



[Please note that the meeting agenda is subject to change during the meeting.]

City of Clearwater Council Meeting Agenda
Tuesday January 25, 2022 at 6:30pm
129 E Ross Clearwater, KS 67026

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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. [Previous Council Meeting Minutes](#)
 - b. [Claims and Warrants](#)
6. **Staff Reports**
7. **Business**
 - a. **Discussion: Park Advisory Board 5-year Plan**
 - b. **Action: Consider Ordinance 1080 – SKT Franchise Tax**
8. **Governing Body Comments**
9. **Executive Session**
10. **Adjournment**

Next Assignment Numbers

Charter Ordinance: 22

Ordinance: 1080

Resolution: 05-2022

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.

TO City of Clearwater, Kansas
Sedgwick County
City Council Meeting - **MINUTES**
January 25, 2022
Clearwater City Hall – Council Chambers
129 E. Ross Avenue Clearwater, KS 67026

1. Call to Order/ Invocation and Flag Salute

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

2. Roll Call

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

Mayor Burt Ussery, Councilmembers; Tim Robben, Tex Titterington, Chad Pike, Crystal Walter, and Justin Shore were present.

The following staff members were present:

Courtney Zollinger, City Administrator, Carol Reitberger, Deputy City Clerk, Amber Ives, Cole Hollis, Chief Jared Dinwiddie, Justin Patrick and Chief Kirk Ives. Chadd Posch was present in go to meeting.

Tricia Nichols and Jaye Poe were also present.

3. Approval of Agenda

Motion: *Walter* moved; *Shore* seconded to approve the agenda as presented. Voted and passed unanimously.

4. Public Forum

None

5. Consent Agenda

- a. Previous Council Meeting Minutes
- b. Claims and Warrants

Motion: *Shore* moved; *Pike* seconded to approve the consent agenda as presented. Voted and passed unanimously.

6. Staff Reports

- a. Administration Office – Courtney Zollinger – Zollinger reported the Art Walk is April 1st. Annual curbside clean up is April 16th. Also trying to schedule Shred-It for April 23rd from 9-12. Zollinger is looking for volunteers from the Council.
- b. Fire Department – Jared Dinwiddie – Dinwiddie reported that Sedgwick County Radio Communications will be performing an upgrade of the department’s 800 radios on the 27th. Dinwiddie will be looking for grants to help with the cost when it comes time for an upgrade. This is just an overdue scheduled maintenance on the radios.
- c. Police Department – Kirk Ives – Council had no questions.
- d. Park – Chadd Posch – Council had no questions.
- e. Public Works – Cole Hollis –Pike asked about the streetlights around town still being purple. Cole stated a problem with other surrounding cities.

- f. Senior Center – Amber Ives – Mayor asked about the door getting fixed. Ives stated all was fine with the door.

7. Business

a. Special Event Permit – 2022 Art Walk

In 2016 City Council established an application process to close roads for special events. This was to create a more coordinated process, so the city departments are aware of the street closures.

The annual Art Walk will be held April 1, 2022, from 6:00 to 9:00 pm The event has requested road closures between 5:00 pm to 9:30 pm to allow for safe set up, attendance and tear down.

The road closure includes Ross Ave between Byers and Gorin because the Masons would like to participate in the event this year.

This event is hosted by the Clearwater Community Foundation and sponsored by various Clearwater organizations and businesses.

Motion: *Titterington* moved, *Robben* seconded to approve the Special Event permit for the 2022 Art Walk as presented. Voted and approved unanimously.

b. Consider Resolution 05-2022 Complimentary Beverages 2022 Art Walk

Since 2015, the Clearwater Community Foundation has hosted a Spring Art Walk in various locations in the downtown area of Clearwater. A few businesses have requested permission to provide complimentary wine and other alcoholic beverages at their place of business. Alcohol Beverage Control allows a non-profit organization to make this request for promoting the arts with the local governing body approval by ordinance or resolution.

The 2022 Art Walk will be April 1, 2022, starting at 6:00 p.m.

