "Ayes," Philbrook, Ramirez, McKiernan, Bynum; and one "No," Kane.

Item No. 2 – 211071...RESOLUTION: THIRD AMENDMENT TO DEVELOPMENT AGREEMENT FOR LEGENDS WEST LAWN

Synopsis: A resolution approving the Third Amendment to Legends West Lawn Development Agreement, submitted by Katherine Carttar, Director of Economic Development. It is requested that this item be fast tracked to the September 30, 2021, full commission meeting.

Patrick Waters, Deputy Chief Counsel, said, several years ago in 2018, you may recall we entered into a development agreement with the Legends for some improvements to the West Lawn area. That included a video board, lawn chairs, kind of an artificial turf area that you might be familiar with. Part of that was funded through the creation of a community improvement district out there. There was a side agreement as part of that development agreement, which provided that the developer would either pave the gravel lot north of the baseball stadium or enter into an agreed redevelopment plan with the Unified Government for that lot. At the time, the deadline for that was December 31st, 2020.

Of course, that date has come and passed. That gravel lot still exists and has not been paved or redeveloped. So, the developer has asked for additional time. That is what we are here for tonight. The third amendment that you have before you would extend the time that developer could either pave the lot or enter into an agreed redevelopment plan to November 30th, 2022. There is a reason why we are here before this committee tonight and not Economic Development and we are requesting a fast track and I will have our outside counsel, Todd LaSala, speak a little bit about that.

Todd LaSala, Stinson Leonard Street Law Firm said, I am happy to explain sort of why we're here tonight and why we're fast tracking. Commissioners, we issued bonds, CID bonds, for this

project and they are all sitting with the Bond Trustee. A lot of that money has already been spent. There is an amount that, I believe, is equal to \$700,000 that is still being held by the Bond Trustee. The developer has done enough work and submitted requisition draw requests for that money, but frankly, we have not disbursed that money because this paving issue has been out there. The problem is that that money can only sit there for a limited window of time, and we are now at the end of that period of time where that money can sit there.

The bond documents require one of two things to happen by the end of this week. Either we disburse that money to the developer to reimburse their costs, or that money gets swept from the bond account and used to reimburse bonds. There's no way around that. One of those two things has to happen by the end of the week. So, what's happened here is we've been holding that money because this paving obligation hasn't been met and the developer is now before you asking for more time. I believe Chuck Oglesby, from the developer, is with you tonight to talk about the various options that could happen, but we're really here for that reason. We felt very secure about that paving obligation being met while we were holding these funds hostage, but at the end of the week, we have to let them go one way or another.

So, what the third amendment does, is it creates a new contractual obligation for the developer if they don't meet this deadline that Patrick said is going to be pushed to November 30th of 2022. If it doesn't happen by that date, instead of holding money hostage, given that we have to let it go, the developer has agreed that they would pay us liquidated damages in the amount of \$500,000 if they don't meet that deadline by November of next year. So, is that contractual obligation as good as holding on to the money? No, but it's a pretty good second option. It does provide us a remedy if this paving obligation isn't met some way or another by November 30th of 2022. So, I'll stop there. Happy to answer any questions. If not, I would suggest we maybe hand this to Mr. Oglesby so he can speak to the paving obligations on behalf of the developer.

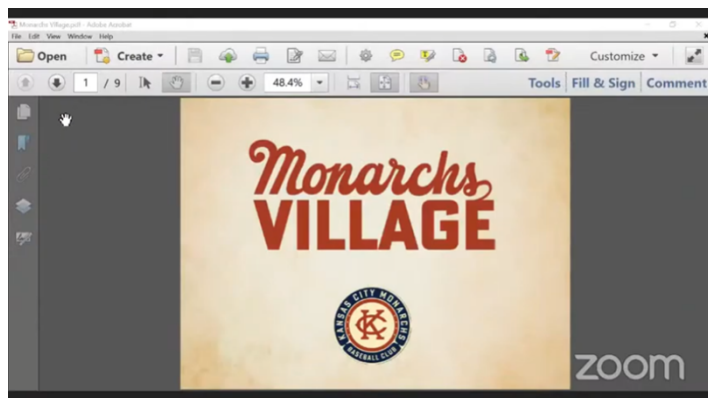
Chuck Oglesby said, we're here tonight seeking support for the third amendment, I thought Todd did a really nice job of explaining this situation and circumstances that we're all faced with. As you're all well aware, there are a couple of other parties, I believe, also on this call. I believe Mr. McKee and Mr. Brandmeyer are here as well, representing Legends Stadium and the Monarchs. I believe the spirit and intent of the document, as it was written, associates that either

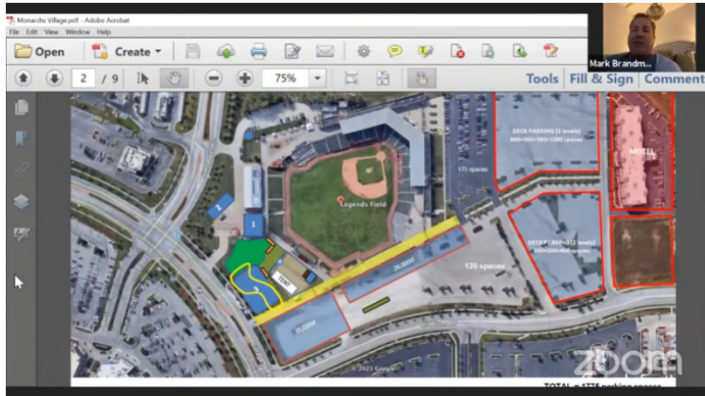
the developer would pave the lot, or there would be a development plan in place for a redevelopment in front of the commission. Is that correct, Todd? Is that a reasonable understanding?

Mr. LaSala said, yes, that is correct. The lot either gets paved or some redevelopment plan comes forward that essentially wipes out the paving application. That's correct.

