



City of Clearwater Council Meeting Agenda  
Tuesday October 23, 2018 at 6:30pm  
129 E Ross Clearwater, KS 67026

**1. CALL TO ORDER / INVOCATION AND FLAG SALUTE**

**2. ROLL CALL**

**3. APPROVAL OF AGENDA**

**4. PUBLIC FORUM**

Members of the public can address the Mayor and City Council limited to not more than five minutes.

**5. CONSENT AGENDA**

Items on the Consent Agenda are considered by staff to be routine business items. Approval of the items may be made by a single motion, seconded, and a majority vote with no separate discussion of any item listed.

- a. [Minutes 10/09/18 Council Meeting](#)
- b. [Emergency Services Appointments & Resignation](#)
- c. [Support Letter for Sg County Division on Aging](#)
- d. [Claims and Warrants](#)

**6. RECREATION COMMISSION UPDATE**

**7. STAFF REPORTS**

**8. BUSINESS**

- a. **CONSIDER A FIELD USAGE AGREEMENT WITH RECREATION COMMISSION**
- b. **PARK DEED UPDATE**

**9. ADMINISTRATORS REPORT**

**10. GOVERNING BODY COMMENTS**

**11. ADJOURNMENT**

Next Assignment Numbers

Charter Ordinance: 21

Ordinance: 1050

Resolution: 15-2018

**NOTICE: SUBJECT TO REVISIONS**

It is possible that sometime between 6:00 and 6:30 pm immediately prior to this meeting, during breaks, and directly after the meeting, a majority of the Governing Body may be present in the council chambers or lobby of City Hall. No one is excluded from these areas during those times.

**City of Clearwater, Kansas**  
Sedgwick County  
City Council Meeting - **MINUTES**  
October 9, 2018  
Clearwater City Hall – Council Chambers  
129 E. Ross Avenue Clearwater, KS 67026

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**1. Call to Order/ Invocation and Flag Salute**

Mayor Ussery called the meeting to order at 6:30 p.m. followed the invocation and flag salute.

**2. Roll Call**

The City Clerk called the roll to confirm the presence of a quorum. The following members were present:

Mayor Burt Ussery and Councilmembers; Yvonne Coon, Laura Papish, Tex Titterington, and Chris Griffin were present.

Shirley Palmer-Witt was absent.

The following staff members were present:

Ron Marsh, City Administrator; Courtney Meyer, City Clerk; Bill Hisle, Chief; Ernie Misak, Director of Public Works; Austin Parker, City Attorney.

Others present: Justin Patrick, Emergency Services; Esther Harp, Emergency Services; Stephanie Patrick, Caven Lewis

**3. Approval of the Agenda**

Mayor Ussery asked if there were any modifications to the agenda. Marsh stated a drainage easement needed to be added after Chisholm Ridge Phase 3 discussion.

Mayor Ussery called for a motion to approve the agenda as modified.

**Motion: *Papish*** moved, ***Coon*** seconded to accept the October 9, 2018 agenda as modified. Voted and passed unanimously.

**4. Public Forum**

None

**5. Approve Consent Agenda**

Mayor Ussery asked if there was any question on the consent agenda and if not asked for a motion to approve.

Marsh asked that Fire Service Resignations be moved to the top of the business.

Minutes 09/25/18 Council Meeting  
Minutes 10/02/18 Special Council Meeting

**Motion: *Titterington*** moved, ***Papish*** seconded to approve the consent agenda as modified. Voted and passed unanimously.

**6. Claims and Warrants**

Meyer stated that the claims and warrants were \$117,812.68.

It was asked if the malpractice insurance was an annual amount. The answer is yes.

**Motion: *Papish*** moved, ***Coon*** seconded to pay the claims and warrants as presented. Voted and passed unanimously.

## 7. Staff Reports

- a. Chief Hisle stated his report was in the packet and asked if there were any questions. Council asked if there were any problems with Fall Fest and Chief answered no. Griffin asked if the department was able to obtain car seats. Chief answered yes.
- b. Ernie Misak, Public Works Director – Council asked if the river came up to the ponds. Misak stated there was a little back up in the ponds before they could get it capped. He stated we will have to discharge in November is not sooner.

Titterington asked if the one-way sign on Kansas at 1<sup>st</sup> street was necessary. When coming up to the intersection you can go either way but with a one-way sign it appears you can only go one way. Staff said they would look at options.

- c. Ron Marsh, Administrator – reported for Emergency Services – 4 fire calls and 10 EMS calls, 2 of which Sedgwick county had to transport.

