

CITY COUNCIL STUDY SESSION

TO: Mayor and City Council
FROM: Mari E. Macomber, City Manager ^{MSM}

SESSION DATE: December 15, 2008
TIME: 12:00 p.m.
PLACE: Second Floor Conference Room

AGENDA:

- **Meeting With Judge Phoebe Herrin**
- **Policy Allowing Alcohol on Certain City Property**
- **Newsletter Review – December 12, 2008**

MEETING WITH JUDGE PHOEBE HERRIN

Phoebe Powel Herrin has been the City's Municipal Court Judge since 1995. Prior to Judge Herrin, the City was served by Associate Judge Otten. Due to demands on the Associate Circuit Court Judge, the City began to solicit for a possible Municipal Court Judge. After completing the process, the City selected Judge Herrin to serve. At the time of her appointment, Judge Herrin had served as the Municipal Court Judge for the City of Macon. She had previously served as the City Attorney for the City of Macon and has provided legal services to the cities of Bevier, Callao and Atlanta.

The agreement between the City and Judge Herrin is a two-year agreement and is set for renewal in early 2009. A copy of the current agreement is attached to this cover memorandum.

The meeting on Monday is intended to give Council members an opportunity to visit with Judge Herrin about Municipal Court. Judge Herrin will be available to speak with the City Council and answer any questions that you might have regarding the services that she provides to the City of Kirksville.

Recommended Action – It is recommended that the Council visit with Judge Herrin and that the City Council support the renewal of Judge Herrin as the Municipal Court Judge for the City of Kirksville for another two-year period by directing the City Manager to renegotiate the contract.

POLICY ALLOWING ALCOHOL ON CERTAIN CITY PROPERTY

This issue has been discussed by the City Council on several dates (August 11, September 8 and October 27). During one of these meetings, the Council specifically asked whether the policy the way it was written would allow someone having a wedding

reception to have a champagne toast. The response from staff was yes, citing language in the draft policy document that referenced “not-for-profit” stating that this language was intentionally written to allow individual parties the ability to serve or consume alcohol at the Rotary Park Amphitheater.

During the December 1 City Council meeting, the question came up again, the City Attorney responded that he did not believe that to be the case and that the language would need to be modified before individuals could make a request to serve or consume alcohol on City property.

The simplest course of action to address Council direction was to establish two different policies, one for the municipal, charitable and/or non profit organizations public events and then a separate policy for individual private events.

The policy for the individual private events is limited to the use of the Rotary Park Amphitheater.

Recommended Action

It is recommended that the City Council determine if the second policy represents the intent of the City Council.

NEWSLETTER REVIEW – December 12, 2008

Attachments

Agreement with Judge Herrin – pages 3 - 6

Court Schedule and No Court Dates 2009 – page 7

Proposed Policy for Private Special Events – pages 8 - 10

Proposed Policy for Public Special Events – pages 11 - 13

Municipal Court Judge Agreement

THIS AGREEMENT (the "Agreement") is dated effective as of the 28th day of February 2007, by and between the **City of Kirksville ("City")**, and **Phoebe Powell Herrin (Ms. Herrin)**, a professional attorney practicing in Macon County, Missouri.

WITNESS TO:

WHEREAS, Phoebe Powell Herrin is a licensed attorney in the State of Missouri and qualified to provide Municipal Court judicial services; and

WHEREAS, the City desires that Ms. Phoebe Powell Herrin provide such judicial services to the City.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the Parties hereto have agreed, and do hereby agree as follows:

1. **Term of Appointment**. The City Council hereby appoints Ms. Herrin for a period commencing on the effective date hereof and continuing for a term of two (2) years, unless such appointment shall have been sooner terminated as hereinafter provided. This Agreement may be renewed by execution of a letter by both Parties to that effect. Ms. Herrin hereby accepts such appointment and agrees to perform the services hereinafter described, all upon the terms and conditions herein stated.

2. **Scope of Services to be Provided**. Ms. Herrin is hereby appointed by the City Council as Municipal Court Judge, and will be responsible for all Municipal Court proceedings, supervision of the activities of the Kirksville Municipal Court, and the discharge of other duties of the Municipal Court Judge as required by law.

