

**This is a business meeting of the governing body for the City of Herington. There is no implied or expressed right for persons outside the governing body to speak or voice their opinion unless specifically recognized by the chair.**

Regular Meeting  
September 6, 2022  
6:00 p.m.

1. Pledge of Allegiance

2. Call to Order

3. Public Forum

4. Additional Agenda Items

5. Approval of Agenda

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

6. Consent Agenda

- a. Minutes of the Regular City Commission Meeting August 16, 2022.
- b. Minutes of the Special City Commission Meeting August 23, 2022.

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

7. Police Department Update

8. Fire Department Update

9. Neighborhood Services Update

10. Update from the CVB

11. Letter from Beverly Trevorrow President AVFW, Post 1281 Regarding the 15<sup>th</sup> Annual Remembrance of 9/11/2001, National Patriots Day Remembrance Walk

12. Proclamation to set POW/MIA day for September 16, 2022, and authorize the mayor's signature

13. Discuss and Action to Certify the 2023 City of Herington Budget

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

14. Discuss and Action on Annexing 902 E Trapp into the City of Herington City Limits as a Highway Business District (B-3)

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

15. Discuss and Action on Adoption of Ordinance 1874 of Article VI Vendor Regulations to Chapter 3 to the Code for the City of Herington, and authorize the mayor's signature

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

16. Discuss and Action on Adoption of Ordinance 1875 to Amend Chapter 4, Article VIII, Section 4-803, Bonds, to the Code for the City of Herington, and authorize the mayor's signature

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

17. Discuss and Action on Adoption of Ordinance 1876 to Amend Chapter 2, Article III, Section 2-309 through 2-318 Grass Control, to the Code for the City of Herington, and authorize the mayor's signature

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

18. Discussion on the financial cost to the city for the mud run and after event analysis to include nonpayment of required insurance

19. Discuss and Action on Sandy Merrifield's application for the Herington Housing Authority Board, term to expire 8/31/2025

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

20. Discuss and Action on Jaqueline Mueller's application for the Herington Housing Authority Board, term to expire 8/31/2025

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

21. Discussion on FRE Utilities

22. Administer the Code of Ethics Oath to the City Commissioners

23. City Manager Comments

24. City Commission Comments

25. Adjourn

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Bell, Commissioner Urbanek,  
Commissioner Donahue, Mayor Gares

**To join the City Commission meetings from your computer, tablet, or smartphone, go to:**  
<https://www.youtube.com/channel/UBbvSBw614w85XQHSX0S1BXg>  
**Public Forum Comments can be dropped in the deposit box or email to**  
[cityoffice@cityofherington.com](mailto:cityoffice@cityofherington.com)

DRAFT

**Regular Meeting  
August 16, 2022  
6:00 p.m.**

The Herington City Commission met on the above date and time in the commission chambers at city hall. In attendance were Mayor Eric Gares, Commissioner Vance Donahue, Commissioner Debi Urbanek and Commissioner Ben Castleberry, absent was Robbin Bell. Also in attendance were City Manager Branden Dross, City Attorney Brad Jantz, City Clerk Megan Lawrenz, Larry Mann, Carl Urbanek, Marcus Hawkes, Karen Soliz, Mark Will, Janet Wade, and Carl Brown.

The meeting opened with the pledge of allegiance.

Mayor Gares called the meeting to order.

Public Forum – None.

Additional Agenda Items – Move agenda items 9 and 12 to the next commission meeting.

Mayor Gares made a motion to approve the agenda moving items 9 and 12 to the next commission meeting, seconded by Commissioner Donahue. Motion carried 4-0.

Consent Agenda – There was discussion to correct the minutes from the regular city commission meeting from August 2, 2022, Commissioner Donahue made a motion to move C and D out of the consent agenda for discussion agenda item 6a, and to approve item A and B in the consent agenda with corrections to the August 2, 2022, regular city commission meeting minutes, seconded by Commissioner Castleberry. Motion carried 4-0.

6a. Discussion item C and D from the consent agenda – Commissioner Donahue was concerned about why there were only two applicants listed on the consent agenda. Mayor Gares and City Manager Branden Dross received an email Kat Souza, Mayor Gares read the following email:

*Mayor Gares,*

*Please be advised that applicant Carl Brown has let me know verbally that he no longer wishes to be involved with HHA Board of Commissioners. This leaves two applicants and two positions to be filled. I have spoken with Jacqueline personally, and have attempted to make contact with Sandy. I have not received Board opposition to appointing these two individuals.*

*It is my hope after appointment that we can have a full Board meeting at month's end. If you have any questions, please do not hesitate to contact me.*

*Thanks in advance,*

*Kat Souza*

*Chairwoman, HHA Board of Commissioners*

Commissioner Donahue made a motion to table this discussion until all 5 commissioners are together and encouraged each commissioner to reach out the applicants, seconded by Commissioner Castleberry. Motion failed 2-2 with Commissioner Urbanek and Mayor Gares casting the dissenting votes.

Commissioner Urbanek made a motion to appoint Sandy Merrifield and Jacqueline Mueller to the HHA board terms to expire 8/31/2025, seconded by Mayor Gares. Motion failed 2-2, with Commissioner Castleberry and Commissioner Donahue casting the dissenting votes.

Commissioner Urbanek made a motion to appoint Sandy Merrifield to the HHA board term to expire 8/31/2025, motion failed for lack of a second.

