

## OVERLAND PARK CITY COUNCIL MEETING

June 4, 2001

Mayor Ed Eilert called the Overland Park City Council meeting to order at 7:35 p.m. The following members were present, constituting a quorum:

Mr. Neil S. Sader, Council President; Mr. George Kandt; Dr. Jack Halligan; Mr. Byron C. Loudon; Mr. Thomas C. "Tim" Owens; Dr. Kris Kobach; Mr. Carl R. Gerlach; Mr. Terry Goodman; and Mr. Jim Hix. Dr. Jay F. Lehnertz arrived at 8:45 p.m.

Also present were: Mr. John M. Nachbar, City Manager; Mr. Bob Watson, City Attorney; Mr. Roger Peterson, Director of Planning and Development Services; Mr. Bob Jones, Director of Human Resources; Mr. James Cox, Director of Parks and Recreation; Mrs. Kristy Stallings, Director of Finance, Budget and Administration; Mr. John Douglass, Police Chief; Mr. Bob Lowry, Director of Public Works; Mr. Bart Budetti, Senior Assistant City Attorney; Ms. Michelle Mendoza and Ms. Lori Knadle, Assistant City Managers; Mr. Bob Pledge, Project Manager; Mr. Doug Brown, City Engineer; Mr. Sean Reilly, Manager, Communications; Ms. Tammy Williams, Police Legal Advisor; Mr. Brad Cooper, Kansas City Star; and Ms. Pamela Blaszyk, Senior Recording Secretary. Approximately 40 persons were in the audience.

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### PLEDGE OF ALLEGIANCE

Mayor Eilert led the audience in the Pledge of Allegiance.

### MAYOR ED EILERT

#### REAPPOINTMENTS TO THE CITIZENS ADVISORY COUNCIL ON PARKS AND RECREATION

	<u>TERM OF OFFICE</u>	
	<u>Beginning</u>	<u>Ending</u>
Doris A. Duke	2/01/01	2/01/03
K.H. Christensen	2/01/01	2/01/03
Ron Meyer	2/01/01	2/01/03
David Coleman	2/01/01	2/01/03
William A. Dean	2/01/01	2/01/03
Douglas S. Stone	5/07/01	5/07/03
Duncan Leckie, Jr.	5/14/01	5/14/03

Mr. Neil S. Sader moved to approve the referenced reappointments to the Citizens Advisory Council on Parks and Recreation. The motion was seconded by Mr. Byron C. Loudon, and carried with a vote of 9 to 0.

REPORT FROM COMMITTEE-OF-THE-WHOLE MEETING HELD ON  
MAY 30, 2001

Mayor Eilert indicated that there would be a report on the May 30, 2001, and June 4, 2001, Committee-of-the-Whole meetings.

Mr. Sader stated that earlier this evening, the Committee of the Whole met and recommended to the Governing Body the approval of Charter Ordinance No. 79, which would establish the storm water utility. They also discussed the adoption of a user fee system and a mill rate. Charter Ordinance No. 79 puts into operation the creation of the utility. Further discussions regarding the funding would occur within the budgetary process.

Mr. Sader moved to approve Charter Ordinance No. 79 chartering out of K.S.A. 12.3101 et seq., regarding the establishment of a storm water utility, subject to the approval of the City's bond counsel. The motion was seconded by Mr. Terry Goodman, and carried with a roll-call vote of 9 to 1, including the vote of Mayor Eilert, and with Dr. Kris Kobach abstaining.

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Mr. Sader announced that the 2001 Family Appreciation Night was scheduled on June 11, 2000. All Councilmembers and Department Directors were invited to bring their families to this event, which would occur at the Deanna Rose Children's Farmstead.

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Mr. Sader moved, in accordance with the recommendation from the May 30, 2001, Committee-of-the-Whole meeting, to adopt Amendment No. 2 to the agreement dated January 1, 2001, as amended by Amendment No. 1 dated June 6, 2000, between the City of Overland Park and City Manager John Nachbar regarding the terms and conditions of his continued employment as follows: 1) Section 3(a) to pay the Employee for services rendered a base salary of \$142,870 per annum payable in installments at the same time other City employees are paid, effective June 1, 2001; 2) Section 3(b) to contribute \$8,500 per annum into the City's Deferred Compensation plan on the Employee's behalf; 3) Section 3(g) to pay the Employee an automobile allowance of \$700 per month; 4) Section 3(h) to pay the Employee a \$9,000 Performance Bonus with the effective date of the bonus being June 1, 2001, and with the bonus amount not included in the base salary. The motion was seconded by Mr. Goodman, and carried with a vote of 9 to 0.

Mayor Eilert commented that the approval of this contract demonstrates the Council's appreciation for Mr. Nachbar's hard work and efforts in several areas, including negotiations for the hotel and Convention Center. Mr. Nachbar thanked the Mayor and Council for their support.