Except for reasonable vacation and absences due to temporary illness, Ms. Herrin shall devote up to one full day each week (or the equivalent thereof) to the City and shall not during her employment be engaged in any activity which in the reasonable judgement of the City, conflicts with the duties of Municipal Court Judge; whether or not such activity is pursued for gain, profit or other pecuniary advantage. The foregoing restrictions shall not be construed as preventing Ms. Herrin from participating in any professional private practice, provided that such practice will not require services on the part of Ms. Herrin which would directly or indirectly impair the performance of her duties under this Agreement. If Ms. Herrin does participate in any private practice considered to be in contradiction to this clause, Ms. Herrin will be given ample time to disengage in such activity Ms. Herrin will not provide legal representation for persons, firms or corporations in any proceeding where the City of Kirksville is a party.

Ms. Herrin shall endeavor to be supportive of the City's business and its best interests and shall not, directly or indirectly, take any action which could reasonably be expected to have an adverse effect upon the business or best interests of the City. Ms. Herrin covenants, represents and warrants that she will at all times honestly and fairly conduct her duties as described herein or as otherwise directed by the City and will at all times maintain the highest of professional standards in representing the interests of the City.

3. **Fees.** For the services rendered pursuant to this Agreement, Ms. Herrin shall be paid by the City the sum of \$1,580.00 per month payable to the "Law Office of Phoebe Powell Herrin."

4. **Expenses.** Ms. Herrin will pay all costs of travel to and from her home and Kirksville Municipal Court, phone and FAX charges, and other miscellaneous fees from the monthly fees delineated in Section 3.

5. **Professional Training.** Ms. Herrin agrees to attend statutorily required continuing municipal legal education training sessions, at her own cost and expense, and will provide documentation of said training to the City.

6. **Indemnification.** Ms. Herrin shall indemnify and hold the City harmless for any and all liability, loss, expenses and claims for damages or injury arising from acts or omissions of Ms. Herrin in providing services pursuant to this Agreement which are determined to be the result of Ms. Herrin's negligence, malfeasance or misconduct as determined by a court of competent jurisdiction. The City shall indemnify and hold Ms. Herrin harmless from any and all liability, loss, expenses and claims for damages or injury arising from acts or omissions of the City or its employees in connection with the provision of services hereunder.

7. **Independent Contractor.** In performing the services herein specified, Ms. Herrin is acting as an independent contractor, and shall not be considered an employee of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the parties hereto, and nothing herein contained shall be construed to authorize either party to act as agent for the other. Each party shall be liable for its own debts, obligations, acts and omissions. Each party shall, with respect to its employees and independent contractors, be solely responsible for payment of all applicable compensation, wages, taxes, withholdings, fringe benefits, and contributions to insurance, pensions, worker's compensation and other withholdings and benefits.

8. **Compliance with Law.** In performing their duties pursuant to this Agreement, both parties shall act in compliance with all applicable federal, state and local laws, rules and regulations. This agreement in no way diminishes Ms. Herrin's accountability, as a Municipal Court Judge, to the Presiding Judge of the 2nd Circuit.

9. **Termination.**

9.1 **Death.** If Ms. Herrin should die during this Agreement period, the City shall have no further obligation hereunder to Ms. Herrin, her spouse, or her estate, except to pay to Ms. Herrin's estate the amount of compensation earned by Ms. Herrin through the month of her death, such compensation to be prorated to the date of death.

9.2 **Disability.** If, during this Agreement, Ms. Herrin shall be prevented for a continuous period of nine (9) weeks from performing her duties by reason of disability, the City may terminate the Agreement, in which event Ms. Herrin shall receive any compensation earned or accrued to the date upon which any determination of disability shall have been made as hereinafter provided, and any compensation Ms. Herrin would have earned pursuant to Section 3 herein. For the purposes of this Agreement, Ms. Herrin shall be deemed to have become disabled when the City, upon the advice of two qualified

physicians of its selection, determines that Ms. Herrin has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illnesses) of performing her duties under this Agreement and that such disability has disabled Ms. Herrin for a cumulative period of twelve (12) weeks.

9.3 Voluntary Termination. Notwithstanding herein to the contrary, Ms. Herrin or the City may elect to terminate this Agreement, with a notice period of at least thirty (30) days by Ms. Herrin and ninety (90) days by the City, by notifying the other party of such termination in writing at any time during the term of this Agreement. In the event of termination of this Agreement pursuant to this Section 9.3, neither the City nor Ms. Herrin shall have any further liability to the other hereunder, and Ms. Herrin shall be entitled to the amount of earned compensation, stipulated in Section 3 prorated to the date of such termination.