Commissioner Donahue made a motion to appoint Jacqueline Mueller to the HHA board term to expire 8/31/2025, seconded by Commissioner Castleberry. Motion carried 4-0.

Mayor Gares made a motion to table the 5<sup>th</sup> appointment to next regular city commission meeting, seconded by Commissioner Donahue. Motion carried 4-0.

Update on CCLIP/US B-56 from KDOT – CCLIP stands for City Connecting Link Improvement Program. The city was awarded \$300,000 for work on US Business Highway 56 a couple years ago, but there are more repairs needed than was known about when the project was awarded. \$300,000 is not enough to fix the whole problem. Recently the city has submitted for more money to fix the problem and expand on the length. KDOT is unwilling to invest \$1.2 million in a route that does not function as part of the state system, the project will not really fall under the CCLIP program. KDOT has offered to fund the project, but they would take it off the state system, and the City would lose approximately \$15,000 per year in maintenance funds received from the program. If approved by the commission the repairs would be funded by KDOT and upon completion the portion of US B-56 would be removed from the KDOT system, and the city would be responsible for maintenance. In doing so the city would gain ownership of another bridge and would be required to have it inspected and maintained. City staff needs to verify that KDOT received the information from our previous annexation of 77 and figure out what CCLIP payments for maintenance could potentially be made on that portion, it could potentially equal the \$15,000 per year that the city would lose from the portion of US B 56. City Attorney Brad Jantz advised it would be ok to proceed with the repairs. KDOT is also working on getting the county to vacate their portion. Commissioner Urbanek made a motion to proceed with KDOT in funding the repairs needed for HWY B-56, and approved city staff to work with KDOT on what is needed to vacate the portion the highway, seconded by Mayor Gares. Motion carried 4-0.

Update from the Planning Commission – The Planning Commission was presented with the comp plan from Dr. Bonnie Johnson. The planning commission felt that section 5 needed to be beefed up, for Herington highlights and history. Planning Commission Members Janet Wade and Cynthia Naylor will be working on that. The Planning Commission is also looking at goals. They are having a special meeting on Saturday August 20, 2022, from 9am to about 2pm, to work through the comp plan more in depth.

Update from the Recreation Commission – Tabled.

Property Lease for the Recreation Commission – City staff confirmed with City Attorney Brad Jantz that the address down at the “sports complex area”, or “700 S Broadway” needs to be revised to be more specific. Staff will define the areas more clearly. There was discussion about how much the utilities for the Rec Commission are costing the city. Staff will get clarification on lease amounts that the Rec Commission may charge for use of fields and such. Commissioner Urbanek made a motion to adopt lease as printed to authorize the mayor’s signature, seconded by Commissioner Castleberry. Motion carried 3-1 with Commissioner Donahue casting the dissenting vote.

Update on Lake and Reservoir Master Plan Estimate Cost of Construction – Mayor Gares made a motion to recess for 5 minutes, seconded by Commissioner Donahue, Motion carried 3-0. Staff presented preliminary cost amounts. Staff suggests looking at utility upgrades and some larger infrastructure items first. Commissioner Urbanek– hopes that we can look at the grand scheme, specifically lot placement to make sure that things are completed in the appropriate order.

Discussion on Utility Billing – Tabled.

Discussion on UTV, ATV and Golf Cart Registration Fees – Agenda item requested by Commissioner Donahue. Staff provided stats on what other cities around are charging. The commissioners directed staff to speak with the Police Department to enforce registration and compliance.

By-Law Revisions – Staff removed elected representatives from section 1, number 5, and revised that the chair be a signer on the bank accounts instead of the treasurer. The term for the high school representative was also changed to be August to July. There will be one open position on the board. Commissioner Urbanek made a motion to approve the CVB bylaws as presented and authorize the mayor’s signature, seconded by

Commissioner Castleberry. Motion carried 4-0.

Petition for Vacation of a Portion of Street Right of Way Easement Tract for McClaren Lot 1 – The planning commission approved vacations between South B and South C on McClaren.

Commissioner Urbanek made a motion to approve vacation for lot 1 and authorize the mayor's signature, seconded by Commissioner Castleberry. Motion carried 4-0.

Public Hearing Time for Vacation of a Portion of Street Right of Way Easement Tract for McClaren Lot 1 – Commissioner Urbanek made a motion to set the public hearing time for the vacation of a portion of street right of way easement for McClaren Lot 1 for September 20, 2022, at 6:00pm, seconded by Commissioner Castleberry. Motion carried 4-0.

Petition for Vacation of a Portion of Street Right of Way Easement Tract for McClaren Lot 2 – Commissioner Urbanek made a motion to approve vacation for lot 2 and authorize the mayor's signature, seconded by Commissioner Donahue. Motion carried 4-0.

Public Hearing Time for Vacation of a Portion of Street Right of Way Easement Tract for McClaren Lot 2 – Mayor Gares made a motion to set the public hearing time for the vacation of a portion of street right of way easement for McClaren Lot 2 for September 20, 2022, at 6:00pm, seconded by Commissioner Castleberry. Motion carried 4-0.

Representative on the Tri-County Free Fair Board – City Attorney Bard Jantz confirmed city commissioners should not be voting members of various boards. Mayor Gares made a motion to appoint the City Manager or his Designee to be a representative on the Tri-County Free Fair Board, seconded by Commissioner Urbanek. Motion carried 4-0.

