

JOURNAL OF THE CITY COUNCIL

Regular Session – April 4, 2007

COUNCIL & STAFF PRESENT:

Martha Rowe	Mayor
Jeff Newton	Councilmember
Dale Blesz	Councilmember
Tim Crist	Councilmember
Jill McCord	Councilmember
Howard Hickman	City Attorney
Mari E. Macomber	City Manager
Vickie Brumbaugh	City Clerk
John Buckwalter	Public Works Director
Paul Frazier	Code Administrator
Laura Guy	Finance Director
Kris McKim	Assistant City Manager
Tom Mayer	Newly Elected Official
Aaron Rodgerson	Newly Elected Official

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Wednesday, April 4, 2007, at 5:30 p.m. in the City Hall Council Chambers.

INVOCATION/PLEDGE

Pastor Marty Joplin, First Baptist Church, gave the Invocation.
Boy Scout Troop 26 led the Pledge of Allegiance.

MINUTES

Councilmember Crist moved to approve the minutes of the regular session of March 19, 2007; seconded by Councilmember Newton. The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

ORDER OF AGENDA

Councilmember Crist moved to approve the order of the agenda; seconded by Councilmember Blesz. The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

INFORMATION PRESENTATION

Mayor Rowe read a Proclamation proclaiming April as Fair Housing Month.

CITIZEN PARTICIPATION

None.

ACTION PRESENTATIONS**BILL NO. 2007-11****AN ORDINANCE AMENDING ORDINANCE NO. 11493, APPROVING THE PLAT OF FOX RUN PLAT 3.**

Councilmember Newton moved to adopt Bill No. 2007-11 on first reading; seconded by Councilmember Crist.

Code Administrator Paul Frazier reported that a plat for the rezoning of property on South Jamison was approved in 2001. The language within that ordinance of approval contained a Deed of Dedication and plat to be recorded, but there was no Deed of Dedication. Therefore, an ordinance is required to amend the language, and will be recorded to delete the words, Deed of Dedication.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

BILL NO. 2007-12**AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, APPROVING A LOT SPLIT FOR LANDS LOCATED ON MISSOURI HIGHWAY 63, NORTH, KIRKSVILLE, MISSOURI.**

Councilmember McCord moved to adopt Bill No. 2007-12 on first reading; seconded by Councilmember Newton.

Paul Frazier reported the property owner of land known as North Realty Group (where specialty shops such as Hibbett Sports and Dollar Tree are located) , wishes to sell the north half of this property, therefore separating into two lots.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

BILL NO. 2007-13**AN ORDINANCE DECLARING THE RESULTS OF THE MUNICIPAL ELECTION FOR THE CITY OF KIRKSVILLE, MISSOURI, HELD ON APRIL 3, 2007, AT WHICH TIME THERE WERE FOUR (4) CANDIDATES FOR ELECTION TO THE TWO (2) POSITIONS FOR THREE (3) YEAR TERMS THAT EXIST ON THE CITY COUNCIL.**

Councilmember Crist moved to adopt Bill No. 2007-13 on first reading; seconded by Councilmember McCord.

City Manager Macomber explained the election results are the unofficial totals. The Council Clerk will provide certification within the next two weeks. The Council will be provided any changes in the vote count.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

BILL NO. 2007-14

AN ORDINANCE DECLARING THE RESULTS OF THE MUNICIPAL ELECTION FOR THE CITY OF KIRKSVILLE, MISSOURI, HELD ON APRIL 3, 2007, AT WHICH TIME THERE WAS SUBMITTED TO THE QUALIFIED VOTERS OF SAID CITY A QUESTION TO CONTINUE THE ONE-FOURTH OF ONE PERCENT CAPITAL IMPROVEMENT SALES TAX.

Councilmember McCord moved to adopt Bill No. 2007-14 on first reading; seconded by Councilmember Newton. The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

BILL NO. 2007-15

AN ORDINANCE DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION FOR THE CITY OF KIRKSVILLE, MISSOURI, HELD ON APRIL 3, 2007, AT WHICH TIME THERE WAS SUBMITTED TO THE QUALIFIED VOTERS OF SAID CITY A QUESTION TO CAUSE ENACTMENT OF AN ORDINANCE PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES WITHIN THE CITY LIMITS OF KIRKSVILLE.

Councilmember Crist moved to adopt Bill No. 2007-15 on first reading; seconded by Councilmember Blesz. The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

BILL NO. 2007-16

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE V – OFFENSES AGAINST PUBLIC HEALTH AND SAFETY - OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI, BY ADDING A SECTION ENTITLED “SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES”.