The proposed resolution is required pursuant to KSA 41-104(i) which states that “the serving of complimentary alcoholic liquor or cereal malt beverage on the unlicensed premises of a business by the business owner or owner’s agent at an event sponsored by a nonprofit organization promoting the arts and which has been approved by ordinance or resolution of the governing body of the city, county or township wherein the event will take place and whereby the director of the alcoholic beverage control has been notified thereof no less than 10 days in advance. “

Motion: *Walter* moved; *Pike* seconded the motion to approve Resolution 05-2022 allowing complimentary beverages at the 2022 Art Walk as presented. Voted and approved unanimously.

c. Annual Fireworks Show – Victory Pyrotechnics

Victory Pyrotechnics has agreed to do the annual Clearwater July 4th fireworks show. The contract is the same as last year and the show will be on Monday, July 4th, 2022.

The city has budgeted \$8,000. For the July 4th fireworks show.

Motion: *Titterington* moved, *Pike* seconded the motion to approve the Annual Fireworks Show with Victory Pyrotechnics and allow the Mayor to sign the contract with Victory Pyrotechnics.

d. Authorize Purchase of Fire Pumper Truck

During the 2022 Budget discussion and adoption council approved to purchase a new pumper truck for the Clearwater volunteer Fire Department.

The Department currently has on 1999 engine in service. A fire truck life is around 15-25 years, and the 1999 engine is in that range. While it is still in working condition the City should consider a replacement for the frontline and move the 1999 to a secondary engine.

It is important for the department to have dependable apparatuses to meet the needs of the community and the townships and service supports.

Clearwater Fire researched the different manufacturers of trucks and decided to go with Pierce. Pierce offers all the options that the fire department is seeking in a new custom apparatus. In addition, there are a few firefighters are already familiar with Pierce apparatus and are aware of its capabilities and performance. Pierce has local certified techs that will not require a delay in any maintenance issues with the apparatus.

Zollinger reached out to Volunteer Financing Services after the fire department decided on a Pierce Fire Truck. The company works with Pierce directly for volunteer fire departments.

The Pierce Enforcer Pumper with options is \$695,961.85. A prepay discount is available that will reduce the purchase price and there is an additional \$5,000 added to the total to be applied to any changes during the build that department sees that needs to be made prior to completion. Total purchase price with the pre-pay discount is \$674,025.83.

With equipment reserves the City will be able to put \$200,00 cash towards the purchase of the truck. The City would then finance \$474,025.83 @ 2.88% for 15 years. Annual payment is \$39,363.67. First payment will be due 1 year after close.

Chief Dinwiddie stated when the truck is ready it will be driven to Clearwater. They will provide 40 hours of training. Dinwiddie will schedule with everyone to train with the new truck. The expected arrival date is tentatively scheduled for July 2024.

Motion: *Titterington* moved; *Walter* seconded to authorize the purchase of the Pierce Fire Pumper Truck as presented. Voted and approved unanimously.

e. Consider Re-Design of City Logo

Zollinger stated the governing body has been discussing implementing a marketing plan for Clearwater. Staff believes this would be a good opportunity to go through a re-design of the current city logo with the help of House of Sharp, a Wichita company. We would like to keep the windmill as part of the logo as well as the blue but update the type face and shape of our logo where we could use it for marketing purposes on different platforms.

City Staff would work with House of Sharp to produce different options to bring to council before a final design is selected.

Along with a new logo City Staff asked if House of Sharp would quote a custom lobby sign for city hall that would hang in the entrance after the window from the old cemetery office has been removed and filled.

Zollinger stated the cost is \$100 per hour for the design. Rose with House of Sharp believes it won't take more than 5 hours of design time. With the price the city would receive pdf and

vector files of the new artwork, modifications of unique design choices, and the branding page of the pantone colors.

Zollinger stated that she has asked Crystal Walter to also be a part of the process with House of Sharp. Walter works in this field and will be asset to have during this process.

Motion: *Robben* moved; *Shore* seconded to have House of Sharp produce a re-design logo for the City of Clearwater not to exceed \$500.

8. Governing Body Comments

Walter - nothing to report- asked about sanding road at 4th and Ross ahead of the storm later in week

Shore - stated he would be going to Government Day in Topeka if anyone would have anything for him to discuss while there

Pike - nothing

Titterington - nothing

Robben - nothing

Ussery - would like Parks to check the safety fence at the end of every day to make sure it is visual. Posch said he would and would ask Multicon to do the same.

9. Executive Session

Motion: *Titterington* moved, *Pike* seconded to recess into executive session pursuant to non-elected personnel to discuss specific personnel matters, to include the City Administrator and the City Attorney. The City Council will reconvene the open meeting in the City Council Chamber at 8:01 p.m.

