

COUNCIL & STAFF PRESENT:

Martha Rowe	Mayor
Jeff Newton	Councilmember
Tim Crist	Councilmember
Jill McCord	Councilmember
Dale Blesz	Councilmember
Howard Hickman	City Attorney
Mari E. Macomber	City Manager
Vickie Brumbaugh	City Clerk
Paul Frazier	Code Administrator
Jim Hughes	Police Chief

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Wednesday, November 15, 2006, at 5:30 p.m. in the City Hall Council Chambers.

INVOCATION/PLEDGE

Reverend Jim Robinson of the First United Methodist Church gave the Invocation. The Mayor and Council led the Pledge of Allegiance.

MINUTES

City Manager Macomber explained that the City Council approved an Airport hangar lease with Preferred Family Healthcare at the November 1, 2006 meeting. The following week, a representative of Preferred Family informed the City that they had given the wrong name, and that the lease should read PFH Aviation. The Council is asked to approve the minutes of November 1 with this amended name change.

Councilmember McCord moved to approve the amended minutes of the regular session of November 1, 2006; seconded by Councilmember Blesz. The motion carried by the following vote: Mayor Rowe - aye; Council members: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays - none.

ORDER OF AGENDA

City Manager Macomber asked that Item 9 C be moved to Item 9A – Ordinance rezoning real estate described herein from R-4, General Residential Zoning to CBDP.

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

CITIZEN PARTICIPATION

None.

ACTION PRESENTATIONS

BILL NO. 2006-37

AN ORDINANCE REZONING REAL ESTATE DESCRIBED HEREIN FROM R-4, GENERAL RESIDENTIAL ZONING TO CBDP, CENTRAL BUSINESS DISTRICT PLANNED AND CHANGING THE ZONING DISTRICT MAP ACCORDINGLY.

Councilmember Crist moved to adopt Bill No. 2006-37 on first reading; seconded by Councilmember Newton.

Code Administrator Paul Frazier reported the owner of property at 505 West Scott, Charles Morris, wants to construct a self-serve motor fuel dispensing business on West Normal, and accessed by West Normal and South Fourth driveway connections. Fuel pumps will be constructed to accessorize the fuel supply business just north of the proposed project. The Planning and Zoning Commission unanimously supported the rezoning.

Susan Rogers, Post Office Box 612, owns rental property nearby. She stated the proposed business is located in a residential area and rock trucks, snow plows and other heavy vehicles will be visiting the business causing noise, the smell of fuel, and headlight distraction as they enter and exit this business.

Charles Morris, 210 Suburban Drive, stated that most of the fueling will be done through the daytime.

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

BILL NO. 2006-38

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.”

City Manager Macomber explained a few clarifications made to Bill No. 2006-38: Section 18-90 Responsibilities, – “establishment” was removed from wording, and replaced with “the area where smoking is prohibited by the provisions of this Ordinance.” Section 18-91 Penalty - Item b – Previously stated restaurants and bars – was removed and replaced with “an area where smoking is prohibited by the provisions of this Ordinance.”

Councilmember McCord moved to adopt Bill No. 2006-38 on first reading; seconded by Councilmember Blesz.

Mayor Rowe called out those from the audience who had completed speaker’s cards.

Brenda Sewell, Post Office Box 374, asked what the city will do about businesses who sell cigarettes? She lives outside of the city limits and cannot vote on this matter that affects her business inside the city. Ms. Sewell asked the Council to reconsider, and she prefers this question go before the voters.

Rosalie Caldwell, owns Green Door at 103 West Washington, said that she lives outside of the city limits, and asked who represents the business owners? Her business is a smoke shop and a smoke ban would impact her business. She said it should be everyone’s choice to go into a business that allows smoking.

Carol Cox, 1709 East LaHarpe, presented a couple of recent reports regarding four out of five restaurants are now smoke free.

Emily Krogmann, Campbell Apartments, 127 Florence Street, asked the Council to vote, yes.

Nancy Reid, 802 South First, has had coughs while working in a smoking place. She said to vote yes.