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Mayor Eilert indicated that he would take the agenda items out of order. He wanted to address two of the items under the Finance, Administration and Economic Development portion of the regular agenda.

Mr. Thomas C. "Tim" Owens explained that Ordinance No. EF-2301 regarded granting Kansas City Power and Light Company a 15-year franchise to supply electricity within the City. Ordinance No. TF-2300 regarded granting Everest Midwest Licensee, L.L.C., a one-year franchise relating to the telecommunications systems. Both ordinances would be read for the second time, as required by state statute.

Mayor Eilert noted that staff prepared a taped reading of these ordinances. This would be the second reading. Interested individuals could obtain hard copies of the ordinance or listen to the tape. State statutes require three readings of the ordinances at a public meeting prior to the adoption of a franchise ordinance.

Staff proceeded to play the recording of the ordinances.

CONSENT AGENDA:

PUBLIC WORKS

COMMITTEE CONSENT ITEMS:

STORM DRAINAGE VARIANCE – Approving the storm drainage variance with the Shawnee Mission School District, as stipulated.

WAIVER OF CONSULTANT SELECTION PROCESS AND AUTHORIZATION TO NEGOTIATE CONTRACT WITH TRANSCORE, INC. – For design of the traffic monitoring cameras project (CCTV).

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

STAFF CONSENT ITEMS:

COUNCIL MINUTES – February 12 and Special Council, May 21, 2001.

CONFIRMATION OF INVESTMENTS – Confirming investment in the amount of \$2,000,000 in certificate of deposit.

EXPENDITURE ORDINANCE NO. 5B – Outlining the expenditures from the General Operating Funds for May 10 through May 23, 2001.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 5D – Outlining the expenditures from the Capital Projects Funds for May 17 through May 23, 2001.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 5E – Outlining the expenditures from the Capital Projects Funds for May 24 through May 30, 2001.

APPLICATION FOR TEMPORARY PERMIT TO SELL CEREAL MALT BEVERAGE – Downtown Overland Park Partnership for an event to be held on June 15, 2001, at The Farmer's Market, vicinity of 7937 Overland Park Drive, Ronda Barry, applicant.

Mr. Loudon moved to approve the Consent Agenda. The motion was seconded by Mr. Carl R. Gerlach and carried with a roll-call vote of 9 to 0.

REGULAR AGENDA:

COMMUNITY DEVELOPMENT

COMMITTEE REPORT: Carl R. Gerlach, Chairman

No report.

STAFF REPORT:

BID TABULATION – One (1) GIS Plotter.

Director of Planning and Development Services Roger Peterson recommended the acceptance of the bid from Drexal Technologies, in the amount of \$11,310, for one (1) GIS plotter.

Mr. Sader moved to accept the bid from Drexal Technologies for one GIS plotter, as recommended by staff. The motion was seconded by Mr. Loudon, and carried with a vote of 9 to 0.

PUBLIC SAFETY

COMMITTEE REPORT: Jack Halligan, Chairman

ASSISTING JOHNSON COUNTY WITH FUNDS IN THE AMOUNT OF \$102,186 FOR JUVENILE INTAKE AND ASSESSMENT CENTERS (JIAC) SECURITY.

Dr. Jack Halligan reported that the Public Safety Committee was recommending, by a vote of 3 to 2, the approval of the City's participation in funding JIAC security, in the amount of \$102,186. He noted that amount may be amended to \$79,500 if the City receives a grant of \$23,000.

Mayor Eilert commented that there was a lengthy discussion regarding this item at the Public Safety Committee meeting. Subsequent to that meeting various communiques were sent regarding various legal issues associated with this item. The Mayor suggested that any verbal opinions expressed by the City's Law Department personnel on this issue should be provided during an executive session. If there is a need to move into an executive session, he preferred to address this item at the end of the agenda.

Mr. Sader indicated that he had some questions and would welcome the opportunity to discuss this issue with the City's legal staff.

Dr. Kobach suggested that the executive session be limited to discussing the basis for City liability as some members of the audience may be interested in this item.

The Mayor stated that this item would be addressed at the end of the agenda.

STAFF REPORT:

No report.

PUBLIC WORKS

COMMITTEE REPORT: Byron C. Loudon, Chairman

No report.

STAFF REPORT:

BID TABULATIONS:

Santa Fe Drive, 80th Street to Grandview.

Public Works Director Bob Lowry noted that staff was recommending that the Council reject all bids for this project and rebid the project next spring. He explained that the bid amounts were considerably higher than what was anticipated.

Mr. Loudon moved to reject the bids for the Santa Fe Drive, 80th Street to Grandview, project as recommended by staff. The motion was seconded by Mr. Jim Hix, and carried with a vote of 9 to 0.

135th Street/U.S. 69 Interchange

Mr. Lowry recommended the acceptance of the bid from Pyramid Contractors, Inc., in the amount of \$962,492.38, for the 135th Street/U.S. 69 Interchange project.

