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**AGENDA
CITY OF CREVE COEUR
CITY COUNCIL MEETING
300 N NEW BALLAS ROAD
Monday, March 28, 2011
7:00 PM**

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

COMMENTS FROM THE GENERAL PUBLIC

ACCEPTANCE OF AGENDA

ANNOUNCEMENTS

The City Council meets the 2nd and 4th Monday of each month

6:00 p.m. – 7:00 p.m. – Work Session

7:00 p.m. – Regular Meeting of the City Council

FUTURE PUBLIC HEARINGS

Monday, April 11, 2011 - 7:00 p.m. - Five Year Capital Improvement Plan FY 2012 - 2016

1. CONSENT ORDINANCE READINGS

- a. Bill No. 5298 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A STP-Urban Program Grant Project With The Missouri Highways And Transportation Commission To Enable The City To Construct The West Olive Lighting Project. Final Reading**

Summary: The approval of this ordinance will allow the City Administrator to execute the necessary agreements to proceed with an STP-E grant project to install decorative lighting on West Olive between Cross Creek Dr. and Mason Rd.



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- b. **Bill No. 5299 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A STP-Urban Program Grant Project With The Missouri Highways And Transportation Commission To Enable The City To Construct The Ladue Road Sidewalk Phase II Project. Final Reading**

Summary: Approval of this ordinance will allow the City Administrator to execute a necessary agreement with MoDOT regarding compliance with the terms of an STP-E grant project

- c. **Bill No. 5300 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A Maintenance Agreement With The Missouri Highways And Transportation Commission For Black Powder Coat On Traffic Signals And Lighting Facilities On Olive Boulevard (State 340). Final Reading**

Summary: Approval of this ordinance allows the City Administrator to execute a maintenance agreement with MoDOT regarding maintenance responsibilities for black powder coating on traffic signals, lighting facilities and visual enhancements along Olive Boulevard.

2. **CONSENT AGENDA**

- a. **Council Meeting Minutes dated March 13, 2011**

- b. **Bill No. 5298 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A STP-Urban Program Grant Project With The Missouri Highways And Transportation Commission To Enable The City To Construct The West Olive Lighting Project. Final Passage**

Summary: The approval of this ordinance will allow the City Administrator to execute the necessary agreements to proceed with an STP-E grant project to install decorative lighting on West Olive between Cross Creek Dr. and Mason Rd.



CITY OF CREVE COEUR – AGENDA
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Summary: Approval of this ordinance allows the City Administrator to execute a maintenance agreement with MoDOT regarding maintenance responsibilities for black powder coating on traffic signals, lighting facilities and visual enhancements along Olive Boulevard.
- e. **Resolution No. 955 - A Resolution Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Purchase And Installation Of Four Wisconsin V-465d Leaf Vacuum Motors From L & C Truck Repair Inc., For An Amount Of \$38,992.44.**
Summary: The replacement of four leaf vacuum motors will restore our fleet of vacuums back to an optimum level to provide fall leaf collection service. There is currently funding available in the FY2011 budget to cover the cost.

BILLS PAYABLE REPORT

For Information Only

Summary: A report of bills payable dated March 23, 2011 in the amount of \$78,287.79 has been provided for Council review. No vote is required.

UNFINISHED BUSINESS

- 3. **Bill No. 5296 - An Ordinance Establishing Revised Donations Policy And Procedures Of The City Of Creve Coeur. Final Reading and Passage**



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Summary: This Bill is the same information as discussed with Substitute Resolution No. 949. Once in Ordinance form any alleged violations would be handled in the same manner as a conflict of interest claim.

4. Substitute Resolution No. 949 - A Resolution Approving Changes To The Donations Policy and Procedures of the City of Creve Coeur.

Summary: Council Member Rhoades has proposed changes to the donations policy regarding solicitations. Deferred at the March 14, 2011 Council meeting.

5. Bill No. 5297 - An Ordinance To Amend Chapter 405, The Zoning Ordinance, Of The Code Of Ordinances Of The City Of Creve Coeur, Missouri, By Adding Pet Spas As A Permitted Use In Commercial Zoning Districts "MX" Mixed Use, "PC" Planned Community, "GC" General Commercial, And "CB" Core Business, And Establishing Definition For Such Use. Final Reading and Passage

Summary: Chapter 405 does not currently permit pet spa services within any commercial zoning district. Ellen Parfenov of Willowbrook Dog Grooming has submitted an application to add pet spas to the list of permitted uses in the Planned Community zoning district. Planning Commission has recommended that such uses also be allowed in the "MX" Mixed Use, "GC" General Commercial, and "CB" Core Business districts. Section 205.060 (D), under Article IV Animal Regulations of the Public Health, Safety and Welfare Code will also be amended to include Pet Spas as an exception on the limitation of number of animals kept.

NEW BUSINESS

6. Bill No. 5301 - An Ordinance To Amend Chapter 405, The Zoning Ordinance, Of The Code Of Ordinances Of The City Of Creve Coeur, Missouri, By Restricting Horses To A Minimum Of Three Acres, With No More Than One Horse Per One Acre Of Fenced Pasture. First Reading

Summary: Section 205.030.A and Section 405.460.21 contain conflicting regulations governing the keeping of horses on residential property. The record before the City Council at the time of recodification of the Municipal Code clearly indicates an intention to eliminate said conflicts. Therefore, an application has been submitted by the Zoning Administrator to amend the code to eliminate the conflict in regulations.



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7. Bill No. 5302 - An Ordinance Authorizing The Issuance Of A New Conditional Use Permit For A Waterway Automotive Detail Center Located At 11664 Olive Boulevard. First Reading

Summary: Application was made by Michael Goldman, General Counsel for Waterway Gas & Wash, for a conditional use permit for a Waterway Automotive Detail Center, within the 2,360 square foot building at 11664 Olive Boulevard, in the “CB”, Commercial zoning district. Section 405.370(C)(1)(i)(3), car washes (except bus washing and truck washing) in the “CB”, Commercial zoning district require the issuance of a conditional use permit as provided in Section 405.1070, Conditional Use Permits.

8. Bill No. 5303 - An Ordinance To Adopt The International Property Maintenance Code, 2009 Edition First Reading

Summary: The building division is proposing the implementation of an apartment re-occupancy program. St. Louis County and other municipalities have had residential re-occupancy programs for years and have adopted the International Property Maintenance Code to establish minimum requirements and standards for maintaining existing residential dwelling units in a code-compliant manner.

9. Bill No. 5304 - An Ordinance To Revise The Miscellaneous Fees Portion Of The Community Development And Public Works Fee Schedule (Appendix B To Title IV) First Reading

Summary: This revision is needed to address fees specific to the apartment re-occupancy program.

10. Bill No. 5305 - An Ordinance Authorizing The Installation Of One (1) Fire Hydrant For Ladue Court Villas Located In The Cul-De-Sac At The End Of The Ladue Court Extension In The City Of Creve Coeur, Missouri. First Reading

Summary: Request by Creve Coeur Fire Protection District for Council to approve legislation to install a fire hydrant for Ladue Court Villas.



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11. Resolution No. 956 - A Resolution Directing The City Administrator To Commence Negotiations To Reconcile The Scope Of Projects Of The Olive Boulevard Transportation Development District To Available Sources Of Funds And Achieve Completion Of Such Projects As Soon As Practicable.

Summary: The proposed resolution will direct city staff to move toward completion of Olive TDD projects based on available funds as soon as practicable. Requested by Council Member Bryant.

APPOINTMENTS

12. Reappointment of Municipal and Provisional Judges

Summary: Municipal and Provisional Judge terms expire April 2011. They both were appointed to office in 2010 to fill unexpired terms. Both Judges wish to remain in office. The term begins April 12 and runs for a period of four years.

BUSINESS FROM THE MAYOR and CITY COUNCIL

13. Campaign Finance Disclosure Reports

Summary: Requested by Council Member Kistner

BUSINESS FROM CITY ADMINISTRATOR

14. Mill Crossing

Summary: Staff will provide a status report regarding compliance efforts pertaining to landscaping and other site deficiencies.

15. Delmar Gardens

Summary: Follow up to a Council request at the previous meeting to contact Delmar Gardens regarding a recent article in the St. Louis Business Journal concerning future development plans in Creve Coeur.

16. House Bill 534

Summary: Discussion of House Bill 534, which would end sharing of sales tax in St. Louis County. As a city with a large commercial base, the current formula results in Creve Coeur sharing a significant amount of sales tax dollars throughout the county. Creve Coeur shared \$984,000 in sales tax with St. Louis County and other cities over the last 12 months, or about 20% of our total receipts for our 1% sales tax.



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17.2011 Estimated Property Tax Rate

Summary: State law requires the City staff to submit an estimated tax rate by April of each year, no Council action is needed until the rate is formally established in September. Staff will review the estimated rate with the City Council.

Pursuant to Section 610.022 RSMo., the City Council could, at any time during the meeting, vote to close the public meeting and move to closed session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under Section 610.021(1) RSMo. and/or personnel matters under Section 610.021(13) RSMo. And/or employee matters under Section 610.021(3) RSMo. and/or real estate matters under Section 610.021(2) or other matters as permitted by Chapter 610.

Posted: _____ posted 3/25/11 3:45 pm
Deborah Ryan, MRCC
City Clerk

BILL No. 5298

ORDINANCE No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI AUTHORIZING THE EXECUTION OF A STP-URBAN PROGRAM GRANT PROJECT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TO ENABLE THE CITY TO CONSTRUCT THE WEST OLIVE LIGHTING PROJECT.

WHEREAS, the City of Creve Coeur strives to promote a beautiful and safe place for the residents to live, work and drive; and

WHEREAS, the City has been awarded grant funding under the STP-E program to assist with the cost to install decorative lighting along Olive Boulevard between Cross Creek Drive and Mason Road; and

WHEREAS, the attached "Exhibit A" is an agreement with the Missouri Department of Transportation (MoDOT) regarding the responsibilities and requirements of the STP-E Grant Program.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, AS FOLLOWS:

Section 1: The STP Agreement between the Missouri Highways and Transportation Commission and the City regarding the installation of decorative lighting along Olive Boulevard from Cross Creek Dr. to Mason Road attached hereto as Exhibit A is hereby approved and the City Administrator is authorized to execute same on behalf of the City and the City Clerk is authorized and directed to attest thereto. The Agreement as executed shall be in substantially the form of Exhibit A, with such changes therein as shall be approved by the officers of the City executing same, consistent with the provisions and intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and his designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient or proper in order to carry out the intent of this Ordinance, the matters herein authorized, and the rights and duties of the City under the Agreement.

Adopted this ____ day of _____ 2011.

A.J. Wang
President of City Council

Adopted this ____ day of _____ 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 of the City Charter
Attest:

Deborah Ryan, MRCC
City Clerk

CCO Form: RM12
Approved: 04/95 (MGB)
Revised: 12/10 (MWH)
Modified:

City of Creve Coeur
Olive Street Lighting

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: STP – 5526(637)
Award Year: 2011
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ENHANCEMENT FUNDS
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Creve Coeur, (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in 23 U.S.C. §101, §104 and §133, funds to be used for transportation enhancement activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation enhancement funds which are the subject of this Agreement are for the project at the following location:

Olive Boulevard (Route 340) street lighting from Cross Creek to Mason Road.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress

payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this

Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or

words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: No acquisition of additional right of way is anticipated in connection with Project STP-5526(637) or contemplated by this Agreement.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalks or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalks or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 80 percent not to exceed \$318,000. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein

improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly for amounts equal to or greater than \$10,000.00. The City shall repay any progress payments which involve ineligible costs

(18) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(19) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(20) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(21) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(22) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(23) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(24) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(25) OMB AUDIT: If the City expend(s) five hundred thousand dollars (\$500,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with OMB Circular A-133. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of OMB Circular A-133, if the City expend(s) less than five hundred thousand dollars (\$500,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(26) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 2011.

Executed by the Commission this ____ day of _____, 2011.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CREVE COEUR

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

East-West Gateway Council of Governments
FY 2011-2014 Transportation Improvement Program
Transportation Enhancement (STP-E) Funds
New Project Application

STP-E Project Location Map



EXHIBIT A

Project Schedule

Project Description:

Creve Coeur, Olive Street Lighting, STP-5526(637)

Task	Date
Date funding is made available or allocated to recipient	02/2011
Solicitation for Professional Engineering Services (advertised)	n/a
Engineering Services Contract Approved	n/a
Conceptual Study (if applicable)	n/a
Preliminary and Right-of-Way Plans Submittal	05/2011
Plans, Specifications & Estimate (PS&E) Submittal	07/2011
Plans, Specifications & Estimate (PS&E) Approval	08/2011
Advertisement for Letting	10/2011
Bid Opening	02/2012
Construction Contract Award or Planning Study completed (REQUIRED)	04/2012

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts
(included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all

related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA

each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of

a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,

quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this

transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



DEPARTMENT OF PUBLIC WORKS OFFICE MEMO

DATE: March 1, 2011

TO: Mark Perkins, City Administrator,

FROM: Jim Heines, Director of Public Works

SUBJECT: Recommendation to Execute an Agreement with the Missouri Highways and Transportation Commission

The City of Creve Coeur has been selected as a successful STP-E grant applicant for the West Olive Lighting Project. This is a federally funded grant opportunity administered by the Missouri Highways and Transportation Commission.

As a requirement of the grant the city must enter into an enabling agreement with the Missouri Highways and Transportation Commission committing to following the guidelines of the grant program.

Below is the anticipated timeline for this project:

<u>Item</u>	<u>Date</u>
Project submittals to MoDot	September/October 2011
MoDot Approval	November 2011
Bid	January 2012
Sign contracts	February 2012
Construction	April/July 2012

Public Works staff is recommending for the City Administrator to execute six copies of the attached agreement on behalf of City Council to retain the city's eligibility for grant reimbursement on this project.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI AUTHORIZING THE EXECUTION OF A STP-URBAN PROGRAM GRANT PROJECT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TO ENABLE THE CITY TO CONSTRUCT THE LADUE ROAD SIDEWALK PHASE II PROJECT.

WHEREAS, the City of Creve Coeur strives to promote a beautiful and safe place for the residents to live, work and drive; and

WHEREAS, the City has been awarded grant funding under the STP-E program to assist with the cost to replace the asphalt path along Ladue Road with a concrete sidewalk between Coeur de Ville and east of Graeser Road; and

WHEREAS, the attached "Exhibit A" is an agreement with the Missouri Department of Transportation (MoDOT) regarding the responsibilities and requirements of the STP-E Grant Program.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, AS FOLLOWS:

Section 1: The STP Agreement between the Missouri Highways and Transportation Commission and the City regarding the replacement of an asphalt path with a concrete sidewalk along Ladue Road attached hereto as Exhibit A is hereby approved and the City Administrator is authorized to execute same on behalf of the City and the City Clerk is authorized and directed to attest thereto. The Agreement as executed shall be in substantially the form of Exhibit A, with such changes therein as shall be approved by the officers of the City executing same, consistent with the provisions and intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and his designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient or proper in order to carry out the intent of this Ordinance, the matters herein authorized, and the rights and duties of the City under the Agreement.

Adopted this ____ day of _____ 2011.

A.J. Wang
President of City Council

Adopted this ____ day of _____ 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 of the City Charter

Attest:

Deborah Ryan, City Clerk

CCO Form: RM12
Approved: 04/95 (MGB)
Revised: 12/10 (MWH)
Modified:

City of Creve Coeur
Ladue Sidewalks

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: STP – 5526(636)
Award Year: 2011
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ENHANCEMENT FUNDS
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Creve Coeur, (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in 23 U.S.C. §101, §104 and §133, funds to be used for transportation enhancement activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation enhancement funds which are the subject of this Agreement are for the project at the following location:

Upgrade sidewalks and crosswalks on Ladue Rd. (Route 340), phase 2. Various locations from Coeur De Ville to Graeser.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in

place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose

such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United

States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: No acquisition of additional right of way is anticipated in connection with Project STP-5526(636) or contemplated by this Agreement.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalks or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalks or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalks or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 80 percent not to exceed \$415,470. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs.

Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly for amounts equal to or greater than \$10,000.00. The City shall repay any progress payments which involve ineligible costs

(18) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(19) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(20) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(21) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(22) VENUE: It is agreed by the parties that any action at law, suit in equity, or

other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(23) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(24) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(25) OMB AUDIT: If the City expend(s) five hundred thousand dollars (\$500,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with OMB Circular A-133. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of OMB Circular A-133, if the City expend(s) less than five hundred thousand dollars (\$500,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(26) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 2011.

Executed by the Commission this ____ day of _____, 2011.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CREVE COEUR

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Ladue Rd. Sidewalk Improvements



Project Schedule

Project Description:

Creve Coeur, Ladue Rd. Sidewalks, STP-5526(636)

Task	Date
Date funding is made available or allocated to recipient	02/2011
Solicitation for Professional Engineering Services (advertised)	n/a
Engineering Services Contract Approved	n/a
Conceptual Study (if applicable)	n/a
Preliminary and Right-of-Way Plans Submittal	05/2011
Plans, Specifications & Estimate (PS&E) Submittal	07/2011
Plans, Specifications & Estimate (PS&E) Approval	08/2011
Advertisement for Letting	10/2011
Bid Opening	02/2012
Construction Contract Award or Planning Study completed (REQUIRED)	04/2012

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts
(included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all

related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA

each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of

a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,

quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this

transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



DEPARTMENT OF PUBLIC WORKS OFFICE MEMO

DATE: March 1, 2011

TO: Mark Perkins, City Administrator,

FROM: Jim Heines, Director of Public Works

SUBJECT: Recommendation to Execute an Agreement with the Missouri Highways and Transportation Commission

The City of Creve Coeur has been selected as a successful STP-E grant applicant for the Ladue Road Sidewalk Phase II Project. This is a federally funded grant opportunity administered by the Missouri Highways and Transportation Commission.

As a requirement of the grant the city must enter into an enabling agreement with the Missouri Highways and Transportation Commission committing to following the guidelines of the grant program.

Below is the anticipated timeline for this project:

<u>Item</u>	<u>Date</u>
Project submittals to MoDot	September/October 2011
MoDot Approval	November 2011
Bid	February/March 2012
Sign contracts	April/May 2012
Construction	July/September 2012

Public Works staff is recommending for the Mayor to execute six copies of the attached agreement on behalf of City Council to retain the city's eligibility for grant reimbursement on this project.

BILL No 5300

ORDINANCE No _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI AUTHORIZING THE EXECUTION A MAINTENANCE AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR BLACK POWDER COAT ON TRAFFIC SIGNALS AND LIGHTING FACILITIES ON OLIVE BOULEVARD (STATE 340).

WHEREAS, the City of Creve Coeur strives to promote a beautiful and safe place for the residents to live, work and drive; and

WHEREAS, the City has funded visual enhancements along Olive Boulevard.; and

WHEREAS, the attached "Exhibit A" is an agreement with the Missouri Department of Transportation (MoDOT) regarding the responsibilities of maintaining city approved improvements along Olive Boulevard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, AS FOLLOWS:

Section 1: The maintenance agreement between the Missouri Highways and Transportation Commission and the City regarding the upkeep and maintenance of black powder coating on traffic signals and other visual enhancements along Olive Boulevard attached hereto as Exhibit A is hereby approved and the City Administrator is authorized to execute same on behalf of the City and the City Clerk is authorized and directed to attest thereto. The Agreement as executed shall be in substantially the form of Exhibit A, with such changes therein as shall be approved by the officers of the City executing same, consistent with the provisions and intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and his designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient or proper in order to carry out the intent of this Ordinance, the matters herein authorized, and the rights and duties of the City under the Agreement.

Adopted this 14th day of March 2011.

A.J. Wang
President of City Council

Adopted this 14th day of March 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 of the City Charter

Attest:

Deborah Ryan
City Clerk

CCO Form: TR35
Approved: 05/00 (BDG)
Revised: 02/10 (ASB)
Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
PAINTING OF TRAFFIC SIGNAL AND LIGHTING FACILITIES AGREEMENT**

This Agreement is made and entered into by and between the Missouri Highways and Transportation Commission (hereinafter, "Commission"), whose address is P.O. Box 270, 105 W. Capitol, Jefferson City, Missouri 65102, and the City of Creve Coeur (hereinafter, "City"), whose address is 300 N. New Ballas Road, Creve Coeur, MO 63141.

WITNESSETH:

WHEREAS, the Commission owns and operates, as part of the State Highway System, Route 340 located between New Ballas Road and Graeser Road in St. Louis County; and

WHEREAS, the City is desirous of performing certain tasks related to the painting of traffic signal and lighting facilities between New Ballas Road and Graeser Road in said county.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) PROPOSAL: The City proposes and the Commission will allow the painting of galvanized steel traffic signal and lighting facilities at this location.

(2) LOCATION: The general location of the facilities to be painted pursuant to this Agreement is at the intersections of Route 340 and Old Ballas Road, Craig Road, West Oak, Mary Meadows Lane, and Graeser Road in Creve Coeur, Missouri.

(3) COSTS: All costs associated with the painting of facilities, including, but not limited to work zone signing and traffic control during construction, will be borne entirely by the City, with no cost incurred by the Commission.

(4) TRAFFIC CONTROL: All work zone signs and traffic control devices to be used shall be in accordance with the latest revision of the Manual on Uniform Traffic Control Devices for Streets and Highways or as directed by the District Engineer or his authorized representative.

(5) PAIN T SPECIFICATIONS:

(A) The City shall have the paint manufacturers paint system and product data sheet, including color pigment information, submitted to the Commission's District Engineer for the Commission's review and approval. The color of the finish coat of paint must be approved by the Commission. All work done pursuant to this Agreement must be in accordance with Commission specifications and policies relating to painting of traffic signals and lighting equipment.

(B) The City shall provide certified performance data from an independent testing laboratory on samples formulated with the finish coat of the desired color that the system has performed satisfactorily for three years under exterior exposure tests.

(C) The painting of aluminum material, cabinets, or signal heads is not authorized by this Agreement.

(6) INSPECTION: The City will allow inspection and testing as necessary of the construction of the herein contemplated improvements by the Commission's District Engineer, or his authorized representative, at any time and shall take no attempts to prevent said inspection.

(7) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(8) COMMISSION RIGHT-OF-WAY: All painted facilities within the state-owned Right-of-Way shall remain the Commission's property, and all future alterations, modifications, or maintenance thereof, excluding the paint system, will be the responsibility of the Commission.

(9) MAINTENANCE: The City shall provide proper maintenance of the paint coating at its cost for continuation of appearance of the unique color including the painting of any replacement equipment installed or replaced by the Commission. The method of maintenance shall be mutually agreeable between the City and the Commission's District Engineer. Should the City elect to not repaint the facilities, the Commission may terminate this Agreement and the Commission's District Engineer shall have full discretion on future coatings to any of the painted signals or facilities painted pursuant to this Agreement.

(10) PERMITS: Before beginning work, the City shall secure from the Commission's District Engineer a permit for the proposed improvement. The City may provide written authority to the Commission's District Engineer enabling its contractor to obtain the permit as an agent for the City. Future painting shall be covered by separate permit.

(11) BOND: The City shall secure sufficient bond, as determined by the Commission's District Engineer or his authorized representative, for the work to be done pursuant to this Agreement within Commission right-of-way.

(12) HIGHWAY SPECIFICATIONS: All work done pursuant to this Agreement shall be in accordance with applicable portions of the latest editions of the Missouri Highways and Transportation Commission's Standard Specifications for Highway Construction and the Standard Plans for Highway Construction. The City shall provide a copy of its contractor's certification of material used.

(13) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the City and the Commission.

(14) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(15) AUDIT OF RECORDS: The City must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(16) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for any reason, including the convenience of the Commission, by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(17) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the state of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(18) MISSOURI NONDISCRIMINATION CLAUSE: The City shall also comply with all state and federal statutes applicable to City relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, et seq.); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, et seq.).

(19) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(20) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(21) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the City.

(22) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(23) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 2011.

Executed by the Commission this ____ day of _____, 2011.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CREVE COEUR

By _____

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

ACKNOWLEDGMENT BY CITY

STATE OF MISSOURI

SS

COUNTY OF ST. LOUIS

On this ____ day of _____, 2011, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the City of Creve Coeur and that the foregoing instrument was signed and sealed on behalf of the City and that he/she acknowledged said instrument to be the free act and deed of the City and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Notary Public
My Commission Expires: _____

ACKNOWLEDGMENT BY COMMISSION

STATE OF MISSOURI

SS

COUNTY OF ST. LOUIS

On this ____ day of _____, 2011, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the Missouri Highways and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said _____ acknowledged said instrument to be the free act and deed of said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Notary Public
My Commission Expires: _____

CITY OF CREVE COEUR

ORDINANCE NO. _____

BILL NO. _____

An Ordinance to authorize the Mayor to execute an agreement between the City of Creve Coeur and the Missouri Highways and Transportation Commission providing for the painting of traffic signal and lighting facilities on Commission Right-of-Way.

Be it ordained by the City Council of Creve Coeur as follows:

Section 1. That the Mayor is hereby authorized to execute on behalf of the City of Creve Coeur an agreement with the Missouri Highways and Transportation Commission providing for the painting of traffic signal and lighting facilities on Commission Right-of-Way.

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. Read three times, passed and approved on the day of _____, 2011.

APPROVED AS TO FORM

City Attorney

Mayor

Attest:

Presiding Officer

City Clerk

Chairman of the Board



DEPARTMENT OF PUBLIC WORKS OFFICE MEMO

DATE: March 1, 2011

TO: Mark C. Perkins, City Administrator,

FROM: Jim Heines, Director of Public Works

SUBJECT: Recommendation to Execute an Agreement with the Missouri Highways and Transportation Commission for the Maintenance of Black Powder Coat on Traffic Signals, Visual Enhancements and Lighting Facilities Along Olive Boulevard.

The City of Creve Coeur and adjacent developers have funded many improvements along Olive Boulevard such as black powder coat and illuminated street name signs on traffic signals and decorative lighting in medians. The aforementioned improvements have been constructed over the past 10 years and more are planned through the TDDs, CID, and private development.

The attached agreement, "Exhibit A" is a blanket agreement that covers current and future lighting improvements at various locations on Olive Boulevard within the City of Creve Coeur.

Public Works staff is recommending the execution of six copies of the attached agreement on behalf of City to confirm the city's maintenance responsibilities in regards to these improvements.



**MINUTES
CITY OF CREVE COEUR
CITY COUNCIL MEETING
300 N NEW BALLAS ROAD
Monday, March 14, 2011
7:30 PM**

CALL MEETING TO ORDER

A regular meeting of the City Council of the City of Creve Coeur was called to order by Council President Wang at the Creve Coeur Government Center, 300 North New Ballas Road on Monday, March 14, 2011.

PLEDGE OF ALLEGIANCE

Council President Wang led the Pledge of Allegiance.

INVOCATION

Council President Wang said the invocation and asked everyone to keep the people of Japan in their thoughts and prayers.

ROLL CALL

The following members were in attendance:

Mr. Kreuter	Council Member Ward I
Mrs. Kistner	Council Member Ward I
Mr. Wang	Council Member Ward II
Mrs. Nealey	Council Member Ward II
Mr. Haddenhorst	Council Member Ward III
Mr. Hoffman	Council Member Ward III
Mrs. Rhoades	Council Member Ward IV
Ms. Bryant	Council Member Ward IV

* - Mayor Dielmann was absent.

COMMENTS FROM THE GENERAL PUBLIC

David Caldwell resident of 257 Brooktrail Court asked why are the mowing contracts were being bid for two years and not one?

Jim Heines stated the City has gone with a one year bid in the past and the last round of bidding requested a two year option and the price dropped from previous years. Companies know if they can get a two year contract then they will have work. Financially it is advantageous for the City to go after the two year bid rather than the single year bid.

Mel Klearman resident of 739 Bergerac Drive and Director of the Graeser/Olive TDD stated he spoke with Mr. Heitz this week and inquired about a ceremony to celebrate the lighting of the traffic lights at the new intersection. Mr. Klearman stated that Mr. Heitz stated he didn't have an issue with a ceremony but it would need to be coordinated with the City and MoDOT. Mr. Klearman stated he recommends this ceremony take place. Mr. Klearman stated everyone needs to forget that he is a candidate for the election because he knows how to toot his own horn. It is an important statement to



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the citizens that the Council did something right. Mr. Klearman stated he is proposing that this request be taken seriously.

Council Member Kistner stated this is definitely an event worth celebrating and is in full support and will be working with staff to put something together.

Council Member Bryant stated although there was disagreement amongst Council on how to fund the project there was never any disagreement about whether or not it was an important project. There will probably not be any hesitation at all among any Council Member to support such an initiative but would defer to the Ward I Council Members to take the lead as this is their Ward.

Mel Klearman stated he would like to volunteer to assist in the project as there are two County Councilwomen that are involved with this project as well as a MoDOT Commissioner that resides in the community and they should be recognized also.

Council Member Bryant stated she is certain that Mrs. Kistner will include everyone.

Bob Fry resident 805 Country Manor Lane stated he is curious that the Delmar Garden question thing was going to be moved up on the agenda this evening and hopes that is still the case.

ACCEPTANCE OF AGENDA

Council Member Kreuter moved, seconded by Council Member Haddenhorst to approve the agenda as presented.

Council Member Bryant asked that Item 12 be moved up before Unfinished Business and become Item 3.

Council Member Rhoades requested the addition of Item 15a – City Committees, Under Business from Mayor and City Council.

Council Member Bryant moved, seconded by Council Member Kistner to approve as amended, with the vote upon such motion being as follows, to-wit:

Council Member Kreuter – Aye
Council Member Nealey – Aye
Council Member Haddenhorst – Aye
Council Member Rhoades – Aye
Council Member Wang – Aye
Council Member Bryant – Aye
Council Member Hoffman – Aye
Council Member Kistner – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.