## 8. Business

### INSERT – Fire Service Resignations

Marsh reported that Luke Davis and Haley Roberts have spoken to Captains and we would like to take them off of the resignation list for now. Marsh asked to approve all resignations except for Luke Davis and Haley Roberts.

**Motion:** *Titterington* moved, *Griffin* seconded to approve the resignations. Voted and passed unanimously.

- a. Approve Ordinance 1049 Insurance Proceeds Ordinance

Per K.S.A. 40-3901 The City of Clearwater is required to adopt an ordinance establishing and implementing an insurance proceeds fund. Clearwater Ordinance 765 was adopted in 1998 for Insurance Proceeds.

In 2016 the State statute was updated and requires the City ordinance to be updated also. Insurance proceeds are the claim payments (not to exceed 15% of claim) from an insurance company for building or structures damaged in excess of 75%. The state statute requires the local municipality to deposit these funds in an interest-bearing account until a building inspector (Sedgwick County MABCD) has issued a certificate that the insured has brought the property up to code. Once the certificate is issued, the City turns the insurance funds plus interest over to the insured.

Marsh explained this is a house cleaning ordinance and no direct business spurred this ordinance.

**Motion:** *Coon* moved, *Papish* adopt ordinance 1019. Coon, yea; Papish, yea; Titterington, yea; Griffin, yea. Voted and passed unanimously.

- b. Consider an Appropriation Resolution

Marsh explained that the resolution was revised based on the comments made from the prior meetings.

Mayor Ussery stated the changes satisfied his concerns.

**Motion:** *Titterington* moved, *Papish* seconded to approve the appropriation resolution. Voted and passed unanimously.

**c. Considering a Stipend for Co-Interim EMS Directors**

With the resignation of the Emergency Services Director, I have asked Esther Harp, AEMT, and Justin Patrick, Paramedic, to be co-interim EMS Directors until a new director is hired.

The EMS side of Emergency Services has a considerable amount of paperwork including run reports, medicine inventory, billing reports, etc. They are in the process of going through the credentialing process for Sedgwick County and running calls. Both Esther and Justin have full time jobs and families and I believe co-interim directors will help spread the responsibilities and not overwhelm one person. I would like to pay each of them \$500 per pay period as a stipend for taking on the additional responsibilities and runs.

The total financial commitment through the end of the year is \$7,101.00. This is available in the Emergency Services payroll line items.

**Motion:** *Papish* moved, *Griffin* seconded to approve the co-interim stipend of \$500 each per pay period. Voted and passed unanimously.

**d. Discuss: Chisholm Ridge Phase 3 Lots**

This year council authorized the infrastructure improvements for Chisholm Ridge Phase 3 with the intent to improve the lots to sell. Initial discussion began in May 2018 to discuss how to market these lots.

In initial discussion staff recommended selling the lots for \$15,000, pay off existing specials, pay for new water and sewer improvements, and leave the street improvements for the new property owners to pay. This would leave a balance of \$42,059.48 to pay for the drainage improvements of \$48,000 that are designed to help the alleviate the flooding concerns we have for Chisholm Ridge and the Sports Complex.

Council has now awarded bids for water, sewer, streets, and drainage for Chisholm Ridge Ph 3.

The construction bids came in lower than the engineers estimate except for the drainage improvement which is now \$71,279. Below are some options for selling the lots.

Option	Selling Price	Incentive Options	Balance after Specials Paid	Approx. Monthly Special Payment
#1	\$15,000	Pay existing specials – Plus New Water and Sewer Improvements	\$132,346.76	\$57.16
#2	\$12,000	Pay existing specials – Plus New Water and Sewer Improvements	\$78,346.76	\$57.16
#3	\$10,000	Pay existing specials ONLY	\$154,567.45	\$74.82 - \$98.33

City has already paid \$28,515 total for the specials for these lots in 2015, 2016 and 2017.

Depending on the Governing Body's decision, the financial impact is how much of the drainage improvements costs the City will have to cover.

Staff stated at this time they are not recommending any other incentives to go with Phase 3.

Council discussed and all agreed option #1 was the best option for now. Council stated if needed they could come back and discuss further incentives at a later time. Since they all knew what

they wanted to move on Mayor Ussery asked if anyone wanted to make a motion to allow staff to sell Chisholm Ridge Phase 3 lots at a set price.

**Motion:** *Titterington* moved, *Papish* seconded to approve the sale of each lot @ \$15,000 and offer to pay off existing specials and new water and sewer improvements. Voted and passed unanimously.

**e. Drainage Easement**

As part of the Chisholm Ridge Phase 3 infrastructure improvements, Council approved a drainage project to be done in conjunction with the improvements. This drainage project is designed to better channel and redirect the drainage from the farming land north and east of the Chisholm Ridge development.