Kylene Puckett, 25305 Benton Way, said during her recent pregnancy she chose not to go to places where she had meetings that smoking was allowed. Every 30 seconds in a smoking place is a high risk of SIS for unborn children. Vote yes.

Sharon Buck, State Highway H, said it is her choice, and vote no.

Frances Jones, 616 East Jefferson, said her daughter cannot go in smoking places because of her lungs.

Brittany Schultehennch, 223 Campbell Apts, South Florence, said the public health needs protected, so vote yes.

Mary Paradix, 1111 Mulanix, said that freedom will be affected and public health will be affected if an ordinance is not approved.

Stacy Ward, 22571 State Hwy 11, owns the Full Moon bar, and lives outside of the city limits. She and her husband sell mostly alcohol at their business where people smoke while drinking. She sees the effects of smoking on her parents. Her daughter was diagnosed with an illness, and they need their income from the business to pay for medical expenses. Mrs. Ward said she is a nurse and knows what second hand smoke does, but also needs their business.

Cheri Sharp, 2309 North East, said that statistics can be manipulated the way you want them to go, and she does not go into places that do not allow smoking. Let the people vote.

Randy Bradley, business owner of Burger King at 2211 North Baltimore, said he tries to accommodate both smokers and non smokers. He suggested the property owner should be the one who decides if they allow smoking in their business.

Tom Mayer, 701 South Bradford, spoke on behalf of several people who he has diagnosed over the years with lung diseases. Some were caused by growing up in smoking households, and some for other reasons. They cannot visit smoking facilities. Some of his patients were amongst second hand smoke and were not smokers themselves.

Councilmember McCord called for the question to vote.

The motion tied by the following vote: Mayor Rowe - aye; Council members: Newton - abstain; Crist - aye; McCord - nay; Blesz - nay. Nays – 2; Ayes – 2; Abstention - 1.

BILL NO 2006-39

AN ORDINANCE TO PLACE ON THE GENERAL MUNICIPAL ELECTION BALLOT OF APRIL 3, 2007, A QUESTION TO BAN SMOKING IN CERTAIN PUBLIC PLACES, INCLUDING BARS, RESTAURANTS, CITY OPERATED FACILITIES, RECREATION FACILITIES, AMUSEMENT PLACES AND BANQUET FACILITIES WHEN EMPLOYEES

ARE PRESENT AND WORKING, LOCATED WITHIN THE CITY LIMITS OF KIRKSVILLE, MISSOURI.

Councilmember Blesz moved to adopt Bill No. 2006-39 on first reading; seconded by Councilmember McCord.

Councilmember Crist moved to amend the motion contingent upon this being the only question on the ballot regarding this subject; this ordinance would be void if there was an initiative petition; seconded by Councilmember McCord. The motion carried by the following vote: Mayor Rowe – aye; Council members: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays - none.

Councilmember Blesz moved to amend the ordinance by deleting the Breathe Easy group, and replacing with: “various citizens of Kirksville”; seconded by Councilmember McCord. The motion carried by the following vote: Mayor Rowe - nay; Council members: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Ayes – 4; Nays – 1.

Mayor Rowe said that the Breathe Easy group was the driving force.

The motion to adopt Bill No. 2006-39, as amended, carried by the following vote: Mayor Rowe - nay; Councilmembers: Newton - aye; Crist - nay; McCord - aye; Blesz - aye. Ayes – 3; Nays – 2.

BILL NO. 2006-40

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BETWEEN THE CITY OF KIRKSVILLE AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION PROVIDING FOR AN AMENDMENT TO THE STATE BLOCK GRANT AGREEMENT.

Councilmember Crist moved to adopt Bill No. 2006-40 on first reading; seconded by Councilmember Newton.

City Manager Macomber explained that the Council approved this agreement at the November 1st meeting, but the Missouri Highways and Transportation Commission requires an ordinance for their records.

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

Lakes, Parks and Recreation Commission Appointments

Councilmember Newton moved to appoint Neal Chamberlain; and reappoint Brent Motter and Jane Bartling to the Lakes, Parks and Recreation Commission; seconded by Councilmember Crist. The motion carried by the following vote: Mayor Rowe - aye; Council members: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays - none.