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ANNOUNCEMENTS

The City Council meets the 2nd and 4th Monday of each month

6:00 p.m. – 7:00 p.m. – Work Session

7:00 p.m. – Regular Meeting of the City Council

1. CONSENT ORDINANCE READINGS

- a. **Bill No. 5295 - An Ordinance Amending The Adopted 2010-2011 General Fund Budget Of The City Of Creve Coeur By Authorizing Additional Appropriations And Unappropriations From Operating Departments. Final Reading**

City Clerk read Bill No. 5295 for the final time.

2. CONSENT AGENDA

Council Member Rhoades moved, seconded by Council Member Kistner to approve the Consent Agenda as presented.

- a. **Council Minutes dated February 28, 2011**
- b. **Resolution No. 950 - A Resolution Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A Contract With Outdoor Solutions For Grounds Maintenance Services For The Interstate 270/Olive Boulevard Interchange For The 2011 And 2012 Growing Seasons, For The Sum Of \$28,255.00 For The 2011 Growing Season.**
- c. **Resolution No. 951 - A Resolution Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A Contract With Outdoor Solutions For Mowing Services Within The City Right-Of-Way For The 2011 And 2012 Growing Seasons, For The Sum Of \$11,458.90 For The 2011 Growing Season.**
- d. **Resolution No. 952 - A Resolution Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A Contract With Turfgrass Professionals For Mowing Services In City Parks For The 2011 And 2012 Growing Seasons, For The Sum Of \$25,294.00 For The 2011 Growing Season.**
- e. **Bill No. 5295 - An Ordinance Amending The Adopted 2010-2011 General Fund Budget Of The City Of Creve Coeur By Authorizing Additional Appropriations And Unappropriations From Operating Departments. Final Passage**



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Council President Wang called the question for the approval of the Consent Agenda as presented, with the vote upon such motion being as follows, to-wit:

Council Member Kistner – Aye
Council Member Hoffman – Aye
Council Member Bryant – Aye
Council Member Wang – Aye
Council Member Rhoades – Aye
Council Member Haddenhorst – Aye
Council Member Nealey – Aye
Council Member Kreuter – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

BILLS PAYABLE REPORT

For Information Only

Summary: A report of bills payable dated March 8, 2011 in the amount of \$332,810.45 has been provided for Council review. No vote is required.

3. Delmar Gardens

Council Member Haddenhorst recused himself from the dais.

Council Member Bryant submitted for the record an article from the St. Louis Business Journal to show us what information we are learning from the media and ask the City Administrator to reach out to Delmar Gardens for clarification. (Exhibit A)

Council Member Rhoades stated she is in favor of having the City Administrator making an inquiry.

Council Member Kistner stated it is unfortunate when stories like this come out and it makes many people misunderstand or think that Delmar Gardens is in a process for development. Obviously staff members don't know about the project. Council Member Kistner stated they have a huge planning hurdle to go over especially in light of the litigation that that particular property recently went through.

Council Member Hoffman stated that the Council is obligated, with any project, to hear all sides and most in the room are familiar with past litigation and issues with that property. Council Member Hoffman stated we need to wait and see what they are proposing and have the City Administrator reach out to them and wait for their response.

Council Member Bryant stated a statement was made that no one in the City knows about the project and isn't sure if that is a true statement. Council Member Bryant stated the experience from the Delmar Gardens proposal on Olive indicated that there was some communication and possibly some sort of exchange of information and what was affectionately termed as "informal bedding". Council Member Bryant stated it is a fair question to ask.



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Mark Perkins stated staff has not heard from Delmar Gardens. The article was news to himself and the Planning Director, Mr. Langdon.

Paul Langdon stated in the past he has been asked by the Delmar Gardens attorney what does the current approval allows and that it is currently zoned single family. Paul Langdon stated the attorney asked what the City would consider and that the reply was single family houses. The Comprehensive Plan clearly set that as policy and it would be very difficult to do anything different.

Council Member Bryant stated anyone has the right to propose and submit any application but it is confusing and hard to understand why information like this would be put in the paper.

Mark Perkins stated he is unclear of what he needs to ask in his correspondence.

Council Member Kistner stated we need to be specific about a time because there is a lot of water under the bridge with Delmar Gardens. Council Member Kistner stated the article talks about the Dream Project.

Council Member Hoffman stated we need to be specific on what piece of property we are asking about also.

Bob Fry resident of 805 Country Manor Lane stated he feels that residential streets should stay residential streets.

Charlotte D'Alfonso resident of 128 Ladue Oaks stated she feels that this is a heated issue that gets residents' anxiety level up and we really can't do anything until we know what the plans are. It would behoove the developer and help the residents if we sent something to Delmar to let them know this discussion took place and encourage him to speak with residents beforehand.

Council Member Kistner stated it is fair to point out to Delmar that it doesn't get them off to a very good start when they make their announcement in the paper when City officials and area residents have to read about it.

Council Member Bryant stated it is very possible that they just got started off on the right foot and that our concerns may be premature, the problem is that we don't know that. We need to keep an open mind and they may come forth with something that the residents encourage the Council to approve. The article was a bad way to start the process all over again.

UNFINISHED BUSINESS

3a. Bill No. 5294 - An Ordinance Amending Section 240.040 Of The Creve Coeur Code Of Ordinances Pertaining To Greens Fees – Creve Coeur Golf Course. Final Reading and Passage

City Clerk read Bill No. 5294 for the final time.



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Council Member Nealey moved, seconded by Council Member Rhoades to approve Bill No. 5294, with the vote upon such motion being as follows, to-wit:

Council Member Kistner – Aye
Council Member Hoffman – Aye
Council Member Bryant – Aye
Council Member Wang – Aye
Council Member Rhoades – Aye
Council Member Haddenhorst – Aye
Council Member Nealey – Aye
Council Member Kreuter – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried. Bill No. 5294 becomes Ordinance No. 5179.

4. Substitute Resolution No. 949 - A Resolution Approving Changes To The Donations Policy and Procedures of the City of Creve Coeur.

City Clerk read Substitute Resolution No. 949.

Council Member Rhoades moved, seconded by Council Member Bryant to defer Substitute Resolution No. 949 until March 28, 2011, with the vote upon such motion being as follows, to-wit:

Council Member Kreuter – Aye
Council Member Nealey – Aye
Council Member Haddenhorst – Aye
Council Member Rhoades – Aye
Council Member Wang – Aye
Council Member Bryant – Aye
Council Member Hoffman – Aye
Council Member Kistner – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

5. Bill No. 5296 - An Ordinance Establishing Revised Donations Policy And Procedures Of The City Of Creve Coeur. First Reading

City Clerk read Bill No. 5296 for the first time.

Council Member Rhoades asked if anyone has any questions or issues since there were some concerns raised at the last meeting.

Council Member Kistner asked why it is being switched from a resolution to an ordinance.



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Carl Lumley stated there are two aspects: (i) it is not communicated very well to the public so it would not be in the code book and readily accessible and (ii) as part of the ethics code it lays out a better procedure if there is an allegation.

Council Member Kistner stated the main change was to take the current language and change it to those donations over a certain level receive approval from the Council and this would add to that the solicitation would require prior Council approval.

Carl Lumley stated that is one piece of it. The current policy sort of assumes that people are coming out of the blue offering to sponsor events. Obviously donors are asked to sponsor and this would avoid the embarrassment or controversy over a request. Secondly the major message on top of that is to avoid any misinterpretations to someone who happens to be a City official or employee asking for donations on a personal level that could be construed as a City donation request. Also clarifying that we are not getting into campaign finance but strictly other types of solicitations.

NEW BUSINESS

6. Bill No. 5297 - An Ordinance To Amend Chapter 405, The Zoning Ordinance, Of The Code Of Ordinances Of The City Of Creve Coeur, Missouri, By Adding Pet Spas As A Permitted Use In Commercial Zoning Districts "MX" Mixed Use, "PC" Planned Community, "GC" General Commercial, And "CB" Core Business, And Establishing Definition For Such Use. First Reading

City Clerk read Bill No. 5297 for the first time.

Paul Langdon, Director of Community Development made a presentation regarding this application. Mr. Langdon stated at the Monday, March 7, 2011 Planning and Zoning Commission meeting the Commission unanimously recommends approval.

Council Member Kistner asked if this type of use been defined in any other municipality?

Paul Langdon stated as far as he is aware Creve Coeur would be the first to codify a pet spa distinctive from general grooming.

Council Member Kistner asked about the language, by appointment only, and asked what would stop an owner from having open appointments during regular business hours and harboring a large number of animals?

Paul Langdon stated there is always a risk in any definition of terms where it becomes difficult if not impossible to enforce and administer through zoning. This would be one of those times. It is up to the business owners where they don't want to create a problem for adjacent tenants.

Carl Lumley stated in the specific application the 100 square foot limit would drive a smaller number than 20 and the Commission's discussion moved onto things like Petsmart that might have a



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subsection of their business devoted to this type of business and came up with the number of 20 as an absolute limit but think that they were more focused on the 100 square foot per pet first and then whether or not there was a line that they wanted to draw. Carl Lumley stated this particular applicant was at 10 or 12 as a maximum and it was their business plan.

Council Member Kreuter asked if this was a licensed profession from that State.

Paul Langdon stated not to his knowledge but the applicant could answer that.

Council Member Kreuter asked if P & Z had discussed addressing the noise level.

Paul Langdon stated it wasn't discussed but anything beyond conversational level which is 55 or 60 decibels would be reasonable if the Council chooses to go in that direction but P & Z did not discuss.

Ellen Parfenov stated currently no license is required for dog grooming.

Council Member Nealey asked if the animals would be kept in separate enclosures.

Ellen Parfenov stated they will crate the animals for safety issues.

Council Member Rhoades stated it is an interesting point that Council Member Kreuter raised regarding the decibel level and asked if there was a comment from the applicant.

Ellen Parfenov stated the animals are usually very calm during their procedures and stay relaxed, however they are dogs and there will be ultra sonic devices in the rooms to keep the dogs from barking.

Council Member Rhoades asked the applicant if she would object to a decibel limit because this is not only an ordinance for their business but a generic ordinance for future similar businesses.

Ellen Parfenov suggested language on excessive barking over 15 minutes.

Council Member Rhoades stated staff will work on something as this is only the first reading and the following meeting will be the final vote.

7. Bill No. 5298 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A STP-Urban Program Grant Project With The Missouri Highways And Transportation Commission To Enable The City To Construct The West Olive Lighting Project. First Reading.

City Clerk read Bill No. 5298 for the first time.

8. Bill No. 5299 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A STP-Urban Program Grant Project With The Missouri Highways And Transportation Commission To



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**Enable The City To Construct The Ladue Road Sidewalk Phase II Project.
First Reading**

City Clerk read Bill No. 5299 for the first time.

9. Bill No. 5300 - An Ordinance Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A Maintenance Agreement With The Missouri Highways And Transportation Commission For Black Powder Coat On Traffic Signals And Lighting Facilities On Olive Boulevard (State 340). First Reading

City Clerk read Bill No. 5300 for the first time.

10. Resolution No. 953 - A Resolution Of The City Council Of The City Of Creve Coeur, Missouri Authorizing The Execution Of A Contract With Horner & Shifrin, Inc. For Engineering Services Related To Updates To The City's Storm Water Master Plan For A Fee Not To Exceed \$69,110.00.

City Clerk read Resolution No. 953.

Council Member Bryant moved, seconded by Council Member Rhoades to approve Resolution No. 953.

Jim Heines, Director of Public Works stated the City's existing storm water master plan, entitled Stormwater Evaluation – Final Report, was developed for the City in 1998 and was finalized in 1999. This report documented, estimated, and prioritized various stormwater-related issues that were brought to the City's attention through responses to a questionnaire on the subject and through public meetings. In the 12 years since the report was developed, several of the issues documented in it have been addressed and other have either changed in nature or have simply gotten worse. Jim Heines stated the 1999 report has become outdated and somewhat unreliable as a resource for assessing or prioritizing the needs of the City. The Stormwater Committee is recommending Horner and Shifrin, Inc. to update the plan. The proposed plan will be integrated with the City's GIS System. This will assist staff to use the information in the report while providing the public with the means to easily and intuitively browse and analyze the same information.

Council Member Bryant stated the vision for this updated Master Plan and one of the things she has been asking for is a way to incorporate subdivision detention/retention areas. Most trustees don't have any idea what they are dealing with or know what is involved to maintain an area. Is there a way to bring all of that together with this process?

Jim Heines stated that is not part of what we are planning to do. MSD does have information available for the detention area and that information could be put on the City's website and shared with all of the subdivision trustees. To include those areas would be nearly a completely different study.



CITY OF CREVE COEUR – MINUTES
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Council Member Kistner asked if anywhere through the process there was going to be an open forum or townhall meeting to hear from the residents before we begin pairing it down.

Gene Rovak, representative of Horner and Shifrin, Inc stated allowing input through the process is not a big deal. There could be a cross link made available on the City's website which would allow a place for feedback in the form of questions or comments.

Council Member Kistner stated she would like to see stormwater meetings by Ward at some point during this process.

Council Member Hoffman stated it would be helpful if the subdivision trustees received a letter notifying them so they can get that information out at their homeowners meetings.

Robert Kent resident of 13084 Fern Trails Lane stated the State of Missouri, MSD and the City are chartered to cover this area along with two public charters for fire departments. Mr. Kent stated as a tax payer he pays taxes to all of the entities. The City is essentially subsidizing MSD by taking on this project. If anyone would read the MSD Charter it is quite clear that it is their responsibility. They also have the opportunity for subdistricts. So from a taxpayer's standpoint Mr. Kent stated he is paying for MSD, Fire Department and the City and paying extra to subsidize MSD because the City is transferring funds to take care of MSD functions. Mr. Kent stated the City needs to go back to MSD and see why they won't prepare the plan for the City and at the most provide a subdistrict. Mr. Kent asked that Council vote no on this because it is MSD's responsibility.

David Caldwell stated he endorses Mr. Kent's comments that this is really MSD's responsibility. This was a \$30,000 to do this plan and this was on last year's CIP and now it is a \$70,000 project and part of it is on this year's CIP. The Council is being asked to approve something on a CIP that hasn't even had a public hearing yet. Mr. Caldwell asked why we always need to hire a pricey consultant for projects like this. We have staff and we have residents who know where the issues are, why do we need a consultant? Does Council think that staff is incapable of prioritizing and taking care of these puddles around the City?

Council Member Haddenhorst stated we have heard enough to at least defer this item until we receive additional information. Council Member Haddenhorst stated he would like to hear back from MSD before moving forward on a vote.

Council Member Kreuter stated he would like to defer this resolution and ask the City Administrator to contact MSD regarding their position and ask Jim Heines to summarize the hourly rates and timing of the different proposals and return that information to the Council before a final vote is taken on this.

Council Member Bryant asked that any contact with MSD be in writing so that there is a paper trail.

Mark Perkins stated for clarification Council is looking to approach MSD essentially asking them to take on the role of developing some sort of a plan for our area and if they aren't going to do it then why not.



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Robert Kent stated he would like to hear from legal counsel regarding the City's authority in taking over MSD's authority.

Council Member Haddenhorst moved, seconded by Council Member Kreuter to table Resolution No. 953 until a response is received back from MSD, with the vote upon such motion being as follows, to-wit:

Council Member Kreuter – Aye
Council Member Nealey – Aye
Council Member Haddenhorst – Aye
Council Member Rhoades – Aye
Council Member Wang – Aye
Council Member Bryant – Aye
Council Member Hoffman – Aye
Council Member Kistner – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

11. Resolution No. 954 - A Resolution Of The City Council Of The City Of Creve Coeur, Missouri Authorizing Execution Of An Agreement With Erb Equipment Company, Inc. For The Purchase Of A 2011 John Deere 544k Front End Loader For An Amount Of \$121,240.

City Clerk read Resolution No. 954.

Council Member Haddenhorst moved, seconded by Council Member Kistner to approve Resolution No. 954, with the vote upon such motion being as follows, to-wit:

Council Member Kistner – Aye
Council Member Hoffman – Aye
Council Member Bryant – Aye
Council Member Wang – Aye
Council Member Rhoades – Aye
Council Member Haddenhorst – Aye
Council Member Nealey – Aye
Council Member Kreuter – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

BUSINESS FROM THE MAYOR and CITY COUNCIL

12. Delmar Gardens

Previously discussed in meeting.

13. Security Matters



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Mark Perkins stated since the last discussion the Council asked the Planning and Zoning Commission to provide comments regarding the use of security screening at public meetings. The Planning and Zoning Commission is willing to begin the use of metal detectors at their meetings and plans to subject Commission members to the process as well. This can be implemented for the next scheduled Council and P & Z meetings.

Council Member Kistner suggested if we are considering this we should do so on a trial basis and see what kind of impacts it makes on all parties involved.

Council Member Nealey stated we should try on a trial basis and see how it goes.

Council Member Hoffman stated he recommends a three-month period and to keep a cost analysis for both P & Z and Council and return the information after three months to reevaluate.

Council Member Hoffman moved, seconded by Council Member Bryant to move forward with security measures to be put in place for a 90-day trial period at both the Council and P & Z meetings, with the vote upon such motion being as follows, to-wit:

Council Member Kreuter – Aye

Council Member Nealey – Aye

Council Member Haddenhorst – Aye

Council Member Rhoades – Aye

Council Member Wang – Aye

Council Member Bryant – Aye

Council Member Hoffman – Aye

Council Member Kistner – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

14. Deer Management

Council Member Nealey stated she, Chief Eidman, Mark Perkins and Jaysen Christensen met with Erin Shank with the Missouri Department of Conservation to discuss the deer issue in Creve Coeur. The options that are available for deer management include controlled hunting, sharp shooting and trap and kill. The justification of getting into a deer mitigation program is a public safety one. We do not have a wide spread problem in Creve Coeur but do have a fairly serious one that is concentrated in a small region of the City. Although small it is comparable to the deer density problems that Town and Country is having. The other concern is that it seems deer are becoming less afraid of humans. At a minimum come back at the next meeting with a no-feed ordinance because we don't have anything in place right now. The no feed ordinance could have an effect on the behavior of the deer. The ordinance will also address the coyote issue because they are also becoming less afraid of being close to humans. We have a range of options to review and choose from. There are two adjacent municipalities that have use one approach or another and we could obtain information from them on how their particular programs worked.



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Mark Perkins stated a no feed ordinance would be difficult to enforce but we would rely on neighbors to let the City know if they have a deer feeder or salt lick in their yard.

Council Member Rhoades stated she is in favor of a no-feed ordinance and also considering establishing a short-term deer task force or maybe having the REB look at it.

Council Member Haddenhorst stated the deer are wild animals but are becoming domesticated which is becoming a serious public issue that needs to be addressed. Council Member Haddenhorst stated he is fully in support of a sharp shooter and the meat being given to local food pantry.

Council Member Kistner thanked Council Member Nealey for all of her hard work on this issue. It might be helpful to hold a single forum for public comment and bring forth the information received from the forum and we could then make a decision. There has to be a will to act or not and this doesn't need to be a long drawn out process.

Council Member Nealey stated she is of the opinion that there is a need. Holding an informational meeting regarding this issue would be helpful.

Mark Perkins stated we could present this information to the Public Safety Committee meeting which is scheduled for Wednesday and get their feedback regarding a sharp shooter program as well as a no-feed ordinance before we bring the issue back to the Council for consideration.

15. Olive Blvd TDD Agreement Exit Strategy

Council Member Bryant stated she requested this item to make sure this information is documented. There is a memo dated October 6, 2010 along with two Ward IV columns and two CreveCoeurvoter.com pieces. (Exhibit B) Council Member Bryant stated what motivated her to bring this back up was the that most recent CID vote sent a strong signal that City Council was not willing to bailout the TDD and the second thing was it was nice to discover that another Council Member, Council Member Hoffman, also expressed an interest in an exit strategy. It is time to bring this back up and have a discussion about what our options are. With the provision that there are going to be some legal issues involved in this and it is going to be a long term process which will extend beyond her term of office. Because of the legal issue there will probably be multiple conversations in Executive Session of which she will not be privy to. There are legal concerns and considerations that the Council will have to take into account because there are rights that we just need good legal guidance on.

Council Member Kistner stated she had asked City Administrator Mark Perkins to get the same conversation going but as a result of agenda items and not having a full Council for discussion the item has been postponed.

Mark Perkins stated the City Attorney and himself has had discussion with Garrick Hamilton who represents the Koman Group regarding how the project can be moved off base as we have been at a stalemate with regard to the 2007 supplemental financing agreement. Mark Perkins stated we would expect by the end of the month we would have something back to Capital Land with yet another option



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for them to consider in order completing the financing of Phase I and we are pushing hard on that. Mark Perkins stated in discussion of close out we are talking about completing whatever projects the Olive Blvd TDD can complete and the TDD will continue for many years because there is debt service that will need to be completed. The Olive Blvd TDD will not go anywhere but the projects certainly can be completed as soon as possible.

Council Member Bryant moved, seconded by Council Member Rhoades to direct the City Administrator to move forward in the process to begin an exit strategy for the Olive Blvd TDD to complete any projects eligible as soon as possible.

Council Member Kistner stated for discussion purposes what if the City finds another funding source to get all the projects completed?

Council Member Bryant stated at the risk of sound repetitive the TDD Board and the Council has looked and many different funding sources over many years including eminent domain, blight, CID, etc. The motion stands to get the projects scheduled completed and shut down the TDD as quickly as possible.

Council Member Rhoades stated in a memo in the packet it states that if the supplemental funding plan does not come to fruition then the Olive Blvd has approximately \$850,000 to use for completion of projects. Council Member Rhoades asked if the funding does not come to fruition who makes the final decision regarding the TDD to decide what to do with the remaining funds.

Mark Perkins stated he would need to work with the City Attorney in reviewing the agreements carefully and discuss with MoDOT on what priority for street/intersection upgrades should be completed.

Council Member Rhoades asked if the Council has any authority to make a decision regarding the TDD?

Mark Perkins stated it all depends on the language in the agreements.

Council Member Kistner stated she feels very strongly that the Council should inform themselves before taking a vote that limits the options of the Council and then move forward at the first opportunity.

Council Member Kreuter stated he wouldn't vote right now to shut the TDD down.

Council Member Wang stated he is concerned with the procedural process to vote on an important issue under business from Mayor and Council.

Council Member Hoffman asked for clarification that if new funding becomes available would the motion currently on the table allow it?

Council Member Bryant stated no, the TDD is to spend the funding that they currently have available and be done. Council Member Bryant stated she will withdraw her current motion for this meeting but it



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will be moved for approval at the next meeting. It is time to do this and we have been through enough cycles.

15a. City Committees

Council Member Rhoades requested that Council give this subject some thought about the number of committees we have and the function of each committee. We could explore options to reorganize and make the committees we have more efficient. These committees consume a large amount of staff time to manage.

Mark Perkins stated a couple of years ago we did combine a couple and some of the task forces that have been created are moving along and really could be combined with standing committees.

BUSINESS FROM CITY ADMINISTRATOR

16. Subdivision Street Lighting Policy

Mark Perkins stated Mr. Caldwell's subdivision's street lights have never been paid as there was never an application made with the City. Mark Perkins stated staff will be contacting the trustees of that subdivision to make application for lighting subsidization.

17. Court Receipts

Dan Smith stated currently court receipts are paid by walk in customers downstairs at the court office. The mail is opened by the court and collections during court proceedings. Dan Smith stated the auditors have suggested a change of internal control regarding court payments. Staff would like to proceed with this and include the new cost in next year's budget.

Council Member Kistner asked if there is any reason why a finance person couldn't provide that service in the court area as to not inconvenience the customer if they have a court or procedural question.

Dan Smith stated he would have to send an employee down to court and then we would lose segregation of duties.

18. Transportation Development District Updates

Mark Perkins stated at Olive and Graeser staff expects the traffic light to be operational by March 28th or sooner. Mark Perkins stated he, Dan Smith and the Olive/Graeser TDD are looking at prospects for issuing bonds or some other financing tool and that review is ongoing. Ribbon cutting is being possibly scheduled around mid April once all for the improvements are completed.

Mark Perkins stated the connector road is under construction in the Olive Blvd TDD and should be completed within 30 days.

* Council Member Kistner left Council Chambers at 10:27 p.m.



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Council Member Rhoades moved, seconded by Council Member Haddenhorst go into Executive Session at 10:29 p.m., pursuant to Section 610.020 (1) (legal matters), (3) (personnel) and Section 610.022, with the vote upon such motion begin as follows, to-wit:

Council Member Kreuter - Aye
Council Member Nealey – Aye
Council Member Haddenhorst – Aye
Council Member Rhoades – Aye
Council Member Wang – Aye
Council Member Bryant - Aye
Council Member Hoffman – Aye

The vote on the motion being 7 ayes and 0 nays, motion carried.

Council Member Haddenhorst moved, seconded by Council Member Hoffman to adjourn Executive Session at 10:48 p.m. with the vote upon such motion being as follows, to-wit:

Council Member Bryant – Aye
Council Member Hoffman – Aye
Council Member Nealey – Aye
Council Member Rhoades – Aye
Council Member Wang – Aye
Council Member Haddenhorst – Aye
Council Member Kreuter - Aye

The vote on the motion being 7 ayes and 0 nays, motion carried.

Council Member Haddenhorst moved, seconded by Council Member Bryant to adjourn at 10:51 p.m., with the vote upon such motion being as follows, to-wit:

Council Member Nealey – Aye
Council Member Haddenhorst – Aye
Council Member Rhoades - Aye
Council Member Bryant – Aye
Council Member Hoffman - Aye
Council Member Kreuter – Aye
Council Member Wang – Aye

The vote on the motion being 7 ayes and 0 nays, motion carried.

Deborah Ryan
City Clerk

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 Of The City Charter

RESOLUTION NO. 955

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI AUTHORIZING THE PURCHASE AND INSTALLATION OF FOUR WISCONSIN V-465D LEAF VACUUM MOTORS FROM L & C TRUCK REPAIR INC. FOR AN AMOUNT OF \$38,992.44.

WHEREAS, the City Council of the City of Creve Coeur recognizes a need to provide quality equipment to city employees; and

WHEREAS, the purchase and installation of four new leaf vacuum motors is necessary to keep the fleet at an optimum level and provide valuable city services to the residents; and

WHEREAS, these goods have been competitively bid as required by the City of Creve Coeur Code of Ordinances.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, AS FOLLOWS:

Section 1: The agreement between **L&C Truck Repair Inc.** and the City to supply and replace four leaf vacuum motors for \$38,992.44 is hereby approved. The agreement as executed shall be consistent with the provisions and intent of this Resolution and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and his designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient or proper in order to carry out the intent of this Resolution, the matters herein authorized, and the rights and duties of the City under the agreement.

Adopted this 28th day of March, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 Of The City Charter

Attest:

Deborah Ryan, MRCC
City Clerk



DEPARTMENT OF PUBLIC WORKS OFFICE MEMO

DATE: March 10, 2011

TO: Mark Perkins, City Administrator

FROM: Jim Heines, Director of Public Works

SUBJECT: Recommendation for the Purchase and Installation of Four New Leaf Vacuum Motors From L&C Truck Repair Inc.

Background

The City of Creve Coeur provides a spring and fall leaf collection services to the residents. At the height of the fall leaf season we require at least eight vacuum units on the road to meet the demand. To consistently keep eight vacuums on the street we require the fleet to stay at 10 vacuums to provide spares to be substituted while break downs are being repaired. Our current fleet consists of 10 leaf vacuums of which four are fairly new and have diesel motors, the remaining six vacuums are older and have gas motors. Public Works staff has inventoried our fleet of leaf vacuums and assessed our needs to keep the fleet running at an optimum level. Of the six gas motor units, two have motors that require immediate replacement and two more are in poor condition. This being said we have obtained proposals for the replacement of four motors and impellers. These replacement motors have a 5-6 year life expectancy. The result is listed below:

<u>Vendor</u>	<u>Unit Cost</u>	<u>Total Cost</u>
L & C Truck Repair Inc.	\$9,748.11	\$38,992.44
Key Equipment & Supply	\$10,456.15	\$41,824.60
Scott's Power Equipment	\$10,775.67	\$43,102.68

Budget Status

The Street Division has \$12,000 identified in FY 2011 account #01-31-41-9503 for a leaf vac motor replacement. In addition, there is \$36,000 identified in the approved FY 2011 CIP account #02-61-71-9516 for a replacement leaf vacuum. The amount of available funding between these two accounts is \$48,000.

Recommendation

Public Works staff is recommending to deviate from the FY2011 budget (replace 1 leaf vacuum and 1 motor) approved almost a year ago and utilize the available funding to best manage the current conditions of our existing fleet (replace 4 leaf vacuum motors). By following this plan, Public Works staff will have ten vacuums running in good condition to attack the fall leaf collection program rather than eight good vacuums and two poorly running vacuums.

The recommendation is to award the purchase and installation of four Wisconsin V465D engines to L&C Truck Repair, Inc., 10616 Liberty Ave., St. Louis, MO 63132 in an amount of \$38,992.44 (four units @ \$9,748.11 each).



City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, Missouri 63141
(314) 432-6000
www.creve-coeur.org

DATE: March 23, 2011

TO: Mark Perkins, City Administrator

FROM: Daniel Smith, Director of Finance

SUBJECT: Bills Payable

For your information and transmittal to the City Council, is a list of bills payable dated March 23, 2011, in the amount of \$78,287.79.



