

COUNCIL & STAFF PRESENT:

Martha Rowe	Mayor
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
John Buckwalter	City Engineer
Jim Hughes	Police Chief

Absent:

Jeff Newton	Council Member
Jill McCord	Council Member

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

INVOCATION/PLEDGE

Council Member (Reverend) Aaron Rodgerson gave the Invocation. The Mayor and Council led the Pledge of Allegiance.

MINUTES

Council Member Mayer mentioned that he was hoping the minutes of the Special Session would have documented his agreement with the Council to go ahead with a yes vote.

City Manager, Mari Macomber, stated that it was not in the minutes because the meeting had adjourned, and would not have been included as part of the formal minutes.

Council Member Mayer said his work kept him from attending the meeting, but he was in agreement with the Council's decision.

Mayor Rowe thanked Council Member Mayer for his support.

Council Member Mayer moved to approve the minutes of the special session of November 16, 2007, and the regular session of November 20, 2007; seconded by Council Member Rodgerson. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

ORDER OF AGENDA

City Manager Macomber apologized and said that item six should read, "Motion and second to approve Addendum U of an agreement with Benton and Associates, Inc. for final design for Water Treatment Plant Improvements Phase II". Macomber also wanted to note the Public Hearing for the 2008 Budget that was advertised.

Council Member Rodgerson moved to approve the correction to the agenda; seconded by Council Member Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

INFORMATION PRESENTATION

Mayor Rowe opened the public hearing to hear citizen comments regarding the 2008 Budget at 5:35p.m.

Finance Director, Laura Guy, stated that the 2008 Proposed budget includes expenditures of \$25,018,422, which is a .43% increase over the 2007 Budget as amended. The City is accounting for essential services such as Police, Fire, and Streets, which makes up about 19% of the total budget. Capital expenditures of over \$8.2 million are approximately 33% of the budget. The E-911 operation and the pass through of the one-half cent Economic Development Sales Tax is not part of the City's money but the City accounts for them. Guy stated that approximately 15% of the budget is for administrative services, recreation, lease payments, K-REDI, Airport, Aquatic Center, North Park, and downtown improvements. Guy said that the notice of the public hearing was advertised on November 21, 2007, and the public has been invited to look at the budget document which has been available for the past seven days.

City Manager Macomber said that the documents were placed outside of her office so people could use the conference room to look at them, and nobody had come in to view it.

Guy stated that the second and final reading of the budget will be December 18, 2007.

There being no further comments, Mayor Rowe closed the public hearing at 5:39 p.m.

CITIZEN PARTICIPATION

None.

Old Business

None.

ACTION PRESENTATIONS

Bill No. 2007-51

[Ordinance No. 11816]

AN ORDINANCE APPROPRIATING FROM THE REVENUE OF THE CITY OF KIRKSVILLE, MISSOURI, EXPENDITURES IN ACCORDANCE WITH THE FISCAL YEAR 2008 BUDGET OF THE CITY OF KIRKSVILLE, MISSOURI AND PROVIDING FOR ADJUSTMENTS THERETO.

Council Member Rodgerson moved to adopt Bill No. 2007-51 on first reading; seconded by Council Member Mayer.

City Manager Macomber stated that Council Member McCord was not able to attend the meeting, and would still be able to bring this up at the meeting on the 18th, but that since reviewing the budget she has expressed concern about the additional funding for the Council Members.

Mayor Rowe stated that Council Member McCord feels that the additional funding for the Council is not what the Council should be doing, and that the Council is a service that citizens give to the community. Mayor Rowe stated that Council Member McCord will explain it better, but that it is a concern of Council Member McCord's

Council Member Rodgerson asked if City Manager Macomber was going to look at other cities.

Macomber stated that she could do that and bring it back to the Council. Macomber said that the Council made a decision to put \$1,200 in the budget for the Council. She stated that she had not looked into other cities, but if the Council chooses she could do so and could have it ready for the following Tuesday.

Mayor Rowe and Council Member Mayer concurred that Macomber should look further into the situation.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Bill No. 2007-52

[Ordinance No. 11817]

AN ORDINANCE AMENDING ORDINANCE NO. 11782, APPROPRIATING FROM THE REVENUE OF THE CITY OF KIRKSVILLE, MISSOURI, EXPENDITURES IN ACCORDANCE WITH THE 2007 BUDGET OF THE CITY OF KIRKSVILLE, MISSOURI AND PROVIDING FOR ADJUSTMENTS THERETO.

