

City of



City of Clearwater Council Meeting Notice

Tuesday, November 22, 2016 at 6:30pm

129 E Ross Clearwater, KS 67026

www.clearwaterks.org

Please call the Clerk's office at 620-584-2311 or the Kansas Relay Service 800-8766-3777 at least 48 hours in advance if you require special accommodations to participate in this meeting. We make every effort to meet reasonable requests.

AGENDA

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

1. Call meeting to order and welcome

Burt Ussery, Mayor

2. Invocation and flag salute

3. Roll Call

Courtney Meyer, City Clerk

Burt Ussery, Mayor

Laura Papish, Councilmember President

Tex Titterington II, Councilmember

Paul Clark, Councilmember

Ron Marsh, Councilmember

Chris Griffin, Councilmember

4. Action: Approve November 22, 2016 meeting agenda

5. Public Forum

Pursuant to Ordinance No. 917 and Section 2.08.010 adopted by the governing body and approved by the Mayor on November 24, 2009, members of the public are allowed to address the Mayor and City Council for a period of time limited to not more than five minutes.

6. Action: Approve Consent Agenda

a. [Minutes 11/08/16 Council Meeting](#)

7. Action: Approve a Developers Agreement for Indian Lakes Phase II

a. [Approve Developer Incentives](#)

8. Action: Accept a Petition for improvements for Indian Lakes Phase II

9. Action: Adopt a Resolution Authorizing the Improvements for Indian Lakes Phase II

10. **Action:** Authorize an Engineering Services Agreement for Indian Lakes Phase II
11. **Action:** Consider an Ordinance Amending Section IV of the Clearwater Zoning Code – Floodplain Regulations
12. **Action:** Consider an Ordinance Amending Section 2 of Charter Ordinance #3 – Establishment of November Elections for Mayor and City Council Members
13. **Discussion:** Business Park Incentive Program
14. **Report:** 2016 ADA Improvements
15. **Action:** Claims and Warrants
Courtney Meyer, City Clerk
16. **City Administrator Report**
Justin Givens, City Administrator
17. **Council Reports**
18. **Executive Session: Non-Elected Personnel**
19. **Adjournment**

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.

Honorable Mayor and City Council

**From: Justin S. Givens,
City Administrator**

Re: Agenda Summary 11 22 2016

Item 6: a. Approval of Minutes as submitted 11/08/16

-----end of Consent Items

Item 7: As per our discussion at the last meeting, staff has reviewed the financial impact of the requested incentives that were proposed in the Development Agreement. The developer has requested a 50% reduction in the city portion of his property taxes for a period of five years per unit as well as a 50% reduction in the building permit costs and the waving of sewer and water tap fees that are generally associated with new construction. Based on a review of the proposed incentives the total incentive package for the developer would be approximately \$84,000. The total revenue collected by the city over that period of time, which includes utility and property tax payments would be estimated at \$151,000. Overall the city would net \$68,000 while the incentives were in place.

The development agreement spells out the path for financing the upfront costs for the development. Based on the relatively small cost of the project, the developer has asked for the ability to pay the city upfront for the cost of the improvements. The developer would essentially act as the bank for the project by paying the city for the improvements up front as opposed to issuing short term financing saving costs associated with the issuance of short term bonds as well as avoiding the interest that would be accumulated during that time. Also, by choosing this plan of finance the project would be run as similar developments thru the city and avoid sales tax and the developer would have the option of paying the final project costs off via special assessments or in a lump sum. The development agreement will be presented at the council meeting on Tuesday.

Item 8: For a development to use the Special Assessment Process a petition for those improvements must be approved. Ed Miksell (the developer) is wanting to extend Silverado Ct. south opening up Copperhead Road. This new extension would allow for 8 lots to be developed. The petition will be for sewer, water and roads. The estimated cost for the improvements would be:

Sewer: \$25,000
Water: \$30,000
Streets: \$125,000
Administrative: \$20,000

Total Project: \$200,000

The project costs are expected to be lower than the Engineers Estimates and there is some estimated savings for the developer in the structure of the payment for the project. The petition will be prepared by Kevin Cowan of Gilmore and Bell (the city's bond attorney) and will be presented at the meeting on Tuesday.

- Item 9:** The city is required to approve a resolution authorizing the project so that long term financing if requested can be utilized. The resolution is being prepared by Kevin Cowan and will be presented at the meeting on Tuesday.
- Item 10:** CED has performed all of the preliminary design work for the project and would contracted with thru the city to design and inspect the project. The Engineering Agreement is included in the agenda report.
- Item 11:** Floodplain Update. FEMA has issued new maps for the City of Clearwater and based on outdated Floodplain Regulations it was determined that it would be beneficial for the city to adopt a completely new model floodplain management ordinance. The ordinance will be included into the Zoning Regulations as often is the case with most floodplain regulations. This ordinance has been drafted by the City Attorney based on Model Floodplain Regulations provided by FEMA and the State of Kansas. The new maps will become effecting in December. Based on an evaluation of those maps several properties will be removed from the floodplain and several other properties will be now included in the floodplain.
- Item 12:** November Elections Ordinance – the City Attorney has crafted an ordinance that changes the elections of the Mayor and City Council members from April to November. This is required to be in compliance with new state regulations that were adopted last year.
- Item 13:** Business Park Incentive Discussion – staff will provide information on possible business park incentives that the city could employ for the development of the property in the business park.
- Item 14:** Review of ADA Improvements – staff will review the previous ADA improvement projects and provide a list of future projects and timeline for completion.
- Item 15:** Staff will provide the claims and warrants for approval.
- Item 16:** A full City Administrators report will be provided at the meeting.
- Item 18:** Executive Session for Matters Related to Non-Elected Personnel

City of Clearwater, Kansas
Sedgwick County
City Council Meeting - **MINUTES**
November 8, 2016
Clearwater City Hall – Council Chambers
129 E. Ross Avenue Clearwater, KS 67026

1. Call to Order

Mayor Burt Ussery called the meeting to order at 6:30 p.m.

2. Invocation and Flag Salute

Mayor Ussery gave the invocation which was followed by the pledge of allegiance and flag salute.

3. Roll Call

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

Mayor Burt Ussery, Councilmembers Ron Marsh, Laura Papish, Chris Griffin, Tex Titterington and Paul Clark were present.

The following staff members were present:

Justin Givens, City Administrator; Courtney Meyer, City Clerk; Bill Hisle, Police Chief; Beki Zook, Recreation Director; Austin Parker, City Attorney.

Others present: Elijah Jacob Spellman-Sak, Konner Wells, Ed Mikesell, Aaron Pero, Yvonne Coon, Kale Mills, Haley Pearson

4. Approval of the Agenda

Givens asked to strike item 12, ADA Improvements, from the agenda.

Mayor Ussery called for a motion to approve the November 8th with the modifications.

Motion: *Papish* moved, *Clark* seconded to accept the November 8, 2016 agenda with modifications. Voted and passed unanimously.

5. Public Forum

None

6. Consent Agenda

Mayor Ussery called for a motion to approve the consent agenda. On the consent agenda, there is the minutes from October 25, 2016.

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

7. Yvonne Coon – Millings in Alley

Yvonne Coon, 114 S Gorin, approached the council and requested that asphalt millings be put down in the alley behind her house. When it rains the sand and gravel wash into the main street, which can be hard on asphalt surfaces.

Mayor Ussery stated that staff will look into what can be done.

8. Accept a Petition for Improvements for Indian Lakes Phase II

Ed Mikesell approached council and stated he wanted to see if council would be willing to have building incentives for the Indian Lakes Phase II similar to the incentives that were done for Park Glen Estates and Chisholm Ridge.

