

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.

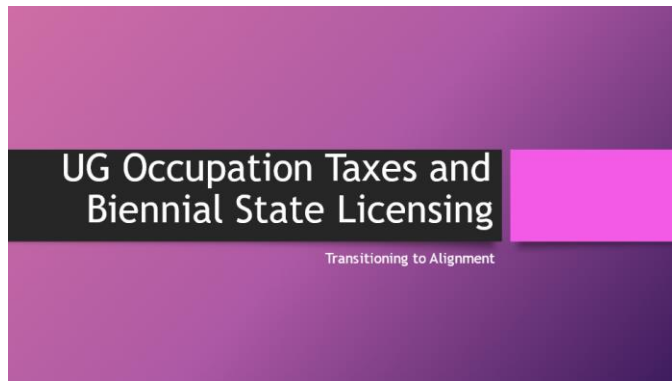
Action: **Commissioner Kane made a motion, seconded by Commissioner Philbrook, to approve.**

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

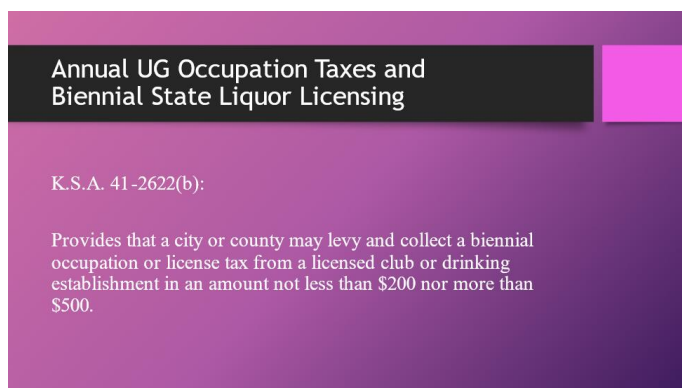
Roll call was taken on the motion and there were five "Ayes," Philbrook, Kane, Ramirez, Bynum, Markley.

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?

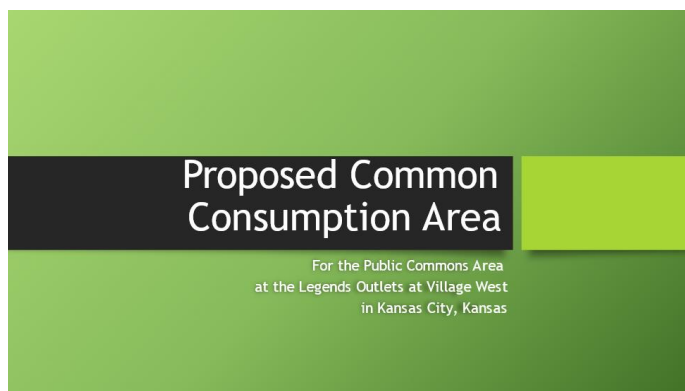
Action: Commissioner Kane made a motion, seconded by Commissioner Ramirez, to approve.

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.

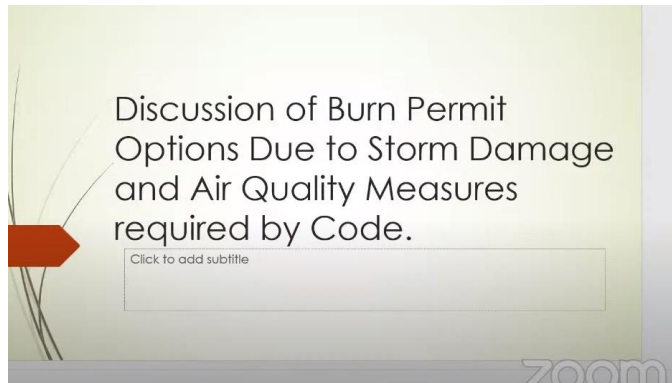
Item No. 5 – 21939...DISCUSSION OF BURN PERMIT OPTIONS FOR TREES KNOCKED DOWN BY STORM DAMAGE AND THE NECESSITY OF AIR QUALITY CONTROL MEASURES

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 RECOMMENDATIONS

John Drappel

- 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.

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