

COUNCIL & STAFF PRESENT:

Martha Rowe	Mayor
Jill McCord	Mayor Pro Tem
Tom Mayer	Council Member
Aaron Rodgerson	Council Member
Howard Hickman	City Attorney
Mari Macomber	City Manager
Sarah Halstead	Deputy City Clerk
Laura Guy	Finance Director
Brad Selby	Codes Administrator
John Buckwalter	City Engineer
Jim Hughes	Police Chief
Steve Bell	Community Services Director

Absent:

Jeff Newton Council Member

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Tuesday, November 20, 2007, at 5:30 p.m. in the City Hall Council Chambers.

INVOCATION/PLEDGE

Marty Joplin, First Baptist Church, gave the invocation.
The Mayor and Council led the Pledge of Allegiance.

MINUTES

Council Member Rodgerson moved to approve the minutes of the regular session of November 6, 2007; seconded by Council Member Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

ORDER OF AGENDA

City Manager Mari Macomber stated that a last minute item had been added to the agenda for a liquor license for Ryan’s Sports Bar & Grill, due to transfer of ownership.

Council Member McCord moved to approve the amendment to the agenda; seconded by Council Member Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

INFORMATION PRESENTATION

None.

CITIZEN PARTICIPATION

None.

Old Business

None.

ACTION PRESENTATIONS

Bill No. 2007-49

[Ordinance No. 11814]

AN ORDINANCE AMENDING AND REPEALING CERTAIN PROVISIONS OF CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF KIRKSVILLE, MISSOURI CONCERNING THE CITY'S WATER AND SEWERAGE SYSTEMS.

Council Member Rodgerson moved to adopt Bill No. 2007-49 on first reading; seconded by Council Member Mayer.

Finance Director Laura Guy explained that this issue has been discussed publicly four times over the past three months. In September, at the Council Retreat, the alternatives were heard and eight options were originally presented. The City Staff determined that the minimal impact on the customers would be to implement a \$5 monthly service availability fee for both water and sewer. In addition to that the City would like to propose lowering the minimum consumption from 300 cubic feet to 100 cubic feet. Guy said, for example, that previously if a citizen only used 200 cubic feet per billing cycle they were still billed for 300 cubic feet. The proposed change would allow citizens to pay for actual usage with a minimum charge of 100 cubic feet for \$14.82 per month. Guy stated that the City has participated in the State Revolving Loan Fund Program (SRF) since 1997 for extensive capital projects, and under participation requirements for this program the City is required to meet minimums. The State sets guidelines for payment of costs of operation and maintenance from the user charges, so as not to subsidize the system. The user charges are used to pay the debt service on the bonds, ensure the City is capable of meeting the 110% of the annual debt service from the net operating revenues, and to set a sufficient reserve to pay the debt service, and protect and make sure the system has quality water, and provide sewerage services. Guy stated that a public hearing was held two weeks ago, and copies of the proposed ordinance have been available since October 1. At this time the Staff would recommend approval of the ordinance.

City Manager Macomber asked Howard Hickman, City Attorney, to address the issue of the Hancock Amendment and whether or not this ordinance would be affected by said Amendment.

Hickman said that the Hancock Amendment is a provision that prohibits a city from increasing taxes or fees without sending it to a vote of the people. Hickman stated that there is another component that the State cannot enact a law that mandates something new unless they provide funding. However, Hickman stated that user fees are not prohibited from increases under the Hancock Amendment, and there are five factors as to what is a user fee and what is a tax or license fee that you cannot increase. Utility rate charges fall under the five part test as a user fee that is permitted to be increased without a vote of the citizens. Some of those factors are: who is billed for the service; is billing done only after service is provided; is a service being provided; is the fee based on amount of consumption, etc. All of these tests favor this as being a permissible user fee.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Bill No. 2007-50

[Ordinance No. 11815]

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI AND AUTHORIZING THE LICENSING AND USE BY OTHERS OF DIGITAL FORMAT DATA FROM THE GEOGRAPHIC INFORMATION SYSTEM (GIS), TO APPROVE THE GIS

DATA LICENSE AGREEMENT, AND TO DEFINE THE FEES RELATED TO THE LICENSING AND USE OF GIS INFORMATION.