Mr. Mikesell understands that this was a last minute change and staff was not able to prepare for the request for this meeting. Mr. Mikesell requests that building incentives be considered for this project.

Council asked staff to prepare finance numbers for building incentives for Indian Lakes Phase II for the next council meeting.

Items 8, 9, 10, and 11 will be tabled until next meeting

9. Approve a Developers Agreement for Indian Lakes Phase II

Tabled

10. Adopt a Resolution Authorizing the Improvements for Indian Lakes Phase II

Tabled

11. Authorize and Engineering Services Agreement for Indian Lakes Phase II

Tabled

12. 2016 ADA Improvements

Stricken

13. Update on City Projects

In 2016, budgeted for numerous capital improvements and had additional items or projects arise during the year that became priorities. Those improvements and status are included in this report.

Department	Project	Description	Status
Administration	Council Chambers Remodel	Remodel and Technology Updates to City Hall	Completed
	Update Officer Furniture for offices	New Officer Furniture Clerk and Assistant Clerk Office	Ordered to be installed by end of year
Senior Center	Storage Shed	Purchase of Storage Shed for Center to move tables chairs and other items out of center	Ordered to be installed by end of year
Police	Range Improvements	Rebuild and new shooting lanes at range	Ongoing will be continued into 2017
Public Works	Overhead Door at Shop	A new overhead door for city shop	Completed
	Mower Replacement	New mowers for lagoons and city mowing areas	Completed
	Solar Crossing Light	Light for crossing on Ross at	Purchased and will be

		Chisholm Ridge	installed by year end
	Street Sweeper Repairs	New sprockets and chains for street sweeper	Completed
	Variable Speed Drives	New variable speed drives for water wells	Installed and operational
	Meter reading handhelds upgrades	New handheld units for meter reading and new software	Completed and operational
	Replacement of 2 Fire Hydrants	Budgeted for two hydrants to be replaced yearly	Testing this week to establish priorities to replace
	Water valve Inserts	Budgeted for two valve replacements	Testing this week to establish priorities to replace
	Tommy Gate Lift	Purchase of a Tommy Gate lift for department	Purchased bucket truck as an alternative
	Street Repairs	Annual street repair including small and large crack filling as well as other projects	Encumbered expense into 2017 due to construction window closing
Parks	Chisholm Trail Walking Path	New path from 4 th to Ross thru CTSC	Work scheduled to begin next week
	ADA Fishing Dock	A new fishing dock that is to be built at the Chisholm Ridge Ponds	Final budget numbers are anticipated next week
	Backstop Repairs	Ice storm caused damage to baseball backstop	Poles have been removed and replacement poles are on order. Engineer has reviewed project and given ok as to course of repair
	Turf Upgrades for baseball field	Request to upgrade to Bermuda for baseball infield	An alternative approach was employed that will improve drainage and save money over cost of new turf. New sand has been installed and mixed into field.
Fire	SCBA	Updating new SCBA's for department	3 units have been replaced and replacement program has been started
EMS	Heart Monitors	Upgrading with new heart monitors for Ambulances	New units have been purchased and completed.

14. Claims and Warrants

Meyer presented the claims and warrants in the amount of \$40,300.27.

Motion: *Papish* moved, *Clark* seconded to pay the claims and warrants in the amount

of \$40,300.27. Voted and passed unanimously.

15. City Administrator Report

- **Public Works**
 - Nova Chip was installed last week. Contractors talked Sed. Co. into extending project west of the 4th and Ross intersection that had no previously been proposed based on material savings in other areas. Our portion of Tracy was also laid a little thicker than anticipated at no extra cost to the city.
 - Staff will be exercising water valves this week and exercising and flow testing hydrants – this includes adding GIS reference points as well as some manholes
 - Staff will continue working on alleys this week including brush removal
 - Staff completed weatherization of facilities at the pool and Sports Complex
 - Staff will be working on the gun range
- **Parks and Recreation**
 - 18 teams and approximately 160 1st thru 6th graders are participating in the basketball league
 - 60 3 to 5 year old children have signed up for the clinic series
 - Sign up continues for the Hoedown
- **Library**
 - Tina Welch – has started as the new librarian – one of her top priorities is working on a website redesign and cleaning out
- **Community Center**
 - Medicare Counseling is ongoing. To date staff has been able to save those who have taken part in counseling more than \$13,000.
 - The foot clinic that is offered at the center has added an extra day due to demand
 - A trip to attend the Nutcracker in Wichita has been scheduled for the 14th of December
 - A holiday light tour has been scheduled for the 20th of December
- **Police**
 - Officers recovered several bikes and could return four of them to their owners based on Bike Registration
 - Officers also could return several loose dogs to owners based on licensing
 - Review of applicants for the vacant patrol position has started with several applicants being certified law enforcements officers already.
- **Administration**
 - Staff reviewed the safety manual today
 - Furnaces have been serviced at all city facilities and new thermostats have been installed at city hall
 - Staff is researching websites for upgrades to our current provider and version.
 - The Holiday Party will be Sunday, December 11, 2016 at 5:15pm at the Clearwater Executive Center
 - The EMS Director Review Committee finalized phone interviews and will be asking two candidates back for in person interviews.
 - The Strategic Planning Committee will be hosting a Community Wide Input Session at the Clearwater Event Center on Tuesday November 29th from 6:30 to 8:30 with more details to come.

16. Council Reports

Griffin had nothing to report.

Marsh had nothing to report.

Papish had nothing to report.

Clark had nothing to report.

Titterington had nothing to report.

Ussery had nothing to report.

17. Adjournment

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

MOTION: *Marsh* moved, *Clark* seconded to adjourn the meeting. Voted and passed unanimously. The meeting adjourned at 7:37 p.m.

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 November 8, 2016 City Council meeting.

Given under my hand and official seal of the City of Clearwater, Kansas, this 22th day of November 2016.

Courtney Meyer, City Clerk

**City of Clearwater
City Council Meeting
November 22, 2016**

TO: Mayor and City Council
SUBJECT: Indian Lakes Phase II
INITIATED BY: City Administrator
PREPARED BY: City Administrator
AGENDA: New Business

Background: In 2012, Phase I of Indian Lakes began construction. Since that time 19 units in 9 separate buildings have been built with a total assessed valuation of \$237,002 and a total appraised valuation of \$2,060,886 with a total developer investment of approximately \$2.9 million. The occupancy rate remains high and in fact at times has seen a waiting list for the units. Based on housing demands in the community the developer is ready to proceed with Phase II of the development. Phase II would represent an approximate investment of \$1.85 million for the 8 new units and supporting infrastructure. At the November 8, 2016 meeting, the developer, Ed Mikesell, proposed thru his developers agreement an incentive package that would include;

- A 50% abatement in City Property Taxes
- A 50% abatement in Building Permit Fees
- A 100% waiver of Sewer and Water Tap Fees

At the meeting the Governing Body asked to delay any decision on the matter until the November 22nd meeting in order for staff to prepare an analysis of the impact of the incentive package.

Analysis: The projected impact of the assessments as proposed is included with this report. To summarize though if the incentives were approved;

- The total incentive package would be approximately \$84,000
 - Water Tap Waiver - \$24,000
 - Sewer Tap Waiver - \$24,000
 - Building Permit Waiver - \$7,000
 - Property Tax Abatement - \$28,967
- The total revenue collected by the city would be approximately \$152,175
 - Total Property Tax Collected - \$50,693
 - Total Utility Revenue Collected - \$101,481
- Based on those figures the city's net gain over the eight years that abatements would be in place would be approximately \$68,000.

This assumes a build out of three units in the first year, two units in the second, two more in a third year and a single unit in year four. Each unit would have a five-year property tax abatement of 50% of the total city taxes.

