

COUNCIL & STAFF PRESENT:

Martha Rowe	Mayor
Jeff Newton	Councilmember
Tim Crist	Councilmember
Jill McCord	Councilmember
Dale Blesz	Councilmember
Mari E. Macomber	City Manager
Vickie Brumbaugh	City Clerk
Amy Elschlager	Deputy City Clerk
John Buckwalter	Public Works Director
Laura Guy	Finance Director
Kris McKim	Assistant City Manager
Steve Bell	Parks and Recreation Director

Absent: Howard Hickman, City Attorney

The City Council of the City of Kirksville, Missouri, met in a Special Session on Wednesday, April 26, 2006, at 5:30 p.m. in the City Hall Council Chambers.

ACTION PRESENTATIONS

BILL NO. 2006-16

AN ORDINANCE AMENDING ARTICLE IV EXCHANGE TELEPHONE SERVICES, OF APPENDIX C - FRANCHISES, OF THE MUNICIPAL CODE OF THE CITY OF KIRKSVILLE TO COMPLY WITH STATE LEGISLATION REGARDING SIMPLIFICATION OF MUNICIPAL TELECOMMUNICATIONS TAXES.

Councilmember Crist moved to adopt Bill No. 2006-16 on first reading; seconded by Councilmember McCord.

Finance Director Laura Guy reported that on March 27, 2006, the City Council approved a resolution for the City to be in compliance with the publication of the recommended rate of 5% taxation for telephonic service. However, the Missouri Department of Revenue has notified the City of a new rate of 2.3% in effect, imposed on telecommunication companies for service within City Limits. The new rate will start being collected July 2006.

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

County Courthouse Project Agreement w/Mihalevich

Councilmember Blesz moved to enter an agreement with Mihalevich Concrete Construction for the Adair County Courthouse Revitalization 2006 project; seconded by Councilmember Newton.

John Buckwalter reported that three bids were received. Mihalevich Concrete Construction was the low bidder at \$277,753.00, charged to the TIF infrastructure.

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

Liquor Licenses – Pungo Jungo, Inc. d/b/a Travelers Square

Councilmember Crist moved to approve a restaurant bar (Sunday sales) liquor license, contingent upon the required inspections being satisfied and a business license issued prior to opening; seconded by Councilmember Newton.

Laura Guy explained that the business will operate under the name of Travelers Square and was issued an intoxicating liquor by the drink license in February of this year.

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

Second Reading**BILL NO. 2006-16****ORDINANCE NO. 11753**

AN ORDINANCE AMENDING ARTICLE IV EXCHANGE TELEPHONE SERVICES, OF APPENDIX C - FRANCHISES, OF THE MUNICIPAL CODE OF THE CITY OF KIRKSVILLE TO COMPLY WITH STATE LEGISLATION REGARDING SIMPLIFICATION OF MUNICIPAL TELECOMMUNICATIONS TAXES.

WHEREAS, pursuant to Appendix C, Article IV Exchange Telephone Services (Generally), of the Municipal Code, the City of Kirksville collects gross receipts taxes for telecommunications services; and

WHEREAS, pursuant to Sections 92.074 to 92.095 RSMo., adopted in 2005 by the 93rd Missouri General Assembly, cities must comply with the Municipal Telecommunications Business License Tax Simplification Act; and

WHEREAS, the City of Kirksville desires to comply with any mandatory provisions of the Act, but in the event that said Act is not in effect for any reason, the City desires that its Municipal Code remain unchanged except as compelled by the Act; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, that the following sections be amended as follows:

The following revisions shall include additional or change in language indicated in bold and deletions indicated by strike-throughs:

An ordinance providing for a license **or occupation** tax to be paid by persons, firms, companies or corporations engaged in the business of furnishing ~~exchange telephone~~ **telecommunications** service in the City of Kirksville, Missouri.

The following definitions shall be additional language to this Article:

Gross receipts. The aggregate amount of all sales and charges, exclusive of sales and charges for the commodities or services relative to the business of supplying telephone or telephone service for compensation in the City during the period, less credits, refunds, sales taxes and uncollectible accounts actually charged off during the period. Effective July 1, 2006, to the extent required by Section 92.083 RSMo., as used in this

article, the term shall be construed to mean all receipts from the retail sale of telecommunications service taxable under Section 144.020 RSMo., and from any retail customer now or hereafter exempt from state sales tax.

Telecommunications service. Exchange telephone service, telephone service, local exchange telephone transmission service and similar terms shall be construed to mean telecommunications service as defined in Section 92.077 RSMo. As of the date of adoption, this has the same meaning as such term as defined in Section 144.010 RSMo., which in turn as of the date of adoption hereof provides that telecommunications service means the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means, further provides that as used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols, and further provides that telecommunications service does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

- (a) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;
- (b) Answering services and one-way paging services;
- (c) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or
- (d) Cable or satellite television or music services.

"To the extent required by law". The action is required or permitted by State law in order for the City to continue to receive municipal telecommunications tax revenues under this Article.

