



**MINUTES
REGULAR CITY COUNCIL MEETING
GLADSTONE, MISSOURI
MONDAY, JULY 8, 2019**

PRESENT: Mayor Carol Suter
Mayor Pro Tem Jean Moore
Councilman Bill Garnos
Councilman R.D. Mallams
Councilman Kyle Yarber

City Manager Scott Wingerson
Assistant City Manager Bob Baer
City Clerk Ruth Bocchino
Attorney Chris Williams

Item No. 1. On the Agenda. Meeting Called to Order.

Mayor Suter opened the Regular City Council Meeting Monday, July 8, 2019, at 7:39 pm in the Gladstone City Council Chambers.

Item No. 2. On the Agenda. ROLL CALL.

All Councilmembers were present.

Item No. 3. On the Agenda. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA.

Mayor Suter asked all to join in the Pledge of Allegiance to the Flag of the United States of America.

Item No. 4. On the Agenda. Approval of Agenda.

The Agenda was approved as published.

Item No. 5. On the Agenda. Approval of the June 24, 2019, Closed City Council Meeting Minutes.

Councilman Mallams moved to approve the minutes of the June 24, 2019, Closed City Council meeting as presented. **Councilman Yarber** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Item No. 6. On the Agenda. Approval of the June 24, 2019, Regular City Council Meeting Minutes.

Mayor Pro Tem Moore moved to approve the minutes of the June 24, 2019, Regular City Council meeting as presented. **Councilman Garnos** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Item No. 7. On the Agenda. CONSENT AGENDA.

Following the Clerk's reading:

Councilman Mallams moved to approve the Consent Agenda as published. **Councilman Garnos** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Councilman Mallams moved to approve **RESOLUTION R-19-31** A Resolution authorizing acceptance of work under contract with SheDigsIt LLC, for the Hobby Hill Park Project, and authorizing final payment in the amount of \$5,390.11 for Project CO1656. **Councilman Garnos** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Councilman Mallams moved to approve **RESOLUTION R-19-32** A Resolution authorizing acceptance of work under contract with McConnell and Associates Corporation, for the 2018 Oak Grove Parking Lot Seal Coating Project, and authorizing final payment in the amount of \$996.13 for Project TP1805. **Councilman Garnos** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Councilman Mallams moved to approve **RESOLUTION R-19-33** A Resolution authorizing acceptance of work under contract with Mid-West Associated Contractors Corporation, for the Public Works Building Improvements Project, and authorizing final payment in the amount of \$8,718.53 for Project CP1754. **Councilman Garnos** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Councilman Mallams moved to approve the **OUTDOOR SPECIAL EVENT PERMIT:**

Atkins-Johnson Restoration Run, 4109 NE Pleasant Valley Road, Atkins-Johnson Farm, Saturday, August 24, 2019, 5:00 am – 10:00 pm. **Councilman Garnos** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

REGULAR AGENDA.

Item No. 8. On the Agenda. Communications from the Audience.

Inoru Wade, 601 NE 70th Street, The Heights, approached Council and stated: *"Last weekend, June 30, we had Northland Pride, we saw three out of five of you actually show up to that event. I don't know if anybody knows me but I am an Executive Board Member for the Kansas City Center for Inclusion which is the only LGBT Community Center in the Metro Area for 250 miles. I did want to make a public thing to say thank you for showing up. It was very important to us. We had certain people running for office this last time around that said very harsh, mean, awful things about people like me and so it was very important for us to actually show that the City of Gladstone and our community is actually diverse. I believe, based on our statistics, that we are the largest minority in Gladstone and so it was very important for everyone to show up and I did want to say thank you for that. In addition to that, I did want to say that it's not important to just support everyone at Pride during the month of June, it's important to support us all year around. There is a lot of work to be done and then on top of that, this Thursday at the Kaufman Foundation, the Kansas City Center for Inclusion is doing an event. I don't know if anybody ever received any emails from that organization but they are doing a private event for City Managers and City Council people across the Metro. Thank you."*

Item No. 9. On the Agenda. Communications from the City Council.

Councilman Yarber stated: *"We have had a lot of events in the last couple of weeks. We certainly had the Northland Pride Festival. We had the Gladstone Classic Car Concours. We had the Fourth of July Celebration; we had Theatre in the Park and despite all of these different activities going on, the city did an amazing job with all of these. It's one of the things we can be very proud about in Gladstone. I wanted to mention one other thing coming up on July 16, our Public Safety Department is up for accreditation again and there will be a hearing in this room at 5:30. We encourage members of the public to come up and let the Accreditation Board know what we think of our Public Safety Department here in Gladstone. We think they are pretty terrific. We would love to have people express their opinions, too. Thank you."*

Councilman Mallams stated: *"I just returned from vacation. I enjoyed the time away and I am glad to be back in Gladstone. No comments this evening, Mayor."*