The drainage work was let with the street improvements, recently awarded to APAC. In order to complete the drainage improvements, a 20' drainage easement and 10' temporary construction easement was required from the current property owner, Janet Reusser. Staff has been working with Ms. Reusser and her attorney the past several weeks to obtain the easement and have reached an agreement acceptable to all parties. The agreement is attached.

Acquiring the easement will cost \$6500 (+ filing fee with the County Register of Deeds) which will come from the bonds issued for the project. The costs for the drainage project will not be passed on to property owners in Chisholm Ridge.

**Motion:** *Coon* moved, *Titterington* seconded to authorize the mayor to sign and accept the drainage easement agreement. Voted and passed unanimously.

Mayor Ussery saw there was one more item that needed to be discussed and added another item to the agenda

**INSERT Street Sign Agreement**

On September 11, 2018 City Council adopted ordinance 1047 requiring address numbers to be displayed on residences and businesses. Through the implementation process council staff proposed and council approved that the city would offer to install the house numbers if requested.

Staff and Counsel thought it would be best if a formal agreement be made between the property owner and the city. The agreement states that this will be free of charge, the owner hold the City and employees harmless from damages, and the city will not warranty the street numbers it places on the homes.

The City Attorney has drafted the agreement.

**Motion:** *Coon* moved, *Griffin* seconded to authorize the City Administrator to enter and sign the street sign agreements for the residents who request numbers to be installed on their house. Voted and passed unanimously.

**9. Review: 3<sup>rd</sup> Quarter Financials**

Meyer reported that all the funds are healthy and are either in line or below budget as of September 30<sup>th</sup>. Meyer asked if council had any questions.

Council had no questions.

**10. Administrators Report**

City Attorney has drafted a Field Usage Agreement for the Recreation Commission. I will present it to the Park Advisory Board for their comments and bring to the Governing Body at the next meeting.

Vireo is wrapping up the final draft of the pedestrian transportation plan for the City. They expect to have it to us sometime this week.

Update on YTD water sales compared to last year:

1 QTR 2017 – 23% total projected revenue	1 QTR 2018 – 26.9% total projected revenue
2 QTR 2017 – 46.8% total projected revenue	2 QTR 2018 – 54.8% total projected revenue
3 QTR 2017 – 75.1% total projected revenue	3 QTR 2018 – 82.4% total projected revenue

Increase in the water rates approved for this year continue to provide the increased revenue needed for the fund to be self-sustaining.  
 Fall City wide cleanup will be 19-20 October. Containers will be at Public Works shop for citizens to drop off their items.  
 Marsh also commented that the leadership of the Fire and EMS department have gone above and beyond. He also wanted to report that the department is still very robust.

**11. Governing Body Comments**

Griffin had nothing to report

Titterington asked if someone was still following up on the grants Scott Cooper was working on. Marsh stated yes. Tex also asked if we should have a town hall meeting to settle the turmoil and answer the questions.

Papish asked what the timeline for a committee to be put together for a new director. Marsh stated he still needed to speak with the Mayor about that however the job description is posted on HRE Partners. Papish also asked when a strategic plan meeting was going to be. Marsh said he is trying to plan a meeting sometime in January or February.

Coon stated when it comes to city plans most citizens just wait to see how things will fall. If they don't like what has happened then they will voice their concern. If it doesn't bother them or they like the change you are less likely to hear from them.

Mayor Ussery stated that I-235 will be closed Friday at 6pm through Sunday this weekend to finish the highway. He also wanted to echo Marsh's comments on the leadership in the Fire and EMS department. Mayor Ussery also stated when it comes to social media that all city and governing body members are accountable for what they say on social media. When a message goes out from a member of the city it looks as though the city has sent the message. He just asked that whatever is put out there to be cautious.

**12. Adjournment**

With no further discussion Mayor Ussery called for a motion to adjourn.

**MOTION:** *Coon* moved, *Papish* seconded to adjourn the meeting. Voted and passed unanimously. The meeting adjourned at 7:26 PM

**CERTIFICATE**

State of Kansas        }  
 County of Sedgwick   }  
 City of Clearwater    }

I, Courtney Meyer, City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the October 9, 2018 City Council meeting.

Given under my hand and official seal of the City of Clearwater, Kansas, this 23<sup>rd</sup> day of October 2018

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Courtney Meyer, City Clerk

**City of Clearwater  
City Council Meeting  
October 19, 2018**

**Item: Emergency Services Mayoral Appointments & Resignation**

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**Background:** Per City Code all volunteers are to be appointed by the Mayor with approval of the City Council.