Councilmember Blesz moved to adopt Bill No. 2007-16 on first reading; seconded by Councilmember McCord.

City Manager Mari Macomber explained that the 120 days effective time period in the ballot language was not statutory language, but was a time limit for the City Council to act upon an ordinance after the election. The City Council had included an effective date within the draft ordinance of July 1.

Mayor Rowe opened discussion from the audience.

Justin Puckett thanked the Council for listening to the requests, for the town hall meeting and allowing citizens time to speak. He presented a certificate of thank you.

Sherry Sharp asked the Council to consider making changes to the Ordinance before passing it. The Moose, Shrine, Country Club and fair grounds are family oriented clubs and should be banned as well.

Brenda Sewell, owner of Uptown Café, said the Council needs to make the ordinance fair to include Moose, Shrine, Country Club and fair grounds.

Jennifer Aldridge Houser reported she is trying to get a grant to help people in the community who would like to stop smoking.

Justin Puckett said the Preferred Family offers free tobacco relief.

Joyce Larra said there are other services available.

Melody Jennings said she understood the non-profit organization would have to ban smoking if they hired food preparers to come in. A Council member said originally that was the wording, but the Council had changed the wording.

Ann Blesz asked the Council to consider including the private organizations in the ordinance, and reminded them this is about health issues.

There being no further comments, the motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

BILL NO. 2007-17

AN ORDINANCE AUTHORIZING THE ISSUANCE OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS (STATE REVOLVING FUND PROGRAM) SERIES 2007 OF THE CITY OF KIRKSVILLE, MISSOURI, FOR THE PURPOSE OF EXTENDING AND IMPROVING THE CITY'S COMBINED WATERWORKS AND SEWERAGE SYSTEM; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THEIR PAYMENT; AND AUTHORIZING A NO-INTEREST LOAN FROM THE WATER AND WASTEWATER LOAN FUND AND/OR THE WATER AND WASTEWATER LOAN REVOLVING FUND OF THE STATE OF MISSOURI AND PRESCRIBING OTHER RELATED MATTERS.

Councilmember Crist moved to adopt Bill No. 2007-17 on first reading; seconded by Councilmember Blesz.

Laura Guy reported the proceeds from the bonds will fund the downtown water main improvements and phase II of the water treatment plant upgrade.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Addendum to Water Plant Improvements Agreement w/Benton & Associates

Councilmember McCord moved to authorize the City Manager to execute an addendum to the agreement with Benton and Associates, adding engineering services for bidding and construction phase services for Water Plant improvements, Phase II; seconded by Councilmember Blesz.

John Buckwalter reported the design work for Phase I and II of the water treatment project was completed in 2005. Phase I is nearing completion, and ready to begin work on Phase II, which is eligible under the SRF funding.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Airport Improvements Engineering w/Bucher, Willis & Ratliff

Councilmember Blesz moved to approve Bucher, Willis and Ratliff Corporation to provide engineering services for planning and design of airport improvements at the Kirksville Regional Airport, pending approval by the Missouri Department of Transportation; seconded by Councilmember Crist.

John Buckwalter reported that proposals were solicited in February, and two companies presented proposals and were interviewed.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Downtown Water Main Improvements, Phase I Agreement

Councilmember Crist moved to authorize the City Manager to enter into an agreement with Willis Brothers, Inc. for Downtown Water Main Improvements, Phase I, pending Missouri Department of Natural Resources approval; seconded by Councilmember Newton.

John Buckwalter reported that Willis Brothers was the low bidder at \$982,373. Work will start in June.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Bid – Utility Van for Public Works

Councilmember Newton moved to approve a bid from Jim Robertson Chevrolet for a utility van; seconded by Councilmember Crist.

John Buckwalter reported their specifications were for a diesel engine, but accepted alternate bids for gasoline. A diesel engine bid at \$39,936 is recommended.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Water Tower Lease Amendment w/Alamosa Missouri

Councilmember Crist moved to approve an amendment to the water tower lease agreement with Alamosa Missouri Properties; seconded by Councilmember Newton.

Kris McKim reported the agreement allowed for installation of up to 12 panel antennas. Alamosa installed 6 antennas, and is currently planning to add 3 more. They would like in writing the number of coaxial cables it will take to run those antennas.

The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Committee/Board Appointments

Councilmember Newton moved to appoint Norman Belitz to the Highway 63 Transportation Corporation; seconded by Councilmember Blesz. The motion carried by the following vote: Mayor Rowe - aye; Councilmembers: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays – none.