Councilman Garnos stated: *"Thank you, Mayor. I was privileged to join you at the Flag Pole Dedication with the American Legion at Hobby Hill Park. It was a very nice dedication and at the Independence Day welcome at Oak Grove Park. I enjoyed both of those. Again, there is nothing I enjoy more than looking out over Oak Grove Park on the Fourth of July and seeing nothing but lawn chairs and people, kids, Frisbees, because that is what it's all about. My wife and I also had the privilege of attending the Pride Festival. I don't know what the reports were from elsewhere, but it appeared to be well received and well attended. I thought the television coverage of it was good and I think with very little effort it could be twice that size next year. Anything we can do to be supportive, I think is well worth the effort."*

Mayor Pro Tem Moore stated: *"Thank you, Mayor. I also had the opportunity to attend the Northland Pride Festival and was very impressed with how well everything was coordinated and for the first time out, it was a great attendance and it was a really nice event. I also had the opportunity to participate in a Chamber ribbon cutting at Happy Rock Church. They have done a*

really amazing job rehabbing that church. It's just one more example of investment in our community and how much we really appreciate that."

Mayor Suter stated: *"Thank you. You have all covered most of the things that I've been to in the last few weeks as each of you has mentioned, it has been a busy time of year. It's a busy time of year for our Parks Department and we always pull off so many events with such aplomb. Things are well run, well attended, and we have learned it takes at least two years before people know that you are doing something, so don't get discouraged. It takes a couple of years to really build. At the first year of Linden Square, we thought if we got 100 people in there, that was an OK start, and now we can put 1,000 people in there. It takes a few years for people to find out, but it is off to a good start. We heard some good comments about it as well. I wanted to say thank you again to our Public Safety Department, particularly Animal Control. Those of you on Council know my family descends from all over the universe for the Fourth of July to my home. We had 15 or 18 people in the swimming pool in the back yard when we noticed an uninvited guest was slithering his way up the post of our deck. He ended up being a rat snake, 5.5 feet long, and got our attention. Instead of people wrangling it, we suggested let's call Animal Control. Our fabulous officers, Beth Gillespie and Heather Smith showed up. Beth, as it turns out, is the snake wrangler. Believe it or not, some of the folks in Animal Control do not want to handle the snakes. Beth was up for it. As always, our staff goes above and beyond and they took a few minutes to talk to the children who were there about the snake; what kind of snake it was, where it lives, whether it was dangerous, and invited them to come up and feel it, experience it, which they did, and then we had to get a good shot to see really how long the thing was. We really appreciated the quality of effort that our Public Safety staff put into this. You can tell that these folks really love dealing with animals and they really love educating folks about animals and what to be afraid of or not afraid of. It was a great experience with Public Safety. Please share our appreciation back to your staff, Director Hasty."*

Councilman Mallams stated: *"Mayor, neighbor, where was it let loose?"*

Mayor Suter stated: *"At Happy Rock. They were taking it back to Animal Control. It's a rat snake so it eats mice and rats. It's not dangerous; it's actually a healthy thing. Unfortunately, it had climbed up and it ate the three little baby chicks we had in the nest, and they were all gone. I think it had eaten some of the fish in the pond before that. We knew something was up, somewhere, but, anyway, it's always hard to imagine that things that size are just there in your backyard somewhere and you don't know. You can't tell. Thank goodness for effective Animal Control. They came right away and did a great job. Alright, City Manager, you have to top that one."*

Item No. 10. On the Agenda. Communications from the City Manager.

City Manager Wingerson stated: *"My comment to that is, ewwww. I'd like to start by thanking the hundreds of people who participated in Theatre in the Park; whether you are a patron and you donate at the box, you are a performer, you are a contract or paid staff; you are a volunteer or a parking attendant; all of those things really matter to keep community theatre alive and it is an important part of what we do. Thanks to everybody and I hope Justin passes this along to the Theatre in the Park Committee. Number two: Linden Square Concert Series continues this*

weekend after being off last weekend for Theatre in the Park. July 12th is Funk Syndicate; July 13th is Landslide, which is the Fleetwood Mac experience, and Killer Queen which is a Queen Tribute Band. We are excited for that. Finally, rumor has it, and we get dozens of calls a day, when is Stone Canyon going to open: it looks like July 15 is the opening day. Hopefully there will be some soft opening before that and they will make their deadline of July 15. Thank you, Mayor."

Item No. 11. On the Agenda. PUBLIC HEARING: Considering a Site Plan Revision for property at 7117 North Prospect Avenue, commonly known as Hy-Vee Stores.

Mayor Suter opened the Public Hearing at 7:52 pm and stated: *"The procedure for a Public Hearing is we will hear first from city staff, who will inform us of the applicant and its conditions. Then we will have an opportunity to hear from the applicant, and then anyone who wants to speak in favor of the application and anyone in the public who would like to speak in opposition to the application. Then the hearing will be closed."*

