

## **Council Minutes – March 17, 2015**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 17, 2015. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Brown, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon -9. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Councilmember Schmidt asked for a moment of silent meditation.

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber.

A PRESENTATION on the Topeka Metropolitan Transit Authority (TMTA) Bike Share Program was given by Susan Duffy, Executive Director. She reported the program would begin on April 15, 2015, and TMTA anticipates purchasing up to 100 bicycles over a two-year span.

Karl Fundenburger, TMTA Director of Bicycle Operations stated Topeka is the first city in Kansas to offer a bike share program and one of the first cities of its size to embrace the concept. He reported the bicycles would be equipped with drive shafts instead of chains, as well as, GPS systems.

Councilmember Brown moved to add a resolution granting a noise exception to Jona Rupnicki to the Council agenda. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

Mayor Wolgast announced the resolution would be added to the Council agenda under the consent agenda as item 4C.

Councilmember Brown moved to add a resolution approving a special event known as Moto in NOTO 3<sup>rd</sup> Fridays to the Council agenda. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

Mayor Wolgast announced the resolution would be added to the Council agenda under Action Items as item 5H.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of March 10, 2015, was presented.

Open After Midnight License applications were presented for the following:

<b><u>Business Name</u></b>	<b><u>Address</u></b>
American Legion Post 400	3029 NW US Highway 24
Applebee's	5928 SW 17 <sup>th</sup> Street
Blue Moose	3030 SW Wanamaker Road
Boss Hawg's	2833 SW 29 <sup>th</sup> Street
Breakers Sports Bar & Grill	5217-5235 SW 28 <sup>th</sup> Court
Buffalo Wild Wings	1227 SW Wanamaker Road
Cousins	1211 S Kansas Avenue
Dillons #87	5311 SW 22 <sup>nd</sup> Place
Dillons #88	4015 SW 10 <sup>th</sup> Street
Eclipse Night Club	4117 SW Huntoon Street
El Rey	1000 SE 21 <sup>st</sup> Street
Fraternal Order of Eagles #4319	2941 SE Fremont Street
Hooters	6100 SW 10 <sup>th</sup> Avenue
Hot Pockets	1909 NE Seward Avenue
Hy-Vee #1658	2951 SW Wanamaker Road
Hy-Vee Gas	6011 SW 29 <sup>th</sup> Street
Goose Again	5630 SW 29 <sup>th</sup> Street
Henry T's	1521 SW 21 <sup>st</sup> Street
Jeremiah Bullfrog's	2940 SW Wanamaker Road
Kelly Express	1001 SW Wanamaker Road
Kickstart Saloon	2521 N Kansas Avenue
Kwik Shop #705	1114 NW Topeka Boulevard
Kwik Shop #713	5700 SW 21 <sup>st</sup> Street
Kwik Shop #720	102 SW 37 <sup>th</sup> Street
Kwik Shop #729	1700 SW Topeka Boulevard
Kwik Shop #740	2277 SW 10 <sup>th</sup> Street
Kwik Shop #757	2619 SW 21 <sup>st</sup> Street
Kwik Shop #780	2520 SW 6 <sup>th</sup> Avenue
Kwik Shop #781	4500 SW Topeka Boulevard
Kwik Shop #788	1414 SW 17 <sup>th</sup> Street
Kwik Shop #789	746 NE Wabash Avenue
Last Pocket	5009 SW 29 <sup>th</sup> Street
Lazy Toad	5331 SW 22 <sup>nd</sup> Place
Los Charros	4111 SW Gage Center Drive
Midwest Elks Lodge	1316 SE Madison Street