Per K.S.A. 15-204 volunteers appointed by the Mayor upon approval of the City Council shall require majority vote of the Governing Body to remove them from their position.

**Analysis:** The Mayor is presenting the following individuals for appointment to Clearwater Emergency Services:

Chad Sterret – Firefighter/EMT  
Kyle Berger – Firefighter/EMT  
Jordan Ford – Firefighter (probationary)

The following members of Clearwater Emergency Services (CES) resigned from their positions with CES effective 10/2/18:

Haley Roberts - Cadet

**Financial:** There is no financial consideration

**Legal Considerations:** Review and comment as necessary

**Recommendations/Actions:** Approve the appointments and resignation from CES.

Kurtis Lauterbach	Firefighter	Assistant Chief
Gary Berger	Firefighter	Interim Fire Chief
Carl Fry	Firefighter	Captain
Jason Templin	Firefighter	Captain
Chad Posch	Firefighter	
Kolby Lauterbach	Firefighter	
Rick Kindle	Firefighter	
Bree Daffron	Firefighter-Probationary	
Jordan Ford	Firefighter - Probationary	
Mandy Guy	Firefighter - Probationary	
Tim Robbins	Paramedic	
Garbrielle Simon	Paramedic	
Lisa Corr	AEMT	
Elizabeth Riddle-Kindel	EMT	
Justin Patrick	Paramedic/FF	Co-Interim EMS Director
Esther Harp	AEMT/FF	Co-Interim EMS Director
Jared Dinwiddie	EMT/FF	
Joshua Hecker	EMT/FF	
Michael Cowherd	EMT/FF	
Trent Zimmerman	EMT/FF	
Chad Sterret	EMT/FF	
Kyle Berger	EMT/FF	
Caven Lewis ©	Cadet Firefighter	
Andy Rakes ©	Cadet Firefighter	
Luke Davis©	Cadet Firefighter	
Jack Metzger ©	Cadet Firefighter	

**10 Firefighter Only**

**4 EMS only**

**8 Both**

**4 FF Cadets**



*Sedgwick County...  
working for you*

**Sedgwick County Division on Aging**

Annette Graham, Director

**Sedgwick County Transportation – SCT**

271 W. 3<sup>rd</sup> St. N., Suite 500 | Wichita, Kansas 67202

Phone: (316) 660-7298 Fax: (316) 660-1936

Long Distance: 1-800-367-7298

October 11, 2018

Mayor Burt Ussery  
City of Clearwater  
129 E. Ross Avenue  
P.O. Box 453  
Clearwater, KS 67026

Honorable Mayor Ussery,

Sedgwick County Transportation (SCT) has provided safe, affordable, accessible, door-to-door general public transportation to citizens of the city of Viola and other areas designated as rural within Sedgwick County since 1995. SCT receives funding from Sedgwick County government, the Kansas Department of Transportation and the Federal Transit Administration (FTA). Demand for transportation services continues to increase in rural Sedgwick County and the County is committed through our partnership with KDOT and FTA to offer access to public transportation through the FTA 5311 program.

Transportation is essential to access services in the metropolitan areas such as medical care, groceries, social services, work and other important needs for health, independence and wellness. Sedgwick County is applying for continued operating assistance under 49 U.S.C. § 5311 of the Federal Transit Act for the rural transportation program to continue providing this critical service that helps persons who cannot or choose not to drive maintain their mobility. This is the only subsidized, affordable transportation available in areas outside the city of Wichita within Sedgwick County for a reasonable fare of \$3.00 one-way. A private transportation provider with wheelchair accessibility can cost upwards of \$155.50 one-way from city of Clearwater to Wichita and if the rider needs to transport with oxygen bottles the price goes up based on the size and number of oxygen bottles.

**Sedgwick County Division on Aging, SCT is requesting your written support of their rural general public transportation program.** A sample letter of support is enclosed for your consideration. Please return the letter of support by November 2, 2018 to Sedgwick County Division on Aging, Attention: Kandace Bonnesen, 271 W. 3<sup>rd</sup> St. N., Suite 500, Wichita KS, 67202.

If you and the council would like to review and comment on the funding application please contact me at 316.660.5157 or email at [kandace.bonnesen@sedgwick.gov](mailto:kandace.bonnesen@sedgwick.gov). Additional information regarding SCT program is available at the following internet website [www.sedgwickcounty.org/aging](http://www.sedgwickcounty.org/aging).

Sincerely,

Kandace Bonnesen, Transit Manager

Encl.



