

EL DORADO CITY COMMISSION – REGULAR MEETING AGENDA
CITY HALL – 220 E. FIRST AVENUE
September 3, 2019 – 6:30 PM

- 1. Call to Order**
- 2. Roll Call**
- 3. Invocation** – Rev. Mark Somerville – Family Worship Center
- 4. Pledge of Allegiance** - First Baptist Church Youth Group

Proclamations and Recognition

5. None

Personal Appearances. Personal appearances are opportunities for organizations or citizens to make special presentations before the City Commission. Such appearances are scheduled in advance of the meeting by calling City Clerk Tabitha Sharp at (316) 321-9100 by 5:00 pm the Tuesday preceding the meeting. Presentations are limited to ten minutes. Any presentation is for information purposes only; no action will be taken.

6. Public Comments. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon the Mayor. Comments on personnel matters and matters pending in court are not permitted. Speakers are limited to three minutes. Any presentation is for information purposes only; no action will be taken.

Consent Agenda (*Consent agenda items will be acted on by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.*)

7. Approval of City Commission Minutes from August 19, 2019 and City Commission Special Minutes from August 14, 2019.
8. Approval of a temporary CMB license for United Way of El Dorado, September 13 at 210 N. Griffith.
9. Approval of 2019 Cereal Malt Beverage License for Jump Start Stores, Inc. at 701 North Main Street.

Old Business

10. None

New Business

11. Tax Increment Financing Policy
12. Main Street Memorandum Of Understanding
13. Commission Terms
14. Cox Wireless Small Cell Franchise Agreement

Reports

15. City Commission and Advisory Board Updates

16. City Manager

Executive Session

17. Commissioner _____ moved to recess into executive session pursuant to the non-elected personnel exception under K.S.A. 75-4319(b)(1) for the purposes of discussing the City Manager's annual evaluation and to reconvene the meeting at ____ p.m. in the City Commission Room.

Commissioner _____ seconded the motion.

Adjournment

18. Consideration of a motion to adjourn the September 3, 2019 regular meeting

PUBLIC COMMENT POLICY:

Citizens are encouraged to address the City Commission during regularly scheduled meetings. This policy is intended to provide some guidelines to ensure that all El Dorado citizens have a chance to address the Commission.

1. Each citizen will state their name and address before making comments.
2. There are no residency requirements.
3. Each citizen will have 3 minutes to present his or her comments.
4. An extension of time, if necessary, may be approved but must be by a majority of the City Commission.
5. Comments or questions will be directed only to the City Commission.
6. Citizens will follow the decorum policy.
7. Debate or argument between parties in the audience will not be allowed.
8. Certain legal issues may not be discussed. (Examples include but are not limited to personnel issues, lawsuits, etc.)
9. Violation of this public comment policy will result in the citizen being directed to cease or resume sitting.

Approved by the Commission this 2nd day of May 2005.

The El Dorado City Commission met in a regular session on August 19, 2019 at 6:30 p.m. in the Commission Room with the following present: Mayor Vince Haines, Commissioner Matt Guthrie, Commissioner Nick Badwey, Commissioner Kendra Wilkinson, City Manager David Dillner, City Engineer Scott Rickard, and City Clerk Tabitha Sharp. Absent: Commissioner Gregg Lewis and City Attorney Ashlyn Lindskog

VISITORS

Tim Baker	128 N Vine	El Dorado, KS
Deanna Bonn	Everyday El Dorado	El Dorado, KS
Scott Pechin	220 E 1 st	El Dorado, KS
Sarah Hagen	128 N Vine	El Dorado, KS
Anita Mitchell	205 N Washington	El Dorado, KS
Joe Sterbenz	6420 NE 20 th	El Dorado, KS
Tom Pennycuff	800 S Taylor	El Dorado, KS

CALL TO ORDER

Mayor Vince Haines called the August 5, 2019 meeting to order.

INVOCATION

Pastor Mark Somerville, Family Worship Center, led the invocation.

PLEDGE OF ALLEGIANCE

Cub Scout Troop #222 led the Pledge of Allegiance.

PUBLIC COMMENT

Mayor Vince Haines opened the floor for public comment.

There were no comments.

CONSENT AGENDA

Approval of City Commission Minutes from August 5, 2019 and the Special City Commission Minutes from July 31, 2019.

Approval of Appropriation Ordinance No. 07-19 in the amount of \$6,576,676.98.

Commissioner Nick Badwey moved to approve the consent agenda as presented.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 5 – 0.

OLD BUSINESS

2020 EXCESS SALES TAX PROJECTS

City Manager David Dillner stated that the excess sales tax committee provided the following recommendations:

Recommendation #1:

Re-allocate the funds from the arena study to the excess sales tax fund and re-distribute them to new projects.

Recommendation #2:

- Additional Property Tax Reduction \$300,000

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- Senior Center Parking Lot \$ 67,200
- McDonald Stadium Project Bank \$ 40,000
- Public Works Roof Replacement \$ 61,000
- Fire Station No. 1 Doors \$ 24,000
- North Main Playground Replacement \$ 80,000
- Miniature Golf Course \$ 80,000
- Oil Museum Sign Replacement \$ 17,296.41
- El Dorado Main Street Façade Grant \$ 5,000
- Chamber of Commerce Grant Program \$ 5,000

Recommendation #3:

- Additional Property Tax Reduction \$300,000
- Senior Center Parking Lot \$ 67,200
- McDonald Stadium Project Bank \$ 50,000
- Public Works Roof Replacement \$ 61,000
- Fire Station No. 1 Doors \$ 24,000
- North Main Playground Replacement \$ 80,000
- Oil Museum Sign Replacement \$ 31,396
- Gordy Park Shelter \$ 40,000
- Activity Center Basketball Goals \$ 10,000
- El Dorado Main Street Façade Grant \$ 5,000
- Chamber of Commerce Grant Program \$ 10,000

Mayor Vince Haines clarified that there needed to be two separate motions.

City Clerk Tabitha Sharp stated she had included both motions in the agenda item. She stated that the \$30,000 for the arena study would be moved back to the excess sales tax fund if they approve that motion. She also stated that the committee had chosen to make their recommendations for next year including the arena study funds, so if the Commission chooses not to approve that motion, we would need to reduce the recommendations by \$30,000.

Commissioner Matt Guthrie moved to reallocate the excess sales tax funds for the arena feasibility study to the excess sales tax fund for use on other sales tax projects.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

Commissioner Matt Guthrie moved to accept for consideration the projects presented by the Excess Sales Tax Committee in recommendation number two.

Commissioner Nick Badwey seconded the motion.

Motion carried 3 – 1 (Mayor Haines opposed).

NEW BUSINESS

CONDEMNATION HEARINGS

Scott Rickard, City Engineer, stated that in an effort to address some of the more dangerous and unfit structures in El Dorado, staff have determined that five homes from the red tagged list are in need of a quicker resolution. He stated that those homes are 1107 W Carr, 1108 W Carr, 426 W 7th, 802 S Taylor and 205 N Washington. He stated that the Commission must hold a public hearing to hear any evidence submitted by property owners, lienholders or occupants.

City Engineer Rickard stated that should the Commission agree that the structures should be torn down, they will pass a resolution that will give the owners a number of days to make

repairs, if no repairs are made, the City will demolish the structure and assess the costs to the property.

Commissioner Nick Badwey asked if all five structures would be demolished.

City Engineer Rickard stated that they would, they have the funds in the demolition budget.

Mayor Vince Haines opened the public hearing.

Tom Pennycuff, 807 S Taylor, stated that since he purchased his property, the property behind his at 802 S Taylor has caused problems for him. He encouraged the Commission to move forward with this decision as the other owner has ceased to respond to him or his lawyer.

Anita Mitchell, 205 N Washington, stated that she has attempted to do work on the property, but had finally given up. She stated that the property is going up for auction on October 1st. She asked that the Commission consider allowing her time to auction the property prior to moving forward with the demolition.

Mayor Haines closed the public hearing.

Commissioner Kendra Wilkinson asked if the auction would be affected by this process.

City Engineer Rickard stated that the new owner would assume responsibility for all of the issues.

Commissioner Matt Guthrie asked how many days they would have to repair the property if the Resolution was passed.

City Engineer Rickard stated that the Commission has the ability to put the number of days in the Resolution and that will commence after publication.

Commissioner Wilkinson asked what the issues with this house were.

Scott Pechin, Building Official, stated that he has terminated utilities because the house is currently unsafe.

Mayor Haines confirmed that the costs associated with tearing down the property would be assessed to the property.

City Engineer Rickard stated that they would be.

Commissioner Guthrie asked what the timeline looked like on this property.

Mr. Pechin stated that we had been working on this one for at least a year.

Commissioner Guthrie asked if we had to mow this property.

Sarah Hagen, Code Enforcement Official, stated that the property owner had mowed this one.

Commissioner Guthrie confirmed that staff time had been limited to that of the Building Official and Code Enforcement Officer.

Mr. Pechin stated that he was correct.

Commissioner Badwey asked if they did not act on this property and it sold at auction, if they would have to wait to begin the process and do another public hearing.

City Engineer Rickard stated that they would. He stated that they could instruct staff to put something on the deed to notify people of the problems. He stated that the Resolution will be

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filed with the deed on the property, and if there is a transfer of ownership, they would be notified.

Mayor Haines stated that he would like to give 60 days on the 205 N Washington property and 30 on the others.

Commissioner Matt Guthrie moved that Resolution No. 2888 that a structure at 802 S Taylor is unsafe or dangerous and directing the structure to be repaired or removed and the premises made safe and secure within 30 days.

Commissioner Kendra Wilkinson seconded the motion

Motion carried 4 – 0.

Commissioner Matt Guthrie moved that Resolution No. 2889 that a structure at 426 W 7th is unsafe or dangerous and directing the structure to be repaired or removed and the premises made safe and secure within 30 days.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

Commissioner Matt Guthrie moved that Resolution No. 2890 that a structure at 205 N Washington is unsafe or dangerous and directing the structure to be repaired or removed and the premises made safe and secure within 60 days.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

Commissioner Matt Guthrie moved that Resolution No. 2891 that a structure at 1107 W Carr is unsafe or dangerous and directing the structure to be repaired or removed and the premises made safe and secure within 30 days.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

Commissioner Matt Guthrie moved that Resolution No. 2892 that a structure at 1108 W Carr is unsafe or dangerous and directing the structure to be repaired or removed and the premises made safe and secure within 30 days.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

SPECIAL USE PERMIT – 114 W CENTRAL AVENUE

City Engineer Scott Rickard stated that Mike and Gigi Dudek applied for a special use permit for a worship assembly at 114 W Central. He stated that the Planning Commission reviewed the application, held a public hearing and recommended approval 8 – 0.

Commissioner Kendra Wilkinson asked if they were meeting now.

City Engineer Rickard stated that they were, they became aware of the need for a permit and contacted the City.

Mayor Vince Haines asked if there would be an occupancy change with this application.

Scott Pechin, Building Official, stated that he had not seen a footprint at this time, but he believed it would change the occupancy. He stated that there are numbers that trigger the allowed occupancy.

City Engineer Rickard stated that items like special events or meetings that draw more people and create demand on parking will also change the occupancy requirements.

Commissioner Badwey confirmed that they would be able to meet whenever they wanted after this is passed.

Mayor Haines stated that they could. He stated that he has trouble with the use as a worship center in the downtown area and the restraints placed on neighboring property owners once that designation is put in place.

City Clerk Tabitha Sharp stated that she spoke with the City Attorney and that the 200 foot rule for selling alcohol near a church is only for microbreweries, distilleries, wineries and retail liquor stores. She stated that the attorney stated that anything already in place would be grandfathered in, and any new proposals could come to the City for a waiver on the 200 foot rule because of the zoning in the downtown.

Commissioner Wilkinson asked if they had a plan for upstairs.

Mr. Pechin stated that they do not have a plan for the upstairs at this time.

Mayor Haines stated that he wanted to make sure that the individuals asking for this permit understood the requirements for this property if it is changed. He stated that they would have to install sprinklers and

City Engineer Rickard stated that once the land use was in place, they planned to begin discussions on the other items they would be required to do.

Mayor Haines read the standards for review aloud.

Commissioner Kendra Wilkinson moved to approve Case No. 19-05-SUP, requesting a SUP for a public assembly venue, and that Ordinance No. G-1310 be approved.

Commissioner Nick Badwey seconded the motion.

Commissioner Matt Guthrie confirmed that to override the vote of the Planning Commission, they needed a super majority.

City Engineer Rickard stated that he was correct.