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

NO DEPARTMENT

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00188	175		031111	11-Mar-11	DACY, JAMES	SEWER LATERAL REPAIR REIMB	02-00-00-1901	2,960.00
					ST LOUIS COUNTY AND MUNICIPAL POLICE			
00332	0		03082011	08-Mar-11	ACADEMY	PPCT RECERT GOTTSCHALK/HARTMAN	01-00-00-2414	90.00
00092	13		24605	02-Mar-11	ST LOUIS COUNTY JUSTICE SERVICES	PRISONER HOUSING	01-00-00-2410	150.00
00466	0		31011	10-Mar-11	VINCIGUERRA JEWELERS	REFUND O/P 2011 BUSINESS LICENSE	01-00-00-4402	630.00
Sum of Invoices								3,830.00



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

LEGISLATIVE

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-11-12-6253	190.71
Sum of Invoices								190.71



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

Administration

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
01120	0		022811	28-Feb-11	ASI	FLEX SPENDING ADMIN-FEB 2011	01-12-11-6203	345.60
00114	11		832132988X0308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-12-11-6253	71.89
00034	0		031011	10-Mar-11	CHRISTENSEN, JAYSEN	MILEAGE REIMB-FEB 2011	01-12-11-7307	24.00
01262	0	P001160	23797	28-Feb-11	SPECIALTY MAILING	HANDLING OF MARCH 2011 NEWSLET	01-12-11-6203	272.67
00053	0		37301-42	03-Mar-11	ST JOHN'S MERCY CORPORATE HEALTH	PREPLACEMENT PHYS.-MCBRIDE	01-12-11-6271	85.00
Sum of Invoices								799.16



CITY OF CREVE COEUR
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IT

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00070	1		I110317141	17-Mar-11	TECH ELECTRONICS	PROGRAM PHONES PD AND WCDC	01-12-51-6213	312.50
						LASERFICHE AVANTE SERVER FOR MS		
						SQL W/WORKFLOW & ASSOCIATED		
00029	0	P001171	100250	02-Feb-11	BUSCOMM INCORPORATED	SOFTWARE	01-12-51-7332	7,056.77
00029	0		100333	09-Feb-11	BUSCOMM INCORPORATED	SOFTWARE	01-12-51-7332	249.61
							<i>Sum of Invoices</i>	<i>7,618.88</i>



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

Finance

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00005	1		1648205	08-Mar-11	AMERICAN STAMP	SELF-INKING STAMP	01-13-11-7304	40.05
00114	11		832132988X0308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-13-11-6253	67.09
00016	0		31411	14-Mar-11	COLLECTOR OF REVENUE	SALES TAX REPORT	01-13-11-6202	20.00
00072	0		XT00053640	28-Feb-11	HARRIS	SITE LICENSE UPDATE FOR CCS	01-13-11-6202	500.00
Sum of Invoices								627.14



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

MUNICIPAL COURT

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00050	0		INV0015869	15-Mar-11	REJIS	SUBSCRIPTIONS FEES-MARCH 2011	01-13-14-6202	2,231.06
Sum of Invoices								2,231.06



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

INTERDEPARTMENTAL

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00045	1		1322653661	10-Mar-11	OFFICE DEPOT	USB DRIVE, MEMORY CARDS-PW	01-13-15-7312	45.51
00045	1		554810486001	11-Mar-11	OFFICE DEPOT	1 OF 2 SIGNHOLDERS-MUNIT COURT	01-13-15-7312	26.23
00045	1		554821127001	11-Mar-11	OFFICE DEPOT	2 OF 2 SIGNHOLDERS-MUNI COURT	01-13-15-7312	26.23
00045	1		'555554723001	14-Mar-11	OFFICE DEPOT	STAPLERS, LABEL WRITER	01-13-15-7312	105.70
00045	1		555554783001	14-Mar-11	OFFICE DEPOT	4 PR SCISSORS	01-13-15-7312	26.76
00166	1		280972	14-Mar-11	OFFICEMAX	SEALING TAPE, SLOT PUNCH FOR IDs	01-13-15-7312	73.92
00076	1		34437865	11-Mar-11	PEPSI-COLA GEN. BOT. IN	SODA-CITY HALL VENDING	01-13-15-7304	472.35
00077	0		2810727	07-Mar-11	QUILL	TONER CARTRIDGES-PUB WKS	01-13-15-7312	266.38
01169	0		107509628	11-Mar-11	STAPLES ADVANTAGE	VARIOUS OFFICE SUPPLIES	01-13-15-7312	291.71
01169	0	107486748	107486748	10-Mar-11	STAPLES ADVANTAGE	TONER CARTRIDGE-BLDG DIV.	01-13-15-7312	107.58
01169	0		107289915	28-Feb-11	STAPLES ADVANTAGE	ID BADGE REELS	01-13-15-7312	11.22
01169	0		107439408	09-Mar-11	STAPLES ADVANTAGE	TONER CARTRIDGES-CHIEF'S OFFC	01-13-15-7312	296.32
01169	0		107421330	08-Mar-11	STAPLES ADVANTAGE	FILE JACKETS-BLDG DEPT	01-13-15-7312	16.79
01169	0		107421212	08-Mar-11	STAPLES ADVANTAGE	DESK ACCESSORIES-BLDG DEPT.	01-13-15-7312	53.43
01169	0		107420883	08-Mar-11	STAPLES ADVANTAGE	MANILA FOLDERS FOR PD	01-13-15-7312	22.26
Sum of Invoices								1,842.39



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

ICE ARENA

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00088	0		104066	14-Mar-11	ARCHWAY LIGHTING SUPPLY, INC.	BULBS FOR DIELMANN COMPLEX	06-14-31-6212	222.80
00114	11		832132988 EF 3/11	01-Mar-11	AT&T	CELL PHONE-FEBRUARY 2011	06-14-31-6253	75.29
00015	1		452729949	10-Mar-11	CINTAS CORP. #452	CLEANING SUPPLIES (031011)	06-14-31-7301	1.92
00015	1		452729949	10-Mar-11	CINTAS CORP. #452	UNIFORMS (031011)	06-14-31-7308	5.01
00015	1		452733077	17-Mar-11	CINTAS CORP. #452	CLEANING SUPPLIES (031711)	06-14-31-7301	1.92
00015	1		452733077	17-Mar-11	CINTAS CORP. #452	UNIFORMS (031711)	06-14-31-7308	5.01
00084	1		3878141813.	01-Mar-11	COCA-COLA	SODA FOR BIRTHDAY PARTIES	06-14-31-7304	23.85
00080	0		8053-174-5	11-Mar-11	DIERBERGS	BIRTHDAY CAKES	06-14-31-7304	49.98
00080	0		7884-110-5	05-Mar-11	DIERBERGS	BIRTHDAY CAKE	06-14-31-7304	20.99
00081	1		9482511137	10-Mar-11	GRAINGER	PARTY FOR OLYMPIA	06-14-31-6211	3.66
00082	0		0468286	15-Mar-11	METROLIFT PROPANE	PROPANE FOR OLYMPIA	06-14-31-7307	213.58
00164	0		014358	14-Mar-11	NEW SYSTEM CARPET & BUILDING CARE	CLEANING SUPPLIES	06-14-31-7301	122.30
00711	1		302747637	15-Feb-11	TERMINIX	PEST CONTROL ICE ARENA	06-14-31-6212	32.00
Sum of Invoices								778.31



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

GOLF MAINTENANCE

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
01476	0		43236	18-Feb-11	ACCUPRODUCTS INT'L	DIGITAL DEPTH GAUGE	06-14-32-7302	204.92
00141	0		111223	24-Feb-11	ELECTRO BATTERY	BATTERY FOR TRACTOR CUSHMAN	06-14-32-6211	74.90
00953	0		84009	08-Mar-11	GATEWAY GOLF CARS, LTD	CLUTCH BOLT FOR EZGO	06-14-32-6210	3.35
00117	0		9021452	07-Mar-11	HOME DEPOT	PAINT & LIGHT BULBS MAINT BLDG	06-14-32-7301	14.29
00040	0		751108	11-Mar-11	MILBRADT	FUEL PUMP & CLAMPS BLOWER	06-14-32-6211	34.97
00175	0		774122-00	02-Mar-11	MTI DISTRIBUTING, INC.	MOTOR FOR FOLEY GRINDER	06-14-32-6211	457.15
01084	0		CD1419586	28-Feb-11	R&R PRODUCTS, INC.	REEL BACK LAPPER	06-14-32-9503	409.86
00116	0		9645	07-Mar-11	SAM'S CLUB	MOTOR OIL	06-14-32-6211	45.76
00173	0		IN091191	01-Feb-11	SUPREME TURF PRODUCTS	CUPS & FLAGS FOR GOLF COURSE	06-14-32-6212	140.80
Sum of Invoices								1,386.00



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

PRO SHOP

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount	
00121	0		922239943	25-Feb-11	CALLAWAY GOLF	GOLF BALLS FOR RESALE	06-14-33-8324	222.00	
00121	0		922247579	28-Feb-11	CALLAWAY GOLF	GOLF BALLS FOR RESALE	06-14-33-8324	126.00	
00217	1		931644509	21-Feb-11	NIKE USA, INC.	GOLF GLOVES FOR RESALE	06-14-33-8325	569.84	
00711	1		302747637	15-Feb-11	TERMINIX	PEST CONTROL PRO SHOP	06-14-33-6212	32.00	
Sum of Invoices									949.84



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

SNACK BAR

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00015	1		452729949	10-Mar-11	CINTAS CORP. #452	WIPING TOWELS (031011)	06-14-34-7301	5.17
00015	1		452733077	17-Mar-11	CINTAS CORP. #452	WIPING TOWELS (031711)	06-14-34-7301	5.17
00084	2	P001142	3878141813	01-Mar-11	COCA-COLA	DRINKS FOR RESALE (8317)	06-14-34-8317	147.25
00084	2	P001142	3878141813	01-Mar-11	COCA-COLA	PAPER PRODUCTS (8321)	06-14-34-8321	188.80
00959	0		85673	16-Feb-11	OMNI REFRIGERATION SERVICES, INC.	REF/FREEZER REPAIR CONCESSION	06-14-34-6211	384.40
00116	0	P001145	8648	17-Mar-11	SAM'S CLUB	GENERAL SUPPLIES (7304)	06-14-34-7304	15.98
00116	0		8648.	17-Mar-11	SAM'S CLUB	SNACKS FOR RESALE	06-14-34-8319	283.60
00116	0		1940	05-Mar-11	SAM'S CLUB	SNACKS FOR RESALE	06-14-34-8319	29.79
Sum of Invoices								1,060.16



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

BUILDING MAINTENANCE

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		832132988X0308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-16-11-6253	31.79
00102	0		699973	08-Mar-11	BEYERS LUMBER	FAUCET, FLOORING-RESTROOM REPAIR	01-16-11-6212	80.60
00010	0		881425	15-Mar-10	BRANNEKY HARDWARE	LEGS FOR SINCK IN P.D.	01-16-11-6212	23.99
00015	1		45726646	03-Mar-11	CINTAS CORP. #452	UNIFORM RENTAL (3/3/11)	01-16-11-7308	10.00
00015	1		452729940	10-Mar-11	CINTAS CORP. #452	UNIFORM RENTAL (3/10/11)	01-16-11-7308	10.00
00081	1		9474977254	01-Mar-11	GRAINGER	FLOOR CABLE COVER	01-16-11-6212	84.29
00117	0		1050757	15-Mar-11	HOME DEPOT	TOILET FIXTURE AND SUPPLIES	01-16-11-6212	256.83
00164	0		012427	10-Jan-11	NEW SYSTEM	BATHROOM CLEANER	01-16-11-7301	54.20
<i>Sum of Invoices</i>								551.70



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

POLICE-ADMIN

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00335	0		137674	04-Mar-11	ARCH ENGRAVING	2 RETIREMENT PLAQUES	01-21-11-7306	119.95
00114	11		826147039X0308	01-Feb-11	AT&T	WIRELESS PHONES FOR ADMIN	01-21-11-6253	130.11
00002	0		1000703171313	04-Mar-11	HAHN, LISA	MAILING OF APPLICANT TESTS	01-21-11-6203	5.65
00148	0		C25089A	08-Mar-11	I/O SOLUTIONS	SCORING OF 5 TESTS+SHIPPING	01-21-11-6203	82.00
00154	0		217236453	04-Mar-11	KONICA MINOLTA BUSINESS SOLUTIONS	QUAR. MAINT. RECORDS COPIER	01-21-11-6213	420.75
00125	0		237533	04-Mar-11	LEON UNIFORM	CASE FOR RETIRMENT BADGE	01-21-11-7306	29.95
00125	0		232512	09-Feb-11	LEON UNIFORM	CIT AND PISTOL EXPORT BAR	01-21-11-7308	109.50
00332	0		031611	16-Mar-11	ST LOUIS COUNTY AND MUNICIPAL POLICE ACADEMY	MEMBERSHIP 3 OFFICERS	01-21-11-6261	375.00
00092	4		24724	07-Mar-11	ST LOUIS COUNTY TREASURER	MARCH CARE CONTRACT	01-21-11-6202	23.91
00178	0	P001012	197898	15-Mar-11	WARNER COMMUNICATIONS CORP.	MONTHLY MAINT FEE	01-21-11-6211	456.33
Sum of Invoices								1,753.15



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

POLICE-INVESTIGATIONS

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		826147039X0308	01-Feb-11	AT&T	WIRELESS PHONES FOR INVEST	01-21-21-6253	185.95
00094	1		134955	16-Mar-11	FIRESTONE	CAR 2423 EMISSIONS INSPECTION	01-21-21-6202	24.00
00094	1		134955	16-Mar-11	FIRESTONE	CAR 2423 3000 MILE SERVICE	01-21-21-6210	17.99
01228	0		1432814-20110228	28-Feb-11	LEXISNEXIS	MONTHLY USER FEES	01-21-21-6202	175.00
01478	0		66938	08-Mar-11	SOUTHERN UNIFORM & EQUIPMENT ST LOUIS COUNTY AND MUNICIPAL POLICE	2 KEVLAR HELMETS	01-21-21-9503	499.80
00332	0		031611	16-Mar-11	ACADEMY	MEMBERSHIP 6 OFFICERS	01-21-21-6261	750.00
00273	1		T1102016	01-Mar-11	ST LOUIS UNIVERSITY	BLOOD SCREEN FOR JASON MATHIS	01-21-21-6202	75.00
Sum of Invoices								1,727.74



**CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING**

3/23/2011

POLICE-PATROL

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		826147039X0308	01-Feb-11	AT&T	WIRELESS PHONES FOR PATROL	01-21-22-6253	301.95
00095	1		208253	07-Mar-11	DOBBS TIRE & AUTO	2 TAHOE TIRES	01-21-22-6210	215.00
00234	1		343352	24-Feb-11	ED ROEHR SAFETY PRODUCTS	TASER TGTS, CARTRIDGES, BATTS.	01-21-22-7313	616.45
00096	0	P001172	114802	28-Feb-11	EVS	CHANGEOVER-CAR 2413	01-21-22-6210	2,045.50
00096	0	P001172	114793	22-Feb-11	EVS	CHANGEOVER-CAR 2404	01-21-22-6210	1,315.50
00096	0	P001172	114798	24-Feb-11	EVS	CHANGEOVER-CAR 2414	01-21-22-6210	1,760.50
00096	0	P001172	114794	22-Feb-11	EVS	CHANGEOVER-CAR 2410	01-21-22-6210	1,440.50
00096	0	P001172	114796	22-Feb-11	EVS	CHANGEOVER-CAR 2407	01-21-22-6210	1,440.50
00096	0	P001172	114792	22-Feb-11	EVS	CHANGEOVER-CAR 2406	01-21-22-6210	605.00
00096	0	P001172	114792	22-Feb-11	EVS	CHANGEOVER-CAR 2406	01-21-22-6210	835.50
00094	1		132896	25-Jan-11	FIRESTONE	2419 TIRE REPAIR & BALANCE	01-21-22-6210	19.48
00094	1		134674	08-Mar-11	FIRESTONE	CAR 2424 3000 MILE; REAR BRKS	01-21-22-6210	114.98
00094	1		134719	09-Mar-11	FIRESTONE	MOUNT TAHOE TIRE ON RIM	01-21-22-6210	17.73
00094	1		134649	08-Mar-11	FIRESTONE	CAR 2417 30,000 MILE SERVICE	01-21-22-6210	241.55
00094	1		134669	08-Mar-11	FIRESTONE	CREDIT ON INVOICE 134649	01-21-22-6210	(46.83)
00094	1		134628	07-Mar-11	FIRESTONE	INSTALL TIRE ON TAHOE	01-21-22-6210	32.97
00094	1		134677	08-Mar-11	FIRESTONE	CREDIT ON INVOICE 134628	01-21-22-6210	(18.54)
00347	1		437517	15-Mar-11	KUSTOM SIGNALS, INC.	REPAIR VIDEO CAMERA CPU CAR 3	01-21-22-6211	155.30
00347	1		436729	03-Mar-11	KUSTOM SIGNALS, INC.	REPAIR CPU CAR 9 VIDEO CAMERA	01-21-22-6211	251.30
00831	1		0165MO	03-Mar-11	NASRO	1-YR MEMBERSHIP ED DAVIS	01-21-22-6262	40.00
					ST LOUIS COUNTY AND MUNICIPAL			
00332	0		031611	16-Mar-11	POLICE ACADEMY	MEMBERSHIP 41 OFFICERS	01-21-22-6261	5,125.00
00266	0		228195	17-Mar-11	SUNTRUP	2405 REPLACE HARNESS CONNECTOR	01-21-22-6210	143.12
00490	0		46012	03-Jan-11	TRADEMARK CREATIVE	(27) BACKPACKS FOR CERT	01-21-22-7314	499.50
Sum of Invoices								17,151.96



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

PUBLIC WORKS

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount	
00114	11		308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	6253	263.83	
00607	0		84080-1	28-Feb-11	GBA MASTER SERIES, INC.	ANNUAL SUPPORT & MAINTENANCE	6203	2,800.00	
Sum of Invoices									3,063.83



**CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING**

3/23/2011

STREETS

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00131	1		111813273	28-Feb-11	AIRGAS MID AMERICA	WELDING GAS/TANKS	01-31-41-7307	40.74
00114	15		3149941534 3/11	27-Feb-11	AT&T	IRRIGATION SENSOR-12015 OLIVE	01-31-41-6253	35.00
00114	15		3149891849 3/11	19-Feb-11	AT&T	IRRIGATION SENSOR-OLIVE/I270	01-31-41-6253	90.41
00114	15		3143178753 3/11	19-Feb-11	AT&T	IRRIGATION SENSOR-ST. MONICAS	01-31-41-6253	35.00
00114	11		832132988X0308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-31-41-6253	138.14
00008	1		4389646	11-Mar-11	BEARING HEADQUARTERS	BEARINGS FOR SALT SPREADER	01-31-41-7310	164.48
00008	1		4389139	10-Mar-11	BEARING HEADQUARTERS	BEARINGS FOR 1-TON SALT SPRDER	01-31-41-7310	97.64
00010	0		881103	09-Mar-11	BRANNEKY HARDWARE	ROASTING PAN-SHOP KITCHEN	01-31-41-6212	79.99
00010	0		881056	10-Mar-11	BRANNEKY HARDWARE	OVEN CLEANER	01-31-41-7301	9.58
00010	0		881056	10-Mar-11	BRANNEKY HARDWARE	FACE MASK	01-31-41-7308	12.99
00010	0		880745	04-Mar-11	BRANNEKY HARDWARE	SMALL TOOLS FOR SHOP	01-31-41-7302	31.55
00010	0		881029	08-Mar-11	BRANNEKY HARDWARE	PAINT BRUSHES, SAND	01-31-41-7305	4.22
00010	0		881052	10-Mar-11	BRANNEKY HARDWARE	LETTERS, NUMBERS FOR SIGNS	01-31-41-7311	79.96
00013	1		1763-167768	08-Mar-11	CARQUEST	BRAKES FOR TRUCK #103	01-31-41-6210	118.26
00013	0		1763-167780	08-Mar-11	CARQUEST	ROTOR REPAIRS-TRUCK #103	01-31-41-6210	75.21
00013	0		1763-167612	04-Mar-11	CARQUEST	FILTERS FOR LIMB CHIPPERS	01-31-41-6211	149.16
00013	0		1763-167805	08-Mar-11	CARQUEST	PAINT FOR STEEL PLATE-LADUE	01-31-41-7305	24.31
00011	0		32000652	07-Mar-11	CARTER-WATERS LLC	CONCRETE TOOLS	01-31-41-7305	30.39
00099	0		1231847	28-Feb-11	CEEKAY SUPPLY	WELDING GAS/TANKS	01-31-41-7307	57.04
00394	0	P001139	11-1184	05-Mar-11	CHUCK'S BOOTS	WORK BOOTS-BOYD & CALLAHAN	01-31-41-7308	239.98
00015	1		452729946	10-Mar-11	CINTAS CORP. #452	SAFETY MATS (3/10/11)	01-31-41-6212	36.46
00015	1		452729946	10-Mar-11	CINTAS CORP. #452	CLEANING SUPPLIES (3/10/11)	01-31-41-7301	18.53
00015	1		452729947	10-Mar-11	CINTAS CORP. #452	UNIFORM RENTAL (3/10/11)	01-31-41-7308	37.16
00235	0	P001068	ACO150-1011-74	08-Mar-11	CITY OF CHESTERFIELD	344.36 TONS ROAD SALT	01-31-41-7310	14,511.33
00205	1		SVI004948	08-Mar-11	CK POWER PRODUCTS. CORP.	GENERATOR MAINTENANCE-SHOP	01-31-41-6211	305.00
00127	0		173464	12-Jan-11	ERB EQUIPMENT COMPANY	ALTERNATOR REPAIR-FRONT LOADER	01-31-41-7310	639.91
00413	1		D29179	22-Feb-11	FASTSIGNS	NUMBERS FOR TRUCK LIC PLATES	01-31-41-6210	108.00
01231	0	P001103	030311	03-Mar-11	FICK SUPPLY SERVICE INC	REMOVAL OF 1,045 YD LEAVES	01-31-41-6202	2,769.25
00023	1		158160	04-Mar-11	FRED WEBER, INC	GABION STONE	01-31-41-7305	42.68
00128	1		S2938540.001	03-Mar-11	FROST ELECTRIC	ELECTRICAL SUPPLIES	01-31-41-6212	135.49
00128	1		S2937191.001	01-Mar-11	FROST ELECTRIC	CONDUIT-RUN ELECTRIC TO BACKLT	01-31-41-6212	23.36



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

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STREETS

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00117	0		5084705	11-Mar-11	HOME DEPOT	LEAF VAC SIGNS	01-31-41-7311	18.29
00156	0		0046830	07-Mar-11	L & C TRUCK REPAIR, INC.	HYDROLIC CLUTCH-TRUCK 306	01-31-41-6210	332.09
00156	0		0046831	07-Mar-11	L & C TRUCK REPAIR, INC.	REPLACE DOOR LATCHES ON TRK #305	01-31-41-6210	480.04
00100	0		22713	04-Mar-11	MISSOURI PETROLEUM	CRACK SEAL MATERIAL	01-31-41-7305	520.60
00100	0		22751	11-Mar-11	MISSOURI PETROLEUM	CRACK SEALER	01-31-41-7305	372.40
00411	0		101954	04-Mar-11	N.B. WEST CONTRACTING CO.	COLD PATCH-POTHOLE REPAIRS	01-31-41-7305	390.00
00411	0		101992	11-Mar-11	N.B. WEST CONTRACTING CO.	COLD PATCH-POTHOLE REPAIR	01-31-41-7305	183.00
01095	1		511851	08-Mar-11	NAPA AUTO PARTS	SOCKET ADAPTER FOR TIRE GUN	01-31-41-6210	39.48
00164	0		012909	27-Jan-11	NEW SYSTEM CARPET & BUILDING CARE	ICE MELT, CALCIUM BLEND	01-31-41-7310	505.76
00818	0		026342	12-Mar-11	NU WAY CONCRETE FORMS	FORMS FOR LADUE SIDEWALK	01-31-41-7305	333.90
00970	0		1388-356674	08-Mar-11	O'REILLY AUTO PARTS	SCANNING TOOL-CHECK CODES ON TRUCKS	01-31-41-6210	229.99
00169	1		71011017	07-Mar-11	PURCELL TIRE CO.	TIRES & ALIGNMENT-TRK 203	01-31-41-6210	410.25
00169	1		71007135	07-Dec-10	PURCELL TIRE CO.	CREDIT MEMO	01-31-41-6211	(232.01)
00270	1		32093-00	09-Mar-11	TERMINAL SUPPLY CO.	YELLOW MARKER LIGHTS-TRUCKS	01-31-41-6210	15.12
00270	1		32093-00	09-Mar-11	TERMINAL SUPPLY CO.	YELLOW MARKER LIGHTS-EQUIPMENT	01-31-41-6211	15.12
00270	1		30123-00	01-Mar-11	TERMINAL SUPPLY CO.	SHOP SUPPLIES	01-31-41-7302	71.79
00092	14		030811	08-Mar-11	TREASURER, ST. LOUIS COUNTY	VEHICLE MAINT-FEBRUARY 2011	01-31-41-6210	2,150.45
00311	0		511449	11-Mar-11	WEBER CHEVROLET	REPAIR OF TRUCK #205	01-31-41-6210	302.19
Sum of Invoices								26,279.68



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

HEALTH & WELFARE

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-31-42-6253	31.99
01480	1		2110176462	15-Feb-11	IESI MO - CHAMP LANDFILL LLC	SMALL LOAD LANDFILL FEE	01-31-42-6214	88.79
Sum of Invoices								120.78



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

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PARKS

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-31-43-6253	36.82
00010	0		881052	10-Mar-11	BRANNEY HARDWARE	PRUNERS	01-31-43-7302	59.95
00013	0		1763-167712	07-Mar-11	CARQUEST	FILTERS FOR MOWERS	01-31-43-6211	26.20
00015	1		452729946	10-Mar-11	CINTAS CORP. #452	CLEANING SUPPLIES (3/10/11)	01-31-43-7301	18.53
00015	1		452729947	10-Mar-11	CINTAS CORP. #452	UNIFORM RENTAL (3/10/11)	01-31-43-7308	37.15
00173	0		INV091780	09-Mar-11	SUPREME TURF PRODUCTS	FERTILIZER	01-31-43-7303	680.00
Sum of Invoices								858.65



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

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COMMUNITY DEVELOPMENT - PLANNING

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00114	11		308201	08-Mar-11	AT&T	CELL PHONES-FEBRUARY 2011	01-32-11-6253	173.50
00213	0		0308-11-1	08-Mar-11	MCLAUGHLIN COURT REPORTING SERVICES, INC	CRT REPORTER-P&Z MTG 3/7/11	01-32-11-6203	107.00
00303	1		10276306	02-Mar-11	MISSOURI LAWYERS MEDIA	PUB HRG NOTICE-WATERWAY	01-32-11-6260	35.96
00303	1		10276296	02-Mar-11	MISSOURI LAWYERS MEDIA	AMENDMENT	01-32-11-6260	37.12
00303	1		20961294	14-Feb-11	MISSOURI LAWYERS MEDIA	PUB HRG NOTICE-PET SPAS	01-32-11-6260	35.96
Sum of Invoices								389.54



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

COMMUNITY DEVELOPMENT - BUILDING

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount
00044	1		265992316-111	09-Mar-11	NEXTEL	CELL PHONES 2/6 - 3/5/11	01-32-61-6253	280.61
Sum of Invoices								280.61



CITY OF CREVE COEUR
ACCOUNTS PAYABLE LISTING

3/23/2011

CAPITAL IMPROVEMENTS

Vendor Number	Address Number	Purchase Order	Invoice Number	Invoice Date	Vendor Name	Description	GL Account	Invoice Amount	
00606	0	P001086	PAY #5	17-Mar-11	HORNER & SHIFRIN INC	PAY #5 EMERSON RD CONCEPT PLAN	02-61-71-9510-11603	4,454.00	
01417	0	P001104	PAY #2	18-Mar-11	GEOTECHNOLOGY, INC.	ASPHALT PAVEMENT CORING SERVICE	02-61-71-9510-11606	342.50	
Sum of Invoices									4,796.50
GRAND TOTAL OF ALL INVOICES									78,287.79

**AN ORDINANCE ESTABLISHING REVISED DONATIONS POLICY AND
PROCEDURES OF THE CITY OF CREVE COEUR.**

WHEREAS, prevention of fraud and corruption is an important objective for any organization, and

WHEREAS, the City of Creve Coeur desires to encourage the prevention and reporting of any fraud or corruption which may occur within its organization, and

WHEREAS, in 2004 the City of Creve Coeur originally adopted an anti-fraud and corruption policy in response to recommendations made by the City's auditors, and

WHEREAS, it is recognized that solicitation of donations by individual City officials or employees from parties having current or potential contracts, applications or other formal business before the City can create a potential conflict of interest, and

WHEREAS, amending and codifying the current policy to address solicitation of donations by individual City officials or employees helps the City to maintain the integrity of its relationships with vendors, developers, service providers, or any other parties having current or pending interests with the City,

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

SECTION 1. The revised Donations Policy and Procedures of the City are hereby established and incorporated into Chapter 130 Article III of the City Code of Ordinance as follows:

A. The following statement of purpose is added as Section 130.050.D:

This policy also establishes procedures and guidelines regarding the solicitation and acceptance of donations to the City for use by its citizens, employees and officials. Employees and officials as individuals are also subject to the City's Anti-Fraud & Corruption Policy. A uniform set of procedures shall be followed in solicitation and acceptance of all donations and proper approval shall be obtained prior to solicitation or acceptance. All cash, equipment, in-kind services, materials, donated to the City, sponsorship arrangements, and business discount offers to City employees and/or officials shall be accounted for in accordance with the procedures set forth in this policy.

B. The following definitions are added to Section 130.060:

Donation. For purposes of this policy, the term "donation" means a monetary contribution and/or equipment, in-kind goods or services, or business discounts, which a City department or the City would accept and for which the donor would not receive any goods or service in return.

Business Discount. For the purposes of this policy, the term “business discount” means any offer, formal or informal, to discount the normal purchase price of any item for City employees and/or officials because of their affiliation with the City of Creve Coeur. Such offers may include coupons, promotional discounts, and other programs that would provide special discounted rates to City employees and/or officials that are not extended to the general public.