Austin Greer, Assistant to the City Manager, approached Council and stated: *"The applicant is requesting site plan approval on behalf of Hy-Vee Stores for the purpose of an interior remodel, expansion of the building to the south by roughly 4,000 square feet in order to relocate the pharmacy drive through. Hy-Vee is also proposing the addition of a 900 square foot Aisles Online kiosk to the parking area north of the store. The purpose of the kiosk is to provide a separate location for customers to pick up grocery orders that have been placed through their Aisles Online program and redirect that traffic away from the pickup canopy at the front of the store. In order to meet the required parking count, Hy-Vee has reconfigured the north parking area. Aisles Online allows customers to place their grocery order online and an Aisles Online personal shopper hand-selects their products. The groceries are kept in climate-controlled totes until they are unloaded into the customer's vehicle or delivered. The parking lot reconfiguration on the north side of the property will allow better traffic flow designed for employees, store customers and the proposed Aisles Online standalone building for grocery pickup/delivery. In regard to landscaping, Hy-Vee has proposed a removal and replace strategy to maintain and enhance landscaping throughout the entire project site using vegetation native to Missouri. City Staff approves of this strategy. City Staff has requested that signage along 72nd Street and North Prospect Avenue is refurbished or replaced to look like new with 150 square feet of landscaping surrounding the signs. Hy-Vee will use a combination of windows and higher-end building materials to aesthetically enhance the north side of the Aisles Online building facing 72nd Street."*

In regard to the 4,000 square feet building addition to the south side of the building located adjacent to their Wine & Spirits section of the store, City staff requests that exterior lighting be no higher than 10 feet, angled downward and/or covered with light shields in an effort to preserve residential properties south of Hy-Vee. City Staff also requests that Hy-Vee extend their proposed tree line to the southeast side of the property to cover the proposed addition."

City Staff recommends that the following conditions be considered if the City Council chooses to approve this project request:

1. All exterior lighting shall be LED.

2. *Trash service, deliveries, and distribution shall be scheduled between the hours of 7:00 a.m. to 10:00 p.m.*
3. *Any and all disturbed areas shall be sodded.*
4. *All landscaped areas shall be irrigated and maintained in perpetuity.*
5. *On the Aisles Online kiosk, and 4,000 square feet addition, all mechanical equipment on the roof(s) shall be screened from public view by a parapet similar in design to the rest of the structure. This must be a minimum of twelve (12) inches above the tallest piece of mechanical equipment.*
6. *Two refurbished or new monument signs shall be used to serve this development along 72nd Street and North Prospect Avenue. The two monument signs will need a minimum of 150 square feet of area landscaping around both signs.*
7. *Hy-Vee will use a combination of windows and higher-end building materials to aesthetically enhance the north side of the Aisles Online kiosk facing 72nd Street.*
8. *Any new exterior lighting being added to the south side of the building, in relation to the 4,000 square feet addition, will be no higher than 10 feet, angled downward, and/or covered by light shields in an effort to preserve residential properties south of Hy-Vee.*
9. *Tractor trailers and storage containers shall not be parked or stored overnight in the main parking lot.*

Hy-Vee being the great community partner that they are, has agreed to all conditions. City Staff recommends that the request be approved contingent upon the conditions listed above. Also, Mr. John Brehm from Hy-Vee is in the audience tonight as well as the new Hy-Vee Store Director Ash Wounded Arrow. Please feel free to step forward and say hi."

John Brehm approached Council and stated: "Good evening. I hope you are ready for the application. I don't have anything really to add to Austin's report. He has covered all of it. I would be happy to address any concerns you may have and any questions you may have about the project."

Councilman Mallams stated: *"On condition #8, it says 'any new exterior lighting being added to the south side of the building, in relation to the 4,000 square feet addition, will be no higher than 10 feet, angled downward, and/or covered by light shields in an effort to preserve residential properties south of Hy-Vee.' Presently, on the south side, there is exterior lighting that must be at least 15 or 20 feet high. Will that exterior lighting be removed and replaced with the 10 foot?"*

Mr. Brehm stated: "The lighting that's on the existing building, the masonry block wall that is farther back from the residential area; that will remain the same. It's the building addition, any lighting that we put on there; we would reduce the lighting level to 10 foot."

Councilman Mallams stated: *"So I understand it doesn't impact at all the exterior lighting that's on the south side of the parking lot, or the drive itself."*

Mr. Brehm stated: "That is correct. We need those lights a little higher up for safety reasons."

Councilman Mallams stated: *"OK. Then in the conditions, in the narrative that Austin read, it talked about extending the tree line to the southeast. Is that something that Hy Vee still plans to do but it's just not in the conditions?"*

Mr. Brehm stated: *"We have agreed to do that at Planning and Zoning. We have actually revised our Site Plan to reflect that."*

Councilman Mallams stated: *"Those are the two questions I had, Mayor."*

Mayor Suter stated: *"I'm just curious about the continuing agreement between you and the Linden Woods folks around the catchment for water?"*

Mr. Brehm stated: *"Correct. Some of the neighbors attending the Planning and Zoning Commission had concerns about both the conditions of landscaping to the south of our store behind the fence and the condition of the landscaping itself behind Linden Woods. Linden Woods is actually responsible for their portion of the landscaping back there. We contacted Scenic Development at Linden Woods and asked them to look into their maintenance practices back there. Our store has gone ahead and taken care of a dead tree and some trash and the lawn needed some attention behind our fence and we have gone ahead and taken care of all that."*

Councilman Garnos stated: *"I may have missed it. Planning Commission approved this, recommended it unanimously, correct?"*