Second Reading of Ordinances

BILL NO. 2006-37

ORDINANCE NO. 11776

AN ORDINANCE REZONING REAL ESTATE DESCRIBED HEREIN FROM R-4, GENERAL RESIDENTIAL ZONING TO CBDP, CENTRAL BUSINESS DISTRICT PLANNED AND CHANGING THE ZONING DISTRICT MAP ACCORDINGLY.

WHEREAS, the Petition of Charles A. Morris, hereinafter referred to as the Petitioner, is the owner of the following described real estate, commonly described as 505 West Scott St, and more particularly described as:

A tract of land situated in Section 9, Township 62 North, Range 15 West, Railroad Addition to the City of Kirksville, Adair County, Missouri and being more particularly described as follows: Commencing at the Northwest corner of Block 14 of said Railroad Addition; thence along the West line of Block 14, South 0 degrees 04 minutes 00 seconds East, a distance of 284.02 feet to a point on the Southerly right of way line of Scott Street; thence along said line, South 88 degrees 36 minutes 58 seconds East, a distance of 118.30 feet to the POINT OF BEGINNING of the description herein: TOWIT: thence continuing East along said line a distance of 156.11 feet to a point on the centerline of an abandoned Railroad; thence leaving the last described line, along said centerline, South 17 degrees 28 minutes 03 seconds West a distance of 450.98 feet to a point on the Northerly right of way line of Normal Street; thence leaving the last described line, along said right of way line, North 89 degrees 19 minutes 50 seconds West, a distance of 138.47 feet to a point on the Easterly right of way line of Fourth Street; thence leaving the last described line, along said Easterly right of way line, North 0 degrees 04 minutes 00 seconds West, a distance of 57.89 feet to a point on the Westerly right of way line of said abandoned Railroad; thence leaving the last described line, along said Westerly right of way line North 17 degrees 28 minutes 03 seconds East, a distance of 392.55 feet to the point of beginning.

WHEREAS, Petitioner has petitioned for the rezoning of the above described real estate from R-4, General Residential under Chapter 25, Article XI of the Code of the City of Kirksville, to CBDP, Central Business District Planned, under Chapter 25, Article I, Section 25-5 of said Code and the changing of the “zoning district map” as set forth under Article I of Chapter 25 of said Code in accordance therewith; and

WHEREAS, the aforesaid petition and development plan was duly referred to the Planning and Zoning Commission of the City of Kirksville, Missouri, for hearing, report and recommendation and it is the finding of this Council that the hearing was held by said Planning and Zoning Commission on November 8, 2006, and after hearing thereon, it is the recommendation of said Commission to this Council that the rezoning sought in the preceding paragraph be allowed; and

WHEREAS, a site development plan was submitted, reviewed and conditionally approved by said Commission as follows:

SECTION 1:

Semi-tractor fuel delivery must deliver at the North end of the development.

SECTION 2:

Fuel delivery shall be between the hours of 7:00a.m. and 7:00p.m., Central Standard Time.

SECTION 3:

Low profile site lighting must be designed and arranged whereby there will not be a nuisance to the neighboring properties.

SECTION 4:

Final building plans shall be submitted to the codes office and approved by the Codes Administrator prior to construction.

WHEREAS, after due hearing hereon it is the finding of this Council that the greatest benefit can be derived for the City of Kirksville and the inhabitants thereof by granting of the above stated petition to rezone and that the rezoning sought herein would not be detrimental or hazardous to the adjoining property owners or the inhabitants of the City of Kirksville, Missouri, as a whole but would in fact, enhance the orderly development of said property; and

WHEREAS, it is the finding of this Council that all requirements of the Code of the City of Kirksville for the rezoning of the above described real estate from R-4, General Residential to CBDP, Central Business District Planned have been met by Petitioners;

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

That the real estate described herein be and the same is hereby rezoned from R-4, General Residential to CBDP, Central Business District Planned of the Code of the City of Kirksville, Missouri, and the "zoning district map" as set forth under Article I of Chapter 25 of said Code be changed accordingly. The development of said land shall be in complete accord with the development plan which shall be finally approved by the City Council and, furthermore, shall be subject to all other conditions contained in this ordinance.