Sponsorship. For the purposes of this policy, the term “sponsorship” means an arrangement in which a person would make a donation in support of a City event and the City would provide in return benefits such as name recognition and special participation in the event.

C. The following is added as new Section 130.070.C (and existing Sections 130.070.C-G are re-lettered accordingly):

1. Donations and sponsorships valued at \$1,000 or less.

a. The City Administrator will consider the guidelines established in subsection C.3 of this policy and either accept or reject offers of donations of money, equipment and in-kind contributions or sponsorships to the City up to \$1,000.

b. Donated money will be expended for general purposes or specified purposes, if agreed upon with the donor, as one-time supplements to the City’s operating budget. Donations of equipment will be considered based on program outcomes, department goals and needs. Each donation will be evaluated for usefulness, and costs of potential replacement/rental rates will be considered. In-kind contributions and sponsorships, or business discounts for specific events will be treated in the same way as donated funds.

c. The City Administrator will accept or reject donations to the City and sponsorship arrangements with the City and business discount offers for City employees and/or officials with a cumulative value of up to \$1,000. Acceptance of such discount offers by individuals shall comply with the policies and procedures set forth in the City’s Anti-Fraud and Corruption Policy. Unless otherwise directed by the City Council, the City Administrator shall determine any necessary allocation of gifts to the City.

d. Donations, sponsorships, and business discounts that are approved by the City Administrator shall be recorded by the Office of the City Administrator. Recorded information shall include the name of the donor or sponsor, a description of the donation, sponsorship or discount including approximate material value, and the date of approval by the City Administrator.

2. Donations and sponsorships valued at more than \$1,000.

a. For monetary, equipment and in-kind contributions, sponsorships, or discounts with material values over \$1,000, a report to the City Council will be written outlining the purpose of each proposed transaction and any relevant considerations of the guidelines provided in subsection C.3. The City Council will decide, on a per-case basis, if donations or sponsorships should be accepted or rejected. Corporations offering in-kind contributions will be requested to state the value of the offered item or service.

b. All donations and sponsorships valued at more than \$1,000 either separately or cumulatively during a calendar year require City Council approval. Subsequent to Council's acceptance, procedures for handling transactions of more than \$1,000 shall be the same as those for the acceptance of transactions valued at \$1,000 or less.

3. Guidelines for Accepting Donations

The following criteria shall be considered in the acceptance or rejection of all donations:

- a. Does acceptance of funds, equipment or in-kind services, materials, or business discounts, present a conflict of interest for the City or its employees? Regardless of the value, donations shall not be accepted if there is reason to believe there may be a conflict of interest. Examples may include donations from:
 1. donors that are involved in a matter under current review with a pending outcome with any City process such as any zoning or development matter, building inspection, police investigation, property maintenance code investigation, or any investigation into the violation of municipal code.
 2. contractors, vendors, or persons seeking to provide services/materials to the City of Creve Coeur.
- b. Do restrictions upon the use of the item or funds make it practical to accept?
- c. Do restrictions on disposal or retention of the item or funds make it practical to accept?
- d. Is required accounting for the item or funds excessively difficult?
- e. Would donated materials or equipment require extensive repair or maintenance, and if so, is maintenance support available?
- f. Does the equipment or materials require the purchase of additional items to be useful?
- g. Will the donation result in an increase to the City's budget? Donations are to be considered one-time supplements and should not be used to develop new

programs or services which would require budget supplements from the City in the current or subsequent years.

4. Solicitations

a. Solicitation of donations to the City shall be subject to this subsection C.4 as well as the same procedures that would apply to acceptance of an unsolicited donation under subsection C.3. Approval of a solicitation shall constitute approval of acceptance unless the terms and conditions required for acceptance are materially different from those included with the solicitation.

b. City officials and employees shall obtain approval prior to soliciting donations to the City. If the solicitation is for a donation of less than \$1,000, approval shall be obtained from the City Administrator. If the solicitation is for a donation of \$1,000 or more, approval shall be obtained from the City Council.

c. Other than a donation solicitation approved pursuant to subsection C.4.b, no elected or appointed City official or employee of the City shall directly solicit anything of value, for any purpose, from a person or corporation:

1. that is currently seeking or subject to official action of, or doing business with, the City, or anticipated to be doing so in the immediate future; or
2. whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

d. City officials and employees soliciting donations in compliance with this policy (i.e. either with approval or after restrictions no longer apply) from those that are or have previously engaged in the conduct set forth in subsection C.4.c of this policy, shall make clear that such solicitations are not connected to or presented as requests for payment for services rendered and otherwise strive to avoid any semblance of impropriety.

e. Those soliciting donations are prohibited from exerting any form of pressure upon those they have benefited through official acts.

f. City officials and employees shall not offer any form of "special access" to themselves in exchange for donations.

g. City officials and employees shall not solicit anything of value, for a private purpose, through the use of the City's letterhead, official stationary, assigned City email address, or any other means that suggest that the solicitation is made with authority or on behalf of the City.

BILL NO. 5296

ORDINANCE NO. _____

h. City officials shall not directly solicit anything of value from City employees. City employees shall not directly solicit anything of value from their subordinates. Notwithstanding the foregoing, fundraising campaigns directed to all employees may be approved by the City Administrator.

i. This policy does not apply to solicitations of campaign contributions. Such activities are subject to separate regulations, including Chapter 130 RSMo.

D. Existing Section 130.070.C (hereby changed to 130.070.D) is revised so that the first sentence reads as follows:

Any complaint regarding a violation of the provisions of Section 130.070(A) or Section 130.070(C) shall be presented to the Missouri Ethics Commission established under Section 105.955 RSMo. or its successor.

SECTION 2: This Ordinance shall take effect in accordance with Section 3.11(g) of the Charter.

ADOPTED THIS ____ DAY OF _____, 2011.

A. J. Wang
President Of City Council

APPROVED THIS ____ DAY OF _____, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 of the City Charter

ATTEST:

Deborah Ryan
City Clerk

SUBSTITUTE RESOLUTION NO. 949

A RESOLUTION APPROVING CHANGES TO THE DONATIONS POLICY AND PROCEDURES OF THE CITY OF CREVE COEUR.

WHEREAS, prevention of fraud and corruption is an important objective for any organization and,

WHEREAS, the City of Creve Coeur desires to encourage the prevention and reporting of any fraud or corruption which may occur within its organization and,

WHEREAS, in 2004 the City of Creve Coeur originally adopted an anti-fraud and corruption policy in response to recommendations made by the City's auditors and,

WHEREAS, it is recognized that solicitation of donations by individual City officials or employees from parties having current or potential contracts, applications or other formal business before the City can create a potential conflict of interest and,

WHEREAS, amending the current policy to address solicitation of donations by individual City officials or employees helps the City to maintain the integrity of its relationships with vendors, developers, service providers, or any other parties having current or pending interests with the City.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI AS FOLLOWS:

SECTION 1. The Donations Policy and Procedures of the City are hereby revised to read as follows:

Section 1. Purpose

The purpose of this policy is to establish procedures and guidelines regarding the solicitation and acceptance of donations to the City for use by its citizens, employees and officials. Employees and officials as individuals are also subject to the City's Anti-Fraud & Corruption Policy. A uniform set of procedures shall be followed in solicitation and acceptance of all donations and proper approval shall be obtained prior to solicitation or acceptance. All cash, equipment, in-kind services, materials, donated to the City, sponsorship arrangements, and business discount offers to City employees and/or officials shall be accounted for in accordance with the procedures set forth in this policy.

Section 2. Definitions

1. Donation. For purposes of this policy, the term "donation" means a monetary contribution and/or equipment, in-kind goods or services, or business discounts, which a City department or the City would accept and for which the donor would not receive any goods or service in return.

2. Business Discount. For the purposes of this policy, the term "business discount" means any offer, formal or informal, to discount the normal purchase price of any item for City employees and/or officials because of their affiliation with the City of Creve Coeur. Such offers may include coupons, promotional discounts, and other programs that would provide special discounted rates to City employees and/or officials that are not extended to the general public.

SUBSTITUTE RESOLUTION NO. 949

3. Sponsorship. For the purposes of this policy, the term “sponsorship” means an arrangement in which a person would make a donation in support of a City event and the City would provide in return benefits such as name recognition and special participation in the event.

Section 3. Policy and Procedures

1. Donations and sponsorships valued at \$1,000 or less.

- a. The City Administrator will consider the guidelines established in Section 4 of this policy and either accept or reject offers of donations of money, equipment and in-kind contributions or sponsorships to the City up to \$1,000.
- b. Donated money will be expended for general purposes or specified purposes, if agreed upon with the donor, as one-time supplements to the City's operating budget. Donations of equipment will be considered based on program outcomes, department goals and needs. Each donation will be evaluated for usefulness, and costs of potential replacement/rental rates will be considered. In-kind contributions and sponsorships, or business discounts for specific events will be treated in the same way as donated funds.
- c. The City Administrator will accept or reject donations to the City and sponsorship arrangements with the City and business discount offers for City employees and/or officials with a cumulative value of up to \$1,000. Acceptance of such discount offers by individuals shall comply with the policies and procedures set forth in the City's Anti-Fraud and Corruption Policy. Unless otherwise directed by the City Council, the City Administrator shall determine any necessary allocation of gifts to the City.
- d. Donations, sponsorships, and business discounts that are approved by the City Administrator shall be recorded by the Office of the City Administrator. Recorded information shall include the name of the donor or sponsor, a description of the donation, sponsorship or discount including approximate material value, and the date of approval by the City Administrator.

2. Donations and sponsorships valued at more than \$1,000.

- a. For monetary, equipment and in-kind contributions, sponsorships, or discounts with material values over \$1,000, a report to the City Council will be written outlining the purpose of each proposed transaction and any relevant considerations of the guidelines provided in Section 4 of this policy. The City Council will decide, on a per-case basis, if donations or sponsorships should be accepted or rejected. Corporations offering in-kind contributions will be requested to state the value of the offered item or service.
- b. All donations and sponsorships valued at more than \$1,000 either separately or cumulatively during a calendar year require City Council approval. Subsequent to Council's acceptance, procedures for handling transactions of more than \$1,000 shall be the same as those for the acceptance of transactions valued at \$1,000 or less.

Section 4. Guidelines for Accepting Donations

The following criteria shall be considered in the acceptance or rejection of all donations:

SUBSTITUTE RESOLUTION NO. 949

1. Does acceptance of funds, equipment or in-kind services, materials, or business discounts, present a conflict of interest for the City or its employees? Regardless of the value, donations shall not be accepted if there is reason to believe there may be a conflict of interest. Examples may include donations from:
 - a. donors that are involved in a matter under current review with a pending outcome with any City process such as any zoning or development matter, building inspection, police investigation, property maintenance code investigation, or any investigation into the violation of municipal code.
 - b. contractors, vendors, or persons seeking to provide services/materials to the City of Creve Coeur.
2. Do restrictions upon the use of the item or funds make it practical to accept?
3. Do restrictions on disposal or retention of the item or funds make it practical to accept?
4. Is required accounting for the item or funds excessively difficult?
5. Would donated materials or equipment require extensive repair or maintenance, and if so, is maintenance support available?
6. Does the equipment or materials require the purchase of additional items to be useful?
7. Will the donation result in an increase to the City's budget? Donations are to be considered one-time supplements and should not be used to develop new programs or services which would require budget supplements from the City in the current or subsequent years.

Section 5. Solicitations

1. Solicitation of donations to the City shall be subject to this section 5 of this policy as well as the same procedures that would apply to acceptance of an unsolicited donation under section 4 of this policy. Approval of a solicitation shall constitute approval of acceptance unless the terms and conditions required for acceptance are materially different from those included with the solicitation.

2. Other than a donation solicitation approved pursuant to Section 5.3, no elected or appointed City official or employee of the City shall directly solicit anything of value, for any purpose, from a person or corporation:

a. that is currently seeking or subject to official action of, or doing business with, the City, or anticipated to be doing so in the immediate future; or

b. whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

3. City officials and employees shall obtain approval prior to soliciting donations to the City. If the solicitation is for a donation of less than \$1,000, approval shall be obtained from the City Administrator. If the solicitation is for a donation of \$1,000 or more, approval shall be obtained from the City Council. City officials and employees soliciting donations to the City from those that are or have previously engaged in the conduct set forth in section 5.2 of this policy, shall make clear that such solicitations are not connected to or presented as requests for payment for services rendered and otherwise strive to avoid any semblance of impropriety.

While the City cannot provide its approval for solicitation purposes other than for donations to the City, City officials and employees should make clear that such solicitations are not connected to or presented as requests for payment for services rendered by the City.

SUBSTITUTE RESOLUTION NO. 949

4. Those soliciting donations are prohibited from exerting any form of pressure upon those they have benefited through official acts.
5. City officials and employees shall not offer any form of "special access" to themselves in exchange for donations.
6. City officials and employees shall not solicit anything of value, for a private purpose, through the use of the City's letterhead, official stationary, assigned City email address, or any other means that suggest that the solicitation is made with authority or on behalf of the City.
7. City officials shall not directly solicit anything of value from City employees. City employees shall not directly solicit anything of value from their subordinates. Notwithstanding the foregoing, fundraising campaigns directed to all employees may be approved by the City Administrator.
8. This policy does not apply to solicitations of campaign contributions. Such activities are subject to separate regulations, including Chapter 130 RSMo.

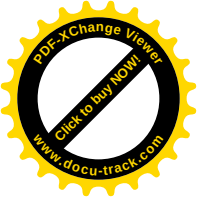
SECTION 2 – THIS RESOLUTION SHALL BECOME EFFECTIVE UPON ITS PASSAGE.

ADOPTED THIS ____ DAY OF _____, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary
Absence Pursuant to Section 3.4
Of the City Charter

ATTEST:

Deborah Ryan
City Clerk



City of Creve Coeur Donations Policy and Procedures

Whereas, from time to time donations are offered to and/or requested by the City, and

Whereas, the City benefits from having a formal policy regarding such donations,

Now, therefore, on this day of , the City establishes the following revised policy and procedures,

Section 1. Purpose

The purpose of this policy is to establish procedures and guidelines regarding~~for~~ the solicitation and acceptance of donations to the City for use by its citizens, employees and officials. Employees and officials as individuals are also subject to the City's Anti-Fraud & Corruption Policy. A uniform set of procedures shall be followed in solicitation and acceptance of all donations and proper approval shall be obtained prior to solicitation or acceptance. All cash, equipment, in-kind services, materials, donated to the City, sponsorship arrangements, and business discount offers to City employees and/or officials shall be accounted for in accordance with the procedures set forth in this policy.

Section 2. Definitions

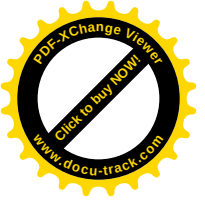
1. Donation. For purposes of this policy, the term "donation" means a monetary contribution and/or equipment, in-kind goods or services, or business discounts, which a City department or the City would accept~~has accepted~~ and for which the donor ~~has not~~ would not receive any goods or service in return.

2. Business Discount. For the purposes of this policy, the term "business discount" means any offer, formal or informal, to discount the normal purchase price of any item for City employees and/or officials because of ~~their~~~~his or her~~ affiliation with the City of Creve Coeur. Such offers may include coupons, promotional discounts, and other programs that would provide special discounted rates to City employees and/or officials that are not extended to the general public.

3. Sponsorship. For the purposes of this policy, the term "sponsorship" means an arrangement in which a person would make a donation in support of a City event and the City would provide in return benefits such as name recognition and special participation in the event.

Section 3. Policy and Procedures

1. Donations and sponsorships valued at \$1,000 or less.



- a. The City Administrator will consider the guidelines established in Section 4 of this policy and either accept or reject offers of donations of money, equipment and in-kind contributions or sponsorships to the City up to \$1,000.
- b. Donated money will be expended for general purposes or specified purposes, if agreed upon with the donor, as one-time supplements to the City's operating budget. Donations of equipment will be considered based on program outcomes, department goals and needs. Each donation will be evaluated for usefulness, and costs of potential replacement/rental rates will be considered. In-kind contributions and sponsorships, or business discounts for specific events will be treated in the same way as donated funds.
- c. The City Administrator will accept or reject donations to the City and sponsorship arrangements with the City and business discount offers for City employees and/or officials with a cumulative value of up to \$1,000. Acceptance of such discount offers by individuals shall comply with the policies and procedures set forth in the City's Anti-Fraud and Corruption Policy. Unless otherwise directed by the City Council, the City Administrator shall determine any necessary allocation of gifts to the City.
- d. Donations, sponsorships, and business discounts that are approved by the City Administrator shall be recorded by the Office of the City Administrator. Recorded information shall include the name of the donor or sponsor, a description of the donation, sponsorship or discount including approximate material value, and the date of approval by the City Administrator.

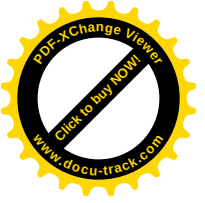
2. Donations and sponsorships valued at more than \$1,000.

- a. For monetary, equipment and in-kind contributions, sponsorships, or discounts with material values over \$1,000, a report to the City Council will be written outlining the purpose of each proposed transaction and any relevant considerations of the guidelines provided in Section 4 of this policy. The City Council will decide, on a per-case basis, if donations or sponsorships should be accepted or rejected. Corporations offering in-kind contributions will be requested to state the value of the offered item or service.
- b. All donations and sponsorships valued at more than \$1,000 either separately or cumulatively during a calendar year require City Council approval. Subsequent to Council's acceptance, procedures for handling transactions of more than \$1,000 shall be the same as those for the acceptance of transactions valued at \$1,000 or less.

Section 4. Guidelines for Accepting Donations

The following criteria shall be considered in the acceptance or rejection of all donations:

1. Does acceptance of funds, equipment or in-kind services, materials, or business discounts, present a conflict of interest for the City or its employees? Regardless of the value, donations shall not be accepted if there is reason to believe there may be a conflict of interest. Examples may include donations from:



- a. donors that are involved in a matter under current review with a pending outcome with any City process such as any zoning or development matter, building inspection, police investigation, property maintenance code investigation, or any investigation into the violation of municipal code.
 - b. contractors, vendors, or persons seeking to provide services/materials to the City of Creve Coeur.
2. Do restrictions upon the use of the item or funds make it practical to accept?
3. Do restrictions on disposal or retention of the item or funds make it practical to accept?
4. Is required accounting for the item or funds excessively difficult?
5. Would donated materials or equipment require extensive repair or maintenance, and if so, is maintenance support available?
6. Does the equipment or materials require the purchase of additional items to be useful?
7. Will the donation result in an increase to the City's budget? Donations are to be considered one-time supplements and should not be used to develop new programs or services which would require budget supplements from the City in the current or subsequent years.

Section 5. Solicitations of Donations

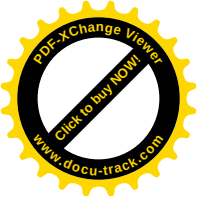
1. Solicitation of donations to the City shall be subject to this section 5 of this policy as well as the same procedures that would apply to acceptance of an unsolicited donation under section 4 of this policy. Approval of a solicitation shall constitute approval of acceptance unless the terms and conditions required for acceptance are materially different from those included with the solicitation.

2. No elected or appointed City official or employee of the City shall solicit anything of value, for any purpose, from a person or corporation:

a. that is currently seeking or subject to official action of, or doing business with, the City, or anticipated to be doing so in the immediate future; or

b. whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

3. With advance approval, City officials and employees may solicit donations to the City from those that have previously engaged in the conduct set forth in section 5.2 of this policy, provided that such solicitations are not connected to or presented as requests for payment for services rendered and that a reasonable period of time has passed, so as to avoid any semblance of impropriety. While the City cannot provide its approval, City officials and employees that wish to solicit something of value for purposes other than



donations to the City from those that have previously engaged in the conduct set forth in section 5.2 of this policy should make sure such solicitations are not connected to or presented as requests for payment for services rendered by the City and that a reasonable period of time has passed, so as to avoid any semblance of impropriety.

4. Those soliciting donations are prohibited from exerting any form of pressure upon those they have benefited through official acts.

5. City officials and employees shall not offer any form of "special access" to themselves in exchange for donations.

6. City officials and employees shall not solicit anything of value, for a private purpose, through the use of the City's letterhead, official stationary, assigned City email address, or any other means that suggest that the solicitation is made with authority or on behalf of the City.

7. City officials shall not directly solicit anything of value from City employees. City employees shall not directly solicit anything of value from their subordinates. Notwithstanding the foregoing, fundraising campaigns directed to all employees may be approved by the City Administrator.

8. This policy does not apply to solicitations of campaign contributions. Such activities are subject to separate regulations.

AN ORDINANCE TO AMEND CHAPTER 405, THE ZONING ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF CREVE COEUR, MISSOURI, BY ADDING PET SPAS AS A PERMITTED USE IN COMMERCIAL ZONING DISTRICTS "MX" MIXED USE, "PC" PLANNED COMMUNITY, "GC" GENERAL COMMERCIAL, AND "CB" CORE BUSINESS, AND ESTABLISHING DEFINITION FOR SUCH USE.

WHEREAS, Chapter 405 does not currently permit pet spa services within any commercial zoning district; and,

WHEREAS, Ellen Parfenov has requested that pet spas be included with the list of permitted uses in the "PC" Planned Community Zoning District, and establishing a definition for such activity; and,

WHEREAS, the Planning and Zoning Commission of the City of Creve Coeur, Missouri has recognized the need for an addition to the provisions of the City Code of Ordinances and related amendments to other sections as set forth herein, to more effectively implement the goals of the Comprehensive Plan and the purposes of the Zoning Code; and

WHEREAS, the Planning and Zoning Commission of the City of Creve Coeur, Missouri, held a public hearing thereon at the Creve Coeur Government Center on March 7, 2011, beginning at 7:00 p.m., or immediately following the close of the previous public hearing; and

WHEREAS, the Planning and Zoning Commission reviewed and, by a unanimous vote revised and recommended approval of the subject amendments at its meeting on Monday, March 7, 2011; and

WHEREAS, notice of said public hearing had previously been published at least 15 days prior to the hearing in the St. Louis Countian, a newspaper of general circulation in the City of Creve Coeur; and

WHEREAS, all persons who presented themselves at said meeting and desiring to be heard were given an opportunity to be heard and a copy of the proposed ordinance has been made available for public inspection prior to its consideration by the City Council; and this Bill having been read by title in open meeting two times before final passage by the City Council; and

WHEREAS, the City Council being fully informed finds that amending the City Code of Ordinances would be in harmony with and bear a substantial relation to the public welfare, health, safety, comfort and convenience of the citizens of the City of Creve Coeur and in the public interest.

NOW, THEREFORE, be it ordained by the City Council of the City of Creve Coeur, Missouri as follows:

SECTION 1: Section 205.060 *Limitations On Number Kept* of Chapter 205, Animals and Fowl, of the City of Creve Coeur's Code of Ordinances shall be amended to include Pet Spas to the exceptions on the limitations on the number of animals kept, as follows:

Section 205.060 Limitations On Number Kept

- D. This Section shall not apply to a pet shop, pet spa (as defined in Section 405.120), or a veterinarian's office.

SECTION 2: Section 405.120, *Definition of Terms* of Chapter 405, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended to include a new definition for a Pet Spa as follows:

Section 405.120 Definition of Terms

Pet Spa: An animal specialty service facility offering, by appointment only, spa services for the health, wellness, and overall wellbeing of domestic dogs and cats that include massages, facials, pedicures and nail art, aromatherapy, healthy coat conditioning treatments, and grooming. Minimum facility area shall provide for one hundred (100) square feet per pet with a maximum of twenty (20) pets at any one time, with no outdoor activity nor overnight boarding, nor daycare services, and where animals are not to remain at the spa for extended time periods beyond the appointment time. All pets are to be removed no later than 8 pm.

SECTION 3: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.340, *Permitted Uses*, in the "MX" Mixed Use zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.340: "MX" Mixed Use District**B. Permitted Uses**

1. Class 1 –Between 1.00 and 2.99 acres. The Following uses area permitted on sites between one (1.00) and two and ninety-nine hundredths (2.99) acres:
 - c. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 4: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.350, *Permitted Uses*, in the "PC" Planned Community zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.350: "PC" Planned Community District**B. Permitted Uses**

7. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 5: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.360, *Permitted Uses*, in the "GC" General Commercial zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.360: "GC" General Commercial District**B. Permitted Uses**

3. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 6: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.370, *Permitted Uses*, in the "CB" Core Business zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.370: "CB" Core Business District**B. Permitted Uses**

2. Class 2. One (1) acre or greater. The following uses are permitted to occupy all or part of a planned development on sites of one (1) acre or greater under single ownership provided that a site concept and site development plan is submitted and approved for the use and development of the total site in accordance with the procedures provided in Section 405.1080.
 - d. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 7: All ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

SECTION 8: This ordinance shall become effective in accordance with Section 3.11 (g) of the City Charter.

ADOPTED THIS ____ DAY OF _____, 2011.

A. JAMES WANG
PRESIDENT OF CITY COUNCIL

APPROVED THIS ____ DAY OF _____, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 of the City Charter

ATTEST:

DEBORAH RYAN, MRCC
CITY CLERK



city of CREVE COEUR

300 North New Ballas Road • Creve Coeur, Missouri 63141
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966
www.creve-coeur.org

APPLICATION TO PLANNING AND ZONING COMMISSION

#11-002 TEXT AMENDMENT ALLOWING PET SPAS AS A PERMITTED USE IN COMMERCIAL DISTRICTS

FOR THE MEETING OF: March 7, 2011

LOCATION: "MX" Mixed Use, "PC" Planned Community, "GC" General Commercial, and "CB" Core Business Districts

REQUEST:

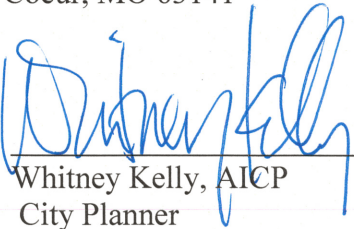
Ellen Parfenov of Willowbrook Dog Grooming has submitted an application to add pet spas to the list of permitted uses in the Planned Community zoning district. Staff is recommending to the Planning Commission that such uses also be allowed in the "MX" Mixed Use, "GC" General Commercial, and "CB" Core Business districts.

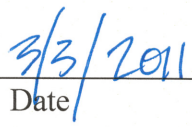
ADDITIONAL INFORMATION:

"Pet Spa" as defined for this request is: An animal specialty service facility offering, by appointment only, spa services for the health, wellness, and overall wellbeing of domesticated pets that include massages, facials, pedicures and nail art, aromatherapy, healthy coat conditioning treatments, and grooming, using all natural products including cleaning products, with no overnight boarding or daycare services, and where animals are not to remain at the spa for extended time periods beyond the appointment time.

APPLICANT: Ellen Parfenov
Willowbrook Dog Grooming
10465 Old Olive Street Road
Creve Coeur, MO 63141

REPORT PREPARED BY:


Whitney Kelly, AICP
City Planner


Date

Key Issues:

- Does the request integrate with existing permitted uses?
- Does this request further the goals and/or implement the Comprehensive Plan?
- Is this a reasonable exercise of zoning authority?

Comp. Plan References

- NA

Zoning Code References

- Section 405.340: "MX" Mixed Use District
- Section 405.350: "PC" Planned Community District
- Section 405.360: "GC" General Commercial District
- Section 405.370: "CB" Core Business District

ATTACHMENTS: Draft Ordinance

INTRODUCTION

Ellen Parfenov, of Willowbrook Dog Grooming, contacted City Staff about relocating to a tenant space within the Westgate Shopping Center. Independent pet grooming facilities are not currently allowed in any commercial zoning district within the City of Creve Coeur. Westgate Center is zoned “PC” Planned Community. Pet grooming has been permitted as a subordinate function within a veterinary office.

DISCUSSION

Defining “Pet Spa” - The applicant has submitted a possible definition for Pet Spas that will offer a distinction from pet grooming:

Pet Spa is different from grooming shop by its innovative approach to health, wellness and overall wellbeing of pets. Pet Spa is about creating a relaxing and positive experience for your pet. An authentic pet spa should offer extra spa-like services: massages, facials pedicures and nail art, aromatherapy, and healthy coat conditioning treatments. In addition pet spa uses all natural products including cleaning products.

The applicant has indicated that there will be no long-term or all day pet sitting, as it is important to have the customers pick up the animals within the appointment time frame. Also, it is in the business’ interest to keep animals calm and limit barking noise. In general, it is the staff’s opinion that the requested use integrates with the permitted uses in commercial districts of the City, as well as further the goals of the Comprehensive Plan by preserving the long-term economic strength of the City and allowing for new services for residents. All activity is within a retail space, with only drop off and pick of pets.

However, there are concerns for long-term boarding and the excessive noise and sanitation issues it can create. The Planning Division staff therefore suggest the following modified proposed definition and has included it in the attached draft ordinance:

Pet Spa: An animal specialty service facility offering, by appointment only, spa services for the health, wellness, and overall wellbeing of domesticated pets that include massages, facials, pedicures and nail art, aromatherapy, healthy coat conditioning treatments, and grooming, using all natural products including cleaning products, with no overnight boarding or daycare services, and where animals are not to remain at the spa for extended time periods beyond the appointment time.

RELATED AMENDMENTS

Article IV Animal Regulations, under Title II Public Health, Safety and Welfare, of the City of Creve Coeur Code of Ordinances limits the number of animals any person may at any time own, harbor, shelter, keep, control, manage or possess in or on his/her premises to no more than three dogs or a combination of six dogs and cats as long as there are not more than three dogs. This does not apply to pet shops or veterinarian’s offices. Therefore, Section 205.060(D) will also be amended to include Pet Spas as an exception.

If the members of the Planning Commission are not in agreement with these changes, they should vote on a motion(s) to amend the attached draft ordinance accordingly, before voting on a recommendation for the entire draft ordinance.

CONCLUSION AND ACTION

Staff recommends that Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa as defined above be added to the list of permitted uses within all commercial districts of the city.