Mr. Loudon moved for the acceptance of the bid from Pyramid Contractors, Inc., as recommended by staff. The motion was seconded by Mr. Gerlach, which carried with a unanimous vote.

Maintenance Service for City Vehicles

Mr. Lowry stated that staff was recommending the acceptance of the bid from Castrol 10 Minute Oil Change for the maintenance service for City vehicles, for a total amount of \$31,500.

Mr. George Kandt moved to accept the bid from Castrol 10 Minute Oil Change, as recommended by staff. The motion was seconded by Mr. Sader, and carried with a vote of 9 to 0.

AGREEMENT – Board of County Commissioners of Johnson County for the Indian Creek Watershed Study.

Mr. Lowry explained that this agreement provides for the City to administer the Indian Creek Watershed Study. Johnson County will pay for this study through the Storm Water Management Advisory Committee (SMAC) funding and will also reimburse City staff for approximately \$55,000 for the staff time used to administer the contract. Staff recommended approval of the agreement.

Mr. Loudon moved for the approval of the agreement with the Board of County Commissioners of Johnson County for the Indian Creek Watershed Study, as recommended by staff. The motion was seconded by Mr. Gerlach, and passed by a vote of 9 to 0.

AGREEMENT – Phelps Engineering, Inc., for engineering services for the Indian Creek Watershed Study.

Mr. Lowry indicated that this agreement is between the City and Phelps Engineering, Inc. Phelps Engineering, Inc., will actually conduct the study. The City will pay for their services and be reimbursed by the county. Staff recommended approval of this agreement.

Mr. Sader moved for the approval of the agreement with Phelps Engineering, Inc., as recommended by staff. The motion was seconded by Mr. Loudon, and carried with a vote of 9 to 0.

RESOLUTION NO. 3219 AND KDOT AGREEMENT NO. 135-01 – Secretary of Transportation of the State of Kansas for the construction of the intersection of 119th Street and U.S. 69 and southbound U.S. 69 ramp.

Mr. Lowry noted that Resolution No. 3219 and KDOT Agreement No. 135-01 provide for the widening of the southbound U.S. 69 ramp and the construction of the intersection of 119th Street and U.S. 69. He noted that the Law Department did not approve this agreement as to form because of the standard KDOT agency language that was used. However, staff recommended approval of this agreement.

Mayor Eilert commented that this document is required by KDOT.

Mr. Loudon moved for the approval of Resolution No. 3219 and KDOT Agreement No. 135-01. After a second by Mr. Kandt, the motion carried with a unanimous vote.

#### FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT: Thomas C. “Tim” Owens, Chairman

ORDINANCE NO. EF-2301 – Granting Kansas City Power and Light Company a 15-year franchise to supply electricity within the City. (SECOND READING)

ORDINANCE NO. TF-2300 – Granting Everest Midwest Licensee, L.L.C., a one-year franchise relating to the telecommunication systems. (SECOND READING)

Mr. Owens noted that he already reported on these items earlier in the meeting.

#### STAFF REPORT:

APPLICATIONS FOR TEMPORARY PERMITS TO SELL CEREAL MALT BEVERAGE CONTINGENT ON RECEIVING SPECIAL EVENT PERMITS:

Overland Park Rotary Club for an event to be held on July 4, 2001, Building 40, Corporate Woods, 9401 Indian Creek Parkway, Bob Vancrum, applicant.

Overland Park South Rotary Club for an event to be held on June 8 -10, 2001, Building 40, Corporate Woods, 9401 Indian Creek Parkway. Tom Pitney, applicant.

Director of Finance, Budget and Administration Kristy Stallings presented two applications for temporary permits to sell cereal malt beverages, contingent on receipt of special event permits. Both special event permits are scheduled for consideration under the Planning Commission items on this agenda. Mrs. Stallings recommended approval of the applications, based on the contingencies.

Mr. Owens moved for the approval of both applications. After a second by Mr. Sader, the motion carried with a vote of 9 to 0.

RECOMMENDATIONS FROM THE PLANNING COMMISSION:

PLANNING COMMISSION CONSENT AGENDA:

FINAL PLAT NO. 2001-32 – Oxford Mills, 4th Plat, vicinity of the southeast corner of 143rd Street and Bluejacket. Application made by Schlagel & Associates. The Planning Commission approved this item on May 14, 2001, by a vote of 10 to 0.

SPECIAL USE PERMIT NO. 2001-8 – 6300 College Boulevard. Special use permit requested for a four-year period of time, to allow a temporary commercial use in an industrial district for an Enterprise Rent-A-Car agency. This property is currently zoned BP, Business Park District. Application made by Roger Estell. The Planning Commission approved this item on May 14, 2001, by a vote of 10 to 0. Ordinance No. Z-2863.