Council came out of executive session with no action taken.

Mayor Burt Ussery invited Jaye Poe from the audience to the front. He then asked if she would accept the City Clerk position. She stated yes.

Motion: *Robben* moved, *Walter* seconded to approve Jaye Poe as the new City Clerk for the City of Clearwater beginning January 25, 2022, with a pay of \$22.00 per hour. Voted and passed unanimously.

10. Adjournment

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

Motion: *Shore* moved; *Pike* seconded to adjourn the meeting. Voted and passed unanimously. The meeting adjourned at 8:05 p.m.

CERTIFICATE

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

I, Carol Reitberger, Deputy 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 January 25, 2022, City Council meeting.

Given under my hand and official seal of the City of Clearwater, Kansas, this 8th day of February 2022.

Carol Reitberger, Deputy City Clerk

Check Register Report

Date: 02/03/2022

Time: 10:54 am

Page: 1

City of Clearwater

BANK: EMPRISE BANK

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
EMPRISE BANK Checks								
48238	02/03/22	Printed			AIR	AIR VACUUM CORPORATION	FIRE DEPT AIR SCRUBBER	61,525.00
48239	02/03/22	Printed			AMAZ	AMAZON BUSINESS	WHITE OUT	40.16
48240	02/03/22	Printed			AMBER	AMBER IVES	MILEAGE REIMBURSEMENT	100.24
48241	02/03/22	Printed			ALB1	ARLENE M. BURROW	STATEMENT	150.00
48242	02/03/22	Printed			ART	ART OF AHS STUDIO	50% 4 CANVAS PRINTS	240.00
48243	02/03/22	Printed			BBL1	B & B LUMBER	CEDAR FENCE/SUPPLIES	101.04
48244	02/03/22	Printed			B & T	BAKER & TAYLOR	MATERIALS	36.54
48245	02/03/22	Printed			BH01	BECKY C. HURTIG	PROFESSIONAL SERVICES	1,000.00
48246	02/03/22	Printed			BLACK	BLACKSTONE AUDIO, INC	MATERIALS	104.03
48247	02/03/22	Printed			CED2	CERTIFIED ENGINEERING	Monthly Engineering Svc Fee	650.00
48248	02/03/22	Printed			CAA1	CITY ATTORNEYS ASSOC. OF KS.	MEMBERSHIP FEES	35.00
48249	02/03/22	Printed			CTA	COMMUNICATIONS TECHNOLOGY ASSO	REMOTE TECH SUPPORT	37.50
48250	02/03/22	Printed			ERIN B	ERIN BETTLES	ZOOM PAYMENT FOR MEETING	16.11
48251	02/03/22	Printed			GAB1	GILMORE & BELL	PROFESSIONAL SERVICES	5,000.00
48252	02/03/22	Printed			GILM	GILMORE SOLUTIONS, INC	VIDEO COURT	3,466.80
48253	02/03/22	Printed			IRIS	IRIS BLOSSOMS	TITTERINGTON ORDER	35.00
48254	02/03/22	Printed			LA LI	J. LARRY LINN	PROSECUTION SERVICES	915.00
48255	02/03/22	Printed			KMJ1	KANSAS MUNICIPAL JUDGES ASSOC.	KMJA SUBSCRIPTION	25.00
48278	02/03/22	Printed			KOC1	KANSAS ONE CALL SYSTEM, INC.	68 LOCATES	81.60
48279	02/03/22	Printed			KST1	KANSAS STATE TREASURER	TRAINING FUND/REINSTATEMENT	763.50
48280	02/03/22	Printed			KHE1	KS DEPT OF HEALTH & ENVIRON.	WATER TESTING	325.00
48281	02/03/22	Printed			MCCULL	MCCULLOUGH EXCAVATION	WATERLINE RELOCATION	4,401.00
48282	02/03/22	Printed			MIG1	MIZE'S THRIFTWAY	STATEMENT	237.21
48283	02/03/22	Printed			MC05	MULVANE COOP	PROPANE	828.75
48284	02/03/22	Printed			PATR	PATRICIA SEILER	REIMBURSE EXPENSE	8.49
48285	02/03/22	Printed			PCA1	PETTY CASH	CITY	4.33
48286	02/03/22	Printed			RA01	PITNEY BOWES	POSTAGE	300.00
48287	02/03/22	Printed			RJ01	ROASTER JOE'S	SENIOR CENTER	31.50
48288	02/03/22	Printed			STA	STAPLES	STATEMENT	6.29
48289	02/03/22	Printed			TSN1	TIMES-SENTINEL NEWSPAPERS	SUBSCRIPTION	145.88
48290	02/03/22	Printed			TCE1	TRI-COUNTY ELECTRIC CORP.	TRANSFORMER SHORTED #6	890.22
48291	02/03/22	Printed			T2UL	TRUE2U AUTOMOTIVE, LLP	ANTI FREEZE	37.18
48292	02/03/22	Printed			USAB1	USA BLUE BOOK	SEWER EQUIPMENT REPAIRS	607.13
48293	02/03/22	Printed			VALE	VALERIE BROWN-KUCHERA	HUMANITIES KS GRANT	250.00
48294	02/03/22	Printed			VAN	VAN ASDALE CONSTRUCTION LLC	CHANGE DOOR OPENINGS	29,667.00
48295	02/03/22	Printed			VER	VERIZON WIRELESS	STATEMENT	160.04
48296	02/03/22	Printed			WPF1	WATER PROTECTION FEE	4TH QUARTER 2021	931.19
48297	02/03/22	Printed			WTC1	WICHITA TRACTOR CO.	AIR, OIL, FUEL FILTERS	578.18
48298	02/03/22	Printed			NOLAN	ZACH NOLAN	STEERING WHEEL COVER	10.74