For better perspective, a 50% reduction in the property tax for one unit would equal the equivalent tax revenue of a \$140,000 new home for the city. Currently, the developer is the second largest taxpayer in the city behind Walmart and once Phase II is finished would be the single largest taxpayer in the city.

Indian Lakes Phase II will bring infrastructure to 8 lots with the possibility of 16 to 20 housing units being available after construction is complete. The project will consist of extending Silverado Ct. south and opening up Copperhead Rd. This extension will require approximately 550 feet of new asphalt and extending the sewer mains to several of the properties as well as the extension of the water main. The properties that abut Chisholm Ridge will be served from the existing sewer main in that development.

To proceed with the project the city will need to take the following steps:

- Accept the Petition for Improvements;
 - Sewer in the amount of \$25,000
 - Water in the amount of \$30,000
 - Streets in the amount of \$125,000
 - Administrative Costs in the amount of \$20,000
 - Total Project Costs – Estimated to be \$200,000
- Adopt a Resolution Authorizing the project;
 - By adopting the Resolution Authorizing the project, the developer has the option of either paying for the cost of the development in a lump sum or via the special assessment process once the project is completed.
- Authorize a Development Agreement with the Developer;
 - The Development Agreement will establish the framework in which the city will be protected during construction and the payback of any and all special assessments as well as benchmarks for the release or reduction in required Letters of Credit;
 - Establish a means in which the developer and the city will finance the initial improvements and provides for the ability for the developer to use the special assessment process if so desired.
- Authorize an Engineering Services Agreement.
 - Certified Engineering Design has performed all of the preliminary design work for the project and will be working on behalf of the city during design, construction and inspection.

- CED will also be soliciting bids directly from contractors for the two portions of the project: Water and Sewer; Streets and Stormwater. The proposed method of solicitation should result in a lower overall project cost. This is being done so based on the relatively low cost of the project.

Financial: The estimated project cost is \$200,000 will actual bids anticipated in coming in lower than the Engineers Estimates. The developer will be required to provide a surety in the amount of 35% for the overall project total. Additionally, the developer will provide the city with the funds for the project costs avoiding short term financing. At the completion of the project the option for the developer to either elect to use the special assessment process or pay the city directly for the costs associated with the infrastructure will be available.

Legal Considerations: The Petition for and Resolution Authorizing the project will be prepared by city bond attorney Kevin Cowan of Gilmore and Bell and will be presented at the meeting on Tuesday. The development agreement will be presented at the meeting on Tuesday and will be reviewed by the City Attorney. The Engineering Services Agreement has been reviewed and approved by the City Attorney.

Recommendations/Actions: It is recommended the City Council:

- 1) Accept the Petition for Improvements;
- 2) Adopt the Development Agreement;
- 3) Adopt the Resolution Authorizing the Project;
- 4) Authorize the Engineering Services Agreement.

Attachments:

Indian Lakes Phase II Map (1-page)

Engineering Services Agreement (7-pages)

Development Agreement (4-pages)

Petition (2-pages)

Resolution (5-pages)

Incentive Information (1-page)

DEVELOPMENT AGREEMENT CONCERNING CERTAIN
INFRASTRUCTURE IMPROVEMENTS TO INDIAN LAKES ADDITION
TO THE CITY OF CLEARWATER, KANSAS

(Special Assessment Improvements)

THIS AGREEMENT made and entered into this ____ day of November, 2016 by and between the City of Clearwater, Kansas (“City”) and Duckhorn Properties, LLC (“Developer”).

WHEREAS, Developer is the owner of the following described real property: Lots 1 through 5, inclusive, Block 1, and Lots 1 through 3, inclusive, Block 2, Indian Lakes 2nd Addition, an addition to the City of Clearwater, Sedgwick County, Kansas (“Property”); and

WHEREAS, the Developer, on behalf of the City, desires to provide the initial temporary funding necessary for the construction of certain public improvements on the Property at its own cost, subject to reimbursement by the City upon the completion of such improvements through the issuance of bonds to be repaid by special assessments to be levied against the Property by the City (“Bonds”); and

WHEREAS, the City desires to assure uniform compliance with specifications, implementation of the Subdivision Regulations, and workmanlike standards for all public improvements, all as more particularly provided in this Agreement.

NOW, THEREFORE, it is agreed, as follows:

1. The City shall initiate steps to allow the construction of the following public improvement(s) by Developer:

Water
Sanitary Sewer
Street Paving

(collectively the “Improvements”) and, in lieu of the City issuing temporary notes to finance the initial construction of the Improvements, the City agrees to allow Developer to fund the construction of the Improvements at its own cost until the Bonds can be issued, all as more particularly provided herein.

2. The City shall permit the Developer to use the special assessment form of financing with the Bonds for the permanent financing for the Improvements, with a portion of the proceeds of the Bonds used to reimburse Developer for the full cost of such Improvements. In connection therewith:
 - A. The Developer shall submit or cause to be submitted to the City valid petitions drawn in accordance with applicable Kansas Statutes with respect to the financing of such Improvements through Bonds.
 - B. The City shall permit Developer to obtain separate bids from no fewer than two contractors, all of whom shall be acceptable to the City, for each separate item of the Improvements, and the City shall enter into the contracts with the selected contractor.

- C. The City shall require Developer to escrow with the city the full amount of the cost of the Improvements (“Project Costs”), which the parties estimate to be \$180,456.11. The Project Costs shall be held in a project fund (“Project Fund”), and the City shall permit the release of funds therefrom to pay the valid invoices submitted by the City’s contractors and approved by the City for the design, installation and construction of the Improvements. The City agrees to provide copies of all of the approved invoices to Developer, upon Developer’s request. Any funds remaining in the Project Fund after the completion of the Improvements and the payment of all Project Costs shall be promptly refunded to Developer.
3. As soon as reasonably possible following the completion of the Improvements and the payment of all of the Project Costs, but in no event prior to September 1, 2017, the City shall cause the issuance of the Bonds and a portion of the proceeds thereof shall be paid to Developer in reimbursement of the Project Costs which were initially paid by Developer. Developer agrees to provide the City with a Certificate of Deposit, issued by a bank acceptable to the City, equal to 35% of the amount of the Bonds to secure payment of the special assessments levied against the Property with respect to the Bonds (“Security”). Such Security shall remain in place until the first to occur of: (i) issuance of certificates of occupancy for at least 50% of the residential lots included in the Property; or (ii) the county appraised value for improvements constructed on the Lots within the Property exceed 150% of the outstanding principal amount of the Bonds, at which time the City agrees to release such Security in favor of Developer.
 4. All temporary construction facilities must be removed upon final inspection.
 5. The City agrees to provide Developer with incentives at least equal to those granted to other developers within the City, including, without limitation, (i) 50% reduction in general property taxes for five (5) years for all lots within the Property; (ii) 50% off of building permits for any construction on the lots within the Property; and (iii) a waiver of all City sewer and water tap fees.
 6. All lots within the Property covered by this agreement shall be kept clean and mowed to a reasonable height, not to exceed twelve (12) inches.
 7. No construction will be allowed on any portion of the Property unless the Developer or the designated contractor has first obtained from the City the proper building and zoning permits.
 8. The Developer will file this agreement, as approved by the City, with the Sedgwick County Register of Deeds. A copy of this agreement showing said recording along with a copy of the recorded plat shall be furnished to the City before building and/or zoning permits are issued.
 9. The terms and conditions set forth herein shall be binding upon the heirs, personal representatives, trustees, successors, and assigns of the parties hereto.
 10. In entering into this agreement, the Developer represents it has familiarization with the City’s Subdivision Regulations and all policies of the City applicable to the Improvements contemplated under the terms of this agreement. Nothing herein is intended or shall be construed to grant to the Developer either, directly or indirectly, a variance, waiver, or departure from any such policies, ordinances, or regulations. Any waiver of the required Improvements or guarantees for installation may be made only by the governing body of the City.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have set their hands to this Agreement on the date and year first above written.