MOTION

If the Planning Commission has chosen to accept the draft ordinance as written, the following would be a suitable motion for this application:

“I move to recommend approval of a text amendment to include Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services as a Permitted Use within the “MX” Mixed Use District, “PC” Planned Commercial District, “GC” General Commercial District, and “CB” Core Business District as described in the staff report on application #11-002, dated March 3, 2011.”

APPENDIX 1: COMPREHENSIVE PLAN

Included and attached by reference. See body of report for specific excerpts.

APPENDIX 2: ZONING CODE

Included and attached by reference. See body of report for specific excerpts.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 405, THE ZONING ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF CREVE COEUR, MISSOURI, BY ADDING PET SPAS AS A PERMITTED USE IN COMMERCIAL ZONING DISTRICTS “MX” MIXED USE, “PC” PLANNED COMMUNITY, “GC” GENERAL COMMERCIAL, AND “CB” CORE BUSINESS, AND ESTABLISHING DEFINITION FOR SUCH USE.

WHEREAS, Chapter 405 does not currently permit pet spa services within any commercial zoning district; and,

WHEREAS, Ellen Parfenov has requested that pet spa's be included with the list of permitted uses in the “PC” Planned Community Zoning District, and establishing a definition for such activity; and,

WHEREAS, the Planning and Zoning Commission of the City of Creve Coeur, Missouri has recognized the need for an addition to the provisions of the City Code of Ordinances and related amendments to other sections as set forth herein, to more effectively implement the goals of the Comprehensive Plan and the purposes of the Zoning Code; and

WHEREAS, the Planning and Zoning Commission of the City of Creve Coeur, Missouri, held a public hearing thereon at the Creve Coeur Government Center on March 7, 2011, beginning at 7:00 p.m., or immediately following the close of the previous public hearing; and

WHEREAS, the Planning and Zoning Commission reviewed and, by a vote of _____ recommended approval of the subject amendments at its meeting on Monday, March 7, 2011; and

WHEREAS, notice of said public hearing had previously been published at least 15 days prior to the hearing in the St. Louis Countian, a newspaper of general circulation in the City of Creve Coeur; and

WHEREAS, all persons who presented themselves at said meeting and desiring to be heard were given an opportunity to be heard and a copy of the proposed ordinance has been made available for public inspection prior to its consideration by the City Council; and this Bill having been read by title in open meeting two times before final passage by the City Council; and

WHEREAS, the City Council being fully informed finds that amending the City Code of Ordinances would be in harmony with and bear a substantial relation to the public welfare, health, safety, comfort and convenience of the citizens of the City of Creve Coeur and in the public interest.

NOW, THEREFORE, be it ordained by the City Council of the City of Creve Coeur, Missouri as follows:

SECTION 1: Section 205.060 *Limitations On Number Kept* of Chapter 205, Animals and Fowl, of the City of Creve Coeur's Code of Ordinances shall be amended to include Pet Spas to the exceptions on the limitations on the number of animals kept, as follows:

Section 205.060 Limitations On Number Kept

- D. This Section shall not apply to a pet shop, pet spa (as defined in Section 405.120), or a veterinarian's office.

SECTION 2: Section 405.120, *Definition of Terms* of Chapter 405, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended to include a new definition for a Pet Spa as follows:

Section 405.120 Definition of Terms

Pet Spa: An animal specialty service facility offering, by appointment only, spa services for the health, wellness, and overall wellbeing of domesticated pets that include massages, facials, pedicures and nail art, aromatherapy, healthy coat conditioning treatments, and grooming, using all natural products including cleaning products, with no overnight boarding or daycare services, and where animals are not to remain at the spa for extended time periods beyond the appointment time.

SECTION 3: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.340, *Permitted Uses*, in the "MX" Mixed Use zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.340: "MX" Mixed Use District

B. Permitted Uses

1. Class 1 –Between 1.00 and 2.99 acres. The Following uses area permitted on sites between one (1.00) and two and ninety-nine hundredths (2.99) acres:
 - c. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 4: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.350, *Permitted Uses*, in the "PC" Planned Community zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.350: "PC" Planned Community District

B. Permitted Uses

7. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 5: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.360, *Permitted Uses*, in the "GC" General Commercial zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.360: "GC" General Commercial District

B. Permitted Uses

3. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 6: Appendix C, The Zoning Ordinance, of the City of Creve Coeur's Code of Ordinances shall be amended by adding "Pet Spa Services" to Section 405.370, *Permitted Uses*, in the "CB" Core Business zoning district, *and* subsequent sections renumbered accordingly, as follows:

Section 405.370: "CB" Core Business District

B. Permitted Uses

2. Class 2. One (1) acre or greater. The following uses are permitted to occupy all or part of a planned development on sites of one (1) acre or greater under single ownership provided that a site concept and site development plan is submitted and approved for the use and development of the total site in accordance with the procedures provided in Section 405.1080.
 - d. Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services (as defined herein).

SECTION 7: All ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

SECTION 8: This ordinance shall become effective in accordance with Section 3.11 (g) of the City Charter.

ADOPTED THIS ____ DAY OF _____, 2011.

A. JAMES WANG
PRESIDENT OF CITY COUNCIL

BILL NO. _____

ORDINANCE NO. _____

APPROVED THIS ____ DAY OF _____, 2011.

HAROLD DIELMANN
MAYOR

ATTEST:

DEBORAH RYAN, MRCC
CITY CLERK

1 PZ 030711.txt
2 PLANNING AND ZONING COMMISSION PUBLIC HEARING
3 CITY OF CREVE COEUR, MISSOURI
4 300 NORTH NEW BALLAS ROAD
5 MONDAY, MARCH 7, 2011
6 7:00 P.M.
7 THOSE IN ATTENDANCE:
8 Mr. Tim Madden, Chair
9 Mr. Gary Eberhardt, Vice Chair
10 Ms. Cynthia Kramer
11 Dr. Scott Saunders
12 Mr. Jim Schnarr
13 Mr. Barry Glantz
14 Mr. Carl Lumley, City Attorney
15 Mr. Paul Langdon, AICP, Director of Community Development
16 Ms. Whitney Kelly, AICP, City Planner
17 Ms. Pat Rosenblatt, Recording Secretary
18
19
20
21
22

23 McLaughlin Court Reporting Services, Inc.
24 Deborah K. McLaughlin, RPR, MO-CCR #314, IL-CSR, KS-CCR
25 4772 Gatesbury Drive
St. Louis, MO 63128
(314)487-2259

1 MR. MADDEN: Like to call to order the Planning¹
2 and Zoning Commission meeting for the City of Creve Coeur,
3 Missouri for Monday, March 7, 2011.
4 We'll start with roll call.
5 Dr. Barton? I don't see him yet.
6 Gary Eberhardt?

7 MR. EBERHARDT: Present.
8 MR. MADDEN: Barry Glantz?
9 MR. GLANTZ: Present.
10 MR. MADDEN: Cynthia Kramer?
11 MS. KRAMER: Present.
12 MR. MADDEN: Scott Saunders?
13 MR. SAUNDERS: Present.
14 MR. MADDEN: Jim Schnarr?
15 MR. SCHNARR: Present.
16 MR. MADDEN: Carl Lumley?
17 MR. LUMLEY: Present.
18 MR. MADDEN: Paul Langdon, our Director of
19 Community Development?
20 MR. LANGDON: Present.
21 MR. MADDEN: Whitney Kelly, our City Planner?
22 MS. KELLY: Present.
23 MR. MADDEN: Pat Rosenblatt, our Recording
24 Secretary?
25 MS. ROSENBLATT: Present.

1 MR. MADDEN: We'll move into new business. And²
2 we'll start with the public hearing, and it's Application
3 No. 11-002.
4 Would the applicant please come forward.
5 And would you state your name -- well, she has
6 to be sworn in first.
7 (Ellen Parfenov was sworn by the court
8 reporter.)
9 MR. MADDEN: Would you please state your name
10 and address for the record.
11 MS. PARFENOV: My name's Ellen Parfenov, and the

12 business address is 10465 Old Olive Street Road, Creve
13 Coeur, 141 ZIP Code.

14 MR. MADDEN: Thank you.

15 Do you want to tell us what you want to do then?

16 MS. PARFENOV: Yeah. I have a quick overview of
17 what we're doing at the pet spa; what is the pet spa.

18 First of all, talking about the experience at
19 the pet spa. Pet spa experience centers around innovative
20 approach to health and wellness and lots of TLC. And it,
21 basically, it's a tune-up for mind, body and spirit, and
22 it creates a very positive atmosphere for dogs.

23 Grooming industries are moving closer to mimic,
24 so to speak, the people spas and now offering different
25 services.

1 It's a very sound environment, and we offer 3
2 extra spa services in our shop like hydro-massage bath
3 with addition of essential oils that provide calming
4 therapy, like, for example, lavender oils, when we add it
5 to the bathwater it has that calming smell, and dogs
6 respond to it very well and they relax, and also it's good
7 for muscle tension.

8 And next one is skin care. We offer healthy
9 coat treatments, warm mud rubs and variety of medication
10 shampoos and conditioners that enhance the skin overall.

11 Also nail and foot care. We give treatment that
12 includes filing nails, massaging pads, soap -- special
13 soaps for cracked pads and nail art.

14 There's a little bit here, what you can see,
15 just different nail designs.

16 MR. LANGDON: Ma'am, if you'll lay it on that
17 white thing.

18 MS. PARFENOV: This? Yeah, different nail
19 designs. This could be holiday designs or just fun
20 designs like that.

21 We also offer facials for breeds like bulldogs
22 and breeds that have wrinkles. And it usually helps with
23 the bacteria that gets inside of the wrinkles, it helps to
24 get rid of it.

25 And breeds like Maltese and Shih Tzus that are

1 prone to tear staining, that helps also to make it clean.⁴

2 And all of our products are wheat-free and
3 gluten-free, and also we use green-clean products in the
4 shop.

5 And the main thing, I guess, the difference
6 between just grooming shop where you drop the pet off, and
7 it's a hectic day with noises of hair dryers, we try to
8 create a different experience.

9 We try to give more personal attention to the
10 dogs. They come in for their appointment, and they're
11 taken care of and then they are picked up, so they are not
12 staying there over long periods of time.

13 And pretty much, if you have any questions, I
14 can answer.

15 MR. MADDEN: Before I open up to questions, I
16 just want to tell you, Mrs. Parfenov here, it's an
17 ordinance to amend Chapter 405 of The Zoning Code by
18 adding "Pet Spas" as permitted use in the retail zoning
19 districts "MX" Mixed Use, "PC" Planned Community and "GC"
20 General Commercial, and "CB" Core Business, and
21 establishing the definition for such use.

22 Any questions from anybody up here?

23 Mr. Saunders.

24 MR. SAUNDERS: I just got a question. I know
25 that you said the intention is -- the way you run the

1 business, the owners usually pick up the animals pretty ⁵
2 close to around the time the appointment is done. So in
3 terms of your running the business currently, how many
4 animals are usually there at any given point in time,
5 animals waiting to be picked up?

6 MS. PARFENOV: At the same time there could be
7 five, maybe to ten overlapping because we need two to
8 three hours to work on different breeds of dogs. It
9 depends how much the drying time takes.

10 MR. SAUNDERS: Uh-huh.

11 MS. PARFENOV: Like, for example, if it's a pug,
12 it could be going home within an hour, but if it's a
13 standard poodle, it needs hour and twenty-five minutes
14 pure grooming time --

15 MR. SAUNDERS: Uh-huh.

16 MS. PARFENOV: -- so that is overlapping
17 throughout the day.

18 MR. SAUNDERS: Okay. Thank you.

19 MR. MADDEN: Mr. Glantz.

20 MR. GLANTZ: How many staff members do you --
21 would you typically have on staff?

22 MS. PARFENOV: Right now it's five including
23 myself.

24 MR. GLANTZ: And is this -- is this dogs only or
25 other animals?

1 MS. PARFENOV: It's dogs only. ⁶

2 MR. GLANTZ: Should that be somewhere in the
Page 5

3 definition?

4 MS. PARFENOV: Well, some of the pet spas are
5 accepting cats. We decided to just accept dogs for mere
6 reason that when you have cat, one cat, and there's dogs
7 there, they usually get nervous because they can smell
8 that the cat's there and cat gets really upset, so we
9 don't want to mix that.

10 This is our fourth business grooming shop. We
11 used to have one, TLC Grooming, it was sold because of
12 family health reasons, but we used to accept cats there,
13 and from our experience it's better to deal with dogs
14 only. It provides calmer atmosphere.

15 MR. SCHNARR: I think I read somewhere that pet
16 grooming was an extension of pet services or something
17 like that, and so it wasn't even involved. I don't see a
18 substantial difference between what this woman --

19 MR. SAUNDERS: I think my understanding of it
20 was that the current zone allows those services as a part
21 of veterinary services, right?

22 MS. KELLY: Within a veterinary service center
23 they are allowed. This is a stand-alone in a retail
24 shopping center. We do see it as an extension of other
25 personnel -- personal services; hair care, salons, stuff

1 like that. It's just a product of how our society's
2 viewing pets today. And this is -- and with it being a
3 definition of a pet spa, it is a shorter stay, as the
4 applicant stated, to keep the pets calm.

5 Grooming associated with veterinary services
6 could be an all-day event with the vet. They're
7 staying -- they can stay overnight as part of the

8 veterinary services as well, if care -- if they need the
9 care of a vet. And this would just be hourly, shorter
10 timeframe.

11 MR. SCHNARR: Well, in my mind, based on how
12 much traffic she would generate and business she's doing,
13 the difference between her business and pet grooming is
14 pure semantics. It's the same thing. People bring their
15 dogs, leave them an hour and a half and come get them, so,
16 you know, I don't have any problems with it.

17 MR. MADDEN: Mr. Saunders.

18 MR. SAUNDERS: I'm sorry. Can I ask a question
19 following up on what Kelly was saying, for Carl, I think
20 it is, in terms of definition, since it says remain at the
21 spa for -- will not remain at the spa for extended time
22 period of time, is that too vague? Should there be some
23 provision in there for length of time?

24 MR. LUMLEY: It's somewhat vague. I think the
25 overnight boarding restriction --

8

1 MR. SAUNDERS: Covers that.

2 MR. LUMLEY: -- as a natural cut-off. I don't
3 know that it's essential to have it at all.

4 I did have a little concern about the reference
5 to products that seemed to be kind of going -- could be
6 viewed as a restriction on competition.

7 It's not necessary, but that could go either way
8 on the extent. I mean it's sort of a bit of guidance to
9 the operator, but, you know, I agree with you, we're not
10 going to have a municipal citation cause some dog stayed
11 for 45 minutes instead of 40 minutes. I mean there is no
12 right definition there.

13 MS. KELLY: The idea was just to limit any dog
Page 7

14 daycare where you drop them off at like seven in the
15 morning and pick them up at six at night, all day kind of
16 where they have to be walked and play time, and that would
17 create a disturbance, I think.

18 MR. MADDEN: Mr. Eberhardt.

19 MR. EBERHARDT: I have a couple of questions.

20 First of all, in the section of the staff report
21 entitled "Related Amendments", it indicates that no more
22 than three dogs or a combination of six dogs and cats will
23 be in the place at any one time.

24 I thought you said up to ten at some point in
25 time.

9

1 MS. KELLY: I'm sorry.

2 MR. SAUNDERS: I think, Gary, that's what the
3 ordinance is in the City.

4 I think what it says here is that there will be
5 an amendment to make this an exception also.

6 MR. EBERHARDT: Oh, that would be not included
7 in that, is that right?

8 MS. KELLY: Right, that would not be included.

9 What is excluded from that ordinance is
10 veterinary offices and pet shops, and we would add the pet
11 spa to that list.

12 MR. EBERHARDT: So there's no limits to the dogs
13 that could be there at any one time?

14 MS. KELLY: Right.

15 MR. EBERHARDT: I think we need to put a limit.

16 I don't know what the correct number is, but it
17 seems to me we need to.

18 With regard to the time situation, analogizes

19 this to child daycare. I'm familiar with situations where
 20 parents forget to pick up their children frequently, and I
 21 guess I'd like to have a time which dogs have to be gone.
 22 Whether that's eight o'clock or seven o'clock or something
 23 on the outside, so that we don't have a situation where
 24 they're there beyond nighttime, even though it's not
 25 overnight, perhaps it's there till ten o'clock at night.

1 MS. PARFENOV: No, we're usually done by 10
 2 five o'clock.

3 MR. EBERHARDT: I know usually, but this is an
 4 ordinance that's going to apply to not only you, but other
 5 people as well.

6 So I think we need -- I would suggest we have
 7 some sort of outside time, and we have a maximum number of
 8 animals that could be kept there at any one time.

9 I'd also like to ask the question, will there --
 10 is there any time in which any of these dogs would be
 11 outside the walls of the building?

12 MS. PARFENOV: No. Except when they drop off
 13 and picked up by the owner.

14 MR. EBERHARDT: No, no. I mean when you are --
 15 they're not going to be in a cage or in a fenced-off area
 16 that's outside the walls of the building, is that correct?

17 MS. PARFENOV: No, that's correct.

18 MR. EBERHARDT: And so I think maybe that needs
 19 to be included as well, so we don't have a situation
 20 where, I'm not saying you would do this, but if we're
 21 adopting an ordinance now or changing an ordinance, that
 22 someone could presumably have an outside pen where they
 23 keep a dog or several dogs for a period of time while
 24 they're waiting for either to be taken care of or pick up.

25 It seems to me that those three things ought to

11

1 be part of the ordinance.

2 I don't know that anyone else feels that way.

3 MR. MADDEN: When you open up, does anybody
4 bring their dog -- what time do you open?

5 MS. PARFENOV: Usually 8:30.

6 MR. MADDEN: 8:30. And what time do you close?

7 MS. PARFENOV: It depends on how the day goes.
8 Sometimes it could be three o'clock; sometimes it could be
9 4:30.

10 MR. MADDEN: Okay. Does anybody like make an
11 8:30 appointment and then, cause they're going to work,
12 they don't come back and pick them up until the end of the
13 day? How often does that happen?

14 MS. PARFENOV: Usually we have Saturday hours
15 available for people who can't be there. Saturday hours
16 available for people who can't do that, for people who are
17 working and can't do six o'clock or after that. We don't
18 operate after those hours, so they take our Saturday
19 appointments.

20 We also working with the pet shuttle service
21 that could shuttle the pets to the owner's house in case
22 of emergency, which those people shuttle pets there also
23 are pet-sitting --

24 MR. MADDEN: Okay.

25 MS. PARFENOV: -- if that needs to be done.

12

1 MR. MADDEN: Go ahead.

2 MS. KRAMER: I was just curious. Outside of
3 if -- let's say it was an ordinance, do you have your own

4 policy in your business, I know that if you drop off your
5 children at a facility and you're late, they charge you an
6 inordinate amount to encourage you not to forget to pick
7 up your children, so I was curious, not me, but seen it
8 happen, but just curious if you have a policy.

9 MS. PARFENOV: \$30 an hour.

10 MS. KRAMER: Okay.

11 MR. MADDEN: Mr. Eberhardt, do you have
12 something else?

13 MR. EBERHARDT: I do have a question.

14 You started to analogize this to a human spa,
15 and I see the word "healthful" frequently. Seems to me,
16 although I have no personal experience with this, that
17 spas frequently for humans involve food and all sorts of
18 other kinds of treatment other than what I think here is
19 a -- is essentially appearance treatment.

20 I don't understand how any of this has to do
21 with healthful except for perhaps in a psychological
22 sense.

23 MS. PARFENOV: We do a health check-up when the
24 dog comes in. We take a look at eyes, at the ears, at the
25 skin, nails, and if something needs to be addressed and

1 the dog needs to see the vet because the skin is flaky or¹³
2 there's a discharge from the ears that could be leading to
3 a very costly infection, ear infection, we can notice it
4 early, and tell the owner check with the vet, so that
5 would be avoided.

6 MR. EBERHARDT: Okay.

7 And, finally, I would like to see the word
8 "natural" out of the ordinance as well, so that other
9 kinds of unnatural products could be used.

10 MS. PARFENOV: But everyone's going green.

11 MR. MADDEN: Mr. Glantz.

12 MR. GLANTZ: I just have a question for
13 clarification. I don't -- maybe I'm missing something.

14 Are we trying to make this strictly for dogs or
15 is this for all domestic animals? Somebody had mentioned
16 that dogs -- this was --

17 MS. KELLY: Well, the applicant has indicated
18 she only handles dogs, but we were considering that if we
19 would open this up to all of the different districts it
20 could be a possibility that someone wants to do cats as
21 well.

22 MR. GLANTZ: So do we have a definition
23 somewhere in the City Codes of what a domesticated pet is?

24 MS. KELLY: Yes, it's under the public health
25 and safety, I believe, there is -- it's dogs and cats.

1 MR. GLANTZ: Okay. 14

2 MR. MADDEN: Okay. Anybody in the audience wish
3 to make a comment?

4 Seeing none, then I'll turn it over to
5 Mr. Lumley.

6 MR. LUMLEY: Does staff want to give any
7 testimony or --

8 MS. KELLY: Well, I was just going to get the
9 exact wording of the domesticated pet if you need it. But
10 I think I addressed everything that we have.

11 MR. LUMLEY: Okay. Well, I'd offer the
12 following exhibits into the record of this public hearing:
13 Documentation that's in possession of the City reflecting
14 those as provided to the public regarding this hearing;

15 Ms. Kelly's report of March the 3rd; the materials that
16 the applicant presented this evening; these Code of
17 Ordinances, City's Charter, City's Comprehensive Plan and
18 public file regarding this application.

19 MR. MADDEN: Okay. That closes our public
20 hearing on this subject.

21 And we can now have more discussion if you wish.

22

23 (This ends the public hearing.)

24

25

15

1 STATE OF MISSOURI)

2) SS

3 COUNTY OF ST. LOUIS)

4

5 I, Deborah K. McLaughlin, Registered Professional
6 Reporter, Missouri Certified Court Reporter, Illinois
7 Certified Shorthand Reporter and Kansas Certified Court
8 Reporter, do hereby certify that I reported the Planning
9 and Zoning Public Hearing stenographically and later
10 reduced to typewriting; and that this is a true and
11 accurate transcript of the public hearing.

12

13

14 _____, RPR, MO-CCR, IL-CSR, KS-CCR

15 Deborah K. McLaughlin, RPR, MO-CCR, IL-CSR, KS-CCR

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PZ 030711.txt

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city
of

CREVE COEUR

300 North New Ballas Road • Creve Coeur, Missouri 63141
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966
www.creve-coeur.org

March 8, 2011

Mayor Harold Dielmann
City Council Members
City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, MO 63141

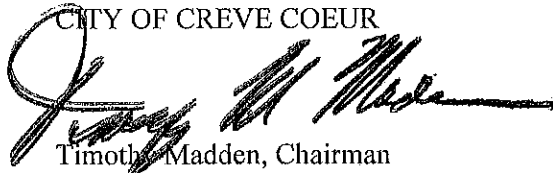
Re: Pet Spas as Permitted Use
Application #11-002

Honorable Mayor and City Council Members:

The Planning and Zoning Commission, at its meeting of March 7, 2010, reviewed the request of Ellen Parfenov, Willowbrook Dog Grooming, to amend Chapter 405 of The Zoning Code to add "Pet Spas" as a permitted use in the retail zoning districts "MX" Mixed Use, "PC" Planned Community, "GC" General Commercial, and "CB" Core Business, and to establish a definition for such use.

By unanimous vote, the P&Z Commission recommends approval of the text amendment per the attached draft ordinance.

Sincerely,

CITY OF CREVE COEUR

Timothy Madden, Chairman
Planning & Zoning Commission

TM:pr

cc: Ellen Parfenov, Applicant
M.C. Perkins, City Administrator
Carl Lumley, City Attorney
J. Heines, Director of Public Works
G. Eidman, Chief of Police
A. Oestereich, Fire Marshal
S. Unser, Chief Building Official
G. Seifried, Project Manager

5. NEW BUSINESS

A. Application #11-002 – PUBLIC HEARING

An ordinance to amend Chapter 405, The Zoning Code, by adding “Pet Spas” as a permitted use in the retail zoning districts “MX” Mixed, “PC” Planned Community, “GC” General Commercial, and “CB” Core Business, and to establish a definition for such use.

A presentation was made by Ellen Parfenov, Willowbrook Dog Grooming, regarding the application.

Comments and questions from Commission members.

There being no further comments, the City Attorney presented exhibits for the record and the public hearing was closed.

(This ends the Public Hearing)

Mr. Lumley suggested, to focus on discussion, that there be a motion in the affirmative, followed by motions to amend.

Mr. Eberhardt moved, seconded by Dr. Saunders, to recommend approval of the Text Amendment to include Animal Specialty Services (SIC 0752), except Veterinary, to include only Pet Spa services as a Permitted Use within the “MX” Mixed Use District, “PC” Planned Commercial District, “GC” General Commercial District, and “CB” Core Business District as described in the staff report on Application #11-002 dated March 3, 2011.

Mr. Eberhardt moved, seconded by Mr. Glantz, to amend the prior motion to limit the number of domestic animals that would be in this facility at any one time to a maximum of ten.

Mr. Glantz asked if the limit to the number of pets should be based on the square footage of the facility. Dr. Saunders noted that this text amendment to the Zoning Code applies to the entire City and is not structured just for Ms. Parfenov’s business. Ms. Parfenov’s facility is currently 800 square feet with the intention of expanding to 1,200 square feet. The Commission members tried to determine how much space is needed for each animal on the premises. Ms. Parfenov pointed out that the average groomer can do six to eight dogs a day. She explained the different arrival and pick-up times by the type of dogs to be groomed. She felt her expanded facility could keep up to 20 dogs at the same time. Mr. Lumley suggested “one dog for every 100 square feet.” Mr. Eberhardt stated he would still like to state a specific number and suggested a maximum of 20. Ms. Kramer suggested that the amendment could read “100 square feet of the actual grooming space”. Ms. Parfenov explained how they train the dogs to be groomed from the puppy stage.

After further discussion with Mr. Lumley, Mr. Eberhardt amended the prior amendment to limit the number of domestic animals to 100 feet of spa area per pet, not to exceed 20 animals. Dr. Saunders seconded the amendment with the resultant vote as follows, to-wit:

Mr. Glantz – aye
Dr. Saunders – aye

Ms. Kramer – aye
Mr. Eberhardt – aye

Mr. Schnarr – nay
Chair – aye

Mr. Eberhardt moved to amend the prior main motion to indicate that all domestic animals are to be removed from the premises no later than 8:00 p.m. Dr. Saunders seconded the motion, with the resultant vote as follows, to-wit:

Mr. Glantz – aye
Dr. Saunders – aye

Ms. Kramer – aye
Mr. Eberhardt – aye

Mr. Schnarr – aye
Chair – aye

Mr. Eberhardt moved that there be no animals maintained outside of the interior walls of the building. Dr. Saunders seconded the motion, with the resultant vote as follows, to-wit:

Mr. Glantz – aye
Dr. Saunders – aye

Ms. Kramer – aye
Mr. Eberhardt – aye

Mr. Schnarr – aye
Chair – aye

Mr. Eberhardt moved that the ordinance be amended by deleting the phrase “using all natural products including cleaning products”. Mr. Schnarr seconded the motion, with the resultant vote as follows, to-wit:

Mr. Glantz – aye
Dr. Saunders – aye

Ms. Kramer – aye
Mr. Eberhardt – aye

Mr. Schnarr – aye
Chair – aye

Chair Madden called for a vote on the main motion, as amended four times, with the resultant vote as follows, to-wit:

Mr. Glantz – aye
Mr. Eberhardt – aye

Ms. Kramer – aye
Dr. Saunders – aye

Mr. Schnarr – aye
Chair – aye

This item will be before City Council next week.

CURTIS, HEINZ, GARRETT & O'KEEFE, P.C.
Attorneys at Law
130 South Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Memo to Mayor, City Council, City Administrator, Director of Planning and
Development, City of Creve Coeur

From Carl Lumley

Re: Regulating Noise at Pet Spas, Current Animal Noise Ordinances

March 15, 2011

Pursuant to discussion at the March 14, 2011 City Council meeting, we researched current ordinances concerning problematical noise levels, in the context of the pending proposal to introduce the new use of "pet spa" to the zoning ordinance. As you will see from the following, there are several current ordinances which would regulate noise levels at a pet spa. It would not appear to be necessary to add a specific noise regulation for pet spas relative to the proposed amendment to the zoning code.

However, an issue arises concerning the intent behind the exceptions listed in section 210.237 (below). First, the City does not have a unique license for the listed exempt pet-oriented businesses, so presumably the reference is simply to the standard business license. Hence, to the extent there was any assumption of a higher level of city regulation of these businesses versus others to control noise to some degree, that assumption would appear to be misplaced. Second, the City does not even allow some of the listed businesses (i.e. kennels – even though the code defines them, see "boarding kennels" section 205.010). Third, it is unclear whether there was an intention to extend these exemptions to the other noise ordinances, but regardless such extension was not accomplished. Fourth, depending on how the City wants to proceed in terms of clarifying these ordinances, a decision should be made as to whether pet spas should receive the same exemptions as, for example, a pet shop.

Please let me know if there are any questions on these matters.

SECTION 205.080: NOISES AND NOXIOUS ODORS

A. It shall be unlawful for any person keeping any animal of any kind to allow said animal to give forth or cause any loud or unusual noise or to cause any ill-smelling, nauseous or obnoxious odors.