Roll Call Vote

	Mayor Vince Haines	Yes
Position No. 1	Commissioner Matt Guthrie	Yes
Position No. 2	Commissioner Gregg Lewis	Absent
Position No. 3	Commissioner Nick Badwey	Yes
Position No. 4	Commissioner Kendra Wilkinson	Yes

**PROJECT NO. 556 – RESURFACING 6TH AVENUE (METCALF – EL RECO)
RESURFACING HAVERHILL (CENTRAL – TOWANDA)**

City Engineer Scott Rickard stated that bids were received for Project No. 556 to resurface 6th from Metcalf to El Reco and Haverhill, Central to Towanda. He stated that the low bid was from Flint Hills Materials LLC for \$283,590.55.

City Engineer Rickard stated that his estimate was \$416,967. The highest bid was \$449,272, there were also a few in the mid \$350,000 area. He stated that staff believe that this is a very favorable bid.

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Commissioner Nick Badwey moved that since Flint Hills Materials, LLC has submitted the lowest and best bid of \$283,590.55 for Project No. 556, the City Manager be directed to award the contract to said contractor providing that the company furnish the proper bonds.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

PROJECT NO. 557 – RESIDENTIAL STREET RESURFACING SALES TAX (HIGH, HOUSER AND ATCHISON)

City Engineer Scott Rickard stated that this is a mill and overlay project. He stated that this is also part of the sales tax funds for street rehabilitation. He stated that the engineer's estimate was \$186,398.

Commissioner Kendra Wilkinson asked what the shapes were in the lines on the map.

City Engineer Rickard stated that the ones that are missing are not going to be touched because they have recently been paved, the ones with the shapes show that the resurface will extend in those areas.

Commissioner Nick Badwey moved that since Flint Hills Materials, LLC has submitted the lowest and best bid of \$140,176.45 for Project No. 557, the City Manager be directed to award the contract to said contractor providing that the company furnish the proper bonds.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

RECYCLING

City Manager David Dillner stated that staff have communicated the deterioration of the recycling markets over the last few years. He stated that currently we are paying \$75 per ton for haulers to take materials and that is expected to increase to \$90 in the near future. He stated that haulers have also begun to back out of the process because they cannot find someone to take it regardless of price.

City Manager Dillner stated that staff had provided the Commission with a few options regarding the recycling program including continuing the program, increasing the cost for services, reviewing the program more extensively, and discontinuing it completely.

City Manager Dillner stated that the current costs for the landfill are \$35 per ton. He stated that the Butler County landfill has plenty of capacity available for the materials.

City Manager Dillner stated that he is recommending that the program be discontinued immediately to mitigate our expenses and to monitor the cardboard program for a brief time until a better decision can be made on it.

Commissioner Kendra Wilkinson asked if residents will continue to keep both of their carts.

City Manager Dillner stated that until the refuse rates can be reviewed further, residents will be allowed to keep both carts with the understanding that everything will go to the landfill.

Commissioner Wilkinson asked what would happen to the recycling center.

City Manager Dillner stated that it will close and the employees will continue to operate the cardboard program.

Commissioner Matt Guthrie stated that he would like to decrease the refuse fee by the \$1 that it was increased a few years ago.

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Public Works Director Brad Meyer stated that the two recycle employees, the route driver and the processor, will remain in that area until a decision is made on the future of the cardboard program. He stated that the processor will be monitoring the compost site when he is not working on the cardboard program. He stated that he would like to keep the \$1 for now until the cardboard program is done and a decision is made on the compost site.

Commissioner Nick Badwey stated that he would like to keep the \$1 if it ensures that we are able to keep the compost site open.

Commissioner Matt Guthrie moved to approve Resolution No. 2893, a Resolution authorizing the City Manager to sunset the Residential Recycling Program and providing guidance on the continuation of the Commercial Cardboard Recycling Program.

Commissioner Nick Badwey seconded the motion.

Commissioner Wilkinson stated that she would like to point out that the Commission is doing this with a great deal of regret.

Commissioner Guthrie stated that it was also with a lot of work to try and keep it running over the years.

Motion carried 4 – 0.

REPORTS

CITY COMMISSION

Commissioner Kendra Wilkinson stated that Parks and Recreation advisory board meets this coming Wednesday to discuss a reorganization.

CITY MANAGER

City Manager David Dillner stated that SCARF will be holding a ribbon cutting on their new office on Thursday.

City Manager Dillner stated that fall sports sign-up is currently going on.

City Manager Dillner stated that on Friday, August 30th, the library will be holding their 60th birthday at 11 a.m.

City Manager Dillner stated that a letter will be going out this week to all residential addresses informing them of the change in the recycle program.

City Manager Dillner stated that the Public Utilities Department was recognized as a Utility of the Future by several water groups. He stated that the water reclamation facility was named plant of the year by the Kansas Water Association for the 9th time.

ADJOURNMENT

Commissioner Nick Badwey moved to adjourn the meeting at 7:53 p.m.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 4 – 0.

City Clerk Tabitha D. Sharp

Mayor Vince Haines

The El Dorado City Commission met in special session on August 14, 2019 at 5:00 pm at City Hall with the following present: Mayor Vince Haines, Commissioner Matt Guthrie, Commissioner Gregg Lewis, Commissioner Nick Badwey, Commissioner Kendra Wilkinson, City Manager David Dillner, City Engineer Scott Rickard and City Clerk Tabitha Sharp.

VISITORS

Kevin Wishart	220 E 1 st	El Dorado, KS
Curt Ziemann	128 N Vine	El Dorado, KS
Tammy Schaffer	220 E 1 st	El Dorado, KS
Brad Meyer	222 E 2 nd	El Dorado, KS
Frank Patton	El Dorado Main Street	El Dorado, KS
Linda Jolly	El Dorado Inc.	El Dorado, KS
Megan Bottenberg	Cox Communications	El Dorado, KS

CALL TO ORDER

Mayor Vince Haines called the August 14, 2019 Special City Commission meeting to order at 5:00 p.m.

MAIN STREET MOU

City Manager David Dillner reviewed the Main Street MOU with the City Commission.

COX SMALL CELL AGREEMENT

City Manager David Dillner reviewed the proposed franchise agreement.

RECYCLING

Public Works Director Brad Meyer stated that it has become difficult and more expensive to get recyclable materials shipped. He stated that the recommendation of staff is that the recycling program end, but that the cardboard collection for businesses continue temporarily.

The City Commission agreed to see the issue at the next meeting. They stated that they would be in favor of ending the recycling program and reviewing cardboard collection in 45 days.

CITY COMMISSION TERMS/VACANCIES/QUORUM

City Clerk Tabitha Sharp stated that changes in State laws have dictated a need for a change in the way the City Commission addresses swearing in new candidates, vacancies and quorum.

The City Commission agreed to set the quorum at 4, change the swearing in date to the first meeting in December and to leave the vacancies the way they are written.

TAX INCREMENT FINANCING 101

City Manager David Dillner provided a primer on tax increment financing to the City Commission in preparation for an upcoming economic development project.

STORM SHELTERS

City Manager David Dillner stated that staff would like direction on providing storm shelters in the City of El Dorado.

The City Commission asked that either City Hall or the Senior Center be open and asked that someone talk to the library to see if they would be willing to open. Staff will return with options.

UPCOMING AGENDA ITEMS

City Manager David Dillner reviewed the upcoming agenda.

REPORTS

There were no reports.

ADJOURNMENT

Commissioner Nick Badwey moved to adjourn the meeting at 7:00 p.m.

Commissioner Matt Guthrie seconded the motion.

Motion carried 5 – 0.

City Clerk Tabitha D. Sharp

Mayor Vince Haines

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

☒ City or ☐ County of _____

SECTION 1 - LICENSE TYPE

Check One: ☐ New License ☐ Renew License ☐ Special Event Permit

Check One:

- ☒ License to sell cereal malt beverages for consumption on the premises.
☐ License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.

SECTION 2 - APPLICANT INFORMATION

Kansas Sales Tax Registration Number (required): 23-7199368

I have registered as an Alcohol Dealer with the TTB. ☐ Yes (required for new application)

Name of Corporation <u>United Way of El Dorado</u>		Principal Place of Business <u>116 W Pine</u>	
Corporation Street Address <u>116 W Pine Suite 104</u>		Corporation City <u>El Dorado</u>	State <u>KS</u>
Date of Incorporation <u>March 1973</u>		Zip Code <u>67042</u>	
Resident Agent Name		Articles of Incorporation are on file with the Secretary of State. ☐ Yes ☐ No	
Residence Street Address		Phone No. <u>316-321-6200</u>	
		City	State
			Zip Code

SECTION 3 - LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name <u>McDonalds Stadium</u>		Name	
Business Location Address <u>210 N Griffith</u>		Address	
City <u>El Dorado</u>	State <u>KS</u>	City	State
Zip <u>67042</u>		Zip	
Business Phone No. <u>316-321-9100</u>		☐ Applicant owns the proposed business location. ☐ Applicant does not own the proposed business location.	
Business Location Owner Name(s) <u>City of El Dorado</u>			

SECTION 4 - OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK

List each person and their spouse*, if applicable. Attach additional pages if necessary.

Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
		Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
		Zip Code

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK (CONTINUED)

Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City	State Zip Code

SECTION 5 – MANAGER OR AGENT INFORMATION

My place of business or special event will be conducted by a manager or agent.

☒ Yes ☐ No

If yes, provide the following:

Manager/Agent Name <i>Andrea Van Aiken</i>	Phone No. [REDACTED]	Date of Birth [REDACTED]
Residence Street Address [REDACTED]	City <i>El Dorado</i>	Zip Code <i>67042</i>

Manager or Agent Spousal Information*

Spouse Name <i>Blake Van Aiken</i>	Phone No. [REDACTED]	Date of Birth [REDACTED]
Residence Street Address [REDACTED]	City <i>El Dorado</i>	Zip Code <i>67042</i>

SECTION 6 – QUALIFICATIONS FOR LICENSURE

Within 2 years immediately preceding the date of this application, have any of the individuals identified in Sections 4 & 5 have been convicted of, released from incarceration for or released from probation or parole for any of the following crimes*:

(1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.

☐ Yes ☒ No

Have any of the individuals identified in Sections 4 and 5 been managers, officers, directors or stockholders owning more than 25% of the stock of a corporation which:

(1) had a cereal malt beverage license revoked; or (2) was convicted of violating the Club and Drinking Establishment Act or the CMB laws of Kansas.

☐ Yes ☒ No

All of the individuals identified in Sections 4 & 5 are at least 21 years of age*.

☒ Yes ☐ No**SECTION 7 – DURATION OF SPECIAL EVENT**

Start Date <i>9-13-19</i>	Time <i>5pm</i>	☐ AM ☒ PM
End Date <i>9-13-19</i>	Time <i>11pm</i>	☐ AM ☒ PM

Proceed to Section 8 on the next page.

SECTION 8 – LICENSED PREMISE

In the space below, draw the area you wish to sell or deliver CMB. Include entrances, exits and storage areas. Do not include areas you do not wish to license. If you wish to attach a drawing, check the box: ☐ 8 1/2" by 11" drawing attached.



I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct and that I am authorized by the corporation to complete this application. (K.S.A. 53-601)

SIGNATURE

Andrea Van Dusen

DATE

8/26/19

FOR CITY/COUNTY OFFICE USE ONLY:

☐ License Fee Received Amount \$ _____ Date _____
(\$25 - \$50 for Off-Premise license or \$25-200 On-Premise license)

☐ \$25 CMB Stamp Fee Received Date _____

☐ Background Investigation ☐ Completed Date _____ ☐ Qualified ☐ Disqualified

☐ Verified applicant has registered with the TTB as an Alcohol Dealer

☐ New License Approved Valid From Date _____ to _____ By: _____

☐ License Renewed Valid From Date _____ to _____ By: _____

☐ Special Event Permit Approved Valid From Date _____ to _____ By: _____

A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE STAMP FEE REQUIRED BY K.S.A. 41-2702(e), MUST BE SUBMITTED WITH YOUR MONTHLY REPORT (ABC-307) TO THE ALCOHOLIC BEVERAGE CONTROL, 915 SW HARRISON STREET, TOPEKA, KS 66612.

* Applicant's spouse is not required to meet citizenship, residency or age requirements. If renewal application, applicant's spouse is not required to meet the no criminal history requirement. K.S.A. 41-2703(b)(9)

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

☒ City or ☒ County of El Dorado, Kansas

SECTION 1 – LICENSE TYPE

Check One: ☒ New License ☐ Renew License ☐ Special Event Permit

Check One:

☐ License to sell cereal malt beverages for consumption on the premises.

☒ License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.