Mayor Suter stated: *"Correct. And is the Store Manager here? Would he like to introduce himself? We try to keep up with who is the Manager at the Hy Vee."*

Ash Wounded Arrow approached Council and stated: *"I'm the new Store Director here. I'm very happy to be a part of Gladstone. Thank you for letting me come and see you this evening. Do you have any questions of me?"*

Councilman Yarber stated: *"One quick question. I think you have made it already clear that if any of the neighbors to the south have any issues that you are the first person they can come and talk with if they have issues about ..."*

Mr. Wounded Arrow stated: *"Absolutely. I'd be more than happy to take care of any issues they may have, or concerns. I want to be a good neighbor to them so anything that they have, I'd be more than happy to take a phone call or they can come visit with me anytime."*

Councilman Yarber stated: *"I think one even described the tree against another tree and that is obviously something that needs to be taken care of quickly, and you are the guy to contact."*

Mr. Wounded Arrow stated: *"Absolutely."*

Mayor Pro Tem Moore stated: *"I just wanted to say thank you for that. I know that at the Planning Commission it was a bit contentious. I came away thinking it had nothing to do with Hy Vee, it had to do with the neighbors needing to have a face and a contact name and phone"*

number along with the feeling that Hy Vee was being a good neighbor to them and managing their property. I appreciate that view point and I encourage everybody to keep the course on that. I know it's really important to the community and important to the neighbors. Thank you."

Mayor Suter stated: *"We always appreciate the good relationships that vary from manager to manager. We appreciate you stepping forward. It gives us confidence that we can count on you to be a good neighbor. I am a little bit curious about traffic flow around this kiosk and exactly where is the kiosk, in the parking lot on the north side?"*

Mr. Brehm stated: *"The Aisles Online Kiosk; let me explain a little bit about what is going on with the Aisles Online Kiosk. Right now, people can order their groceries online. Of course it's still not a huge majority of grocery orders, but it creates the need for people to be in the store picking orders for people who have placed those orders, and then taking up room in the drive-thru lane."*

Mayor Suter stated: *"Yes, the drive-thru lane. We are at your store quite often."*

Mr. Brehm stated: *"Thank you. That lane is meant for people who want assistance having their groceries that they purchased in the store loaded into their car. The idea behind the Aisles Online Kiosk, which is going the north of the store along 72nd Street, in the middle of that parking area, ..."*

Mayor Suter stated: *"Where the employees park, that part?"*

Mr. Brehm stated: *"Yes."*

Mayor Suter stated: *"That is what I was trying to figure out, towards the gas station or towards..."*

Mr. Brehm stated: *"Half way between the building and 72nd Street, back towards the loading area. The idea there is that groceries that are ordered online will be picked at a fulfillment facility that we are finishing up in the Kansas City market. Those orders will be delivered to that kiosk and people who are picking their groceries up can stop at the kiosk and get the groceries there. That way, that traffic, the vehicular traffic, and the order picking traffic is not in the store disrupting our customers who actually want to shop in the store."*

Mayor Suter stated: *"So is that changing the flow of traffic through that parking lot?"*

Mr. Brehm stated: *"A little bit. It will be moving any online orders over to that kiosk instead of going through...(unintelligible)."*

Mayor Suter stated: *"But there won't be like one-way traffic going in a certain direction around this kiosk?"*

Mr. Brehm stated: *"No. Traffic will still be two-way. We have the ability to control the number of people that are actually coming to pick up orders. They are given a window in which they can"*

pick up their order. If we have too many people coming at one time we can back that down to the number of people... whatever we need to do in order to control traffic problems."

Mayor Suter stated: *"That entrance/exit gets quite backed up at times with the gas station, mailboxes, pick up, etc."*

Mr. Brehm stated: *"We are hoping this will help."*

Mayor Suter stated: *"Is there anyone in the audience who would like to speak in favor of this application?"*

There were none.

Mayor Suter stated: *"Is there anyone in the audience who would like to speak against this application?"*

There were none.

Mayor Suter closed the Public Hearing at 8:03 pm.

Item No. 12. On the Agenda. FIRST READING BILL NO. 19-26 An Ordinance approving a Site Plan Revision, subject to certain conditions, for property at 7117 North Prospect Avenue, commonly known as Hy Vee Stores.

Councilman Mallams moved Bill No. 19-26 be placed on its First Reading. **Mayor Pro Tem Moore** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0). The Clerk read the Bill.

Councilman Mallams moved to accept the First Reading of Bill No. 19-26, waive the rule, and place the Bill on its Second and Final Reading. **Mayor Pro Tem Moore** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0). The Clerk read the Bill.

Councilman Mallams moved to accept the Second and Final Reading of Bill No. 19-26, and enact the Bill as **Ordinance 4.476**. **Mayor Pro Tem Moore** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Item No. 13. On the Agenda. PUBLIC HEARING: Continued from June 10, 2019: Considering a Special Use Permit-Creative Arts Academy at 1904 Northeast Englewood Road.