Council Member McCord moved to adopt Bill No. 2007-50 on first reading; seconded by Council Member Rodgerson.

Code Administrator Brad Selby explained that the GIS Consortium consists of the City, County and Adair County Public Water District. Over the past two years the GIS Consortium has been working on a computerized map of the County and City that shows water line locations, sewer locations, sanitary sewer as well as storm sewer, and plots of land. The map includes owner's names, distances, roadways, addresses, and all physical and characteristic information of the City and County utilities and services used. Selby stated that the Consortium now has enough information that it is widely used, and the City and County have separate information. The City's information, mostly on road, water, sewer, and storm drainage is available and can be sold to other entities. Selby said that the Adair County Nursing Home District has recently requested the information and wanted it to determine voting needs. The First American Flood Data Services, Co. has also requested the information and wants parcel files with owner names and addresses. These entities are willing to pay for these services because it gives them a good way to look at the address, boundaries, etc. Selby said the possible sale of the City's information is allowed by state statute, and the fee would help to offset the cost of obtaining the information. The sale of the information would require the signing of a data license agreement that has been approved by Hickman, who offered changes that are included. Selby said all sales would have to be recommended by the GIS board, and the City Manager would have final say on the sale of City information. The information is proprietary, and the Licensee would have the right to use, but not transfer, information to other people. Selby explained that the City does not have to provide updates and new information, as it is a one time purchase, and the City would retain the title to all information. The agreement holds the City harmless from the use of information and disclaims errors. The City Manager could waive fees for community organizations that would need the information, but they would still be required to sign the agreement. The fee schedule is in the ordinance, and the fees would help offset the costs of the Consortium. Selby said the Staff believes agreements made this year could total \$1000 - \$3000, and possibly more in future years based on interest and fees. Selby stated that the Staff is recommending approval of this ordinance.

Council Member Mayer had questions as to whether the City would give information, or sell it, to people that requested it. Selby said that the information is public information, and we can show it to people or print general information out for them. Selby stated that the information as a whole, on a disk or where it can be used by someone else, is proprietary information. The City can, and does, pass along pieces of the information

Hickman stated that pieces of the information are open public records and people can have access to it, but the database as a whole is proprietary. By statute the City, if it enacts an ordinance, is permitted to license people to use the database for a fee.

Citizen Michael Doman, 16839 Stokes Road, asked if there are any downsides to the sale of information and the agreements.

Selby explained that there would not be many downsides, but there would be additional paperwork and record keeping.

Council Member Mayer stated that this issue had been covered in a work session, and many questions were asked regarding the safety and liability.

Hickman said there is a disclaimer of warranties and a waiver of liability on part of the Licensee. He said that in a database of this size there may be information that is incorrect in error, and the City would not be liable for the use of the Licensee.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Purchase of Land from Rodney J. and Alice M. Rieken

Council Member Mayer moved to authorize the Mayor to enter into a purchase agreement with Rodney J. and Alice M. Rieken for the purchase of land immediately adjacent to the Wastewater Treatment Plant; seconded by Council Member McCord.

Macomber said that the Council has talked about this item before, and the property is immediately adjacent to the Waste Water Treatment Plant. Macomber said that the purchase of this property would benefit the City for future expansion. The Council authorized that Macomber meet with the landowners, and gave Macomber the authority to offer up to \$45,000. Macomber stated that the amount agreed upon is significantly less than the Council's authorized maximum, and the City Attorney drafted an agreement. The Rieken's are willing to sell the property for the agreed upon amount and it has been included in the 2007 budget run out.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Change Order—Route P Sanitary Sewer Improvements, Project SE-04-002

Council Member Rodgerson moved to approve a change order with Willis Brothers, Inc. of Macon, Missouri for Route P Sanitary Sewer Improvements, Project SE-04-002, in the amount of \$104,827.50 bid and authorize the City Manager to execute the change order; seconded by Council Member Mayer.