Mr. Oglesby said, correct. So, what I would offer up to the committee tonight is there are a couple of options from the development perspective here. One of the things, obviously, is associated with the purchase of the stadium and/or the modification of the documents associated with operation of the stadium. They were done with Mr. Brandmeyer and his group. The Monarchs have interest in the development plan. We've been working with them for quite some time. I believe back when that process initially took place or was presented, what's proposed is actually in the spirit and intent of the entire redevelopment of that area.

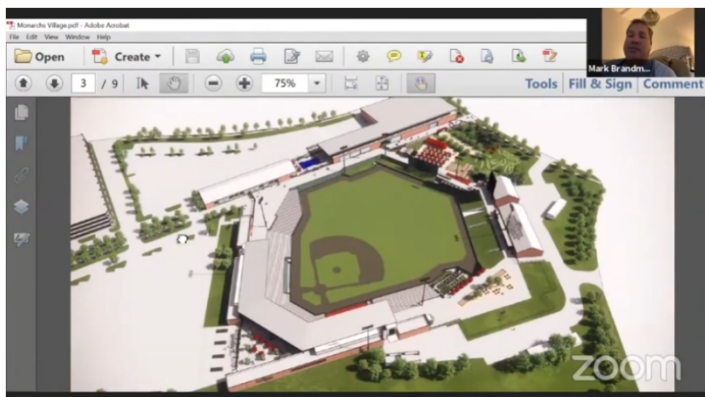
There are a couple of others that also have interest in that lot, and I can tell you that none of them want the lot paved from the perspective of the redevelopment because it would require them basically to tear out all of the infrastructure, all of the paving, any improvements that would be done to that lot. So, it's really counterproductive for the purposes of the redevelopment. Mark's actually here if I have the opportunity to share my screen here, I can perhaps show you a few renderings of what's proposed and what we've been working on.





Mark Brandmeyer said, as you guys all know, I bought the Monarchs and—or, the T-Bones in 2019 and then, of course, ran headlong into the pandemic. We ran hard this year to get the stadium opened. I know some of you guys have been out to the stadium this year, seen some of the renovations that we were able to get accomplished. I think overall, just had a great season. Wound up winning the championship last Saturday. We wound up having our first live event out there. It was a taco and tequila festival. Had over 8,000 people there and I think very successful, so I appreciate the support that the commission has given me so far on the stadium. I think we have proven to be a good bet so far.

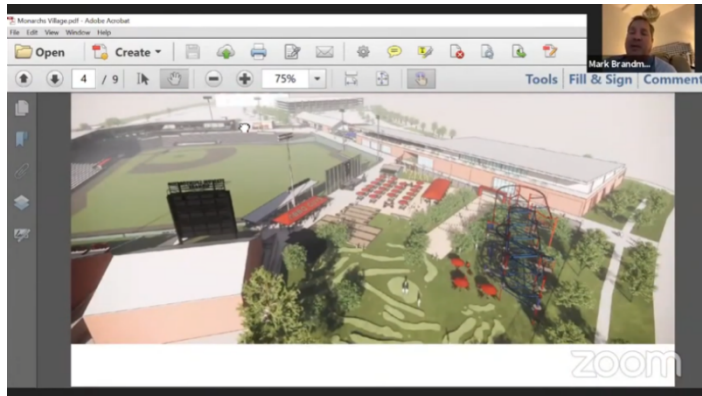
I think as we look at that gravel lot, it's kind of an unusual shaped lot. It just makes sense if we could put together an agreement with the Legends to maybe make that space more of an entertainment district that complements the stadium as opposed to having any other group in there.



Here are a couple of renderings that we put together. We just finished the season, so we've been busy doing that. But as you guys know, back behind center field there, there's about three acres

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that we are in control of that we would like to develop and then continue that development into that gravel lot. I think it just makes sense.

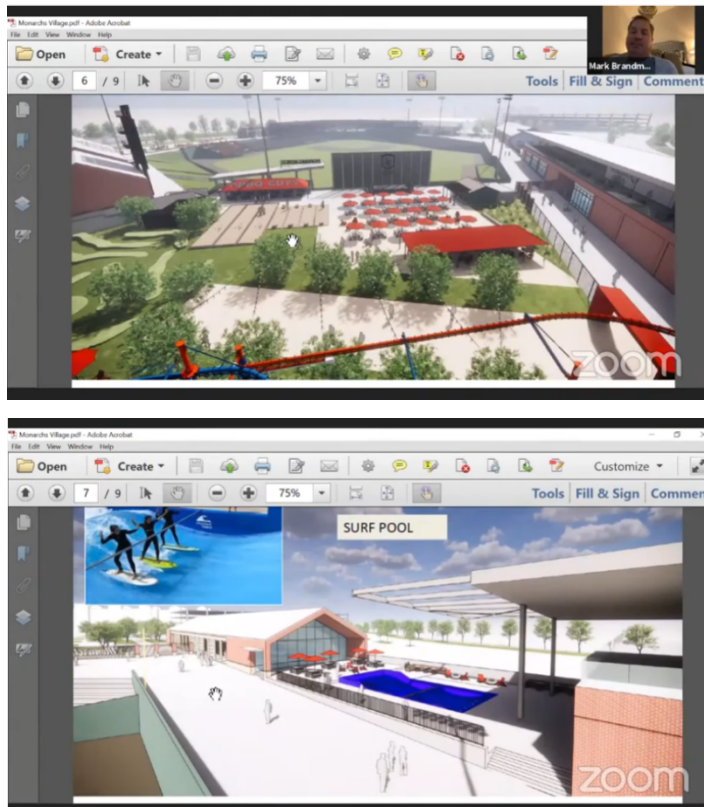


You might imagine a structure that would overlook the field and complement what happens on the field and then also adds to our vision of being a 365-day destination.