Second Reading

BILL NO. 2007 11

ORDINANCE NO. 11791

AN ORDINANCE AMENDING ORDINANCE NO. 11493, APPROVING THE PLAT OF FOX RUN PLAT 3.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Ordinance No. 11493, approving the plat of Fox Run Plat 3, was approved by the City Council in April, 2001; and recorded in Book 735, Page 236 on March 1, 2002. An amendment to this Ordinance is necessary to correct the wording within the Ordinance. There was no Deed of Dedication at the time of the plat approval.

Section 1. Certain contents of Ordinance No. 11493 shall be amended to read as follows:

...~~“WHEREAS, Philip T. Richardson and Irene M. Richardson, have executed their “Deed of Dedication of Fox Run Plat 3,” and~~

WHEREAS, both the “Plat” and ~~“Deed of Dedication”~~ shall be recorded in the Recorder’s Office of Adair County, Missouri....

Section 2. Effective upon approval and passage of this Ordinance.

BILL NO. 2007-12

ORDINANCE NO. 11792

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, APPROVING A LOT SPLIT FOR LANDS LOCATED ON MISSOURI HIGHWAY 63, NORTH, KIRKSVILLE, MISSOURI.

BE IT ORDAINED by the City Council of the City of Kirksville, Missouri as follows:

WHEREAS, a tract of land located on Missouri Highway 63, North, (North of Wal-Mart) is proposed to be subdivided into two (2) tracts of land within the City of Kirksville, Missouri, described herein and is incorporated herein by reference, and has been regularly certified by Steven A. Laune, licensed surveyor number 2007000079, and

WHEREAS, the plat of land is described as follows:

A tract of land situated on Lot 6, Johnson Addition to Kirksville, Adair County, Missouri.

WHEREAS, the plat shall be recorded in the Recorder’s Office of Adair County, Missouri.

NOW, THEREFORE, a lot split for a tract of land located on North Missouri Highway 63 is hereby approved and the same is made an addition to the City of Kirksville, Missouri, and the portions thereof dedicated to the public are hereby accepted.

BILL NO. 2007-13

ORDINANCE NO. 11793

AN ORDINANCE DECLARING THE RESULTS OF THE MUNICIPAL ELECTION FOR THE CITY OF KIRKSVILLE, MISSOURI, HELD ON APRIL 3, 2007, AT WHICH TIME THERE WERE FOUR (4) CANDIDATES FOR ELECTION TO THE TWO (2) POSITIONS FOR THREE (3) YEAR TERMS THAT EXIST ON THE CITY COUNCIL.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1. That it is hereby found and determined that the results of the election are as follows:

	SW #1	SE#2	SE#3	NE#4	NE#5	NE#6	TSU	ABSENTEE	TOTAL
Kevin A. Alm	78	103	59	77	62	95	9	31	514
Tom Mayer	149	419	206	246	279	389	77	104	1,869
Aaron Rodgerson	119	337	153	196	211	296	37	73	1,422
Charles Cannaday	107	236	101	149	128	187	29	80	1,017
Write In	4	3	5	3	7	8	7	1	38
Write In	1	0	2	0	2	1	1	1	8

Section 2. That it is hereby found that Tom Mayer and Aaron Rodgerson are declared elected for three-year terms on the City Council and shall take office on the 4th day of April, 2007.

Section 3. That it is further found, declared and determined that notice of said election was duly given and published in a manner provided by law, and that said election was held and conducted in all respects in conformity with the constitution and laws of the State of Missouri.

BILL NO. 2007-14

ORDINANCE NO. 11794

AN ORDINANCE DECLARING THE RESULTS OF THE MUNICIPAL ELECTION FOR THE CITY OF KIRKSVILLE, MISSOURI, HELD ON APRIL 3, 2007, AT WHICH TIME THERE WAS SUBMITTED TO THE QUALIFIED VOTERS OF SAID CITY A QUESTION TO CONTINUE THE ONE-FOURTH OF ONE PERCENT CAPITAL IMPROVEMENT SALES TAX.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1.

	FOR	AGAINST
Absentee	122	52
Southwest Benton #1	143	132
Southeast Benton #2	430	205
Southeast Benton #3	224	95
Northeast Benton #4	251	131
Northeast Benton #5	259	128
Northeast Benton #6	355	198

TSU Benton	97	16
TOTAL	1,881	957

Section 2. That it is hereby found the continuance of the one-fourth (1/4) cent capital improvement sales tax passed by a vote of 1,881 for and 957 against.

Section 3. That it is further found, declared and determined that notice of said election was duly given and published in a manner provided by law, and that said election was held and conducted in all respects in conformity with the Constitution and laws of the State of Missouri.

