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101 S. Hickory
PO Box 60
Ottawa, KS 66067-0060
 Phone: 785-229-3600
 Fax: 785-229-3639
www.ottawaks.gov
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TO: Mayor and City Commissioners
RE: **Study Session Agenda**
FROM: Richard U. Nienstedt, City Manager

A Study Session is scheduled for **August 13, 2012 at 4:00 pm** in the Commission Chambers on the first floor of City Hall, 101 S. Hickory. The following items will be presented:

I. Public Comments

II. Items to be Placed on the Regular City Commission Agenda

- a. Minutes from the July 16, July 23, and July 30, 2012 Study Sessions; and the July 18 Regular Meeting.
- b. An ordinance vacating the alley right-of-way on 12th Street between the 100 blocks of North Cedar Street and North Oak Street.
- c. An ordinance adopting the revisions to the Standard Traffic Ordinances for 2012.
- d. An ordinance restricting parking on the west side of South Cedar Street both north and south of the intersection with 10th Street

III. Items for Presentation and Discussion

- a. City Manager's Report
 Planning Commission resignation
- b. Commissioners' Reports
- c. Mayor's Report

IV. Announcements

- | | |
|--------------------|--|
| August 15, 2012 | NEXT REGULAR MEETING, 9:30 am |
| August 15, 2012 | "Imagination Playground in a Box" Dedication, 10:00 am, Don Woodward Community Center, 517 E. Third Street |
| August 20, 2012 | Study Session, 4:00 pm |
| August 22, 2012 | Strategic Planning Retreat, 5:00 pm |
| August 27, 2012 | Study Session, 4:00 pm |
| August 27, 2012 | Ottawa University Fusion, 6:00 - 8:00 pm, Franklin County Courthouse lawn |
| September 3, 2012 | Labor Day holiday – City offices closed |
| September 3, 2012 | Labor Day holiday – Study Session canceled |
| September 5, 2012 | Regular Meeting, 7:00 pm |
| September 10, 2012 | Study Session, 4:00 pm |
| September 10, 2012 | ORC Facilities Tour, 5:30 pm |
| September 17, 2012 | Study Session, 4:00 pm |
| September 19, 2012 | Regular Meeting, 9:30 am |
| September 19, 2012 | Joint City/County/USD 290 Luncheon, City Commission Chambers, City Hall, 101 S. Hickory, 12:00 Noon |
| September 24, 2012 | Study Session, 4:00 pm |

V. Adjourn

2012 Priorities

Streets & Sidewalk Improvements • Economic Development • Parks • Business Development • Citizen Relations

**STUDY SESSION MINUTES
OTTAWA, KANSAS
Minutes of
July 16, 2012**

The Governing Body met at 4 pm this date with the following members present and participating to wit: Mayor Jorgensen, Commissioner Caylor, Commissioner Reed, Commissioner Ramsey, and Commissioner Richards. A quorum was present.

Mayor Jorgensen called the meeting to order.

Public Comments

None offered at this time.

Review of Minutes

The Governing Body reviewed minutes from the June 25 and July 2, 2012 Study Sessions and agreed to place these items on the next Regular Meeting Agenda on July 18, 2012.

Resolution-Allegiance Communications, Inc Franchise

The Governing Body reviewed a resolution amending the Cable Communications Franchise with Allegiance Communications, Inc.

The Governing Body heard from City Manager Richard Nienstedt and City Attorney Bob Bezek who provided an overview of the Cable Communications Franchise and answered questions from the Governing Body. The Governing Body agreed to place this item on the next Regular Meeting Agenda.

Sublease-Don Woodward Center

The Governing Body reviewed a request to consider a proposed sublease with East Central Kansas Economic Opportunity Corporation (ECKAN) at the Don Woodward Center.

The Governing Body heard from Ottawa Recreation Commission (ORC) representative Blaine Finch who provided an overview of the proposed sublease with ECKAN and a similar existing sublease with Big Brothers Big Sisters at the Don Woodward Center and explained the City's lease with ORC requires approval from the Governing Body. The Governing Body agreed to place this item on the next Regular Meeting Agenda.

Proposed 2013 Budget-Request to Publish

The Governing Body reviewed a request to publish the proposed 2013 Budget and to call a public hearing for the purpose of hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of ad valorem tax on August 1, 2012 at 7 pm.

The Governing Body heard from Director of Finance Scott Bird who provided an overview of the proposed 2013 Budget and answered questions from the Governing Body.