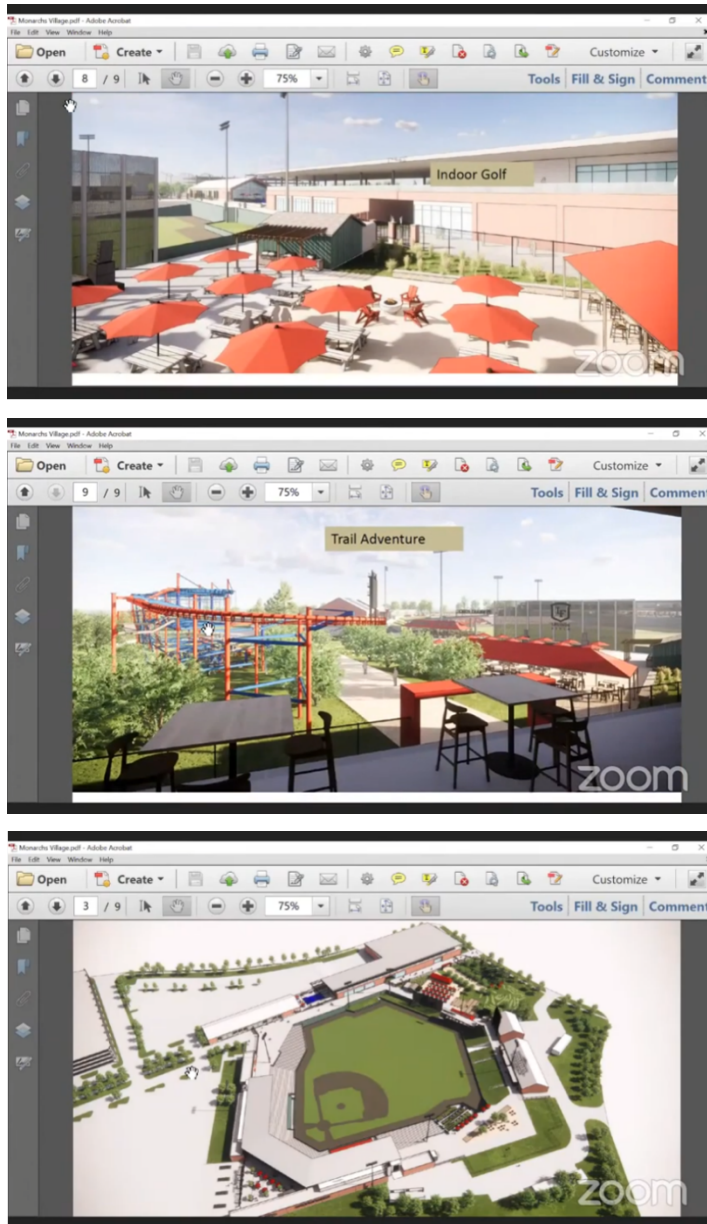
Mr. Oglesby said, there are a couple of other renderings here that just really give you a sense of the environment and the opportunity here to create additional destination, entertainment, and sense of place. We believe there's a lot of synergy and opportunity here. To key on something that Mark said, and obviously I've heard throughout the earlier presentations and the issues you've been discussing. Obviously, COVID has had a major impact on everybody's ability to be able to function, plan, get work done, and complete things timely. We've continued to push forward in good faith as much as we possibly can. Congratulations, Mark, by the way on the championship.

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I'm happy to answer any questions or provide any additional information that I can as it relates to this opportunity and this request. Again, I think the developer is within the terms of the resolution that's being proposed. There's a commitment there to be able to provide a development plan to the group and/or there's a liquidated damages penalty on the tail end. But to Todd's point, we're sort of at a critical impasse as it relates to the West Lawn funding. That work has been completed, or is in completion as we speak, and has been committed. We'd like to be able to process that, get this resolution in place, and then be able to get some additional information in front of the committee and over the long term, the commission, for the full redevelopment of that area.

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Chairman Bynum said, okay, thank you very much. These items don't usually come to either of these committees on this night, so I do have gratitude for Commissioner McKiernan being present because he sits on our Economic Development and Finance Committee. So, I've got a couple of questions and then Commissioner Ramirez, we'll go to you, if that's all right with you.

Mr. Brandmeyer, congratulations to the Monarchs. What an exciting season. The park looks fantastic and the team looks even better, so really, many congratulations on an outstanding opening season for the team. Question for, I think, Mr. Waters or possibly Mr. LaSala. What we contemplate tonight is a resolution that could include or does include an option for a redevelopment, correct, instead of a parking lot. Is that right?

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Mr. Waters said, absolutely, Commissioner. That is still an option just as it has been since the beginning and obviously, probably the preferred option.

Chairman Bynum said, good. So, what is this penalty of the 500,000 and how does that play into a redevelopment versus a parking lot?

Mr. Waters said, the penalty would be only if they did neither. If over a year, a little over a year from now, if they've neither paved it nor redeveloped it, that's when the penalty would kick in.

Chairman Bynum asked, and so do you mean completely redevelop it or do you mean put a plan in place that's been approved by the Unified Government? **Mr. Waters** said, I'm sorry, approved by the Unified Government. So it could still be in the conceptual phase, but in the planning phase, as long as there's commission approval.

Chairman Bynum said a redevelopment plan put forward would go to its proper committee. It wouldn't come back to this committee.

Mr. Waters said, most likely, and that could also be a Planning and Zoning matter, as well. **Chairman Bynum** said, okay or both. Okay.

Commissioner Ramirez said, seconding the words of Commissioner Bynum, congratulations Mr. Brandmeyer and to the Monarchs. It was very exciting to see that. Majority of my comments were going to be what Commissioner Bynum was talking about because I was kind of confused as well of what was happening tonight and what was being asked. So, thank you for that, Mr. Waters, for the clarification so now I have a better understanding. The only question I had was based off the original parking lot condition, and I can sort of probably get an understanding of why it didn't happen, but I would like to know as to why that parking lot condition wasn't met in the original development agreement.

Mr. Oglesby said, well, I don't think the original development agreement—now, you're talking about the 2002 agreement, or are you talking about the West Lawn CID agreement? **Commissioner Ramirez** said, the West Lawn CID agreement.