B. All manure accumulations in any pen, run, cage or yard wherein an animal is kept shall be removed or disposed of in such a manner as to prevent the breeding of flies or obnoxious and/or foul odors. (R.O. 2008 §5-27; Ord. No. 1879 §1, 8-11-97)

SECTION 210.200: PEACE DISTURBANCE

A. A person commits the offense of peace disturbance if:

1. He/she unreasonably and knowingly disturbs or alarms another person or persons by:

a. Loud noise;

SECTION 210.237: PUBLIC DISTURBANCE NOISES

A. No person shall cause, nor shall any person in possession of property allow to originate from the property, sound that is a public disturbance noise. The following sounds are hereby determined to be public disturbance noises:

1. Frequent, repetitive or continuous sounds made by any animal which unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors, except that such sounds made in animal shelters or commercial kennels, veterinary hospitals, pet shops or pet kennels licensed under and in compliance with the provisions of the Code of Ordinances shall be exempt from this Subsection; provided, that notwithstanding any other provision of this Section, if the owner or other person having custody of the animal cannot, with reasonable inquiry, be located by the investigating officer or if the animal is a repeated violator of this Subsection, the animal may be impounded;

SECTION 405.550: ENVIRONMENTAL PERFORMANCE STANDARDS

Every use, activity, process or operation located or occurring in the City of Creve Coeur shall comply with the environmental performance standards prescribed in this Section and no such existing use, activity, process or operation shall be hereafter altered or modified so as to conflict with or further conflict with such environmental performance standards. If, as of the date of adoption of this Chapter, the operations of any lawful existing use violates these environmental performance standards, such operations shall not be varied or changed in any way as to increase the degree of such violation. The operation of any existing conforming use in violation of the environmental performance standards shall not in itself make such use subject to [Section 405.610](#), Non-Conformities.

2. *Noise.* Sound levels and impulsive type noises shall comply with the St. Louis County noise standards as established and enforced by the St. Louis County Noise Abatement Office of the Department of Community Health and Medical Care.

AN ORDINANCE TO AMEND CHAPTER 405, THE ZONING ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF CREVE COEUR, MISSOURI, BY RESTRICTING HORSES TO A MINIMUM OF THREE ACRES, WITH NO MORE THAN ONE HORSE PER ONE ACRE OF FENCED PASTURE.

WHEREAS, Section 205.030.A and Section 405.460.21 contain conflicting regulations governing the keeping of horses on residential property; and,

WHEREAS, the record before the City Council at the time of recodification of the Municipal Code clearly indicates an intention to eliminate said conflicts; and

WHEREAS, an application has been submitted by the Zoning Administrator to amend the code to eliminate the conflict in regulations; and

WHEREAS, the Planning and Zoning Commission of the City of Creve Coeur, Missouri has recognized the need for an addition to the provisions of the City Code of Ordinances and related amendments to other sections as set forth herein, to more effectively implement the goals of the Comprehensive Plan and the purposes of the Zoning Code; and

WHEREAS, the Planning and Zoning Commission of the City of Creve Coeur, Missouri, held a public hearing thereon at the Creve Coeur Government Center on March 21, 2011, beginning at 7:00 p.m., or immediately following the close of the previous public hearing; and

WHEREAS, the Planning and Zoning Commission reviewed and, by a unanimous vote and recommended approval of the subject amendments at its meeting on Monday, March 21, 2011; and

WHEREAS, notice of said public hearing had previously been published at least 15 days prior to the hearing in the St. Louis Countian, a newspaper of general circulation in the City of Creve Coeur; and

WHEREAS, all persons who presented themselves at said meeting and desiring to be heard were given an opportunity to be heard and a copy of the proposed ordinance has been made available for public inspection prior to its consideration by the City Council; and this Bill having been read by title in open meeting two times before final passage by the City Council; and

WHEREAS, the City Council being fully informed finds that amending the City Code of Ordinances would be in harmony with and bear a substantial relation to the public welfare, health, safety, comfort and convenience of the citizens of the City of Creve Coeur and in the public interest.

NOW, THEREFORE, be it ordained by the City Council of the City of Creve Coeur, Missouri as follows:

SECTION 1: Section 205.030, Restrictions on Horses, paragraph A, of Chapter 205, Animals and Fowl, of the City of Creve Coeur's Code of Ordinances shall be amended to include no more than one horse per one acre of fenced pasture, as follows:

Section 205.030 Restrictions on Horses

- A. In accordance with Section 405.460(B)(21) of the Zoning Code, horses may be kept in a stable on lots that are a minimum of three (3) acres with no more than one (1) horse per one (1) acre of fenced pasture ~~per three (3) acre parcel~~. The stable is required to be set back a minimum of fifty (50) feet from any property line. The lot upon which a horse is kept shall be free of debris. The lot shall be fenced and kept in good repair to prevent the horse from running at large.

SECTION 2: Section 405.460, Accessory Uses and Structures, subsection 21, of Chapter 405 Zoning Ordinance, shall be amended to include a minimum lot size of three acres, and no more than one horse kept per one acre of fenced pasture to the requirements of horses and horse stables in residential districts, as follows:

Section 405.460 Accessory Uses and Structures:

21. Horses and horse stables in residential districts "A", "B", "C" and "D" provided that:
- The lot on which the use exists is at least ~~one (1) acre~~ three (3) acres in size;
 - No more than one (1) horse is kept per one (1) acre of fenced pasture;
 - All horses are kept within a stable; and,
 - The stable is set back from any property line a minimum of fifty (50) feet.

SECTION 3: All ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

SECTION 4: This ordinance shall become effective in accordance with Section 3.11 (g) of the City Charter.

ADOPTED THIS ____ DAY OF _____, 2011.

A. JAMES WANG
PRESIDENT OF CITY COUNCIL

APPROVED THIS ____ DAY OF _____, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 Of The City Charter

ATTEST:

DEBORAH RYAN, MRCC
CITY CLERK



**APPLICATION TO PLANNING AND ZONING COMMISSION
#11-003 TEXT AMENDMENT TO THE RESTRICTION ON
HORSES IN RESIDENTIALLY ZONED PROPERTIES**

FOR THE MEETING OF: March 21, 2011

LOCATION: All Residential Zoning Districts

REQUEST:

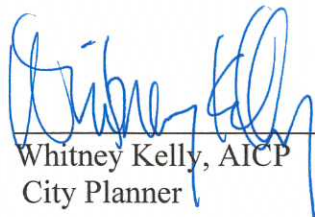
An application has been submitted to revise sections of the City of Creve Coeur Zoning Regulations and Public Health, Safety, and Welfare Regulations of the Code of Ordinances to only allow horses on residential properties of at least three acres where no more than one horse is kept per one acre of fenced pasture.

ADDITIONAL INFORMATION:

Section 405.460(B)(21), under Accessory Uses And Structures, currently allows horses and horse stables in residential districts "A", "B", "C" and "D" provided that: a. the lot on which the use exists is at least one acre in size; b. no more than one horse is kept per acre; c. all horses are kept within a stable; and d. the stable is set back from any property line a minimum of 50 feet. Whereas Section 205.030, Restrictions on Horses under Public Health, Safety, and Welfare Regulations of the Code of Ordinances, states that horses may be kept in a stable on lots that are a minimum of three acres with no more than one horse per three acre parcel.

APPLICANT: Paul Langdon, AICP
Director of Community Development
City of Creve Coeur

REPORT PREPARED BY:


Whitney Kelly, AICP
City Planner


Date

ATTACHMENTS: Draft Ordinance

Key Issues:

- Does the request integrate with existing permitted uses?
- Does this request further the goals and/or implement the Comprehensive Plan?
- Is this a reasonable exercise of zoning authority?

Comp. Plan References
Residential Preservation and
Economic Development
States:

- Encourage the continued preservation of the suburban landscape character of the area, its open green spaces, and stream corridors.

Code References

- Article VIII Zoning Regulations, Section 405.460(B)(21): Accessory Uses and Structures
- Title II: Public Health, Safety, and Welfare, Article II, Section 205.030: Restrictions On Horses

INTRODUCTION

Staff became aware of conflicting restrictions between the Zoning Regulations and the Public Health, Safety, and Welfare Regulations regarding keeping horses on residential property after a general inquiry from the public. The zoning regulations currently allow horses and horse stables on lots of at least one acre and one horse per acre. The Public Health, Safety, and Welfare Regulations restrict horses to three acre lots, with no more than one horse per three acre parcel, in accordance with the Zoning Regulations. During the recodification process in 2010, the City Attorney's notes, in discussions with the City Council, indicates that the Zoning Regulations would be changed to match the Public Health and Safety Regulations, however this was not completed by the recodifier at the time.

DISCUSSION

Upon further review, Staff recommends that both regulations be modified to include a minimum of three acres with no more than one horse per one acre of fenced pasture to provide for the appropriate space for the animal, reduce overcrowding, and ensure proper soil conditions. This will reduce the number of lots available for the keeping of horses, but the demand for this is low and the impacts of one over-crowded pasture can be considerable. Therefore Section 405.460 will be amended as follows:

Section 405.460 Accessory Uses and Structures

21. Horses and horse stables in residential districts "A", "B", "C" and "D" provided that:
- The lot on which the use exists is at least ~~one (1) acre~~ three (3) acres in size;
 - No more than one (1) horse is kept per one (1) acre of fenced pasture;
 - All horses are kept within a stable; and
 - The stable is set back from any property line a minimum of fifty (50) feet.

RELATED AMENDMENTS

Article IV Animal Regulations, under Title II Public Health, Safety and Welfare, of the City of Creve Coeur Code of Ordinances will also be amended for conformity, as follows:

Section 205.030: Restrictions on Horses

- A. In accordance with Section 405.460(B)(21) of the Zoning Code, horses may be kept in a stable on lots that are a minimum of three (3) acres with no more than one (1) horse per one (1) acre of fenced pasture ~~per three (3) acre parcel~~. The stable is required to be set back a minimum of fifty (50) feet from any property line. The lot upon which a horse is kept shall be free of debris. The lot shall be fenced and kept in good repair to prevent the horse from running at large.

The attached ordinance reflects the proposed changes outlined above. If the members of the Planning Commission are not in agreement with these changes, they should vote on a motion(s) to amend the attached draft ordinance accordingly, before voting on a recommendation for the entire draft ordinance.

CONCLUSION AND ACTION

Staff recommends that Section 405.460(21) be amended to require a minimum of three acres with no more than one horse per one acre of fenced pasture for Horses and Horse Stables in residential districts.

MOTION

If the Planning Commission has chosen to accept the draft ordinance as written, the following would be a suitable motion for this application:

"I move to recommend approval of a text amendment to include lots of at least three acres in size and no more than one horse is kept per one acre of fenced pasture for the permitted Accessory Uses and Structures of Horses and Horse Stables in residential districts "A", "B", "C" and "D" (conditions may be added, eliminated, or modified by preceding motion).

APPENDIX 1: COMPREHENSIVE PLAN

Included and attached by reference. See body of report for specific excerpts.

APPENDIX 2: ZONING CODE

Included and attached by reference. See body of report for specific excerpts.



city
of

CREVE COEUR

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March 22, 2011

Mayor Harold Dielmann
City Council Members
City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, MO 63141

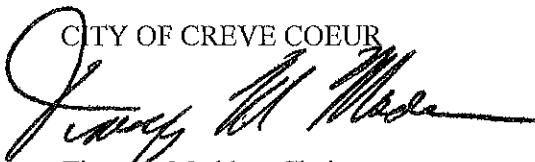
Re: Text Amendment
#11-003

Honorable Mayor and City Council Members:

The Planning and Zoning Commission, at its meeting of March 21, 2011, reviewed the request of Paul Langdon, Zoning Administrator, for approval to revise sections of the Code of Ordinances to only allow horses on residential properties of at least three acres where no more than one horse is kept per one acre of fenced pasture.

By unanimous vote, the P&Z Commission recommends approval of the Text Amendment per the attached draft ordinance.

Sincerely,

CITY OF CREVE COEUR


Timothy Madden, Chairman
Planning & Zoning Commission

TM:pr

cc: M.C. Perkins, City Administrator
Carl Lumley, City Attorney
J. Heines, Director of Public Works
G. Eidman, Chief of Police
A. Oestereich, Fire Marshal
S. Unser, Chief Building Official
G. Seifried, Project Manager
B. Holmes, Senior Plans Examiner



CITY OF CREVE COEUR - MINUTES
PLANNING AND ZONING COMMISSION MEETING
MONDAY, MARCH 21, 2011
7:00 P.M.

A Public Hearing/regular meeting of the Planning and Zoning Commission of the City of Creve Coeur, Missouri was held on Monday, March 21, 2011, at the Creve Coeur Government Center, 300 North New Ballas Road. Chair Tim Madden called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: *Mr. Timothy Madden, Chair*
 Dr. Michael Barton - ABSENT
 Mr. Gary Eberhardt - ABSENT
 Mr. Barry Glantz
 Ms. Cynthia Kramer
 Dr. Scott Saunders
 Mr. Jim Schnarr

OTHERS PRESENT: *Mr. Leland Curtis, Acting City Attorney*
 Mr. Paul Langdon, Director of Community Development
 Ms. Whitney Kelly, City Planner
 Ms. Pat Rosenblatt, Recording Secretary

2. ADDITIONS TO – ACCEPTANCE OF THE AGENDA

The agenda was accepted as written.

3. APPROVAL OF MINUTES

A. Draft Minutes of March 7, 2011

In the absence of Mr. Lumley, Mr. Curtis offered a minor correction to Page 3, after which Mr. Glantz made a motion, seconded by Dr. Saunders, for approval of the March 7 minutes, as corrected, which unanimously carried.

4. PUBLIC COMMENT

None

5. NEW BUSINESS

A. Application #11-003 – PUBLIC HEARING

A proposed text amendment to revise sections of the City of Creve Coeur Zoning Regulations and Public Health, Safety, and Welfare Regulations of the Code of Ordinances to only allow horses on residential properties of at least three acres where no more than one horse is kept per one acre of fenced pasture.

A presentation was made by Paul Langdon, Zoning Administrator, regarding the application.

Comments and questions from Commission members.

There being no further comments, the City Attorney presented exhibits for the record and the public hearing was closed.

(This ends the First Public Hearing)

Mr. Schnarr moved to recommend approval of a text amendment to include lots of at least three acres in size and no more than one horse is kept per one acre of fenced pasture for the permitted Accessory Uses and Structures of Horses and Horse Stable in residential districts “A”, “B”, “C” and “D”. Ms. Kramer seconded the motion, with the resultant vote as follows, to-wit:

Mr. Glantz – aye
Dr. Saunders – aye

Ms. Kramer – aye

Mr. Schnarr – aye
Chair - aye

B. Application #11-007 – PUBLIC HEARING

A request for a new conditional use permit for a Waterway Automotive Detail Center, within the 2,360 square foot building at 11664 Olive Boulevard, in the “CB” Core Business Zoning District.

A presentation was made by Henry Dubinsky, Chairman of Waterway, regarding the application.

Comments and questions from Commission members.

Comments and questions from Mr. Carl Moskowitz, 291 Bellington Lane.

There being no further comments, Mr. Curtis introduced exhibits into the record and the public hearing was closed.

(This ends the second and final Public Hearing)

Mr. Schnarr moved to recommend approval of the conditional use permit for the Waterway Automotive Detail Center located at 11664 Olive Boulevard, submitted with Application #11-007, subject to the conditions contained in the attached ordinance attached to the staff report dated March 18, 2011. Mr. Glantz seconded the motion, with the resultant vote as follows, to-wit:

Dr. Saunders – aye
Mr. Glantz – aye

Mr. Schnarr – aye

Ms. Kramer – aye
Chair – aye

7. WORK AGENDA

A. City Council requests Planning and Zoning Commission statement of preference for security screening (metal detector) during meetings.

Mr. Langdon stated that discussion was raised at the City Council level about the use of metal detectors, which is now used only on court nights. It would require additional police staff to operate the unit as well as do the screening and supervisor the space. The Council is inclined to use it for their own meetings but felt that if it is appropriate for their meetings, it would probably be appropriate for the P&Z meetings. Since public hearings are now heard at the P&Z level, the call to the general public is larger. Discussion followed. Commission members were in favor of the security screening.

B. Street Lighting Plan: City Council requests that the Planning and Zoning Commission consider a level of priority and time frame for developing a street lighting plan for the City.

Mr. Langdon pointed out that there is no plan in place for street lighting at the present time, noting a number of studies that will be reviewed in the next twelve months and asked if the members wanted to add another one to the list. Dr. Saunders stated that his observation at the City Council meeting is that the issue began with Mr. Caldwell's question about streetlights along the discussed section of Olive, saying he feels there is a need for some type of uniform consensus among P&Z and City Council as to what we are trying to achieve in terms of lighting. Mr. Glantz felt it was worthy of discussion. Mr. Schnarr pointed out possible massive costs associated with it and establishing priority as to when it is needed. Mr. Langdon was not aware of any pressing residential concerns but felt it is really about what to do with the commercial areas, especially Olive Boulevard. Discussion followed. Ms. Kramer felt discussion on some level could be valuable to the overall vision for long term. Mr. Langdon suggested starting with the City Center to get familiar with the issues and familiar with a particular area, which does include a portion of Olive, and then extend it to include the rest of the arterials.

Ms. Lynn Barry, 626 Graeser Road, stated that there are a lot of people walking at night and alluded to the Comprehensive Plan which was originally designed as a walking community. With the change of lighting on Olive, she pointed out that it is a lot darker and harder to walk at night. She felt more people would be walking toward the Downtown Center if there could be more pedestrian lighting on Olive. Dr. Saunders suggested bringing back a review of the TDD plans for street lighting. Discussion continued.

8. OTHER BUSINESS

A. Planning Division Report

Mr. Langdon mentioned the following projects for the near future:

- City Center
- Street Lighting
- “LI” Light Industrial District

Applications for the next meeting could include:

- Public Hearing amendment dealing with horses
- Public Hearing CUP for Waterway
- Review amended SDP for Dierbergs for an outside dining area.

B. City Attorney

Mr. Lumley had no report.

9. ADJOURNMENT

There being no further business to come before the Planning and Zoning Commission, upon motion being made and duly seconded, the meeting was adjourned at 8:45 p.m.

Timothy Madden, Chair

Pat Rosenblatt, Secretary

PZ 032111 11-003.txt
1 PLANNING AND ZONING COMMISSION PUBLIC HEARING
2 CITY OF CREVE COEUR, MISSOURI
3 300 NORTH NEW BALLAS ROAD
4 MONDAY, MARCH 21, 2011
5 7:00 P.M.
6 APPLICATION NO. 11-003
7
8 THOSE IN ATTENDANCE:
9 Mr. Tim Madden, Chair
10 Ms. Cynthia Kramer
11 Dr. Scott Saunders
12 Mr. Jim Schnarr
13 Mr. Barry Glantz
14 Mr. Leland B. Curtis, Acting City Attorney
15 Mr. Paul Langdon, AICP, Director of Community Development
16 Ms. Whitney Kelly, AICP, City Planner
17 Ms. Pat Rosenblatt, Recording Secretary
18
19
20
21 McLaughlin Court Reporting Services, Inc.
22 Deborah K. McLaughlin, RPR, MO-CCR #314, IL-CSR, KS-CCR
23 4772 Gatesbury Drive
24 St. Louis, MO 63128
25 (314)487-2259

1 CHAIRMAN MADDEN: Like to call to order the 1
2 Planning and Zoning Commission Meeting for the City of
3 Creve Coeur for Monday March 21st, 2011.
4 We'll start with roll call.
5 (Roll call was conducted.)
6 CHAIRMAN MADDEN: A public hearing on
Page 1

7 Application No. 11-003.

8 I think Mr. Langdon's going to be handling this.

9 MR. LANGDON: Yeah.

10 (Paul Langdon was sworn by the court reporter.)

11 MR. LANGDON: Good evening, Mr. Chair, Members
12 of Commission. My name's Paul Langdon, Director of
13 Community Development for the City of Creve Coeur.

14 This is a public hearing on application by staff
15 to amend the Zoning Code regarding to keeping of horses on
16 residential property.

17 Part and parcel with this request will be a
18 similar one that goes to the City Council only that will
19 amend the City's Public Health, Safety and Welfare
20 Regulations that deal with this same issue.

21 In fact, that's the problem is that they deal
22 with it separately. At present this request originated
23 out of a generic inquiry from a real estate agent.

24 There's no particular property that we're aware
25 of that's at risk one way or the other, or that anybody

1 has any particular concerns, but the ordinances do not²
2 agree.

3 One says that you can have one horse on a 1-acre
4 lot and no more than one per acre, that's in the Zoning
5 Code, and then in the Health, Safety and Welfare
6 Regulations it says you have to have a 3-acre lot, but you
7 can have one horse per 3 acres on those properties.

8 Fortunately, I guess, I actually have, in past
9 experience, dealt with a lot of horse use on residential
10 property. And one of the common problems is -- is this
11 standard of designating an acre lot that's big enough for

12 a horse.

13 I can tell you from past experience that what
14 often happens is, one, people don't want the horse in the
15 front yard, so take out the front yard; two, they don't
16 want it in the area adjacent to the house, so take out
17 that area, and now the horse is on a very small area.

18 And unless they're meticulous about keeping up
19 that pasture, if you will, you soon have a problem with
20 the adjacent neighbors.

21 So it's my recommendation that we increase the
22 amount of area needed for each horse, and also, I believe,
23 given the character, given we actually don't have high
24 demand for horses in residential property, that we go with
25 the minimum lot size of 3 acres. And one horse per acre

1 is fine as long as it's an acre for the horse. 3

2 And so what you have in there is a change, so
3 it's 1 acre -- one horse per acre for pasture, fenced
4 pasture. So now we have a definable area we can measure;
5 we can determine if it's, in fact, large enough. We have
6 a standard that meets with sort of character in the
7 community, I believe, only the largest lots are available
8 for this use. And to my knowledge, there are no
9 situations where we're going to create a hardship for an
10 existing property.

11 Obviously, if anyone has a horse on property
12 that meets the current standards and we change the
13 ordinance, it would be preexisting nonconforming. They
14 could continue to have the same number of horses on that
15 property going into the future.

16 It's fairly straightforward. You have a draft
17 ordinance in front of you that is just for the portion of

18 the Zoning Code. That's the only portion you have purview
19 over. As I said, it will go straight to City Council if
20 you recommend it.

21 Have any questions?

22 CHAIRMAN MADDEN: Questions?

23 MR. SAUNDERS: Paul, you may not know the answer
24 on this based on what you just said, but do we have any
25 properties that would be nonconformance?

1 MR. LANGDON: Not to my knowledge. 4

2 MR. SAUNDERS: Okay.

3 MR. SCHNARR: You say all horses are to be kept
4 in a stable, and yet you're talking about pasture. Should
5 we re-word all horses are to be kept within a stable? I
6 mean that's nothing more than weather protection.

7 MR. LANGDON: Right, they have to have the
8 pasture along with the stable.

9 MR. SCHNARR: Right.

10 MR. LANGDON: So it says lots of 3-acres with no
11 more than one horse per fenced pasture, so it's both as
12 it's written.

13 MR. SCHNARR: But it says all horses kept in a
14 stable, either in the pasture or in the stable. I mean it
15 just seemed to me that if it is important to say that you
16 want a stable to be provided, that's fine.

17 MR. LANGDON: Uh-huh.

18 MR. SCHNARR: But you can't say you want to keep
19 the horses within the stable if they've got a pasture.
20 That's where they're going to be.

21 MR. LANGDON: I guess I don't mean exclusively.
22 There is shelter there as well for the animal.

23 CHAIRMAN MADDEN: So if you have a 3-acre lot --

24 MR. LANGDON: Uh-huh.

25 CHAIRMAN MADDEN: -- what you're saying is the

5

1 most you could have is two horses?

2 I mean if you have your home on there --

3 MR. LANGDON: Right. By the time you take out
4 the areas you can't fence off, that's correct.

5 CHAIRMAN MADDEN: Mr. Glantz.

6 MR. GLANTZ: You say that we have, under this,
7 there wouldn't be any nonconforming uses. What would
8 trigger -- if somebody had a horse on one acre right now,
9 what would -- they would be, quote, grandfathered in, for
10 lack of a better word, what would be a trigger point in
11 the future that would require them to change?

12 MR. LANGDON: The Zoning Code says that this
13 discontinuation of a nonconforming for, I believe it's six
14 months, essentially, abandons, so let's say the horse
15 passes away or it's sold, then they would have a certain
16 amount of time to replace it or they lose the standing.

17 Typically changing the animal doesn't really
18 affect the standard. It's the same analogy draws like a
19 sign; just because you change the name of the business
20 doesn't mean that the business itself doesn't continue.

21 MR. SCHNARR: But if the property was sold, then
22 all bets are off?

23 MR. LANGDON: I don't believe so. I think that
24 it would -- cause use runs with the land, not the
25 ownership. So you could sell it as horse property even if

6

1 it's not within conformity.

2 Again, same as we do with conditional uses of
Page 5

3 any kind; it runs with the land, so restaurant can go
4 away. A new one can come in totally new ownership, new
5 franchise, but as long as meet the same conditions, they
6 can continue the use.

7 MR. GLANTZ: But you're fairly confident that we
8 don't have the horse condition that we're talking about?

9 MR. LANGDON: I'm not aware of any horse
10 property presently.

11 CHAIRMAN MADDEN: That what I was going to ask.

12 As far as you know, there's no horses being
13 stabled in the --

14 MR. LANGDON: As far as I know.

15 CHAIRMAN MADDEN: Okay.

16 MR. LANGDON: I can't swear that's 100 percent
17 true. No one's informed me of any and I haven't seen any.

18 CHAIRMAN MADDEN: Okay. Anything else for Paul?

19 I guess that would end the formal public
20 hearing, so we'll move --

21 Is there anybody in the audience that wants to
22 make a comment on this? I guess not.

23 Anymore discussion?

24 MR. LELAND CURTIS: Mr. Chairman, before you
25 close the public hearing, I'd like to introduce the

1 following exhibits: Notice documentation, which is in ⁷
2 possession of City Clerk; the specific documents that
3 contain staff reports, Planning and Zoning letters,
4 minutes or excerpts, documents from presenters, any
5 written materials, some are contained in the packet here,
6 the entire City Code, Ordinance and Charter, City
7 Comprehensive Plan and any of public file regarding the

8 application or letters that may have been received.

9 CHAIRMAN MADDEN: Okay.

10 MR. LELAND CURTIS: All that into evidence.

11 CHAIRMAN MADDEN: Okay. And now we'll

12 officially end the public hearing.

13

14 (Public Hearing ended.)

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1 STATE OF MISSOURI)

2) SS

3 COUNTY OF ST. LOUIS)

4

5 I, Deborah K. McLaughlin, Registered Professional

6 Reporter, Missouri Certified Court Reporter, Illinois

7 Certified Shorthand Reporter and Kansas Certified Court

8 Reporter, do hereby certify that I reported the Planning

9 and Zoning Public Hearing stenographically and later

10 reduced to typewriting; and that this is a true and

11 accurate transcript of the public hearing.

12

13

14 _____, RPR, MO-CCR, IL-CSR, KS-CCR
15 Deborah K. McLaughlin, RPR, MO-CCR, IL-CSR, KS-CCR
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**AN ORDINANCE AUTHORIZING THE ISSUANCE OF A NEW CONDITIONAL USE
PERMIT FOR A WATERWAY AUTOMOTIVE DETAIL CENTER LOCATED AT 11664
OLIVE BOULEVARD**

WHEREAS, application was made by Michael Goldman, General Counsel for Waterway Gas & Wash, for a conditional use permit for a Waterway Automotive Detail Center, within the 2,360 square foot building at 11664 Olive Boulevard, in the "CB", Commercial zoning district; and

WHEREAS, under Section 405.370(C)(1)(i)(3), car washes (except bus washing and truck washing) in the "CB", Commercial zoning district require the issuance of a conditional use permit as provided in Section 405.1070, Conditional Use Permits; and

WHEREAS, a public hearing was held by the Creve Coeur Planning and Zoning Commission on Monday, March 21, 2011, beginning at 7:00 p.m. or immediately following the close of the previous public hearing, on said application for the conditional use permit as provided by Section 405.1070(D)(3); and

WHEREAS, notice of publication for said public hearing had been previously published at least 15 days prior to the hearing, in the St. Louis Countian, a newspaper of general circulation in the City of Creve Coeur; and

WHEREAS, all parties desiring to be heard, either for or against said application, were given an opportunity to be heard, and a copy of the proposed ordinance has been made available for public inspection prior to its consideration by the Council; and this Bill having been read by title in open meeting two times before final passage by the City Council, and

WHEREAS, the Planning and Zoning Commission reviewed and, by a unanimous vote and recommended approval of the subject amendments at its meeting on Monday, March 21, 2011; and

WHEREAS, the City Council finds that the application and evidence presented clearly indicate that the proposed conditional use, when subject to certain conditions set forth herein:

1. Will contribute to and promote the community welfare and convenience at the specific location.
2. Will not cause substantial injury to the value of neighboring property.
3. Meets the applicable provisions of the City's Comprehensive Plan and any applicable neighborhood or sector plans and complies with other applicable zoning district regulations and provisions of this Chapter, unless good cause exists for deviation therefrom.
4. Will be compatible with the surrounding area and thus will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services.

