



May 4, 2007

TO: Mayor and City Council

FROM: Mari E. Macomber, City Manager *MEM*

SUBJECT: Study Session – **May 8, 2007**

The City Council will convene in Study Session on **Tuesday, May 8, 2007 at 5:30 p.m.** in the **City Council Chamber of City Hall.**

The following are the agenda items for the Study Session.

- 1. 2007 STREET PROGRAM**
- 2. SMOKING BAN ORDINANCE**
- 3. REVIEW NEWSLETTER – May 4, 2007**

1. 2007 STREET PROGRAM

With the approval of the ½ cent Transportation Sales Tax, the City has been able to plan for and develop a long range street improvement plan. We have a five-year street improvement plan that includes both concrete and asphalt and then funds for storm drainage improvements including curb and gutter related to street improvements.

The City uses a rating method that was approved by the City Council several years ago which uses both the streets classification and the pavement condition. A street classification is determined by its. Is it an arterial street (main thoroughfare through town), a collector (takes traffic from residential streets and moves the traffic to arterials) or is it a residential street (serves to get people to and from their homes). The City has used the Pavement Condition Index (PCI) for several years now. Rating the condition of the street on set pavement criteria eliminates most of the bias and establishes a program based upon need.

We have submitted the 2007 Street Program to the Airport and Transportation Commission, who have approved it and have moved it forward for City Council review. Included with this Study Session packet is a Staff Report from John Buckwalter, which

outlines more information on the PCI rating system and the levels that are used to determine the priority projects.

Keep in mind that we do not have unlimited funds, we have several sources of funds that we use to complete projects, including funds from federal sources like the Surface Transportation Program (STP) which is helping to support the majority of the cost to complete Osteopathy Street. We have also used tax increment financing (TIF) dollars to complete work such as Jamison Street from Hamilton to Highway 6. The majority of our funds come from the ½ cent Transportation Sales Tax. The City Council has approved a budget which includes \$550,000 for street improvements. This breaks down to \$200,000 for concrete pavement, \$200,000 for asphalt pavement, and \$150,000 for storm drainage, curb and gutter. Keep in mind that the transportation funds can only be used for transportation projects. We could not use these funds to improve storm drainage through a park. The City also, through voter approval, allocates a small amount of transportation sales tax dollars to the airport and to Kirk Tran – approximately \$60,000.

2. SMOKING BAN ORDINANCE

Since October of last year, the City Council has discussed the possible implementation of a smoking ban in Kirksville. In November, the City Council voted not to pass an ordinance on smoking in certain public places, but did vote to place the measure before the citizens of the community. Several months later, the City Council decided that there needed to be more details regarding what the citizens were voting for and worked on an ordinance. The Council then adopted by Resolution a commitment stating that if a majority of the voters were in favor of the smoking ban they would pass that ordinance that was developed, and if the voters did not pass the ban, they would not implement a smoking ban ordinance. The ordinance that the Council supported in January was the one that was promoted to the citizens as the ordinance that would be adopted by the City Council.

On April 4, 2007, the City Council adopted that Ordinance and set its implementation date for July 1, 2007. During the meeting on April 4, two individuals in attendance expressed concern to the Council about the equity of the Ordinance, since it did not prohibit smoking in places like the Shrine Club or the Moose Lodge.

In addition to these comments, there was a question raised that the affirmative defense of the ordinance gives the smoker an out. After reviewing this language with the City Attorney it is clear that the Ordinance provides an affirmative defense for those owners, managers, etc. listed in this section and that the provisions of that section affects only that section. There is a completely different section of the Ordinance that prohibits smoking. The City Attorney will be in attendance to explain this in more detail.

Finally, at your last Study Session, I explained that Council Member Mayer wanted to revisit the Ordinance. During that meeting, Mayor Newton also expressed interest in

discussing the membership associations. Instead of delaying this to a later date, it is important that the issue be resolved in a timely manner to allow staff and affected businesses the time needed to prepare for its implementation.