July 16, 2012

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After discussion, the Governing Body requested a change related to capital spending for buildings with a suggestion that half of the amount proposed for the Municipal Auditorium be moved to the General Fund. The Governing Body agreed to publish the proposed 2013 Budget with the change and to place the Public Hearing on the Regular Meeting Agenda on August 1, 2012 at 7 pm.

Request-Traveling Petting Zoo

The Governing Body reviewed a request to bring a traveling petting zoo to City Park.

The Governing Body heard from BJ and Melissa Harlan of Faith Farm Corporation who explained the request to have a traveling petting zoo at City Park on Sunday, July 22, 2012 and their plans for clean up. The Governing Body agreed by consensus to approve the request.

2013 Budget Discussion

The Governing Body discussed the following 2013 proposed budgets:
Franklin County Development Council 1100-572
Municipal Court
Library

Commissioners' Reports

Commissioner Caylor reported on the following:

- Play Day was great.

Commissioner Richards reported on the following:

- He requested an update on the airport runway. Director of Public Works Andy Haney reported the target completion date is July 27, 2012.

Commissioner Ramsey reported on the following:

- He requested an update on 124 S Main. Director of Planning/Codes/Inspections Wynndee Lee explained there is ongoing discussion with the contractors and the wall treatment issue is being addressed.

Mayor's Report

Mayor Jorgenson reported on the following:

- The water has a chlorine taste. Director of Utilities Jim Bradley explained the chlorine taste is due to the flushing process.

Commissioner Caylor thanked Parks Superintendent Doug Reinert for all he has done and explained he will begin to assemble the rock climbing wall in Forest Park.

City Manager Richard Nienstedt reported 11 new benches were ordered for downtown. Director of Public Works Andy Haney reported the benches should be here by Labor Day.

July 16, 2012

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Adjournment

There being no further business to come before the Governing Body, Commissioner Richards made a motion, seconded by Commissioner Caylor, to adjourn the meeting. The motion was considered and upon being put, all present voted aye. Mayor Jorgensen declared the meeting duly adjourned.

Carolyn S. Snethen, City Clerk

**CITY COMMISSION
Regular Meeting Minutes
Commission Chambers
101 S. Hickory, Ottawa, Kansas
Minutes of July 18, 2012**

The City Governing Body met at 9:30 am this date for the Regular City Commission Meeting with the following members present and participating to wit: Mayor Jorgensen, Commissioner Richards, Commissioner Caylor, Commissioner Ramsey, and Commissioner Reed. A quorum was present.

The Mayor called the meeting to order and welcomed the Chamber Audience and led the Pledge of Allegiance to the American flag and the invocation was given by Director of Finance Scott Bird.

Consent Agenda

Commissioner Richards made a motion, seconded by Commissioner Ramsey, to approve the consent agenda. The consent agenda included the agenda, minutes from the June 25 and July 2, 2012 Study Sessions. The motion was considered and upon being put, all present voted aye. The Mayor declared the Consent Agenda duly approved.

Public Comments

None offered at this time.

Declaration

The Mayor asked the City Commission for declarations of any conflict or outside communications that might influence their ability to impartially consider today's issues and come to a fair decision. None were declared.

Dave Sellens Retirement

The Governing Body heard from Fire Chief Jeff Carner who honored Dave Sellens for his contributions to the City. Mayor Jorgensen presented Mr. Sellens with a plaque to recognize his retirement after 34 years of service to the City of Ottawa. Mr. Sellens thanked the City and summarized his career with the City.

Resolution- Allegiance Communications, Inc Franchise

The Governing Body reviewed a resolution amending the Cable Communications Franchise with Allegiance Communications, Inc. Commissioner Ramsey made a motion, seconded by Commissioner Reed, to adopt the resolution.

During discussion it was explained this resolution amends the existing and continuing franchise agreement with Allegiance Communications, Inc. The Governing Body heard from City Attorney Bob Bezek who provided an overview of the amended franchise agreement. The motion was considered and upon being put, all present voted aye. The Mayor declared the resolution duly adopted and the resolution was duly numbered Resolution No. 1588-12.

July 18, 2012

Unofficial Until Approved

Sublease-Don Woodward Center with Big Brothers Big Sisters

The Governing Body reviewed a request to approve a sublease at the Don Woodward Community Center between the Ottawa Recreation Commission (ORC) and Big Brothers Big Sisters of Franklin and Anderson Counties. Commissioner Reed made a motion, seconded by Commissioner Caylor, to approve the request.