BILL NO. 2007-15 **ORDINANCE NO 11795**
AN ORDINANCE DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION FOR THE CITY OF KIRKSVILLE, MISSOURI, HELD ON APRIL 3, 2007, AT WHICH TIME THERE WAS SUBMITTED TO THE QUALIFIED VOTERS OF SAID CITY A QUESTION TO CAUSE ENACTMENT OF AN ORDINANCE PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES WITHIN THE CITY LIMITS OF KIRKSVILLE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1.

	FOR	AGAINST
Absentee	95	82
Southwest Benton #1	146	143
Southeast Benton #2	422	230
Southeast Benton #3	245	100
Northeast Benton #4	234	171
Northeast Benton #5	236	160
Northeast Benton #6	330	239
TSU Benton	112	18
TOTAL	1,820	1,143

Section 2. That it is hereby found that the question to cause to be enacted an ordinance prohibiting smoking in certain public places within the city limits of Kirksville passed by a vote of 1,820 for, and 1,143 against.

Section 3. That it is further found, declared and determined that notice of said election was duly given and published in a manner provided by law, and that said election was held and conducted in all respects in conformity with the Constitution and laws of the State of Missouri.

BILL NO. 2007-16 **ORDINANCE NO. 11796**

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE V – OFFENSES AGAINST PUBLIC HEALTH AND SAFETY - OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI, BY ADDING A SECTION ENTITLED “SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES”.

WHEREAS, on April 3, 2007, a majority of voters in the municipal election affirmatively voted in favor of a smoking ban in certain public places; and

WHEREAS, the smoking of tobacco is a form of air pollution, and is a danger to health, and a material public nuisance; and

WHEREAS, the City of Kirksville wishes to promote the public health and welfare of its citizens and community visitors by decreasing exposure to secondhand smoke caused from tobacco; and

WHEREAS, the City of Kirksville understands the health impact of second hand smoke in the workplace and wishes to protect employees where high exposure of second hand smoke exists; and

WHEREAS, the City Council of the City of Kirksville finds and declares that the purpose of this Ordinance is to protect the public health and welfare by prohibiting smoking in certain public places.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, ADAIR COUNTY, MISSOURI, AS FOLLOWS:

Section 1. That Chapter 18, Article V, of the Code of Ordinances of the City of Kirksville, Missouri, be amended to read as follows:

Division 3. SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES.

Section 18-88. Definitions.

The following words, terms and phrases, when used in this Section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

1. *Actively Passing* means to travel alongside, across, through or in front of a particular place or location while proceeding from one place or location to a different place or location.
2. *Amusement Place* means a building used for billiards, bowling or roller skating and other similar entertainment, open to the public.
3. *Banquet Facility* means a stand alone building when used primarily for private or public gatherings or entertainment.
4. *Bar* means an establishment that serves alcoholic beverages for consumption by guests on the premises, and all indoor and outdoor areas thereof, including but not limited to, taverns, nightclubs, cocktail lounges and cabarets.
5. *City Operated Facility* means any building located within the city limits of the city, which is owned, leased or under control of the city for providing city services.
6. *Control* means to exercise authority or influence over.
7. *Employee* means any person who performs services for an employer for compensation.
8. *Employer* means a person, partnership, association, corporation, trust, or other organized group of individuals, which utilizes the services of one (1) or more employees.
9. *Membership Association* means a private organization which;
 - a. is organized primarily for the benefit of its members; and
 - b. its members are required to pay dues; and
 - c. is organized primarily as:
 - 1) a charitable or benevolent association; or
 - 2) a recreational association; or
 - 3) a fraternal association; or
 - 4) an athletic association; or
 - 5) a military veterans association; or
 - 6) a religious association; or
 - 7) a kindred association; and
 - d. is a not-for-profit organization under the laws of the State of Missouri; and
 - e. is managed and operated by a board consisting entirely of its members; and
 - f. is not primarily engaged in the preparation and serving of alcoholic beverages by the drink and/or food.
10. *Owner* means a person, partnership, association, corporation, trust, or other organized group of individuals.
11. *Recreation Facility* means any public park, playground, recreation center or recreation area, whether it be improved or unimproved real property located within the city limits of the city, which is owned, leased or under control of the city for recreational purposes, including all indoor and outdoor areas.
12. *Restaurant* means an eating establishment thereof, and all indoor and outdoor areas thereof, including but not limited to, coffee shops, cafeterias, sandwich stands, bed and breakfast

establishments and private and public school cafeterias, which gives or offers for sale food to the public. The term "restaurant" shall include an attached bar.