3. REVIEW NEWSLETTER – MAY 4, 2007

Attachments

Staff Report for 2007 Street Program – pgs – 5 - 6

Concrete Pavement Repair – pg 7

Asphalt Pavement Repair – pg 8

Map Showing Pavement Repair – pg 9

Staff Report Smoking Ban Ordinance – pg 11

Summary Comments from Council Member Mayer – pgs 12 - 13

KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

SUBJECT: 2007 Street Improvement Program

STUDY SESSION MEETING DATE: May 8, 2007

CITY DEPARTMENT: Public Works

PREPARED BY: John R. Buckwalter, Director of Public Works

This report summarizes the proposed 2007 Street Improvement Program. This report recommends allocation of funds between concrete pavement repair, curb, gutter, and storm drainage, and asphalt pavement repair. It provides a summary of required work, and includes comments from the ATC during its May 1 meeting. It is intended to provide council and staff a starting point for input supporting development of the final list to be included in the contract documents for 2007. If Council concurs with the basic program outlined, bids for the 2007 contracts will be opened on May 29.

The 5-year transportation plan calls for spending approximately \$550,000 per year for the street improvement program, including overlay, concrete pavement repair, and curb and gutter construction. From 2001 to 2005 expenditures exceeded that amount as we attempted to catch up with much needed repairs to reduce the maintenance backlog on our streets. Council authorized spending almost \$940,000 from the Transportation Sales Tax account in FY01/02, \$853,000 in FY02/03, \$718,900 in FY 03/04, \$645,765 FY 04/05. and \$574,239 in 04/05. The 2006 program charges to Transportation Sales Tax totaled \$226,686 for concrete and \$319,022 for asphalt, or a total of \$545,708.

The 2007 budget again allocates \$150,000 to Curb, Gutter and Storm Drainage and \$400,000 to the Street Improvement Program, or \$550,000. For 2007 the proposed division was \$200,000 for concrete pavement, \$150,000 for curb, gutter, and storm drainage, and \$200,000 for asphalt overlay.

In 2001, council agreed to a maintenance and repair priority based on street classification and pavement condition. The PAVER pavement management program uses Pavement Condition Index, or PCI as the measurement of a street's condition. A PCI of 70 is considered "Fair"; a PCI of 75 is considered "Good". A PCI of 46 to 69 is considered "Poor". PCI's below 45 are very poor to failed. Streets were grouped in 5 priorities for first analysis:

- | | | |
|----|---------------------|--------------|
| 1. | Collector and Above | PCI < 70 |
| 2. | Residential | PCI < 46 |
| 3. | Collector and Above | PCI 70 to 75 |
| 4. | Residential | PCI 46 to 69 |
| 5. | Residential | PCI 70 to 75 |

Streets scheduled for reconstruction under the TST or other construction programs are not included in the list. Street sections recommended for repair by the Department of Public works were added where appropriate. The recommended list of streets to be considered for the 2007 asphalt portion of the program is at enclosure 1. It includes 8 sections totaling \$230,807.65. The ATC had no comments on this list.

Concrete pavement repair is typically accomplished by removing and replacing individual slabs, as opposed to entire street sections. The work is scattered, and distributed throughout the city. The preliminary repair list is at enclosure 2. The recommended sections total \$248,489.65. Again, ATC had no recommended changes.

Lincoln Street from Line to Randolph, and associated storm drainage along Lewis Street is the only separate curb and guttering project for the 2007 program. This street will be widened to 24 feet with the new curb. The estimated cost is \$70,700.