Mayor Suter opened the Public Hearing at 8:06 pm and stated: *"We will have the same procedure where we will hear from city staff, the applicant if available, and then anyone speaking in favor or against the application. Mr. Greer you are up again."*

Austin Greer, Assistant to the City Manager, approached Council and stated: *"The applicant is requesting a special use permit renewal (15 year permit) for the continued operation of the Creative Arts Academy, LLC located at 1904 NE Englewood Road. The most recent special use permit issued to Ms. Raisher was in May, 2004.*

Since 2004, the City of Gladstone has received numerous calls in regard to maintenance between the residential fences and privacy fence installed by the Creative Arts Academy located on the north property line. The city has also received a number of phone calls over the years in regard to the large banner hanging from the privacy fence along the north property line.

It is City Staff's recommendation that Ms. Raisher maintain the property between residential fences and the Creative Arts Academy privacy fence located on the north property line. The reason for staff's recommendation is that the property between the two fences has been created and neglected due to the installation of the privacy fence used for the Creative Arts Academy. This is in response to neighborhood requests. As of Monday, May 6th, Ms. Raisher has agreed and started to maintain the subject area.

It is also City Staff's recommendation that Ms. Raisher bring into compliance with the current sign code, the Creative Arts Academy banner hanging from the privacy fence on the north property line. City Staff requests that Ms. Raisher hang the Creative Arts Academy banner sign inside the frame that is being constructed for the fence. This is in response to neighborhood requests. As of Monday, May 13th, Ms. Raisher has agreed to hang the banner sign inside the frame that is currently being constructed.

City Staff recommends that the following conditions be considered if the Planning Commission and City Council choose to approve this project request:

- 1. Ms. Raisher shall apply for and maintain all applicable State and City business and occupational licenses; copy of such business and occupational licenses shall be supplied to the Community Development Department of the City of Gladstone.*
- 2. This Special Use Permit is to be issued to Ms. Raisher and to be used at this location only. If she relocates, sells or leases out this location to another tenant, either she or another tenant must reapply for a new permit. This Special Use Permit is non-transferable to another tenant occupying this location.*
- 3. Hours of operation for the location shall be limited to 8:00 a.m. to 9:00 p.m. Monday – Saturday.*
- 4. All fire safety requirements shall be complied with and maintained as required.*
- 5. Ms. Raiser shall continue to work with the surrounding neighborhood to insure that a level of residential privacy be considered/implemented as is feasible. The applicant will work to assure that parking, noise, lighting and traffic congestion are mitigated as it relates to the surrounding residential neighbors when considering extra-curricular activities outside the hours of regular day-to-day operation.*

6. *Signage at the location shall be limited to applicant owned property or included in a shared signage arrangement with the tenant of the adjacent parcel, and shall follow all rules and regulations associated with all City of Gladstone sign ordinances.*
7. *The Englewood Road entry to the site shall be restricted to employee use only.*
8. *A shared parking agreement shall continue to be executed. Such agreement shall provide for cross-sharing of all parking, maintenance responsibility, and insurance.*
9. *The 6 foot privacy fence, as well as the property located north and south of the privacy fence (residential homes to commercial use), shall be maintained in perpetuity by the applicant.*
10. *Any violation of these conditions or other City Code requirements may result in the revocation of this Special Use Permit.*

City Staff recommends that the request be APPROVED for 15 years contingent upon the conditions listed above.

Also, Ms. Pam Rashier and Mr. Dick Davis who is representing a neighbor are in the audience tonight."

Mayor Suter stated: *"Would the applicant like to address Council?"*

Pam Rashier approached Council and stated: "Good evening, Mayor and City Council. Thank you for your service. I was not aware of these complaints that have come through so I believe I have been a good neighbor throughout these years. I wanted to make that statement that would be on record. For 15 years I have not had any complaints that I was aware of and I have spent thousands of dollars to maintain this property. I have taken on the space for the last 30 days of cleaning between the fences. This fence that was put up, was put up at the request of one neighbor. 400 feet of privacy fence that I didn't want and I didn't need. Now we have created a space that we don't know if it is my property or the neighbor's property and we need a survey to really figure that all out. In that space that we have created, we have got debris, we have got trash, and I've got pictures of what I am dealing with. We now have teenagers that have a very dark, six foot tall tunnel to the back of my property. We have graffiti on the fence. The fence has created a couple of other issues that I'm dealing with. The cleaning of which I'm asking, in 30 days I've spent \$600 and they just keep throwing trash. Could I show you the photos? (approaches Council). They are kind of numbered 1-4, I think, then I skipped 5...that shows pictures of the trash we uncovered and had to deal with blankets and huge foam and toys and ashes and brush and tree limbs. So, I did all that. As you can see in the progression after you get past No. 4, that was a month ago, it's all super clear until a week later when we have more stuff that is thrown over the fence. The back of the fence, which I was requested to wash, the bulk of the 400 foot fence was free of any, well I won't say any, because it's been there for a long time; but not much dirt or ash or whatever. However, there was an area of one of the neighbors who has complained because of the ashes and throws them over the fence, into the fence, and then I

have to clean the fence. So, what do I do about that? Here are, today, two of these, but I'll just pass this one, ...I, too, want to be a really good neighbor and take care of my property, but it's getting rather expensive to take care of...I have eight neighbors to clean up their limbs and debris and garbage. I would love to take care of my property. I don't know how we work that out but I will do what I can. Thank you."