<b><u>Business Name</u></b>	<b><u>Address</u></b>
Old Chicago	1231 SW Wanamaker Road
Panchos 2	3506 SW Topeka Boulevard
Quinton's Bar & Deli	4121 SW Huntoon Street
Riegel's 20's West	901 SW Fairlawn Street, Suite 101
Skinny's	4016 SW Huntoon Street
Speck's Bar & Grill	2105 SW Mission Road
Spot Tavern	2202 SW Buchanan Street
Starlite Skate	301 SE 45 <sup>th</sup> Street
Steak 'N Shake	1415 SW Wanamaker Road
Stevie-Rae's	555 SW 39 <sup>th</sup> Street
Taco Bell	101 SE 29 <sup>th</sup> Street
Taco Bell	1560 SW Wanamaker Road
Taco Bell	2013 N Topeka Boulevard
Tailgators Sports Pub & Grub	2025 SW Urish Road, Suite 108
Theatre Club of Topeka	3028 SW 8 <sup>th</sup> Avenue
Terry's Bar & Grill	522 SW 6 <sup>th</sup> Street
Topeka Hookah House	1507 SW 21 <sup>st</sup> Street, #201
Topeka Country Club	2700 SW Buchanan Street
Walgreens #02846	2915 SW Gage Boulevard
Walgreens #03069	1001 SW Topeka Boulevard
West Ridge Lanes	1935 SW Westport Drive
Whiplash Bar & Grill	2107 SE California Avenue

RESOLUTION NO. 8672 introduced by Councilmember TJ Brown, granting Jona Rupnicki an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Brown moved to approve the consent agenda. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager Jim Colson, concerning fees and procedures for record requests, amending City of Topeka Code Sections 2.20.090, 2.20.110, 2.20.120 and 10.10.050 and specifically repealing said original sections was presented.

(Deferred from the meeting of February 17, 2015.)

Jim Colson, City Manager, reported approval would increase fees for accident reports from the Police Department and allow fees pursuant to the Kansas Open Records Act to be set

administratively. He noted Councilmember Hiller has some additional questions and has requested the ordinance be referred to committee. He noted staff has no issues with the request.

Councilmember Hiller stated staff has provided feedback on her previous questions; however, she now has additional questions and would like to refer the ordinance to committee for further review.

Councilmember Hiller moved to refer the ordinance to the Policy and Finance Committee for further review. The motion was seconded by Councilmember Brown.

Councilmember Manspeaker requested to schedule the Policy and Finance Committee meeting after April 7, 2015, after the new councilmembers have been elected.

Councilmember Ortiz spoke in support of referring the ordinance to committee because she would like clarification on how the Police Department handles requests.

The motion to refer the ordinance to the Policy and Finance Committee for further review carried unanimously. (9-0-0)

RESOLUTION NO. 8673 introduced by City Manager Jim Colson, authorizing and adopting the 2016-2020 Capital Improvement Plan and the 2016-2018 Capital Improvement Budget and approving the project budgets attached was presented.

Jim Colson, City Manager, reported extensive detail was provided by staff on the plan and budget at the March 10, 2015, Council meeting. He stated approval would adopt the five year Capital Improvement Plan (CIP) and three year Capital Improvement Budget (CIB), as well as, the project budgets that comprise the CIB.

Councilmember Schwartz asked how the unfunded project list was developed.

Doug Whitacre, Public Works Director, reported the projects identified on the “Unfunded Project List” are potential projects in the next 5 to 10 years, but are not included in the CIP due

to funding constraints. He stated the projects are listed in order of priority for the purpose of providing a mechanism for staff to track projects from year to year.

Mayor Wolgast requested staff revise the process to incorporate project information for the previous two years to allow them to track projects, list all new projects and monitor project budgets. He suggested these policy issues be addressed in the beginning of the CIP/CIB process.

Mike Calwell spoke in support of the Kansas River Weir improvements because it will save lives and improve quality of life.

David Green spoke in support of the Kansas River Weir improvement because it will improve public safety and avoid further loss of life in this area of the river.

Susan Duffy spoke in support of increasing funds for infill sidewalk projects because sidewalks are important to all aspects of the community. She noted the Topeka Metropolitan Transit Authority needs pedestrian access to their 37 new bus shelters.