SECTION 2 – APPLICANT INFORMATION

Kansas Sales Tax Registration Number (required): 004-451283780F-01

I have registered as an Alcohol Dealer with the TTB. ☒ Yes (required for new application)

Name of Corporation Jump Start Stores Inc		Principal Place of Business 701 N Main St El Dorado, Ks 67042	
Corporation Street Address 100 E Watman St		Corporation City Wichita	State Ks
Date of Incorporation 04-01-2011		Articles of Incorporation are on file with the Secretary of State.	☒ Yes ☐ No
Resident Agent Name Phillip L Near		Phone No. [REDACTED]	
Residence Street Address [REDACTED]		City [REDACTED]	State Ks
			Zip Code [REDACTED]

SECTION 3 – LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)			Mailing Address (If different from business address)		
DBA Name Jump Start Stores Inc			Name Jump Start Stores # 12		
Business Location Address 701 N Main St			Address 100 E Watman St		
City El Dorado	State Kansas	Zip 67042	City Wichita	State Kansas	Zip 67202
Business Phone No. 316-768-2882			☐ Applicant owns the proposed business location. ☐ Applicant does not own the proposed business location.		
Business Location Owner Name(s) Phillip L Near					

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK

List each person and their spouse*, if applicable. Attach additional pages if necessary.

Name [REDACTED]	Position President	Date of Birth [REDACTED]
Residence Street Address [REDACTED]	City [REDACTED]	State Ks
		Zip Code [REDACTED]
Spouse Name [REDACTED]	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Name [REDACTED]	Position Secretary	Date of Birth [REDACTED]
Residence Street Address [REDACTED]	City Andover	State Ks
		Zip Code [REDACTED]
Spouse Name Phillip L Near	Position	Age
Residence Street Address	City	State
		Zip Code
Name	Position	Date of Birth
Residence Street Address	City	State
		Zip Code
Spouse Name	Position	Age
Residence Street Address	City	State
		Zip Code

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK (CONTINUED)

Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
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Spouse Name	Position	Date of Birth
Residence Street Address	City	State
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Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		
Spouse Name	Position	Date of Birth
Residence Street Address	City	State
Zip Code		

SECTION 5 – MANAGER OR AGENT INFORMATION

My place of business or special event will be conducted by a manager or agent.

☐ Yes ☐ No

If yes, provide the following:

Manager/Agent Name

Roberto Flores

Phone No.

Date of Birth

Residence Street Address

City

Zip Code

Manager or Agent Spousal Information*

Spouse Name

Phone No.

Date of Birth

Residence Street Address

City

Zip Code

SECTION 6 – QUALIFICATIONS FOR LICENSURE

Within 2 years immediately preceding the date of this application, have any of the individuals identified in Sections 4 & 5 have been convicted of, released from incarceration for or released from probation or parole for any of the following crimes*:

(1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.

☐ Yes ☒ No

Have any of the individuals identified in Sections 4 and 5 been managers, officers, directors or stockholders owning more than 25% of the stock of a corporation which:

(1) had a cereal malt beverage license revoked; or (2) was convicted of violating the Club and Drinking Establishment Act or the CMB laws of Kansas.

☐ Yes ☒ No

All of the individuals identified in Sections 4 & 5 are at least 21 years of age*.

☒ Yes ☐ No**SECTION 7 – DURATION OF SPECIAL EVENT**

Start Date

Time

☐ AM ☐ PM

End Date

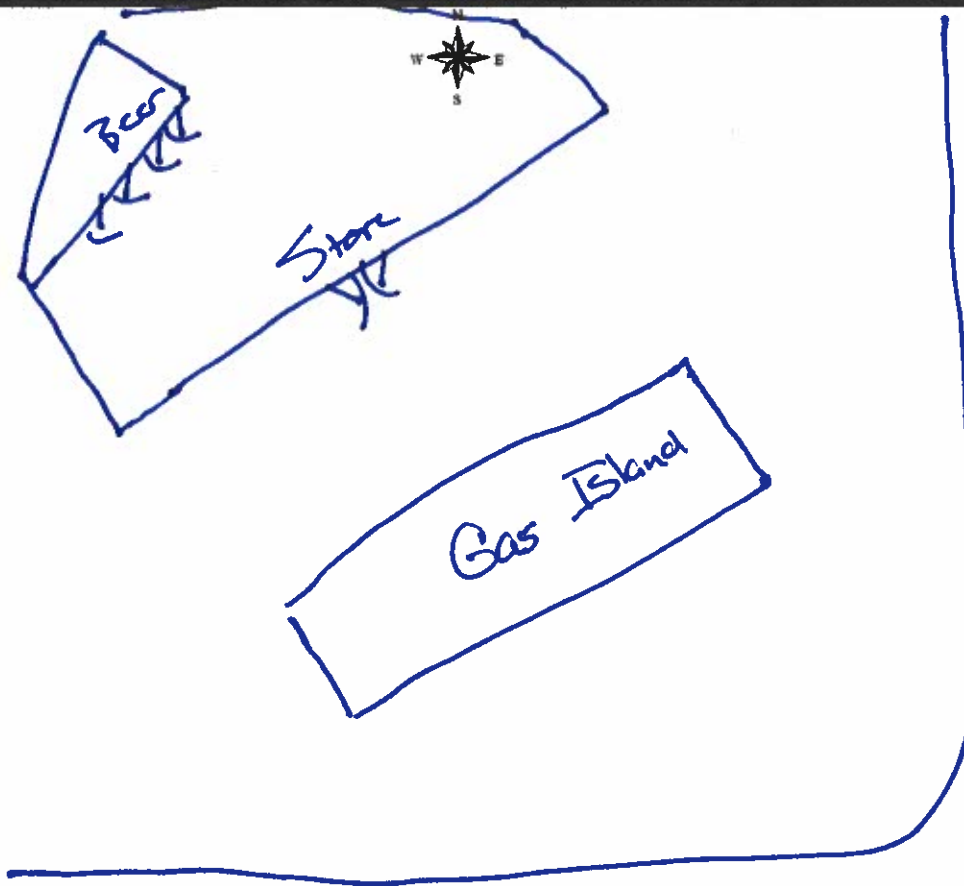
Time

☐ AM ☐ PM

Proceed to Section 8 on the next page.

SECTION 8 – LICENSED PREMISE

In the space below, draw the area you wish to sell or deliver CMB. Include entrances, exits and storage areas. Do not include areas you do not wish to license. If you wish to attach a drawing, check the box: ☐ 8 1/2" by 11" drawing attached.



I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct and that I am authorized by the corporation to complete this application. (K.S.A. 53-601)

SIGNATURE

Phillip L. Dean

DATE

8/28/19

FOR CITY/COUNTY OFFICE USE ONLY:

☐ License Fee Received Amount \$ _____ Date _____
(\$25 - \$50 for Off-Premise license or \$25-200 On-Premise license)

☐ \$25 CMB Stamp Fee Received Date _____

☐ Background Investigation

☐ Completed Date _____

☐ Qualified

☐ Disqualified

☐ Verified applicant has registered with the TTB as an Alcohol Dealer

☐ New License Approved

Valid From Date _____ to _____ By: _____

☐ License Renewed

Valid From Date _____ to _____ By: _____

☐ Special Event Permit Approved

Valid From Date _____ to _____ By: _____

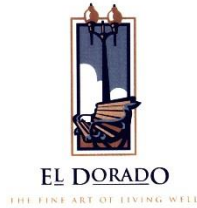
A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE STAMP FEE REQUIRED BY K.S.A. 41-2702(e), MUST BE SUBMITTED WITH YOUR MONTHLY REPORT (ABC-307) TO THE ALCOHOLIC BEVERAGE CONTROL, 915 SW HARRISON STREET, TOPEKA, KS 66612.

* Applicant's spouse is not required to meet citizenship, residency or age requirements. If renewal application, applicant's spouse is not required to meet the no criminal history requirement. K.S.A. 41-2703(b)(9)

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

City Manager's Office
David B. Dillner
City Manager
220 E. First Avenue
El Dorado, KS 67042



Phone: (316) 321-9100
Fax: (316) 321-6282
Email: ddillner@eldoks.com
Web: www.eldoks.com
Twitter: @EldoCityMgr

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Tax Increment Financing Policy
DATE: August 29, 2019

Background: Staff has developed a proposed policy provide guidelines for the local use of tax increment financing, also known as TIF, to assist with redevelopment efforts that require public infrastructure investments. TIF captures the incremental increase in property tax valuation from local taxing entities and uses the proceeds to pay for public infrastructure necessary to serve the redevelopment project. The City Manager has included with the memorandum a copy of a presentation “A Primer: Tax Increment Financing” that further explains the incentive.

Policy Issue: Should the City Commission approve a policy providing local guidelines its use of tax increment financing for redevelopment?

Alternatives: The City Manager has determined the following options exist with respect to this issue (*listed in no particular order*):

- **Approve the proposed Tax Increment Financing Policy.**
- **Deny approval of the proposed policy.**
- **Request additional information from the City Manager or direct changes be made to the proposed policy.**
The City Commission will need to specify the information or changes desired if this option is selected.

Fiscal Impact: Adoption of the policy will not have an immediate or direct impact on the City’s finances as the policy only delineates how the City will administer TIF requests from private developers or on City-initiated projects. Such redevelopment projects may have a fiscal impact on the City and other local taxing entities, although the impact will be on a case-by-case basis. A private developer requesting the use of TIF must provide sufficient information on the proposed redevelopment project to allow the City to conduct due diligence to understand the impact to the City and other taxing entities before making a decision on the use of TIF.

Legal Review: The City Attorney has not reviewed the policy and does not have an opinion regarding it at this time. Attorneys from Gilmore & Bell, PC, the City’s bond counsel, has reviewed the policy and has provided comments that have been incorporated into the final draft.

Staff Recommendation: The City Manager recommends approval of the proposed Tax Increment Financing Policy.

Recommended Motion:

Commissioner _____ moved to approve the Tax Increment Financing Policy of the City of El Dorado, Kansas.

Commissioner _____ seconded the motion.

A Primer: Tax Increment Financing

August 5, 2019



What is Tax Increment Financing?

Tax Increment Financing, or “TIF,” is a municipal financing tool used to target redevelopment to specific, defined geographic areas.

Facilitates the (re)development of areas designated as ***blighted, environmentally contaminated, conservation areas, and enterprise zones.***

TIF captures ***new, incremental property tax dollars*** generated from the defined geographic area to fund public improvements necessary for development.

What will TIF fund?



What will TIF fund?

State law allows for increased property tax increment to fund various public infrastructure components necessary for development such as:

Acquisition of property within the redevelopment area;

Site preparation, including utility relocations;

Sanitary and storm sewers and lift stations;

Drainage conduits, channels, and levees;

Street grading, paving, and curb and guttering;

Street lighting fixtures, connections, and facilities; and

Underground gas, water, heating and electric services located within the public right-of-way.

How is TIF revenue generated?

Primary revenue comes from incremental increases in property tax revenues otherwise distributed to local taxing authorities.

TIF **does not** capture the state school district levy (20 mills), school district capital outlay or the state mill levy (1.5 mills).

Allocation of “new” franchise fees, sales taxes, and transient guest receipts derived from the development area, and any other general revenue appropriated by the City.

Private sources or contributions.

Federal and state loans and grants may also be used to fund eligible expenses.

What financing may be used with TIF?

The City may issue ***special obligation bonds***, ***general obligation (G.O.) bonds***, or ***private activity bonds*** to finance eligible development expenses.

- Special obligation bonds are repaid from revenue generated from the project; investors take on additional risk and require a interest premium.
- G.O. bonds are backed by the full faith and credit of the City, meaning taxes may be raised to offset any revenue shortfall from the project.
- Private activity bonds are special loans backed by the project revenue and the private developer.

