

JOURNAL OF THE CITY COUNCIL

Regular Session – April 19, 2010

COUNCIL & STAFF PRESENT:

Todd Kuhns	Mayor
Richard L. Detweiler	Councilmember
Martha Rowe	Councilmember
Carolyn Chrisman	Councilmember
Tony Fajkus	Councilmember
Howard Hickman	City Attorney
Mari E. Macomber	City Manager
Vickie Brumbaugh	City Clerk
Cherie Bryant	Assistant to the City Manager
John Buckwalter	Public Works Director
Laura Guy	Finance Director
Jim Hughes	Police Chief
Brad Selby	Code Administrator
Melanie Smith	Community Services Director

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Monday, April 19, 2010, at 6:00 p.m. in the City Hall Council Chambers.

INVOCATION/PLEDGE

Deacon Dave Ream, of the Mary Immaculate Catholic Church, gave the Invocation. The Mayor and Council led the Pledge of Allegiance.

MINUTES

Councilmember Chrisman moved to approve the minutes of the special session of April 12, 2010; seconded by Councilmember Rowe. The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

ORDER OF AGENDA

Mari Macomber asked that the Council consider an additional item: A motion to approve an agreement with the Missouri Highways and Transportation Commission for placement of accomplishment signs at the city limits signs, as requested by the Kirksville Rotary Club. Also, there is a change to the City Attorney/Prosecutor agreement that was distributed in the packet.

Councilmember Chrisman moved to approve the Order of the Agenda, as amended; seconded by Councilmember Detweiler. The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

INFORMATION PRESENTATION & PUBLIC HEARING

Mayor Kuhns announced the signing of a Proclamation for Arbor Day to be honored on April 30, 2010.

Mayor Kuhns read and presented a Proclamation to representatives of the Historical Preservation Commission honoring Historic Preservation Month in May.

Mayor Kuhns presented the Government Finance Officers Association Award to Laura Guy.

Mayor Kuhns opened the floor for comments regarding the sale of city properties known as 26021 Stukey Cemetery Trail, and 4800 – 4900 block of North Lincoln Street.

No comments were made, and Mayor Kuhns closed the floor.

CITIZEN PARTICIPATION

Kevin Alm, 11 Mohawk Drive, asked why there was no spring cleanup any more. He brought a dumpster to City Hall tonight that he does not need.

UNFINISHED BUSINESS

None.

ACTION PRESENTATIONS

BILL NO. 2010-21

RESOLUTION NO. R4-19-600

A RESOLUTION OF THE CITY OF KIRKSVILLE, MISSOURI, STATING INTENT TO SEEK FUNDING THROUGH THE MISSOURI FOUNDATION FOR HEALTH'S HEALTHY & ACTIVE COMMUNITIES PROGRAM AND AUTHORIZING THE MAYOR TO PURSUE ACTIVITIES IN AN ATTEMPT TO SECURE FUNDING FOR THE CITY OF KIRKSVILLE

WHEREAS, the Missouri Foundation for Health (MFH), established the Healthy & Active Communities Initiative (H&AC) in 2005 to respond to increasing obesity rates; and

WHEREAS, the goals of H&AC are to (1) have a sustained impact on healthy eating and active living for communities in Missouri by supporting promising environmental and policy change strategies (2) to cultivate strong local, regional and state partnerships that support the development and sustainability of healthy and active communities in Missouri (3) to position Missouri as a leader in building and promoting healthy and active communities; and

WHEREAS, the H&AC funds projects that produce coordinated environmental and policy change interventions; and

WHEREAS, the city does have areas of need which may be addressed through the Healthy & Active Communities Program.

NOW, THEREFORE BE IT RESOLVED by the City of Kirksville, Missouri, that it desires to participate with the Missouri Foundation for Health in plans and activities for the improvement of our community.

THEREFORE, BE IT FURTHER RESOLVED, that the Mayor, or Mayor Pro Tem in the Mayor's absence, of Kirksville, Missouri is hereby authorized to pursue and submit documents which are necessary in applying for funding and establishing an administrative organization to implement activities.

Councilmember Chrisman moved to approve Bill No. 2010-21; seconded by Councilmember Detweiler.