10-19-18

Mr. Scott Lein  
Kansas Department of Transportation  
Office of Public Transportation  
Eisenhower State Office Building  
700 SW Harrison Street  
Topeka, KS 66603-3745

Dear Mr. Lein:

The City of Clearwater strongly supports Sedgwick County Division on Aging's intent to apply to the Kansas Department of Transportation (KDOT) for continued operating assistance under their 48 U.S.C. § 5311 Rural General Public Transportation program.

If this grant is renewed; safe, affordable, accessible, origin to destination transportation would continue to be available to individuals living in rural Sedgwick County. This includes the cities of Andale, Bentley, Cheney, Clearwater, Colwich, Garden Palin, Mt. Hope, Sedgwick, and Viola as well as unincorporated areas.

We extend our appreciation to KDOT for funding Sedgwick County's rural transportation program since 19954 and strongly urge your continued support. This public transportation service is essential for those in our community who choose to or cannot drive in order to access medical care, food, human services, and other important needs for health and wellness.

Sincerely,

Burt Ussery  
Mayor

# Check Register Report

Date: 10/12/2018

Time: 4:03 pm

Page: 1

City of Clearwater

BANK: EMPRISE BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>EMPRISE BANK Checks</b>							
44395	10/17/2018	Printed		AMS1	AIRGAS MID SOUTH	OXYGEN	184.59
44396	10/17/2018	Printed		BH01	BECKY C. HURTIG	STATEMENT	890.00
44397	10/17/2018	Printed		CAL PR	CALIBRE PRESS	LEADERSHIP CONFERENCE 11-26	159.00
44398	10/17/2018	Printed		CGSI	CASEY'S GENERAL STORES, INC.	STATEMENT	2,967.88
44399	10/17/2018	Printed		CYBER	CYBERTRON INTERNATIONAL, INC	COMPUTER INSTALL	1,356.25
44400	10/17/2018	Printed		GADES	GADES SALES CO, INC	FIXING LIGHTS AT CITY PARK	200.00
44401	10/17/2018	Printed		LA LI	J. LARRY LINN	STATEMENT	860.00
44402	10/17/2018	Printed		KDR1	KANSAS DEPARTMENT OF REVENUE	3RD QUARTER WATER PLAN FEE	1,046.50
44403	10/17/2018	Printed		LEW 1	LEWIS STREET GLASS CO, INC.	CITY OFFICE GLASS ENTRY DOOR	105.00
44404	10/17/2018	Printed		MW SS	MIDWEST SINGLE SOURCE	BUSINESS CARDS	45.00
44405	10/17/2018	Printed		NAT SIGN	NATIONAL SIGN COMPANY INC	CREDIT INVOICE	917.00
44406	10/17/2018	Printed		PB03	PITNEY BOWES	POSTAL METER LEASE	305.91
44407	10/17/2018	Printed		RON	RON MARSH	MILEAGE	156.96
44408	10/17/2018	Printed		0004	SEDGWICK COUNTY ELECTRIC COOP	STATEMENT	1,912.67
44409	10/17/2018	Printed		TR CON	TRAFFIC CONTROL SERVICES	INSTALL VIDEO SYSTEM	393.75
44410	10/17/2018	Printed		VER	VERIZON WIRELESS	STATEMENT	399.01
44411	10/17/2018	Printed		VISA	VISA	CLEANING SUPPLIES/BREAKFAST	1,693.65
44412	10/17/2018	Printed		WCI1	WASTE CONNECTIONS, INC.	STATEMENT	13,081.13
44413	10/17/2018	Printed		YESCO	YESCO SIGN AND LIGHTING	SERVICE CALL	147.00

**Total Checks: 19**

**Checks Total (excluding void checks):**

**26,821.30**

**Total Payments: 19**

**Bank Total (excluding void checks):**

**26,821.30**

# Check Register Report

Date: 10/12/2018

Time: 4:03 pm

Page: 2

City of Clearwater

BANK:

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
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**Checks**

46	10/17/2018	Printed		KDR1	KANSAS DEPARTMENT OF REVENUE	SEPTEMBER SALES TAX	258.82
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**Total Checks: 1**