During discussion it was explained the Don Woodward Center is owned by the City and space is leased to the ORC. As required by the terms of the City's lease, a request has been made to approve a sublease at the Don Woodward Center between the ORC and Big Brothers Big Sisters of Franklin and Anderson Counties.

The Governing Body heard from City Attorney Bob Bezek who reviewed the details of the sublease process with the ORC. The motion was considered and upon being put, all present voted aye. The Mayor declared the request duly approved.

Sublease-Don Woodward Center with East Central Kansas Economic Opportunity Corp

The Governing Body reviewed a request to approve a sublease at the Don Woodward Community Center between the Ottawa Recreation Commission (ORC) and East Central Kansas Economic Opportunity Corporation (ECKAN). Commissioner Caylor made a motion, seconded by Commissioner Ramsey, to approve the request.

During discussion it was explained the Don Woodward Center is owned by the City and space is leased to the ORC. As required by the terms of the City's lease, a request has been made to approve a sublease at the Don Woodward Center between the ORC and East Central Kansas Economic Opportunity Corporation (ECKAN). The motion was considered and upon being put, all present voted aye. The Mayor declared the request duly approved.

Capital Improvement Plan for 2012-2017

The Governing Body reviewed a request to approve the Capital Improvement Plan for 2012-2017. Commissioner Ramsey made a motion, seconded by Commissioner Richards, to approve the request.

During discussion it was explained the Planning Commission recommended approval of the Capital Improvement Plan with a 6-0 vote. The motion was considered and upon being put, all present voted aye. The Mayor declared the request duly approved.

Contract-Tyler Technologies

The Governing Body reviewed a request to approve a contract with Tyler Technologies for a financial/accounting software system. Commissioner Caylor made a motion, seconded by Commissioner Reed, to approve the contract.

During discussion it was explained City staff requests approval of a contract with Tyler Technologies for an upgrade to the City's financial/accounting system.

The Governing Body heard from Director of Finance Scott Bird who reviewed details of the selection process and contract and answered questions from the Governing Body. The motion was considered and upon being put, all present voted aye. The Mayor declared the contract duly approved.

Reappointment-KMEA Board of Directors

The Governing Body reviewed a request to authorize the reappointment of Jim Bradley to the Kansas Municipal Energy Agency (KMEA) Board of Directors. Commissioner Reed made a motion, seconded by Commissioner Richards, to approve the request.

During discussion it was explained in accordance with their bylaws, the KMEA calls for the appointment of the Board of Directors every two years. The motion was considered and upon being put, all present voted aye. The Mayor declared the request duly approved.

City Manager's Report

The City Manager reported on the following:

- July 18, 2012: Senator Moran's aide will be at Neosho County Community College at 10 am
- July 18, 2012: Joint City/County/USD 290 Luncheon at USD 290 1404 S Ash at Noon

Commissioners' Reports

Commissioner Richards reported on the following:

- He recognized his daughter for her attendance and good behavior during the meeting.

Commissioner Reed reported on the following:

- She reminded citizens to be careful in the heat and reported on 3 heat-related deaths in Kansas.

Commissioner Caylor reported on the following:

- She thanked everyone who participated in Play Day and encouraged them to take part next year.
- She encouraged everyone to participate in National Night Out on July 31, 2012 and reminded citizens to contact the Police Department to come visit with them about safety in the community.

Mayor's Report

The Mayor reported on the following:

- He reminded citizens to stay hydrated and keep cool and reported on 3 deaths and 20 injuries related to the heat.

Announcements

The Mayor announced the following:

- July 18, 2012: Joint City/County/USD 290 Luncheon at USD 260 1404 S Ash at Noon
- July 23, 2012: Study Session at 4 pm
- July 31, 2012: National Night Out at City Park & neighborhoods throughout Ottawa at 6 pm

Adjournment

There being no further business to come before the Governing Body, Commissioner Caylor made a motion, seconded by Commissioner Reed, to adjourn the meeting. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly adjourned at 9:57 am.

Carolyn S. Snethen, City Clerk

**STUDY SESSION MINUTES
OTTAWA, KANSAS
Minutes of
July 23, 2012**

The Governing Body met at 4 pm this date with the following members present and participating to wit: Mayor Jorgensen, Commissioner Caylor, Commissioner Reed, Commissioner Ramsey, and Commissioner Richards. A quorum was present.

Mayor Jorgensen called the meeting to order.

Public Comments

None offered at this time.

Review of Minutes

The Governing Body reviewed minutes from the July 2, 2012 Special Call Meeting and agreed to place this item on the next Regular Meeting Agenda on August 1, 2012.