Total Checks: 39

Checks Total (excluding void checks):

113,742.65

Total Payments: 39

Bank Total (excluding void checks):

113,742.65

Check Register Report

Date: 02/03/2022

Time: 10:54 am

Page: 2

City of Clearwater

BANK:

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
Checks								
1535	02/03/22	Printed			CGSI	CASEY'S	STATEMENT	2,254.66
1536	02/03/22	Printed			HSB1	EMPRISE BANK	Loan 13181467 Dodge Durango	561.36
1537	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	921 JANET	381.10
1538	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	401 W. ROSS	498.71
1539	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	129 E. ROSS	362.38
1540	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	149 N. FOURTH	346.75
1541	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	109 E. ROSS	369.67
1542	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	319 W. ROSS	722.70
1543	02/03/22	Printed			KGS1	KANSAS GAS SERVICE	901 CLEARCREEK	59.89
1544	02/03/22	Printed			LIBERTY	LIBERTY NATIONAL	STATEMENT	274.58
1545	02/03/22	Printed			SKT1	SKT	CITY BUILDING	309.76
1546	02/03/22	Printed			SKT1	SKT	PUBLIC LIBRARY	135.74
1547	02/03/22	Printed			SKT1	SKT	PARKS	23.02
1548	02/03/22	Printed			SKT1	SKT	POLICE DEPT	310.15
1549	02/03/22	Printed			SKT1	SKT	PUBLIC WORKS	82.49
1550	02/03/22	Printed			SKT1	SKT	FIRE	471.81
1551	02/03/22	Printed			SKT1	SKT	ELECTRONIC SIGN	62.00
1552	02/03/22	Printed			SKT1	SKT	HISTORICAL SOCIETY	103.50
1553	02/03/22	Printed			SKT1	SKT	SENIOR CENTER	78.55
1554	02/03/22	Printed			SEHP	STATE EMPLOYEE HEALTH PLAN	FEB PREMIUMS	19,595.14

Total Checks: 20

Checks Total (excluding void checks): 27,003.96

Total Payments: 20

Bank Total (excluding void checks): 27,003.96

Total Payments: 59

Grand Total (excluding void checks): 140,746.61

To: Mayor and City Council
From: Courtney Zollinger, City Administrator
Date: February 4, 2022
Re: Administration Report