**Checks Total (excluding void checks): 258.82**

**Total Payments: 1**

**Bank Total (excluding void checks): 258.82**

**Total Payments: 20**

**Grand Total (excluding void checks): 27,080.12**

To: Mayor and City Council

From: Bill Hisle  
Police Chief

Date: October 18, 2018

Re: Police Department Staff Report

- We worked or assisted with 4 non-injury accidents, 2 in Clearwater and 2 in the County along S. 135 St. W
- 10/08 Suspicious subject. H.S. Stadium Unfounded
- 10/09 Financial Crimes 800 block of Streamside
- 10/09 5900 block of S. 135 St. W. Residential Burglary, Assisted SG CO Sheriff's Dept.
- 10/09 Assisted the County with several calls in ref to high water/flooding
- 10/11 Assisted SG CO S.O. with several loose horses in the area of 8000 Blk of 135 St. S.
- 10/11 Solicitors, 200 block of N. Lee
- 10/12 Reckless Driving, 100 block of N. Lee
- 10/13 Theft, 800 block of Streamside
- 10/15 A couple of calls related to the transformer blowing – electrical smell
- 10/17 Domestic Violence, Aggravated Battery 400 block of Streamside – Suspect charged, taken to jail.
- Lt. Gearhardt attended the Kansas Peace Officers Association Conference in Lawrence, 10/16 through 10/18.
- Officer Heiar started wrestling practice at the Middle School this week where he is serving as the wrestling coach.

To: Mayor and City Council

From: Ernie Misak, Public Works Director

Date: October 2, 2018

R.E. Public Works Bi-Weekly Reporting

- Due to excessive rain and an instance of the river backing up into wastewater ponds, we have been forced to discharge from ponds to river.
- Sample pulled October 18, 2018 from wastewater ponds , delivered to Lab for analysis.
- Monthly reading of water meters on Oct 17 and 18.
- Cleaning up our areas for semi-annual Citywide cleanup.
- Citywide cleanup at the shop on Oct 19 and 20<sup>th</sup>.
- Shop cleaning and re-organizing of shop office area.
- Getting proposal for potential upgrade of Park Glen wetwell.
- Still working with outside technicians for generator transfer switch at wastewater ponds.
- Continued operation and work that is normal for public works.

Have a good day!

To: Mayor and City Council

From: Kristina Rey  
Senior & Community Center Director

Date: October 19, 2018

Re: Center Staff Report

- Getting ready to start scheduling SHICK Counseling appointments
- Halloween Party on the 31<sup>st</sup> lasting all day with a costume contest
- Breakfast at the Center on the 20th
- Working on the last step on starting up a Family Support Class with Tina Welch aiming at people raising kids that are not their own. Hoping to start in November.

**City of Clearwater  
City Council Meeting  
October 19, 2018**

**Item: Field Usage Agreement with Clearwater Recreation Commission**

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**Background:** The current field usage agreement between the City and Recreation Commission has been in place since 2006. This agreement updates recent changes and allows the Recreation Commission to use City facilities for their activities.

**Analysis:** Since the Recreation Director is a full-time employee of the Recreation Commission, and no longer a City employee, several changes needed to be made to the agreement particularly involving maintenance and scheduling.

**Financial:** There are no changes financially with the current agreement.

**Legal Considerations:** The City Attorney has drafted the agreement.

**Recommendations/Actions:** The Park Advisory Board has reviewed the agreement and recommends approval. If Council approves the document it will be presented to the Recreation Commission for their consideration.

MEMORANDUM OF UNDERSTANDING  
Concerning the Use of Recreational Facilities  
Within the City of Clearwater, Kansas

This Memorandum of Understanding (MOU) is made and entered into with an effective date of the \_\_\_\_ day of \_\_\_\_\_, 2018 (“the Effective Date”), by and between the City of Clearwater, Kansas, a municipality organized and existing under and by virtue of the laws of the State of Kansas (“City”) and the Clearwater Recreation Commission, a recreation commission organized and existing under and by virtue of the laws of the State of Kansas (“Recreation Commission”).

WHEREAS, the City owns and operates multiple recreation facilities throughout the City of Clearwater, Kansas, including but not limited to the Clearwater City Park and the Chisholm Trail Sports Complex located on East 103<sup>rd</sup> St. South, including all shelters, gazebos, buildings and other improvements located on said property (“Facilities”), and

WHEREAS, over the past several years, the Recreation Commission has worked with the City and community partners to oversee the funding and installation of improvements within multiple recreational facilities owned by the City of Clearwater; and

WHEREAS, the Recreation Commission has taken over the responsibility of employing and overseeing the former Parks and Recreation Director position originally employed by the City of Clearwater, Kansas; and