Monthly Financial and Activity Report-June

The Governing Body reviewed the Monthly Financial and Activity Reports for the month of June.

City Manager's Report

City Manager Richard Nienstedt reported on the following:

- Municipal Airport opened on Saturday, July 21, 2012.
- He provided an update on the 124 S Main demolition.

Commissioners' Reports

Commissioner Ramsey reported on the following:

- He is holding a National Night Out neighborhood party with Commissioner Reed on July 31.

Commissioner Richards reported on the following:

- He reported on the Main Street Association meeting he recently attended.

Commissioner Reed reported on the following:

- She recently attended the Ottawa Recreation Commission meeting.

Open Agenda

The Governing Body discussed a request for a discount on water from Great Life Golf Course and recent fire hydrant flushing.

Adjournment

There being no further business to come before the Governing Body Commissioner Richards made a motion, seconded by Commissioner Caylor, to adjourn the meeting. The Mayor declared the meeting duly adjourned.

Carolyn S. Snethen, City Clerk
July 23, 2012

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**STUDY SESSION MINUTES
OTTAWA, KANSAS
Minutes of
July 30, 2012**

The Governing Body met at 4 pm this date with the following members present and participating to wit: Mayor Jorgensen, Commissioner Caylor, Commissioner Reed, and Commissioner Ramsey. Commissioner Richards was absent. A quorum was present.

Mayor Jorgensen called the meeting to order.

Public Comments

The Governing Body heard from Silent Siren representative Gina Hill who invited the Governing Body to attend a BBQ event and Family Fun Day on Saturday, August 4, 2012 at 3 pm at Ottawa University to raise funds for military veterans with Post Traumatic Stress Disorder.

Review of Minutes

The Governing Body reviewed minutes from the July 9, 2012 Study Session and the July 11, 2012 Special Call Meeting and agreed to place these items on the next Regular Meeting Agenda on August 1, 2012.

Donation-Ottawa Optimists

The Governing Body reviewed a request from Ottawa Optimists to make a donation in support of City parks improvement and agreed to place this item on the next Regular Meeting Agenda.

FAA Grant-Ottawa Municipal Airport

The Governing Body reviewed a request to authorize City staff and the City Attorney to proceed with necessary actions to comply with the FAA grant requirements and execute the FAA grant offer for the acquisition of additional land for the Ottawa Municipal Airport.

The Governing Body heard from Director of Public Works Andy Haney and Board Chair of the Airport Advisory Committee Chad Caylor who provided an overview of the grant and answered questions from the Governing Body. City Manager Richard Nienstedt announced the ribbon cutting will be September 7, 2012 at the Ottawa Municipal Airport. The Governing Body agreed to place this item on the next Regular Meeting Agenda.

2013 Budget-Approval of State Forms

The Governing Body reviewed a request to approve the 2013 State Budget Forms.

The Governing Body heard from Director of Finance Scott Bird who provided a presentation of the 2013 Budget. The Governing Body agreed to place this item on the next Regular Meeting Agenda.

July 30, 2012

Unofficial Until Approved

Ordinance-Increase in Tax Revenues for Budget Year 2013

The Governing Body reviewed an ordinance attesting to an increase in tax revenues for Budget Year 2013. While the mill levy for the 2013 budget is projected to see a slight decrease, the overall dollars have increased due to the increase to assessed value making the ordinance required. The Governing Body agreed to place this item on the next Regular Meeting Agenda.

Commissioners' Reports

Commissioner Caylor reported on the following:

- Community conversations have unveiled a key interest in community involvement with school age children and she will bring more information back for discussion.

Mayor's Report

Mayor Jorgensen explained an executive session is needed.

Executive Session

Recess

Commissioner Ramsey made a motion, seconded by Commissioner Caylor, to recess into executive session to discuss attorney-client privilege with City Manager Richard Nienstedt and City Attorney Bob Bezek present for a period of 15 minutes and to reconvene into open session at 4:50 pm. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly recessed.

Reconvene

Commissioner Reed made a motion, seconded by Commissioner Ramsey, to reconvene into open session. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly reconvened at 4:50 pm.

Recess

Commissioner Ramsey made a motion, seconded by Commissioner Caylor, to recess into executive session to discuss attorney-client privilege with the City Manager and City Attorney present for a period of 10 minutes and to reconvene into open session at 5 pm. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly recessed.

Reconvene

Commissioner Caylor made a motion, seconded by Commissioner Ramsey, to reconvene into open session. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly reconvened at 5 pm.