The City, A.T.Still University and the Area Community Health Initiative submitted a concept paper last January, and a full application is due April 22 for funding. This funding is for a three-year period, beginning in January 2011. Total budget would be \$450,000, \$300,000 grant budget and \$150,000 in matching funds.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

BILL NO. 2010-22

AN ORDINANCE AUTHORIZING THE MAYOR OR MAYOR PRO TEM IN THE ABSENCE OF THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF KIRKSVILLE, MISSOURI AND THE MISSOURI DEPARTMENT OF NATURAL RESOURCES FOR A HISTORIC AND ARCHITECTURAL RESOURCE SURVEY PLAN.

Councilmember Chrisman moved to approve Bill No. 2010-22 on first reading; seconded by Councilmember Detweiler.

The City has been approved for an \$8,100 grant to complete a historic and architectural resource survey plan. The grant agreement requires the City to document \$2,900 in-kind match for administration and \$2,500 cash, for a total project cost of \$13,500.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

BILL NO. 2010-23

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH ALLTEL.

Councilmember Chrisman moved to adopt Bill No. 2010-23 on first reading; seconded by Councilmember Detweiler.

A total of \$129,204.26 for back taxes, and future taxes, will be paid after the settlement agreement. This is the fifth wireless company making settlement on back taxes.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

BILL NO. 2010-24

AN ORDINANCE REPEALING AND AMENDING CERTAIN SECTIONS OF CHAPTER 14, ARTICLE V, FARMERS' MARKET, OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI.

Councilmember Chrisman moved to adopt Bill No. 2010-24 on first reading; seconded by Councilmember Fajkus.

This is an update of the Ordinance clarifying hours of operation, adding a provision that gives a Kiwanis representative the authority to deny use; establishes a change on fresh produce within a 50-mile radius; USDA inspected meat and fish; added the state law requirement on

egg sales requiring a dealer and retailer licensing. A representative of the Kiwanis Farmers Market Committee has reviewed the ordinance as presented.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

City Attorney/Prosecutor Agreement

Councilmember Rowe moved to approve renewal of a three-year agreement with Farr, Hickman and Slavin law firm; seconded by Councilmember Chrisman.

Mari Macomber reported that the agreement expired last January. One change is that the agreement will automatically renew at the end of three years unless either party which to terminate the agreement.

Councilmember Chrisman moved to amend the agreement to delete the wording – “change, revise or” from two locations of Section Four – General Provisions of the agreement as distributed; seconded by Councilmember Fajkus.

The motion to amend the agreement carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

The motion to approve the agreement, as amended, carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Amendment to GBA Agreement

Councilmember Chrisman moved to approve an amendment to the GBA agreement for Basin C & F Collection system; seconded by Councilmember Rowe.

The heavy rains in 2008 and 2009 created problems in sections of Basins C and F that need addressed. The addendum will allow for identifying additional work to be done at a fee not to exceed \$33,953.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

CAP Agreement

Councilmember Chrisman moved to approve the Community Assistance Program agreement from the Missouri Department of Conservation for Hazel Creek Lake; seconded by Councilmember Rowe. The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Indoor Pool Painting Bid

Councilmember Chrisman moved to approve a bid of \$16,193.94 from Bazan Painting Company of St. Louis for pool surface preparation and repainting in the indoor pool; seconded by Councilmember Rowe.

The indoor pool was last painted in 2004 by the vendor being recommended who was also the lowest bidder.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Traffic Paint Bid

Councilmember Chrisman moved to approve the purchase of traffic paint from ICI Paints of St. Peters, in the amount of \$11,685.50; seconded by Councilmember Rowe. The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Police Body Armor

Councilmember Chrisman moved to approve a bid from Mahgemeyer North America of Charleston, South Carolina, for eight sets of tactical body armor in the amount of \$14,666.08; seconded by Councilmember Rowe.

The budget amount was for \$10,000. The department has a grant for repayment of 50 percent of vest purchases, and the additional \$4,666.08 will be recovered through that grant. Two ballistic shields were purchased through the Homeland Security grant.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Liquor License – The Green Door

Councilmember Chrisman moved to approve a new liquor license for the Green Door, located at 103 West Washington; seconded by Councilmember Rowe.