Public Works Director John Buckwalter said that this change order is to execute the Route P Sanitary Sewer extension, which is the last piece of the 2001 Annexation Plan to be completed. The project has had two false starts, but the City signed an agreement with Willis Brothers August 22, 2005, for \$468,904. Buckwalter said the notice to proceed was issued in 2006, but the City encountered significant easement and property rights issues, which caused the City to issue a stop order. The project has been on hold since then, minus a small piece of work on North Highway 63 that was added in as change order one and completed last year. Buckwalter said that at this time the Staff has completed a redesign and realignment of the sewer, resized the lift station, and changed a number of lines to be installed from an open cut to a bored installation to minimize impact on the right-of-way and adjacent property owners. The net cost of these changes is \$104,827, and with changes orders one and two the total Cost will be \$621,429.50. Buckwalter said that change order one has already been approved by the DNR and has been completed. Change order two will go to the DNR for approval then the contractor will be ready to begin construction, and Buckwalter anticipates approval by the DNR without issue. Buckwalter also stated that this plan is compatible with the proposed alternate route for Highway 63, with a projected completion date of May 2008.

Macomber stated that the City has the easements for the project from all individuals, and the project has been redesigned three times. Buckwalter said some rules changed and there was a significant problem with site distance and acquisition of easements for access to one of the lift stations, but the City is now ready to move forward. Buckwalter stated that this project is funded by the SRF and even though it is significantly higher than the original contract, it is still within the cap and lower than original estimates.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Change Order—2007 Asphalt Overlay Program

Council Member Rodgerson moved to approve a change order with WL Miller Company of Hamilton, Illinois for the 2007 Asphalt Overlay Program, Project ST-07-002 to adjust quantities to those actually installed and to add pavement repair for utility maintenance street disturbance, in the amount of; seconded by Council Member Mayer.

John Buckwalter stated that the 2007 Asphalt Overlay Program is completed, with the exception of a change order that was added for the YMCA trail. This is would normally be considered a final change order to close out the adjusted quantities, however, we need to keep the contract open until the trail is completed. Due to the weather it is not possible to do asphalt the remainder of the year, so the trail will be finished in the Spring of 2008. The change order will give the contractor additional time, and the total for the change order is \$14,568.91, which will be initially charged to the Transportation Sales Tax Fund and will come out of the fund balance.

Council Member Rodgerson asked if the change order takes into account the potential change in the price of asphalt for next year, or if there will be another change order in Spring 2008.

Buckwalter stated that Staff does not anticipate a change order, because the price of the asphalt was adjusted when the YMCA trail was approved. If there is a dramatic increase between now and May the City may have to consider the contractor's demands, but not necessarily approve them. Buckwalter said he believes the City has adjusted for an increase, but it will depend on gas prices.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Committee Appointments—Planning and Zoning, TIF Commission

Council Member Mayer moved to approve the appointments of Jim Hamilton to the Planning and Zoning Board, and Allen Goans and Aaron Rodgerson to the Tax Increment Financing Commission; seconded by Council Member McCord.

Planning and Zoning

Jim Hamilton – unexpired term to June 2009

Tax Increment Finance Commission

Allen Goans – full four year term to October 2011

Aaron Rodgerson – full four year term to October 2011

Macomber explained that these are the present openings that need to be filled. Jim Hamilton is a former Codes Inspection employee, and Macomber believes Hamilton will do a fine job of

filling an unexpired term due to a resignation. The TIF Commission appointments are for full, four year terms, and Goans is currently the chairperson who wishes to continue to serve. The Council said they would like to have one Council Member on this commission, and Council Member Rodgerson would serve as the Council Representative.

Mayor Rowe thanked Council Member Rodgerson for serving on this committee.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Liquor License—Ryan’s Sports Bar & Grill

Council Member McCord moved to approve liquor licenses for Ryan’s Sports Bar & Grill, which will be contingent upon the City Business License being obtained prior to opening; seconded by Council Member Mayer.