NOW, THEREFORE, be it ordained by the City Council of the City of Creve Coeur, St. Louis County, Missouri, as follows:

Section 1: A Conditional Use Permit is authorized to be issued pursuant to Section 3 hereof for the operation of a car wash for an automotive detail center located at 11664 Olive

Boulevard, in the "CB" Core Business zoning district, within the Reuther's Auto Group site development whose legal description is as follows:

A tract of land in part of Lot 1 of Studt's HOME PLACE according to the plat thereof recorded in Plat Book 7, Page 38 of the St. Louis County records and described as follows: Beginning at a point being the intersection of the south line of Olive Boulevard with the east line of Ham Drive; thence along the south line of Olive Boulevard, North 74° 27' 30" East, 96.79 feet to a point; thence South 0° 40' 00" East, 301.15 feet to a point; thence South 89° 28' 45" West, 95.00 feet to a point in the east line of said Ham Drive; thence along the east line of Ham Drive, North 0° 40' 00" West, 277.18 feet to the point of beginning, containing 27,541 square feet

Section 2: The Conditional Use Permit granted shall be subject to all applicable statutes, ordinances, rules and regulations, and the following conditions:

1. This Conditional Use Permit shall be for the operation of a car wash for auto detail only.
2. Said use shall be located in the 2,360 square foot leased building currently addressed as 11664 Olive Boulevard located on the Reuther's Auto Group property, having its principal office at 11654 Olive Boulevard.
3. The hours of operation shall be between 7a.m. and 7p.m., seven days a week.
4. All proposed cleaning and detailing of vehicles will be located within the building structure.
5. All signs and banners shall be in conformance with Article VIII, Sign Regulations, of the Zoning Code.
6. There shall be no outdoor storage or long-term placement of any automobiles, trailers, materials or equipment on the site.
7. Any mechanical equipment installed for the site shall be properly screened with approved materials.
8. The owner of the property shall address all outstanding property maintenance violations on the property to the satisfaction of the Chief Building Official prior to the issuance of any final Certificate of Occupancy for the automotive detail center permitted by this ordinance.
9. Any future enlargement, extension, expansion or alteration in the use of the structures or site must be approved by the City Council upon receipt of the recommendation of the Planning and Zoning Commission as an amendment to the Conditional Use Permit before a Building Permit for the enlargement, expansion or alteration may be issued.
10. All new, modified or altered overhead utilities servicing the subject tenant space shall be placed underground.
11. Failure to comply with any one or all of the conditions of this permit shall be adequate cause for the revocation of said permit by the City Council, provided, however, no permit shall be revoked without prior notice to the owner of the intention of the City Council to revoke this permit and reasonable time granted to the owner to correct or remedy any such breach of conditions, except for repeated breaches or violations.
12. No conditional use permit granted by the City Council shall be valid for a period longer than one year from the date it grants the conditional use permit, unless within such period: (1) a building permit is obtained and construction is begun; or (2) if a building permit is not required, an occupancy permit is obtained and the use of the building commenced. The City Council may grant extensions to the one (1) year period of not more than one hundred and eighty (180) days each, without notice or hearing, provided that a written request for such extension is filed by the original applicant and approved by the City Council prior to the date the conditional use permit is scheduled to expire.

BILL NO. 5302

ORDINANCE NO. _____

13. Any transfer of ownership or lease of the property shall include in the transfer or lease agreement a provision that the purchaser or lessee agrees to be bound by the approved Site Development Plan for the property and the conditions herein set forth, and written confirmation thereof signed by the new owner or lessee shall be filed with the City at the time of such transfer or lease. Failure to comply with this provision shall not excuse anyone from these conditions.

Section 3: The City Administrator of the City of Creve Coeur is hereby authorized and directed to issue a Conditional Use Permit in accordance with the provisions of this ordinance, said permit to expressly provide for the conditions and stipulations hereinabove set out in Section 2 of this ordinance. Exercise of the rights granted pursuant to the issued permit shall constitute acceptance of all conditions and stipulations set forth herein.

Section 4: This ordinance shall become effective in accordance with Section 3.11 (g) of the City Charter.

ADOPTED THIS ____ DAY OF _____, 2011.

A. J. WANG
PRESIDENT OF CITY COUNCIL

APPROVED THIS ____ DAY OF _____, 2011.

AJ WANG, COUNCIL PRESIDENT
ACTING FOR MAYOR DURING TEMPORARY ABSENCE
PURSUANT TO SECTION 3.4 OF THE CITY CHARTER

ATTEST:

DEBORAH RYAN, MRCC
CITY CLERK



city of CREVE COEUR

300 North New Ballas Road • Creve Coeur, Missouri 63141
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966
www.creve-coeur.org

APPLICATION TO PLANNING AND ZONING COMMISSION #11-007 CONDITIONAL USE PERMIT WATERWAY AUTO DETAIL CENTER AT REUTHER'S

FOR THE MEETING OF: March 21, 2011

LOCATION: 11664 Olive Boulevard

REQUEST:

Michael Goldman, on behalf of Waterway Gas & Wash, has submitted a request for a conditional use permit to operate an automotive detail center in the approximately 2400 sq. ft. building on the Reuther's Automotive Group property at 11664 Olive Boulevard. The property is located south of Olive Boulevard between N. New Ballas and Old Ballas Roads and is currently zoned "CB" Core Business District.

ADDITIONAL INFORMATION:

Section 405.370(C)(1)(i)(3) indicates that car washes (all uses within SIC Code 7542 except bus washing and truck washing) are Conditional Uses within the Core Business District.

Key Issues:

- Does the request integrate with existing permitted uses?
- Does this request further the goals and/or implement the Comprehensive Plan?
- Does this use meet the criteria for Conditional Use Permit approval?

Comp. Plan References

- Core Business District
- Central Business District Land Use Plan

Zoning Code References

- 405.370 "CB" Core Business
- 405.1070 Conditional Use Permits

APPLICANTS: Michael P. Goldman
General Counsel
Waterway Gas & Wash
727 Goddard Ave
Chesterfield, MO 63005



REPORT PREPARED BY:

Whitney Kelly
Whitney Kelly, AICP, City Planner

3/15/2011
Date

ATTACHMENTS: Applicant's Application Materials Received 02/28/2011
Draft Ordinance

BACKGROUND AND ZONING REQUEST

An application has been submitted by Michael Goldman, General Council for Waterway Gas & Wash Company, for a Conditional Use Permit to operate an automotive detailing center in the 2,360 sq. ft. building at 11664 Olive Boulevard located on the Reuther's Auto Group campus. All such uses are regulated under Section 405.370(C) *Conditional Uses* within the Core Business District.

LAND USE HISTORY AND ZONING OF SUBJECT SITE

The subject property was originally built 1941, and later served as the service center for the Reuther's Automotive Group. The property is zoned "CB" Core Business District.

LAND USE AND ZONING OF SURROUNDING PROPERTIES

The adjacent zoning and land uses are as follows:

DIRECTION	USE	ZONED	SEPARATED BY
North	Retail/Office Development	"CB" Core Business District	Olive Boulevard
South	Office	"CB" Core Business District	NA
East	Automotive Dealership	"CB" Core Business District	NA
West	Retail Development	"CB" Core Business District	Hamm Ave

COMPREHENSIVE PLAN REVIEW

The subject property is located in the "Central Business District 1" area and within the Central Business District (CBD) Land Use Plan adopted in 2005. These documents advocate higher density redevelopment than the site currently provides and the establishment of a true "center" of the community as the heart of the Central Business District. The Central Business District area encourages a mix of uses, including retail, residential, government, and park uses. The Comprehensive Plan recommends connection to the neighborhoods and adjacent area through a series of on-street and off-street pedestrian facilities. The Comprehensive Plan further recommends that all new development or redevelopment of non-residential uses should comply with the Design Guidelines. In reviewing a copy of the lease the applicants are aware that redevelopment of the site could occur. However, they are not proposing any improvements to the building and all activity will be occurring inside the existing structure, with parking in the spaces behind the building. Given the extremely limited impact of the proposed use on the existing facilities, and the overall plan goals to see the site redevelopment, it is the staff opinion that significant investments in furtherance of the Comprehensive Plan are excessive and may ultimately inhibit redevelopment of the larger tract.

ZONING REVIEW

The overall development has legally pre-existing, but non-conforming site coverage, but is generally in conformance with the Zoning Code. Since neither the external building shell nor the surrounding parking and landscaping are changing as a direct result of this application, there is minimal opportunity to pursue changes on the Reuther's campus property. These conditions also preclude the need for a site development plan in conjunction with the conditional use permit.

Car washes, except bus washing and truck washing, are permitted with conditions in the Core Business District. Given that the applicant will not be making any changes to the existing structure and that the site provides adequate parking, and the proposed use is low key, low impact, and low demand in nature, there is limited opportunity to require large scale physical improvements to the site, however minor changes regarding standard property maintenance issues are recommended as condition of approval.

PROPERTY MAINTENANCE

While visiting the property, Staff has found the following property maintenance problems:

- Displaced concrete wheel stops
- Unsecured dumpster enclosure
- Debris and dumpster stored along the south east fencing (see photo's in Appendix 4)
- Inoperable vehicles and trailers stored on site
- Broken window at the subject building
- Non-shielded outward casting light underneath canopy of building

While these issues are generally on the larger Reuther's site, they are benefiting from the request as the landlord of the property. Staff feels that conditions of approval need to ensure that both properties are kept tidy and to minimal property maintenance standards adopted by the City of Creve Coeur. Therefore, the draft ordinance has conditions requiring that all property maintenance violations be addressed prior to the issuance of the final certificate of occupancy. If there are issues that cannot be addressed within this timeframe, the applicant will be able to work with the City's Code Enforcement Officer, under the direction of the Chief Building Official, on an appropriate schedule of repairs. Building code violations are not under consideration at this time, but may also become evident during the occupancy permit process.

FORM OF THE DRAFT ORDINANCE

As stated above, the proposed Waterway Automotive Detail Center is entirely within an existing development where façade improvements or additional site coverage is neither proposed nor requested. As such, the attached draft ordinance does not contain a section relating to site development plan conditions. However, property maintenance issues though out the Reuther's Auto Group campus must be addressed, and therefore conditions to such are included.

ACTION

If the Planning and Zoning Commission finds the associated draft conditional use permit ordinance to be in conformance with the purposes and regulations of the Comprehensive Plan and Zoning Code, it may vote on a recommendation to the City Council. Any changes to the draft ordinance should be discussed and made by separate actions.

MOTION

The following is an example of an appropriate motion for this application:

"I move to recommend approval of the Conditional Use Permit for the Waterway Automotive Detail Center located at 11664 Olive Boulevard, submitted with Application #11-007, subject to the conditions contained in the draft ordinance attached to the staff report dated March 18, 2011" (conditions may be added, eliminated, or modified by preceding motion).

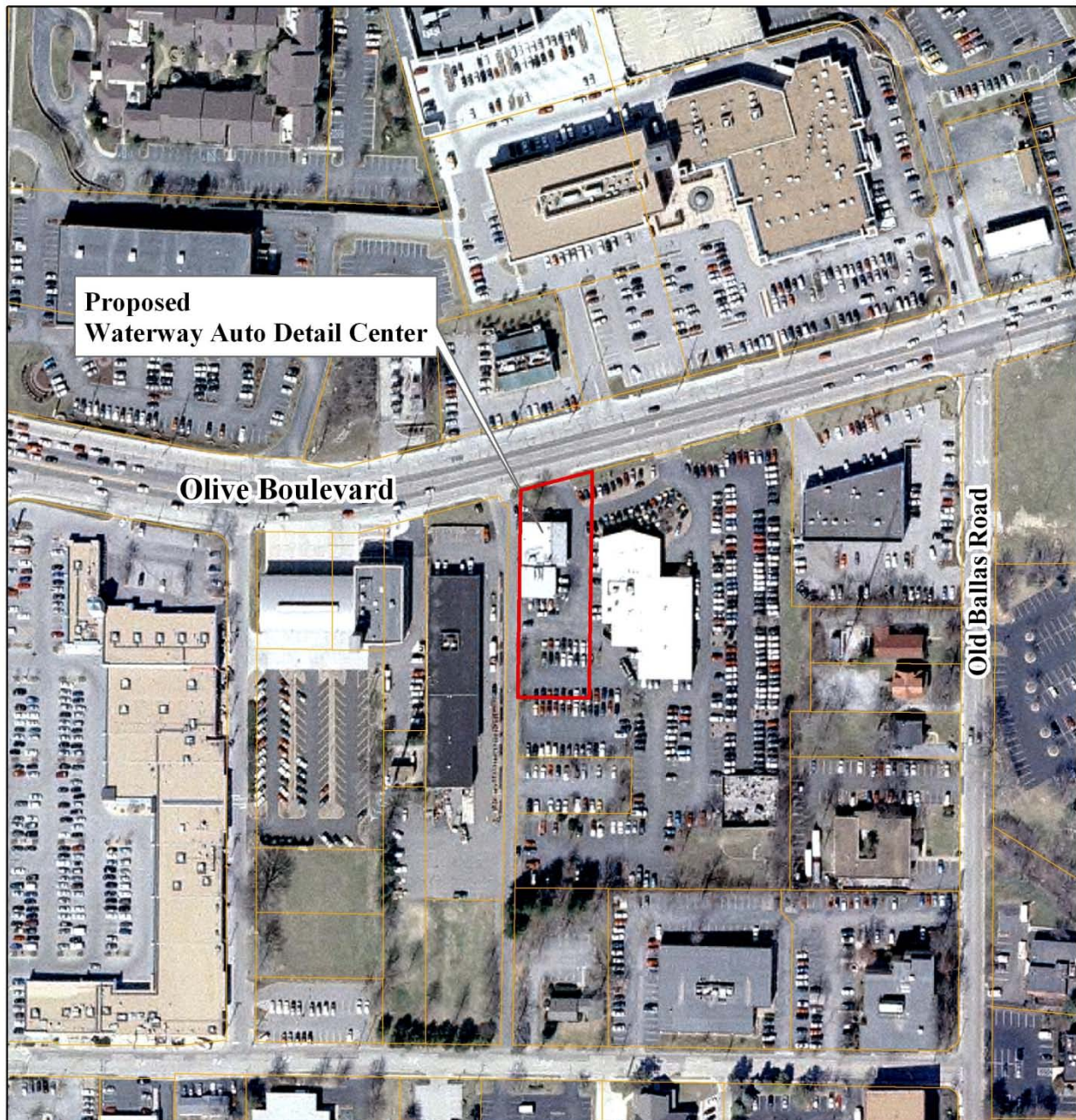
APPENDIX 1: COMPREHENSIVE PLAN

Included and attached by reference. See body of report for specific excerpts.

APPENDIX 2: ZONING CODE

Included and attached by reference. See body of report for specific excerpts.

APPENDIX 3: AERIAL MAP



Legend

-  Property Lines
-  11664 Olive Boulevard



APPENDIX 4: SITE PHOTOGRAPHS
Application #11-007

Photo Date: 03/15/2011



Description: View of the proposed Waterway Auto Detail Center from Olive Boulevard.



Description: View of the east side of the building along Olive Boulevard. Note the unshielded lights.



Description: View of east side of the building looking north west. Note the broken window in the first garage door, as well as the exposed lighting.

	Description: Photo of unenclosed dumpster on Reuther's property
	Description: photo of one of the inoperable vehicles stored on the Reuther's site.
	Description: View of the southeast portion of the Reuther's property with an unenclosed dumpster and debris.

To: City of Creve Coeur, Planning and Zoning Commission
From: Michael Goldman, Waterway Gas & Wash Company, General Counsel

Re: Conditional Use Permit - Waterway Gas & Wash Company
Detail Center 11,654 Olive Boulevard

Waterway Gas & Wash Company is hereby requesting a conditional use permit (CUP) for the property located at 11,654 Olive Boulevard for use as a detail center. Waterway has been a long term corporate citizen of Creve Coeur at our 11,059 Old Olive Street Road location. At that location, we are primarily in the full service car wash, gasoline, and convenience store business. Waterway has recently expanded our services to include drop off detail services. The detail service involves a deeper cleaning than is possible at our current location due to time and equipment restraints. At the detail center, customers will generally leave their car for 5-6 hours, and pick it up after completion of such services as leather treatment, stain treatment of carpets, cleaning of engines, exterior buffing, etc. The 11,654 Olive location is on the broader Reuther Automotive Group campus. Historically, automotive services, including detail, have been performed in this building. Automobile washing is a conditional use in the CB district under 405.370 C 1 (i)(3) of the Creve Coeur municipal code.



CONDITIONAL USE PERMIT APPLICATION

This application should be prepared and submitted in consultation with Planning Division staff. Conditional Use Permit applicants must appear before the Planning and Zoning Commission and the City Council at a regular meeting.

Return To: The Department of Community Development
Government Center
300 N. New Ballas Road
Creve Coeur, Missouri, 63141

APPLICANT INFORMATION

Applicant Name: MICHAEL GOLDMAN
Applicant Address: 727 GODDARD AVE.
CHESTENFIELD, MO 63005
Phone Number: 636-537-3551
Fax Number: 800-861-5329
Email: MIKE@hvareview.com

RELATIONSHIP OF THE APPLICANT TO THE PROPERTY

Owner: _____ Tenant: ✓

BUILDING/SITE OWNER INFORMATION

Owner Name: FEUTHER LAND MANAGEMENT, LLC
Owner Address: 11654 OLIVE, CREVE COEUR, MO 63141
Phone Number: 314-432-8408
^{EMAIL}
Fax Number: JAVET@feuther.com

PROPERTY INFORMATION

Property Address: 11664 Olive Blvd, Creve Coeur, MO 63144

Existing Use: AUTOMOBILE SERVICE

Zoning District: CB

AREA DATA

Zoning of Area Properties

North: _____ East: _____

South: _____ West: _____

Land Use of Area Properties

North: _____ East: _____

South: _____ West: _____

REQUEST

The applicant hereby requests a conditional use permit for the following land use activity, per Section 26-52 of the Creve Coeur Zoning Ordinance:

Fully identify the use: AUTOMOBILE DETAILING

PROPOSED USE INFORMATION

Gross Floor Area – Existing and Proposed: 2,360 EXISTING & 2,360 PROPOSED

Number of Parking Spaces – Existing and Proposed: 20 EXISTING & 20 PROPOSED

Number of Handicapped Accessible Parking Spaces: 2 EXISTING & 2 PROPOSED

Number of Seats (for restaurant only): _____

Number of Employees at the busiest shift: 21

Hours of Operation: 7:00 AM - 7:00 PM

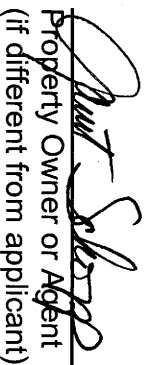
Will the applicant apply for a liquor license: Yes No ✓

RATIONALE

Please describe in detail, on an attached sheet, the reasons why the applicant believes the request for a conditional use permit should be approved by the Planning Commission and City Council. Document the statement with all of the necessary supporting evidence.

SIGNATURES


Applicant _____ Date 2-28-11


Property Owner or Agent _____ Date 2-28-2011
(if different from applicant)

REQUIRED MATERIALS TO SUBMIT WITH THIS APPLICATION

- Rationale (see above)
- Legal description of all properties involved
- Plan/survey of existing conditions on site
- Plan of proposed conditions on site (if different)
- Elevations of proposed buildings
- Elevations of proposed signs
- Electronic copy of all materials

Rev.: 2/09

Subject Property

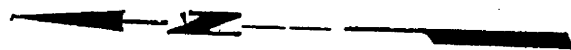


Exhibit A





city
of

CREVE COEUR

300 North New Ballas Road • Creve Coeur, Missouri 63141
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966
www.creve-coeur.org

March 22, 2011

Mayor Harold Dielmann
City Council Members
City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, MO 63141

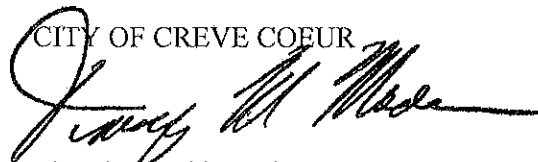
Re: Waterway Automotive Detail Center
Application #11-007

Honorable Mayor and City Council Members:

The Planning and Zoning Commission, at its meeting of March 21, 2011, reviewed the request of Michael Goldman, on behalf of Waterway Gas and Wash, for a conditional use permit to operate an automotive detail center in the approximately 2,400 sq. ft. building on the Reuther's Automotive Group property at 11664 Olive Boulevard.

By unanimous vote, the P&Z Commission recommends approval of the Conditional Use Permit, subject to the conditions contained in the attached draft ordinance.

Sincerely,

CITY OF CREVE COEUR


Timothy Madden, Chairman
Planning & Zoning Commission

TM:pr

cc: Mr. Henry Dubinsky
M.C. Perkins, City Administrator
Carl Lumley, City Attorney
J. Heines, Director of Public Works
G. Eidman, Chief of Police
A. Oestereich, Fire Marshal
S. Unser, Chief Building Official
G. Seifried, Project Manager

B. Holmes
D. Woods
P. Burke



CITY OF CREVE COEUR - MINUTES
PLANNING AND ZONING COMMISSION MEETING
MONDAY, MARCH 21, 2011
7:00 P.M.

A Public Hearing/regular meeting of the Planning and Zoning Commission of the City of Creve Coeur, Missouri was held on Monday, March 21, 2011, at the Creve Coeur Government Center, 300 North New Ballas Road. Chair Tim Madden called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: *Mr. Timothy Madden, Chair*
 Dr. Michael Barton - ABSENT
 Mr. Gary Eberhardt - ABSENT
 Mr. Barry Glantz
 Ms. Cynthia Kramer
 Dr. Scott Saunders
 Mr. Jim Schnarr

OTHERS PRESENT: *Mr. Leland Curtis, Acting City Attorney*
 Mr. Paul Langdon, Director of Community Development
 Ms. Whitney Kelly, City Planner
 Ms. Pat Rosenblatt, Recording Secretary

2. ADDITIONS TO – ACCEPTANCE OF THE AGENDA

The agenda was accepted as written.

3. APPROVAL OF MINUTES

A. Draft Minutes of March 7, 2011

In the absence of Mr. Lumley, Mr. Curtis offered a minor correction to Page 3, after which Mr. Glantz made a motion, seconded by Dr. Saunders, for approval of the March 7 minutes, as corrected, which unanimously carried.

4. PUBLIC COMMENT

None

5. NEW BUSINESS

B. Application #11-007 – PUBLIC HEARING

A request for a new conditional use permit for a Waterway Automotive Detail Center, within the 2,360 square foot building at 11664 Olive Boulevard, in the “CB” Core Business Zoning District.

A presentation was made by Henry Dubinsky, Chairman of Waterway, regarding the application.

Comments and questions from Commission members.

Comments and questions from Mr. Carl Moskowitz, 291 Bellington Lane.

There being no further comments, Mr. Curtis introduced exhibits into the record and the public hearing was closed.

(This ends the second and final Public Hearing)

Mr. Schnarr moved to recommend approval of the conditional use permit for the Waterway Automotive Detail Center located at 11664 Olive Boulevard, submitted with Application #11-007, subject to the conditions contained in the attached ordinance attached to the staff report dated March 18, 2011. Mr. Glantz seconded the motion, with the resultant vote as follows, to-wit:

Dr. Saunders – aye
Mr. Glantz – aye

Mr. Schnarr – aye

Ms. Kramer – aye
Chair – aye

PZ 032111 11-007.txt
1 PLANNING AND ZONING COMMISSION PUBLIC HEARING
2 CITY OF CREVE COEUR, MISSOURI
3 300 NORTH NEW BALLAS ROAD
4 MONDAY, MARCH 21, 2011
5 7:00 P.M.
6 APPLICATION NO. 11-007
7
8 THOSE IN ATTENDANCE:
9 Mr. Tim Madden, Chair
Ms. Cynthia Kramer
10 Dr. Scott Saunders
Mr. Jim Schnarr
11 Mr. Barry Glantz
Mr. Leland B. Curtis, Acting City Attorney
12 Mr. Paul Langdon, AICP, Director of Community Development
Ms. Whitney Kelly, AICP, City Planner
13 Ms. Pat Rosenblatt, Recording Secretary
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22 McLaughlin Court Reporting Services, Inc.
23 Deborah K. McLaughlin, RPR, MO-CCR #314, IL-CSR, KS-CCR
4772 Gatesbury Drive
24 St. Louis, MO 63128
(314)487-2259
25

1 CHAIRMAN MADDEN: Like to call to order the 1
2 Planning and Zoning Commission Meeting for the City of
3 Creve Coeur for Monday March 21st, 2011.
4 We'll start with roll call.
5 (Roll call was conducted.)
6 CHAIRMAN MADDEN: Okay. Now we'll move on to
Page 1

7 Public Hearing on Application No. 11-007.

8 And are you going to be presenting it?

9 MS. KELLY: Yes.

10 (Whitney Kelly was sworn.)

11 MS. KELLY: Good evening. I'm Whitney Kelly,
12 City Planner for the City of Creve Coeur.

13 Waterway Gas & Wash Company has submitted a
14 request for a conditional use permit for a retail center
15 at the Accessory Building of Reuther site at 11664 Olive
16 Boulevard.

17 Conditional use permit require City Council
18 approval for all car wash facilities in this area.

19 They are not proposing any improvements to the
20 building, and all activity will be occurring inside the
21 existing structure with parking for, once cars are
22 completed, in this back area off of Olive Boulevard.

23 Given the extremely limited impact of the
24 proposed use on the existing facility and the overall
25 goals to see this site redeveloped, it is staff opinion

1 that significant investment and, further, the
2 comprehensive planning and requiring building improvements
3 is not necessary.

4 However, there are a number of property
5 maintenance issues that are located at this site, as well
6 as the adjoining Reuther property, and as a co-applicant
7 and beneficiary of the CUP as well, we request that those
8 property maintenance use be addressed as written in the
9 conditional use permit.

10 I don't have any other major issues with the
11 site. If you have any questions, I'm here and the

12 applicant is here as well.

13 CHAIRMAN MADDEN: Any questions?

14 Mr. Schnarr.

15 MR. SCHNARR: You have in your notes about
16 property maintenance --

17 MS. KELLY: Uh-huh.

18 MR. SCHNARR: Is that really -- does that need
19 to be a part of this conditional use permit? It sound
20 like to me this is all Reuther's property. Don't we
21 inspect the property and say, wait a minute, guys, you're
22 in violation?

23 MS. KELLY: It is this property as well as
24 Reuther, and as property owners of both sites, we just
25 like to use it as an incentive to get both properties in

1 compliance with our existing -- with our building codes.³

2 On this site we have a broken window and
3 unshielded lights, as well as there are a couple of car
4 stops that were displaced.

5 There is -- on the Reuther property itself,
6 there was un-enclosed dumpsters; the lighting is bad here,
7 but there's a large dumpster here, and a lot of debris at
8 the back fence. And there were cars -- inoperable
9 vehicles located throughout the site and retention basin
10 needs to be cleared out as well.

11 MR. GLANTZ: Has the -- sorry.

12 CHAIRMAN MADDEN: Mr. Glantz.

13 MR. GLANTZ: Is the current property owner been
14 informed and notified of property maintenance issues that
15 we're listing on here?

16 MS. KELLY: Yes, sir, the applicant has
17 indicated he did talk to the property owner and they are

18 amenable to having -- to clearing up the site, and meeting
19 all the property maintenance issues.

20 MR. GLANTZ: Is there a timeframe for when that
21 has to be accomplished?

22 MS. KELLY: We suggested, as part of the
23 conditional use permit, that it be completed within --
24 prior to receiving the occupancy, and if it takes longer
25 than that, they are to work with our chief building office

1 on a timeline. 4

2 MR. GLANTZ: But, and you say that the property
3 owner, the current property owner, is in agreement with
4 those items?

5 MS. KELLY: Yes, sir, that's what the applicant
6 has indicated to us.

7 MR. GLANTZ: And is the list -- sorry to --

8 CHAIRMAN MADDEN: That's okay.

9 MR. GLANTZ: -- belabor the point.

10 Is the list of the five or six items that we
11 have, is that the complete list or is there more
12 exhaustive list that City staff --

13 MS. KELLY: That was my observation when we were
14 on site, one during a building permit process that if more
15 were to come up, we would ask that those be completed as
16 well, but it's not an exhaustive list.

17 MR. SCHNARR: Under normal circumstances, who
18 would make these inspections? I mean --

19 MS. KELLY: Our building officials, our building
20 inspectors themselves.

21 MR. SCHNARR: So what you're saying, the
22 building has been operating in violation for a time, and

23 now because the conditional use permit change, we're
24 saying, hey, you got to put an enclosure around that
25 building?

5

1 MS. KELLY: Yes, sir.

2 MR. SCHNARR: Is the same -- never mind.

3 CHAIRMAN MADDEN: Anybody else, a question up
4 here or a comment?

5 Oh, Cynthia.

6 MS. KRAMER: I'm sorry, I just have another
7 question.

8 So if this is not done, and they were to ask for
9 extended time to clean it up, I guess the question is if
10 they just -- kind of just doesn't happen in a timely
11 fashion, what's the recourse then?

12 MS. KELLY: I believe our building inspectors
13 would move to violation notices and proceed with our
14 normal process that way and fine.

15 CHAIRMAN MADDEN: I thought you said they
16 wouldn't get their occupancy permit.

17 MS. KELLY: Well, it states that as part of the
18 occupancy process, if they determine that, well, this is
19 going to take longer, and the building official is in
20 agreement that it will take longer and decides to go ahead
21 and issue the certificate of occupancy for this applicant,
22 but as time drags on and Reuther is not meeting their
23 obligation, then we would proceed with the violation
24 notices and proceed with court action and fine.

25 CHAIRMAN MADDEN: But the applicant will be okay

6

1 and his business, right?

2 MS. KELLY: Yes, sir.
Page 5

3 CHAIRMAN MADDEN: Okay.

4 MS. KRAMER: Thank you.

5 CHAIRMAN MADDEN: Is there anybody in the
6 audience that has a comment?

7 Mr. Moskowitz, come forward state your name and
8 address.

9 MR. MOSKOWITZ: Ms. Kelly, can you leave the --

10 MS. KELLY: I'm sorry.

11 MR. MOSKOWITZ: My name's Carl Moskowitz, and I
12 live at 29 Bellington Lane.

13 CHAIRMAN MADDEN: Oh --

14 (Carl Moskowitz was sworn by the court
15 reporter.)

16 MR. MOSKOWITZ: I just have a couple of quick
17 questions for the applicant concerning the detailing
18 operations.

19 Says all included -- enclosed in the building,
20 but there has to be a car wash there, still is one, and
21 I'm just wondering if that's going to end up turning into
22 another Waterway Car Wash on Olive Street Road at that
23 location.