- Staff is one step closer to initiate video court. The computers have been purchased using equipment reserve funds that were set aside. We will be testing the software on the police officer computers in the court house and training staff next.
- Court/ Office Clerk has been posted on the website and will run 3 weeks in the newspaper. We have received 3 applications to date
- An add for a full time police officer, new budgeted position, has been posted.
- We will be posting the new full time position for parks department within a week.
- On the February 1st Planning Commission meeting they approved the change of zoning from R-3 to a Planned Unit Development for the new addition Indian Ridge. The change in zoning request will come before council on February 22nd. They also approved the Preliminary Plat for Indian Ridge. The Final Plat will be presented to the Planning Commission on March 1 before it goes to Council on March 8th.
- Chadd Posch and I have been asked to attend the Recreation Commission meeting to talk about the sports complex. The meeting is Wednesday February 9th at 6:30 pm.
- Annual Art Walk is April 1st from 6p – 9p
- Annual Curbside Cleanup is April 16th.
- Community Shred It event will be April 23rd from 9 - 12
- The Governing Body Institute in Manhattan is April 29-30. Crystal Walter, Justin Shore, Tim Robben and Mayor Ussery will be attending.

Active Nuisance

159 Longhorn Ct
203 N Tracy
150 N Gorin

To: Mayor and City Council

From: Jared Dinwiddie
Clearwater Fire Chief

Date: February 2, 2022

Re: Fire Department Staff Report

- Clearwater Fire responded to **5** medical calls and **1** Fire call since last meeting
- Average response time for SGCO EMS on medical calls has been around **15** minutes. Sedgwick County EMS Community Response Vehicle (CRV81) response time has averaged about 3 minutes.
- To Date: The department has been unable to respond to **2** emergency call.
- To Date: The CRV has been unstaffed **11** times.
- Sedgwick County Radio Communications performed an upgrade of the department's 800 radios on the 26th; due to some technical issues, about ¾ of the radios have been upgraded. The rest of them will be completed soon.
- The department has submitted its order for the new engine with Pierce.
- Department has submitted applications for AFG and SAFER grants. We have requested assistance in funding for new loose equipment for the new engine. Looking at submitting an FP&S grant for implementing a KNOX BOX program.
- Department help a combined Fire/Medical meeting on the 1st. Members went over CPR and Pit Crew operations.
- Members that are needing new PPE gear will be fitted on the 7th. ARPA funds are being utilized to cover the expenditure of this.
- Chief Dinwiddie attended the Sedgwick County Chief's quarterly meeting on the 5th. It was held at SGCO Fire Dist. #1 Station 32.

To: Mayor and City Council

From: Kirk Ives, Chief of Police

Date: February 3rd, 2022

Re: Police Department Staff Report

Officers:

The arrest numbers are steady.

Sgt. Harp has been still working on video court. We have the software added to the computers. It should work for the next court date.

Domestic calls are down.

A few of the officers including myself have been out sick, but all is well now.

Officer Pickens and Sgt. Harp have completed training on the FLOCK cameras, and he will train the other officers this Sunday. We did have a stolen vehicle alert on the cameras last week. The cameras are working great, and we are glad to have them.

Building:

All is good with our building currently.

Vehicles:

All patrol vehicles are working great currently. We have a service check on the new ford this next week.

Matters of interest since last meeting on Police Activity:

We had 44 dispatched/report calls and 10 arrests since my last report. (Does not always include self-initiated calls).

To: Mayor and City Council

From: Chadd Posch

Date: 01/20/2022

Re: Parks and facilities

- Stem walls for around the new park shelters are in place and the electrical conduit, and telecommunication conduit are in place. The rest of the concrete is on hold until the weather improves.
- We replaced ceiling tiles in the library that were damaged
- Gathered supplies and started work on turf for the batting cages at the sports complex
- Assisted public works with snow removal 02/02/2022
- Replaced deadbolt on bark bathroom (tumblers wore out)
- Fixed linkage on New Holland tractor's hydraulic valve bank
- Fixed Park shop sliding doors
- All other duties as needed

To: Mayor and City Council Members
From: Cole Hollis, Public Works Director
Date: February 8, 2022
Subject: Public Works Summary

1. Replace fuel pump in ranger
2. Speed limit sign reinstalled
3. Fluoride injector replaced well #7
4. Remove wrecked windmill at Ross and Chisholm ridge
5. Install new street sign at Ross and Chisholm Ridge
6. Fix leak on setter at 200 S. Prospect Ave.
7. Fence post installed at little wet well
8. Build barley straw tea bags for ponds
9. Install meter at 1269 Park Glen Ct.
10. Prepare for snow
11. Plow and shovel snow / spread salt and sand
12. reformed shutoffs and work orders as needed
13. Performed locates as needed

*Not affiliated with streetlights



Clearwater Senior Center

Staff Report

February 3, 2022

To: Mayor & City Council

From: Amber Ives, Coordinator

Hermes Foot Care was unable to come due to the weather. I have not heard back to see when they might be rescheduling this service.