Mr. Oglesby said, right. So, obviously it was contemplated within the terms of the agreement. As I said before, that happened back in 2018, and we all know what's happened for the last two-year period. In addition to that, I'll tell you within that same sort of window of time is when Mr. Brandmeyer's group started all of this and we began conversations with them as well as other parties for redevelopment. So, the plan all along had been to redevelop that lot. Obviously, we don't believe it's the highest and best use to pave it for purposes of additional parking when there's the opportunity to continue development, entertainment districts and other items that create additional synergy within Village West.

So, as we sort of moved down that road and we moved into what I'll call the COVID era, that basically was delayed substantially and all of the tenants, merchants, typical development partners that we would be working with, they sort of went dead stop as we moved through the COVID era. Coming back out of this and during that period of time with Mr. Brandmeyer's acquisition of the T-Bones group and as that relationship continued to develop, we saw this opportunity in front of us and we believe it's the appropriate path. So, that's the reason for the delay. Primarily was finding the option that's appropriate other than paving. I believe that's contemplated within the terms of the original document.

Commissioner Ramirez said, well, thank you very much for that explanation. I have a better, again, a better understanding of everything that is being asked of us tonight. I think if you and Mr. Brandmeyer and all of those who are involved can find a good, suitable option for it other than a parking lot, I say go for it because, Mr. Brandmeyer, you have changed that place where the stadium is now. I remember when I first came on, this is one of the biggest things that was coming through and you were getting hit down and down because of COVID. You have come out on top, so I thank you for all that you've done for our community and the amenity that you've brought to our community. I thank you for that, and I hope and look forward to see what else you can develop in that area.

Mr. Brandmeyer said, well, thank you very much. It's largely due to the partnership that we've developed. So, I appreciate this board and the mayor and the commissioner for your support through this whole journey.

Commissioner McKiernan said, first of all, Mr. Oglesby, I want to say I think that the West Lawn development within the perimeter of the Legends is magnificent. I've been out there on several weekend afternoons when it is just packed with people having fun, enjoying the shopping. So, job well done on that. Having said that, I've always been disappointed that—I've never liked that gravel lot. I was always wondering why it was not completed at the same time as West Lawn, but now that there is an opportunity for something other than a parking lot there, I'm definitely in support of this extension so that we can potentially get a development agreement for something better than a parking lot on that little gravel spot.

So, great job on West Lawn, great job over at Legends Field with Mr. Brandmeyer and his group. I guess my only question would be, do we have a reasonable expectation that by the deadline articulated in this third amendment—November 30th, 2022—do we have a reasonable expectation that we could have a development agreement in place that would forgo the need to pay any sort of penalty?

Mr. Oglesby said, well, that would definitely be our hope and that's our expectation. I think the short answer is yes. Obviously, we can't predict what's going to happen as it relates to items that are out of our control, i.e. the COVID that we've just gone through, the Delta variants that we're dealing with today, and any potential things that may inhibit or hinder the process. That being said, we feel very strongly that we are on the right path and we're a ways down the road here in being able to create something that we can present. So, the hope, the plan, is yes.

Commissioner McKiernan said, okay. So, my thought process is this. If it's not reasonable that we could come up with something by November of 2022, if we end up just paving or if you end up paying the penalty in November of 2022, we'll probably end up just paving that lot. If we're going to wait a year and a half to do it, we might as well do it now. So, I hope that we do get a development agreement in there so that we have something productive before this deadline comes.

I have one other question for Mr. LaSala, I guess it would be. So, what we're doing with this third agreement is we're allowing the rest of the CID funds that were designated for West Lawn to be released. Is that correct? **Mr. LaSala** said, that is correct.

Commissioner McKiernan said, and those would reimburse the expenses for creating the West Lawn area. **Mr. LaSala** said, also correct.

Commissioner McKiernan asked, do any of the funds that are about to be released, or are any of the funds that are about to be released designated for the paving of this lot? **Mr. LaSala** said, no.

Commissioner McKiernan said, in that case, thank you so much. Thanks, Commissioner Bynum. That's all the questions I have.

Commissioner Philbrook said, Todd, I was reading over on page 3, actually it's under Z, 1-Z, and it says as described in Section 9.4 of the agreement. What is Section 9.4 of the agreement?

Mr. LaSala said, that's about a default interest rate. It is in the original CID agreement and it essentially says if for some reason neither of these things happen and we get to November of '22, neither of those things have happened, they owe us the \$500,000. We're essentially saying for every day that you don't pay, you owe interest on that money at the rate of interest articulated in the original development agreement.

Commissioner Philbrook said, thank you. I like to know what those sections are in there. Thank you so much. I agree with Brian. \$500,000 seems like a lot to me. It may not to some people, but it sure does to me. So, I sure don't want to have to pay somebody to go after the \$500,000, but it's a lot cheaper to pay, oh I don't know, a lawyer to go after that \$500,000 if we have to than not to put that in this contract.

I'm sorry that we have had to get to this point where we've had to wait to get something accomplished, but because of Mr. Brandmeyer luckily falling into our laps—thank you so much – that we have the possibility of really doing great things in there. So, Mr. Oglesby, I hope that you and Mr. Brandmeyer can come to an agreement so we can see something happening there. So, thank you so much.

Chairman Bynum asked, Katherine Carttar, do you have any comments you'd like to share with us?

Katherine Carttar, Director of Economic Development, said, no, thank you. I think Patrick and Todd have covered everything.

Chairman Bynum said, excellent. Thank you so much. Is there anyone—or, I should say, Madam Clerk, is there any comments received from the public on the item? **Carol Godsil, Deputy UG Clerk**, said, no public comments were received.

Chairman Bynum asked, anyone else with their hand up in our attendees that wishes to speak? **Ms. Godsil** said, there are no hands raised.