“CITY”
CITY OF CLEARWATER, KANSAS

[seal]

_____, Mayor

ATTEST:

_____, City Clerk

ACKNOWLEDGEMENT

STATE OF KANSAS)
)ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this ____ day of _____, 20____, before me the undersigned, a notary public in and for the County and State aforesaid, came _____ and _____, Mayor and City Clerk, respectively, of the City of Clearwater, Kansas, a municipal corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of the City of Clearwater and such persons duly acknowledged execution of the same to be the act and deed of said City of Clearwater, Kansas.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires:

“DEVELOPER”
Duckhorn Properties, LLC

By: _____
Edwin A. Mikesell, Manager

ACKNOWLEDGEMENT

STATE OF KANSAS)
)ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this ____ day of _____, 20____, before me the undersigned, a notary public in and for the County and State aforesaid, came Edwin A. Mikesell who is personally known to me to be the Manager, of Duckhorn Properties, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of Duckhorn Properties, LLC and such person duly acknowledged execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires:

PETITION
(STREET, SEWER AND WATER IMPROVEMENTS--INDIAN LAKES 2nd ADDITION)

TO: The Mayor and City Council (the "Governing Body")
City of Clearwater, Kansas

1. The undersigned, being the owners of record of more than one-half of the area liable for assessment for the hereinafter described proposed improvement of the City of Clearwater, Kansas (the "City"), do hereby request that said improvement be made in the manner provided by K.S.A. 12-6a01 *et seq.* (the "Act").

(a) The improvement proposed to be made is as follows (the "Improvements"):

Construct a water distribution, sanitary sewer and street improvements to serve the area described below, all in accordance with City standards and plans and specifications prepared or approved by the City Engineer.

(b) The estimated or probable cost of the proposed Improvements is: \$200,000, with \$33,000 allocable to the water portion of the Improvements, \$28,400 allocable to the sanitary sewer portion of the Improvements, and \$138,600 allocable to the street portion of the Improvements, all to be increased at the pro rata rate of 1 percent per month from and after November 1, 2016.

(c) The extent of the improvement district (the "Improvement District") to be assessed for the costs of the proposed Improvements is:

INDIAN LAKES 2ND ADDITION

Lots 1 through 5, inclusive, Block 1, and Lots 1 through 3, inclusive, Block 2

(d) The method of assessment is on a fractional basis, as follows: Lots 1 through 5, inclusive, Block 1, and Lots through 3, inclusive, Block 2, Indian Lakes 2nd Addition, shall each pay 1/8 of the Improvement costs to be assessed.

In the event all or part of the lots or parcels in the Improvement District is replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

(e) The apportionment of the cost of the Improvements, between the Improvement District and the City at large, is: 100% to be assessed against the Improvement District and 0% to be paid by the City-at-large.

2. It is further requested that the proposed Improvements be made without notice and hearing as required by the Act.

3. Names may not be withdrawn from this Petition by the signers hereof after the Governing Body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first.

Signature	Dated	Property Owned Within Proposed Improvement District
		Lots 1 through 5, inclusive, Block 1, and Lots 1 through 3, inclusive, Block 2, Indian Lakes 2 nd Addition to the City of Clearwater, Kansas

THIS PETITION was filed in my office on _____; and was examined, considered and found sufficient by the Governing Body on _____.

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF CLEARWATER, KANSAS
HELD ON NOVEMBER 8, 2016**

The governing body met in regular session at the usual meeting place in the City, at 6:30 p.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, and among other business, there was presented to the governing body a Petition which had been filed in the Office of the City Clerk requesting the making of certain internal improvements in the City pursuant to the authority of K.S.A. 12-6a01 *et seq.*

Thereupon, there was presented a Resolution entitled:

A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF CLEARWATER; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENTS IN ACCORDANCE WITH SUCH FINDINGS (STREET, SEWER AND WATER IMPROVEMENTS/INDIAN LAKES 2nd ADDITION).

Thereupon, Councilmember _____ moved that said Resolution be adopted. The motion was seconded by Councilmember _____. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the governing body, the vote being as follows:

Yea: _____.

Nay: _____.

Thereupon, the Mayor declared said Resolution duly adopted and the Resolution was then duly numbered Resolution No. ____ and was signed by the Mayor and attested by the Clerk; and the Clerk was further directed to cause the publication of the Resolution one time in the official City newspaper and to record the Resolution in the Office of the Register of Deeds of Sedgwick County, Kansas, all as required by law.

* * * * *

(Other Proceedings)

On motion duly made, seconded and carried, the meeting thereupon adjourned.

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Clearwater, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

Clerk

(Published in *The Times Sentinel*, on November __, 2016)

RESOLUTION NO. _____

A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF CLEARWATER; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENTS IN ACCORDANCE WITH SUCH FINDINGS (STREET, SEWER AND WATER IMPROVEMENTS/INDIAN LAKES 2nd ADDITION).

WHEREAS, a Petition (the "Petition") was filed with the City Clerk of the City of Clearwater, Kansas (the "City") proposing certain internal improvements; and said Petition sets forth: (a) the general nature of the proposed improvements; (b) the estimated or probable cost of the proposed improvements; (c) the extent of the proposed improvement district to be assessed for the cost of the proposed improvements; (d) the proposed method of assessment; (e) the proposed apportionment of the cost between the improvement district and the City at large; and (f) a request that such improvements be made without notice and hearing as required by K.S.A. 12-6a04(b) (the "Act"); and

WHEREAS, the governing body of the City hereby finds and determines that said Petition was signed by a majority of the resident owners of record of the property, or the resident owners of record of more than one-half of the area or the owners of record of more than one-half of the area liable for assessment for the proposed improvements, and is therefore sufficient in accordance with the provisions of the Act.

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

Section 1. Findings of Advisability. The governing body hereby finds and determines that:

Construct a water distribution, sanitary sewer and street improvements to serve the area described below, all in accordance with City standards and plans and specifications prepared or approved by the City Engineer (the "Improvements").

(b) The estimated or probable cost of the proposed Improvements is: \$200,000, with \$33,000 allocable to the water portion of the Improvements, \$28,400 allocable to the sanitary sewer portion of the Improvements, and \$138,600 allocable to the street portion of the Improvements, all to be increased at the pro rata rate of 1 percent per month from and after November 1, 2016.

(c) The extent of the improvement district (the "Improvement District") to be assessed for the costs of the proposed Improvements is:

INDIAN LAKES 2ND ADDITION

Lots 1 through 5, inclusive, Block 1, and Lots 1 through 3, inclusive, Block 2

(d) The method of assessment is on a fractional basis:

Lots 1 through 5, inclusive, Block 1, and Lots 1 through 3, inclusive, Block 2, Indian Lakes 2nd Addition, shall each pay 1/8 of the Improvement costs to be assessed.

In the event all or part of the lots or parcels in the Improvement District is replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

(e) The apportionment of the cost of the Improvements, between the Improvement District and the City at large, is: 100% to be assessed against the Improvement District and 0% to be paid by the City-at-large.

If the Improvements are abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the Improvements are abandoned at any state during the design and/or construction of the Improvements or if it is necessary for the City to redesign, repair or reconstruct the Improvements after their initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said Improvements shall be assessed to the property described above in accordance with the terms of this petition.

Section 2. Authorization of Improvements. The abovesaid Improvements are hereby authorized and ordered to be made in accordance with the findings of the governing body of the City as set forth in *Section 1* of this Resolution.