13. *Smoking* means inhaling, exhaling, burning or possessing any lighted cigar, cigarette, pipe, weed, plant, or other tobacco product or possessing any lighted cigar, cigarette or pipe containing a combustible and burning substance other than tobacco.

Section 18-89. Prohibition of smoking.

- a. Smoking is prohibited in all bars, city operated facilities, recreation facilities, restaurants, amusement places, bed and breakfasts and banquet facilities when employees are present and working at the banquet facility, provided however, that smoking is not prohibited in facilities owned and/or operated by a membership association or under the control of a membership association if such facility is used primarily for its members.
- b. Smoking is prohibited within a distance of ten feet (10') from entrances, operable windows or ventilation systems of areas where smoking is prohibited in Section 18-89a. This subsection shall not apply to persons who are actively passing by such entrance, operable window or ventilation system.

Section 18-90. Responsibilities of proprietors, owners and managers.

- a. Any person(s) who owns, manages, operates, or otherwise has control of an area where smoking is prohibited by the provisions of Section 18-89a, shall not permit, cause, suffer or allow any person to violate the provisions of this ordinance in that place.
- b. It shall be an affirmative defense to an alleged violation of this subsection if the person who owns, manages, operates or otherwise controls a public place listed in Section 18-89a does the following:
 1. Immediately requests that the person in possession of lighted smoking materials extinguish the same; and
 2. If the lighted smoking materials are not extinguished, immediately requests that the person in possession of such lighted smoking materials leave the area where smoking is prohibited by the provisions of this Ordinance; and
 3. If the person in possession of such lighted smoking materials does not leave the area where smoking is prohibited by the provisions of this Ordinance, immediately notifies the City enforcement officers of the violation of Section 18-89a.
- c. A person who owns, manages, operates, or otherwise has control of a public place listed in Section 18-89a shall clearly and conspicuously post "No Smoking" signs, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), near all entrances where smoking is prohibited by this Ordinance. Such signage shall consist of letters not less than one inch, (1") in height.

Section 18-91. Penalty for violation of this Ordinance.

- a. A person, who smokes in an area where smoking is prohibited by the provisions of this Ordinance, shall be guilty of an ordinance violation, punishable by:
 1. A fine not less than one hundred dollars (\$100) for a first violation.
 2. A fine not less than two hundred dollars (\$200) for a second violation within a period of twelve (12) consecutive months.
 3. A fine in the amount of five hundred dollars (\$500) for a third or subsequent violation within a period of twelve (12) consecutive months, or by imprisonment for a period not exceeding ninety (90) days, or by both such fine and imprisonment.
- b. Any person(s), who owns, manages, operates, or otherwise has control of an area where smoking is prohibited by the provisions of Section 18-89a, who fails to comply with the provisions of this Ordinance shall be guilty of an ordinance violation, punishable by:

- 1. A fine not less than one hundred dollars (\$100) for a first violation.
- 2. A fine not less than two hundred dollars (\$200) for a second violation within a period of twelve (12) consecutive months.
- 3. A fine in the amount of five hundred dollars (\$500) for a third or subsequent violation within a period of twelve (12) consecutive months, or by imprisonment for a period not exceeding ninety (90) days, or by both such fine and imprisonment.

c. Each incident for which a violation of this Ordinance occurs shall be a separate and distinct violation.

Section 18-92. Other applicable laws.

- a. This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 18-93. Effective dates.

- a. This Ordinance will become effective on July 1, 2007.

Section 18-94. Enforcement of Ordinance.

- a. The authority to administer the provisions of this Ordinance is vested with the City Manager and his/her duly authorized representatives.
- b. Whenever the need arises, the City Manager may call upon the police, fire and codes departments and other departments of the City to aid in the enforcement of the provisions of this Ordinance.
- c. Notice of the provisions of this Ordinance shall be given to all applicants who have applied for a business license in the City of Kirksville, Missouri.

Section 2. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri, as an addition or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

BILL NO. 2007-17 **ORDINANCE NO. 11797**
AN ORDINANCE AUTHORIZING THE ISSUANCE OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS (STATE REVOLVING FUND PROGRAM) SERIES 2007 OF THE CITY OF KIRKSVILLE, MISSOURI, FOR THE PURPOSE OF EXTENDING AND IMPROVING THE CITY'S COMBINED WATERWORKS AND SEWERAGE SYSTEM; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THEIR PAYMENT; AND AUTHORIZING A NO-INTEREST LOAN FROM THE WATER AND WASTEWATER LOAN FUND AND/OR THE WATER AND WASTEWATER LOAN REVOLVING FUND OF THE STATE OF MISSOURI AND PRESCRIBING OTHER RELATED MATTERS.