## ORDINANCE 1872

**AN ORDINANCE AMENDING THE CODE OF THE CITY OF HERINGTON, KANSAS, TO REPEAL IN THEIR ENTIRETY, SECTIONS 6-151 AND 6-152 OF CHAPTER 6, ARTICLE 1, ENTITLED AQUATIC NUISANCE SPECIES (ANS) EDUCATION CERTIFICATION REQUIRED FOR FISHERMEN AND AUQATIC NUISANCE SPECIES (ANS) EDUCATION CERTIFICATION REQUIRED FOR BOATERS RESPECTIVELY. ESTABLISHING A CERTIFICATION REQUIREMENT FOR ANYONE FISHERMAN AND BOATERS AT THE HERINGTON LAKE AND RESERVOIR OWNED BY THE CITY OF HERINGTON, KANSAS PURSUANT TO THE CODE FOR THE CITY OF HERINGTON, KANSAS CHAPTER 6I, ARTICL I AND REPEALING ANY OTHER CURRENT ORDINANCES, OR PORTIONS THEREOF, IN CONFLICT HEREWITH.**

Commissioner Urbanek made a motion to approve Ordinance 1872 and authorize the mayor's signature, seconded by Commissioner Donahue. Motion carried 4-0.

Business on US HWY 56 & 77 – Casey's is coming to the city of Herington. Staff working on MOU to annex in the property voluntarily. City to provide sewer to the property. Staff anticipates they will be here within the next year.

Executive Session – Mayor Gares made a motion that the Herington City Commission Recess into Executive Session, Pursuant to the: Personnel matters of non-elected personnel exception, K.S.A. 75-4319(b)(1), In order to discuss city manager annual review expectations to include the governing body. With the open meeting to resume at 8:00pm, seconded by Commissioner Urbanek. Motion carried 4-0. The meeting resumed with no action taken.

City Manager Comments – Branden went to the KS association of trail towns last week with Commissioner Urbanek. \$28.4 million awarded to the trail to finish the last 40 miles, funds cannot be used for property acquisition. Looking at an 18–24-month time frame for completion. \$60,000 grant also awarded for economic impact study for towns around the trail. Staff Update: Leo Schlesener is now at the water treatment plant. Marcus Hawkes has been promoted to street superintendent. Hired Deputy city clerk. Chip and seal project is

complete. Marcus Hawkes will have site eval on 2<sup>nd</sup> street project in the next few weeks. Attended brownfields clean up conference last week with asbestos abatement. Karen Soliz and he started a grant writing class. Attended a grant class today where they were encouraged to work together with other cities to get grants. Comp plan meeting this Saturday. Special meeting next Tuesday.

#### City Commission Comments -

Commissioner Castleberry – Asked about the safe walk program, Branden told him the city needs 20% matching funds, could adjust for next year's budget. Approximately \$250-300k is needed. Commissioner Urbanek mentioned looking to see if the school could help fund the 20%.

Commissioner Urbanek – Huge shout out to Barnes for the free swim at the pool last Friday. She is excited to be a part of the association and feels there are some great opportunities to take advantage of. At the last meeting they came up with the following mission statement: Kansas Association of Trail Towns (KATT) advocates for the viability and sustainability of trails for promoting Active Tourism through collaboration. Our goal is to support the continued health and economic development of our communities.

Mayor – Reminded the community about the RNR and Budget hearing on Tuesday, August 23, 2022. DK CO leadership dinner on August 25<sup>th</sup> at 6pm. August 31 he is attending a League of Municipalities policy meeting. The League is offering an essay contest for 7<sup>th</sup> graders, asked staff to place info at city hall and reach out to educators there will be cash prizes.

Commissioner Donahue made a motion to adjourn, seconded by Commissioner Castleberry. Motion carried 4-0.

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Megan Lawrenz, City Clerk

DRAFT

**Special Meeting  
RNR Hearing/Budget Hearing  
August 23, 2022  
6:00 p.m.**

The Herington City Commission met on the above date and time in the commission chamber at City Hall. In attendance were Commissioner Eric Gares, Commissioner Vance Donahue, Commissioner Debi Urbanek, Commissioner Robbin Bell, and Commissioner Ben Castleberry. Also in attendance were City Manager Branden Dross, City Clerk Megan Lawrenz, DJ Neuberger, Carl Urbanek, Shelly Wirtz, Karen Soliz and John Thissen.

The meeting opened with the Pledge of Allegiance.

Mayor Gares called the meeting to order.

The public hearing for the 2023 City of Herington Revenue Neutral Rate at 84.592 opened at 6:00pm. DJ Neuberger – 9 S 2<sup>nd</sup> St. Herington, KS 67449 – Would like to see the water/electric franchise fee be used to pay off debt and not go to special projects. After DJ Neuberger was finished, Mayor Eric Gares held the floor open for 5 minutes before moving onto the action item to approve the 2023 RNR Rate of 84.592.

2023 City of Herington Revenue Neutral Rate at 84.592 - There was discussion on previous RNR rates, and previous Mill Levy values. Commissioner Bell made a motion to approve the 2023 Revenue Neutral Rate at 84.592, seconded by Commissioner Urbanek. Motion carried 5-0.