Section 3. Bond Authority; Reimbursement. The Act provides for the Improvements to be paid by the issuance of general obligation bonds or special obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation 1.150-2.

Section 4. Effective Date. This Resolution shall be effective upon adoption. This Resolution shall be published one time in the official City newspaper, and shall also be filed of record in the office of the Register of Deeds of Sedgwick County, Kansas.

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ADOPTED by the governing body of the City on November 8, 2016.

(SEAL)

Mayor

ATTEST:

Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on November 8, 2016 as the same appears of record in my office.

DATED: November 8, 2016.

Clerk

CONTRACT
FOR
ENGINEERING SERVICES
BETWEEN
THE CITY OF CLEARWATER, KANSAS
AND

CERTIFIED ENGINEERING DESIGN, P.A.
1935 West Maple
Wichita, Kansas 67213-3311

WATERLINE, SANITARY SEWER AND STREET
IMPROVEMENTS FOR PHASE 2, INDIAN LAKES ADDITION

THIS CONTRACT, made this ___ day of _____, 2016, by and between THE CITY OF CLEARWATER, KANSAS, party of the first part, hereinafter referred to as the "CITY" and CERTIFIED ENGINEERING DESIGN P.A., Wichita, Kansas, party of the second part, hereinafter referred to as the "CONSULTANT".

WITNESSETH:

WHEREAS the CITY intends to construct waterline, sanitary sewer and street improvements for Phase 2 of Indian Lakes Addition, in Clearwater, Sedgwick County, Kansas.

All of the aforesaid being located within the corporate limits of the CITY, and hereinafter referred to as the "PROJECT"; and

WHEREAS, the CITY is authorized by law to employ a consulting engineer to assist in the plans, supplemental specifications and the estimates of quantities of work for the PROJECT ; and

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The CONSULTANT shall furnish the engineering services as required for the development of plans, supplemental specifications and the estimates of quantities of work for the PROJECT.

A.. PLAN DEVELOPMENT

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design.
2. Soils and Foundation Investigations. The CITY may authorize the CONSULTANT to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT. The cost of soils and boring investigations shall be non-engineering costs of the PROJECT, not included in this contract.
3. Prepare engineering plans, plan quantities and supplemental specifications as required Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design
4. Identify all known potential utility conflicts and present recommended solutions to such conflicts and, when authorized by the CITY, provide prints of plans to each utility identifying the problem locations. CONSULTANT shall meet with utility company representatives as required to review the PROJECT design and interpret engineering drawings.

B. CONSTRUCTION PHASE SERVICES

1. Transmit directions to the Contractor and provide guidance in the proper interpretation of the Contract Documents through consultation with the CITY.
2. Perform measurements and surveys that are required for documentation of work performed and for determination of Contractor's final pay quantities.
3. Provide adequate on-site inspection of the work, such services to

be provided by experienced and qualified personnel who shall be responsible for observing the progress and quality of the executed work and determining that the work is proceeding in accordance with the Contract Documents.

4. Take field samples and/or test materials to be incorporated in the work, and reject or advise rejection of those not meeting the provisions of the Contract Documents.
5. Receive and review all test report records or certificates of compliance for materials tested off the Project site prior to the incorporation in the work.
6. Keep and maintain such daily diaries, logs and records as are needed for a complete record of the Contractor's progress.
7. Measure and compute all materials identified in the bid items incorporated in the work and applicable pay items of work completed, and maintain an item account record.
8. Provide and submit CITY such periodic, intermediate and final reports and records as may be required by the CITY and as are applicable to the PROJECT.
9. To prepare and deliver (when PROJECT is completed) one certified copy (Bond) of "as-built" or "record" plans to the CITY.

II. IN ADDITION, THE CONSULTANT AGREES:

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in SCOPE OF SERVICES.

B. To attend meetings with the CITY and other local, state and federal agencies as necessitated by the PROJECT.

C. To furnish the CITY plans for the PROJECT that have been approved and accepted by all necessary and applicable state and federal agencies.

D. To make available during regular office hours at its Wichita office, all

calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

E. To deliver to the CITY the original tracings of the completed plans and other pertinent drawings and documents for the PROJECT, all of such documents to become the property of the CITY.

F. To submit to the CITY an Engineer's estimate of the quantities of work units for the PROJECT incorporating all items of work included in the plans.

G. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To submit a single and final billing to the CITY for the engineering design services upon completion of the design work and progress billings for construction phase services.

I. To complete and deliver plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below:

EXCEPT that the CONSULTANT shall not be responsible or held liable for the time required for reviews by the approving parties or other delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT.

Plans, specifications and estimates to be commenced upon receiving a Notice to Proceed and completed by January 31, 2017.

J. CONSULTANT shall procure and maintain such insurance as will protect the CONSULTANT from damages, resulting from errors, omissions and negligent acts of the CONSULTANT, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement and for which he is legally liable. Such policy of insurance shall be in an amount not less than \$500,000.00. In addition, a Workers' Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their

employment, which, for any reason, may not fall within the provisions of the Workers' Compensation Laws. The liability limit shall be not less than:

Workers' Compensation - Statutory

Employer's Liability - \$500,000 each occurrence

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees or subcontractors in the performance of CONSULTANT services under this Agreement. The liability limit shall not be less than \$500,000 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time CONSULTANT starts any work under this agreement. The CONSULTANT shall furnish the CITY copies of all insurance policies or certificates of insurance that relate to the insurance policies that must be maintained hereunder. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the City's Office.

B. To pay the CONSULTANT for his services in accordance with the requirements of this agreement.

C. To provide the right of entry for CONSULTANT'S personnel in performing field surveys and inspections.

IV. PAYMENT PROVISIONS

A. Payment to the CONSULTANT for the performance of engineering design and construction inspection services required by this agreement shall be made on the basis of the lump sum fee amount specified below, which shall not be exceeded.

Phase 2 Indian Lakes- Water, Sanitary Sewer and Street Improvements(Not-to-Exceed)

Design & Preparation of Waterline Improvement Plans	\$ 2,814
Construction Administration and Inspection Waterline Improvements	\$ 1,504
Design & Preparation of Sanitary Sewer Improvements Plans	\$ 2,486
Construction Administration and Inspection Sanitary Sewer Improvements	\$ 1,291
Survey, Design & Preparation of Street Improvement Plans	\$ 11,268
Construction Administration and Inspection Street Improvements	\$ 6,349

B. Reimburse the CONSULTANT for Utility Permit Agreement fees and design review fees charged by Sedgwick County.

C. Reimburse the CONSULTANT for Construction Material Testing services for the project as ordered by the CONSULTANT'S inspector.

D. If additional work should be necessary by virtue of major changes in the scope of the proposed PROJECT, the CONSULTANT will be given written notice by the CITY along with a request for an estimate of the lump sum fee for performance of such additions; but no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the CONSULTANT'S inability to proceed with the work, or because the services of the CONSULTANT are unsatisfactory; PROVIDED, however, that in any case the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the CONSULTANT'S actual costs plus a fee for profit based upon a fixed percentage of the CONSULTANT'S actual costs.

B. That the original tracings for the final Engineering Plans and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the CONSULTANT in accordance with this agreement; and there shall be no restriction or limit on their further use by the CITY.

C. That the services, except for surveying, to be performed by the CONSULTANT under the terms of this agreement are personal and can not be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided however, that the CONSULTANT shall request extensions, in writing, giving the reasons therefore.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, THE CONSULTANT has executed this agreement and THE CITY has caused this agreement to be signed by its Mayor and attested by its City Clerk with the seal of the City of Clearwater, Kansas impressed thereon on the day and year first above written.

CERTIFIED ENGINEERING DESIGN, P.A.



Harlan D. Foraker, P.E.