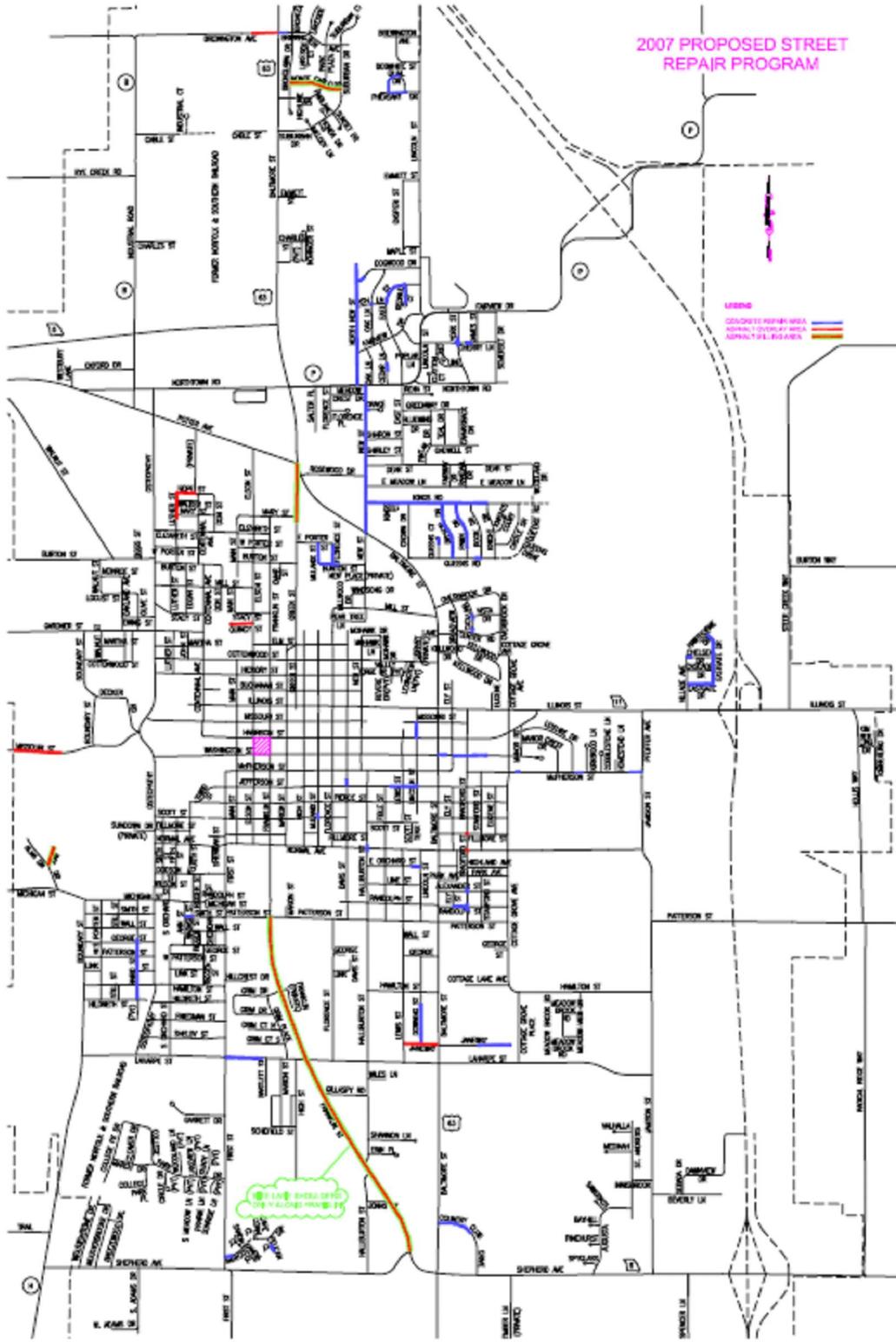
The estimated costs of the program for a first review are:

Lincoln	\$ 70,700
Concrete Repair	\$ 248,490
Asphalt Overlay	<u>\$ 230,810</u>
Total	\$ 550,000

As always there is significantly more work to be done than funds available. The proposals attached represent a prioritized list of work that should be done. Alternate or optional sections are listed for both concrete and asphalt streets. I seek Council's concurrence or input on both the overall priority used for this program, individual high priority street sections that may have been missed by staff's analysis and streets that should be deleted from this year's program.

Enclosures:

- Proposed Asphalt Street Work
- Proposed Concrete Street Work
- Map



2007 PROPOSED STREET REPAIR PROGRAM

- LEGEND
- CONCRETE REPAIR AREA
 - ASPHALT REPAIR AREA
 - ASPHALT REPAIR AREA

SEE EXHIBIT 10 FOR A LARGER VIEW OF THIS AREA

KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

SUBJECT: Smoke Ban Ordinance

STUDY SESSION MEETING DATE: May 8, 2007

CITY DEPARTMENT: Administration

PREPARED BY: Mari E. Macomber, City Manager

At your last Study Session, I informed the City Council that Council Member Mayer wished to review the smoke ban ordinance in a Study Session. Mayor Newton also expressed interest in discussing the membership organizations and whether or not these organizations should be excluded. The City Council agreed to discuss this Ordinance again at a Study Session.