Commissioner Castleberry – Aye  
Commissioner Bell – Aye  
Commissioner Urbanek – Aye  
Commissioner Donahue – Aye  
Mayor Gares – Aye

The Revenue Neutral Rate Hearing closed at 6:16pm.

The public Hearing for the 2023 City of Herington Budget – Opened at 6:16pm. DJ Neuberger – 9 S 2<sup>nd</sup> spoke more about reducing costs for the residents. Mayor Gares held the floor open for 5 minutes.

2023 City of Herington Budget with a Revenue Neutral Rate of 84.592 – There was discussion about the city raising water, sewer, and electric rates to fund projects. Commissioner Bell made a motion to approve the 2023 City of Herington Budget with the Revenue Neutral Rate at 84.592, Seconded by Commissioner Urbanek. Motion carried 5-0.

Commissioner Castleberry – Aye  
Commissioner Bell – Aye  
Commissioner Urbanek – Aye  
Commissioner Donahue – Aye  
Mayor Gares – Aye

The Budget Hearing Closed at 6:30pm

Commissioner Urbanek made a motion to approve Resolution 959 – A resolution of the city of Herington, Kansas to levy a property tax rate exceeding the revenue neutral rate and authorizing the mayor's signature, seconded by Commissioner Bell. Motion carried 5-0.

Commissioner Castleberry – Aye  
Commissioner Bell – Aye  
Commissioner Urbanek – Aye  
Commissioner Donahue – Aye



Mayor Gares – Aye

City of Herington's matching funds for the AFG Grant for a new Fire Tanker in the amount of \$16,667.67 – There was discussion about the terms of the AFG grant that the Herington Fire Department Received. Commissioner Urbanek made a motion to approve the city's matching funds in the amount of \$16,667.67, seconded by Commissioner Bell. Motion carried 5-0.

Commissioner Donahue made a motion to adjourn, seconded by Commissioner Castleberry. Motion carried 5-0.

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Megan Lawrenz, City Clerk

DRAFT

Auxiliary to the Veterans of Foreign Wars  
The Dix Day Post 1281  
June 14, 2022

TO: Mayor, City of Herington, 17 North Broadway, Herington, KS. 67449

The Auxiliary of the Veterans of Foreign Wars and the Veterans of Foreign Wars would like to invite you and the City Commissioners to our 15th annual remembrance of 9 - 11 -01, National Patriots Day Remembrance Walk.

We ask that this be placed on the first agenda in September and that you formally invite the rest of the commissioners, city staff and the citizens of Herington.

We will meet at Father Padilla Park and at 5 PM on Sunday September 11th, 2022. A prayer will be given at 6 PM in remembrance of those who have given their all to help others and those who continue to put themselves in harms way, so that we may have the freedoms we enjoy. Following the prayer the color guard will lead a lap around the pond, or an alternative route. To show our support for these brave men and women the walk will continue however long you desire to walk or till 8:00 PM. One lap or 30, it's up to you!

Large photos and a brief description of what happened in that photo will be placed around the pond.

So please come and join us for the National Patriots Day Remembrance Walk.

*Beverly Trevorrow*

BEVERLY TREVORROW  
President AVFW, Post 1281.

Contact Person: Pat Ebersole (785) 512-0078 before 5:00 PM



# THE CITY OF HERINGTON

P.O. Box 31 • 17 North Broadway • Herington, KS 67449

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Telephone: (785) 258-2271

FAX: (785) 258-3552

## PROCLAMATION - POW/MIA Recognition Day



WHEREAS, more than 217,000 Americans have been confined by enemies of the United States during the last one hundred years, with many enduring brutal and inhumane treatment by their captors in violation of international law; and

WHEREAS, at present, more than 82,000 Americans remain missing from VVVII, the Korean War, the Vietnam War, the Cold War, and the Gulf Wars/other conflicts. Out of the 82,000 missing, 75% of the losses are located in the Indo-Pacific, and over 41,000 of the missing are presumed lost at sea (i.e. ship losses, known aircraft water losses, etc.).

WHEREAS, families, and friends of these missing Americans, as well as their fellow veterans, endure uncertainty concerning their fate; and

WHEREAS, as a nation founded on the principles of civil rights and justice, we have a moral obligation to continue to make every effort to ascertain the truth about these Americans;

NOW, THEREFORE, I, Eric Gares, Mayor of the City of Herington, Kansas  
do hereby proclaim September 16, 2022. as. POW /MIA Recognition Day in Herington,  
Kansas,

I encourage all people in our City to join me in honoring the bravery and  
perseverance of former prisoners of war, those still missing, and their families.

**Signed by the Mayor this 6<sup>th</sup> day of September, 2022.**

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Eric Gares, Mayor

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Megan Lawrenz, City Clerk

DRAFT

Published in the Dickinson County News - Times on \_\_\_\_\_, 2022.