Joseph Ledbetter spoke in support of widening SE California Avenue between SE 29<sup>th</sup> Street and SE 45<sup>th</sup> Streets to five lanes and stated he has received positive feedback from staff on the issue. He distributed a handout regarding the opportunity to develop commercial and residential properties in the area which includes upgraded water and sewer infrastructure. He spoke in support of increasing funds for infill sidewalks because it improves accessibility in neighborhoods.

Councilmember Hiller spoke in support of the CIP and commended staff for presenting a comprehensive document. She requested to implement the following items for the next CIP:

- 1) Consider other funding sources for infill sidewalks and City Hall renovations
- 2) Bikeways Advisory Committee approves of staggered funding and they are hopeful it will last a full 15 years
- 3) No less than one street project completed per year
- 4) Include “sunset language” in the resolution so that projects are actually cancelled if removed from the CIP because the current language is open-ended

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Schwartz carried. Councilmember Manspeaker voted “no.” (8-1-0)

RESOLUTION NO. 8674 introduced by City Manager Jim Colson, declaring the necessity to repair, alter, reconstruct, enlarge or improve the City’s water, water pollution, and/or stormwater utility system through improvement projects authorized by Resolution and providing Notice of Intention authorizing the issuance of revenue bonds in the manner required by K.S.A. 10-1201, et seq., was presented.

Doug Gerber, Administrative and Financial Services Director, reported approval would authorize the issuance of revenue bonds for the water, water pollution and storm water projects identified in the CIB. He stated the revenue bonds would be sold in August 2015 and Council would formally approve the bonds at that time. He noted this process allows some flexibility to fund the CIP projects.

Councilmember Everhart moved to approve the resolution. The motion seconded by Councilmember Schmidt carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

ORDINANCE NO. 19945 introduced by City Manager Jim Colson, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC), by providing for certain changes in zoning on property at 2600 NW Topeka Boulevard from “C-4” Commercial District TO “I-1” Light Industrial District was presented. (Z15/2)

Jim Colson, City Manager, reported approval would allow the vacant 45,000 square foot warehouse to be sold for light industrial uses.

Bill Fiander, Planning Department Director, stated the property needs to be rezoned light industrial for marketing purposes to make it consistent with the surrounding area and Land Use

and Growth Management Plan 2040. He reported the Topeka Planning Commission and Planning Department recommends adoption of the ordinance.

Councilmember Brown moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Brown, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt, Harmon and Mayor Wolgast -10.

A PETITION, A PROJECT BUDGET in the amount of \$912,389 and RESOLUTION NO. 8675 introduced by City Manager Jim Colson, authorizing Improvement Project T-601048.00 which provides for street improvements in Miller’s Reserve Subdivision as more specifically described herein was presented.

Doug Whitacre, Public Works Director, reported approval would authorize construction of streets in Miller’s Reserve Subdivision located southwest of SW 21<sup>st</sup> Street and SW Indian Hills Road. He stated the applicant would add an additional 23 lots to the subdivision. He noted the funding would be paid 100% by the Improvement District through special assessments over a 20 year period; and the applicant would pay for the installation of City sewer services.

Councilmember Manspeaker questioned the associated risk with allowing a private builder to install a sewer system and ensuring City standards are being met. He expressed concern with the streets generating long-term maintenance costs for the City, continuing to expand outside city limits and increasing the City’s overall cost of services.

Doug Whitacre stated the sewer system would be inspected and must meet all City Code requirements.

Councilmember Hiller stated she concurs with Councilmember Manspeaker. She asked if the northern portion of the subdivision has developed as expected because the City seems to have a reasonable partnership with the developer.

Bill Fiander, Planning Department Director, reported the Miller's Glen Subdivision streets are maintained by the developer and the area has been annexed into the city. He stated the Topeka Planning Commission and Planning Department recommend approval because all services are in place and the development would be considered compact growth.