Action: **Commissioner Philbrook made a motion, seconded by Commissioner McKiernan, to approve as submitted and fast track to full commission on September 30, 2021.** Roll call was taken and there were five “Ayes,” Philbrook, Kane, Ramirez, McKiernan, Bynum.

Adjourn

Chairman Bynum adjourned the meeting at 6:32 p.m.

af



Staff Request for Commission Action

Tracking No. 211147

Full Commission Meeting Date: 12/2/21

Committee: Administration & Human Services

Date of Standing Committee Action: 11/15/21
(If none, please explain):

Publication Required: No

<u>Date:</u> 10/26/2021	<u>Contact Name:</u> Patrick Waters	<u>Contact Phone:</u> x5079	<u>Contact Email:</u> patrickwaters@wycokck.org	<u>Department/Division:</u> Legal
<u>Item Description:</u> An agreement between the UG and CHES to support the Bank On program, which promotes financial stability through access to banking accounts.				
<u>Action Requested:</u> To adopt the resolution.				
<u>Budget Impact: (if applicable)</u> Amount: Source: Included In Budget: Other (explain):				
<u>Attachments List:</u> Resolution Approving Partnership and Grant Agreement - Bank On, Partnership and Grant Agreement - Bank On program - final				

RESOLUTION NO. R-_____

**A RESOLUTION APPROVING THE PARTNERSHIP AND GRANT AGREEMENT
BETWEEN THE UNIFIED GOVERNMENT AND CREDIT & HOMEOWNERSHIP
EMPOWERMENT SERVICES, INC.**

WHEREAS, the Unified Government (hereafter referred to as “UG”) is a political subdivision organized and existing under the laws of the State of Kansas, with its principal office located at 701 North 7th Street, Kansas City, Kansas 66101 (Grantor); and

WHEREAS, Credit & Homeownership Empowerment Services, Inc (hereafter referred to as “CHES”) is a HUD Approved, 501(c)(3) nonprofit, housing, financial and credit organization with its principal office located at 3125 Gillham Plaza, Kansas City, MO 64109; and

WHEREAS, CHES (Grantee) is an organization who is committed to helping people achieve financial stability through access to banking services; and

WHEREAS, the UG desires to support financial stability and access to banking among its constituents in Kansas City, Kansas area through financial empowerment services; and

WHEREAS, the UG desires to allocate funding and in kind support for financial empowerment services to be provided in Kansas City, Kansas, and desires to engage the services of CHES (via their work with the Bank On Coalition) under the performance-based criteria, terms, and conditions set forth in the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/ KANSAS CITY, KANSAS:**

Section 1. That the Unified Government Board of Commissioners hereby approves the Partnership and Grant Agreement in substantially the form attached hereto as Exhibit A.

Section 2. That the County Administrator and all other employees and agents of the Unified Government are authorized to take all actions and to approve all instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 3. This Resolution will take effect and be in full force from and after its passage by the Board of Commissioners.

**ADOPTED BY THE BOARD OF COMMISSIONERS OF WYANDOTTE
COUNTY/KANSAS CITY, KANSAS, THIS _____ DAY OF NOVEMBER 2021.**

Attest:

Unified Government Clerk

**PARTNERHIP AND GRANT AGREEMENT BETWEEN THE UNIFIED GOVERNMENT OF
WYANDOTTE COUNTY/KANSAS CITY, KANSAS AND CREDIT & HOMEOWNERSHIP
EMPOWERMENT SERVICES, INC.**

This Partnership and Grant Agreement (“Agreement”) is made effective as of the Effective Date, as defined herein, by and between the Unified Government of Wyandotte County/Kansas City, Kansas (“Unified Government”) and Credit & Homeownership Empowerment Services, Inc.

WHEREAS, the Unified Government (hereafter referred to as “UG”) is a political subdivision organized and existing under the laws of the State of Kansas, with its principal office located at 701 North 7th Street, Kansas City, Kansas 66101 (Grantor); and

WHEREAS, Credit & Homeownership Empowerment Services, Inc (hereafter referred to as “CHES” or “Contractor”) is a HUD Approved, 501(c)(3) nonprofit, housing, financial and credit organization with its principal office located at 3125 Gillham Plaza, Kansas City, MO 64109; and

WHEREAS, CHES (Grantee) is an organization who is committed to helping people achieve financial stability through access to banking services; and

WHEREAS, the UG desires to support financial stability and access to banking among its constituents in Kansas City, Kansas area through financial empowerment services; and

WHEREAS, the UG desires to allocate funding and in kind support for financial empowerment services to be provided in Kansas City, Kansas, and desires to engage the services of CHES (via their work with the Cities for Financial Empowerment Bank On platform “Bank On”) under the performance-based criteria, terms, and conditions set forth in this Agreement;

NOW THEREFORE, AND IN CONSIDERATION of the conditions and obligations set forth below, the parties agree as follows:

ENGAGEMENT

1. The UG hereby engages and retains CHES to render financial empowerment services for the UG, and CHES agrees to accept such engagement and discharge its duties as set forth in this Agreement.
2. CHES shall perform the following tasks:
 - a. Provide a staff member who spends at least 50% of their time (0.5 FTE) leading the Bank On coalition; spearheading local coalition efforts working in concert with local government agencies, financial institutions and nonprofit community organizations.
 - b. Improve availability of appropriate low-cost, low-fee transactional bank accounts that meet the Bank On National Account Standards, including:
 - i. Negotiating with local and regional financial institution partners to offer accounts that meet the Bank On National Account Standards
 - c. Connect residents to low-cost, low-fee transactional bank accounts without overdraft, including:
 - i. Collaborating with community partners to design and implement programmatic banking access integration.