Mr. Owens moved for the approval of the Planning Commission Consent Agenda. The motion was seconded by Mr. Sader.

Mayor Eilert provided an opportunity for members of the audience to address the Council regarding Special Use Permit No. 2001-8. No one came forward to speak.

The motion passed by a roll-call vote of 9 to 0.

PLANNING COMMISSION REGULAR AGENDA:

SPECIAL EVENT PERMIT NO. 2001-135 – Vicinity of 109th Street and Indian Creek Parkway. Special event permit requested to allow a 4th of July celebration with fireworks and music. Application made by the Overland Park Rotary Club.

Mr. Owens moved to approve Special Event Permit No. 2001-135. Mr. Sader seconded the motion.

Mayor Eilert provided an opportunity for audience members to discuss this item. There was no response.

The motion carried with a vote of 9 to 0.

SPECIAL EVENT PERMIT NO. 2001-147 – 7045 College Boulevard. Special event permit requested to allow an outdoor employee meeting and luncheon. Application made by Universal Underwriters Group.

Mr. Peterson indicated that staff recommended the approval of this item, with stipulation a indicating that a tent permit is required.

Mr. Sader moved for the approval of Special Event Permit No. 2001-147, as recommended by staff. The motion was seconded by Mr. Owens.

Mayor Eilert asked if a member of the audience wanted to discuss this item. There was no response.

The motion carried with a vote of 9 to 0.

SPECIAL EVENT PERMIT NO. 2001-148 – 9401 Indian Creek Parkway. Special event permit requested to allow the 12th Annual Corporate Woods Jazz Festival. Application made by The Overland Park South Rotary Club.

Mr. Peterson stated that this request is to allow the 12th Annual Corporate Woods Jazz Festival. Staff recommended approval of this request with stipulations a through c.

Mr. Owens moved to approve Special Event Permit No. 2001-148, as stipulated. The motion was seconded by Mr. Loudon.

Mayor Eilert opened the public hearing on this item. There was no response and the hearing was closed.

The motion carried with a vote of 9 to 0.

LANDSCAPE EASEMENT VACATION – Vicinity of the northeast corner of 151st Street and Lamar Avenue. Approval of an easement vacation requested to allow the vacation of a 25-foot landscape easement along the rear of several lots in the LionsGate Southlake Subdivision. Application made by Synergy Development Alliance.  
ORDINANCE NO. VAC-2305.

Mr. Peterson stated that Synergy Development is the applicant requesting approval of the vacation of a 25-foot landscape easement that was platted at the developer's request in the backyards of some lots in LionsGate. That was not noticed on the final plat or staff would have had the easement removed. The ordinance does not allow the construction of fences within landscape easements. That means that those 17 lots would have to move their fences back 25 feet into their yard out of the easement. That would create an undesirable alley effect along the back of those lots. Staff concurs that the landscape easement vacation should be approved as submitted.

Mayor Eilert asked if the applicant was present. There was no response.

The Mayor opened the public hearing to discuss this item.

An unidentified speaker, stated that he owns property near this landscape easement. He asked that the Council deny this request. He explained that many home owners in



his neighborhood made the decision to purchase their property with the understanding that the landscape easement was in place at that time. The real estate in this subdivision was marketed for two years with potential landowners being told about the landscape easement. He indicated that he is representing a dozen other landowners from his development, Regency by the Lake, who oppose this request.

Mayor Eilert asked what discussions this individual has had with the applicant. The unidentified speaker replied he has not discussed this issue with the applicant. They received a letter indicating that there would be a Council meeting tonight and that they should be present if they object to this request.

Mr. Paul Gordon, said there is no reason to vacate the easement. Regarding the suggestion that some fences need to be placed further back, he noted that some of the landowners in LionsGate have put up fences and the easement has not been an issue. He felt that the landscape easement is beneficial to both LionsGate and Regency by the Lake. If the easement is vacated, it will hurt the value of his property. When people purchased their homes in LionsGate, they knew about the easement. He did not believe it was justifiable to vacate the easement so that people can move their fences further away from their home.

Mayor Eilert was surprised that the applicant did not contact the landowners who are impacted by this decision. He suggested that this item be continued and that the applicant be directed to meet with the neighbors to determine if the differences between the developer and the neighbors can be resolved. If they cannot resolve their differences, the Council needs to have a better understanding of the issues involved with this request.

Mr. Peterson suggested that a continuance be for one month to allow time for those discussions to occur.

An unidentified speaker indicated that her neighbor is getting ready to put a fence up next to the property line. She assumed the fence would be installed sometime this week. She asked if they are allowed to put that fence up at this time. Mr. Peterson replied that if they obtained a fence permit, they should be installing the fence in the right location. Staff will check that area tomorrow morning. The unidentified speaker added that her neighbors said they were told that they had permission to place the fence at the property line. They were also told that the fences that were already up would be moved to the property line at the expense of LionsGate. LionsGate property owners have concluded that the easement will be approved and that they can now put up their fences. Mr. Peterson explained that they need a fence permit and a fence permit would not be issued for the back property line if this continues to be a landscape easement.