Recess

Commissioner Reed made a motion, seconded by Commissioner Ramsey, to recess into executive session to discuss attorney-client privilege with the City Manager and City Attorney present for a period of 10 minutes and to reconvene into open session at 5:10 pm. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly recessed.

Reconvene

Commissioner Ramsey made a motion, seconded by Commissioner Reed, to reconvene into open session. The motion was considered and upon being put, all present voted aye. The Mayor declared the meeting duly reconvened at 5:10 pm.

Adjournment

There being no further business to come before the Governing Body, Commissioner Caylor made a motion, seconded by Commissioner Reed, to adjourn the meeting. The motion was considered and upon being put, all present voted aye. Mayor Jorgensen declared the meeting duly adjourned at 5:14 pm.

Carolyn S. Snethen, City Clerk

STAFF MEMORANDUM

Target Meeting Date: August 15, 2012

TO: Richard Nienstedt, City Manager

FROM: Wynndee S. Lee, AICP, Director of Planning & Codes Administration

DATE: August 9, 2012

SUBJECT: **An ordinance** vacating the alley right-of-way on Twelfth Street between the 100 blocks of North Cedar Street and N. Oak Street.

Comments: The City of Ottawa's Planning Commission reviewed the alley vacation and held a public hearing. The Ottawa Co-op Association, who first requested the vacation of the alley right-of-way between N. Cedar Street and N. Oak Street, did so in order to allow construction of a building addition on the property for the Co-op. The remaining owners agreed by signing the petition. There were no public comments.

This request was submitted to the Development Review Committee and Utility Advisory Committee for review. There were no comments received in objection to the vacation request. The alley was never improved to allow through vehicular traffic and the City will retain the area between N. Cedar Street and North Oak Street as a permanent utility easement.

The subdivision regulations require that, before making a recommendation to the City Commission, the Planning Commission determine

- (a) Due and legal notice has been given;
Staff called the required public hearing and notified the affected property owners.
- (b) No private rights will be injured or endangered; and
None of the adjacent property owners will experience loss of access from the vacation, and the vacated property will be redistributed appropriately.
- (c) The public will suffer no loss or inconvenience;
The right-of-way has not been developed for travel by the public and, as a result, there will be no inconvenience to the general public.

The Planning Commission recommends to the City Commission to approve the street vacation request by a 4-0 vote.

Attachments: Ordinance
Application for Vacation
Location Map

ORDINANCE NO. _____

AN ORDINANCE VACATING THAT PORTION OF the alley right-of-way on between 301 E. 1st Street and 315 E. 1st Street. Described real estate is generally located adjacent to Lots 1 through 36, Block 48, Ottawa Original Town.

BE IT ORDAINED by the Governing Body of the City of Ottawa, Kansas, as follows:

Section 1: The alley right-of-way described real estate generally located between 301 E. 1st Street and 315 E. 1st Street, and more particularly described as follows:

The alley right-of-way adjacent to Lots 1 through 36, Block 48, Ottawa Original Town, in the City of Ottawa, Franklin County, Kansas.

is hereby vacated, but retained as a utility easement.

Section 2: From and after the effective date of this ordinance the ownership of the portion of the alley right-of-way between 301 E 1st Street and 315 E. 1st Street, vacated herein, shall revert to the owners of the real estate adjacent thereto, according to law.

Section 3: The City Clerk is authorized to certify a copy of the order and directed to record this ordinance in the office of the Register of Deeds of Franklin County, Kansas.

Section 4: This ordinance shall take effect and be in force after its passage and publication in the official city newspaper.

PASSED AND ADOPTED by the Governing Body of the City of Ottawa, Kansas, this _____ day of _____, 2012.

Mayor

ATTEST:

City Clerk

City of Ottawa Department of Planning and Codes Administration

101 S. Hickory, P.O. Box 60
 Ottawa, KS 66067
 Phone (785) 229-3620 Fax (785) 229-3625
 www.ottawaks.gov

RECEIVED
 JUL 12 2012
 CITY OF OTTAWA

Application to Vacate Streets, Alley's, and Easements

Applicant: Ottawa Co-op Assn
 Address: 302 N Main, Ottawa, Kansas 66067
 Phone Number: 785-242-5170
 Fax Number: 785-242-5057
 E-mail: adrian@ottawa-co-op.com

Application to vacate:

Street _____ Alley Setbacks _____ Utility Easement _____ Subdivision _____

Approximate location of the area to be vacated: East of 120 N Cedar

Describe location (nearest street, landmarks, etc.): 315 East 1st - 301 East 1st

Alley row adjacent to lots 1-36 of Block 48, Ottawa
Original Town

Reason for vacating: Alley is non-accessible from 1st street. Co-op owns property East & West of Alley.