WHEREAS, the Recreation Commission desires to continue to obtain the right to use said Facilities and the City is willing to permit such use upon the terms and conditions provided herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Facilities Use: The City hereby agrees to allow the Recreation Commission to utilize all recreation facilities owned by the City, including but not limited to the Clearwater City Park and the Chisholm Trail Sports Complex located on East 103<sup>rd</sup> St. South, including all shelters, gazebos, buildings and other improvements located on said property (“Facilities”), subject to the terms and conditions of this Memorandum.
2. Non-Exclusive Usage: Nothing in this Memorandum shall be construed to at any time grant the Recreation Commission the exclusive right to use said Facilities. Said Facilities shall always be available to the City.
3. Maintenance: While the City maintains primary responsibility for the maintenance of said Facilities, regular/routine maintenance of said Facilities for activities sponsored by the Recreation Commission shall be the responsibility of the Recreation Commission. However, the Recreation Commission shall not

perform any other maintenance unless expressly authorized by City staff. The Recreation Commission shall coordinate with the City for the use of City maintenance equipment. Proper Facilities and/or field maintenance techniques will be discussed with the City and the Recreation Commission before any maintenance is performed by the Recreation Commission. The Recreation Commission shall be required to follow these techniques when performing any maintenance at or within said Facilities.

4. Waiver of Fees: Except as otherwise provided for within this Memorandum, the City agrees to waive all rental fees associated with the use of said Facilities by the Recreation Commission, including fees for the use, lights and maintenance of said Facilities, for the duration of this Memorandum.
5. Scheduling: The Recreation Commission will work with City Staff to schedule and coordinate their use of said Facilities.
6. Storage: The Recreation Commission shall be allowed to store its equipment within buildings located in said Facilities.
7. Weather: While the Recreation Commission has the ability to use the Facilities under this Memorandum, the Recreation Commission shall not utilize said Facilities when weather causes such use to pose a hazard to the public health or maintenance of said Facilities.
8. Oversight: The Recreation Commission shall have oversight authority concerning all recreational, leisure and educational activities it chooses to sponsor/co-sponsor at said Facilities. This oversight responsibility includes, but is not limited to, program approval, budget decisions, personnel, addressing of complaints, program evaluation, scheduling, and the use of Recreation Commission equipment.
9. Concessions: The City shall be responsible for all oversight and control over the operation and sale of concessions within or at said Facilities. All funds derived from the operation and sale of concessions within or at said Facilities shall be maintained by the City.
10. Security: The City shall have access to all portions of the Facilities at all times in case of emergency and/or to take action to protect the security of said Facilities. The City shall maintain all locks on all inside and outside doors within buildings located on said Facilities and shall provide the Recreation Commission with copies of keys to the same. The Recreation Commission shall maintain a log of all individuals and entities to whom copies of said keys have been issued, and annually file an updated version thereof with the City. Said log shall be filed with the Clearwater City Clerk no later than June 1st of each calendar year. The City may elect to change locks within such buildings if it appears that unauthorized copies of such keys have been made. In the event that the Recreation Commission

installs any additional locks within the Facilities, at least one key for each such lock shall be furnished to the City.

11. Prohibited Practices: The Recreation Commission shall not engage in or permit to be performed any acts or practices which may cause or allow injury to the Facilities, and the Recreation Commission expressly agrees to comply with all applicable laws, ordinances, policies, rules and regulations of the City of Clearwater, Kansas and any other governmental authority having jurisdiction over said Facilities, including but not limited to the City's personnel policies, rules and/or regulations concerning public safety on City-owned property.
12. Term & Renewal; Termination: The term of this Memorandum shall commence upon its execution and continue in effect until December 31, 2018. Thereafter, this Memorandum shall automatically renew and extend on January 1 of each calendar year for sequential one (1) year terms, on the terms and conditions herein provided, unless either party gives the other party written notice not to extend and renew at least thirty (30) days prior to date of automatic renewal and extension. Additionally, notwithstanding any provision contained within this Memorandum, either party may terminate this Memorandum without cause and/or for their convenience by providing sixty (60) days advance written notice to the other party.
13. Structural Changes: Any structural changes to the Facilities requires the prior written approval of the City. Any request for such approval shall include documentation or other evidence that such changes may be made without expense or obligation to the City.
14. Waiver of Subrogation: Each of the parties hereby waives and relinquishes any and all rights which they might have against the other party on account of any claim for damages resulting from a loss to the property owned by it, or them, caused by the alleged negligence of such other party or its agents, employees, or other persons who may be in the described Facilities by permission of such other party, whether or not such property of such party is insured against loss in the amount of its full insurable value.
15. Liens and Claims: The Recreation Commission shall not have the right, privilege, or power to in any way create liens for labor or materials upon the interests of the City in said Facilities. The Recreation Commission agrees that in connection with (1) the making of any repairs to said Facilities and/or (2) the construction of any improvements or the installation of any equipment within or upon said Facilities by the Recreation Commission, the Recreation Commission shall pay for all materials and labor and will not permit any mechanic's liens to be filed against said Facilities and the interests of the City therein.
16. Insurance: The City shall maintain insurance on said Facilities, including the contents of the buildings contained therein; PROVIDED the Recreation

Commission supplies the City Clerk prior to February 1st of each year a written list of the contents of the buildings contained therein, their estimated valuation, and any other information necessary for the City to attain insurance coverage. Said written inventory shall be amended after February 1st, by written documentation provided to the City Clerk by the Recreation Commission, in the event said inventory changes. Such written update shall be sent to the City Clerk by the Recreation Commission within thirty (30) days of the change in inventory.