CITY OF CLEARWATER, KANSAS

Burt Ussery, Mayor

ATTEST:

Courtney Meyer, City Clerk

**City of Clearwater
City Council Meeting
November 22, 2016**

TO: Mayor and City Council
SUBJECT: Consider an Ordinance Amending Section IV of the Clearwater Zoning Code – Floodplain Regulations
INITIATED BY: City Administrator
PREPARED BY: City Administrator
AGENDA: New Business

Background: In December of 2016, new floodplain maps issued by FEMA will become effective. Based on those new maps and changes in the floodplain regulations, it was determined that the best course of action for the city was to adopt a new set of floodplain regulations along with the most current floodplain map.

FEMA regularly reviews and updates maps to best determine areas that could be subject to flooding and regulations that best control and minimize the potential loss of property within areas that are subject to flooding.

It was also determined that the best approach for the city was to incorporate the new floodplain regulations into the Zoning Code. This is a practice that is done throughout many municipalities. On, November 10, 2016, the Clearwater Planning Commission did hold a public hearing and did make a recommendation to adopt the new regulations.

Analysis: The new regulations create a more comprehensive view of floodplain management. These regulations are based on model code written by the State of Kansas Division of Water Resources and FEMA. Cities are required to have the Chief Engineer review and approve regulations as well.

At the heart of the reason for adopting new floodplain regulations is the issuance of new floodplain maps that establish special flood hazard areas. Those maps are produced by FEMA and use the latest mapping techniques and equipment to best determine areas that are prone to flooding. Based on the new maps several areas that were once considered to be in the floodplain will be removed. Other properties will be added to the floodplain. In all, 15 properties will have some or all of their property included in to the new floodplain. A total of 15 properties in the city will see all or a portion of their property removed from the floodplain.

Residents, whose properties are affected by the changes will be contacted by their mortgage company once the new maps become effective. Some of the properties that are affected by these changes will be able to receive waivers as only a portion of their property and no structures are within the floodplain.

Financial: There is a small cost for publication of the ordinance summary.

Legal Considerations: The City Attorney has drafted the ordinance based on model regulations provided by the state and FEMA. The ordinance has been approved by the Chief Engineer for the Kansas Division of Water Resources. If the city fails to act on adopting the new maps and regulations prior to the effective date of December 22, 2016, those residents who have flood insurance could have their policies suspended and the city would be out of compliance with the National Flood Insurance Program.

Recommendations/Actions: It is recommended the City Council:

- 1) Adopt the Ordinance Amending the Floodplain Regulations;
- 2) Not adopt the Ordinance;
- 3) Table the Matter for Further Study;
- 4) Take No Action.

Attachments:

Floodplain Ordinance (17 pages)

Link to interactive map: <https://gismaps.sedgwickcounty.org/mabcd/fema/>

Clearwater Area Map (1 page)

Google | Floodplain Maps | Prelim Flood Zones

https://gismaps.sedgwickcounty.org/mabcd/fema/

FEMA Flood Zones - dFIRM Preliminary

Sedgwick County KS

Enter address

Other Layers | Basemap

FEMALayers

Layer Visibility

- CSLF - (Changes Since Last FIRM)
- FEMA Flood (Prelim)
- FEMA Flood (Current)

Legend

CSLF_1pct

- Proposed to be out of floodplain
- Proposed to remain in floodplain
- Proposed to be in floodplain

Map showing FEMA Flood Zones (dFIRM Preliminary) for Sedgwick County, KS. The map displays various flood zones, including areas proposed to be out of floodplain (green), areas proposed to remain in floodplain (yellow), and areas proposed to be in floodplain (red). The map includes a grid of streets (e.g., 79TH, 87TH, 95TH, 103RD, 111TH, 119TH, 127TH, 135TH, 143RD, 151ST, 159TH, 167TH, 175TH, 183RD, 191TH, 199TH, 207TH, 215TH) and a scale bar (0 to 3 km). The location is identified as Clearwater, Summer County.

Summer County

3 km

2 mi

Start | Internet Explorer | Wi-Fi | File Explorer | Microsoft Word | Microsoft Excel | Microsoft PowerPoint | Microsoft Outlook | Google Chrome | Microsoft Word

1:36 PM 11/18/2016

(First Published in the _____ on the ____ day of _____, 2016.)

THE CITY OF CLEARWATER, KANSAS

ORDINANCE NO. 1019

AN ORDINANCE REVISING AND UPDATING THE FLOODPLAIN MANAGEMENT ZONING REGULATIONS WITHIN THE CORPORATE LIMITS OF THE CITY OF CLEARWATER, KANSAS BY AMENDING ARTICLE VII OF THE ZONING ORDINANCE FOR THE CITY OF CLEARWATER, KANSAS.

WHEREAS, Pursuant to and in accordance with the authority granted by K.S.A. 12-741 et seq., including K.S.A. 12-766, the City of Clearwater, Kansas currently regulates and manages floodplain zoning development through its floodplain zoning regulations found in Article VII of the Zoning Ordinance for the City of Clearwater, Kansas; and

WHEREAS, in accordance with state and federal law, all such floodplain zoning regulations must be approved by the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program and must coordinate with the requirements and regulations of the National Flood Insurance Act of 1968 as amended; and

WHEREAS, the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, Floodplain Program and the officials of the Federal Emergency Management Agency (FEMA) Region VII have recommended that the City of Clearwater, Kansas revise its floodplain management zoning regulations by amending its existing regulations and adopting additional regulations based upon the recommended model floodplain management regulations; and

WHEREAS, the Clearwater City Planning Commission held a public hearing on November 10, 2016 to consider these revisions to the City's floodplain management zoning regulations. Notice of this public hearing was published in the official city newspaper at least 20 days prior to the date of the public hearing in compliance with K.S.A. 12-757; and

WHEREAS, following the public hearing a majority of the members of the Clearwater Planning Commission present and voting at the hearing voted to recommend approval of this amendment of Article VII of the Zoning Ordinance for the City of Clearwater, Kansas;

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

Section 1. Amending Article VII of the Zoning Ordinance for the City of Clearwater, Kansas

Article VII of the Zoning Ordinance for the City of Clearwater, Kansas is hereby repealed and replaced in its entirety to read as follows:

SECTION 1. Statement of Intent

It is the purpose of this Article to promote the public health, safety, and general welfare; to minimize those losses described in Section 2(1) of this Article; to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this Article to:

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

SECTION 2. Findings of Fact

1. Flood Losses Resulting from Periodic Inundation

The special flood hazard areas of Clearwater, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

2. General Causes of the Flood Losses

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

SECTION 3. Methods Used To Analyze Flood Hazards

The current Flood Insurance Study (FIS) that is the basis of this Article uses a standard

engineering method of analyzing flood hazards, which consist of a series of interrelated steps:

A. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this Article is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this Article. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated December 22, 2016 as amended, and any future revisions thereto.

B. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.

C. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.

D. Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.

E. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

F. The current Flood Insurance Study and the FIRM adopted by the Governing Body and incorporated by reference in this Article.

SECTION 4. General Provisions

A. **LAND TO WHICH THIS ARTICLE APPLIES.** This Article shall apply to all lands within the jurisdiction of the City of Clearwater identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated December 22, 2016 of the Flood Insurance Rate Map (FIRM) as amended and any future revisions thereto. In all areas covered by this Article, no development shall be permitted except upon a building or land use permit granted by the Floodplain Administrator.

B. **DESIGNATION OF FLOODPLAIN ADMINISTRATOR.** The City Administrator of the City of Clearwater or his/her designee is hereby designated the Floodplain Administrator and appointed to administer and implement the provisions of this Article.