This ordinance shall become effective upon its passage.

BILL NO 2007-39 **ORDINANCE NO. 11777**
AN ORDINANCE TO PLACE ON THE GENERAL MUNICIPAL ELECTION BALLOT OF APRIL 3, 2007, A QUESTION TO BAN SMOKING IN CERTAIN PUBLIC PLACES, INCLUDING BARS, RESTAURANTS, CITY OPERATED FACILITIES, RECREATION FACILITIES, AMUSEMENT PLACES AND BANQUET FACILITIES WHEN EMPLOYEES ARE PRESENT AND WORKING, LOCATED WITHIN THE CITY LIMITS OF KIRKSVILLE, MISSOURI.

WHEREAS, a public hearing was held on August 30, 2006, concerning requests from various citizens of Kirksville to pass a Smoking Ban Ordinance in the City of Kirksville, Missouri; and

WHEREAS, the City Council has held Study Sessions to review and discuss a proposed Smoking Ban Ordinance that would cause a smoke free environment within public places of Kirksville; and

WHEREAS, the City Council has also held Study Sessions to review and discuss a proposed Smoking Ban Ordinance that would cause a smoke free environment within restaurants and bars only; and

WHEREAS, the City Council desires to submit to the voters at the April 3, 2007 election, a proposed question to ban smoking in certain public places within the city limits of Kirksville, Missouri.

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

Section 1. A general election is hereby ordered to be held in the City of Kirksville, Missouri concurrently with the general municipal election, on Tuesday, April 3, 2007 on the following question:

Shall the City of Kirksville, Missouri cause to be enacted an ordinance prohibiting smoking in certain public places, including bars, restaurants, city operated facilities, recreation facilities, amusement places and banquet facilities, when employees are present and working at the banquet facilities, within the city limits of Kirksville, excluding, however, all such facilities owned or operated by a membership association that is recognized as a not-for-profit entity by the State of Missouri; with such ordinance to be effective one hundred twenty (120) days from and after the date of approval by a majority of the voters of the city?

Section 2. The City Clerk is authorized and directed to notify the County Clerk of Adair County, Missouri of the passage of this Ordinance no later than 5:00 p.m. on January 23, 2007, and to include in said notification all of the terms and provisions required by Chapter 115, RsMO, as amended.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

BILL NO. 2006-40

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BETWEEN THE CITY OF KIRKSVILLE AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION PROVIDING FOR AN AMENDMENT TO THE STATE BLOCK GRANT AGREEMENT.

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

SECTION 1:

That the City Manager is hereby authorized to execute, on behalf of the City of Kirksville, a contract with the Missouri Highways and Transportation Commission providing for funds through the State Block Grant Program.

SECTION 2:

That all ordinances or parts of ordinances therefore enacted which are in conflict herewith are hereby repealed.

SECTION 3:

This ordinance shall be in full force and effect from and after the date of its passage and approval.

Councilmember Crist moved to adopt Bill No. 2006-37 and 2006-40 on second reading; seconded by Councilmember Newton. The motion carried by the following vote: Mayor Rowe - aye; Council members: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays - none.

Councilmember Blesz moved to adopt Bill No. 2006-39 on second reading; seconded by Councilmember McCord. The motion carried by the following vote: Mayor Rowe - nay; Council members: Newton - aye; Crist - nay; McCord - aye; Blesz - aye. Ayes – 3; Nays - 2.

ADJOURNMENT

There being no further business to come before the Council, Councilmember Crist moved to adjourn to an Executive Session regarding a real estate matter, RsMO 610.021(2); seconded by Councilmember McCord. The motion carried by the following vote: Mayor Rowe - aye; Council members: Newton - aye; Crist - aye; McCord - aye; Blesz - aye. Nays - none.

Mayor Rowe adjourned the meeting at 7:00 p.m.

Vickie Brumbaugh, CMC, MRCC
City Clerk