Names and mailing address of all property owners abutting the area requested to be vacated:

Performance Electric-206 N Oak, Ottawa, KS
Steanson Plumbing-133 N Cedar, Ottawa, KS
Kanza Rail Trail Conservative-PO Box 3863, Topeka KS 66604 (contact: Doug Walker 913-755-4192)

The following non-conformities exist on this property: →

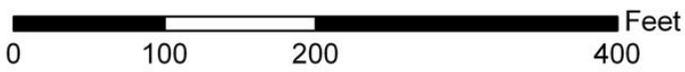
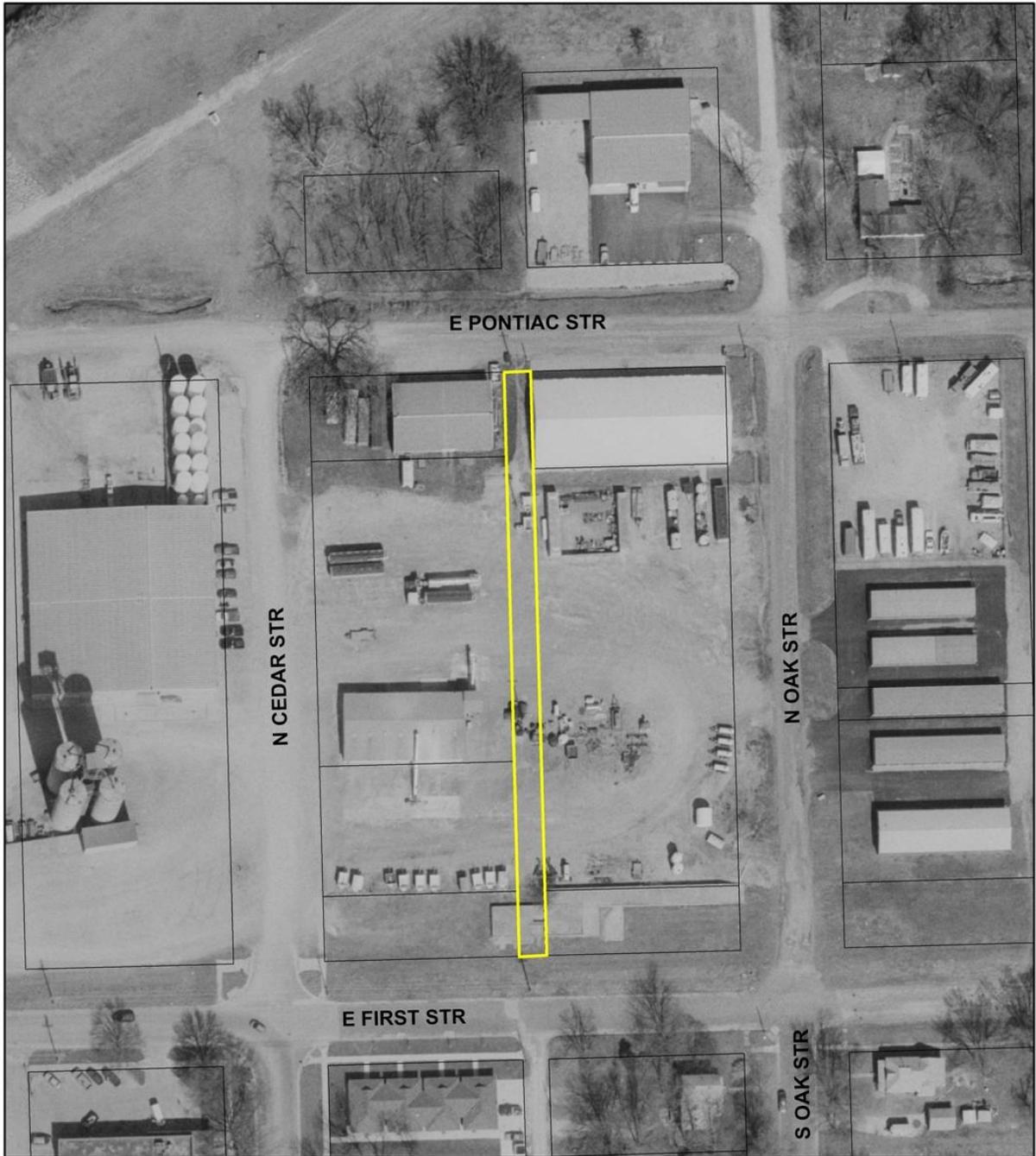
[Signature]
 Applicant's signature