Mr. Kandt moved to continue the Landscape Easement Vacation to the July 9, 2001, City Council meeting, to allow the applicant time to discuss the issues with the neighbors. The motion was seconded by Mr. Loudon.

Mayor Eilert clarified that Mr. Peterson would advise the applicant of the action taken.

The motion carried with a vote of 9 to 0.

UTILITY EASEMENT VACATION – Vicinity of the northeast corner of 143rd Street and Metcalf Avenue. Approval requested to allow the vacation of a utility easement. Application made by Schlagel & Associates. ORDINANCE NO. VAC-2306.

Mr. Peterson stated that staff recommended approval of this request.

Mr. Sader moved to approve Ordinance No. VAC-2306 (Utility Easement Vacation). The motion was seconded by Mr. Gerlach.

Mayor Eilert provided an opportunity for members of the audience to address the Council regarding this item. No one came forward to speak.

Mr. Peterson indicated that he overlooked the applicant's request to continue this item to the July 9, 2001, City Council meeting.

Mr. Sader withdrew his motion.

Mr. Sader moved to continue the Utility Easement Vacation to the July 9, 2001, City Council meeting. The motion was seconded by Mr. Gerlach.

The motion carried with a unanimous vote.

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Mayor Eilert indicated that they would now address an earlier agenda item regarding the Juvenile Intake and Assessment Center (JIAC) Security.

At 8:10 p.m., Mr. Sader moved to enter into an executive session for a period of time not to exceed 15 minutes to discuss a matter pertaining to the attorney/client privilege relating to the City's participation in the funding of the JIAC security, with the Governing Body to reconvene into regular session following the executive session. The motion was seconded by Mr. Loudon, and carried with a vote of 9 to 0.

At 8:25 p.m. the Governing Body reconvened into regular session.

Dr. Halligan reported that in May, 2001, the Public Safety Committee recommended, by a vote of 3 to 2, that the Council approve Overland Park's share of funding for JIAC security. The primary reason for this recommendation is that security is needed at the JIAC facility. If the funds are not provided, the only alternative is to remove City officers from the street to provide the security. The funds will be provided for one year. There is no contemplation that funds would be granted in a subsequent year.

Dr. Halligan moved to approve the recommendation of the Public Safety Committee to provide funds for JIAC security, for a one-year period of time. Mr. Sader seconded the motion.

Dr. Kobach indicated that he would outline the minority opinion of the Committee. There was no disagreement with the need to provide security at the JIAC facility. There was no disagreement that the City receives something in return by allowing the City officers to be back on the street. The question was whether it is appropriate to participate by providing funding for the program if the Committee members perceive constitutional violations are occurring at the JIAC facility. Another question was if the

City would be incurring liability by providing funds for the program under Section 1983, a federal statute. He indicated that the bases for liability were discussed in executive session. From the constitutional perspective, the concern is that children are being asked questions of which derivative use is being made in court. Also, the report that is given to the District Attorney's Office is substantially based on those questions. All this is done without the children being told that they can have an attorney or parent present or that they are free to stop answering the questions. At the Public Safety Committee meeting, representatives of JIAC assured the Committee members that a policy change had been recently made and the children were being informed before the intake, via a handout, that they had these rights. However, since that meeting he has heard subsequent reports from parents that raise concerns. One report he received last Friday regarded an incident that occurred five days after JIAC personnel spoke to the Committee. The report indicated that children are still not receiving either written or oral information regarding their ability to contact their parents. That raises some questions about what is going on at the JIAC facility.

The position of the minority opinion of the Committee was to approve the funds with conditions to protect the constitutionality of the procedure and the City funds. The constitutionality would be protected by adding the condition that JIAC personnel will agree to verbally inform the children that they have a right to contact their parents and/or an attorney before answering any questions. The City funds would be protected by asking the county to indemnify the City in the event that the JIAC program causes liability to the county and the City.

Dr. Kobach moved to amend the motion by attaching the following two conditions to the release of the funds to JIAC: 1) The JIAC personnel will agree to verbally inform the children of their right to have an attorney or parent present before answering any questions; 2) The county will agree to indemnify the City and pay the City's share of legal costs for liability caused by JIAC. Mr. Owens seconded the motion.

Dr. Kobach added that there did not seem to be a lot of disagreement from JIAC personnel regarding the first condition. They indicated that they are already giving the children a handout that informs them of their rights. He hoped that this condition would not be seen as a great imposition on JIAC staff.