- ii. Identifying opportunities to integrate account enrollment into municipal and/or nonprofit payment structure.
 - d. Develop sustainable and productive Bank On coalition infrastructure, including:
 - i. Leading regular coalition meetings and informational events, including financial institution roundtables.
 - ii. Maintaining consistent communication with coalition members, steering committee, and community partners.
 - iii. Assisting the UG in establishing supportive policies, procedures, and marketing programs with local banking institutions.
 - iv. Meeting with UG staff on a regular basis to agree on an annual plan and current strategies for increased engagement by its citizens.
 - e. Support a vibrant Bank On learning community, including:
 - i. Participating in Bank On learning community activities, which could include webinars, conference calls, national conferences, and other communications efforts to share lessons learned with the field.
 - ii. Reporting key metrics on Bank On efforts to the coalition.
 - f. Advance availability of safe and affordable accounts by engaging at least two local or regional financial institutions to meet Bank On National Account Standards and apply for certification.
 - g. Advance banking access efforts by identifying and developing at least one additional program integration at the city, county, or state level.
 - h. Provide specific communication protocols including language for recognizing the Bank On Coalition in text and logo format.
 - i. Be responsible for the proper administration of all Bank On (and their affiliates) rules, regulations, agreements, and obligations.
- 3. UG shall perform the following tasks:
 - a. In consideration of the CHES's performance, the UG agrees to pay CHES Twenty Thousand Dollar and NO/100 (\$20,000.00) within thirty (30) days of the Effective Date of this Agreement, as well as Twenty Thousand Dollars and NO/100 (\$20,000.00) on or before June 30, 2022 (the "UG Grant").
 - b. The UG agrees to provide in-kind support which shall consist of providing a designated meeting location, marketing support, and public relations collaborations for the Term of this agreement. Meeting locations shall exclusively be utilized for the purposes of hosting meetings pertaining to the Bank On Coalition. The choice of such location shall be decided at the UG's discretion based upon available space, and all meeting times shall be authorized by the UG.
 - c. The UG agrees to provide marketing support as follows:
 - 1. The UG agrees to adhere to Bank On's marketing and communication guidelines, that are provided to the UG from CHES (as it may be amended, modified, supplemented, or otherwise revised after proper notice is given.)
 - 2. The UG agrees to provide details about all Bank On-related marketing and communication materials to CHES, reasonably in advance to determine appropriate branding opportunities.
 - a. Materials include but are not limited to, websites, newsletters, media releases, public announcements, event invitations and

- programs.
3. The UG agrees to provide to CHES final copies of all printed materials.
 4. The UG agrees to request permission from appropriate authorities before using or modifying the national Bank On logo and related branded materials.
 5. The UG agrees to coordinate with the CHES in advance before performing any media interviews or making any public announcements intended for media or public purposes related to Bank On.
- ii. The UG agrees to allow CHES the right to disseminate any products or information related to the UG's efforts to promote the Bank On program in any media of its choosing.

TERMS AND CONDITIONS

4. **Use of Grant.** The funds provided by the UG are to be used only for the purposes outlined in this Agreement. CHES must obtain prior written consent of the UG before utilizing the UG Grant to perform any work that is beyond the tasks outlined in this Agreement.
5. **Effective Date; Term.** This Agreement shall be effective from the date of the UG's signature page (the "Effective Date"). The Term of this Agreement shall be for one (1) year from the Effective Date.
6. **Non-Assignability.** CHES shall not assign, transfer, subcontract, convey or otherwise dispose of this Agreement or of its rights, obligations, responsibilities or duties hereunder, either in whole or in part without the prior written consent of the UG.
7. **Financial Reports.** It is further understood and agreed that, not later than [30 days] prior to the expiration of this Agreement, CHES shall submit to the UG a financial reports, showing in reasonable detail the disposition and use of funds that are provided on behalf of the UG. If any portions of such report are considered proprietary or confidential, CHES shall designate such portions of the report as such when it submits them to the UG. The submissions required by this paragraph shall be a condition precedent to future negotiations of renewal of this Agreement.
8. **Records.** CHES shall maintain a set of ledgers in accordance with generally accepted accounting procedures that reflect the inflow of cash and its distribution. All funds shall be secured by adequate bonding or insurance of any and all personnel involved in handling funds. Not more than once in any twelve month period, the UG's designated representative, upon reasonable notice, shall have the right to inspect those books and records of CHES relating to the report described in Section 7 above.
9. **Indemnification.** CHES shall indemnify, defend, and hold the UG harmless from and against all claims, losses, causes of action, damages, or costs arising from or in any way related to any action by CHES, its officers, agents, affiliated organizations, and employees, constituting (i) a breach of this Agreement or (ii) negligence, gross negligence or willful misconduct. This indemnification shall survive termination of this or any other agreement between the parties hereto. In no event will CHES be liable for punitive, consequential, indirect, or special damages.

10. **Insurance.** CHES shall carry or cause to be carried directors and officers' liability insurance covering all the operations embraced by this Agreement in the amount of one million dollars (\$1,000,000.00) per occurrence. Prior to disbursement of funds under this Agreement, CHES shall submit to the UG a certificate of insurance showing the coverage required herein.

11. **Exhibits.** The terms and provisions set forth in Exhibit A, attached hereto, shall be incorporated into the Agreement, and be binding upon the parties.

12. **Notice.** All notices, demands, and/or consents provided for in this Agreement shall be in writing and shall be delivered to the parties hereto by hand or by United States Mail with postage prepaid. Such notices shall be deemed to have been served on the hand delivered date or the date mailed, postage prepaid. All such notices and communications shall be addressed as follows:

To CHES:

Justin M. Walker
Director, Business Development
3125 Gilham Plaza
Kansas City, MO 64109

To the UG:

Douglas G. Bach
County Administrator
Unified Government of Wyandotte County/Kansas City, Kansas
701 North 7th Street
Kansas City, Kansas 66101

With a copy to:

Chief Counsel
Unified Government of Wyandotte County/Kansas City, Kansas
701 North 7th Street
Kansas City, Kansas 66101

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**UNIFIED GOVERNMENT OF WYANDOTTE
COUNTY/KANSAS CITY, KANSAS**

Douglas G. Bach, County Administrator

STATE OF KANSAS)
) SS.
COUNTY OF WYANDOTTE)

Subscribed in my presence and sworn to before me this _____ day of
_____, 2021.