The new license is effective July 1, and the current license for sale of malt liquor and wine by the drink will expire June 30, 2010.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Accomplishment Signs

Councilman Chrisman moved to approve the placement of accomplishment signs at four city limit signs, recognizing Ray Klingensmith, Rotary International President; seconded by Councilmember Rowe.

Matt Eichor, a member of the Celebrate Ray Committee, asked the Council to consider these signs honoring Ray Klingensmith. The process is approval of a TR-15 agreement between the City and the Missouri Highways and Transportation Commission. The City will pay MHTC, and the Rotary Club will reimburse the City for the cost of the four signs of \$3,700. The cost covers fabrication, repair and maintenance over a ten-year period.

Bich Kuhs, 5 Catalina Drive, asked if the signs will be taken down in ten years? Mr. Eichor responded that the signs could be re-negotiated at that time.

The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

2nd Reading of Ordinances

BILL NO. 2010-22

ORDINANCE NO. 11919

AN ORDINANCE AUTHORIZING THE MAYOR OR MAYOR PRO TEM IN THE ABSENCE OF THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF KIRKSVILLE, MISSOURI AND THE MISSOURI DEPARTMENT OF NATURAL RESOURCES FOR A HISTORIC AND ARCHITECTURAL RESOURCE SURVEY PLAN.

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

Section 1. That the Mayor, or the Mayor Pro Tem in the absence of the Mayor is hereby authorized to execute on behalf of the City of Kirksville a contract with the MISSOURI DEPARTMENT OF NATURAL RESOURCES providing \$8,100 in funds for a historic and architectural resource survey plan.

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.

BILL NO. 2010-23

ORDINANCE NO. 11920

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH ALLTEL.

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 Alltel (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 Alltel, and was filed with and preliminarily approved by the Circuit Court of St. Louis County on March 11, 2010 (the "Settlement Agreement"); and

WHEREAS, the Plaintiff and Alltel 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 an Alltel Municipal Tax Settlement Claim Form, incorporated herein by reference, which identify the Past Tax Payment (as defined in the Settlement Agreement) that will be paid 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 Past Tax Payment;

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 Alltel, and as if the City of Kirksville, Missouri was an original signatory thereto.

Section Two. The City of Kirksville, Missouri further approves the Past Tax Payment of \$129,204.26 as shown on the Alltel 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 Alltel 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 Alltel 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.

Section Six. The provisions of this Ordinance are severable.

BILL NO. 2010-24 **ORDINANCE NO. 11921**
AN ORDINANCE REPEALING AND AMENDING CERTAIN SECTIONS OF CHAPTER 14, ARTICLE V, FARMERS' MARKET, OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI.

WHEREAS, enforcement issues/questions arise, on a regular basis, that result in a review of portions of the current City of Kirksville Code of Ordinances; and

WHEREAS, the proposed changes/updates are recommended to more efficiently bring the written code into compliance with recommendations to update/resolve identified issues.

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

Section 1. Chapter 14, Article V, Farmers Market, Section 14-141 of the Code is repealed and replaced with the following:

Section 14-141 Established. **Purpose.**

The City of Kirksville and the Kirksville Kiwanis Club established the farmers' market in the city to support local farmers by providing an opportunity to sell their fresh foods, homemade and handcrafted products to the public. Other vendors are offered the same opportunity to sell fresh foods, homemade and handcrafted products to the public. Fresh foods/products must have been grown, gathered, raised or caught within a 50-mile radius of Kirksville.

~~(a) — A farmers market is established in the city and located either on the north side of the count courthouse on a parking lot operated by the city, or on Elson Street, between Harrison and Washington.~~

~~(b) The farmers market is authorized the exclusive use of Elson Street between Harrison and Washington each Saturday during the spring and summer, or as otherwise authorize by the city manager, between the hours of 5:00 a.m. — 12:30 p.m. The only exception will be for those annual events, using this same section of Elson Street, that have been approved in the past, or new request granted by city council.~~

Section 2. New Section: **Location and Hours**

(a) The farmers market is authorized to use Elson Street between Harrison and Washington each Saturday, commencing the first Saturday in May and ending the last Saturday in October. The selling hours shall be held from 7:00 a.m. to 12:00 noon. An extension of hours during annual/special events may be granted by the city manager, upon a request from a Kiwanis representative prior to the event being held.