Mr. Owens agreed with the recommendations of the City Attorney to pursue some issues at a higher level and to get an opinion from the Kansas Attorney General and the Johnson County Counselor's Office. He noted that Mayor Eilert has questioned if this discussion belongs at the City level. Mr. Owens wanted to discuss how this issue is germane to the City. They just got through discussing the budget at a meeting earlier in the evening. The discussion regarded the strict limitations the City is about to face. They looked at several different positions that will be added and the various costs. One of the costs was the \$79,500 for the JIAC security. They have a situation where the State of Kansas has virtually sent (without the grant) an unfunded mandate to the county to pay for various aspects of the JIAC procedure, including their obligation to provide for security. The grant was depleted and the Sheriff indicated that he would not provide the security without funding from Johnson County. The Johnson County Commissioners decided not to fund JIAC security. Subsequently, the county asked the cities for help. Mr. Owens suggested that this is not the last time the Governing Bodies at various levels of local government will hear requests for help with social services. When the City is thinking of asking the citizens to increase their taxes, it is not the time for the City to put itself into the position of

funding a service that the county refuses to fund. Although JIAC is mandated by the state, the state refuses to provide the funds.

The Council should consider this issue for the sake of their constituents. They have not gotten figures from the Police Department to indicate what the difference in cost would be to use the funds for the City's Police Department rather than sending the funds to the county. There is no indication of how long the City officers have to stay at the JIAC facility for the intake process. There has been no dollar amount provided to indicate what it costs to provide that security. The City was asked to pay \$102,000 into the county funds to support this program. There is no data indicating that every child encountering law enforcement has to be taken to JIAC. He suggested that various options be considered before paying this amount of money. He was concerned that other Councilmembers within the county are not aware of the issues and he did not know how many other cities have committed to the funding of this program. He suggested that the Council be careful in financially supporting an unfunded mandate that is dictated by the state and that the county has refused to fund. He would vote against granting this money for JIAC. He did not believe that the county would allow JIAC to function without security if the City were to refuse to provide the funds. The county would not place itself in a position of liability even if the cities declined to participate in the funding. If the cities refuse to participate in funding social services that are mandated to be provided by the county, they will not set an undesirable precedent. If this motion is approved, the City is asking for the county to make more requests for financial help in the future.

Mr. Gerlach also disliked the fact that the state is issuing unfunded mandates. He believed that there will be similar requests for financial help in the future. It is a travesty that at the same time there are unfunded mandates from the state, the local representatives at the state level are asking the cities to reduce revenues. However, the primary issue of concern is that there are children in trouble. The security of JIAC is more important than funding concerns. While they need to talk to the legislators about unfunded mandates, the funding for JIAC security should not be denied in an attempt to address that issue. He suggested that the JIAC security be funded for one year. In the interim, a strong message should be sent to let people know that they have major concerns regarding the rights of the children. He was concerned about the lack of local input to this program. JIAC needs to be aware that the City will not fund the program in future years unless there is more local input in the JIAC process. If there are no changes with JIAC, then he agreed that the funding should not be continued in future years. He would vote against the amendment.

Mr. Sader has also become concerned in the past few weeks with the procedures used by JIAC. He felt that the issues need to be addressed. However, the Council is not the body to address those issues. If there continues to be situations that are inappropriately and improperly handled, then it becomes incumbent upon the City to take some action. As a part of the motion that was made by Dr. Halligan, he would like to add direction for the City Attorney to seek legal opinions from the Kansas Attorney General and the Johnson County Counselor regarding the issues that have been discussed. He also wanted to address Dr. Kobach's proposed amendments. Part of the problem in trying to review this issue is that it is not clear when a juvenile's constitutional rights apply and when a situation involving a juvenile rises to the level where warnings are required. In some of the legal opinions they have received, there are significant discussions regarding when warnings are given to juveniles under arrest versus when warnings are given to juveniles who are not under arrest. This is

not the body to make that decision. Also, he was uncomfortable with the Council compelling another governmental agency to make constitutional warnings a part of their procedures.

In talking with people in the community, he has been made aware that there is somewhat of a conflict with the District Attorney's program of zero tolerance in dealing with juvenile crime. That policy may be in question when it comes to JIAC. From all that he has read and discovered from the legislative discussion of the issue, JIAC was intended to take care of juvenile issues that deal with crimes or more severe offenses. Unfortunately, under the current policy, many juveniles are being left at JIAC when the process was not intended for them. Mr. Sader indicated that he would vote against the amendment and in favor of the funding for a one-year period of time.