9.4 Termination for Cause. The City shall have the right to terminate this Agreement "for cause" upon the occurrence of one or more of the following events or circumstances:

9.4.1 The neglect, malfeasance, nonfeasance, or other conduct of Ms. Herrin in the performance of the services contemplated by this Agreement which, in the reasonable judgement of the City and the Circuit Court, is detrimental to the best interests of the City; or

9.4.2 Any other breach of this Agreement by Ms. Herrin as determined in the reasonable judgement of the City; or

9.4.3 Any intentional dishonesty, discrimination or other ethical misconduct by Ms. Herrin, as determined in the reasonable judgement of the City and the Circuit Court; or

9.4.4 Conviction of a felony by a court of competent jurisdiction; or

9.4.5 Death of Ms. Herrin, as provided in Section 9.1; or

9.4.6 Disability of Ms. Herrin, as defined in Section 9.2.

10. **Effect of Expiration of Termination.** This Agreement will be of no further force or effect as of the date of expiration or termination except that the parties shall cooperate to promptly resolve any outstanding issues upon the expiration of this Agreement.

11. **Entire Agreement; Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement. All continuing covenants, duties and obligations shall survive the expiration or earlier termination of this Agreement. Although appointment of Ms. Herrin is for a period of two years, the parties to this Agreement will examine fee provisions after one year to determine if the contractual workload and direct expenses incurred are compatible with the compensation provided.

12. **Governing Law.** This Agreement shall be construed in accordance with the laws of the

State of Missouri. Although no conflict is anticipated, where the terms of this Agreement may be found to be in conflict with state or local laws concerning municipal court and municipal judges, then state and local laws shall prevail.

13. **Partial Invalidity.** If any provision of this Agreement is prohibited by any applicable law or court decree, said prohibition shall not invalidate or affect the remaining provisions of this Agreement.

14. **Waiver.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

15. **Assignment; Binding Effect.** Neither party shall assign nor transfer, in whole or in part, this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, and any assignment or transfer without such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

City of Kirksville, Missouri

Municipal Court Judge

By: Marta Rene

By: Phoebe Pullitt

Title: Mayor

Address: 308 Butler Man

Date: 1-17-07

Date: 1/14/07

2009
KIRKSVILLE MUNICIPAL COURT
627-1237
Thursday – Court Dates

JAN.	--	JUL	2
	8		9
	15		16
	22		23
	29		30
FEB	5	AUG	6
	12		13
	19		20
	26		27
MAR	5	SEP	3
	12		10
	19		17
	26		---
APR	2	OCT	1
	9		8
	16		15
	---		22
	30		29
MAY	7	NOV	5
	14		12
	---		19
	28		---
JUN	4	DEC	3
	11		10
	18		17
	---		---

As of January 1, 2009 there will be
NO COURT in 2009 on:

APR 23	instead assign APR 30
MAY 21	instead assign MAY 28
JUN 25	instead assign JUL 2
SEPT 24	instead assign OCT 1
NOV 26	instead assign DEC 3
DEC 24	instead assign JAN 7
DEC 31	instead assign JAN 7

**Policy For Consumption of Alcohol
(Intoxicating Liquor or Non-intoxicating Beer)
At Rotary Park Amphitheater for Private Special Events ~~On City Property~~**

PURPOSE:

The City of Kirksville hereby adopts the following policy to allow for the consumption of alcohol on City Property. The purpose of this policy is to prescribe the manner in which permits for the consumption of alcohol at **private** special events **at the Rotary Park Amphitheater** ~~on City property~~ will be issued, the requirements for such permits, and the rules and regulations governing such activities. The applicant must comply with all other City ordinances and policies regarding the use of City property.

PROCEDURES:

1. Any request for the use of a public facility, whether or not it involves the consumption of alcohol **at Rotary Park Amphitheater**, must be made to the appropriate City department responsible for the administration of that facility.

2. In addition to the submittal of an application for the use of **the Rotary Park Amphitheater** ~~a public facility~~, sponsors of any **private** special event at which it is proposed that alcohol be allowed to be consumed must also submit an application to the City Clerk's office for a permit to possess and consume alcohol at ~~a~~ **said private** special event on City property no later than sixty (60) days in advance of the proposed event or effective date of the permit. There shall be no fee for such application

3. Application's will be approved by the City Council after input from the City Manager and other City departments. A permit may be denied if, based on information acquired by or submitted to the City Council, it is determined that the issuance of the permit is contrary to the public health, welfare and safety.