We are looking forward to our Lunch & Learn on February 8th. Please know you are welcome to join us at these luncheons.

Attendance has started to pick up a bit and I see that increasing every week.

We continue to have at least 3 people sign up for the every other Friday shopping trip.

Thursday, February 10th at 1pm, we will be celebrating all February Birthdays. I hope to have a good group of people come and help celebrate our birthday friends. We will continue this celebration every second Thursday of the month. I will be serving milkshakes at these celebrations.

Did you mark your calendar for a fun Valentines Day Party on Monday, February 14th? I hope so!

Respectfully,

Amber Ives
Senior Center Coordinator



A little Valentine's craft for Make It & Take It.



Bunco has become a favorite game at the Center!



**City of Clearwater
City Council Meeting
February 4, 2022**

Consider SKT Phone Franchise Agreement – Ordinance 1080

Context: The City is granted authority to create Franchise Agreements with utility providers. Over the years, the city has entered, and extended a Franchise Agreement with SKT for the phone service that is provided by the company to the residents within the city. The original contract was made in 1981 and has been extended in 2002, 2007, 2012, and 2017. The Franchise Agreement was set up on a 5-year renewal and is up for renewal in 2022

The base of the agreement provides access for SKT to operate the phone system within city rights-of-way. This includes the placement of poles, lines, and other apparatus within the city. The agreement is non-exclusive, in that another phone company could operate within the city if they so desired.

The agreement itself is for a five (5) year period with two (2) additional five (5) year periods built in. It does maintain that with proper notice of 180 days, the city or SKT may request to terminate or renegotiate the Franchise Agreement.

Financial: The agreement calls for \$1.00 per service line to be paid by SKT to the city on a monthly basis, that is bi-annually. In 2020 the city received approximately \$6,100 thru SKT Franchise and in 2021, the city received approximately \$4,700. The decrease was due to SKT removing cable from their services. It should be noted that State Statute allows the city to charge up to \$2.75 per service line or a flat fee of 5% of gross sales. If the city were to charge the \$2.75 fee an estimated \$12,900 could be generated. The issue with franchise fees are generally that they are passed on to the customer. Any increase in the fee would directly impact those customers that use SKT for land-line services. While more money could be generated with an increase in the fee staff would recommend against the increase at this time.

Legal Considerations: review and comment as necessary.

Recommendations/Actions: Consider ordinance 1080 establishing a contract franchise authorizing Southern Kansas Telephone Company, Inc. to construct, maintain and operate as a telecommunications service's provider in the public right-of-way of the City of Clearwater, Kansas in accordance with K.S.A 12-2001 and 17-1902 and repealing all conflicting ordinances or parts thereof.

(Summary First Published in the Times-Sentinel
on the__day of February 2022.)

THE CITY OF CLEARWATER, KANSAS

ORDINANCE NO. 1080

AN ORDINANCE ESTABLISHING A CONTRACT FRANCHISE AUTHORIZING SOUTHERN KANSAS TELEPHONE COMPANY, INC. TO CONSTRUCT, MAINTAIN AND OPERATE AS A TELECOMMUNICATIONS SERVICES PROVIDER IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF CLEARWATER, KANSAS IN ACCORDANCE WITH K.S.A. 12-2001 AND 17-1902 AND REPEALING ALL CONFLICTING ORDINANCES OR PARTS THEREOF.

WHEREAS, the Southern Kansas Telephone Company, Inc. (hereinafter "SKT") owns, maintains, operates and/or controls, in accordance with regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission (hereinafter "KCC"), telecommunications networks as a telecommunications services provider, as defined in accordance with subsections (a)(2) and (a)(3) of K.S.A. 19-1902 and subsection (c)(8) of K.S.A. 12-2001 and amendments thereto, serving SKT's customers through advanced fiber optic facilities located in public rights-of-way throughout the City of Clearwater, Kansas; and

WHEREAS, K.S.A. 17-1902 and K.S.A. 12-2001 provide for the enactment of contract franchise ordinances by Kansas cities with telecommunications services providers; and

WHEREAS, SKT desires to obtain from the City of Clearwater, Kansas (hereinafter "City") and the City is willing to establish a contract franchise authorizing SKT to construct, maintain and operate as a telecommunications services provider, in accordance with K.S.A. 17-1902 and 12-2001, in the public right-of-way of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CLEARWATER, KANSAS:

Section 1. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the

plural number include the singular. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "City" means the City of Clearwater, Kansas.