Council Member Rodgerson moved to adopt Bill No. 2007-52 on first reading; seconded by Council Member Mayer.

Finance Director Guy stated that every year during budget review for the coming year the City Staff projects what they will spend for the remainder of the year. Guy stated that every year the City finds that there have been projects budgeted for the current year that did not occur due to various reasons, and that there are additional unplanned projects that have come up throughout the year. Guy said that in the Council packet there is a detail of adjustments the City has made to each fund to allocate, or reallocate, additional monies for these unplanned projects. Guy listed some of the major projects that caused money to be reallocated. Guy said that all total the City is asking for \$432,466 to be allocated to the 2007 budget to cover additional expenses, which bring budget the 2007 budget up to \$24,912,093.

Council Member Rodgerson inquired as to whether or not this total is still within the reserve that the City requires.

Guy stated that yes, the City did not touch the General Fund, it is okay, and the others are stand alone funds. Guy said that the City has grant money or specific revenue services that pay for operations.

Macomber stated that with adjustments and expenditures there were also additional revenues. For example, the walking and cycling trails would decrease the Southeast TIF, Franklin St., Downtown TIF, Transportation Sales Tax, Water Treatment Chemicals, all of which were brought back to Council to be approved beforehand.

Macomber said that the additional projects were covered by the fund balance in the Transportation Sales Tax.

Mayor Rowe asked if the Highway 63 Sales Tax Fund was a pass through, and Guy stated that yes it was, the revenues offset the additional expenditures.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Bill No. 2007-53 **[Ordinance No. 11818]**
AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH U S CELLULAR.

Council Member Mayer moved to adopt Bill No. 2007-53 on first reading; seconded by Council Member Rodgerson.

Guy stated that the Council is familiar with this process, as a settlement was agreed upon with Verizon one month ago. This is the second telecommunication company that is settling a class action agreement. U.S. Cellular has calculated Kirksville's past tax at \$292,506.82 for September 1, 2005, through September 30, 2007. In June 2007, U.S. Cellular started remitting payments and protesting them. Guy said they have paid the City almost \$41,000 over five months, and the City will receive balance of \$251,614.30 in back taxes. Guy said this agreement will obligate U.S. Cellular for future taxes.

Council Member Rodgerson asked if the cell phone companies believe they will win, or why they don't want to pay.

Guy said that she thinks that is the reason that one by one they are conceding, and U.S. Cellular will be our biggest dollar amount. Macomber added that others, like AT&T and Sprint, have not come to the table yet.

Council Member Rodgerson asked what would happen if one company wins, and how it would affect the payments the City has already received.

Guy stated she believes the agreements between Verizon and U.S. Cellular bind them to future taxes. City Attorney, Howard Hickman, stated that it might depend upon which issues would be resolved in a hypothetical win, but that he feels there will be more of these settlements to follow. Hickman said that there is no question that these settlements will be absolutely unassailable once they are paid, regardless of what happens with other company's results. He also believes that these agreements will be binding as far as future taxes.

Macomber stated that when the 2008 Budget was prepared this settlement was not included, nor did the City anticipate that all of the cell phone companies would begin to start paying the tax. Therefore, the revenues were not raised for that particular line item.

Council Member Rodgerson asked if there would be an excess of funds, and Macomber stated there would be \$150,000 that would be put into the General Fund once U.S. Cellular pays their back taxes. In order to make the reserve the City has to carry over

funds from previous year, and Macomber hopes that will help at the end of the year to start better fund balance for 2009.

Council Member Rodgerson asked if the extra tax revenue will affect the budget for the upcoming year at all. Macomber said it will affect the budget positively, but the City did not bank on those taxes.

Guy reminded the Council that the General Fund is the fund that is hit the hardest, and said the City is taking a \$500,000 hit in 2007 and dipping into the reserves.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Revision to City Council Budget Policy #3

Council Member Mayer moved to approve a revision to City Council Budget Policy #3 reducing the restricted fund reserve for the General Fund from 20% to 17% or \$1.2 million dollars whichever is less; seconded by Council Member Rodgerson.

Finance Director Guy said that for the past several years the City has made changes to the restricted reserve requirements based on the financial constraints the City was in for the General Fund. Guy said that this revision will allow the City to either meet that \$1.2 million or 17% as the restricted amount, whichever is less. This will allow the City to leave a balance in the unrestricted fund balance to make it available for any unexpected expenditures in the General Fund. Guy said the Staff is asking for revision of language in the Budget Policy.