Mayor Eilert assumed that the Councilmembers received copies of the memorandum from the United Community Services (UCS). For the last three years, the City has been funding a portion of the JIAC services via providing 10 percent of a grant that is administered through UCS and the Children's Coordinating Council. He appreciated all of the efforts that were made to explore the issue of liability. However, it seemed that if there is an issue, the City is already involved. He did not believe that the City is at risk. He asked the City Attorney to examine the process that has brought the City to this point. Many entities have been involved including the Legislature, the Kansas Supreme Court, and other agencies who have oversight of JIAC. He noted that there is occasionally a tendency to over analyze a question. The question before the Council is if the City will participate in funding the security at JIAC. If security is not present, the City officers will have to stay at JIAC. It would be undesirable to deliver a juvenile to JIAC without security being present. If something happened to that juvenile, that would create a significant liability question for the City. He felt that the proposed amendment to require JIAC to inform the juveniles of their rights is redundant. Regarding the amendment asking the county for indemnification, Mayor Eilert suggested that if the county is not willing to provide funding for the security, it was unlikely that the county would provide the indemnity. Mayor Eilert felt that the motion as indicated by Dr. Halligan is appropriate with the amendment proposed by Mr. Sader directing the City Attorney's office to explore the issues with the District Attorney's Office and the Johnson County counselors.

Mayor Eilert offered to facilitate a meeting with City Councilmembers before the appropriate legislative committee whether it is a house committee or a senate committee. He would also be glad to facilitate a meeting between City Councilmembers and the District Attorney's Office. He was not sure that he could facilitate a meeting with a juvenile judge, however, that seems to be the party that would have the direct responsibility to address the issues under consideration. Those are the appropriate arenas to explore these issues.

Dr. Kobach wanted to briefly discuss a couple of points that were mentioned. In response to Mr. Gerlach's comments, he wanted to clarify that the amendment he proposed was not directed at denying the funding. He may disagree with Mr. Owen's broader question of whether or not the City should be involved in paying the county's share of these unfunded mandates. Dr. Kobach wanted to make it clear that his proposed conditions were to be imposed on the funding. He believed that there is a reasonable chance the county would agree to the conditions. It was noted previously that it is necessary to protect the City's children by providing security at JIAC. It is also important to constitutionally protect the children. He was recently informed of a

situation where a child was taken to JIAC for a minor offense (swearing), and was not given the opportunity to talk to a parent. The child was then kept overnight at JIAC for not answering questions. Such an event sends a message to children and it is important to protect their rights. Regarding Mr. Sader's question, Dr. Kobach noted that there is a long line of case law indicating that outside the actual school building the rights of juveniles are essentially identical to the rights of adults in terms of when rights to counsel attach. Regarding the question of why the City should be making a judgement on this issue, Dr. Kobach indicated that when the City becomes a participant in funding to a significant degree, they are then participants in the program. He presented a hypothetical situation. If JIAC was letting all white children go home immediately after answering questions and keeping all African American children overnight, that would be an obvious constitutional violation. The question would still arise, why should the City get involved. If they see a constitutional violation or a probable constitutional violation, the Council has the responsibility to try to correct the problem as they have sworn to do their best to uphold the constitution. His proposed amendments are minor attempts to correct the problems. He is asking that the parents be informed and that the children be informed of their right to an attorney. If the City is going to be financially involved, the constitutional rights of the children should also be protected.

Dr. Jay F. Lehnertz arrived at 8:45 p.m.

Mr. Hix found it disheartening that it is even necessary to discuss whether this Governing Body should be concerned about children receiving fair treatment at JIAC. There is so much smoke around JIAC, there must be some fires that need attention. He hoped that the JIAC people are willing to address the questions that have arisen. However, he did not believe that the City Council is the appropriate forum to manage the internal operations of JIAC. It would be undesirable for every City Council to decide what they like or do not like with the JIAC procedures and require changes to be made that may ultimately make the organization less effective than it is at this time. He hoped that the JIAC representatives are sensitive to what has been expressed by the community about their procedures and that they would seek input from the community rather than taking a defensive posture. Mr. Hix added that he would vote against the motion that requires verbal notification, although he would be concerned if he ever learns that children are not being informed of their rights.

Mr. Owens noted that Mayor Eilert indicated that he was willing to facilitate a meeting between the Councilmembers and state representatives. He has already talked to a lot of the people that the Mayor mentioned. Mr. Owens sees the juvenile judge three to four times per week. He has talked to Mr. Paul Morrison, District Attorney, about the issues with which they are concerned. Mr. Owens also checked into discussing this issue with the Legislature and discovered that a chairman had declined to allow this issue to even be discussed by his committee. It was never brought to the floor because it was never allowed to be addressed or discussed by the committee. He talked to Senator Jordan who indicated that he would be glad to take this item forward and discuss it in further detail at the Senate level. He has talked to Commissioner Wood who indicated that he is going to look further into this issue. He has taken a stance on directing that some things should not be asked in the questionnaire. Mr. Owens has indicated to Commissioner Wood that he would be available to talk about his concerns regarding JIAC at any meeting. He has also discussed his concerns with numerous defense attorneys on the Juvenile Bench and Bar Committee. They are willing to begin talking about the issues. He will not stop

talking about this issue because there is a horrendous fear in this Community that needs to be addressed. He hoped that the Council will continue to look at the fires to which Mr. Hix referred as there is fire where there is smoke and a lot of people have expressed concern. Some changes need to be made.