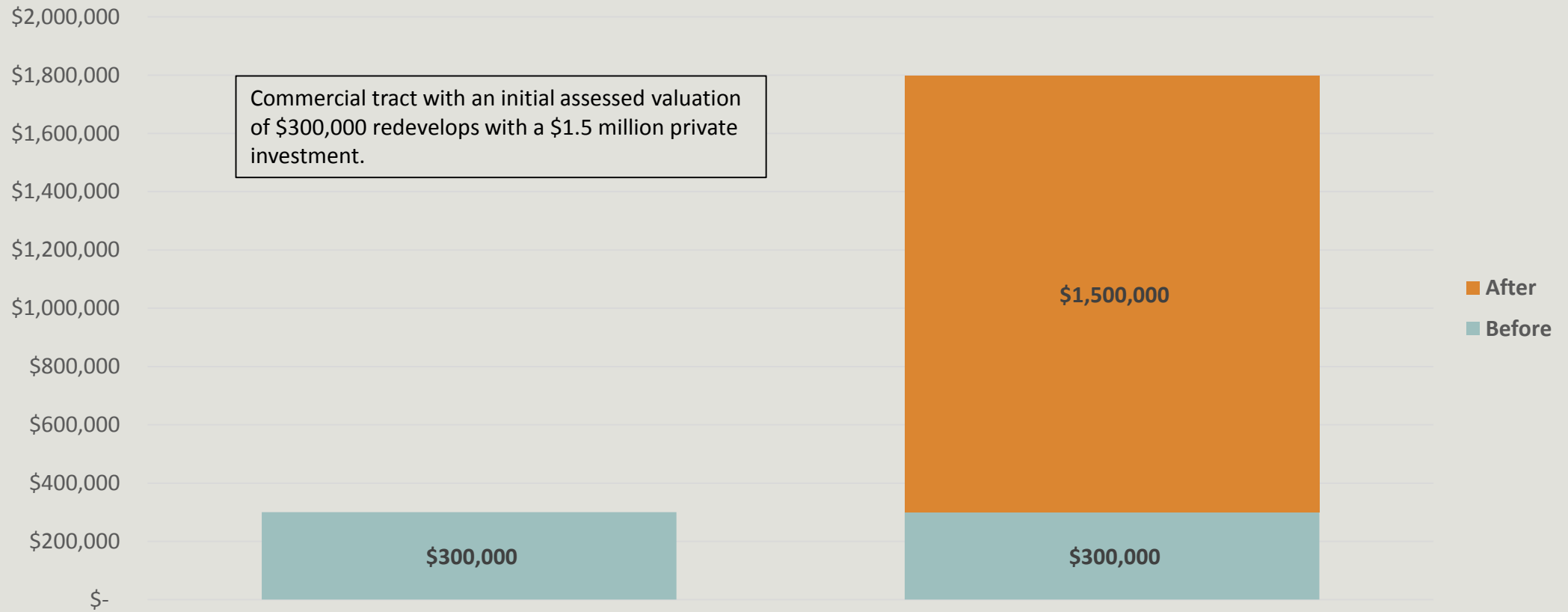
The City may also elect to facilitate projects on a ***pay-as-you-go*** basis; the developer pays for improvements upfront and is reimbursed with TIF proceeds over time.

Private developers may also receive an industrial revenue bond (and the subsequent benefits under state law), but may not simultaneously receive a property tax abatement.

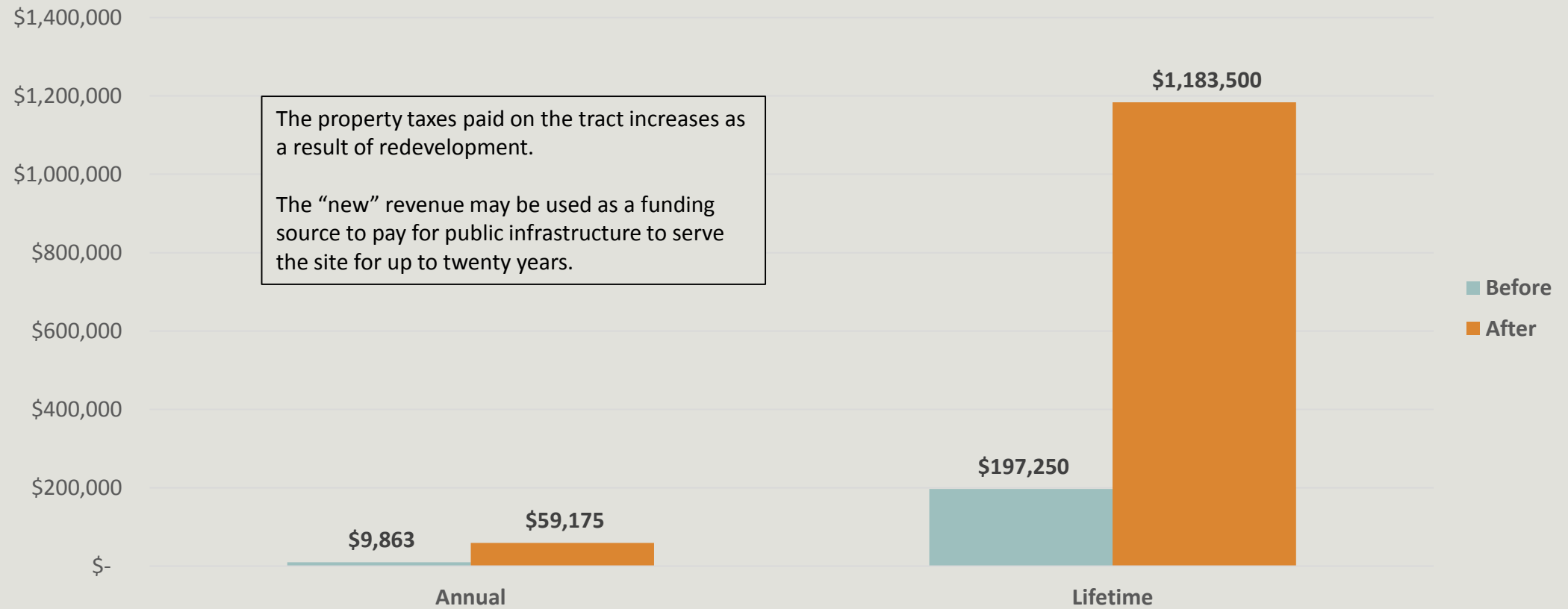
TIF Example

A PRIMER: TAX INCREMENT FINANCING

Assessed Valuation



Property Taxes



TIF Process

A PRIMER: TAX INCREMENT FINANCING

TIF Process: Establishing a TIF District

1. The City adopts a resolution stating its intent to create a TIF District and describes the District Plan.
2. The City adopts a resolution calling a public hearing. Notice of public hearing is provided to County, School District, and property owners, as well as published in the official newspaper.
3. Public hearing on proposed TIF District is held. Following the hearing, the City adopts a resolution making certain findings in support of the creation of a TIF District.
4. The City passes an ordinance establishing the TIF District.
5. No privately owned property may be acquired or redeveloped using TIF if either the BOCC or BOE determines that the TIF District will have an adverse effect on either entity.

TIF Process: Establishing a TIF Project

1. The City, in consultation with the Planning Commission, develops a Project Plan for specific development proposals within the TIF District.
2. The Project Plan must include a feasibility study to review the costs and benefits of the Project and the projected revenue to be derived by the development.
3. The City adopts a resolution calling a public hearing. Notice of public hearing is provided to County, School District, and property owners, as well as published in the official newspaper.
4. Upon conclusion of the public hearing and upon making the appropriate findings, the City may adopt an ordinance accepting the Redevelopment Plan. The ordinance must be adopted by the City Commission by no less than a two-thirds majority.
5. The City issue bonds to finance the Project, except that G.O. bonds may not be issued until a protest petition period expires.

Questions?

**CITY OF EL DORADO
TAX INCREMENT FINANCING POLICY**

1. ADOPTION OF POLICIES AND PROCEDURES

The following Tax Increment Financing (“TIF”) Application Procedures are hereby adopted. The City Manager is hereby authorized to implement the following procedures and to make such additional changes and clarifications that shall be deemed advisable and in the best interest of the City.

2. POLICY STATEMENT

- a. It shall be the policy of the City to consider creation of a redevelopment district for qualifying redevelopment projects. Prior to and following the creation of the redevelopment district, the applicant shall meet all state law and local requirements relating to the redevelopment plan and project.
- b. It is the policy of the City to consider the judicious use of TIF for those projects which demonstrate a substantial and significant public benefit by constructing public improvements in support of developments that will, by creating new jobs and retaining existing employment, eliminate blight, strengthen the employment and economic base of the City, increase property values and tax revenues, reduce poverty, create economic stability, upgrade older neighborhoods, facilitate economic self-sufficiency, promote projects that are of community-wide importance, and implement the Comprehensive Plan and economic development goals of the City.
- c. Care will be exercised in the use of TIF to thoroughly evaluate each project to ensure that the benefits that will accrue from the approval of TIF are appropriate for the costs that will result, and that they are equitable to the community as a whole.
- d. The City will charge a TIF application and an administrative service fee as set forth in this policy.

3. POLICY GUIDELINES

The following criteria are to be used by the City Commission to evaluate TIF applications:

- a. Each TIF application may be required to demonstrate that “but for” the use of TIF, the project is not feasible and would not be completed without the proposed TIF assistance.
- b. All TIF applications requesting the issuance of bonds or notes will be required to demonstrate that the incremental real property taxes and/or the sales and transient guest taxes expected to be generated from within an applicable TIF district will be sufficient to provide a debt coverage factor of at least 1.25 times the projected debt service on the tax increment bonds or notes. Debt service coverage greater than 1.25 times may be necessary to market any notes or bonds that are limited to public offerings. Developer or bank purchased bonds may be less than 1.25 times debt service coverage.
- c. The total amount of TIF assistance provided for projects will be based on the economic payoff expectations of the project and its significance to the community. In general, the goal will be for projects to pay off all improvements in ten years or less. Longer periods may be considered if a determination is made that the project is of community-wide significance.

- d. Each TIF application must include evidence that the applicant:
 - i. Has the financial ability to complete and operate the project;
 - ii. Will be liable for, or contribute equity or private financing of at least fifty percent of the total cost of the redevelopment project (including private development costs), or provide a performance bond for the completion of the project. Projects with equity or private financing contributions from the developer in excess of fifty percent of the total redevelopment project costs will be viewed more favorably.
- e. The City will not consider creation of a TIF district unless the applicant certifies that it intends to submit a redevelopment plan and begin negotiating a development agreement within sixty days of creation of the TIF district. Thereafter, the City will require satisfactory assurance that the project will be completed in a timely manner in accordance with the redevelopment plan and agreement.
- f. TIF applications for residential development projects may be considered for removal of blight and revitalization of older developed neighborhoods, and/or to provide for public improvements to benefit economic development and employment.
- g. TIF applications for the redevelopment of existing residential neighborhoods, commercial and industrial areas will be viewed favorably. Projects to stabilize current residential neighborhoods, commercial, and industrial areas that have or will likely experience deterioration will also be favored.
- h. All TIF applications shall comply with the requirements of the Kansas TIF Statute.
- i. Project eligible costs covered by TIF funds shall be identified in the application and the redevelopment plan.
- j. TIF applications that include the establishment of business areas, or the redevelopment of existing business areas, shall include information as to the business type of the major tenants of the TIF area. In addition, a thorough market analysis should be completed which identifies:
 - i. population areas that will be drawn from; and
 - ii. businesses of similar types which would be competing with the TIF area businesses.

4. PROCEDURE

The City may consider issuing tax increment financing bonds or reimbursing the eligible costs from tax increments pursuant to state law and this policy after the following occurs:

- a. A complete TIF application is received by the City from the applicant in a form prescribed by the City. The TIF application shall be submitted with sufficient time for staff to follow established procedures, review the project documents, and to meet with the Unified School District within which the proposed redevelopment is located.

- b. Upon review of the TIF application, the City may require and the applicant shall furnish further information in order to clarify the submittal.
- c. After creation of the TIF district, the City may designate the applicant as the proposed developer through the adoption of a development agreement.
- d. The applicant shall, in consultation with the City and the Planning Commission proceed with the preparation of a redevelopment plan pursuant to state law and City requirements, including a complete and comprehensive financial feasibility study demonstrating that the economic benefits of the project exceed the cost, the tax increment to be derived from the project will fully fund such costs or bond payments, and that the term of the redevelopment district does not exceed a mutually agreed upon period of time.
- e. The applicant and City will enter into a development agreement upon satisfactory completion of the redevelopment plan.

5. FEES

a. Application Fee

Applicants requesting TIF shall remit a non-refundable TIF application fee of \$5,000 to the City at the time of the submittal of the application. The application fee will also apply when substantial changes to a TIF district or project (i.e., amendment of a district, etc.) are requested by an applicant.

b. TIF Administration Service Fee

- i. A five percent annual administrative service fee shall be paid to the City from the tax increment generated from the project prior to disbursement of the increment to the developer or bond trustee to cover the administrative costs incurred by the City for the administration of and other City costs associated with each approved TIF project. Such administrative service fee shall be in addition to the TIF application fee and any other fees associated with the TIF project, and shall be due by February 15th of each year the TIF project is effective.

c. Funding Agreement and Reimbursement

- i. The applicant will be required to enter into a funding agreement with the City for the purpose of providing such funds as may be necessary to pay preliminary expenses, such as outside consultants and attorney fees, as required for the City to fully analyze the TIF application. TIF application fees (excluding non-refundable), and funds contributed as part of a funding agreement may be reimbursed to applicant or paid to City from bond proceeds or TIF revenues. Bond issuance costs, however, may not be reimbursed from TIF project revenue if TIF project reimbursable costs are payable from City sales tax or transient guest tax.