Finance Director Laura Guy said that this business is under new ownership, and has applied for the sale of intoxicating liquor by the drink and restaurant, bars, and sales. The applications have been filed and the fees paid to the Finance Department, so the business license application process needs to be completed and the state liquor control board needs to do their investigation prior to their approval.

Macomber asked if the new owners would like to introduce themselves,

Lisa Griffin introduced herself and her husband Roy Griffin, and stated that they have purchased Ryan’s Sports Bar & Grill, and would like keep it going in same manner. Griffin said that they have made several new improvements and are trying to bring their own personality into it. Mrs. Griffin said she was born here, and went to school at Kirksville R-III, and graduated from Novinger. For the past ten years she has operated Griffin Specialty Services, an insurance business, in Queen City that insures owner/operator truck drivers. Griffin said she and her husband look forward to having a business in Kirksville on the Square and becoming more of the community. Griffin also said they will probably add desserts to the menu, but plan to keep the menu mostly the same.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – nay. Ayes – 3; Nays – 1; Absent–1.

Second Reading

Bill No. 2007-49

[Ordinance No. 11814]

AN ORDINANCE AMENDING AND REPEALING CERTAIN PROVISIONS OF CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF KIRKSVILLE, MISSOURI CONCERNING THE CITY’S WATER AND SEWERAGE SYSTEMS.

WHEREAS, the City of Kirksville operates a water and a sewerage system and is responsible for their maintenance;

WHEREAS, the City must pay all expenses associated with said utility systems and charge the customers of said systems accordingly;

WHEREAS, it is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the City to collect charges from all customers who use the City’s water and/or sewerage systems;

WHEREAS, in order to continue participation in the State Revolving Loan Fund (SRF) program, the City must ensure user charges are sufficient to meet the requirements as outlined in the SRF program and to review user charges on an annual basis;

WHEREAS, the proceeds of such charges so derived will be used for the purpose of operating, maintaining and retiring the debt for such public water and sewerage systems; and

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

SECTION ONE: The following current wording of Sections 25-60.1-.3 will be deleted in its entirety and replaced with the wording of Sections 25-60.1-.3 in bold following.

~~Sec. 25-60.1. City customers and public water supply districts. Effective April 1, 2003 the first 2,000 cubic feet of water used will cost \$1.88 per 100 cubic feet. Effective April 1, 2004 the first 2,000 cubic feet will cost \$1.99 per 100 cubic feet. Effective April 1, 2005 the first 2,000 cubic feet will cost \$2.10 per 100 cubic feet. Effective April 1, 2006 the first 2,000 cubic feet will cost \$2.21 per 100 cubic feet. Effective April 1, 2007 the first 2,000 cubic feet will cost \$2.32 per 100 cubic feet.~~

~~Effective April 1, 2003, the next 98,000 cubic feet of water used will cost \$1.59 per 100 cubic feet.~~

~~Effective April 1, 2004, the next 98,000 cubic feet of water used will cost \$1.70 per 100 cubic feet.~~

~~Effective April 1, 2005, the next 98,000 cubic feet of water used will cost \$1.81 per 100 cubic feet.~~

~~Effective April 1, 2006, the next 98,000 cubic feet of water used will cost \$1.92 per 100 cubic feet.~~

~~Effective April 1, 2007, the next 98,000 cubic feet of water used will cost \$2.03 per 100 cubic feet.~~

~~Effective April 1, 2003, water usage over 100,000 cubic feet of water used will cost \$1.43 per 100 cubic feet. Effective April 1, 2004, water usage over 100,000 cubic feet of water used will cost \$1.54 per 100 cubic feet. Effective April 1, 2005, water usage over 100,000 cubic feet of water used will cost \$1.65 per 100 cubic feet. Effective April 1, 2006, water usage over 100,000 cubic feet of water used will cost \$1.76 per 100 cubic feet. Effective April 1, 2007, water usage over 100,000 cubic feet of water used will cost \$1.87 per 100 cubic feet.~~