7/10/12
 Date

FOR OFFICE USE ONLY

	Fee	Date Paid	Receipt No.
Street, Alley or ROW -- \$	<u>\$25.00</u>		
Plats w/replat -- \$			
Easement, Setback lines, Access control, and Plats -- \$			
Hearing Date			

Vacation Request



Police Department City of Ottawa, Kansas

MEMORANDUM

DATE: AUGUST 1, 2012
TO: RICHARD NEINSTEDT, CITY MANAGER
FROM: DENNIS P. BUTLER, CHIEF OF POLICE
SUBJECT: 2012 STANDARD TRAFFIC ORDINANCE CHANGES

The purpose of this memorandum is to describe changes made to the 2012 Standard Traffic Ordinance (STO) because of legislative changes. The most significant changes this year involve amendments to the Driving Under the Influence (DUI) Statutes and related statutes.

Section 30, 30.1, 194, and 195.1 all incorporate the new section 30.2.1 (Refusal to Submit to Alcohol or Drug Test.)

- 1. Section 30.** DUI creates a new section, 30.2.1.
 - a. The court no longer has the authority to impound or immobilize a motor vehicle that was driven or owned by the convicted person.
 - b. The court must remit \$250.00 of the fine to the State to be credited to the community corrections supervision fund, even though cities do not benefit in any way from that program.

Sentencing guideline changes

- 2. Section 30.1** DUI Commercial Motor Vehicle.
 - a. Similar changes for drivers of commercial vehicles as described above in 1.a & b.
- 3. Section 30.2.1** Refusal to Submit to Alcohol or Drug Test.
 - a. Changed administrative action from a Department of Motor Vehicle administration Drivers License suspension, to a criminal offense.
- 4. Section 194** Driving while suspended
- 5. Section 195.1** Driving while Habitual Violator
 - a. The penalty both for 194 and 195.1 is enhanced if associated with an alcohol-related offense in which the driver refuses to submit to an Alcohol or Drug Test.

Attached is an article from the July 2012 Kansas Government Journal outlining additional changes to the STO and Uniform Public Offense Code (UPOC) that is very informative.



2012 *STO* and *UPOC* Changes

This year, the main changes in the 2012 *Standard Traffic Ordinance* (*STO*) are to the DUI sections. While there are some other changes, many of which related to the details of the DUI law, the primary changes are cited below. City officials may remember that the DUI law during the 2011 Legislative Session underwent a fairly substantial overhaul, and this session the Legislature made some further changes that did not get incorporated previously. The major change will be incorporated into a new section, 30.2.1, Refusal to Submit to Alcohol or Drug Test. Commonly this is referred to as criminalizing the refusal to take the breathalyzer or blood test after the decision is made to arrest the defendant for driving under the influence of drugs or alcohol. Prior to this change, a refusal resulted in an automatic loss of the driver's license.

In the *STO*, only the first conviction provision has been included. To constitute a first offense for test refusal, the individual must have a prior test refusal within the past 10 years, or have been convicted of DUI at any time. The sentence for a first conviction is not less than 90 days, nor more than one year's imprisonment. Anyone convicted of a first offense must serve five days before being eligible for probation, suspension, or reduction of the sentence. If, however, one or more children under the age of 14 years was in the vehicle at the time of the offense, the sentence is enhanced to require serving at least 30 more days imprisonment. The reason the *STO* only is including a first offense is two-fold. First, after the first offense, the individual is required to serve at least 90 days imprisonment before the sentence may be reduced or suspended. Thus, cities could be responsible for paying for a much longer and expensive incarceration. Second, the bill grants cities the ability to prosecute felony level offenses enumerated in the bill in one section, but in another section states that such offenses shall be sent to the district court for prosecution. Second convictions are misdemeanor level offenses in some cases, but depending upon the facts and prior convictions, could be felony level crimes. Therefore, jurisdiction over such offenses is not by any means clear.

In addition, it is important to note that last year the minimum fine increased by \$250, which district courts were required to submit to the state treasurer to be credited to the community corrections supervision fund. At that time, the remittance portion of the law did not apply to municipal courts. The Legislature, stating that the omission was merely an oversight, is now requiring municipal courts to also remit \$250 to the State to be credited to the community corrections supervision fund, even though cities do not benefit in any way from that program.