B. "Facilities" means any portion of a System located in, along, over, upon, under, or through the Right-of-Way.

C. "Franchise" or "Agreement" means the Franchise that is governed by this Ordinance and agreed to by Franchisee.

D. "Franchisee" means the Southern Kansas Telephone Company, Inc. who currently has a franchise granted by the City of Clearwater, or who is granted a Franchise pursuant to this Ordinance and that entity's agents and employees.

E. "Franchise Fee" means the fee imposed by the City on a Franchisee pursuant to this Ordinance.

F. "Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

G. "Public Project for Private Development" means a Public Project, or that portion thereof, arising solely from a request or requirement of a third party (non-City or governmental) primarily for the benefit and use of a third party.

H. "Right-of-Way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include area on, above and below present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. This term shall not include any county, state, or federal right-of-way or any property owned or controlled by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. Right-of- Way shall not include property owned or held by City and not typically considered Right-of-Way such as City Parks and City Buildings.

I. "Telecommunications System" or "System" means the cables, wires, lines, optic fiber, and any associated converters, equipment, or other facilities designed, constructed or occupied by a Franchisee or others for the purpose of producing, receiving, amplifying or distributing communications service to or from locations within the City.

J. "Local exchange access line" or "access line" means the physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, between the end user customer's premises and a service provider's network, that when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network. Each such connection provided to an end user customer shall constitute a separate "local exchange access line" or "equivalent local exchange access line". Access lines shall not include the following: wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without *voice* services processed by a telecommunications local exchange service provider, or private line service arrangements.

K. "Access line fee" means a fee determined by the city, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

Section 2. Non-exclusivity.

Nothing herein contained shall be construed as giving to the Telephone Company any exclusive privileges, nor shall it affect any prior or existing rights of the Telephone Company to maintain a telecommunications system or related business within the City.

Section 3. Franchise.

A. The City hereby grants to Southern Kansas Telephone Company, Inc., (hereinafter referred to as "the Telephone Company" or "the Company") a franchise which conveys the right, privilege, and authority to construct, operate, and maintain Facilities in, through and along the City's Right-of-Way for the purposes of supplying Telecommunications Services on a nonexclusive basis within the City.

B. The Telephone Company shall continue to operate its telecommunications system and all business incidental to or connected with the conducting of its business and system in the City. The plant, construction and appurtenances used in or incidental to the offering of telecommunications and other services and to the maintenance of such system and business by the Telephone Company in the City shall remain as now planned and constructed, subject to such changes as may be considered necessary by the City in the exercise of its inherent powers and by the Telephone Company in the conduct of its business.

C. The Telephone Company shall continue to exercise its right to place, *remove*, construct and reconstruct, extend and maintain its plant and appurtenances along,

across, on, over, through, above and under all the public streets, avenues, alleys, bridges, utility easements and all public grounds and places within the limits of the City.

Section 4. Excavations: Underground Facility Locating Service.

A. Prior to any underground excavations by Franchisee in the public streets, roads, alleys, sidewalks or other public places, Franchisee must submit written plans for approval by the City.

B. The City shall promptly, and in no event more than 30 days, with respect to facilities in the public right-of-way, process each valid and administratively complete application of a provider for any permit, license or consent to excavate, locate lines, construct facilities, make repairs, effect traffic flow, or for other similar approvals, and shall make reasonable effort not to unreasonably delay or burden the Company in the timely conduct of its business.

C. If there is an emergency necessitating response work or repair, the Company may begin that repair or take any action required under the circumstances, provided that the Company notifies the City promptly after beginning the work and timely thereafter meets any permit or other requirements, had there not been such an emergency.

D. The Franchisee must continue to participate fully in Kansas One Call to insure that damage and/or interference with other underground facilities' occupants is minimized. The City will notify the Telephone Company either directly or through voluntary participation in Kansas One Call of its excavation plans in public Right-of-way, to avoid damage to Company facilities pre-existing in public Right-of-way.