**ORDINANCE NO. 1874**

**AN ORDINANCE AMENDING THE CODE OF THE CITY OF HERINGTON, KANSAS, TO SUPPLEMENT SAID CODE OF THE CITY OF HERINGTON, KANSAS AND ADD ARTICLE XI IN CHAPTER 3, LICENSES AND BUSINESS REGULATIONS, ESTABLISHING AND ADOPTING REGULATIONS FOR VENDORS' OPERATION AND REQUIREMENTS WITHIN THE CITY LIMITS OF THE CITY OF HERINGTON, KANSAS, AND PROVIDING FOR THE ADMINISTRATION THEREOF, AND REPEALING ANY OTHER CURRENT ORDINANCES OR PORTIONS THEREOF IN CONFLICT HEREWITH.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HERINGTON, KANSAS:**

**Section 1. Adoption of ARTICLE VI VENDOR REGULATIONS TO CHAPTER 3 to the Code for the City of Herington, Kansas with assigned sections as noted herein.**

The codification of an Article XI in Chapter 3 of the Code for the City of Herington, Kansas, Vendor Regulations is hereby authorized, adopted and ordained as the "Code of Ethics for the City of Herington, Kansas." with said Article, in its entirety attached hereto as Exhibit A and incorporated by reference as if set out in full herein.

**Section 2. Creation of Chapter 1, Article IX.**

There is hereby created Article IX of Chapter 1 of the Code of the City of Herington which shall be titled Regulation of Vendors.

**Section 3. Repeal of general ordinances.**

All ordinances and parts of ordinances of a general nature related to this topic passed prior to September 6, are hereby repealed as of the date of publication of this ordinance except as hereinafter provided.

**Section 4. Accrued rights and liabilities.**

The repeal of ordinances as provided in section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

**Section 5. Severability.**

If for any reason any section, subsection, sentence, portion or part of the "Code of Ethics of the City of Herington, Kansas," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

**Section 6. Effective date.**

This ordinance shall be published in the official city newspaper and shall take effect and be in force from and after the publication of this Ordinance one time in the Dickinson County News – Times.

**ADOPTED AND PASSED** by the Governing Body of the City on the 6<sup>th</sup> of September 2022 and **APPROVED AND SIGNED** by the Mayor.

DRAFT

\_\_\_\_\_  
ERIC GARES, Mayor

ATTEST:

\_\_\_\_\_  
MEGAN LAWRENZ, City Clerk

*(Approved as to Form):*

\_\_\_\_\_  
**Bradley D. Jantz, City Attorney**

Herington, Kansas, this 6th day of Septmeber, 2022.

## **EXHIBIT A**

### **ARTICLE VI VENDOR REGULATION**

#### **3-601 Definitions**

When used in this chapter, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

##### **CONVEYANCE**

Includes any public or privately owned vehicle, method or means of transporting people, bicycle, motorized or nonmotorized vehicle, handcart, pushcart, lunch wagon or any other device or thing, whether or not mounted on wheels.

##### **GOODS, WARES and MERCHANDISE**

Includes but is not limited to fruits, vegetables, farm products or provisions, dairy products, fish, game, poultry, meat, plants, flowers, appliances, wearing apparel, jewelry, ornaments, art work, cosmetics and beauty aids, health products, medicines, household needs or furnishings, food of any kind, whether or not for immediate consumption, confections or drinks.

##### **MOTOR VEHICLE**

Any vehicle used for displaying, storing, or transporting articles for sale by a vendor which is required to be licensed and registered by the State Department of Motor Vehicles of any state.

##### **PUBLIC SPACE**

Includes all City-owned parks and City-owned property within street rights-of-way, including any roadways and sidewalks.

##### **PUBLIC WAY**

All areas legally open to public use, such as public streets, sidewalks, roadways, highways, parkways, alleys, and parks, as well as the areas surrounding and immediately adjacent to public buildings.

##### **PUSHCART**

Any wheeled vehicle approved by the City Clerk in accordance with this chapter designed for carrying property and for being pushed by a person without the assistance of a motor or motor vehicle.

##### **SIDEWALK**

All that area legally open to public use as a pedestrian public way between the curb-line and the legal building line of the abutting property.

##### **SPECIAL EVENT**

Any occasion, including but not limited to fairs, shows, exhibitions, city-wide celebrations, and festivals, taking place within a specifically defined area of the City of Herington for a period of time not to exceed three days.

**STAND**

Any showcase, table, bench, rack, handcart, pushcart, stall or any other fixture or device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise upon a sidewalk.

**STREET**

All that area legally open to public use as public streets and sidewalks, roadways, highways, parkways, alleys and any other public way.

**VEHICLE**

Every device in, upon, or by which a person or property may be transported or drawn upon a street or sidewalk, including but not limited to devices moved by human power.

**VENDOR**

Any person traveling by foot, wagon, vehicle or any other type of conveyance from street to street carrying, conveying, or transporting goods, wares or merchandise and offering and exposing them for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, exhibits, displays, sells or offers for sale such products from a wagon, handcart, pushcart, motor vehicle, conveyance or from his person while on the public ways of the City of Herington, Kansas. "Vendor" also includes any street vendor, hawker, huckster, itinerant merchant or transient vendor. This definition does not include a door-to-door peddler or solicitor.

**3-602 License Required**

It shall be unlawful for any person, firm or corporation to engage in the business of vending unless he, she or it has first obtained a license from the City Clerk or the designee of the City Clerk.

**3-603 Application for license.**

**A.**

The application for a vending license shall contain all information relevant and necessary to determine whether a particular license may be issued, including but not limited to:

- (1) The applicant's full name, current address, telephone number and proof of identity.