Section 1. (License or occupation tax.)

Every person, firm, company or corporation now or hereafter engaged in the business of furnishing ~~exchange telephone~~ **telecommunications** service in the City of Kirksville, Missouri, shall pay the said City as an annual license or occupation tax, ~~five percent (5%)~~ **two and three-tenths percent (2.3%)** of the gross receipts derived from the furnishing of such service within said City, as hereinafter set forth.

To the extent required by law, the City Manager of the City is hereby authorized and directed to promulgate and publish the revenue neutral rates to be applied in the City of Kirksville for bills to be rendered on or after July 1, 2006, based on the rate information supplied by the Director of Revenue of the State of Missouri.

Effective July 1, 2006, to the extent required by law, notwithstanding the provisions of any municipal business license tax (as defined in Section 92.077 RSMo.) ordinance, this tax shall be based solely and exclusively on those gross receipts of telecommunications companies (being any company doing business in the State of Missouri that provides telecommunications service) for the retail sale of

telecommunications services which are subject to taxation under sections 144.010 and 144.020 RSMo.

To the extent required or permitted by law, for bills rendered on and after July 1, 2006, the tax rate shall be two and three-tenths percent (2.3%) or the revenue neutral rates as promulgated and published.

To the extent required by law, for bills rendered on and after July 1, 2007 the tax rate shall be adjusted as promulgated and published by the Director of the Department of Revenue for the State of Missouri pursuant to Section 92.086 RSMo. The City shall notify the Director of the Department of Revenue in writing within 30 days of any change in the tax rate to the extent required by Section 92.086 RSMo.

Section 2. (Statement of gross receipts, filing; payment of tax.)

All such persons, firms, companies or corporations mentioned in Section 1 hereof shall file with the City Clerk of the said city on or before the 15th day of February, 1986, a sworn statement of the gross receipts derived by such person, firms, company or corporation from the furnishing of such service during the period from July 1, 1985 to January 31, 1986. Thereafter, All such persons, firms, companies or corporations mentioned in Section 1 hereof shall file with the City Clerk **Finance Director of said city** on or before the 15th day each calendar month, a sworn statement of the gross receipts derived by such person, firm, company or corporation from the furnishing of such service during the preceding calendar month. At the time of filing all such sworn statements, the person, firm, company or corporation filing such sworn statement shall pay to the City Collector **Finance Director** of the said City ~~five percent (5%)~~ **two and three-tenths percent (2.3%)** of such gross receipts. Gross receipts derived from the furnishing of such service to said City shall not be included in any such sworn statements, nor shall any tax be due on such gross receipts. The telephone **telecommunications** company shall have the privilege of crediting such sums as may be due hereunder with any unpaid balance due said company for telephone service or facilities furnished to said City.

Effective July 1, 2006, to the extent required by law, the Director of the Department of Revenue for the State of Missouri shall collect, administer, and distribute telecommunications business license tax revenues in accordance with the provisions of Sections 92.074 to 92.095 RSMo. and returns filed by telecommunications companies with the Director and tax payments made by such companies to the Director pursuant to such statutes shall take the place of the statements and payments described above.

The Finance Director, and such other persons, may be designated by the City Council, from time to time, is and are hereby authorized to investigate the correctness and accuracy of any statement filed under the provisions of this section, and for that purpose shall have access at all reasonable times to the books, documents, papers and records of any person filing such statement. Effective July 1, 2006, any audit of a telecommunications company for purposes of sections 92.074 to 92.095 shall be conducted pursuant to such statutes and any rules promulgated thereunder.

Section 7. (Repeal of conflict; validity)

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. The invalidity of any section or portion thereof of this ordinance shall not affect the validity of the remainder thereof.

To the extent required by law, in all respects this article shall be interpreted, construed and applied consistent with the requirements of Sections 92.074 to 92.095 RSMo.

It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect. In the event that the Municipal Telecommunications Business License Tax Simplification Act shall be repealed or shall be declared unconstitutional in total or in substantial part, it is the intent of the City to continue in effect the provisions of Article IV, Sections 1 and 2 of the Municipal Code as they existed prior to the effective date of the Act, unaffected by the provisions of the Act to the greatest extent possible without preventing the City from receiving tax revenues under this Article.

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

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 amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Councilmember Blesz moved to adopt Bill No. 2006-16 on second reading, seconded by Councilmember Crist. The motion carried by the following vote: Mayor Rowe, aye; Councilmembers: Crist, aye; Newton aye; McCord, aye; and Blesz, aye. Nays, none.

ADJOURNMENT

Councilmember Newton moved to adjourn; seconded by Councilmember Blesz. The motion carried by the following vote: Mayor Rowe, aye; Councilmembers: Crist, aye; Newton aye; McCord, aye; and Blesz, aye. Nays, none.

There being no further business to come before the Council, Mayor Rowe adjourned the meeting at 5:40 p.m.

Amy Elschlager, Deputy City Clerk and
Vickie Brumbaugh, CMC/MRCC, City Clerk