~~A minimum monthly charge equal to the cost of 300 cubic feet of water usage shall be made to all water customers whose usage does not exceed 300 cubic feet of water per month.~~

~~Sec. 25-60.2. Suburban customers. Suburban customers shall pay for water usage based on the same formula as proscribed in section 25-60.1 except that the rate shall be 150 percent of the city rate. The minimum charge shall also be 150 percent of the city customer rate for usage which does not exceed 300 cubic feet of water per month.~~

~~Sec. 25-60.3. Industrial customers. The rate for industrial customers located inside the city limits of Kirksville shall be the same formula as proscribed in section 25-60.1 except that the rate for water usage in excess of 400,000 cubic feet shall be as follows: Effective April 1, 2003 industrial customers shall pay \$0.5345 per 100 cubic feet for water usage in excess of~~

~~400,000 cubic feet. Effective April 1, 2004 through March 31, 2008, industrial customers shall pay \$0.5345 per 100 cubic feet for water usage in excess of 400,000 cubic feet.~~

Sec. 25-60.1. City customers and public water supply districts.

Effective January 1, 2008, water user charges will be comprised of two components: a fixed service availability fee and a volume charge based on the amount of water usage.

(a) The service availability fee shall be a monthly charge of \$5.00 per service connection.

(b) A minimum monthly volume charge equal to the cost of 100 cubic feet of water usage per month shall be made to all water customers whose water usage does not exceed 100 cubic feet of water per month.

- (1) Effective January 1, 2008 the first 2,000 cubic feet will cost \$2.32 per 100 cubic feet.**
- (2) Effective January 1, 2008, the next 98,000 cubic feet of water used will cost \$2.03 per 100 cubic feet.**
- (3) Effective January 1, 2008, water usage over 100,000 cubic feet of water used will cost \$1.87 per 100 cubic feet.**

Sec. 25-60.2. Suburban customers.

Suburban customers shall pay for water usage based on the same formula as proscribed in section 25-60.1 except that the volume charge shall be 150 percent of the city rate. The minimum volume charge shall also be 150 percent of the city customer rate for usage which does not exceed 100 cubic feet of water per month. The service availability fee will be equal to the fee charged to city customers.

Sec. 25-60.3. Industrial customers.

Effective January 1, 2008, the rate for industrial customers located inside the city limits of Kirksville shall be the same formula as proscribed in section 25-60.1 except that the rate for water usage in excess of 400,000 cubic feet shall be \$0.5345 per 100 cubic feet for water usage in excess of 400,000 cubic feet.

SECTION TWO: The following current wording of Section 25-113 will be deleted in its entirety and replaced with the wording of Section 25-113 in bold following.

~~Sec. 25-113. Basic sewer use charges. Monthly charges for the use and services of the POTW shall be based on the quantity of water used on the premises served, except as otherwise provided in this article. Effective April 1, 2003, the base charge shall be one dollar and ninety-eight cents (\$1.98) per one hundred (100) cubic feet of water used at the premises as measured by one (1) or more city water supply meter(s) installed on the premises, where the city is the water purveyor.~~

~~Effective April 1, 2004, the base charge shall be two dollars and eleven cents (\$2.11) per one hundred (100) cubic feet of water used at the premises as measured by one (1) or more city water supply meter(s) installed on the premises, where the city is the water purveyor.~~

~~Effective April 1, 2005, the base charge shall be two dollars and twenty four cents (\$2.24) per one hundred (100) cubic feet of water used at the premises as measured by one (1) or more city water supply meter(s) installed on the premises, where the city is the water purveyor.~~

~~Effective April 1, 2006, the base charge shall be two dollars and thirty seven cents (\$2.37) per one hundred (100) cubic feet of water used at the premises as measured by one (1) or more city water supply meter(s) installed on the premises, where the city is the water purveyor.~~

~~Effective April 1, 2007, the base charge shall be two dollars and fifty cents (\$2.50) per one hundred (100) cubic feet of water used at the premises as measured by one (1) or more city water supply meter(s) installed on the premises, where the city is the water purveyor.~~