Mayor Eilert replied that he had been concerned that there would be a lot of discussion at the Council level and no forward action being taken to the appropriate arenas. He would be interested in hearing how the judge and the District Attorney responded to the concerns expressed. Mr. Owens replied that the District Attorney has no reason to cause any changes to be made because the current procedure facilitates an easier conviction of the children. Mayor Eilert replied that he heard another opinion expressed by the individual representing the District Attorney's office at the Public Safety Committee meeting during which JIAC was discussed. Mr. Owens replied that there were many opinions expressed. However he can refer to case after case of instances where attorneys were placed in a difficult position because the children they were representing were overcharged due to an overzealous District Attorney policy. That concern regards the zero tolerance policy that has been mentioned. Children are being harmed by the zero tolerance policy. Until that is addressed, he would continue to discuss his concerns. While some people disagree with his opinion, others share his opinion. Mayor Eilert clarified that the zero tolerance issue is a law enforcement issue rather than a JIAC issue. JIAC does not make the arrests. If there is a community concern about the zero tolerance policy, they can become involved in the policies followed by City police officers. That is an issue for future consideration.

Mayor Eilert reminded the Council that the amendments to the motion under consideration were that before funds could be released, the following conditions would be met: 1) JIAC personnel would agree to verbally inform the children of their rights; 2) Johnson County would agree to indemnify the City and pay the City's share of legal costs for liability caused by JIAC.

Dr. Lehnertz asked what is the opposition to these amendments. Mayor Eilert replied that JIAC is already providing a handout that informs the children of their rights, based on information at the Public Safety meeting. Second, he doubted that the county would indemnify something they refused to fund.

The amendment to the motion failed with a vote of 2 to 8, with Councilmembers Goodman, Kandt, Gerlach, Sader, Hix, Halligan, Loudon, and Lehnertz voting nay.

Mr. Sader moved to amend the motion, as offered by the Public Safety Committee, to direct the City Attorney to request opinions regarding various legal issues that have been discussed from the Johnson County Counsel's office as well as the Kansas Attorney General. The motion was seconded by Mr. Loudon.

Mr. Goodman was troubled by the necessity for the amendment. When they are voting to provide funding and they have concerns expressed to the extent that they need additional legal opinions, he was concerned that they are proceeding with the action before they have the answers to their questions. Also, he heard the option suggested tonight that the City must provide security or take the children to JIAC where there would be no security. He never understood the issue to be that choice. The choice is that either the Sheriff's Department provides security or the City officers would stay there throughout the entire intake and assessment process. He assumed that absent

the City's funding, the City's juveniles would still have police protection throughout the process. The question is if there is sufficient economic benefit to the City to be realized by spending \$79,500 to provide security at JIAC versus the cost for the down time of City's officers if they were detained at JIAC.

The amendment to the motion carried with a vote of 10 to 0.

Dr. Halligan clarified that the funds requested by JIAC was for \$102,000. That amount would be reduced to \$79,500 if the grant is received. Assistant City Manager Lori Knadle indicated that the grant has been issued and approved by the Children's Coordinating Council. The reduced amount is the correct figure.

Dr. Lehnertz clarified that although he arrived late at the meeting, there was a ample amount of paperwork providing information on this issue and he also discussed this item with the City Attorney and Dr. Kobach.

Mr. Goodman indicated that he would support the motion. However, he agreed with Mr. Hix that there seems to be a tremendous amount of smoke surrounding JIAC. He listened to a voice mail message left by Dr. Kobach earlier in the week. The message regarded the experience of one family with JIAC that occurred after the Public Safety Committee meeting during which this item was discussed. If anything, there may be a tremendous inconsistency with the way JIAC applies whatever procedures they have or do not have. If JIAC does not find another source of funding for security by this time next year, he would likely not vote to approve the funding for another year.

Mayor Eilert stated that he has had several calls. When it comes to the criminal justice system, he has never been thanked by someone for being assigned to community service or for being fined. When citizens enter the justice system at the adult level or the juvenile level, it is potentially a negative experience from the outset.

The motion, as amended, carried with a vote of 8 to 2, with Councilmembers Kobach and Owens voting nay.

OLD BUSINESS:

Mayor Eilert suggested that there be a motion to cancel the July 2, 2001, Council meeting as several people would be out of town.

Mr. Hix moved to cancel the July 2, 2001, City Council meeting. The motion was seconded by Dr. Kobach, and carried with a vote of 10 to 0.

NEW BUSINESS:

No report.



ADJOURNMENT:

At 9:05 p.m., Mr. Sader moved to adjourn the meeting. After a second by Mr. Loudon, the motion passed with a unanimous vote. Minutes transcribed by Pamela Blaszyk.

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Ed Eilert, Mayor

ATTEST:

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Marian Cook, City Clerk