- (2) A brief description of the nature, character and quality of goods, wares or merchandise to be he specific location, if any, in which the vendor intends to conduct business.
- (3) The specific location, if any, in which the vendor intends to conduct business.
- (4) If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation.
- (5) If a motor vehicle is to be used, a description of the vehicle together with the motor vehicle registration number and license number.

**B.**

Any application for a vending license to engage in the sale of food or beverages shall be accompanied by proof that the applicant has obtained the license required by the State of Kansas and the City of Herington to sell or serve food and beverages.

**3-604 Contents of license.**

**A.**

Each license shall show the name and address of the licensee, the type of license issued, the kind of goods to be sold, the amount of the license fee, the date of issuance, the license number, an identifying description of any vehicle or conveyance used by the licensee plus, where applicable, the motor vehicle registration number. Each license shall also show the expiration date of the license.

**B.**

In addition to the vending license and any other permit required by this chapter, the City Clerk shall issue an identification badge to each vendor.

**C.**

All licenses, permits and identification badges issued under this section are valid for one year unless suspended or revoked and shall be both non-assignable and nontransferable.

**3-605 Special events.**

Any vendor wishing to conduct business at a special event shall apply to the City Clerk for a temporary vending permit. Application for such a permit must be made at least one day prior to the beginning of the event for which the permit is sought. The permit shall be valid only for the duration of the special event. Fees for such permit shall be as specified in this chapter. Any vendor to whom a temporary permit is granted shall be subject to the same operating regulations as all other vendors, except where otherwise specified.

**3-606 License fees.**

Any vendor granted a vending license under this chapter shall pay an annual license fee of \$15. Any vendor granted a temporary vending permit for special events shall pay a fee of \$2 for each day of vending permitted, unless waived by the governing body.

**3-607 Display of identification badges and other permits.**

**A.**

Any license or permit issued by the City Clerk shall be carried with the licensee whenever he or she is engaged in vending. Identification badges and certificates of health inspection or food and beverage licenses as may be required by the City of Herington, or the State of Kansas shall also be properly and conspicuously displayed at all times during the operation of the vending business.

**B.**

An identification badge shall be deemed to be properly displayed when it is attached to the outer garment of the vendor and clearly visible to the public and law enforcement officials. A certificate of health inspection or food and beverage licenses shall be deemed to be properly displayed when attached to the vending pushcart, vehicle, stand or other conveyance and clearly visible to the public and law enforcement officials.

**3-608 Notification of name or address change.**

All vendors shall assure that a current and correct name, residence address and mailing address are on file with the City Clerk. Whenever either the name or address provided by a licensed vendor on his application for vending license changes, the licensee shall notify the City Clerk in writing within 10 days of such change and provide the same with the name change or address change.

**3-609 Exemptions.**

The provisions of this chapter do not apply to:

**A.**

Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment or transfer;

**B.**

The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals, and paperbound books; or

**C.**

The distribution of free samples of goods, wares and merchandise by any individual from his person.

**3-610 Claims of exemption.**

Any person claiming to be legally exempt from the regulations set forth in this chapter, or from the payment of a license fee, shall cite to the City Clerk the statute or other legal authority under which exemption is claimed and shall present to the City Clerk proof of qualification for such exemption.

**3-611 Hours of operation.**

Vendors shall be allowed to engage in the business of vending only between the hours of 8:00 a.m. and 11:00 p.m. No vending station, conveyance or other item related to the operation of a vending business shall be located on any City sidewalk or other public way during non-vending hours, nor shall any vehicle be parked, stored or left overnight other than in a lawful parking place.

**3-612 Littering and trash removal.**

**A.**

Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their businesses. All trash or debris accumulating within 25 feet of any vending stand shall be collected by the vendor and deposited in a trash container.

**B.**

Persons engaged in food vending shall affix to their vending station, vehicle, pushcart or other conveyance a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

**3-613 Vending restrictions.**

No vendor shall be permitted to operate:

**A.**

So as to obstruct the following public spaces:

Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their businesses. All trash or debris accumulating

within 25 feet of any vending stand shall be collected by the vendor and deposited in a trash container.

**B.**

Persons engaged in food vending shall affix to their vending station, vehicle, pushcart or other conveyance a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

**3-614 Vending restrictions.**

No vendor shall be permitted to operate:

**A.**

So as to obstruct the following public space:

**(1)** Any street intersection or pedestrian crosswalk.

**(2)** Any driveway or loading zone.

**(3)** A building entrance.

**B.**

Within 50 feet of another vending location assigned to another vendor on a public sidewalk.

**C.**

Against display windows of fixed location businesses.

**3-615 Prohibited conduct.**

No person authorized to engage in the business of vending under this chapter shall do any of the following:

**A.**

Unduly obstruct pedestrian or motor vehicle traffic flow.

**B.**

Obstruct traffic signals or regulatory signs.

**C.**

Stop, stand or park any vehicle, pushcart or any other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings.

Leave any conveyance unattended at any time or store, park, or leave such conveyance in a public space overnight.

**E.**

Use a handcart or pushcart or stand whose dimensions exceed six feet in width, eight feet in length, and 10 feet in height.

**F.**

Use any conveyance that, when fully loaded with merchandise, cannot be easily moved and maintained under control by the licensee, his employee, or an attendant.

**G.**

Sell any goods, wares or merchandise within districts or on streets that have been or shall be hereafter so designated by the governing body.

**H.**

Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention or otherwise violate noise limitations under the Herington City Code.