6. REQUEST FOR PROPOSAL

The City may self-initiate a request for proposals process to facilitate a redevelopment project. The fees shown above are for both City initiated and non-City initiated redevelopment projects. The City Commission reserves the right, at its sole discretion, to reduce or waive the above fees if a redevelopment project is City-initiated and it is determined to be in the best interest of the City to do so. Upon the filing of a TIF application that is not City-initiated, the City reserves the right to cause a public notice to be inserted in a newspaper of general circulation in the City and on the City's website requesting proposals for development in the proposed project area.

7. BUSINESS RELOCATIONS

If businesses are to be relocated from other areas of the City, sufficient justification will be included to indicate why this relocation should be considered. If existing businesses are to be relocated to the TIF district, the base year activity for purposes of determining the sales tax increment will be the last twelve month period at the businesses current location, immediately preceding the relocation.

8. METHOD OF FINANCING

TIF applications may request that TIF assistance be provided in one of the following forms:

- a. Special obligation bond financing;
- b. Direct reimbursement to the developer on a cash, or “pay as you go,” basis;
- c. Pledge of tax increment financing revenues to pay private financing; or
- d. Any combination of the foregoing methods.

The City is, at its sole discretion, to determine the appropriate method of financing for a TIF project. In deciding which method of financing to use, the prevailing factor in making the determination will be total costs and the security for the bonds. The City will not provide credit enhancements for the special obligation bonds; however, credit enhancement provided by the developer on any bonds will be viewed favorably.

The City will not issue general obligation bonds for TIF eligible costs unless the City Commission determines that financing a TIF project with general obligation bonds is in the best interest of the community. Any general obligation bonds will be issued in compliance with applicable state law and local policy.

The proposed method of financing will be clearly shown in the TIF application and the redevelopment plan.

9. OTHER TAXES AVAILABLE TO REPAY TIF OBLIGATIONS.

The City will, at its sole discretion, give preference to TIF applications which request reimbursement of eligible project costs solely from the incremental real property taxes generated by the TIF project. Should an applicant request reimbursement of eligible project costs from the City’s sales tax and/or transient guest tax, the applicant shall demonstrate the necessity of including such revenues in writing.

In the event that a TIF redevelopment project demonstrates the need for additional revenue, the City may elect to include, at its sole discretion, a portion of its general sales tax to repay reimbursable project costs. The City will contribute no more than fifty percent of the City’s portion of any general sales taxes generated from within a TIF district in the event the City Commission elects to contribute sale tax receipts to project expenses. If an applicant requests reimbursement of eligible project costs from any amount of the City’s sales tax, no more than twenty percent of the total square feet of the development may be leased to non-sales tax producing tenants. The City will not make available any proceeds from special sales taxes assessed within the corporate limits of the City.

Transient guest taxes may, at the sole discretion of the City, be used as part of the tax increment, but generally the City will only make up to fifty percent of the transient guest tax receipts generated within an applicable TIF district available to reimburse eligible redevelopment project costs.

Generally, the City will not include utility franchise fees collected from private utilities or as payments in-lieu of taxes from publicly owned utilities to repay or reimburse TIF obligations to the extent that such exclusion is permitted by law.

10. AUTHORITY OF GOVERNING BODY

The City Commission reserves the right to deviate from any policy, but not any procedure set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

11. SUNSET DATE

Since the justification and necessity for creation of TIF districts may be lessened as the local economy moves towards its goals of balance and diversification and the City's redevelopment needs are satisfied, this policy shall automatically expire December 31, 2022, unless it is readopted for an additional term. No such TIF project shall be approved following such expiration, unless this policy is readopted or repealed by adoption of a new policy.

RESOLUTION NO. _____

**A RESOLUTION PROVIDING A TAX INCREMENT FINANCING
POLICY FOR THE CITY OF EL DORADO, KANSAS**

WHEREAS, it shall be the policy of the City to consider creation of a redevelopment district for qualifying redevelopment projects. Prior to and following the creation of the redevelopment district, the applicant shall meet all state law and local requirements relating to the redevelopment plan and project; and

WHEREAS, It is the policy of the City to consider the judicious use of TIF for those projects which demonstrate a substantial and significant public benefit by constructing public improvements in support of developments that will, by creating new jobs and retaining existing employment, eliminate blight, strengthen the employment and economic base of the City, increase property values and tax revenues, reduce poverty, create economic stability, upgrade older neighborhoods, facilitate economic self-sufficiency, promote projects that are of community-wide importance, and implement the Comprehensive Plan and economic development goals of the City; and

WHEREAS, care will be exercised in the use of TIF to thoroughly evaluate each project to ensure that the benefits that will accrue from the approval of TIF are appropriate for the costs that will result, and that they are equitable to the community as a whole; and

WHEREAS, The City will charge a TIF application and an administrative service fee as set forth in this policy.

NOW, THEREFORE, BE IT RESOLVED by the City of El Dorado governing body that the attached tax increment financing policy be adopted.

ADOPTED by the City Commission of the City of El Dorado, in Butler County, Kansas, this 3rd day of September, 2019.

SIGNED by the Mayor, this 3rd day of September, 2019.

Vince Haines
Mayor

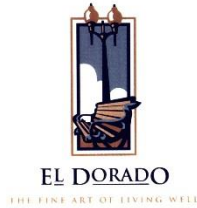
Attest:

Tabitha D. Sharp
City Clerk

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

City Manager's Office
David B. Dillner
City Manager
220 E. First Avenue
El Dorado, KS 67042



Phone: (316) 321-9100
Fax: (316) 321-6282
Email: ddillner@eldoks.com
Web: www.eldoks.com
Twitter: @EldoCityMgr

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Main Street Memorandum of Understanding
DATE: August 29, 2019

Background: The City has not had an approved memorandum of understanding with the El Dorado Main Street Association before, and so the proposed agreement outlines the scope of services the City is “purchasing” from the organization for its annual contribution of \$30,000. The Association’s focus is primarily on downtown El Dorado, and the scope of services included in the agreement is:

- Assisting investors and building owners in rehabilitating and preserving buildings located within the District such as obtaining grants, loans, and facilitating real estate transfers in accordance with applicable regulations and requirements;
- Making Infrastructure Without Walls (“IWW”) loans available within the District;
- Offer advice and assistance to building owners and/or business owners to enable them to insure changes to the facades of their buildings meet the prescribed historic design standards and specifications;
- Assist in attracting businesses and investors to the District;
- Facilitate the development, maintenance, and promotion of the Downtown artscape;
- Promote the District through presenting and conducting activities such as the Historic building tour and facilitating at least two other events such as: Holiday Parade and associated activities, Holly Frontier Western Celebration, and Trick-or-Treat Down the Street, or equivalent type events;
- Maintaining the Veteran Banner Program and participating in the city-wide banner program; and
- Working with City staff, businesses and others to ensure a downtown Historic District that provides a quality experience for those visiting the District.

Policy Issue: Should the City Commission approve a Memorandum of Understanding with the El Dorado Main Street Association?

Alternatives: The City Manager has determined the following options exist with respect to this issue (*listed in no particular order*):

- **Approve the Memorandum of Understanding with El Dorado Main Street Association.**
- **Deny approval Memorandum of Understanding with El Dorado Main Street Association.**
- **Request additional information from the City Manager or direct changes be made to the proposed agreement.** The City Commission will need to specify the information or changes desired if this option is selected.

Fiscal Impact: Per the agreement, the City annually appropriates \$30,000 for distribution to Main Street as compensation for the scope of services outlined in the agreement. The City will remit the distributions twice per year. These funds are included in the City's annual budget, which is subject to annual approval by the City Commission.

Legal Review: The City Attorney has not reviewed the agreement and does not have an opinion regarding it at this time.

Trade-offs: The City Commission could allocate the aforementioned funds to another program or economic development initiative, although such reallocation would have a significant impact on the El Dorado Main Street Association which relies on these funds for its operations. The City allocates funds to El Dorado, Inc. for economic development purposes, so the funds granted to Main Street are intended to facilitate the strengthening of the downtown.

Staff Recommendation: The City Manager recommends approval of the Memorandum of Understanding with the El Dorado Main Street Association.

Recommended Motion:

Commissioner _____ moved to direct the Mayor to sign the Memorandum of Understanding with the El Dorado Main Street Association.

Commissioner _____ seconded the motion.

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“Agreement”) is made and entered into as of this ___ day of September, 2019, by and between the City of El Dorado, Kansas (“City”) and El Dorado Main Street Association (“Association”), a Kansas not-for-profit Association.

WHEREAS, the Association was organized in 1998 as a 501(c)(3) non-profit organization by representatives of the Downtown El Dorado community and other interested stakeholders of the community for the purpose of maintaining a vibrant Downtown and Historic District;

WHEREAS, the Downtown area was designated as an Historic District in October 2013;

WHEREAS, the City has supported the Association since its inception; and

WHEREAS, the City desires to continue to partner with the Association in its efforts to maintain a vibrant Downtown and Historic District.

NOW, THEREFORE, in consideration of the premises and the performance of the covenants herein contained, the parties agree as follows:

1. **Scopes of Services.** The Association agrees to provide, through its professional staff, the following services to the City within the geographic boundaries of the downtown historic district (“District”):
 - a. Assisting investors and building owners in rehabilitating and preserving buildings located within the District such as obtaining grants, loans, and facilitating real estate transfers in accordance with applicable regulations and requirements;
 - b. Making Infrastructure Without Walls (“IWW”) loans available within the District;
 - c. Offer advice and assistance to building owners and/or business owners to enable them to insure changes to the facades of their buildings meet the prescribed historic design standards and specifications;
 - d. Assist in attracting businesses and investors to the District;
 - e. Facilitate the development, maintenance, and promotion of the Downtown artscape;
 - f. Promote the District through presenting and conducting activities such as the Historic building tour and facilitating at least two other events such as: Holiday Parade and associated activities, Holly Frontier Western Celebration, and Trick-or-Treat Down the Street, or equivalent type events;
 - g. Maintaining the Veteran Banner Program and participating in the city-wide banner program; and
 - h. Working with City staff, businesses and others to ensure a downtown Historic District that provides a quality experience for those visiting the District.
2. **Performance Standards.** The Association shall establish a plan of work (“Work Plan”) in which the specific activities to be performed by the Association are delineated. Such Work Plan shall specifically address the nature and scope of services to be provided to the City, and shall establish performance criteria by which the Association’s performance will be measured and evaluated. Such Work Plan shall be prepared annually and shall be subject to the approval of the City Manager prior to adoption by the Association’s Board of Directors.

3. **Compensation.** In consideration of the services to be provided by the Association, the City shall pay to the Association the sum of \$30,000, payable at the rate of \$15,000 on or before the fifteenth day of the months of January and July of each year during the Effective Period of this Agreement. The Association shall prepare an invoice for each semi-annual payment and submit such invoice to the City at least thirty days prior to the scheduled payment.
4. **Term.** This Agreement shall be in full force and effect from and after its Effective Date until and unless terminated by either party as provided herein.
5. **No Agency Relationship.** Notwithstanding anything to the contrary contained in this Agreement, the Association and its employees shall not hold itself or themselves out as, and shall not be, an agent of the City. Neither the Association nor its employees shall have the authority to enter into agreements, leases, or other commitments on behalf of the City.
6. **Indemnity.** Each party to this Agreement agrees to and shall defend and hold harmless the other for the negligent acts and omissions of such party and its agents, employees and contractors, provided, however, nothing herein shall be construed as a waiver by either party of any limitation of liability provided under the Kansas Tort Claims Act.
7. **Insurance.** The Association shall be solely responsible for obtaining all insurance coverages that it deems necessary or desirable in connection with its business and its obligations under this Agreement, including, but not limited to, general liability, workers compensation, and automobile liability coverage.
8. **Termination.** Either party may terminate the Agreement, without cause, by providing the other party written notice of its intent to so terminate the Agreement. Such voluntary termination shall become effective following the conclusion of the then-current budget year.

Either party may terminate the Agreement in the event the other party breaches the terms and conditions as provided herein by declaring, in writing, the other party is in default of the Agreement. The non-breaching party may elect to terminate the Agreement upon ninety days' notice to the breaching party, and this Agreement shall thereafter terminate unless the default is cured within ninety days of such notice.