Section 5. Tree Protection.

In the attachment, installation, removal, reattachment, reinstallation, relocation or replacement or otherwise of the Facilities, the Franchisee shall comply with the tree pruning ordinances and Code provisions of the City.

Section 6. Relocation of Facilities.

A. The Franchisee shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development. The expenses attributable to such a project shall be the responsibility of the third party upon the request and appropriate documentation of the Franchisee. Before such expense may be billed to the third party, the Franchisee shall be required to coordinate with the third party and the City on the design and construction to ensure that the work required is necessary and done in a cost-effective manner. Upon the request of the Franchisee or the third party, the allocation of expense attributable to the project shall be made in the

reasonable determination of the City. Eligible third parties may request to have the City specially assess eligible expenses billed by the Franchisee under this section.

B. The City will use its best efforts, but is not required, to continue to provide a location in the Right-of-Way for the Franchisee's Facilities as part of a Public Project, provided that the Franchisee has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

Section 7. Fees.

A. The Telephone Company shall pay to the City as compensation for the use of the Right-of-Way pursuant to the Franchise granted under this Ordinance the following Access Line Fee: a fee equal to \$1.00 per month per local exchange access line. No sales, excise, use or other tax levied upon telephone service shall be included in the calculation of fees under this ordinance.

B. The Telephone Company shall calculate, report and pay to the City the amount due under this Ordinance semi-annually. To determine the amount of Access Line Fees to be remitted to the City, the telephone company shall calculate and remit an amount equal to the Access Line Fee established by the City multiplied by the local exchange access line count. The amount shall be pro-rated for each day the access line customer is a customer. The assessment shall occur on the normal billing date of the Telephone Company and shall be assessed on those customers who are customers on that date. The assessment shall be pre-billed, as is local regulated service.

C. The first report and payment to the City shall be based on the monthly local exchange access line counts from the adoption date of this agreement through the June 2022 billing and shall be due on the 31st day of July 2022. Subsequent reports and payments shall be due on January 31 and July 31 of each year based on the prior six month period.

D. No acceptance by the City of any fee remitted hereunder shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any fee payment be construed as a release of any claim of the City.

E. The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable written notice, all documents, records or other information that pertains to this Franchise, no more than once per calendar year.

F. If the City and the telecommunications local exchange service provider cannot agree on the access line count, or are in dispute concerning the amounts due under this section for the payment of Access Line Fees, either party may seek appropriate relief in a court of competent jurisdiction, and that court may impose all appropriate remedies,

including monetary and injunctive relief and reasonable costs and attorney fees. All claims authorized in this section must be brought within three years of the date on which the disputed payment was due.

G. The Access Line Fee imposed under this section must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

Section 8. Term.

The Franchise shall be effective for a term of five (5) years from the effective date of this Franchise Agreement, unless either party provides the other party one- hundred eighty (180) days' notice in writing of its intent to terminate or renegotiate this Franchise Agreement.

Section 9. Non-Assignability.

No Franchisee shall sell, transfer, lease, assign, sublet, or dispose of in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise granted hereunder or any of the rights and privileges granted by such Franchise.

Section 10. Enforcement; Attorney Fees

The City shall be entitled to enforce this Ordinance, and, any Franchise granted pursuant to it, through all remedies lawfully available, and Telephone Company shall pay City reasonable attorneys' fees in the event that the Telephone Company is determined judicially to have violated the terms of this Ordinance or Franchise.

Section 11. Indemnification.

A. The Company shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kinds and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection

does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors.

B. If a provider and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law.

Section 12. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 13. Repeal.

All ordinances or parts of ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

Section 14. Effective Date; Publication Procedure.

This Ordinance shall take effect and be in force from and after publication in the official city newspaper. Publication costs shall be reimbursed by the Telephone Company to the city upon presentation of publication costs' receipts. Publication must be preceded by: (1) Notice of the fee provided at a regular meeting of the City Council; (2) Publication of the fee in the official City paper once a week for two consecutive weeks; (3) sixty (60) days from the date of the regular meeting at which the fee was proposed.

Passed by the City Council this 8th day of February 2022.

Approved by the Mayor this 8th day of February 2022.

SEAL

Mayor, Burt Ussery

ATTEST:

City Clerk, Jaye Poe