WHEREAS, the City of Kirksville, Missouri (the "City") is a city of the third class, organized and existing under the constitution and laws of the State of Missouri; and

WHEREAS, prior to adoption of Ordinance No. 11740 on December 19, 2005 (the "Combined System Ordinance"), the City operated a Waterworks System and a Sewerage System; and

WHEREAS, by the Combined System Ordinance, the City combined the Waterworks System (hereafter, the "Waterworks Subsystem") and the Sewerage System (hereafter, the "Sewerage Subsystem"), into a revenue producing combined waterworks and sewerage system serving the City, its inhabitants and others within its service area, including connected and related appurtenances and facilities and extensions, improvements, additions and enlargements made or acquired by the City after the date of this Ordinance (the "System"); and

WHEREAS, the City desires to make extensions and improvements to the System to be financed in whole or in part by the issuance, pursuant to this Ordinance, of its Combined Waterworks and Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2007 (the "Bonds"); and

WHEREAS, to provide the most cost effective financing of the extensions and improvements to the System, the City desires to participate in the Missouri Leveraged State Water Pollution Control Revolving Fund Program or the Missouri Leveraged State Drinking Water Revolving Fund Program (collectively, the "SRF Program") of the Missouri Department of Natural Resources ("DNR") and the State Environmental Improvement and Energy Resources Authority (the "Authority"); and

WHEREAS, under the provisions of Chapter 250 of the Revised Statutes of Missouri (the "Act") the City is authorized to issue and sell revenue bonds for the purpose of paying all or part of the cost of extending and improving the System, with the cost of operation and maintenance of the System and the principal of and interest on revenue bonds payable solely from the Net Revenues (as defined below); and

WHEREAS, pursuant to the Act, a special bond election was duly held in the City on April 4, 2006 on the following question:

QUESTION

Shall the City of Kirksville, Missouri, issue its combined waterworks and sewerage system revenue bonds in the amount of \$7,000,000 for the purpose of paying a portion of the cost of improving the combined waterworks and sewerage system of the City, including rehabilitation of the city's waterworks treatment facility, replacement of the downtown water line, upgrade of the wastewater treatment facility and replacement of sewerage collection components, the cost of operation and maintenance of said combined waterworks and sewerage system and the principal of and interest on said revenue bonds to be payable solely from the revenues derived by the City from the operation of its combined waterworks and sewerage system, including all future improvements and extensions thereto?

and it was found and determined that more than a simple majority of the qualified electors of the City voting on the question had voted in favor of the question, the vote having been 1,925 votes for the question and 461 votes against the question; and

WHEREAS, the City Council (the "Governing Body") of the City has caused plans and specifications for extensions and improvements to the System and a cost estimate to be made by the Consulting Engineer (as defined below); and

WHEREAS, the plans and specifications and the cost estimate are accepted and approved and are on file in the office of the City Clerk, the amount of the estimated cost being not less than the maximum Original Principal Amount set forth in Exhibit A; and

WHEREAS, none of the bonds so authorized have been issued and the City finds and determines that it is necessary and advisable and in the best interest of the City and of its inhabitants to issue the Bonds in the Original Principal Amount; and