9. **Funding.** The parties acknowledge that a portion of the Association's ability to fulfill its obligations of the Agreement is contingent upon continued funding by supporters, and that such funding is currently primarily comprised of voluntary private contributions and the City. The Association shall make reasonable efforts to gain financial support through expanded support and through other funding sources, such as grants-in-aid, service contracts, or by collecting fees for services rendered to other agencies and organizations.
10. **No Implied Appropriation of Funds.** Notwithstanding any other provision of this Agreement, the City shall not be obligated for the Association's performance hereunder or by any provision of this Agreement during any of the City's future fiscal years unless and until the governing body of the City appropriates funds for this Agreement in the City's annual budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of the last day of the last fiscal year for which funds were appropriated. The City shall notify the Association in writing of any such non-appropriation of funds for the upcoming calendar year on or before October 1st.

11. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous oral and written agreements and understandings pertaining to hereto. Any changes to this Agreement must be approved in writing by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hand this ____ day of _____, 2019, at El Dorado, Butler County, Kansas.

EL DORADO MAIN STREET ASSOCIATION

CITY OF EL DORADO, KANSAS

Frank Patton, President

Vince Haines, Mayor

Attest:

Attest:

Secretary

Tabitha Sharp, City Clerk

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: Commission Terms
DATE: August 12, 2019

Background:

In 2016, the State of Kansas changed the municipal election dates to the fall. In addition to this change, they also change the swear-in date to the second Monday of January following the election. Several cities experienced issues with lame-duck candidates after this change was enacted and went to the legislature to change the law. The State changed the law to allow cities to now swear-in newly elected officials anytime between December 1st and the second Monday in January. Staff are recommending that the City Commission choose a date in December in order to avoid the possibility of this issue occurring in El Dorado in the future. Our current ordinance states that elected officials will be sworn in on the second Monday in January.

After discussing this at a work session in August, the City Commission chose to move the swear-in date to the first meeting in December.

Policy Issue:

What does the City Commission believe is in the best interests of future Commissions and the Citizens for each item?

Fiscal Impact:

There will be no fiscal impact in approving this recommendation.

Trade-offs:

Should the Commission choose not to address these issues at this time, they will likely have to address them in the future in an emergency situation.

Staff Recommendation:

Approve the Ordinance.

Commission Actions:

Commissioner _____ moved to approve Ordinance No. _____, an Ordinance amending section 2.04.090 of the City of El Dorado's Municipal Code pertaining to the terms of the City Commission.

Commissioner _____ seconded the motion.

Roll Call Vote

Position No. 1	Commissioner Matt Guthrie	_____
Position No. 2	Commissioner Gregg Lewis	_____
Position No. 3	Commissioner Nick Badwey	_____
Position No. 4	Commissioner Kendra Wilkinson	_____
	Mayor Vince Haines	_____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2 OF THE CITY OF EL DORADO, KANSAS MUNICIPAL CODE RELATING TO THE TERMS OF THE CITY COMMISSION

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS.

Section 1: That Section E of Section 2.04.040 of the City of El Dorado Municipal Code shall read as follows:

E. Officials shall be sworn in at the first meeting in December of each municipal election year.

Section 2: In all other respects, Section 2.04.040 shall be and remain unchanged.

Section 3: All other ordinances or parts of other ordinances in conflict herewith are hereby repealed.

Section 4: This ordinance shall be in full force and effect from and after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, and APPROVED AND SIGNED by its Mayor, this 3rd day of September, 2019.

Vince Haines, Mayor

ATTEST:

Tabitha Sharp, City Clerk

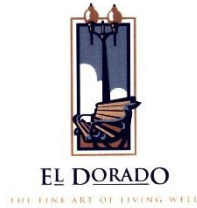
APPROVED TO FORM:

Ashlyn Lindskog – City Attorney

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

City Manager's Office
David B. Dillner
City Manager
220 E. First Avenue
El Dorado, KS 67042



Phone: (316) 321-9100
Fax: (316) 321-6282
Email: ddillner@eldoks.com
Web: www.eldoks.com
Twitter: @EldoCityMgr

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Cox Wireless Small Cell Franchise Agreement
DATE: August 29, 2019

Background: Cox Wireless Access, LLC has approached the City to facilitate the development of a franchise agreement for the purpose of establishing a framework for the installation of distributed antenna systems (DAS) in El Dorado. These systems are leased by Cox Wireless Access, LLC to third-party wireless carriers to enhance the carriers signal. The installation of DAS will be an important consideration as technology continues to migrate to wireless applications. The DAS provides a means for wireless companies to strengthen signals where such signals are weaker, and also allows them to push more data to data-intensive applications on mobile devices.

The wireless industry is using small cells more and more to enhance the 4G network and offload capacity. It will also be used for the anticipated implementation of the 5G network. Large towers will still be needed and used in the future so DAS will not eliminate the use of towers. The quantity of small cells needed and the extent of the technology's reach will greatly depend on the technology. Present technology, according to Cox Wireless, reaches approximately 500 feet.

Policy Issue: Should the City Commission approve a Franchise Agreement with Cox Wireless Access, LLC, concerning distributed antenna systems?

Alternatives: The City Manager has determined the following options exist with respect to this issue (*listed in no particular order*):

- **Approve the Franchise Agreement with Cox Wireless Access, LLC to provide a framework for the installation of distributed antenna systems within the corporate limits of the City.**
- **Deny approval Franchise Agreement with Cox Wireless Access, LLC.**
- **Request additional information from the City Manager or direct changes be made to the proposed franchise agreement.** The City Commission will need to specify the information or changes desired if this option is selected.

Fiscal Impact: Per the agreement, the City will receive an annual payment of \$150 per attachment of wireless equipment on City-owned infrastructure or on newly placed poles owned by Cox Wireless Access, LLC. The City does not anticipate a significant amount of revenue from the franchise agreement.

Legal Review: The City Attorney has reviewed the franchise agreement and has provided comments that have been incorporated into the final draft.

Staff Recommendation: The City Manager recommends approval of the Franchise Agreement with Cox Wireless Access, LLC to provide a framework for the installation of distributed antenna systems in El Dorado.

Recommended Motion:

Commissioner _____ moved to direct the Mayor to sign the Franchise Agreement granting a franchise and authorizing Cox Wireless Access, LLC, a wholly-owned subsidiary of Cox Communications to construct, maintain, and operate as a wireless infrastructure provider in the public right-of-way within the City of El Dorado, Kansas.

Commissioner _____ seconded the motion.

FRANCHISE AGREEMENT

A FRANCHISE AGREEMENT GRANTING A FRANCHISE AND AUTHORIZING COX WIRELESS ACCESS, L.L.C, A WHOLLY OWNED SUBSIDIARY OF COX COMMUNICATIONS, TO CONSTRUCT, MAINTAIN AND OPERATE AS A WIRELESS INFRASTRUCTURE PROVIDER IN THE PUBLIC RIGHT-OF-WAY.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, TERMS, AND CONDITIONS HEREIN PROVIDED, THE PARTIES HERETO AGREE, AS FOLLOWS:

Section 1. Definitions.

For purposes of this franchise ordinance, the following words and phrases shall have the following meanings:

Cable service is defined as set forth in 47 U.S.C. Section 522(6), and amendments thereto.

City means the City of El Dorado, Kansas.

Competitive infrastructure provider means an entity which leases, sells or otherwise conveys Facilities located in the Public right-of-way, or the capacity or bandwidth of such Facilities for use by FCC licensed wireless telecommunications service providers in the provision of Telecommunications services, internet services, or other intrastate and/or interstate traffic, but does not itself provide services directly to end users within the corporate limits of the City.

Distributed antenna system (“DAS”) facility or facilities mean certain components of the Network consisting of distributed antenna systems which may be located on existing or new streetlights, stand-alone poles, third party utility poles, and other structures located on or within the ROW as permitted under this contract franchise ordinance, and which will be connected to underground and aboveground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment.

Facility or facilities means any portion or component of the Network located in, along, over, upon, under, or through the public right-of-way.

Franchise fee means the fees established under this article for each grant of access to the public rights-of-way.

Grantee means the franchisee, Cox Wireless Access, L.L.C., a wholly owned subsidiary of Cox Communications, Inc. a Delaware corporation.

Network means the franchisee’s fiber network and distributed antenna system facilities or small wireless facilities, including the antenna nodes, poles, equipment cabinets, underground and aboveground fiber optic cable, wires, lines, fiber handholes and enclosures, fiber repeaters and related equipment and appurtenance, and similar facilities and appurtenances, designed,

constructed or occupied for the purpose of producing, receiving, amplifying or distributing telecommunications service to or from locations within the city.

Law(s) means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental entity or agency having joint or several jurisdiction over any aspect of this contract franchise agreement or the parties' activities hereunder, whether now existing or hereafter adopted, including but not limited to a city right-of-way management ordinance and the city's zoning and land use laws to the extent they are not inconsistent with state and federal law regulating use of the public rights-of-way, and any related laws, rules, or regulations and amendments thereto relating to the use and occupancy of the public rights-of-way.

Public right(s)-of-way ("ROW") means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts, or facilities or property owned by the City even if located within the ROW.

Small Wireless Facilities or *Wireless Facilities* means a wireless facility that meets both of the following qualifications:

- a) All antennas are located inside an enclosure of not more than (6) six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than (6) six cubic feet, and
- b) All other wireless equipment associated with the facility is cumulatively not more than (28) twenty-eight cubic feet on volume, or (50) fifty cubic feet in volume if the equipment was ground mounted before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:
 - i. An electric meter.
 - ii. Concealment elements.
 - iii. A telecommunications demarcation box.
 - iv. Grounding equipment.
 - v. A power transfer switch.
 - vi. A cutoff switch.
 - vii. Vertical cable runs for the connection of power and other services.

Telecommunications service(s) means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Wireless Services Provider means a provider of wireless services.

Wireless Support Structure means a freestanding structure, such as a pole, monopole, self-supporting tower, or suitable existing structure or alternative structure designed to support or capable of supporting Wireless Facilities. Wireless Support Structure does not include any telephone or electrical Utility pole or any tower used for the distribution or transmission of electrical service.

Section 2. –Grant of Contract Franchise.

- (a) **Competitive Infrastructure Provider.** This contract franchise ordinance hereby grants to Cox Wireless Access, L.L.C., the nonexclusive contract, right, privilege, and franchise to locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain, facilities along, across, upon and under the ROW for the purpose of Cox Wireless Access, L.L.C. providing competitive infrastructure to third-party carriers to provide telecommunications services, internet services, or other intrastate or interstate traffic, subject to the terms and conditions of this contract franchise ordinance.
- (b) **Affiliate Contract Franchise.** Nothing in this contract franchise ordinance is intended to preclude the city from seeking or authorize the city to seek, a franchise from an affiliate or third party providing telecommunications services.
- (c) **Conveyance of Title.** This contract franchise ordinance shall not convey title, equitable or legal, in the ROW, and gives only the right to occupy the ROW, for the purposes and for the period stated herein and subject to the terms stated in this Contract Franchise Ordinance. This Contract franchise ordinance does not:
 - 1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third party, without the consent of such party;
 - 2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City whether inside or outside of the ROW, specifically including, but not limited to, poles, street lights, buildings, towers, park property, City Hall property, or other facilities;
 - 3. Excuse the Grantee from obtaining appropriate access or attachment agreements or permits before locating its Facilities on Facilities or property owned or controlled by the City or a third-party;
 - 4. Grant to any licensee or lessee of Grantee or other third party a right of access or authority to the City's right-of-way without said licensee, lessee, or third party obtaining all necessary permits and authorizations from the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City

dealing with management of the ROW and, if determined necessary by the City, a contract franchise for said licensee, lessee, or third party.

5. Provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract Franchise, and Grantee shall not knowingly allow the use of its Facilities or Network by any third party in violation of any federal, state, or local law.