Following is the information provided by Council Member Mayer. His presentation outlines problems that he agrees exist within the City's Ordinance followed by possible solutions for City Council consideration. You will need to determine whether, as a Council you concur with the identified problem and if so, is the solution agreeable with the Council.

From Council Member Mayer:

First of all, I have talked with many Kirksville citizens who have not been actively involved in the debate but who supported the ordinance with their vote. I've also talked with many who could not vote for the ordinance. Everyone definitely sees the problems with at least one aspect of the ordinance, and most agree on two items that are questionable.

As you probably know, I will argue for cleaning up the ordinance and going with 100% protection for workers across the board and am ready to speak with the other council members about my perspective(s).

I have spent some time with my friends at Breathe Easy Kirksville, and they have put together a nice outline of concerns that some officials from the group called Americans for Non-Smokers Rights have pointed out after reading our ordinance as it is currently written. I would like to take their points and talk about them one by one with the other council members. Here is the outline of concerns:

- I. **Problem:** There is no definition of an enclosed area. As we apply this to the workplace, we need to include a definition. **Solution:** Add the following definition in its alphabetical location:
 - *“Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling*

- II. **Problem:** As we wish to protect all employees from second hand smoke, we need to include a definition for place of employment **Solution:** Add the following definition in its alphabetical location:
- *“Place of Employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways and vehicles.*
- III. **Problem:** We want to protect the public at large from the effects of second hand smoke and some instances require a special definition as a public place, as even on occasion an employee may not be present and the definition of workplace may not apply. **Solution:** Add the following definition in its alphabetical location:
- *“Public Place” means an enclosed area to which the public is invited or in which the public is permitted including but not limited to banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, Laundromats, public transportation facilities, reception areas, restaurants, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a ‘public place’ when being used for a function to which the general public is invited. A private residence is NOT a ‘public place’ unless it is used as a child care, adult day care, or health care facility.*
- IV. **Problem:** One important area to protect the public is the outdoor seating areas of outdoor arenas, stadiums and amphitheatres. **Solution:** Add the following definition in its alphabetical location:
- *“Outdoor Seating Areas” means an area where people are seated near one another including but not limited to bleachers, grandstands, bench seating, and other spectator seating areas.*
- V. **Problem:** Add prohibition of smoking in places of employment **Solution:** Add the following as Section 18-89 c.
- *Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.*
- VI. **Problem:** There is known exposure to SHS in seating areas at outdoor arenas where people sit very near other people. This area would be defined as a smoke free area and would, like any other regulated area, have a perimeter of 10 feet. Remember all city parks with such facilities are already entirely smoke free. This would primarily apply to the grandstands at the fairgrounds and other non-city operated areas **Solution:** Add the following to Section 18-89 d.
- *Smoking shall be prohibited in all outdoor arenas, stadiums and amphitheatres.*

- VII. **Problem:** The ordinance does not clearly indicate where smoking is NOT regulated and should be included. **Solution:** Add the following new Section following current 18-89 Where Smoking is NOT Regulated
- *Notwithstanding any other provision of the ordinance to the contrary, the following areas shall be exempt from the provisions of Section 18-89: Private residences except when used as childcare, adult day care, or healthcare facility. Membership Associations and Private Clubs that have no employees, except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where smoking is prohibited under the provisions of the ordinance. Membership Associations shall meet the definition as defined. Outdoor areas of places of employment except those covered by the provisions of this ordinance.*
- VIII. **Problem:** Some establishments would like to declare their entire area smoke free, such as parking lots etc. This ordinance should encourage businesses to take stronger action, and the enforcement of this should be supported as any other smoke free area. **Solution:** Add the following Section following the above, Where Smoking is NOT Regulated Section Declaration of Establishment as Nonsmoking
- *Notwithstanding any other provision of this ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this ordinance is posted.*
- IX. **Problem:** There is a slight legal issue with Section 18-90 b 1-3. It sets a series of actions that may be legally challenged if an individual breaks the law, and is not approached by the owner/manager as described. It is a complaint of failure to apply the ordinance as outlined. **Solution:** Add the following under 18-90 b 4
- *The above shall only be an affirmative defense for the one who owns, manages, operates or otherwise controls a public space and shall have no implication for an individual violating this ordinance as expressed by section 18-89.*

Sincerely,

Tom Mayer