WHEREAS, by Ordinance No. 11316 adopted on November 13, 1997 (the "Series 1997 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 1997 (the "Series 1997 Bonds"), dated December 1, 1997, in the original principal amount of \$1,465,000, of which \$985,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11360 adopted on November 19, 1998 (the "Series 1998 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 1998 (the "Series 1998 Bonds"), dated December 1, 1998, in the original principal amount of \$1,180,000, of which \$825,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11422 adopted on November 18, 1999 (the "Series 1999 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 1999 (the "Series 1999 Bonds"), dated December 1, 1999, in the original principal amount of \$1,790,000, of which \$1,430,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11531 adopted on November 1, 2001 (the "Series 2001 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2001 (the "Series 2001 Bonds"), dated November 1, 2001, in the original principal amount of \$565,000, of which \$490,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11596 adopted on October 24, 2002 (the "Series 2002 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2002 (the "Series 2002 Bonds"), dated November 7, 2002, in the original principal amount of \$645,000, of which \$580,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11613 adopted on April 3, 2003 (the "Series 2003 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2003 (the "Series 2003 Bonds"), dated April 9, 2003, in the original principal amount of \$1,385,000, of which \$1,190,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11733 adopted on October 17, 2005 (the "Series 2005A Ordinance," together with the Series 1997 Ordinance, the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2001 Ordinance, the Series 2002 Ordinance and the Series 2003 Ordinance, the "Outstanding Senior Sewer Bond Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2005A (the "Series 2005A Bonds," together with the Series 1997 Bonds, the Series 1998 Bonds, the Series 1999 Bonds, the Series 2001 Bonds, the Series 2002 Bonds and the Series 2003 Bonds, the "Outstanding Senior Sewer Bonds), dated November 30, 2005, in the original principal amount of \$1,595,000, of which \$1,565,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11692 adopted on November 18, 2004 (the "Series 2004 Ordinance"), the City has issued its Waterworks System Revenue Bonds (State Revolving Fund Program) Series 2004 (the "Series 2004 Bonds"), dated December 9, 2004, in the original principal amount of \$695,000, of which \$645,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11732 adopted on October 17, 2005 (the "Series 2005B Ordinance," together with the Series 2004 Ordinance, the "Outstanding Senior Water Bond Ordinance"), the City has issued its Waterworks System Revenue Bonds (State Revolving Fund Program) Series 2005B (the "Series 2005B Bonds," together with the Series 2004 Bonds, the "Outstanding Senior Water Bonds"), dated November 30, 2005, in the original principal amount of \$1,805,000, of which \$1,805,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, the City, upon the issuance of the Bonds, will not have outstanding any other bonds or other obligations payable from the applicable portion of the Net Revenues other than the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds and the Bonds; and

WHEREAS, under the provisions of the Outstanding Senior Sewer Bond Ordinance, the City may issue additional bonds payable out of the Sewer Net Revenues that are junior and subordinate to the Outstanding Senior Sewer Bonds if certain conditions are met; and

WHEREAS, under the provisions of the Outstanding Senior Water Bond Ordinance, the City may issue additional bonds payable out of the Water Net Revenues that are junior and subordinate to the Outstanding Senior Water Bonds if certain conditions are met; and

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and its inhabitants that revenue bonds be issued and secured in the form and manner provided in this Ordinance and be sold to the Authority under the SRF Program, subject to the conditions of the Outstanding Senior Sewer Bond Ordinance and the Outstanding Senior Water Bond Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. Capitalized words and terms defined in the Recitals and elsewhere in this Ordinance have the meanings set forth therein. Capitalized words and terms not otherwise defined in this Ordinance have the meanings set forth in the Purchase Agreement (as defined below). In addition, capitalized words and terms have the following meanings in this Ordinance:

"Administrative Fee" means the fee payable to DNR equal to 0.714% of the outstanding principal amount of the Revolving Fund Loan on each Administrative Fee Calculation Date.

"Administrative Fee Calculation Date" means the Business Day preceding each January 1, commencing on the first January 1 on which the principal of the Bonds is payable.

"Authority Bonds" means the series of Water Pollution Control and Drinking Water Revenue Bonds (State Revolving Funds Programs) of the Authority as designated in the Closing Certificate.

"Authority Program Bonds" means the Authority Bonds and any other bonds of the Authority issued under the SRF Program, all or a portion of the proceeds of which are loaned to the City pursuant to the SRF Program.

"Authorized Representative" means the representative of the City designated by the City in accordance with the Regulations.

"Bond Register" means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

"Certificate of Final Terms" means Exhibit C, executed and delivered by the Mayor pursuant to Section 210 and attached to this Ordinance as of the date of issuance of the Bonds.

"Closing Certificate" means the City's closing certificate executed and delivered by the Mayor on the date of issuance of the Bonds, in substantially the form attached as Exhibit D.

"Consultant" means the Consulting Engineer, an independent certified public accountant or a firm of independent certified public accountants.

"Consulting Engineer" means each independent engineer or engineering firm with experience in designing and constructing wastewater treatment, sanitary sewerage or water pollution control facilities and retained by the City.

"Current Expenses" means all reasonable and necessary expenses of ownership, operation, maintenance and repair of the System and keeping the System in good repair and working order, determined in accordance with generally accepted accounting principles, including current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, Paying Agent fees and expenses, annual audits, periodic Consultant's reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular Fiscal Year, obligations incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the ownership and operation of the System, but excluding interest paid on System Revenue Bonds, depreciation, amortization and other noncash charges (including payments into the Depreciation and Replacement Account), and all general administrative expenses of the City not related to the operation of the System.