C. **DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR.** Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for building or land use permits for compliance with the requirements of this Article, including verifying that sites are reasonably safe from flooding and that the floodplain development permit requirements of this Article have been satisfied;
2. Review of all applications for building or land use permits for proposed development for compliance with this Article and to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be in compliance with this Article, including whether such proposals will be reasonably safe from flooding. The Floodplain Administrator shall review all building and land use permit applications to determine if the site of the proposed development meets the provisions of this Article and that all necessary permits have been received as required by federal or state law.
4. Issue building or land use permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse;
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed; and
9. When floodproofing techniques are utilized for a particular non-residential structure, the Floodplain Administrator shall require certification from a registered professional engineer or architect.

D. **RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.** The boundaries of the floodway and floodway fringe overlay districts shall be determined by reviewing the Flood Insurance Study, the FIRM, or other available data. Where interpretation is needed as to the exact location of the boundaries of the districts, the City Administrator shall make the necessary interpretation based upon data available. The City Administrator shall maintain the FIRM, Flood Insurance Study and other engineering studies relating to flood data. In such cases where the interpretation is contested, the Federal Emergency

Management Agency (FEMA) will resolve the dispute. The owner of the property of which the regulatory flood elevation is in question shall be given a reasonable opportunity to present his/her case to the board and to submit his/her own technical evidence, if he/she so desires.

E. COMPLIANCE. No new structure or existing land shall hereafter be used and no new structure shall be located, extended, converted or structurally altered without full compliance with the terms of this Article and other applicable regulations.

F. ABROGATION AND GREATER RESTRICTIONS. It is not intended by this Article to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article imposes greater restrictions, the provision of this Article shall prevail. All other ordinances inconsistent with this Article are hereby repealed to the extent of the inconsistency only.

G. INTERPRETATION. The provisions of this Article shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

H. WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Article does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This Article shall not create liability on the part of the City or any officer or employee thereof for any flood damages that may result from reliance on this Article or any administrative decision lawfully made thereunder.

I. SEVERABILITY. If any section; clause; provision; or portion of this Article is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this Article shall not be affected thereby.

SECTION 5. Building or Land Use Permit

A. PERMIT REQUIRED. No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done within any numbered or unnumbered A zones, AE, AO, and AH zones without first obtaining a building or land use permit in accordance with the definition of development as contained herein. The building or land use permit shall be the same permit required for such development or substantial improvement under the Clearwater City Code and other ordinances of the City of Clearwater, Kansas, except that a building or land use permit shall be required for all development or substantial improvements within any numbered or unnumbered A zones, AE, AO, and AH zones regardless of whether a building or land use permit would otherwise be required under said Code or other ordinances of the City. No building or land use

permit authorizing development or substantial improvements within any numbered or unnumbered A zones, AE, AO, and AH zones shall be issued unless the development or substantial improvement(s) authorized thereunder comply with the provisions of this Article.

B. APPLICATION FOR BUILDING OR LAND USE PERMIT. The Floodplain Administrator shall review all building and land use permit applications to verify that each site for proposed development is reasonably safe from flooding, the floodplain development permit requirements of this Article have been satisfied, the site of the proposed development meets the provisions of this Article and that all necessary permits have been received as required by federal or state law. To obtain a building or land use permit within any numbered or unnumbered A zones, AE, AO, and AH zones, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every application shall:

1. Identify and describe the work to be covered by the permit for which application is made;
2. Describe the land on which the proposed work is to be done by legal description and street address;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Be accompanied by plans and specifications for proposed construction;
5. Be signed by the permittee or his/her authorized agent who may be required to submit evidence to indicate such authority;
6. Specify whether the proposed development is located in designated flood fringe or floodway;
7. Identify the existing base flood elevation and the elevation of the proposed development accompanied by elevations of the lowest floor including basement or, in the case of flood proofed non-residential structures, the elevation to which it will be flood proofed. Documentation or certification of such elevations will be maintained by the City;
8. Give such additional information as may be required by the City such as:
 - a. A plan prepared by a registered engineer in the state of Kansas which includes typical valley cross sections and profiles showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be affected by the proposed development, and elevation of the fully developed one hundred (100) year flood.
 - b. Plan; surface view, showing elevations or contours of ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities,

and other data that will assist the City Administrator to make a determination of flooding.”

SECTION 6. Establishment of Zoning Districts

The floodplain areas within the jurisdiction of this chapter are hereby divided into the two (2) following districts:

- A. A floodway overlay district (FW); and
- B. A floodway fringe overlay district (FF) which are identified on the Flood Insurance Study, the FIRM, and other data.

Within these districts all uses not meeting the standards of this Article and those of the underlying zoning district shall be prohibited.

SECTION 7. Standards for the Floodway Overlay District and the Floodway Fringe Overlay District

A. COMPLIANCE REQUIRED. No permit shall be granted for new construction, substantial improvements and other improvements within any numbered or unnumbered A zones, AE, AO, and AH zones unless the conditions of this section are satisfied.

B. UNDESIGNATED AREAS. All areas identified as unnumbered “A” zones on the FIRM are subject to inundation of the one hundred (100) year flood; however, the base flood elevation is not provided. The unnumbered “A” zones shall be subject to all development provisions of this ordinance. If Flood Insurance Study data is not available the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources.

C. DESIGNATION OF FLOODWAY. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

D. STANDARDS. All new construction, subdivision proposals, substantial improvements, prefabricated structures, placement of manufactured homes, and other developments shall be designed or anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, and shall comply with the following:

- 1. New or replacement water supply systems and/or sanitary sewage systems shall be designed to eliminate or minimize infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems shall be

located so as to avoid impairment of them or contamination from them beyond applicable environmental control limits during flooding.

2. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

3. All utility and sanitary facilities shall be flood proofed up to the regulatory flood-protection elevation so that any space below the regulatory flood protection elevation is watertight, with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

4. Any grading changes within the area estimated to be inundated by the one hundred (100) year flood, or alterations, modification or relocations of a watercourse within the jurisdiction of the Division of Water Resources, Kansas Department of Agriculture rules and regulations, as authorized by KSA 24-126, and any subsequent revisions thereof, shall insure that the water carrying capacity is maintained. The plans for such changes, modification, alterations or relocations shall be submitted to and approved by the Division of Water Resources, Kansas Department of Agriculture, concurrent with City approval. In addition, the City shall notify, in reverie situations, adjacent communities prior to the local office of the administrator of the Federal Insurance Administration (FIA).

5. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, are required to assure that (a) all such proposals are consistent with the need to minimize flood damage; (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage; (c) adequate drainage is provided so as to reduce exposure to flood hazards; and (d) proposals for development (including proposals for manufactured home parks and subdivisions) of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the regulatory flood elevation.

E. STORAGE, MATERIAL AND EQUIPMENT. The storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.”

SECTION 8. Floodway Overlay District

Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

A. DISTRICT DEFINED. The Floodway Overlay District is comprised of all land within the regulatory floodway. It may be shown on a Flood Boundary and Floodway Map (FBFM) that is adopted as an official map of the City which shows both special flood hazard areas and the designated regulatory floodway.

B. PERMITTED USES. Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway Overlay District to the extent they are not prohibited by any other ordinance. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. The following are recommended uses for the Floodway Overlay District:

1. Agricultural uses such as general farming, pastures, nurseries, forestry.
2. Residential uses such as lawns, gardens and yard areas.
3. Non-residential uses such as loading areas, parking, and landing strips.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

C. PROHIBITED USES. All inhabitable structures, manufactured (mobile) homes, manufactured (mobile) home parks, manufactured (mobile) home subdivision, manufactured (mobile) home sales and display areas, and recreation vehicle storage or sales areas shall be prohibited.”