~~A minimum monthly charge equivalent to 300 cubic feet of water usage shall be made to all sewer customers whose water usage does not exceed 300 cubic feet of water per month.~~

~~Sewer customers located inside the corporate limits of the city and served by the rural water district shall be billed a monthly flat rate which reflects the average water consumption of all rural water district customers connected to the city sewer during the preceding twelve (12) months. The city may elect to contract with the rural water district for the collection of this fee, but is not required to do so.~~

~~Sewer customers located outside the corporate limits of the city shall pay one hundred and fifty percent (150%) of the applicable sewer fee for the same customers inside the city limits, regardless of whether the sewer use fee is assessed on a basis of actual water consumption, an annually adjusted flat fee as provided herein, the addition of excess use charges as provided herein, or other method.~~

Sec. 25-113. Basic sewer use charges.

Monthly charges for the use and services of the POTW shall be based on the quantity of water used on the premises served, except as otherwise provided in this article.

Effective January 1, 2008, base sewer user charges will be comprised of two components: a fixed service availability fee and a volume charge based on the amount of water usage.

- (a) The service availability fee shall be a monthly charge of \$5.00 per service connection.**
- (b) A minimum monthly volume charge equal to the cost of 100 cubic feet of water usage per month shall be made to all sewer customers whose water usage does not exceed 100 cubic feet of water per month.**
 - (1) Effective January 1, 2008 the base volume charge shall be \$2.50 per 100 cubic feet of water used at the premises as measured by one or more city water supply meter(s) installed on the premises, where the city is the water purveyor.**

Sewer customers located inside the corporate limits of the city and served by the rural water district shall be billed a monthly flat rate which reflects the average water consumption of all rural water district customers connected to the city sewer during the preceding 12 months. Effective January 1, 2008, in addition to the applicable volume charge, each of these unmetered city customers will be assessed the monthly service availability fee as outlined in Sec. 25-113. The city may elect to contract with the rural water district for the collection of this fee, but is not required to do so.

Sewer customers located outside the corporate limits of the city shall pay 150 percent of the applicable sewer volume charge for the same customers inside the city limits, regardless of whether the sewer use fee is assessed on a basis of actual water consumption, an annually adjusted flat fee as provided herein, the addition of excess use charges as provided herein, or other method as so determined. The minimum charge shall be 150 percent of the city customer rate for usage which does not exceed 100 cubic feet of water per month. Effective January 1, 2008, in addition to the applicable volume charge, each of these city sewer customers will be assessed the monthly service availability fee as outlined in Sec. 25-113.

SECTION THREE: This ordinance shall be in full force and effective as of January 1, 2008.

BILL NO: 2007-50

ORDINANCE NO: 11815

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI AND AUTHORIZING THE LICENSING AND USE BY OTHERS OF DIGITAL FORMAT DATA FROM THE GEOGRAPHIC INFORMATION SYSTEM (GIS), TO APPROVE THE GIS DATA LICENSE AGREEMENT, AND TO DEFINE THE FEES RELATED TO THE LICENSING AND USE OF GIS INFORMATION.

WHEREAS, the City of Kirksville has information about the City's road system, water system, sewer system, storm drainage system, and other information available from the Geographic Information System (hereinafter referred to as GIS), that could be utilized by others; and

WHEREAS, the City of Kirksville wishes to make this proprietary digital format data information available to companies or other entities, which shall require the completion of a Data License Agreement; and

WHEREAS, the City has a Geographic Information Systems Data License Agreement in order to define the express terms, conditions, prohibitions, and use of the City's proprietary information; and

WHEREAS, the GIS Coordinator has recommended the adoption of a schedule of fees to be charged to those who desire a license to utilize the City's GIS data in a digital format; and

WHEREAS, the schedule of fees are specifically authorized by section 67.1850, RSMo Supp. 2005; and

WHEREAS, the licensing, sale, and fee schedule of the City's GIS digital format data is in the best interests of the health, welfare, and safety of the citizens of the City of Kirksville, Missouri;

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

That the use of Geographic Information Systems digital format data be made available for sale to other entities, which shall include the completion of an approved Data License Agreement, and the sale of such information be available at the fees set forth in this ordinance, and that the provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the City of Kirksville, Missouri, as follows:

Section 1. Geographic Information System (GIS) – Title.