"Defeasance Securities" means:

- (a) Federal Securities;

(b) obligations of the Resolution Funding Corporation or any successor, but only if the use of the obligations to pay and discharge Bonds pursuant to Article XI will cause the discharged Bonds to be rated in the highest long-term rating category by the Rating Agency; or

(c) obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any state that:

(i) are not callable at the option of the obligor prior to maturity or for which irrevocable instructions have been given by the obligor to call on the date specified in the instructions, and

(ii) are fully secured as to principal, redemption premium and interest by a fund, consisting of cash or Federal Securities, that:

(A) may be applied only to the payment of principal, redemption premium and interest on the obligations, and

(B) is sufficient, as verified by a nationally recognized independent certified public accountant, to pay the principal, redemption premium and interest on the obligations.

"Depreciation and Replacement Account" means the fund or account created or ratified and confirmed by Section 401.

"Federal Securities" means any direct obligation of, or obligation the timely payment of the principal of and interest on which is unconditionally guaranteed by, the United States of America and backed by its full faith and credit.

"Interest Payment Date" means each January 1 and July 1, commencing January 1, 2008.

"Net Revenues" means Revenues less Current Expenses.

"Operation and Maintenance Account" means the fund or account created or ratified and confirmed by Section 401.

"Ordinance" means this Ordinance as from time to time amended in accordance with its terms.

"Original Principal Amount" means the principal amount of Bonds originally issued and delivered pursuant to this Ordinance, in the amount specified in the Certificate of Final Terms, subject to Exhibit A.

"Outstanding" means, as of the date of determination, all Bonds issued and delivered under this Ordinance, except:

(1) Bonds cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;

(2) Bonds for the payment of the principal or redemption price of and interest on which money or Defeasance Securities are held under Section 1101;

(3) Bonds in exchange for which, or in lieu of which, other Bonds have been registered and delivered pursuant to this Ordinance; and

(4) Bonds allegedly mutilated, destroyed, lost, or stolen and paid under Section 208.

"Owner" means the Authority and its assigns.

"Parity Bonds" means any parity bonds issued under Section 902 and Section 904 payable from the Net Revenues on a parity basis with the Bonds.

"Parity Ordinances" means the ordinances under which any other Parity Bonds are issued.

"Purchase Agreement" means the Purchase Agreement dated as of April 1, 2007, by and among the City, the Authority and DNR.

"Record Date" means the 15th day (whether or not a Business Day) of the calendar month next preceding the applicable Interest Payment Date.

"Revenue Fund" means the fund or account created or ratified and confirmed by Section 401.

"Revenues" means all income and revenues derived by the City from the System, determined in accordance with generally accepted accounting principles, including investment and rental income, net proceeds from business interruption insurance, sales tax revenues which have been annually appropriated by the City or which are limited solely to the payment of improvements to or expenses of the System and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on developer-financed System assets contributed to the City, the early extinguishment of debt or the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business.

"Revolving Fund Agreement" means the Revolving Fund Agreement dated as of April 1, 2007, by and among the City, the Authority and DNR.

"Revolving Fund Loan" means the no-interest loan to the City by DNR from the Drinking Water Revolving Fund under the Revolving Fund Agreement.

"Sewer Net Revenues" means Net Revenues derived from the operation of the Sewerage Subsystem.

"Sewer Revenues" means Revenues derived from the operation of the Sewerage Subsystem.

"SRF Program Bonds" means the Bonds and any other System Revenue Bonds issued in connection with the City's participation in the SRF Program.

"SRF Subsidy" means the amount of investment earnings which will accrue on the Reserve Account during each Fiscal Year (taking into account scheduled transfers from the Reserve Account which will occur upon the payment of principal on the Authority Program Bonds and assuming that the construction for the applicable project has been completed), if the Reserve Security is equal to the Reserve Percentage of the principal amount of the SRF Program Bonds outstanding, the Reserve Account is invested in an investment agreement at a fixed interest rate during the calculation period and earnings are reduced by the Administrative Fee payable to DNR. Administrative Fee, Reserve Account, Reserve Percentage and Reserve Security as used in this definition have the respective meanings set forth in the bond indentures for the applicable Authority Program Bonds.

"State" means the State of Missouri.

"Surplus Account" means the fund or account created or ratified and confirmed by Section 401.

"System Revenue Bonds" means collectively the Bonds, the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds, any Parity Bonds and all other revenue bonds which are payable from the Net Revenues.

"Term Bond" means each Bond, if any, designated as a Term Bond in the Certificate of Final Terms.

"Trustee" means the trustee acting at any time as Trustee under the Indenture.

"Water Net Revenues" means Net Revenues derived from the operation of the Waterworks Subsystem.

"Water Revenues" means Revenues derived from the operation of the Waterworks Subsystem.