SECTION 9. Floodway Fringe Overlay District

A. DISTRICT DEFINED. The Floodway Fringe Overlay District is comprised of all land within any numbered or unnumbered A zones, AE, AO, and AH zones on the current Flood Insurance Rate Map (FIRM) adopted by the City that is not located in the Floodway Overlay District.

B. PERMITTED USES. Any uses allowed in the Floodway Overlay District above as well as uses allowed in the underlying zoning district, in accordance with standards established in this section.

C. PROHIBITED USES. Manufactured (mobile) homes, manufactured (mobile) home parks, manufactured (mobile) home subdivision, manufactured (mobile) home sales and display areas, and recreation vehicle storage or sales areas shall be prohibited. Whenever any manufactured (mobile) home that currently exists within the Floodway Fringe Overlay District is substantially improved it must be elevated so that either:

1. The lowest floor of the manufactured (mobile) home is a minimum of one (1) foot above the base flood level; or

2. The manufactured (mobile) home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

D. STANDARDS FOR THE FLOODWAY FRINGE OVERLAY DISTRICT. The following additional requirements shall apply to development within the floodway fringe overlay district:

1. Residential Construction. New construction or substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above a point of one (1) foot above the one hundred (100) year base flood elevation. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

2. Non-Residential Construction. New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be dry floodproofed to a minimum of one (1) foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.** Such certification shall be provided to the Floodplain Administrator

3. All new construction and substantial improvements that fully enclosed areas below the lowest floor area other than a basement that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. Recreational Vehicles. Recreational vehicles placed on sites within the Floodway Fringe Overlay District must either:

a. Be on the site for fewer than 180 consecutive days, or

- b. Be fully licensed and ready for highway use*; or
- c. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

5. Additional Standards for Areas of Shallow Flooding (AO and AH zones). Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

a. *AO Zones*

i. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).

ii. All new construction and substantial improvements of any commercial, industrial, or other non-residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that level so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

iii. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

b. *AH Zones*

i. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Section 9 of this Article.

ii. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

SECTION 10. Variances and Variance Procedures

The City Board of Zoning Appeals shall hear and decide appeals and requests for variances from the requirements of this Article.

A. Variance Criteria. In passing upon such applications for variances, the City Board of Zoning Appeals shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

B. Conditions For Approving Floodplain Management Variances.

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the

variance increases.

2. Variances may be issued for the reconstruction, repair, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provided the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

3. Variances shall not be issued within any designated floodway if any increase in flood discharge would result.

4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6. The Floodplain Administrator shall notify the applicant in writing that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance."

SECTION 11. Penalties for Violation

Any violation of this Article shall be a violation of the Zoning Ordinance for the City of Clearwater, Kansas and the penalties therefore shall be as established in Article XXIX of the Zoning Ordinance for the City of Clearwater, Kansas.

SECTION 12. Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

"100-year Flood" *see "base flood."*

"Accessory Structure" means the same as *"appurtenant structure."*

"Actuarial Rates" *see "risk premium rates."*

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

"Appurtenant Structure" means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of Special Flood Hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means the computed elevation to which floodwater is anticipated to rise during the base flood.

"Basement" means any area of the structure having its floor subgrade (below ground level) on all sides.

"Building" see *"structure."*

"Chief Engineer" means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

"Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining,

dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Elevated Building" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Eligible Community" or "Participating Community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"Existing Construction" means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"existing construction"* may also be referred to as *"existing structures."*

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"Flood Elevation Determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations.

"Flood Fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

"Flood Hazard Map" means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (*see "flooding"*).

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain Management Regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

"Floodway" or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway Encroachment Lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"Functionally Dependent Use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* **does not include** a *"recreational vehicle."*

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value" or "Fair Market Value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Participating Community" also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Reasonably Safe From Flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy A Violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"Risk Premium Rates" means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

"Special Flood Hazard Area" see *"area of special flood hazard."*

"Special Hazard Area" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

"Start of Construction" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The **actual start** means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the **actual start of construction** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State Coordinating Agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Substantial-Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial-Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *"start of construction"* of the improvement. This term includes structures, which have incurred *"substantial-damage,"* regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *"historic structure,"* provided that the alteration will not preclude the structure's continued designation as a *"historic structure."*

"Variance" means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain riverine areas.

SECTION 13. Repeal

All ordinances or parts of other 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

This Ordinance shall take effect and be in force from and after publication in the official city newspaper.

Passed by the City Council this _____ day of _____, 2016.

Approved by the Mayor this _____ day of _____, 2016.

MAYOR, BURT USSERY

SEAL

ATTEST:

CITY CLERK, COURTNEY MEYER

SEAL OF CHIEF ENGINEER APPROVING DRAFT:

(Published in the _____
on the ____ day of _____, 2016 and
on the ____ day of _____, 2016.)

THE CITY OF CLEARWATER, KANSAS

CHARTER ORDINANCE NO. 11

A CHARTER ORDINANCE EXEMPTING THE CITY OF CLEARWATER, KANSAS FROM CERTAIN TERMS AND PROVISIONS OF K.S.A. 15-201, AND PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECTS RELATING TO THE ELECTION AND THE TENURE OF ELECTED CITY OFFICIALS BY AMENDING SECTION 2 OF CHARTER ORDINANCE NUMBER 3.

WHEREAS, the City of Clearwater, Kansas is a city of the third class; and

WHEREAS, the City of Clearwater, Kansas deems it advisable to exempt itself from the provisions of K.S.A. 15-201 relating to the election and the terms of office of mayor and council members, which are generally applicable to cities of the third class.

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

Section 1. Exemption

The City of Clearwater, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to make inapplicable to it and exempts itself from the provisions of K.S.A. 15-201 relating to the election and the terms of office of mayor and council members.

In exempting itself, the City of Clearwater, Kansas finds that such provisions are applicable to it as a city of the third class with a mayor-council form of government, but not uniformly applicable to all cities. Therefore, the City of Clearwater, Kansas hereby adopts substitute and additional provisions on the same subject as hereinafter provided.

Section 2. Amending Section 2 of Charter Ordinance Number 3

Section 2 of Charter Ordinance Number 3 is hereby amended to read as follows:

“Section 2. Mayor and council member elections – Terms.

On the first Tuesday following the first Monday in November, 2017 and on the first Tuesday following the first Monday in November of every fourth year thereafter, three council members shall be elected for a term of four years. On the first Tuesday following the first Monday in November, 2019 and on the first Tuesday following the first Monday in November of every fourth year thereafter, a mayor and two council members shall be elected for a term of four years. Office shall be held until a successor is elected and qualified.

The existing council member positions with terms expiring in April 2017 shall be extended until the council members elected in the November 2017 general election are elected and qualified. The existing mayor and council member positions with terms expiring in April 2019 shall be extended until the mayor and council members elected in the November 2019 general election are elected and qualified.”

Section 3. The Term “council member”

The term “council member” as used in this Charter Ordinance and the provisions of K.S.A. 15-201 refers also to the terms “councilman” and “councilmen” as used in the sections and provisions of Charter Ordinance Number 3.

Section 4. Other Sections and Provisions of Charter Ordinance

All other sections and provisions of Charter Ordinance Number 3 not in conflict herewith or otherwise amended or repealed shall remain in full force and effect.

Section 5. Effective Date

This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper and shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on this Charter Ordinance as provided in Article 12, Section 5 Subsection (c) (3) of the Constitution of the State of Kansas. If a sufficient petition for a referendum is filed, this Charter Ordinance shall become effective upon approval by a majority of electors voting thereon.

Passed by the City Council by not less than two-thirds of the members-elect voting in favor thereof this ___ day of _____, 2016.

Approved by the Mayor this _____ day of _____, 2016.

MAYOR, BURT USSERY

SEAL

ATTEST

CITY CLERK, COURTNEY MEYER