The 2012 *Uniform Public Offense Code* (*UPOC*) contains more changes than in any other year and are too numerous to detail here. What follows is merely a select overview of the many changes. It is important to note that when the Legislature changes a statute, the *UPOC* does not have to mirror those changes so long as the *UPOC* does not conflict with state law. After the recodification of the

criminal laws last year, some crimes that were two different crimes were merged into one and some that were one crime were rewritten to become two crimes. Gradually the *UPOC* is being changed to reflect some of those changes, although the validity of the enforcement is not affected.

A new provision has been added to the smoking sections applying to minors and smoking, Sections 5.6 and 5.7. Electronic cigarettes have been added to the prohibition on minors purchasing or possessing cigarettes or tobacco products, as well as the prohibition on selling, giving or furnishing cigarettes or tobacco products to minors. On a related topic, Sections 10.24 and 10.26, regarding smoking, have been changed to take out any element requiring an individual to have knowingly violated the law. The words "with no requirement of a culpable mental state" have been added to make it clear that the only requirement is to have smoked in an area where smoking is prohibited.

A new crime of endangerment has been created and becomes new Section 10.10. This crime is defined as "recklessly exposing another person to a danger of great bodily harm or death." It is a Class A violation. Obstructing Legal Process or Official Duty, Section 7.2, is now Interference with a Law Enforcement Officer. The previous crime of obstructing is one subsection of the new law. The new sections address false reporting of crimes, false dissemination of information that could impede a law enforcement officer in doing his or her duty, and concealing, destroying or materially altering evidence to prevent or hinder the apprehension or prosecution of any person. Simulating Legal Process in Section 7.7, which is distributing a document purporting to be a summons, petition, or complaint, has been redefined to include an element of intent "to mislead the recipient and cause the recipient to take action in reliance thereon." Previously, the intent provision was to induce the payment of the claim.

Finally, some of the other sections which have changed include Domestic Battery, Section 3.1.1, Violation of a Protection from Abuse Order, Section 3.8, and Violation of a Protective Order, Section 3.8.1, Unlawfully Buying Scrap Metal, Section 6.25, Escape from Custody, Section 7.3, Carrying Concealed Explosives, Section 10.9, and Unlawfully Obtaining a Prescription-Only Drug, Section 10.20. Some just change a few words, such as the scrap metal provision that removes a few words relating to items being purchased. Others have changed the penalty provisions, such as the explosives section, which goes from a Class C violation to a Class A violation. Because of the large number of changes in both the *STO* and *UPOC*, it is inadvisable to continue using old books. That could result in mischarging violations or not charging violations that are new crimes. As always, cities should discuss these matters with their city attorneys in evaluating how best to address the legislative changes.

☀️ Sandy Jacquot is the Director of Law/General Counsel for the League of Kansas Municipalities. She can be reached at sjacquot@lkm.org or (785) 354-9565.

*Police Department
City of Ottawa, Kansas*

MEMORANDUM

DATE: AUGUST 8, 2012

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COMMISSION

THROUGH: RICHARD U. NEINSTEDT, CITY MANAGER

FROM: DENNIS P. BUTLER, CHIEF OF POLICE

SUBJECT: NEW ORDINANCE -- PARKING AT 10TH AND S. CEDAR

The purpose of this memorandum is to request your approval of the attached ordinance. This ordinance, if approved, will restrict parking on the west side of S. Cedar Street both north and south of the intersection with 10th Street. This action is being requested as a result of a citizen suggestion and subsequent petition signed by the residents immediately adjacent to this location.

The reason for the request was to improve sight lines for motorists entering S. Cedar from 10th Street.

Please contact me with any questions.

Attachment:

cc: Andy Haney, Public Works Director
Wynndee Lee, Planning & Zoning Director
Carolyn Snethen, City Clerk

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE REGULATION OF VEHICULAR AND PEDESTRIAN TRAFFIC, INCLUDING DESIGNATION OF PARKING RESTRICTIONS WITHIN THE CITY OF OTTAWA, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Ottawa, Kansas, as follows:

Section 1. The following "No Parking" zone is added to those previously listed in Section 13-317(a) of the Ottawa Municipal Code.

<u>Street</u>	<u>side(s)</u>	<u>From</u>	<u>To</u>
Cedar Street	West	55 ft. N of 10 th St.	55 ft. S of 10 th St.

Section 2. Appropriate signs shall be installed and maintained for above stated parking restrictions.

Section 3. This ordinance shall be incorporated into the Ottawa Municipal Code and shall be in full force and effect upon its adoption and publication in the official newspaper.

Section 4. ADOPTED this _____ day of _____, 2012.

Attest

Mayor

City Clerk