17. Inspection by City: The City shall have the right to enter said Facilities at all reasonable hours for the purpose of inspecting the same.
18. Damage to Facilities: In the event said Facilities shall be destroyed or so damaged by fire, tornado or other storm, explosion or earthquake, or by any other unavoidable casualty as to become unusable, then the City may elect to either rebuild or put said Facilities in good condition and fit for occupancy by the Recreation Commission within a reasonable time after such total or partial destruction, or may give notice, in writing, terminating this Agreement. If the City elects to repair or rebuild said Facilities, the City shall give the Recreation Commission reasonable prompt notice after such injury of its intentions to repair and proceed to do the same.
19. Indemnification of City: The Recreation Commission covenants and agrees to indemnify and protect, as much as possible, the City, of and from any and all claims of third parties for injuries to persons or property by reason of an accident or happening in or around said Facilities which are the subject of this Memorandum. It is the intent of the parties hereto that this provision be effective in the event that the Recreation Commission is indemnified through its agreements with various organizations for use of the Facilities described herein. It shall be the duty of the Recreation Commission to require third party individuals or organizations using the Facilities described hereunder to furnish the Recreation Commission with a Certificate of Insurance evidencing coverage for any damage caused to said Facilities and/or the agents and employees of such individuals and entities, as well as the guests, invitees, and/or individuals participating in said event(s). Such Certificate of Insurance shall name the "City of Clearwater, Kansas" and the "Clearwater Recreation Commission" as additional named insureds, and shall be in an amount not less than \$500,000.00 combined single limit per occurrence for bodily injury, personal injury, and property damage. Said Certificate shall be submitted to the City Clerk, 129 E. Ross, Clearwater, KS 67026. Failure of the Recreation Commission to provide the City with an approved Certificate of Insurance prior to the use of said Facilities by such individuals and entities shall cancel and make void the portion of this Memorandum allowing the Recreation Commission to allow sponsored entities utilize said Facilities. The Recreation Commission shall reimburse the City for any costs associated with damage to said Facilities that exceeds normal or routine maintenance requirements.

20. Failure to Comply: Failure of the Recreation Commission to comply with the terms and conditions of this Memorandum shall be grounds for the City to issue written notice to the Recreation Commission of the termination of this Memorandum effective immediately. Under said circumstances, the City may elect to pursue all legal and equitable remedies, including the City taking any and all necessary steps to reclaim exclusive possession and control over said Facilities. Failure of the City to insist on the Recreation Commission's specific performance of and compliance with the terms and conditions of this Memorandum shall not be construed as a waiver or relinquishment of the City's rights under this paragraph. No action or inaction by the City shall be construed as a waiver of the Recreation Commission's failure to comply with the terms and conditions of this Memorandum.
21. Attorney's Fees. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary reimbursement in addition to any other relief to which the party may be entitled.
22. Binding Effect; Assignability: This Memorandum shall be binding upon the legal representatives, successors or assigns of the parties hereto. Neither party may assign their rights, duties and responsibilities under this Memorandum without the express written consent of the other party hereto.
23. Notices: All notices, demands, and requests which may be given or which are required to be given by either party to the other party under this Agreement must be in writing and must be sent by email, certified or registered mail, postage fully prepaid, return receipt requested, or by Federal Express or similar nationally recognized overnight courier service, or by facsimile.
24. Entire Agreement; Amendment; Severability: This Memorandum constitutes the entire agreement between the parties and supersedes all prior verbal and written communications between the parties on the subject matters addressed herein. No representations on the subject matters addressed herein have been made other than those set forth herein. Any amendments or modifications of this Memorandum must be made in writing and signed by and executed by duly authorized representatives of all parties hereto or else shall not be effective. The provisions of this Memorandum are severable and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY:

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MAYOR, BURT USSERY

ATTEST:

\_\_\_\_\_  
CITY CLERK, COURTNEY MEYER

CLEARWATER RECREATION COMMISSION:

\_\_\_\_\_  
CHAIRMAN, \_\_\_\_\_

\_\_\_\_\_  
VICE-CHAIRMAN, \_\_\_\_\_