GENERAL REQUIREMENTS:

~~1. **Insurance** – The permit holder shall provide a certificate of general liability insurance which names the City as an additional insured, and provides for at least fifteen (15) days notice of cancellation. The minimum insurance coverage limits shall be \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate.~~

~~12. **Applicant – Individuals and/or organizations** only municipal, charitable and/or nonprofit organizations shall be allowed to apply for and receive such a permit, in conjunction with a specified event to be held **at the Rotary Park Amphitheater** ~~on City property~~ as designated in the application. Only one organization per event is eligible to receive such a permit, which must be the primary organization sponsoring the event, or a municipal, charitable or nonprofit organization selected by the primary sponsor.~~

23. **Special Event Defined** - A special event is defined as any event that is **not** open to the public, regardless of whether a fee is charged, specific to an identifiable time and place.

34. **Posting** - The permit for the possession and consumption of alcohol **at Rotary Park Amphitheater** ~~on City property~~ must be posted in a conspicuous location at all times during the event.

45. **Other** - The permit holder must meet with Kirksville Police Department staff to review all rules, regulations and conditions associated with the permit. A representative of the permit holder is required to be on site for the entire event, and shall provide contact information to the Kirksville Police Department. The permit holder shall comply with all conditions established by the Kirksville Police Department and/or the Kirksville Fire Department for such event.

~~6. **Locations** - Permits for the possession and consumption of alcohol on City property will only be considered at the following locations:~~

~~_____ a. Airport~~

~~_____ b. Downtown streets located in the Central Business District~~

~~_____ c. North Park Complex~~

~~_____ d. Rotary Park Amphitheater~~

57. **Security** - Certain events may require the need for security personnel or police officers for crowd and traffic control. Security requirements will be determined by the Kirksville Police Department, which must be accepted and followed. The applicant/~~sponsor~~ will be required to pay for security personnel for the event.

68. **Location Layout Requirements** - All events for which such a permit is issued shall comply with the following:

a. The area in which the possession and consumption of alcohol will be allowed must **remain within the physical confines of the Rotary Park Amphitheater** ~~be in a designated enclosed area defined by appropriate physical barriers (e.g. fencing, etc.)~~ to prevent unauthorized entry or contact with individuals outside such area.

b. ~~The Kirksville Police Department shall determine the number of _____ entrances/exits required for each event. All entrances/exits shall be staffed at _____ all times.~~

be. A system of checking I.D.'s to prevent underage drinking must be provided and followed.

~~d. A layout of the area to be utilized for serving and consuming alcohol shall be provided with the application. Such area proposed must be approved as part of the issuance of the permit.~~

ce. The specific hours of the event will be approved as part of the permit, however, all such events for which a permit is issued shall conclude no later than twelve o'clock midnight.

79. Sale of Alcohol - The sale of alcohol at any such event shall only be allowed by the holder of valid licenses for such sales issued by both the City of Kirksville, and the Missouri Department of Liquor Control.

810. Terms and Conditions - Various City departments, including the Kirksville Police Department and the Kirksville Fire Department, will be asked to review the application, and may recommend to the City Council the placement of certain conditions or requirements on the issuance of the permit. The permit issued by the City will contain the terms and conditions under which the permit is being issued and are deemed necessary by the City Council. The applicant/~~sponsor~~ will be required to sign the permit, thereby agreeing to all terms and conditions thereof, and to the provisions of this policy.

911. Comply With Other Laws - Applicant/~~Sponsor~~ shall not allow the site of the special event to be used in violation of any other local, state or federal law or regulation, including, but not limited to, those prohibiting public intoxication and serving of alcoholic beverages to minors.

1012. Indemnity - The applicant/~~sponsor~~ shall agree to hold the City harmless and indemnify the City and defend the City from and against all claims, actions, suits or demands, including reasonable attorney's fees, arising out of any breach by applicant of the terms of this policy or of the terms and conditions of the permit.

**Policy For Consumption of Alcohol
(Intoxicating Liquor or Non-intoxicating Beer)
For Public Special Events On City Property**

PURPOSE:

The City of Kirksville hereby adopts the following policy to allow for the consumption of alcohol on City Property. The purpose of this policy is to prescribe the manner in which permits for the consumption of alcohol at **for public** special events on City property will be issued, the requirements for such permits, and the rules and regulations governing such activities. The applicant must comply with all other City ordinances and policies regarding the use of City property.