Councilmember Schmidt moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Schwartz carried. Mayor Wolgast voted "yes." Councilmember Manspeaker voted "no." (9-1-0)

APPROVAL of proposed Kansas Department of Health and Environment Consent Order addressing reduction of combined sewer overflows (CSOs) was presented. (Contract No. 44259)

Jim Colson, City Manager, stated CSOs are a serious issue throughout the country and the City has been working on a specific resolution with the Kansas Department of Health and Environment (KDHE).

Doug Gerber, Administrative and Financial Services Director, reported the City and KDHE worked towards an agreement that satisfies the needs of both entities and provided for a good partnership. He stated they would know where the City stands when the Eastside Interceptor review has been completed.

Councilmember Hiller moved to approve the consent order. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

No Cereal Malt Beverage or Scrap Metal Dealers License applications were presented.

RESOLUTION NO. 8676 introduced by Councilmember TJ Brown, approving a special event known as Moto in NOTO 3<sup>rd</sup> Fridays was presented.

Councilmember Brown moved to approve the resolution. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

DISCUSSION regarding the Project Partnership Agreement between the City of Topeka and the United States Army Corps of Engineers was presented.

Doug Gerber, Administrative and Financial Services Director, provided a brief background on Topeka’s Levee system dating back to 1908 and an example of the Topeka Levee map displaying potential places the City would like to mediate the levee system. He gave an overview of the study areas that include the Waterworks Unit, Auburndale Unit, South Topeka Unit, Oakland Unit, North Topeka Unit and Soldier Creek Diversion Unit which is not owned or maintained by the City and not part of the project; however, a crucial piece of the levee system. He provided an example of a diagram of what would happen during a flood event. He reported the project would address some of the issues at each level, provide reliable flood risk reduction and bring the existing levee system back to authorized level of flood risk management. He stated the Project Partnership Agreement is a legally binding agreement for the cost-sharing and execution of work between the City and the U.S. Army Corps of Engineers. He reported the total project cost is estimated at \$29,500,000 and includes reconstruction of specific assets associated with four of the five Kansas River Levee units funded through Utility Operating funds/Cash, Revenue bonds and/or Temporary Notes.

Councilmember Ortiz commended Mr. Gerber for the thorough presentation and asked how the levee was inspected.

Doug Gerber stated the U.S. Army Corps of Engineers conducts periodic inspections of the levee approximately every five years. He stated the levee units had a detailed analysis which helped determine the issues that need addressed.

Councilmember Schmidt asked where improvements would begin in 2015.

Michelle Neiswender, Water Pollution Control Project Engineer, reported the Oakland Unit would be the first unit to be improved.

Councilmember Hiller commended staff for working in collaboration with KDHE and planning ahead for levee improvements. She stated the projects are a critical piece in getting other improvements completed in the city in regards to riverfront and downtown development. She asked who is responsible for maintaining the Soldier Creek Diversion Unit.

Michelle Neiswender stated the North Topeka Drainage District would be responsible for the Soldier Creek Diversion Unit.

Mayor Wolgast reported the City started planning for these improvements many years ago by setting aside funding for the projects which has put Topeka in good standing with the U.S. Army Corps of Engineers.

Councilmember Brown asked how the levees are rated.

Michelle Neiswender stated the Topeka Levee System has currently been rated “acceptable”.

Jim Colson stated City staff would proceed with the agreement and it would be placed on next week’s Council agenda for consideration.

DISCUSSION for the purpose of providing an update on the status of the Heartland Park Redevelopment District was presented.

Jim Colson, City Manager, stated he would like to address the matter and clarify the City is not proceeding just to complete the process. He acknowledged the communication aspect of the process has been lacking; and they would try to prevent this from happening as the process moves forward. He reported Chad Sublet, City Attorney, would provide a legal update and he would follow up with discussion of the procedure in moving forward with the matter.