The City of Kirksville has information available in a digital data format from the Geographic Information System about the City’s road system, water system, sewer system, storm sewer system, and other information. This information could be utilized by others. The City Council of the City of Kirksville has authorized the sale of this proprietary information in return for a fee.

Section 2. City Manager – Authority.

The final approval for the sale of this City digital format information is vested with the City Manager of the City of Kirksville.

Section 3. Board of Directors – Recommendation for Sale.

The Board of Directors of the GIS at their regular or special meeting, with a quorum of members, may or may not recommend to the City Manager of the City of Kirksville, the sale of digital format information, available from the GIS Consortium. This information may be sold to other entities, after consideration of the proper fees, and shall include the signing of a Data License Agreement with the Purchaser.

Section 4. GIS Coordinator – Duties.

The GIS Coordinator will be responsible for reporting to the Board of Directors any request for purchase of digital format data, along with a recommendation of approval or denial of such request. For any request for purchase that is recommended by the Board and approved by the City Manager of the City of Kirksville, the GIS Coordinator will be responsible for the collection of, signing, and filing of the appropriate paperwork and license agreements that are signed by the purchaser.

Section 5. Data License Agreement

When the sale of digital format data is approved by the City Manager of the City of Kirksville, a Data License Agreement form shall be necessary to protect the interests and proprietary information that is sold. This agreement is as follows:

**GEOGRAPHIC INFORMATION SYSTEMS (GIS)
DATA LICENSE AGREEMENT**

FOR ENTITIES REQUESTING ACCESS TO GIS AND RELATED DATA
CREATED AND MANAGED BY THE CITY OF KIRKSVILLE, MISSOURI

This Agreement is made and entered into this _____ day of _____, 20____, by and between the City of Kirksville, Missouri (“City”), through its GIS Coordinator, and ____[Name of Party Receiving Information]____, (Licensee”). In consideration of the mutual promises and covenants contained in this Agreement, the City and Licensee expressly agree that:

1. **Authority.** This Agreement is made pursuant to the authority granted the City by Section 67.1850, RSMo. It is implemented pursuant to the direction of the Code of Ordinances of the City of Kirksville.
2. **Grant of License.** The City grants to Licensee and Licensee hereby accepts, upon the express terms and conditions contained in this Agreement, a non-exclusive License to use the information described herein in the form produced and maintained by the Geographic Information System produced and maintained by the City.
3. **Licensed Materials.** The materials licensed for use by Licensee under this Agreement are the forms which can be read or manipulated by computer of the geographical and physical characteristic information collected and assimilated in the records of the City ("Licensed Materials").
4. **Use.** Subject to the terms, conditions and prohibitions of this Agreement, Licensee shall be entitled to use the information contained in the licensed materials solely for its business.
5. **Transfer.** The License is expressly non-transferable and Licensee shall not transfer any interest, entitlement or obligation under this Agreement to any other person or entity. The Licensed Materials may not be distributed or disclosed to any other party for that party's use without the written permission of the City.
6. **Data.** The data and information contained in the Licensed Materials shall be those files and systems as recorded and existing as of the time Licensee requests the information. The City is under no obligation to provide maintenance of the Licensed Materials, and will not be responsible for providing maintenance or for informing Licensee that maintenance has been performed on the GIS, or that the information provided has been updated or in any fashion changed.
7. **Title.** The custody and title and all other rights and interests in the Licensed Materials are and shall at all times remain with the City of Kirksville and with the offices or officials of the City of Kirksville having official custody of the Licensed Materials.
8. **Not Public Records.** The database in the form of the Licensed Materials is proprietary, intellectual property of the City of Kirksville (City) and shall not be considered or deemed as open, public records, except as provided in Section 67.1850 RSMo. Licensee shall, and hereby expressly agrees, that it will recognize the property interests of the City and the City agrees that it is not, pursuant to this License Agreement, a custodian of any open, public records, except as may exist pursuant to Section 67.1850 RSMo.
9. **Costs.** Licensee shall pay to the City fees for access to and use of the Licensed Materials in accordance with the Schedule of Fees specified in the Code of Ordinances.
10. **Release and Indemnification.** Licensee expressly releases and agrees to hold the City harmless from any and all claims or damages arising out of the use of the data or information, the accuracy of the data or information, or any reliance on the data or information. Licensee expressly agrees that it does assume all risk for use and reliance on the data and information. Licensee shall indemnify and hold harmless the City from and against all costs, liability, expenses, claims or other charges, including reasonable attorney fees, arising out of or in connection with Licensee's use of the licensed material.
11. **Disclaimer of Accuracy and Warranties.** Licensee shall and hereby does knowingly accept the data and information "as-is", and the City expressly disclaims any representation or warranty to the completeness or accuracy of the data or information. Further, the City expressly disclaims any representation or warranty as to the suitability of the data or information for any use intended by Licensee. Licensee