**I.**

Conduct his business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.

**3-616 Violations and penalties.**

The penalty for violating any provision of this Article shall be as provided for a Class C misdemeanor in the State of Kansas together with revocation or suspension of the vendor's license. Each violation shall be evidenced by a separate written notice presented at the time of citation for the offense. A hearing on each violation shall be required before any fines, suspensions or revocations can occur. Each day of violation shall be deemed a separate offense.

**3-617 Suspension or revocation of license.**

**A.**

In addition to the penalties contained in this chapter, any license issued under this Article may be suspended or revoked for any of the following reasons:

- (1)** Fraud, misrepresentation or knowingly false statement contained in the application for the license;
- (2)** Fraud, misrepresentation or knowingly false statement in the course of carrying on the business of vending;
- (3)** Conducting the business of vending in any manner contrary to the conditions of the license;

- (4)** Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners; or
- (5)** Cancellation of Health Department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations.

**B.**

The City shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint and the grounds for suspension or revocation and notifying the licensee or permittee of his right to appeal. Such notice shall be mailed to the address shown on the license holder's application by certified mail, return receipt requested.

**C.**

If the City revokes a vending license or permit, the fee already paid for the license or permit shall be forfeited. A person whose license or permit has been revoked under this section may not apply for a new license for a period of one year from the date that the revocation took effect.

**6-118 Appeals.**

**A.**

If the City Clerk denies the issuance of a license or permit, suspends or revokes a license or permit, or orders the cessation of any part of the business operation conducted under the license or permit, the aggrieved party may appeal the City Clerk's decision to the governing body of the City of Herington.

**B.**

The filing of an appeal stays the action of the City Clerk in suspending or revoking a license or permit or The City shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint and the grounds for suspension or revocation and notifying the licensee or permittee of his right to appeal. Such notice shall be mailed to the address shown on the license holder's application by certified mail, return receipt requested.

**C.**

If the City revokes a vending license or permit, the fee already paid for the license or permit shall be forfeited. A person whose license or permit has been revoked

under this section may not apply for a new license for a period of one year from the date that the revocation took effect.

**6-119 License renewal.**

A vending license may be renewed, provided that an application for renewal and license fees are received by the City Clerk no later than the expiration date of the current license. Any application received after that date shall be processed as a new application. The City Clerk shall review each application for renewal and, upon determining that the applicant is in full compliance with the provisions of this chapter, shall issue a new license.

DRAFT

Published in the Dickinson County News - Times on \_\_\_\_\_, 2022.

**ORDINANCE NO. 1875**

**AN ORDINANCE AMENDING PRIVATE PROPERTY, BUILDING DEMOLITION, CHAPTER 4, ARTICLE VIII, SECTION 4-803 OF THE CODE OF THE CITY OF HERINGTON, KANSAS RELATING TO REGULATION AND ADMINISTRATION OF PROPERTY DEMOLITION IN THE CITY OF HERINGTON, KANSAS AND REPEALING ANY OTHER CURRENT ORDINANCES OR PORTIONS THEREOF IN CONFLICT HEREWITH.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HERINGTON, KANSAS:**

**SECTION 1.** That Chapter 4, Article VIII, Section 4-803, be amended to read as follows:

**Sec. 4-803. - Bond.**

No permit to wreck, dismantle, or tear down any house, building or other structure shall be issued or granted until the owner or owners shall have filed with the City Clerk a bond in an amount of five thousand dollars (\$5000) for any such demolition. The bond shall be signed by not less than two sureties to be approved by the City Manager or until, in the alternative, the owner or owners shall have paid to the City Clerk a cash deposit in an amount fixed by the City Manager. The bond or cash deposit shall be for protection of the city, the public, and adjacent lot owners and shall be to secure the payment of all damages of any kind or nature arising from the operations of wrecking, dismantling, or tearing down of the house, building, or other structure and to secure the strict compliance of the owner or owners and the person, firm, or corporation assisting in such operations with the provisions of this article regulating the wrecking, dismantling or tearing down of such house, building or other structure. A public liability insurance policy, issued by an insurance company authorized to do business in the State of Kansas, and conforming to this section may be permitted in lieu of bond.



**SECTION 2.** Existing Article VIII of Chapter 4, Section 4-803 is hereby repealed. All other sections of Chapter 4, Article VIII, shall remain in full force and effect.

**SECTION 3.** This ordinance shall become effective and in full force from and after its passage, adoption and publication one time in the official city newspaper, Dickinson County News - Times.

**PASSED AND ADOPTED** this 6th day of September 2022.

\_\_\_\_\_  
ERIC GARES, MAYOR

ATTEST:

DRAFT

\_\_\_\_\_  
MEGAN LAWRENZ  
CITY CLERK

SEAL:

Published in the official city newspaper, the Dickinson County News - Times on the \_\_\_\_\_ day of \_\_\_\_\_, 2022

**ORDINANCE NO. 1876**

**AN ORDINANCE AMENDING THE CODE OF THE CITY OF HERINGTON, KANSAS, TO REPLACE, IN ITS ENTIRETY, CHAPTER 2, ARTICLE III, SECTIONS 2-309 THROUGH 2-318 REGULATING THE CONTROL OF WEEDS AND GRASS, WITHIN THE CITY LIMITS OF THE CITY OF HERINGTON, KANSAS, AS SET OUT IN THE CODE FOR THE CITY OF HERINGTON, KANSAS, AND REPEALING ANY OTHER CURRENT ORDINANCES, OR PORTIONS THEREOF, IN CONFLICT HEREWITH.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HERINGTON, KANSAS.**

**SECTION 1.** That Chapter 2, Article III, Sections 2-309 through 2-318, of the Code of the City of Herington, Kansas, are hereby replaced in their entirety by the following section 2-309 through 2-318, in their entirety, to read as, as follows:

**ARTICLE III WEEDS AND GRASS**

**2-309. Weeds to be removed.**

It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.