Chad Sublet gave a brief overview of the process regarding Heartland Park Topeka and the petition submitted by Mr. Chris Imming. He reported the Third Judicial District Court of Shawnee County ruled the City could move forward because the petition was invalid and there could not be a legally binding vote based on the petition. He stated the ruling by the District Court was forwarded to the Kansas Court of Appeals which also ruled in favor of the City; therefore, there was nothing in place that would prevent the City from moving forward at this time. He stated the court audit reviewed eight different items working in conjunction with City leadership and the post audit revealed all eight areas of the proposed project were legally appropriate and met all requirements. He also reported the National Hot Rod Association (NHRA) has verbally agreed they would do away with unnecessary requirements and have an agreement that would not be punitive to someone who was willing to run the facility.

Councilmember Harmon questioned the petition timeline in regards to filing in the Kansas Supreme Court.

Chad Sublet stated there would be a 30 day timeline from when the order was issued.

Councilmember Ortiz expressed concern with upcoming events at Heartland Park and who would be responsible for the expenses. She questioned if the City has informed interested parties of the excessive cost of repairs to make the Race Track operational.

Chad Sublet stated the City has been very clear with everyone involved and informed all parties that there would be a minimum match of at least \$5 million.

Jim Colson stated there are specific Kansas State Statutes governing the issue. He noted the request for proposal would not be just for the operation of the track but for the development of the entire 700 acres. He commented on the legalities of the issue and stated the agreement would protect the legal interest of the City and ultimately leave the investment decisions up to the investor.

Mayor Wolgast questioned some of the park improvements and asked who drafted the repair list.

Councilmember Brown asked if it would be the City's intent to include a specific timeline for the plan in the agreement.

Jim Colson stated it would be their intent to fulfill the statutory requirement and enter into an agreement that would be beneficial to everyone involved. He clarified that negotiations have not yet began on a contract.

Councilmember Schwartz asked how much in legal fees the City has spent thus far; and if the amount of legal fees could have funded a special vote. She expressed concern with moving forward in the process and being cautious because many of her constituents question if Heartland Park would prosper.

Chad Sublet stated legal fees approximately total \$150,000 to date. He clarified there could not be a legally binding vote because the petition was ruled invalid.

Jim Colson stated people have a right to change their positions as the project moves forward; however, from the beginning the City has tried to clarify the issue so the Governing Body could make the most informed decisions through open communication. He stated it was

important for the City to stay focused on the issue because they are legally bound to do so. He stated City staff would schedule public meetings for additional discussion and direction, as well as, outline a plan for marketing and selling of the bonds.

Councilmember Ortiz stated she would prefer to wait for the ruling on the appeal by the Kansas Supreme Court.

Chad Sublet stated he foresees nothing that would hinder the City from moving forward and the Governing Body will be notified when new information was obtained from the courts.

Councilmember Hiller questioned the City's involvement in the issue because the Memorandum of Understanding between the City, Visit Topeka, Inc., Jayhawk Racing Properties, L.L.C., and Kansas Department of Commerce expired on February 1, 2015.

Jim Colson reported Raymond Irwin and Jayhawk Racing are the current owners of Heartland Park and commented on the NHRA races happening in 2015 with no negative financial impact to the City. He stated it was vital to educate new Councilmembers and conduct many public informational meetings and discuss the direction moving forward.

Councilmember Schmidt referenced the revisionary clause in the current agreement and stated the City already owns Heartland Park; however, he believes the City has not made this clear to the community.

Councilmember Hiller commented on the importance of scheduling public hearings because she believes it was the expectation of constituents to provide their input on the issue.

Chad Sublet stated town hall meetings would be scheduled.

Jim Colson stated it was the City's objective to provide public engagement for those who want a public vote outside the confines of the Memorandum of Understanding.

Councilmember De La Isla stated she understands this was a difficult topic and they could have done a better job communicating to the public; however, the City was trying to mitigate the loses. She suggested removing the revisionary clause to move forward. She commented on the petition signed by 4,000 people and the need to ensure public forums are used in a proper manner to communicate effectively as a Governing Body.