(d) **Cable Service.** This contract franchise ordinance does not provide Cox Wireless Access, L.L.C. the right to provide cable service to the city and inhabitants thereof. If, during the term of this franchise, Cox Wireless Access, L.L.C. desires to provide cable service within the corporate boundaries of the city, Cox Wireless Access, L.L.C. shall follow the requirements of K.S.A. 12-2021, *et seq.*, as amended, in providing notice and paying a video service provider fee to the city. In the event that K.S.A. 12-2021, *et seq.* is repealed or amended in such a way as to provide direct franchising authority to the City, Cox Wireless Access, L.L.C. shall promptly notify the city of its intent to provide cable service and renegotiate this contract franchise ordinance in accordance with applicable law prior to providing such service. Nothing in this contract franchise ordinance is intended to preclude the city from seeking, or authorize the city to seek, a franchise from Cox Wireless Access, L.L.C. or any subsidiary, affiliate, or third party providing cable services, to the extent any such franchise is permitted under applicable law at the time such service commences. Cox Wireless Access, L.L.C. and the city agree that nothing in this franchise is intended to authorize the city to seek from Cox Wireless Access, L.L.C., nor to require Cox Wireless Access, L.L.C. to obtain, a franchise to offer "open video systems" as that term is used in section 653 of the Telecommunications Act of 1996 (codified at 47 U.S.C. 573). Cox Wireless Access, L.L.C. and the city further agree, however, that this article does not authorize Cox Wireless Access, L.L.C. to offer "open video systems" without paying a fee on the gross revenues of the system operator for the provision of cable service in lieu of a franchise fee, pursuant to and in the manner described in 47 U.S.C. 573(c)(2)(b) and without complying with Federal Communication Commission (FCC) regulations promulgated pursuant to 47 U.S.C. 573.

(e) This contract franchise ordinance is subject to and conditioned upon the terms and conditions of all applicable federal, state and local laws, existing now or in the future, and the parties shall comply with any such laws in the exercise of their rights and performance of their obligations under this contract franchise ordinance. "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental entity or agency having joint or several jurisdiction over any aspect of this contract franchise ordinance or the parties' activities hereunder, whether now existing or hereafter adopted, including but not limited to the City's then current ROW management ordinance or regulations and the city's zoning and land use laws to the extent they are not inconsistent with state and federal law regulating use of the ROW, and any related laws, rules, or regulations and amendments thereto relating to the use and occupancy of the ROW.

- (f) The authority of Cox Wireless Access, L.L.C. to use and occupy the ROW shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the city. The city may exercise its home rule powers in its administration and regulation related to the management of the ROW provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Cox Wireless Access, L.L.C. shall comply with all laws, rules, and lawful city regulations, in effect now or as may be adopted in the future, governing the use of ROW, specifically including City of El Dorado Ordinance No. 2293 as amended or replaced, the City's zoning, land use, and subdivision regulations and amendments thereto.

Section 3. - Term.

- (a) This contract franchise ordinance shall be effective for a term of five (5) years from the effective date of this contract franchise ordinance. Thereafter, this contract franchise ordinance shall automatically renew for three (3) additional five-year terms, unless a party notifies the other party of its intent to terminate the contract franchise ordinance prior to 180 days before the termination of the current term. The additional terms are a continuation of this franchise and not a new franchise or amendment.
- (b) Upon written request of either the city or Cox Wireless Access, L.L.C., this contract franchise ordinance shall be renegotiated at any time in accordance with the requirements of K.S.A. 12-2001 and K.S.A. 17-1902, as amended, upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the city or Cox Wireless Access, L.L.C., including but not limited to the scope of the contract franchise ordinance granted to the Cox Wireless Access, L.L.C. or the compensation to be received by the city.
- (c) Amendments under this section, if any, shall be made by contract franchise ordinance as prescribed by statute. The contract franchise ordinance shall remain in effect according to its terms pending completion of any review or renegotiation provided by this section.

Section 4. - Compensation.

- (a) **Competitive Infrastructure Provider Franchise Fee.** In consideration of this contract franchise ordinance, Cox Wireless Access, L.L.C. agrees to pay the city a franchise fee of one hundred and fifty dollars (\$150.00) per year per attachment for the attachment of wireless equipment to support DAS or SWF installations within the city on city owned infrastructure or newly placed Cox Wireless Access, L.L.C poles within the city. Cox Wireless Access, L.L.C. shall pay its franchise fee on the 15th day of the second month following the month in which the gross revenue is received.
- (b) **Additional Fees.** In addition to the fees allowed by law and pursuant to this contract franchise ordinance, and in exchange for other valuable consideration, Cox Wireless Access, L.L.C. shall pay a one-time application fee of \$1,000. This fee shall be in addition to other city permit and review fees that exist as of the date the DAS or Small Wireless Facility is installed that relate

to the installation of the DAS or Small Wireless Facility. Cox Wireless Access, L.L.C. shall pay the one-time application fee upon submission of a complete application for the installation of a DAS or Small Wireless Facility per this article and after the date of Cox Wireless Access, L.L.C.'s submission of a complete application, the city shall not retroactively apply any new permit or licensing fees to the DAS or Small Wireless Facility.

- (c) Cox Wireless Access, L.L.C. shall reimburse the city for the publication costs related to the adoption or amendment of this contract franchise ordinance.
- (d) If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest shall accrue from the due date until received, at an annual rate of ten percent (10%), or if lower, the highest percentage allowed by law.
- (e) Cox Wireless Access, L.L.C. shall keep accurate books of account at its principal office in Buhler, Kansas, or such other location of its choosing, for the purpose of determining the amounts due to the city pursuant to this subsection. The city shall have access to, and the right to examine, at all reasonable times, all books, receipts, files, records and documents of Cox Wireless Access, L.L.C. necessary to verify the correctness of compensation paid to the city, and to correct the same, if found to be erroneous. The city may only exercise its right to examine the books, receipts, files, records, and documents one time per year at a mutually agreeable time. If the statement of fees paid by Cox Wireless Access, L.L.C. is incorrect, Cox Wireless Access, L.L.C. shall promptly make payment upon such corrected statement. The city agrees to hold in confidence any non-public information it learns from Cox Wireless Access, L.L.C. to the fullest extent permitted by law.

Section 5. – Installation of the Facilities.

- (a) Pursuant to the grants provided herein, Cox Wireless Access, L.L.C. shall have the right to construct, maintain, and operate the Facilities along, across, upon, and under the ROW.
- (b) Cox Wireless Access, L.L.C. shall construct and maintain the facilities in a skillful and workmanlike manner that does not obstruct or hinder the usual travel or public safety on such ROW, and that does not obstruct or interfere with the legal use of the ROW by other utilities. Cox Wireless Access, L.L.C. shall be solely responsible for communicating with Kansas One-Call, or for taking other necessary measures to determine the location of public improvements or other facilities located in the ROW. Cox Wireless Access, L.L.C. shall install facilities in accordance with traffic control plans for temporary construction work that are approved by the city, which approval shall not unreasonably be withheld, conditioned or delayed. Cox Wireless Access, L.L.C. shall coordinate the placement of its facilities in the ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the city engineer.
- (c) Cox Wireless Access, L.L.C. shall be the city's point of contact and all communications shall be through Cox Wireless Access, L.L.C.. Cox Wireless Access, L.L.C. shall at all times maintain with the city a local point of contact who shall be available at all times to act on

behalf of Cox Wireless Access, L.L.C. in the event of an emergency. Cox Wireless Access, L.L.C. shall provide the city with the local contact's name, address, telephone number, fax number and e-mail address.

- (d) Cox Wireless Access, L.L.C. shall cooperate with the city and follow all legally binding city policies and state and local ordinances with respect to aesthetics.
- (e) In addition to the approvals required by this section, Cox Wireless Access, L.L.C. must obtain and is responsible for any necessary permit, license, certification, grant, registration, and any other authorization or approval required by the city (collectively, the "permits and approvals") relating to the installation, maintenance, and repair of the facilities or network and for the use and occupancy of the ROW, including but not limited to all permits and approvals required under a city ROW ordinance or zoning regulation and that are not inconsistent with state and federal laws regarding the regulation of the public ROW. The city shall process each valid and administratively complete application for requested permits and approvals in accordance with the time requirements of applicable laws, and shall not unreasonably or unlawfully withhold or delay any permits and approvals. Cox Wireless Access, L.L.C. shall comply with any condition or requirement set forth in any permit and approval, if they comply with the laws.
- (f) When Cox Wireless Access, L.L.C. is allowed to place DAS or Small Wireless Facilities above ground under this section, Cox Wireless Access, L.L.C. may attach its DAS or Small Wireless Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner and or to cable strand owned by Cox Wireless Access, L.L.C. or any affiliate, subject to obtaining an encroachment permit. Cox Wireless Access, L.L.C. agrees that in areas where there are existing poles, Cox Wireless Access, L.L.C. will work with the owner of that existing pole to collocate DAS or Small Wireless Facilities, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective. Any necessary replacement of any pole to accommodate the attachment shall be subject to the proper exercise of the city's police powers, and in no instance shall Cox Wireless Access, L.L.C. erect a new pole absent the city's prior authorization.
- (g) In granting this contract franchise ordinance, the city makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of the ROW. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Cox Wireless Access, L.L.C..
- (h) Cox Wireless Access, L.L.C. shall take all reasonable measures necessary to maintain accurate and complete records in electronic format, of all facilities constructed, reconstructed, or relocated in the ROW. Cox Wireless Access, L.L.C. shall cooperate promptly and fully with the city and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its facilities located within the ROW when requested by the city or its authorized agents for a public project. Such

location and identification shall be at the sole expense of Cox Wireless Access, L.L.C. without expense to the city, its employees, agents, or authorized contractors.

- (i) Cox Wireless Access, L.L.C. may trim trees overhanging the ROW that may come into contact with Cox Wireless Access, L.L.C. facilities in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City dealing with management of the ROW.

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Section 6. Cox Wireless Access, L.L.C. and City access to the facilities.

- (a) Subject to the requirements of El Dorado Ordinance No. 2293, or any then current ordinance or regulation of the City dealing with management of the ROW, Cox Wireless Access, L.L.C. will be given reasonable access to each of the facilities in the ROW for the purposes of routine installation, repair, maintenance or removal of facilities.

Section 7. - Maintenance and repair.

- (a) Cox Wireless Access, L.L.C. shall pay for the electricity and other utilities services it consumes in its operations at the rates charged by the servicing utility companies.
- (b) Cox Wireless Access, L.L.C. shall, at Cox Wireless Access, L.L.C.'s sole cost and expense, perform all maintenance and repairs reasonably needed to maintain its facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws including Ordinance No. 2293 of the city, or any then current ordinance or regulation of the City dealing with management of the ROW. In the event any facility requires replacement because such part cannot be repaired, Cox Wireless Access, L.L.C. shall, at Cox Wireless Access, L.L.C.'s sole cost and expense, replace the irreparable facility. Cox Wireless Access, L.L.C. shall not cause rubbish, garbage or debris on or around the facilities and shall not permit any rubbish, garbage or debris to accumulate on or around any enclosed areas around the facilities. If the city gives Cox Wireless Access, L.L.C. written notice of a failure by Cox Wireless Access, L.L.C. to maintain the facilities, Cox Wireless Access, L.L.C. shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.
- (c) Cox Wireless Access, L.L.C. shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Cox Wireless Access, L.L.C.'s construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of facilities in the ROW. Cox Wireless Access, L.L.C. shall promptly repair such damage and restore the ROW and any affected adjacent property to a safe and satisfactory condition to the city in accordance with the city's applicable street or ROW restoration standards, or to the property owner if not the city. If Cox Wireless Access, L.L.C. fails to make the repairs required by the city, the city may affect those repairs and charge Cox Wireless Access, L.L.C. the cost of those repairs. If the city incurs damages as a result of a

violation of this subsection, then the city shall have a cause of action against Cox Wireless Access, L.L.C. for violation of this section, and may recover its damages, including reasonable attorney fees, if Cox Wireless Access, L.L.C. is found liable by a court of competent jurisdiction. Cox Wireless Access, L.L.C.'s obligations under this section shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the ROW by Cox Wireless Access, L.L.C. to the city, or such longer period as may be established by the city's ROW ordinance, rules or regulations or other applicable laws.

Section 8. – Non-interference.

- (a) Cox Wireless Access, L.L.C. shall operate its network in a manner that will not cause interference with city non-public safety communications systems and to the services and facilities of other licensees or lessees of city property located at or near the Facilities that were in operation prior to the installation of the network or that are in operation prior to any modifications Cox Wireless Access, L.L.C. may make to the network.
- (b) Cox Wireless Access, L.L.C.'s network and facilities shall not cause interference with public safety communications systems operated by city or any other public agency, regardless of the date such systems or any components thereof have been placed in service. Nor shall Cox Wireless Access, L.L.C.'s network and facilities cause interference with the city's use of the Cox Wireless Access, L.L.C. poles for the city's intended city purpose.
- (c) If such interference with the facilities described in subsections (a) or (b) occurs, Cox Wireless Access, L.L.C. shall, upon receipt of written notice from the city, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by Cox Wireless Access, L.L.C. to the reasonable satisfaction of the city within the cure period set forth in the city's notice, which notice shall not be less than 30 days, absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this contract franchise ordinance and city may terminate the contract franchise ordinance. Interference caused by actions of Cox Wireless Access, L.L.C.'s customer(s) remains the responsibility of Cox Wireless Access, L.L.C.