Mayor Suter asked if there were any questions for the applicant.

There were none.

Mayor Suter stated: *"If you would like those to be a part of the record we need to have you leave them with Council."*

Mayor Suter stated: *"If there is anyone in the audience who would like to speak in favor of this application? Yes, please come to the podium and give us your name and address."*

Nancy Norton approached Council and stated: *"Well I have no problem... (unintelligible)"*

Mayor Suter stated: *"OK, so now I'll ask if anyone wants to speak in opposition to the application."*

Dick Davis, 5826 North Kensington, approached Council and stated: *"Mayor Suter and members of the Council, I was on the Planning Commission when this was approved 15 years ago. At that time we learned that the fence was going to be provided and Mrs. Norton, who is a good friend of mine, advised me that the fence was going to create a real problem for her. She had gated the back of her property and she used that gate for years receiving firewood. She heats her house with firewood rather than natural gas to save money. So during the Public Hearing, I asked the question to Pam Raisher whether we could have a gate provided, unlocked gate, so that she would not lose this important access. Ms. Raisher was very gracious, and said she would do so. We thought the issue was closed. We did not make it a condition of the approval and after it was approved and the fence was installed, no gate. So we asked about it and there were several excuses on why they didn't provide the gate but the gate was not provided so Mrs. Norton has had to endure the problem of her decline of access for the last 15 years. So I would respectfully ask you to consider amending the requirements to mandate that she does provide that gate. Two other members of the Planning Commission have discussed this with me. They recall the situation; Brian Hill, Wendall Kaiser, so we have four people that attended that Planning Commission when the commitment was made. Ms. Raisher denies that she ever made the commitment, but we think that commitment ought to be abided by. Thank you."*

Mayor Suter stated: *"Is there anyone else who would like to address Council on this application? Mrs. Norton? If you would like to speak to us now?"*

Nancy Norton, 1805 NE 57th Street, approached Council and stated: *"When they put that fence up, the little man showed me the little red mark and he said it's in the ground from here over is my property. That property behind that belongs to the houses. She has done excellent, I can't wait for a fire so I can run through, because she has cleared it all out. These people don't know*

that it's theirs. The fellow on the end stacks his sticks and stuff on the end of it. The people that live next to me, they threw swimming pools, you saw the pictures, it was unreal. Down on the other end, I'm not sure, there is nothing down there. Nobody, they go to work, the people there, and it seems to be clear. They don't keep throwing stuff over there. The guy on the end does throw his sticks, but other than that, I can see a clean shot. As far as the fence, it was all moldy, mildew, whatever it is, you are sitting here having, and there it is. She sent two men out, did an excellent job, with a mop, cleaned it all off. She did it behind my fence, which is, how big is my property, 100 foot? 75 foot? I don't know."

Mayor Suter stated: *"It's 72. The map says 72."*

Mrs. Norton stated: "72. So over yonder, she never did that. It's as if I'm the only one that is griping. I'm sure the other people would like the mold off of the fence, but I'm happy. It's there, and I don't like it seeing there but it just seems like she is trying to really please me, you know. Which I appreciate, but I don't know what else to say. She has, you know, she has cleared that off, but she needs to find out whose property it is. And it didn't cost thousands for those two men to go through there. Ok. Thank you."

Mayor Suter asked of there was anyone else who would like to address Council.

Councilman Garnos stated: *"I have just a couple quick questions. As I recall from the material in the packet, this issue with the gate is not in the Planning Commission minutes or the City Council minutes from 15 years ago, is that correct?"*

Mayor Suter stated: *"That is correct. It did not make the minutes."*

Councilman Garnos stated: *"But after the hearing, the Planning Commission here most recently approved the Special Permit Renewal 8-1?"*

Mayor Suter stated: *"That is correct."*

Councilman Garnos stated: *"Thank you, that's all I have."*

Councilman Yarber stated: *"A question that may not be exactly related; on your property, how large are the side yards?"*

Mrs. Norton stated: "What do you mean the side yards?"

Councilman Yarber stated: *"The space on the sides of your house."*

Mr. Davis replied: "Probably about 150 feet. The lot is probably about 150 foot."

Councilman Yarber stated: *"I'm talking about the distance from the edge of the house to the edge of the property on the side."*

Mr. Davis replied: "... feet."