Council Member Rodgerson asked how a policy change like this would have affect the budget in 2007, and the \$500,000 hit in the General Fund.

Guy stated that the \$500,000 is for the 2008 Budget, and Macomber said that this policy in 2007 would have freed up approximately \$150,000 - \$200,000.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Memorandum of Agreement—TCRC

Council Member Mayer moved to approve a revision to the Memorandum of Agreement between for the Kirksville, Missouri Telecommunications Resource Center between the University of Missouri Outreach and Extension, Kirksville R-III School District, Truman State University and the City of Kirksville; seconded by Council Member Rodgerson.

City Manager Macomber said that the City entered into an agreement with the University of Missouri, Truman State University, and the Kirksville School District to establish the Telecommunicates Community Resource Center(TCRC). The TCRC is housed in a City-owned building on Franklin Street. The agreement was implemented in 1997, and since that time there have been no significant reviews of the Memorandum of Agreement. Macomber said that the changes the Council and other partners are being asked to make are not significant. Macomber explained that the same people are on both the Executive Committee and Management Committee due to the structure of

the current agreement. In order to streamline, and make it more efficient they would like to cut it to one committee. The University of Missouri's only concern was that they have ten other TCRC's across the state, and this is the same agreement they have everywhere else. However the University of Missouri said they would try it and see how it works. Macomber said the only other change is that they added Economic Development as a focus of the TCRC, which goes along with the Council's goals.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgeron – aye. Ayes – 3; Nays – none; Absent–2.

Addendum U of Agreement with Benton & Associates

Council Member Mayer moved to approve addendum U of an agreement with Benton and Associates adding additional engineering services for final design for Water Treatment Plant Improvements Phase II; seconded by Council Member Rodgeron.

City Engineer, John Buckwalter, stated that this is the final phase of the project. The City entered into an agreement with Benton & Associates for the design and permitting of both Phase I and Phase II of the Water Treatment Plant Improvements. Then the City entered into an agreement with the constructing firm, Par General Contractors, to build the Phase I work that was officially completed in October, 2007. Buckwalter said that during the review of the Phase I work there was additional work identified that should be included in Phase II. This work was not in the original design that was permitted eighteen months ago. Buckwalter said that the largest component of this additional work is the needed replacement of the Chemical Feed Apparatus, which has an estimated construction cost of approximately \$200,000. The replacement of the feeders was originally anticipated in about same time frame as the Phase II work. Buckwalter stated that for purpose of getting this work done as a coherent design the replacement of the feeders should be done as part of this contract. Additionally, the staff would like to request the addition of a fire alarm system since there is none in place at the Water Treatment Plant at this time, and Buckwalter feels that is unacceptable. Other additions would be: the replacement of supply piping; replacement of backflow preventers for the water supply; replacing all doors in the plant because they are deteriorated beyond repair; replacement of the pump on the sludge blow-down on the primary clarifier; a new chlorine panel which is required as part of the EPA settlement as part of a redundant system; replacement of the computer that is used for instrumentation and monitoring. Buckwalter said that all together the additional construction costs would be approximately \$275,000. Due to the additional design work required to revise the plans and resubmit them to the DNR for technical review, as well as review for the State Revolving Fund Loan monies, the additional engineering fees would be \$27,000. Buckwalter said the additional cost of construction paid services would be \$5,100. If these changes are approved, the work would begin immediately, with the new permit in place in thirty to forty-five days. At that point the City would advertise for bids, with construction beginning in early summer or late spring of 2008. Buckwalter said that both the engineering fees and the construction costs are included in SRF Plan, and the staff estimates they will come in at approximately \$1,700,000, with \$1,800,000 available.

Council Member Mayer asked if this will bring the project to an end, and Buckwalter said these changes will bring the City into full compliance with the State.

Mayor Rowe asked how long it will be until the State come in and does another assessment. Buckwalter responded that he believes it will be two to five years, but that the basic process should be sound for quite some time. Buckwalter said it depends on the results of other issues such as de-chlorination of the backwash water, issues associated with torpidity, and the new testing for cryptosporidium. The City is meeting the requirements at this time, and he anticipates this to continue for at least five years, but there is no guarantee.

The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Second Reading of Ordinances

Bill No. 2007-52

[Ordinance No. 11817]

AN ORDINANCE AMENDING ORDINANCE NO. 11782, APPROPRIATING FROM THE REVENUE OF THE CITY OF KIRKSVILLE, MISSOURI, EXPENDITURES IN ACCORDANCE WITH THE 2007 BUDGET OF THE CITY OF KIRKSVILLE, MISSOURI AND PROVIDING FOR ADJUSTMENTS THERETO.