Notary Public

My Appointment Expires:

Credit & Homeownership Empowerment Services, Inc

Name:

Title:

STATE OF KANSAS)
) **SS.**
COUNTY OF WYANDOTTE)

Subscribed in my presence and sworn to before me this _____ day of
_____, 2021.

Notary Public

My Appointment Expires:

EXHIBIT A

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, **GENERAL CONTRACTUAL PROVISIONS**

1. **Governing Law.** This Agreement is subject to, governed by, and construed according to the laws of the State of Kansas.
2. **Compliance with Law.** Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether those legal requirements are specifically referenced in this Agreement.
3. **Authority To Contract.** Contractor represents that it possesses legal authority to contract, that it has undertaken any official action required by its governing documents to enter into this Agreement, that its undersigned representative is duly authorized to execute this document on its behalf, that it agrees to be bound by all the provisions of this Agreement, and that the person identified as its official representative is authorized to act on its behalf in the implementation of this Agreement.
4. **Modification of Agreement.** This Agreement may be modified or amended only in writing executed by both parties and will be subject to renegotiation in the event of changes to applicable law, rules, or regulations affecting the subject matter of this Agreement.
5. **Assignment.** Neither the Contractor nor the UG shall, sell, transfer, assign, or otherwise dispose of any rights or obligations created by this Agreement without the written consent of the other party.
6. **Cash Basis Law.** This Agreement is subject to the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.* and amendments thereto. Any automatic renewal of the terms of the Agreement shall create no legal obligation on the part of the UG. This Agreement shall be construed and interpreted so as to ensure that the UG shall at all times stay in conformity with such laws and, as a condition of this Agreement, the UG reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement is deemed to violate the terms of such law. The UG is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the UG's current budget year or (b) funds made available from any lawfully operated revenue producing source.
7. **Payment of Taxes.** The UG shall not be responsible for, nor indemnify the Contractor for any federal, state, or local taxes which may be imposed or levied upon the subject matter of this Agreement. If applicable, the Contractor shall pay the UG occupation tax prior to execution of the Agreement.
8. **Licenses and Permits.** Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state, or local authority for carrying out this Agreement. Contractor shall notify the UG immediately if any required license, permit, bond, or insurance is

cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate termination by the UG in its discretion.

9. **Independent Contractor Relation.** The parties agree that the legal relationship between them is of a contractual nature. Nothing in this Agreement shall be construed to create a relationship of employer and employee or principal and agent or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Nothing in this Agreement shall create any right or remedies in any third party. The parties agree that no persons supplied by the Contractor are employees of the UG and that no right of the UG's civil service, retirement, or personnel rules accrue to such persons. The UG shall not be responsible for withholding of social security, workers compensation insurance, unemployment compensation, bonuses, retirement benefits, other benefits, and any taxes and premiums from any payments made by the UG to the Contractor.
10. **Discrimination in Delivery of Services Prohibited.** During the performance of this Agreement, Contractor shall deny none of the benefits or services of the program to any eligible participant on the basis of race, religion, color, sex, disability, age, national origin, or ancestry.
11. **Equal Opportunity and Affirmative Action.**
 - a. The Contractor shall observe the provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 *et seq.* and amendments thereto, and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, age, national origin, or ancestry.
 - b. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, religion, color, sex, disability, age, national origin, or ancestry. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the UG setting forth the provisions of this nondiscrimination clause.
 - c. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, disability, age, national origin, or ancestry.
 - d. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractors.
 - e. The Contractor shall assure that it and all subcontractors will implement the certificate of compliance in connection with this Agreement.

- f. If the Contractor fails, refuses, or neglects to comply with the terms of these contractual conditions, such failure shall be deemed a total breach of the contract and this Agreement may be terminated, canceled, or suspended, in whole or in part, and the Contractor may be declared ineligible for any further UG contracts for a period of up to one year. Provided that, if a contract is terminated, canceled, or suspended for failure to comply with this section, the Contractor shall have no claims for damages against the UG on account of such termination, cancellation, or suspension or declaration of ineligibility.
- g. The Contractor shall maintain sufficient records to document that, under all aspects of this Agreement, it has acted in a manner which is in full compliance with the Kansas Act Against Discrimination. Such records shall at all times remain open to inspection by the Kansas Human Rights Commission or by the UG.
- h. The Contractor, in carrying out this Agreement, shall also comply with all other applicable existing federal, state, and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made a part of this Agreement.

12. Representations.

The Contractor makes the following representations:

- a. The price submitted is independently arrived at without collusion.
- b. It has not knowingly influenced and promises that it will not knowingly influence a UG employee or former UG employee to breach any of the ethical standards set forth in Article 12 of the Procurement Code.
- c. It has not violated, and is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §12-106 (Gratuities and Kickbacks) of the Procurement Code.
- d. It has not retained and will not retain a person to solicit or secure a UG contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

13. Waiver of Breach. The waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by such party.

14. Severability. If a court of competent jurisdiction declares any part of this Agreement to be invalid, the balance of the agreement will remain valid and enforceable.

15. Entire Agreement. This Agreement and its attachments set forth the parties' entire agreement. Neither party has made any oral or side agreements or representations not contained in this Agreement. This is a legal document and not a mere recital and is binding upon the parties, their

representatives, and successors in interest.

16. **Disclaimer of Liability.** The UG shall not hold harmless or indemnify the Contractor for any liability whatsoever.
17. **Termination for Default.** If the Contractor refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or commits any other substantial breach of this Agreement, the UG County Administrator may notify the Contractor in writing of the delay or nonperformance and, if not cured in ten (10) days or any longer time specified in writing by the UG County Administrator, such officer may terminate the Contractor's rights to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

The UG shall pay the Contractor the costs and expenses and reasonable profit for services performed by the Contractor prior to receipt of the notice of termination; however, the UG may withhold from amounts due the Contractor such sums as the UG County Administrator deems to be necessary to protect the UG against loss caused by the Contractor because of the default.