recognizes that the City shall not be liable for any damages that may arise from any error that may exist in the information or the geographical information system.

12. **Waiver.** The waiver of any breach of any provision on this License Agreement shall not constitute a waiver of any subsequent breach of the same or other provisions.

13. **Modifications.** Any modification of this Agreement shall be in writing executed by each party.

14. **Entire Agreement.** This Agreement contained the entire understanding between the parties and supersedes all prior agreements or understandings between the parties.

15. **Law.** This Agreement is made in and shall be governed by the laws of the State of Missouri and the City of Kirksville, Missouri.

This Agreement is made as of the date first above written by:

_____ [Name of Party Receiving Information] _____

_____ Title _____ Company or Entity _____

CITY OF KIRKSVILLE, MISSOURI

_____ GIS Coordinator _____ Date _____

APPROVED:

_____ Kirksville City Manager _____ Date _____

Section 6. Fees.

The specific fees for the purchase of digital format data are as follows:

Data Description	Fee
Utility Services	
Water System	\$100 flat fee for layer set
Sanitary Sewer System	\$100 flat fee for layer set
Storm Sewer System	\$100 flat fee for layer set
Road Centerline data*	\$100 flat fee for layer
6"/pixel black/white imagery (2000)	\$30/tile, \$25/hr process time (approx. ½ mile sq.)
Public access imagery	\$25/hr process time (limited to ¼ mile around City limits)

* Does not include Adair County road centerline data; limited to area within City limits.

** Fees shown for digital format data do not include the additional cost of delivery media (e.g. compact disk); and

Section 7. Waiver of fees.

The City Manager of the City of Kirksville has the authority to void and waive fees related to the sale of digital format data, when there is a need for the transfer of information to another entity with no fees charged. A Data License Agreement shall still be required.

Section 8.

The provisions of this Ordinance shall be numbered accordingly and included with the City of Kirksville, Missouri, City Code as deemed necessary by the Municipal Code Corporation.

Council Member McCord moved to adopt Bill No. 2007-49 and Bill No. 2007-50 on second reading; seconded by Council Member Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent–1.

Council Comments

Council Member Mayer explained that he gave the Mayor a letter earlier in the day that due to personal circumstances he will not be able to fulfill his full three year stint as Council Member. Mayer stated that he cannot meet the requirements after his first year, and has asked to step down and allow someone else to run for Council in the upcoming elections. Council Member Mayer said he is sorry, and feels bad about it, but there are unforeseen personal circumstances.

Mayor Rowe stated that she is sorry to lose Council Member Mayer and Council Member McCord voiced her agreement.

Adjournment

Council Member Rodgerson moved to adjourn to a study session; seconded by Council Member Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – aye; Newton – absent; Rodgerson – aye. Ayes – 4; Nays – none; Absent –1.

Mayor Rowe adjourned the meeting to a study session at 6:02p.m.

Sarah Halstead
Deputy City Clerk