Section 9. – Indemnity and hold harmless.

- (a) It shall be the responsibility of Cox Wireless Access, L.L.C. to take adequate measures to protect and defend its facilities in the ROW from harm or damage. If Cox Wireless Access, L.L.C. fails to accurately or timely locate facilities when requested, it has no claim for costs or damages against the city and its authorized contractors unless such party is responsible for the harm or damage by their gross negligence or intentional conduct. The city and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Cox Wireless Access, L.L.C.'s facilities.

- (b) Cox Wireless Access, L.L.C. shall indemnify, defend, and hold harmless the city, its agents, representatives, officers, officials, employees and contractors, from and against all liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by Cox Wireless Access, L.L.C. or any agent, officer, director, representative, employee, or affiliate of Grantee pursuant to this contract franchise ordinance, except to the extent arising from or caused by the gross negligence or willful misconduct of the city, its agents, representatives, officers, officials, employees or contractors.
- (c) Cox Wireless Access, L.L.C. waives all claims, demands, causes of action, and rights it may assert against the city on account of any loss, damage, or injury to any portion of the network, or any loss or degradation of the services provided by the network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the network, or any loss or degradation of the services provided by the network, resulting from the gross negligence or willful misconduct of the city.
- (d) The city will be liable, if at all, only for the cost of repair to damaged portions of the facilities arising from the gross negligence or willful misconduct of the City or its employees. The city, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the facilities, specifically including, without limitation, damage, if any, resulting from the city's maintenance operations adjacent to the facilities or from vandalism or unauthorized use of the facilities, except to the extent such damage is caused by the gross negligence or willful misconduct of city, its officers, or employees. The city will in no event be liable for indirect or consequential damages.
- (e) In no event shall Cox Wireless Access, L.L.C. be liable for indirect or consequential damages in connection with or arising from this contract franchise ordinance, or its use of the network or ROW.
- (f) Cox Wireless Access, L.L.C. or the city shall promptly advise the other in writing of any known claim or demand against Cox Wireless Access, L.L.C. or the city related to or arising out of the Cox Wireless Access, L.L.C.'s activities in a ROW.

Section 10. - Insurance requirement and performance bond.

- (a) During the term of this franchise, Cox Wireless Access, L.L.C. shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers with an A.M. Best rating of no less than A-:VII. Cox Wireless Access, L.L.C. shall provide not less than the following insurance:
 - (1) Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

- (2) Commercial general liability with limits of insurance not less than \$2,000,00 each occurrence, \$2,000,000 annual aggregate, \$2,000,000 completed Operations/Product Aggregate covering claims for bodily injury, property damage, personal and advertising injury, completed operation/product liability and contractual liability arising from the activities and operations of the franchisee and independent contractors operating on their behalf. The city shall be included as an additional insured. The insurance for the additional insured shall be as broad as the insurance for the named insured and apply on a primary/noncontributor basis and include protection for completed operations/products claim. Coverage for the additional insured shall include defense expense. If in order to accomplish the required limits of insurance, the franchisee must purchase a excess liability/umbrella policy, such policy shall be written on a follow form basis and be as broad as the underlying insurance. The city shall be included as additional insured to the policy.
- (3) Business Auto Liability Insurance with limits of insurance not less than \$1,000,00 Combined Single Limit for bodily injury and property damage covering ownership or use of all owned, hired and non-owned autos used in connection with the Franchisee operations and activities. The city shall be included as additional insured to the auto liability policy.
- (b) As an alternative to the requirements of subsection (a), Cox Wireless Access, L.L.C. may demonstrate to the satisfaction of the city that it is self-insured and as such Cox Wireless Access, L.L.C. has the ability to provide coverage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate, to protect the city from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Cox Wireless Access, L.L.C., or alleged to so have been caused or occurred.
- (c) Cox Wireless Access, L.L.C. shall, as a material condition of this franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the city a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the city, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the city 30 days prior written notice. Cox Wireless Access, L.L.C. shall make available to the city on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- (d) Cox Wireless Access, L.L.C. shall, as a material condition of this franchise, prior to the commencement of any work and prior to any renewal of this franchise, deliver to the city a performance bond in the amount of \$100,000.00, payable to the city to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the ROW as set forth in this article; to ensure Cox Wireless Access, L.L.C.'s repair and restoration of its damage to its facilities or the ROW; and to ensure Cox Wireless Access, L.L.C.'s removal of its facilities, as set forth herein. The required performance and maintenance bond must be with

good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the city attorney in form and substance.

Section 11. - Taxes.

Cox Wireless Access, L.L.C. agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the network and this contract franchise ordinance. Pursuant to Section 79-5(a)(26) of the Kansas Revenue and Taxation Code, as amended, the city hereby advises, and Cox Wireless Access, L.L.C. recognizes and understands, that Cox Wireless Access, L.L.C.'s use of the ROW and/or Cox Wireless Access, L.L.C. facilities may create a possessory interest subject to real property taxation and that Cox Wireless Access, L.L.C. may be subject to, and responsible for, the payment of real property taxes levied on such interest. Cox Wireless Access, L.L.C. will cooperate with the county appraiser in providing any information necessary for the appraiser to make a property tax determination. Cox Wireless Access, L.L.C. reserves the right to challenge any such assessment, and the city agrees to reasonably cooperate with Cox Wireless Access, L.L.C. in connection with any such challenge.

Section 12. - Nondiscrimination.

- (a) Cox Wireless Access, L.L.C. will not, on the grounds of race, religion, color, sex, disability, national origin or ancestry, discriminate or permit discrimination against any person in the use of the ROW or in activities under this franchise.
- (b) **Equal Protection.** If any other provider of wireless infrastructure or an entity whose business may consist of small cell deployment is lawfully authorized by the City or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the City, the City shall within thirty (30) days of a written request from Cox Wireless Access, LLC, modify this Franchise to insure that the obligations applicable to Cox Wireless Access, LLC are no more burdensome than those imposed on the new competing provider(s). If the City fails to make modifications consistent with this requirement, Cox Wireless Access, LLC's Franchise shall be deemed so modified thirty (30) days after the initial written notice. As an alternative to the Franchise modification request, the Cox Wireless Access, LLC shall have the right and may choose to have this Franchise with the City be deemed expired thirty (30) days after written notice to the City. Nothing in this Franchise shall impair the right of Cox Wireless Access, LLC to terminate this Franchise and, at Cox Wireless Access, LLC's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

Section 13. -Transfer and assignment.

This franchise shall be assignable in accordance with the laws of the State of Kansas. Cox Wireless Access, L.L.C. shall provide the city written notice of any transfer or assignment within thirty (30) days, including notice of the name and address of the assignee and contact information. Grantee's

obligations under this contract franchise ordinance with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of any transfer or assignment.

Section 14. Default; abandonment; expiration or termination of contract franchise.

(a) A “default” shall be deemed to have occurred if a party fails to cure a breach, within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

(b) Upon a party’s failure to timely cure a breach after city notice, and upon expiration of the above cure periods, then the other party may terminate this contract franchise and pursue all remedies provided for in this contract franchise and/or any remedies it may have under applicable law or principles of equity relating to such breach.

In addition to the remedies set forth herein, the city shall have the right to terminate this contract franchise if (i) the city is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW; or (ii) if Cox Wireless Access, L.L.C.’s licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights under subsection (i) shall be subject to Cox Wireless Access, L.L.C.’s rights to just compensation, if any, from the federal, state or local government requiring such removal for any taking of a protected property right.

(c) In the event Cox Wireless Access, L.L.C. ceases to operate and abandons the network, any facility, or parts thereof, for a period of ninety (90) days or more, Cox Wireless Access, L.L.C. shall, at its sole cost and expense and within ninety (90) days from the date of abandonment, vacate and remove the network or the abandoned part thereof. If such removal disturbs the facility or adjacent property (including ROW or city real property), Cox Wireless Access, L.L.C. shall also, at its sole cost and expense, restore or repair the ROW, each facility, and any adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment or other aesthetic improvements made by Cox Wireless Access, L.L.C. to the facility or adjacent property. Alternatively, the city may allow Cox Wireless Access, L.L.C., in the city’s sole and absolute discretion, to abandon the network, or any part thereof, in place and convey it to the city.

(d) Upon expiration or termination of this contract franchise for any reason, Cox Wireless Access, L.L.C. shall have the right to remove any and all of its Facilities within sixty (60) days after such termination or expiration, or, subject to the approval of the City Engineer said approval not to be unreasonably withheld, to transfer any and all of its Facilities to another entity authorized to place facilities in the ROW. Cox Wireless Access, L.L.C. has the duty, immediately upon any such removal, to restore the ROW from which the facilities are removed to as good a condition as the same were before removal was performed. If Cox Wireless

Access, L.L.C. fails to remove or transfer its Facilities within sixty (60) days, the city may, at its option, remove any or all of the Facilities at Cox Wireless Access, L.L.C.'s expense, or take ownership of any or all of Facilities for the city's use and/or disposal.

Section 15. Notices.

Except in emergencies, all notices by one party to the other shall be made by personal delivery, by depositing such notice in the U.S. mail, certified mail, return receipt requested, or by facsimile. Any notice served by certified mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, city and Cox Wireless Access, L.L.C.-observed holidays excepted. Emergency notices shall be provided by telephone, with written notice immediately following by facsimile.

Notices shall be addressed to the city as follows:

City of El Dorado
Attn: City Clerk
220 E. First Avenue
El Dorado, Kansas 67042

Notice to Cox Wireless Access, L.L.C. shall be addressed to the company as follows:

Cox Wireless Access, L.L.C.
Attn: Cox Business
901 S. George Washington Blvd
Wichita, KS 67211

With copy to:

Cox Communications
6205B Peachtree -Dunwoody Road
Atlanta, Georgia 30328
Attn: VP of Government Affairs

Notice shall be given as required by the terms of this contract franchise ordinance. Notice shall be provided to the above-named addressees unless directed otherwise in writing by the city or Cox Wireless Access, L.L.C. Both Cox Wireless Access, L.L.C. and the city shall provide to the other contact information with telephone and facsimile numbers for use in emergencies.

Section 16. Acceptance.

Prior to the effective date of this franchise, Cox Wireless Access, L.L.C. shall file with the city clerk its acceptance in writing of the provisions, terms and conditions of this contract franchise ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to

administer oaths. When so accepted, the ordinance and acceptance shall constitute a contract between the city and Cox Wireless Access, L.L.C. subject to the provisions of the laws of the state of Kansas.

Section 17. - Reservation of rights.

- (a) The City specifically reserves its right and authority as a customer of the company and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning the company's rates and services to ensure the rendering of efficient telecommunications service at reasonable rates, and the maintenance of the company's property in good repair.
- (b) In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its home rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- (c) In granting its consent hereunder, Cox Wireless Access, L.L.C. does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

Section 18. Entire Agreement; Modification; Waiver.

This contract franchise ordinance constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this contract franchise ordinance. The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party. Any modification or amendment to this contract franchise ordinance shall be of no force and effect unless it is in writing, signed by the parties, and adopted pursuant to the requirements of state law. No waiver of any of the provisions of this contract franchise ordinance shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

Section 19. - Severability.

If any clause, sentence, or section of this contract franchise ordinance, or any portion thereof, shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid;

provided, however, the City or Cox Wireless Access, L.L.C. may elect to declare that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the City or Cox Wireless Access, L.L.C., an essential part of this contract franchise ordinance.

Section 20. - Survival of Terms.

All of the terms and conditions in this contract franchise ordinance related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this contract franchise.

Section 21. - Governing law and venue.

- (a) As a condition of this contract franchise ordinance, Cox Wireless Access, L.L.C. is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC), subject to Cox Wireless Access, L.L.C.'s right to challenge in good faith such requirements as established by the FCC, KCC or other City regulations. Cox Wireless Access, L.L.C. shall also comply with all applicable laws, statutes and/or City regulations, subject to Cox Wireless Access, L.L.C.'s right to challenge in good faith such laws, statutes, and/or City regulations.
- (b) The obligations and undertakings of both parties hereto shall be performed at El Dorado, Butler County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for Butler County, Kansas.

Section 22. - Effective date of franchise.

The effective date of this franchise shall be _____, 2019.

THE CITY OF EL DORADO, KANSAS

VINCE HAINES, MAYOR

ATTEST:

HILLARY LAWRENCE, ASSISTANT CITY CLERK

COX WIRELESS ACCESS, L.L.C.

BY: _____