Councilman Yarber stated: *"So a gate could go there."*

Mr. Davis stated: *"It would have to be delivered to the street... the back of the property where they store the firewood."*

Mrs. Norton stated: *"She said she would put a gate in."*

Mayor Pro Tem Moore stated: *"Mr. Greer, do you know if there has ever been an meeting between the neighbors that are on the other side of the fence and Ms. Raisher? Has anybody ever met together to talk about this issue so that it can be made clear whose property is whose, and that we could all maybe get along?"*

Mr. Greer stated: *"Mayor Pro Tem, I have no idea if they have met over the past 15 years. Maybe Ms. Raisher could speak about that if they have or not."*

Ms. Raisher stated: *"No, no I have not because I have had no other complaints. I'd be happy to, because it is not my property. I'm glad she said that, it is not my property."*

Mayor Suter stated: *"It sounds like some clarification might be helpful there."*

Mayor Pro Tem Moore stated: *"So I do have another question. The condition #9 in terms of maintaining, I know that it appears to be an issue for you; I guess my question is are you willing to accept this condition or not? I know that this is obviously a hardship that you have expressed."*

Ms. Raisher stated: *"This has been a learning curve, to be quite honest. So thank you for your patience through this. I would like the City Council's support because if people are throwing trash, is that not an issue to call the police? I'm getting dumped on daily. If I have support and someplace to call other than another hauling company, yes, I guess, if I could get support of what to do when...I have had it cleared over the 15 years. I had a maintenance guy who was wonderful, and by clearing that would keep the brush down and keep the trees from overgrowing. Not manicure it, and I have pictures of the fence that has been done completely, at any rate, if it's keeping the trees from overgrowing, I'm ok with that. But clearing out this level of garbage, I can't. I'm not Hy Vee."*

Mayor Suter stated: *"At the time that the fence was constructed, was there not a survey done to determine the property line?"*

Ms. Raisher stated: *"I'm sure there is a survey of some sort. I personally don't know where it is, but I could probably pull my survey that was given to me. The church has a survey as well, but I'm relatively certain, and we'd have to go through and pull that, that the fence was put on the edge of my property. Right at the end of the parking lot, which is what I purchased from the church and the other space, as she said, belongs to the neighbors. The fence was not something I wanted, it was something I was forced to do and so, yeah. Nancy doesn't want it and I don't want it either. Did I answer your question, I hope?"*

Mayor Suter stated: *"Thank you. At the very least it would seem that some communication from Community Development would be necessary with all these neighbors to clarify the issues around whose property is whose and what your responsibilities are as a property owner. They're the same as if it's in your front yard or your back yard or wherever, you can't dump stuff. So, perhaps some more effort on our part. Any other questions?"*

Councilman Garnos stated: *"Mayor, I do appreciate the pictures showing that area in between. We've seen the aerial photos, but that clearly shows that you have taken the initiative to clean out that area, so we know that there has been a good faith effort made here, it appears to clean that area out whether it's her responsibility or not. Any future problems or dumping there, I think Pam has demonstrated a willingness to at least attempt to comply with these requirements."*

Mayor Suter stated: *"Started from a new starting point at this point. Anything else? Counselor, would you like to..."*

Counselor Williams stated: *"Before you close the public hearing if we could enter the following as exhibits into the record, the City Zoning Regulations, which are Title VII of the City Code, notices of the public hearing on the Special Use Permit application, documents that relate to this application that were included in the City Council's packet for this meeting, and the photos presented to the City Council by Ms. Raisher this evening. That's all the exhibits we have."*

Mayor Suter stated that those would be entered and closed the public hearing at 8:25 pm.

Item No. 14. On the Agenda. FIRST READING BILL NO. 19-21 An Ordinance granting a Special Use Permit, subject to certain conditions, to Creative Arts Academy for purposes of operating a gymnastics center in an R-1 Zoning at 1904 Northeast Englewood Road.

Councilman Yarber moved Bill No. 19-21 be placed on its First Reading. **Councilman Mallams** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0). The Clerk read the Bill.

Councilman Yarber moved to accept the First Reading of Bill No. 19-21, waive the rule, and place the Bill on its Second and Final Reading. **Councilman Mallams** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0). The Clerk read the Bill.

Councilman Yarber moved to accept the Second and Final Reading of Bill No. 19-21, and enact the Bill as **Ordinance 4.477**. **Councilman Mallams** seconded.

Mayor Suter asked if there was any discussion.

Councilman Mallams stated: *"I just have a comment. I'm empathic to your concerns, Ms. Norton. Unfortunately, there's no record of the previous Planning Commission and conditions*

that were established at that time in regard to the gate. When I read what city staff has provided to us in regard to city staff receiving numerous calls in regard to the maintenance between the residences fences and the privacy fence and then the number of phone calls over the years in regard to the larger banner on the fence, then over a fifteen year period if the gate had not been put in, I guess I would have a question, and I'm not asking an answer for, but I would have concern why you would not have made a phone call to the City saying, 'Oh by the way, why hasn't the gate been put in?' That's just two concerns that I have."

Inaudible talk from audience.

Mayor Suter reminded the audience that the public hearing was closed and that it was time for Council comments.

Councilman Garnos said he had some comments but would defer to other Councilmembers.