(b) The farmers market vendors shall not set up their selling stall any earlier than 5:00 a.m. on the Saturday market day. The vendors shall have their selling stall clear and free of all refuse no later than 12:30 p.m. on the same Saturday market day.

Section 3. **Section 14-142 Denial of use.**

The city manager, **or Kiwanis designee/representative**, is authorized to cancel ~~reservations~~ **a stall or space** without refund; **and to remove persons from the premises**, or deny future use of a stall or space in the farmers' market to persons failing to comply with the provisions of this article, **or who fail to comply with any lawful administrative rules/requirements established by the Kiwanis Club.**

Section 4. Sections 14-144 through 147 of Chapter 14 are repealed.

~~**Section 14-144. Cleaning space.**~~

~~At the close of the business day, the occupant of each space in the farmers market shall clear the area assigned him and remove all refuse.~~

~~**Section 14-145. Establishment of rates.**~~

~~The city manager is hereby authorized to establish rates from time to time. Any such changes are subject to council and voter approval, if required.~~

~~**Section 14-145. Display of rates.**~~

~~Upon fixing the rates from time to time, the city manager shall cause to be posted at the farmers' market, in conspicuous places, a complete schedule of the effective rates so established and shall file such schedule of rates with the city clerk.~~

Section 14-147. Payment of rates.

~~(a) Stall fees shall be charged by the day. The stall fees are payable to the designated Kiwanis representative on the market day.~~

~~(b) A market day shall commence no earlier than 6:00 a.m. and terminate no later than 6:00 p.m., a period of twelve (12) hours.~~

Section 5. New Section titled: **Rates.**

Stall fees shall be charged by the day. The stall or space fees are payable to the designated Kiwanis representative on the market day. The city manager is authorized to establish rates from time to time, or as needed.

Section 6. **Section 14-148 Restrictions.**

In order to maintain uniform policies concerning items offered for sale at the farmers' market, the following rules and regulations are established:

(1) Items that may be offered for sale:

a. Fresh produce **grown within a 50-mile radius of Kirksville;**

f. ~~Poultry and fish~~ **Fish and USDA inspected meat;**

g. **Eggs – Must meet State law requirements that growers who produce and sell their own eggs at a farmers' market need to have a retailer's license and a dealer's license. A vendor who purchases eggs from a producer needs to have a retailer's license only.**

h. Other items considered to be acceptable by the Kiwanis representative.

Section 7. Add new Section titled: **Taxation.**

Farmers and vendors are to acquire a Kirksville sales tax number from the State of Missouri, and shall report sales tax that was collected on sales that took place in Kirksville. Farmers and vendors are required to collect and remit Missouri sales tax for fresh farm-grown products sold at the Farmers Market. Fresh farm-grown products are also subject to applicable local sales tax.

Section 8. Add new Section titled: **Penalty.**

It shall be unlawful for any person to violate any provision, or fail to comply with any provision, of this chapter. Any person so violating or failing to comply with any provision of this chapter shall be guilty of a misdemeanor and be punishable as provided in section 1-7 of this Code.

Section 9. All of the modifications to this ordinance shall be effective from and after its date of passage.

Section 10. 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 Chrisman moved to approve Bill No. 2010-22, Bill No. 2010-23 and 2010-24 on second reading; seconded by Councilmember Rowe. The motion carried by the following vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Comments

None.

Adjournment to Executive Session

There being no further business to come before the Council, Councilmember Chrisman moved to adjourn to an executive session regarding a real estate matter, RsMo 610.021(2); seconded by Councilmember Fajkus.

The motion carried by the City Clerk's roll call vote: Mayor Kuhns – aye; Councilmembers: Detweiler – aye; Rowe – aye; Chrisman – aye; Fajkus – aye. 5 Ayes; 0 Nays.

Mayor Kuhns declared the meeting adjourned at 7:05 p.m.

Vickie Brumbaugh, CMC, MRCC
City Clerk