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

SECTION 1. That Section 1 of Ordinance No. 11782 be amended to read: The Annual Budget of the City of Kirksville, Missouri, aggregating \$24,912,093, for the fiscal year commencing January 1, 2007 and ending December 31, 2007, as submitted by the City Manager and incorporated herein by reference as is fully set out in this ordinance, is hereby approved.

SECTION 2. Revisions to the original budget for the funding of new projects or expenditures necessitating increases or decreases in the individual Funds as so described on the attached Budget Amendment Summary are approved.

Bill No. 2007-53

[Ordinance No. 11818]

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH U S CELLULAR.

WHEREAS, the City of Kirksville, Missouri (the “Plaintiff”) is either a named plaintiff or a putative class member in a lawsuit to recover unpaid Business License Taxes (as defined in the Settlement Agreement described below), which lawsuit is styled *City of University City, Missouri, et al v. AT&T Wireless, Services, Inc., et al.*, No. 01-CC-004454, and is pending in the Circuit Court of St. Louis County, Missouri (the “Lawsuit”); and

WHEREAS, the Plaintiff and U S Cellular (as defined in the Settlement Agreement) wish to avoid the expense and uncertainty of continued litigation and desire to settle their dispute(s) without further litigation; and

WHEREAS, a settlement agreement settling the Lawsuit was signed by the named plaintiffs (as class representatives) and U S Cellular, and was filed with and preliminarily

approved by the Circuit Court of St. Louis County on October 30, 2007 (the "Settlement Agreement"); and

WHEREAS, the Plaintiff and U S Cellular have conducted an investigation and evaluation of the facts and the law relating to the claims in the Lawsuit and believe that the Settlement Agreement is fair, reasonable, adequate and in the best interest of all the parties; and

WHEREAS, pursuant to the Settlement Agreement, the Plaintiff has received a Notice of Class Action Settlement and Approval Hearing, incorporated herein by reference, and a U S Cellular Municipal Tax Settlement Claim Form, incorporated herein by reference, which identify the Total Past Tax Consideration (as defined in the Settlement Agreement) that will be paid and released to the Plaintiff pursuant to the Settlement Agreement after the Settlement Agreement becomes Final (as defined in the Settlement Agreement); and

WHEREAS, the Plaintiff desires to approve and accept the Settlement Agreement and the Total Past Tax Consideration;

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

Section One. The City of Kirksville, Missouri hereby approves, accepts, and adopts all terms and provisions of the Settlement Agreement as a binding and enforceable agreement between the City of Kirksville, Missouri and U S Cellular, and as if the City of Kirksville, Missouri was an original signatory thereto.

Section Two. The City of Kirksville, Missouri further approves the Total Past Tax Consideration of \$292,506.82 as shown on the U S Cellular Municipal Tax Settlement Claim Form, along with the other relief provided in the Settlement Agreement, as adequate consideration for the release of claims by the City of Kirksville, Missouri against U S Cellular as provided for in the Settlement Agreement.

Section Three. The City Manager of the City of Kirksville, Missouri on behalf of the Plaintiff, is hereby authorized and directed to execute the U S Cellular Municipal Tax Settlement Claim Form and any other documents necessary under the Settlement Agreement.

Section Four. The City of Kirksville, Missouri, reserves the right to conclude settlement agreements with other wireless telecommunications service providers in the Lawsuit depending upon the circumstances of each case.

Section Five. This Ordinance shall be in full force and effect after passage and approval as required by law.

Council Member Rodgerson moved to adopt Bill No. 2007-52 and Bill No. 2007-53 on second reading; seconded by Councilmember Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Council Comments

City Manager Macomber recognized the students from Professor Haggerty's class that were in the audience.

Mayor Rowe asked the students if they had any questions, and told them she appreciated their presence and interest in the City's government. Mayor Rowe told Professor Haggerty that she appreciated him bringing his class to the meeting.

Adjournment

There being no further business to come before the Council, Council Member Mayer moved to adjourn; seconded by Council Member McCord. The motion carried by the following vote: Mayor Rowe – aye; Council Members: Mayer – aye; McCord – absent; Newton – absent; Rodgerson – aye. Ayes – 3; Nays – none; Absent–2.

Mayor Rowe adjourned the meeting at 6:10p.m.

Sarah Halstead
Deputy City Clerk