Mayor Suter stated: *"My take on it is some mixed feelings at the moment. I appreciate the effort. It seems like we may still have some details that need to be sorted out here. I appreciate when applicants are willing to negotiate around conditions and accept responsibility for things. We rarely force the applicant's to do something. Generally, it is an agreed upon solution. I have been on City Council and previously on the Planning Commission since this first application was made. I remember conversations about the fence and the gate and pretty much at the time my assumption as well as others, that an agreement had been reached off the table, on the side and so nothing was put into the public record about it. It's been a long time, fifteen years, since this has gone on. I know in those fifteen years that at least at Council we have heard complaints from the neighbors about maintenance and sign violations and those kinds of issues, so I don't know why things wouldn't have been communicated to the applicant, but I know that I've been here for a long time and I've heard about this property for a long time. I'm kind of a little torn myself right now which way to go with this."*

Mayor Pro Tem Moore stated: *"The other piece of that that I am somewhat worried about is the fact that if that property, it's unclear to some of those residents whose property that is, and what worries me is access to that property for a code violation. When I drove up there myself to look at it, I was afraid I was going to be on someone's property to look down the fence row to see what the Planning Commission was hearing about that night and so I am somewhat worried. I don't know whether that's an issue accessing behind those peoples properties to say, 'did you throw that piece of trash out there' I'm concerned if this is going to go anyplace. Obviously, in the grand scheme of the world I would love to have everybody get together and discuss it and everybody agree that this is my property and I don't need to throw trash on it, but that is not happening."*

City Manager Wingerson stated: *"Mayor Pro Tem if I understood your comments you're asking for a little bit of education to the neighborhood about don't throw your debris, your pools, your trash, your ashes, mattresses, whatever over the fence."*

Mayor Pro Tem Moore stated: *"Correct. I know we said it would be a code violation, but is it something Codes can even access to look at because they have to have permission from the*

property owner to go into that person's yard to see what's on the backside of that fence. That's what worries me."

City Manager Wingerson stated: *"I think that's been the problem for fifteen years. It's difficult to see from the road; you have to access it from private property and Ms. Raisher's been fairly good about providing city access for sign inspections, occupancy, and fire inspections so I would guess that she would be supportive of those types of things moving forward, but I think the real question is whose property is it? The chain link fences have been there a long time and most likely placed on the property line meaning that the space outside of the chain link fences that have historically been the property lines would be Ms. Raisher's, but we can add some clarity and then do some education of the neighborhood-a little bit of a soft, kind do's and don'ts. That's very easy and it might help the situation."*

Mayor Suter stated: *"Also making sure with Community Development that they would be able to see and enforce violations because if the chain link fences are the property line, then they're dumping stuff on somebody else's property and that's a violation. If it's their own property, then that's a violation too by allowing junk and trash on their own property. If Community Development can't see over that privacy fence to see what's over there, then how can they cite anybody for it? I'm concerned about that as well. It seems to me that somebody needs to do a survey and we need to figure out whose property is what and that would be really helpful to this whole process."*

Councilman Garnos stated: *"From what I read in the record I'm opposed, frankly, to requiring the gate. It seems like it would open up a lot of new issues and legal issues that I think are unintended, so I would have a hard time supporting imposing that as a condition on the Special Use Permit. I think CAA is a quality operation, they taught my daughter how to dance and my daughter's a dance coach to this day in part because of Pam. I've been troubled by this issue for some time. I've been on Council a long time, not as long as you [Mayor Suter] have, but as long as I've been on Council I know I have heard of this issue. I know former Councilmember Brian Hill brought this up frequently when he was on Council. I appreciate all the work the Planning Commission put into this. We are very fortunate that they did such great due diligence in hearing the issue, the history, the concerns of the neighbors and I appreciate, after reading eighteen pages of minutes, the work they put into this issue. This issue has been around a long time and I'm troubled by that and I'm wanting it to go away amicably. I'm wondering whether we wouldn't be better served by renewing the Special Use Permit but for maybe a shorter period of time than fifteen years...might give us a chance to work through some of these issues, the new conditions. I would completely support the Special Use Permit, but I would personally lean more toward like a five year renewal instead of a fifteen and assuming we have another five years of good work on CAA's part then I don't think there would be any problem after that, but right now I'm troubled that this issue has lingered as long as it has."*

Mayor Pro Tem Moore stated she concurred.

Councilman Yarber stated he also concurred.

Councilman Garnos moved to amend Bill No. 19-21 to renew the Special Use Permit for a period of five (5) years instead of fifteen (15). **Councilman Mallams** seconded.

Mayor Suter asked Counselor Williams if they needed roll call to amend.

Counselor Williams replied that they do not need roll call to amend. If they approve the amendment, since they've already done the second reading, it will be 'as amended.'

Mayor Suter repeated the amendment and stated: "*Is there any further discussion?*" Hearing no further discussion, **Mayor Suter** called for the vote. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)

Councilman Yarber moved to accept the Second and Final Reading, as amended, of Bill No. 19-21, and enact the amended Bill as **Ordinance 4.477**. **Councilman R.D. Mallams** seconded. The Vote: "aye", Councilman Kyle Yarber, Councilman R.D. Mallams, Councilman Bill Garnos, Mayor Pro Tem Jean Moore, and Mayor Carol Suter. (5-0)


Item No. 15. On the Agenda. Other Business.

There was no other business to come before the Council.


Item No. 16. On the Agenda. Adjournment.

Mayor Suter adjourned the July 8, 2019, Regular City Council meeting at 8:39 pm.


Respectfully submitted:



Ruth E. Bocchino, City Clerk

Approved as presented: 

Approved as modified: _____



Mayor Carol J. Suter