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms if the Contractor has notified the UG County Administrator within fifteen (15) days of the cause of the delay and the failure arises out of causes such as acts of God, acts of the public enemy, act of the UG and any other governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, or other labor disputes. If the failure to perform is caused by the failure of a subcontractors to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractors were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, the UG County Administrator shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the Agreement, the time for completion of the Agreement shall be revised accordingly.

If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and both the UG and the Contractor agree, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued.

The following acts committed by the Contractor will constitute a substantial breach of the Agreement and may result in termination of the Agreement:

- If the Contractor is adjudged bankrupt or insolvent;
- If the Contractor makes a general assignment for the benefit of his creditors;

- If a trustee or receiver is appointed for the Contractor or any of its property;
- If the Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws;
- If the Contractor repeatedly fails to supply sufficient services following written notice of such failure from UG;
- If the Contractor disregards the authority of the UG County Administrator;
- Acts other than those specified may constitute substantial breach of this Agreement.

18. **Termination for Convenience.** The UG County Administrator may, when the interests of the UG so require, terminate this contract in whole or in part, for the convenience of the UG. The UG County Administrator shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The UG County Administrator shall pay the Contractor the following amounts:

All costs and expenses incurred by the Contractor for work accepted by the UG prior to the Contractor's receipt of the notice of termination, plus a reasonable profit for said work.

All costs and expenses incurred by the Contractor for work not yet accepted by the UG but performed by the Contractor prior to receipt of the notice of termination, plus a reasonable profit for said work.

Anticipatory profit for work and services not performed by the Contractor shall not be allowed.

19. **Disputes.** All controversies, claims and disputes arising from or relating to this Agreement will be initially be handled through non-binding arbitration before a single neutral arbitrator located in the Kansas City Metro Area, conducted under the applicable rules of the American Arbitration Association. Nothing in this Section 19 will prohibit or prevent either Party from seeking damages or obtaining specific performance, injunctive or other equitable relief in court to enforce the restrictive covenants of this Agreement or in any other agreement between the Parties.

20. **Ownership of Materials.** All property rights, including publication rights, in all interim, draft, and final documentation, including machine-readable media, produced by the Contractor for delivery to UG in connection with the work pursuant to this Agreement, shall be in the UG. For purposes of clarification, the preceding shall not apply to (i) materials produced by Bank On for distribution to consumer and/or (ii) documents, reports, etc. produced by CHES for internal purposes.

21. **Availability of Records and Audit.** The Contractor agrees to maintain books, records,

documents, and other evidence pertaining to the costs and expenses of the services provided under the Agreement (hereinafter collectively called “records”) to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. The Contractor agrees to make available at the offices of the UG at all times during the Term any of the records for inspection, audit, or reproduction by any authorized representative of the UG. Except for documentary evidence delivered to the offices of the UG, the Contractor shall preserve and make available to persons designated by the UG his records for a period of three years from the date of final payment under the Agreement or until all audit questions have been resolved, whichever period of time is longer.

22. **No Limit of Liability.** Nothing in this Agreement shall be construed to limit the Contractor’s liability to the UG as such liability may exist by or under operation of law.



Staff Request for Commission Action

Tracking No. 211161

Full Commission Meeting Date: Fast track to 11/18/2021

Committee: Administration & Human Services

Date of Standing Committee Action: 11/15/2021
(If none, please explain):

Publication Required: No

<u>Date:</u>	<u>Contact Name:</u>	<u>Contact Phone:</u>	<u>Contact Email:</u>	<u>Department/Division:</u>
11/03/2021	Wilba Miller	x5112	wmiller@wycokck.org	Community Development

Item Description:

The UG was awarded Neighborhood Stabilization Program funds in the amount of \$3,656,324 from the State of Kansas Department of Commerce on April 15, 2009. The NSP1 state program was funded under Title III of the Housing & Economic Recovery Act of 2008 (HERA). The primary purpose of the program was to bail out mortgage lenders by providing grants to purchase vacant foreclosed homes, to rehabilitate, or redevelop and resell these homes, in order to stabilize neighborhoods and stem the decline of house values of neighboring homes. The UG acquired 52 foreclosed properties, rehabbed and resold 48, demolished 3, created green space out of 2 of them, and constructed 1 new home for a total of 49 properties.

In order to complete the program's closeout procedures set out by the state, UG is required to hold a close-out public hearing. In addition, the following documents must be submitted to the Kansas Department of Commerce:

Grant Close-Out Transmittal form
Grantee's Contractor's Release form - **requires Mayor/CEO's signature***
Final Independent Auditor's Report
Final Quarterly Progress Report (Section 2)
Certificate of Completion (2 originals) - **requires Mayor/CEO's signature***
Notice of Completion/Final Inspection - Final Wage Compliance Report
Performance Hearing Affidavit

A public hearing notice will be published in the Echo on November 11, 2021 and included in UG ENews and other publications

Action Requested:

Fast Forward to hold a public hearing on 11/18/2021

Budget Impact: (if applicable)

Amount:

Source:

Included In Budget:

Other (explain):

Attachments List:



Staff Request for Commission Action

Tracking No. 211034

Full Commission Meeting Date: N/A

Committee: Administration & Human Services

Date of Standing Committee Action: 11/15/21
(If none, please explain): For information only.

Publication Required: No

<u>Date:</u> 09/15/2021	<u>Contact Name:</u> Amy Loch	<u>Contact Phone:</u> Ext. 5383	<u>Contact Email:</u> aloch@wycokck.org	<u>Department/Division:</u> Museum
<u>Item Description:</u> Departmental update on the Museum.				
<u>Action Requested:</u> For Information Only				
<u>Budget Impact: (if applicable)</u> Amount: Source: Included In Budget: Other (explain):				
<u>Attachments List:</u>				