PROCEDURES:

1. Any request for the use of a public facility, whether or not it involves the consumption of alcohol, must be made to the appropriate City department responsible for the administration of that facility.

2. In addition to the submittal of an application for the use of a public facility, sponsors of any special event at which it is proposed that alcohol be allowed to be consumed must also submit an application to the City Clerk's office for a permit to possess and consume alcohol at a special event on City property no later than sixty (60) days in advance of the proposed event or effective date of the permit. There shall be no fee for such application

3. Application's will be approved by the City Council after input from the City Manager and other City departments. A permit may be denied if, based on information acquired by or submitted to the City Council, it is determined that the issuance of the permit is contrary to the public health, welfare and safety.

GENERAL REQUIREMENTS:

1. **Insurance** - The permit holder shall provide a certificate of general liability insurance which names the City as an additional insured, and provides for at least fifteen (15) days notice of cancellation. The minimum insurance coverage limits shall be \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate.

2. **Applicant** - Only municipal, charitable and/or nonprofit organizations shall be allowed to apply for and receive such a permit, in conjunction with a specified event to be held on City property as designated in the application. Only one organization per event is eligible to receive such a permit, which must be the primary organization sponsoring the event, or a municipal, charitable or nonprofit organization selected by the primary sponsor.

3. **Special Event Defined** - A special event is defined as any event that is open to the public, regardless of whether a fee is charged, specific to an identifiable time and place.

4. **Posting** - The permit for the possession and consumption of alcohol on City property must be posted in a conspicuous location at all times during the event.

5. **Other** - The permit holder must meet with Kirksville Police Department staff to review all rules, regulations and conditions associated with the permit. A representative of the permit holder is required to be on site for the entire event, and shall provide contact information to the Kirksville Police Department. The permit holder shall comply with all conditions established by the Kirksville Police Department and/or the Kirksville Fire Department for such event.

6. **Locations** - Permits for the possession and consumption of alcohol on City property will only be considered at the following locations:

- a. Airport
- b. Downtown streets located in the Central Business District
- c. North Park Complex
- d. Rotary Park Amphitheater

7. **Security** - Certain events may require the need for security personnel or police officers for crowd and traffic control. Security requirements will be determined by the Kirksville Police Department, which must be accepted and followed. The applicant/sponsor will be required to pay for security personnel for the event.

8. **Location Layout Requirements** - All events for which such a permit is issued shall comply with the following:

- a. The area in which the possession and consumption of alcohol will be allowed must be in a designated enclosed area defined by appropriate physical barriers (e.g. fencing, etc.) to prevent unauthorized entry or contact with individuals outside such area.
- b. The Kirksville Police Department shall determine the number of entrances/exits required for each event. All entrances/exits shall be staffed at all times.
- c. A system of checking I.D.'s to prevent underage drinking must be provided and followed.

d. A layout of the area to be utilized for serving and consuming alcohol shall be provided with the application. Such area proposed must be approved as part of the issuance of the permit.

e. The specific hours of the event will be approved as part of the permit, however, all such events for which a permit is issued shall conclude no later than twelve o'clock midnight.

9. ***Sale of Alcohol*** - The sale of alcohol at any such event shall only be allowed by the holder of valid licenses for such sales issued by both the City of Kirksville, and the Missouri Department of Liquor Control.

10. ***Terms and Conditions*** - Various City departments, including the Kirksville Police Department and the Kirksville Fire Department, will be asked to review the application, and may recommend to the City Council the placement of certain conditions or requirements on the issuance of the permit. The permit issued by the City will contain the terms and conditions under which the permit is being issued and are deemed necessary by the City Council. The applicant/sponsor will be required to sign the permit, thereby agreeing to all terms and conditions thereof, and to the provisions of this policy.

11. ***Comply With Other Laws*** - Applicant/Sponsor shall not allow the site of the special event to be used in violation of any other local, state or federal law or regulation, including, but not limited to, those prohibiting public intoxication and serving of alcoholic beverages to minors.

12. ***Indemnity*** - The applicant/sponsor shall agree to hold the City harmless and indemnify the City and defend the City from and against all claims, actions, suits or demands, including reasonable attorney's fees, arising out of any breach by applicant of the terms of this policy or of the terms and conditions of the permit.

{We will still need to tweak a couple of the existing code sections and generate a form application and form permit.}