Councilmember Ortiz asked who would be responsible for operating the park during the NHRA races in May 2015; where does the City go from this point forward; and if the water bill for Heartland Park has been paid.

Jim Colson stated it was anticipated that Jayhawk Racing would operate the track; however, there would be more discussions in the upcoming week.

Chad Sublet stated it could be Jayhawk Racing, CoreFirst Bank & Trust or the City; however, all entities have agreed to ensure the track would be open for the NHRA races in May 2015.

Doug Gerber reported the Heartland Park water bill was outstanding.

Councilmember Brown encouraged the public to educate themselves with the information available on the City's website at [www.topeka.org](http://www.topeka.org).

Councilmember Everhart stated Heartland Park has been a difficult issue and encouraged the public to attend the public meetings to keep informed on the issue. She questioned citizens on how the City could come up with \$10 million because the City was looking for the best solution without losing revenue.

Councilmember Hiller stated she concurs with Councilmember Everhart and asked citizens to come forward if they have a better solution to the issue.

ANNOUNCEMENTS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL;

Jim Colson, City Manager, acknowledged City employee Lindy Brewer for being awarded the 2015 Legal Professional of the Year by the Topeka Legal Professionals.

The members of the Council thanked Councilmembers Everhart and Manspeaker for serving on the City Council and commended them for their hard work and dedication to the community, helping make communities stronger and moving the Council forward in a positive manner.

Mayor Wolgast thanked City staff for their assistance during the last few weeks. He commended Councilmembers Everhart and Manspeaker for serving on the City Council and expressed his appreciation for their efforts in making Topeka a better place to live.

Councilmember Hiller announced the Metropolitan Topeka Planning Organization would hold a Pedestrian Master Plan Workshop on March 24, 2015, from 6:00 p.m. to 8:00 p.m. at the Cyrus K. Holliday building located at 620 SE Madison and noted citizens could call the Topeka Planning Department at 368-3728 for more information. She encouraged citizens to vote in the General Election on April 7, 2015.

Councilmember Brown stated it has been an honor and pleasure to serve the citizens of Council District No. 2.

Councilmember Ortiz commended the Topeka Metropolitan Transportation Authority for implementing the BikeShare Program.

Councilmember De La Isla encouraged citizens to vote in the General Election on April 7, 2015.

Councilmember Manspeaker thanked the people who elected him to office and stated he tried to deliver change in government while serving on the City Council. He also thanked his family for their great support over the past four years. He expressed concern with the continued lack of initiative to rebuild inside city limits, the continued need for treatment and services for mental illness in the community, and the continued lack of accountability in economic development in Topeka and Shawnee County. He encouraged citizens to vote in the General Election on April 7, 2015.

Councilmember Schwartz commended City staff for working with the U.S. Army Corps of Engineers on the Kansas River weir improvements. She stated the improvements will have a positive impact on riverfront development, as well as, many other areas.

Joseph Ledbetter appeared to speak under public comment.

Councilmember De La Isla moved to recess into executive session for a time period not to exceed 30 minutes to discuss labor negotiations and to include the Governing Body, City Manager, Deputy City Attorney and staff, Human Resources Director, Administrative and Financial Services Director and Budget Manager. The motion seconded by Councilmember Schwartz carried unanimously. (9-0-0)

Councilmember Manspeaker left the room.

At 8:32 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Everhart moved to recess into executive session for a time period not to exceed 30 minutes to discuss non-elected personnel and to include the Governing Body, City Manager and Deputy City Attorney. The motion seconded by Councilmember De La Isla carried unanimously. (8-0-0)

Councilmember Schwartz left the room during the executive session.

At 9:07 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Everhart moved to recess into executive session for a time period not to exceed five minutes to continue discussion of non-elected personnel and to include the Governing Body, City Manager and Deputy City Attorney. The motion seconded by Councilmember Schmidt carried unanimously. (7-0-0)

At 9:12 p.m., the Council reconvened into open session and Mayor Wolgast announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:12 p.m.

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Brenda Younger  
City Clerk