**2-310. Definitions.**

Weeds as used herein, means any of the following:

- (a) Brush and woody vines shall be classified as weeds;
- (b) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (c) Weeds which bear or may bear seeds of a downy or wingy nature.

(d) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;

(e) Weeds and indigenous grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 8 inches in height, or grow over the curbing and/or grow in the paved street right-of-way.

**2-311. Public officer; notice to remove.**

The mayor with the consent of the council shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or an authorized assistant shall notify in writing the owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of this article, by mail, by personal service, or by posting in a reasonable manner upon the property once per calendar year. Such notice shall include the following:

(a) That the owner, occupant or agent in charge of the property is in violation of the city weed control law.

(b) That the owner, occupant, or agent in charge of the property is ordered to cut the weeds within 7 days of the receipt of notice.

(c) That the owner, occupant or agent in charge of the property may request a hearing before the governing body or its designated representative within five days of the receipt of notice.

(d) That if the owner, occupant or agent in charge of the property does not cut the weeds, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property.

(e) That the owner, occupant or agent in charge of the property will be given an opportunity to pay the assessment, and, if it is not paid, it will be added to the property tax as a special assessment.

(f) That no further notice shall be given prior to removal of weeds during the current calendar year.

(g) That the public officer should be contacted if there are any questions regarding the order.

If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

**2-312. Abatement; assessment of costs.**

(a) Upon the expiration of seven (7) days after receipt of the notice required by Section 8-503, and in the event that any owner, occupant or agent in charge of the premises shall neglect or fail to comply with the requirements of Section 8-501, the public officer or an authorized assistant shall cause to be cut, destroyed and/or removed all such weeds and indigenous grasses and abate the nuisance created thereby at any time during the current calendar year.

(b) The public officer or an authorized assistant shall give notice to the owner, occupant or agent in charge of the premises by certified mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within 30 days following receipt of the notice.

(c) If the costs of removal or abatement remain unpaid after 30 days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the city clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for spreading on the tax rolls of the county.

**2-313. Right of entry.**

The public officer, and the public officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this article.

**2-314. Unlawful interference.**

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute a code violation.

**2-315. Noxious weeds.**

(a) Nothing in this article shall affect or impair the rights of the city under the provisions of Chapter 2, Article 13 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.

(b) For the purpose of this section, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), and Johnson grass (*Sorghum halepense*).

**2-316. Agricultural exception to the limit on heights of grasses and weeds.**

(a) Any person who requests to be excepted from the provisions of this article shall make a written application to the City of Herington to be excepted from the application of such ordinance. Such application shall include the following: the name of the owner; the name of the person in possession of the property, if different than the owner; the reason for the requested exception

(b) All grants of exception shall be automatically renewed each year unless a complaint is filed with the governing body. Upon such occurrence, there shall be a hearing conducted by the governing body to determine if the exception should be continued.

(c) Upon receipt of a request to be excepted, the City Manager and/or the City Inspector shall view the property to make a determination as to the plausibility of such exception. In determining the plausibility, the inspector shall determine how an exception would impact the character of the neighborhood, the neighborhood property values, and any other relevant impact it may have on the City as a whole.

(d) All noxious weeds must be controlled at all times. If noxious weeds are uncontrolled, the exemption granted herein may be withdrawn.

(e) The final decision as to whether or not to grant an exception shall lie with the city council.

**2-317. Fee to be charged by City.**

If the owner, occupant or agent in charge of the property does not cut the weeds and indigenous grasses, the City or its authorized agent will cut the same and assess the cost of the cutting, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property. The rate of such work charged by the City shall be \$150.00 per hour, with a one hour minimum charge.

**2-318. Abatement By City.**

If the owner, representative, tenant or other person occupying or in charge of the property fails or neglects to request a hearing and to abate the violations within the notice period, then the public officer or an authorized assistant may enter onto the property and may cause to be cut, destroyed and/or removed all such weeds and may abate the nuisance created thereby. The city shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violations. The city may use its own employees or contract for services to abate violations of this article. Any authorized officer or agent of the city shall be allowed to relocate or remove any trash, debris, limbs, or brush, building materials or other items if such relocation or removal is reasonably necessary to abate the violation.

**SECTION 2.** Other ordinances, or portions thereof in conflict herewith, are hereby repealed.

**SECTION 3.** This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

**PASSED AND ADOPTED** by the Governing Body of the City of Herington, Kansas, this \_\_\_\_ day of \_\_\_\_\_, 2022.

**Signed by the Mayor** this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Eric Gares, Mayor, City of Herington, Kansas

ATTEST:

DRAFT

\_\_\_\_\_  
Megan Lawrenz, City Clerk

SEAL