24 CHAIRMAN MADDEN: And your second question or --

25 MR. MOSKOWITZ: That's it.

1 CHAIRMAN MADDEN: Okay. Mr. Dubinsky, would you⁷
2 like to come forward, get sworn in, answer his question,
3 please.

4 MR. DUBINSKY: Sure.

5 (Mr. Henry Dubinsky was sworn by the court
6 reporter.)

7 CHAIRMAN MADDEN: For the record, will you state

8 your name and address, please.

9 MR. DUBINSKY: Yes, my name is Henry Dubinsky.

10 I'm chairman of Waterway, and I live at 10 Country Estates
11 in Frontenac.

12 Many years ago I lived in Creve Coeur. I was a
13 member of the Council in Creve Coeur for a long time.

14 We will not have no -- no plans of any kind to
15 turn this into another car wash.

16 The reach for this application is that we do --
17 we have begun the last year, year and a half, to do
18 certain type of details that we can't readily do at our
19 existing car wash site. Very small number of vehicles per
20 day. Done completely inside the building with a series of
21 services that would take too long to be done at this car
22 wash facility.

23 We have, for the last year, we've had a facility
24 in Maryland Heights, not too far from our car wash in
25 Maryland Heights, but not on the same property. And the

1 answer to the question is that somebody might ask, there⁸
2 are none of our existing car wash sites offer the
3 opportunity to provide these services on those sites, so
4 we look for a site with little more visibility than where
5 we currently are at Maryland Heights. And spoke with
6 Janet Chop (phonetic) regarding this property. Reached an
7 agreement to use this property with the understanding that
8 at some point in the future the property might be sold to
9 a larger development that would be keeping with long-term
10 objectives, which is an outgrowth original master plan
11 that was passed when I was an alderman, so I understand
12 the -- I understand the desire for more intensive
13 development in this area at some point in the future.

14 CHAIRMAN MADDEN: Does anybody have any
15 questions for Mr. Dubinsky?

16 Mr. Glantz.

17 MR. GLANTZ: Do you anticipate any, other than
18 what's been presented here tonight, do you anticipate any
19 signage or --

20 MR. DUBINSKY: Yes, but I believe the signage
21 application is separate. I think we have shown the City
22 Planners what we have in mind, which would be signs in the
23 exact spots that existing signs are, exact same size as
24 the existing signs.

25 MR. GLANTZ: That was going to be my follow-up

1 question, whether that was a separate application. 9

2 MR. DUBINSKY: That's my understanding.

3 CHAIRMAN MADDEN: Any questions for
4 Mr. Dubinsky?

5 Mr. Moskowitz. Can you come up, please.

6 MR. MOSKOWITZ: Would it be asking too much that
7 the conditions for approval include a restriction for the
8 car wash?

9 MS. KELLY: Mr. Chair, I'd like to clarify that
10 the conditions do include that it is for a auto dealer
11 detail only as written.

12 MR. MOSKOWITZ: That doesn't restrict a car wash
13 though.

14 MS. KELLY: It does say for the operation of a
15 car wash for auto detail only, so.

16 CHAIRMAN MADDEN: Mr. Glantz.

17 MR. GLANTZ: Mr. Moskowitz, what's, if I may,
18 what's the concern about a car wash?

19 MR. MOSKOWITZ: It's the traffic situation
20 turning in from Olive Street Road. I've seen near misses
21 going in on Olive Street with that exit. In fact, my car
22 almost got clobbered going in there. I just think Ballas
23 Road would be a worse situation.
24 MR. GLANTZ: So I guess this question is for
25 City staff.

1 So does this application allow a car wash or is¹⁰
2 there -- I know there's a difference between car wash and
3 auto detailing. Can you clarify what's -- what is allowed
4 and what isn't allowed?

5 MS. KELLY: This is for auto detail only inside
6 the existing structure. There's to be no outside cleaning
7 of a vehicle. All activity will occur within the
8 building.

9 CHAIRMAN MADDEN: Mr. Dubinsky, how many cars
10 you think you'll do a day there?

11 MR. DUBINSKY: On the average?

12 CHAIRMAN MADDEN: Yes.

13 MR. DUBINSKY: It will be four or less. There
14 could be more than four on some days, so we're not talking
15 about --

16 CHAIRMAN MADDEN: Not major traffic then.

17 MR. DUBINSKY: Well, I know how difficult -- I
18 tried to turn in there last Friday morning westbound, and
19 so I know how difficult it is to get in there, as -- as
20 this site sits, even though we would never have any plans
21 to put a car wash there, it wouldn't work.

22 CHAIRMAN MADDEN: Okay.

23 MR. DUBINSKY: Okay.

24 CHAIRMAN MADDEN: Any other questions for
Page 9

25 Mr. Dubinsky?

1 Okay. Do you have something to add Curtis? 11

2 MR. LELAND CURTIS: Yes, Mr. Chairman. I'd like
3 to introduce into the record at this public hearing the
4 notice documentation, which is in the possession of the
5 City Clerk, the specific documents that contain staff
6 reports, P&Z letters, minutes and any excerpts, documents
7 of presenters and written materials; the entire City Code,
8 Ordinance, Charter, Comprehensive Plan and public file in
9 its entirety regarding this application.

10 CHAIRMAN MADDEN: Thank you.

11 Mr. Glantz.

12 MR. GLANTZ: I do want to add one other thing
13 while the public hearing is on.

14 I appreciate the clarification by staff and
15 residents and the applicant. I think it's nice to see
16 that a property that is underutilized, if that's the right
17 word, has a real potential to be redeveloped, and I think
18 that redevelopment is a real opportunity in our City, and
19 it's good to see that starting to happen.

20 CHAIRMAN MADDEN: Thank you.

21 Any other discussion?

22 Okay. Going to formally close the public
23 hearing.

24 (Public Hearing ended)

25

1 STATE OF MISSOURI)
2) SS
3 COUNTY OF ST. LOUIS)

12

4
5 I, Deborah K. McLaughlin, Registered Professional
6 Reporter, Missouri Certified Court Reporter, Illinois
7 Certified Shorthand Reporter and Kansas Certified Court
8 Reporter, do hereby certify that I reported the Planning
9 and Zoning Public Hearing stenographically and later
10 reduced to typewriting; and that this is a true and
11 accurate transcript of the public hearing.

12
13
14 _____, RPR, MO-CCR, IL-CSR, KS-CCR
15 Deborah K. McLaughlin, RPR, MO-CCR, IL-CSR, KS-CCR
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CITY OF CREVE COEUR
Department of Community Development
BUILDING DIVISION

MEMORANDUM

TO: Mark Perkins, City Administrator
Paul Langdon, Director of Community Development

FROM: Steve Unser, Chief Building Official
Brad Holmes, Senior Plans Examiner

DATE: March 23, 2011

RE: Proposed Apartment Re-Occupancy Program.

Attachments:

Exhibit 1 – Proposed Ordinance to Adopt the International Property Maintenance Code
Exhibit 2 – Proposed Ordinance to Revise the Fee Schedule
Exhibit 3 – Proposed Revised Appendix B Fee Schedule
Exhibit A – Apartment Community Summary
Exhibit B - Proposed Fee Schedule Comparison
Exhibit C – Projected Revenue and Expenditures
Exhibit D - Apartment Inspection Checklist
Exhibit E - Certificate of Occupancy
Exhibit F - Photos of Typical Exterior Violations

The apartment buildings within the City of Creve Coeur have reached an age and condition where it is becoming necessary for the city's building division to expand one of its primary responsibilities (which is, to ensure the public's safety, health and welfare) to include the city's apartment residents.

The City has recently been made aware of two separate incidents, at two different apartment complexes, where portions of stairways have failed and residents were injured. Upon further investigation, it appears that the exterior elements of many Creve Coeur apartment complexes are not being maintained in a manner consistent with Creve Coeur standards. It stands to reason that the interior elements of apartment dwelling units are also aging and are likely to be

in need of preventive maintenance. An additional level of oversight, in the form of an apartment re-occupancy program, would be an effective means to (1) maintain surrounding property values as well as (2) promote life safety.

Cities such as Maryland Heights, Ballwin, Kirkwood, University City, Richmond Heights, Webster Groves, Clayton, Olivette, Brentwood and St. Louis County (Chesterfield, Wildwood) have all recognized the need for similar programs in their jurisdictions. Presently, the city has no authority to inspect an apartment's interior electrical, mechanical or plumbing systems. An apartment re-occupancy inspection program will help to ensure that the city's apartment buildings will be maintained (internally and externally) so as to be in compliance with the city's residential exterior maintenance code and the 2009 International Property Maintenance Code.

St. Louis County and other municipalities have adopted the 2009 International Property Maintenance Code to establish minimum requirements and standards for existing apartment dwelling units and premises. See [Exhibit 1](#).

Background:

Creve Coeur has approximately 2,460 apartment units that range in age from 43 years old to 3 years old. 50% of all city apartments are 30 years old or older. 87% of all city apartments are 20 years old or older. Apartments are inherently exposed to a more demanding level of use than that of a single family residence due to the higher rate of turnover. See [Exhibit A](#).

From November of 2004 through July of 2008, the city issued building permits to renovate 192 apartments at the Town and Four (now Edgewater Court) apartment complex. These apartments were originally constructed in 1967. Because building permits were required to renovate these apartment units, the city had the opportunity and authority to inspect the interior of these units and require that corrections be made in conjunction with the renovation work. Some of the violations city inspectors found included lack of combustion air for gas-fired furnaces, failed connections in furnace and water heater vents, exposed wiring in electrical panels, unprotected penetrations through fire-rated walls and floors, holes in attic draftstopping between dwelling units, loose stair treads, missing handrails on interior stairs and deteriorating balconies and

decks. These violations may not have been corrected had it not been for the city's involvement.

This experience with the renovated Town and Four apartment units is reason to believe that apartment units within other city apartment complexes have similar interior violations. An apartment re-occupancy program would ensure these violations are corrected before another family moves in. See [Exhibits D and E](#).

In general, property maintenance is vital to an area's reputation, appearance and retained property values. Once an area starts to decline, due to poor building maintenance, it is very difficult to reverse that trend and correct the market responses to those problems. This is indeed one instance where the axiom of "an ounce of prevention is worth a pound of cure" is applicable.

Creve Coeur presently has exterior maintenance codes that apply to exterior conditions of both residential and commercial buildings and properties. The city currently performs re-occupancy inspections of commercial spaces. Staff is experiencing an increasing demand to enforce both of these exterior maintenance code requirements through an increased level of nuisance complaints including, but not limited to, apartment communities. Responding to these complaints is time consuming and without a means of cost recovery short of municipal court fines. Residential re-occupancy programs are designed to address exterior nuisance issues, maintain surrounding property values and correct interior violations by utilizing a consistent, efficient, standardized program that has a method of recovering code enforcement costs. The proposed fee schedule is in line with surrounding communities. See [Exhibits 2, 3, B and C](#).

Summary:

There is an evident public service need for an apartment re-occupancy program. The resulting impact on the City will be that residents' safety has been ensured, high property values have been maintained and the number of nuisance complaints reduced. See [Exhibit F](#).

There will be a need for a part-time office clerk to assist with computer tracking, written notifications, inspection scheduling and billing for this

program. It may also be necessary to hire a code enforcement officer to handle the approximately 380-400 annual complaints received by the building division that relate to the city's nuisance, sign, zoning and residential / nonresidential exterior maintenance codes. This will allow the city's building inspectors (who assumed these 'complaint' duties when the code enforcement officer's position was eliminated during 6/2009) to make the apartment re-occupancy inspections in addition to their daily building inspections. The learning curve for apartment re-occupancy inspections is relatively low and the city's building inspectors can easily be trained to be consistent during the course of these inspections.

During the course of their March 16, 2011 meeting, the Building Code Board of Appeals reviewed and recommended approval of the proposed apartment re-occupancy program.

The building division would like to begin enforcement of the apartment re-occupancy program on June 1, 2011.

An Ordinance Adopting And Enacting New Article IX, Property Maintenance Code, Of Chapter 500 Of The City Code Of Ordinances Of The City Of Creve Coeur.

WHEREAS, the city regulates construction practices and standards by means of technical codes to protect the health, safety and welfare of its citizens, and

WHEREAS, such codes must be updated from time to time, and

WHEREAS, at least three copies of the 2009 International Property Maintenance Code, which is hereby to be adopted by reference, have been filed with the City Clerk's office and made available for public use, inspection and examination for a period of at least 90 days prior to adoption of this ordinance pursuant to Section 67.280 RSMo and notice thereof has been publicly posted, and

WHEREAS, a copy of this ordinance has been available for public inspection in the City Clerk's office and it has been read three times by the City Council as required by the City's Charter prior to adoption.

NOW, THEREFORE, be it ordained by the City Council of the City of Creve Coeur, Missouri as follows:

SECTION 1: ARTICLE IX, PROPERTY MAINTENANCE CODE, of Chapter 500 of the City Code of Ordinances is hereby enacted to be known as "THE PROPERTY MAINTENANCE CODE". Said ARTICLE to read as follows:

ARTICLE IX. PROPERTY MAINTENANCE CODE

SECTION 500.910 ADOPTED: A certain document, three (3) copies of which are on file in the office of the City Clerk; such copies being marked and designated as the "INTERNATIONAL PROPERTY MAINTENANCE CODE, 2009 EDITION", as published by the International Code Council, Inc., is hereby adopted as the Property Maintenance Code of the City of Creve Coeur, Missouri, for the control of property, building and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions, and terms of the INTERNATIONAL PROPERTY MAINTENANCE CODE, 2009 EDITION, are hereby referred to, adopted and made a part thereof, as if fully set out in this Article, with the additions, insertions, deletions, and changes, prescribed in this Article.

SECTION 500.920 JURISDICTIONAL TITLES: Throughout the INTERNATIONAL PROPERTY MAINTENANCE CODE, 2009 EDITION, wherever the terms "name of jurisdiction" or "local jurisdiction" appear, it shall be deemed to mean "City of Creve Coeur, Missouri". Likewise, wherever the terms "department of building inspection" or "department of property maintenance inspection" appear, it shall be deemed to mean "Creve Coeur Building Division". Wherever the term "code" appears, it shall mean the INTERNATIONAL PROPERTY MAINTENANCE CODE, 2009 EDITION.

SECTION 500.930. AMENDMENTS TO CHAPTER 1 INTERNATIONAL PROPERTY MAINTENANCE CODE:

– CHAPTER 1 – Scope and Administration :

Chapter 1 of the International Property Maintenance Code, 2009 Edition, is amended as set forth herein. Each section, subsection, or clause of the code that numerically corresponds to one of the following numbered provisions is hereby deleted where so noted, or amended to read as set forth below. Each provision set out below without a corresponding section, subsection or clause number in the code is hereby enacted and added thereto.

101.1 Title. These regulations shall be known as the Property Maintenance Code for the City of Creve Coeur, Missouri, hereinafter referred to as "this code".

101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and premises only when said provisions are more restrictive than the provisions of the codes that were adopted and enforced when the existing residential and nonresidential structures and premises were built. Otherwise, the provisions of the building, mechanical, electrical and plumbing codes that were adopted and enforced when the existing residential and nonresidential structures and premises were built shall govern. The provisions of this code shall constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

Exception: Detached single-family dwellings or owner-occupied dwelling units.

102.3 Application of other codes. The Building, Mechanical, Electrical, Plumbing, Fuel Gas and Zoning Codes referenced in this code and listed in Chapter 8 of this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes, the provisions of this code shall apply. Nothing in this code shall be construed to cancel, modify or set aside any provision of the Zoning Code, Building Codes, Mechanical Code, Electrical Code, Plumbing Code and Fuel Gas Code as adopted by the City of Creve Coeur.

103.5 Fees. The fees for making inspections, working overtime, issuing certificates of occupancy, penalties and other administrative enforcement activities performed by the building division shall be paid in accordance with the fees established in Appendix B, Community Development and Public Works Fee Schedule, of the City Code of Ordinances.

103.5.1 Building Code Board of Appeals filing fee. A filing fee of \$150.00 shall be paid upon the submittal of the written appeal in order for a quorum of the Building Code Board of Appeals to be notified to convene for the purpose of hearing an appeal of a decision of the building official as set forth in Section 111. The filing fee shall be refunded to the applicant if the Board reverses the decision of the building official.

106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any requirements thereof, shall be guilty of an ordinance violation, punishable by a fine of not more than \$500, or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

109.2 Temporary safeguards. When, in the opinion of the code official, there is eminent danger due to an unsafe condition, the code official may cause the necessary work to be done in an effort to render such structure temporarily safe, whether or not legal procedure described herein has been instituted. Neither the city or the code official or any other city employee shall be deemed to have guaranteed such security or safety or have any liability related to actions or omissions hereunder.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the city on approval from the code official. The city attorney shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for purpose of recovering such costs and may cause a special tax lien to be placed against the property for such purposes.

111.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there is and shall remain a Building Code Board of Appeals. The board shall adopt rules of procedure for conducting its business.

111.2 Limitations on authority. Any person shall have a right to appeal a decision of the code official to the Building Code Board of Appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent form of construction shall be allowed to be used. The board shall have no authority to waive requirements of this code.

111.3 Time limitation and filing procedure. All appeals shall be filed in writing with the code official. A written appeal may not be filed more than thirty days after the affected individuals are notified of the code official's decision.

111.3.1 Filing fee. An application for appeal shall not be filed without full payment of the filing fee as set forth in Section 103.5.1. Said filing fee shall be refunded to the applicant if the Board reverses the decision of the code official.

111.4 Membership of board. The Building Code Board of Appeals shall consist of five regular members, who shall be residents of the City of Creve Coeur, appointed pursuant to Section 4.4(i) of the City Charter for three-year staggered terms. To the extent possible, based on applications submitted to the City, members of the Building Code Board of Appeals should be representative of the following professions or disciplines: registered architects, builder or superintendent of building construction with ten years of experience, structural engineer, code enforcement professional, mechanical engineer, electrical engineer, civil engineer, fire protection engineer, mechanical contractor, electrical contractor, plumbing contractor, fire protection contractor, or other disciplines associated with the building trades or design professions.

111.4.2 Chair. The Chair of the Building Code Board of Appeals shall be elected by the board members, subject to the approval of the City Council.

111.4.3 Secretary. The City Administrator shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the city administrator.

111.4.4 Compensation of members. Members of the Building Code Board of Appeals shall not be compensated for service but shall be reimbursed for actual expenses pursuant to established City policy.

111.4.5 Code of Ethics for members. All members shall be subject to the city's Code of Ethics.

111.5 Notice of meeting. The Building Code Board of Appeals shall meet upon notice from the chair, within 5 calendar days of the filing of a written appeal with the code official, or at stated periodic meetings.

111.6 Open hearing. All hearings before the Building Code Board of Appeals shall be open to the public. Proper public notice shall be given. The appellant, the appellant's representative, the code official, and any person whose interests are affected shall be given the opportunity to be heard.

111.6.1 Procedure. The Board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence but shall mandate that only relevant information be received.

111.7 Quorum. Three members of the Building Code Board of Appeals shall constitute a quorum for the purpose of hearing appeals.

111.9 Board decision. The Building Code Board of Appeals shall only reverse or modify the decision of the code official by a majority vote of the quorum present and voting. Otherwise, the decision shall be deemed to be upheld.

111.9.1 Notification of decision. The secretary of the board shall notify the appellant and the building official of the decision in writing.

111.9.2 Administration. The code official shall take immediate action in accordance with the decision of the board.

111.10 Court review: Any aggrieved person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision of the Building Code Board of Appeals in the office of the City Administrator.

112.4 Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as set forth in Section 106.4.

SECTION 113 CERTIFICATE OF OCCUPANCY

113.1 Use and occupancy. It shall be unlawful for any person, owner or agent thereof to occupy or use, or to permit any person to occupy or use any existing building, structure, tenant space or dwelling unit for any purpose, including the movement of any furniture, equipment or other personal property into said building, structure, tenant space or dwelling unit, until the code official has issued a certificate of occupancy therefor as provided herein.

Exceptions:

1. Detached single-family dwellings.
2. Owner-occupied dwelling units.
3. Sleeping rooms within hotels, motels or dormitories.

113.2 Application. Upon written request from the owner or prospective tenant of an existing building, structure, tenant space or dwelling unit, the code official shall issue a certificate of occupancy, provided that there are not violations of this code or orders of the code official pending which are found to exist upon an inspection of the building, structure, tenant space or dwelling unit, and it has been established after inspection and investigation that the proposed occupancy is also in conformance with the Zoning Ordinance of Creve Coeur, Missouri. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city.

113.3 Certificate issued. After the code official inspects the existing building, structure, tenant space or dwelling unit and finds no violations of the provisions of this code or other city laws, the code official shall issue a certificate of occupancy that contains the following:

1. The date of issuance.
2. The address of the building, structure, tenant space or dwelling unit.
3. The name and address of the owner.
4. Type of use.
5. Description of occupancy.
6. Name of the code official.

113.4 Required certificate of occupancy. Failure of the owner or tenant of a building, structure, tenant space or dwelling unit to obtain a certificate of occupancy as required by Section 113.1 shall be deemed a violation of this code and shall subject said owner or penalties as set forth in Section 106.4 and/or fees as set forth in Section 103.5.

113.5 Suspension of the certificate of occupancy. Any certificate of occupancy shall become invalid if the occupation of the building, structure, tenant space or dwelling unit is not commenced within three months or if said occupation is terminated.

113.6 Revocation of the certificate of occupancy. The certificate of occupancy shall always be subject to this code and other laws enforced by the code official. Non-compliance with the regulations of this code and other laws enforced by the code official shall be deemed a violation subject to the penalties set forth herein, and, in addition, the code official shall be empowered to revoke the certificate of occupancy issued for the building, structure, tenant space or dwelling unit in question, until such time as the violations are corrected and the building, structure, tenant space or dwelling unit is in compliance with this code and the Zoning Ordinance of Creve Coeur, Missouri. The issuance of a certificate of occupancy shall not relieve the owner or tenant from compliance with all regulations of this code and other applicable regulations.

SECTION 500.940 AMENDMENTS TO CHAPTER 2 INTERNATIONAL PROPERTY

MAINTENANCE CODE:

– CHAPTER 2 – Definitions:

Chapter 2 of the International Property Maintenance Code, 2009 Edition, is amended as set forth herein. Each section, subsection, or clause of the code that numerically corresponds to one of the following numbered provisions is hereby deleted where so noted, or amended to read as set forth below. Each provision set out below without a corresponding section, subsection, or clause number in the code is hereby enacted and added thereto.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the City of Creve Coeur Building Code, St. Louis County Mechanical Code, St. Louis County Electrical Code, St. Louis County Plumbing Code and City of Creve Coeur Zoning Ordinance, such terms shall have the meanings ascribed to them as in those codes.

SECTION 500.950 AMENDMENTS TO CHAPTER 3 INTERNATIONAL PROPERTY

MAINTENANCE CODE:

– CHAPTER 3 – General Requirements:

Chapter 3 of the International Property Maintenance Code, 2009 Edition, is amended as set forth herein. Each section, subsection, or clause of the code that numerically corresponds to one of the following numbered provisions is hereby deleted where so noted, or amended to read as set forth

below. Each provision set forth below without a corresponding section, subsection, or clause number in the code is hereby enacted and added thereto.

302.4 Weeds. Insert: "seven (7) inches".

304.14 Insect screens. Insert: "April 15 to November 15".

SECTION 500.960 AMENDMENTS TO CHAPTER 4 INTERNATIONAL PROPERTY MAINTENANCE CODE:

– CHAPTER 4 – Light, Ventilation and Occupancy Limitations:

Chapter 4 of the International Property Maintenance Code, 2009 Edition, is adopted without modification.

SECTION 500.970 AMENDMENTS TO CHAPTER 5 INTERNATIONAL PROPERTY MAINTENANCE CODE:

– CHAPTER 5 – Plumbing Facilities and Fixture Requirements:

Chapter 5 of the International Property Maintenance Code, 2009 Edition, is amended as set forth herein. Each section, subsection, or clause of the code that numerically corresponds to one of the following numbered provisions is hereby deleted where so noted, or amended to read as set forth below. Each provision set out below without a corresponding section, subsection, or clause number in the code is hereby enacted and added thereto.

504.1 General. Add: "Accordion type plastic or other flexible materials are not allowed on any drains or traps".

505.3 Supply. Add: "Supply lines to the hot and cold water valves at the sink shall be metal or metal braid composition. Plastic is not permitted".

SECTION 500.980 AMENDMENTS TO CHAPTER 6 INTERNATIONAL PROPERTY MAINTENANCE CODE:

– CHAPTER 6 – Mechanical and Electrical Requirements:

Chapter 6 of the International Property Maintenance Code, 2009 Edition, is amended as set forth herein. Each section, subsection, or clause of the code that numerically corresponds to one of the following numbered provisions is hereby deleted where so noted, or amended to read as set forth below. Each provision set out below without a corresponding section, subsection, or clause number in the code is hereby enacted and added thereto.

602.3 Heat supply. Insert: "October 1 to May 15".

602.4 Occupiable work spaces. Insert: "October 1 to May 15."

605.2 Receptacles. Every habitable space in a dwelling unit shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain at least one receptacle. All receptacles in a bathroom shall be GFCI protected. All receptacles intended to serve the kitchen countertop shall be GFCI protected. All receptacles installed outdoors shall be GFCI protected.

SECTION 500.990 AMENDMENTS TO CHAPTER 7 INTERNATIONAL PROPERTY
MAINTENANCE CODE:

– CHAPTER 7 – Fire Safety Requirements:

Chapter 7 of the International Property Maintenance Code, 2009 Edition, is adopted without modification.

SECTION 500.1000 AMENDMENTS TO CHAPTER 8 INTERNATIONAL PROPERTY
MAINTENANCE CODE:

– CHAPTER 8 – Referenced Standards:

Chapter 8 of the International Property Maintenance Code, 2009 Edition, is amended as set forth herein. Each section, subsection, or clause of the code that numerically corresponds to one of the following numbered provisions is hereby deleted where so noted, or amended to read as set forth below. Each provision set out below without a corresponding section, subsection, or clause number is hereby enacted and added thereto.

ICC – International Code Council
5203 Leesburg Pike, Suite 600
Falls Church, VA 22041

<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code</u>
<u>section number</u>		
Delete: IMC-09	International Mechanical Code	
Add: Mechanical Code	St. Louis County Mechanical Code	No changes made.
Delete: IPC-09		
Add: Plumbing Code	St. Louis County Plumbing Code	No changes made.
Delete: IZC-09		
Add: Zoning Code	City of Creve Coeur Zoning Code	No changes made.

NFPA – National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02269

<u>reference number</u>	<u>Title</u>	<u>Standard</u>
		<u>Referenced in code section</u>
<u>number</u>		
Delete: 70-08	National Electrical Code	
Add: Electrical Code	St. Louis County Electrical Code	No changes made.

SECTION 2: SAVING CLAUSE: Nothing in this ordinance or in the Property Maintenance Code hereby adopted, shall be construed to affect any suit or proceeding currently pending in any court as of the effective date hereof, or any rights previously acquired or liability previously incurred, or any cause or causes of action existing under any ordinance hereby repealed, as cited herein.

SECTION 3: SEVERABILITY: If any section, subsection, provision, sentence, clause, or phrase of this ordinance or of the ICC International Property Maintenance Code, 2009 Edition, is, for any reasons held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance or of said code, and the City of Creve Coeur City Council hereby declares that it would have passed the same, even though such portion so held to be unconstitutional had not been included therein.

BILL NO. 5303

ORDINANCE NO. _____

SECTION 4: EFFECTIVE DATE: This ordinance shall be in full force and effective on June 1, 2011 after adoption by the City Council and the signing thereof by the Mayor.

Adopted by the City Council this ____ day of _____, 2011.

AJWang
President Of The City Council

Approved this ____ day of _____, 2011.

AJ Wang, Council President
Acting For Mayor During Temporary Absence
Pursuant To Section 3.4 Of The City Charter

ATTEST:

Deborah Ryan
CITY CLERK

Creve Coeur Apartment Complexes

Exhibit A

Apartment Complex	Total # Units	Turnover Rate (%) / year	Contact Information	Age of Complex (year built)	Approximate # of re-occupancy inspections/year
Waterford Downs	208	30	11502 Craig Court Creve Coeur, MO 63146-5230 1-866-421-2577 Amy	1988	63
Heather Ridge	186	40	1007 E. Rue De La Banque Creve Coeur, MO 63141-5175 569-0062	1980	75
Village Park	144	20	11614 Old Ballas Road Creve Coeur, MO 63141 1-866-487-7059 Julie	1977	29
Camden Cross Creek	591	60	807 Cross Creek Drive Creve Coeur, MO 63141 314-878-4000	1975	355
Camden Cove West	276	50	12400 Lighthouse Way Creve Coeur, MO 63141 314-878-3000	1988	138
Kings Landing	152	10	618 N. New Ballas Road Creve Coeur, MO 63141 314-579-0200 Carla	2007	16
Warson Village	162	50	1000 Darwick Court Creve Coeur, MO 63132-2910 1-866-559-1103 Mandy	1969	81
Camden Westchase	160	50	10871 Chase Park Lane Creve Coeur, MO 63141 314-432-3700	1986	80
Edgewater Court	363	25	1003 Mariners Point Court Creve Coeur, MO 63141 1-888-880-9517 Tracy	1967	91
Hallmark	218	15	1 New Ballas Place Creve Coeur, MO 63146 314-432-5200	2001	33
TOTAL	2,460	39	-	-	961

TOTAL / Unit

EXHIBIT B

Ladue	\$0.00
Town & Country	\$0.00
Florissant	\$55.00
Kirkwood	\$70.00
Creve Coeur	\$80.00
Wildwood	\$80.00
Manchester	\$80.00
STL County unincorporated	\$80.00
Ellisville	\$80.00
Brentwood	\$85.00
Maryland Heights	\$87.00
Richmond Heights	\$90.00
Ballwin	\$105.00
Clayton	\$110.00
Olivette	\$113.00
University City	\$142.00
Frontenac (proposed)	\$150.00

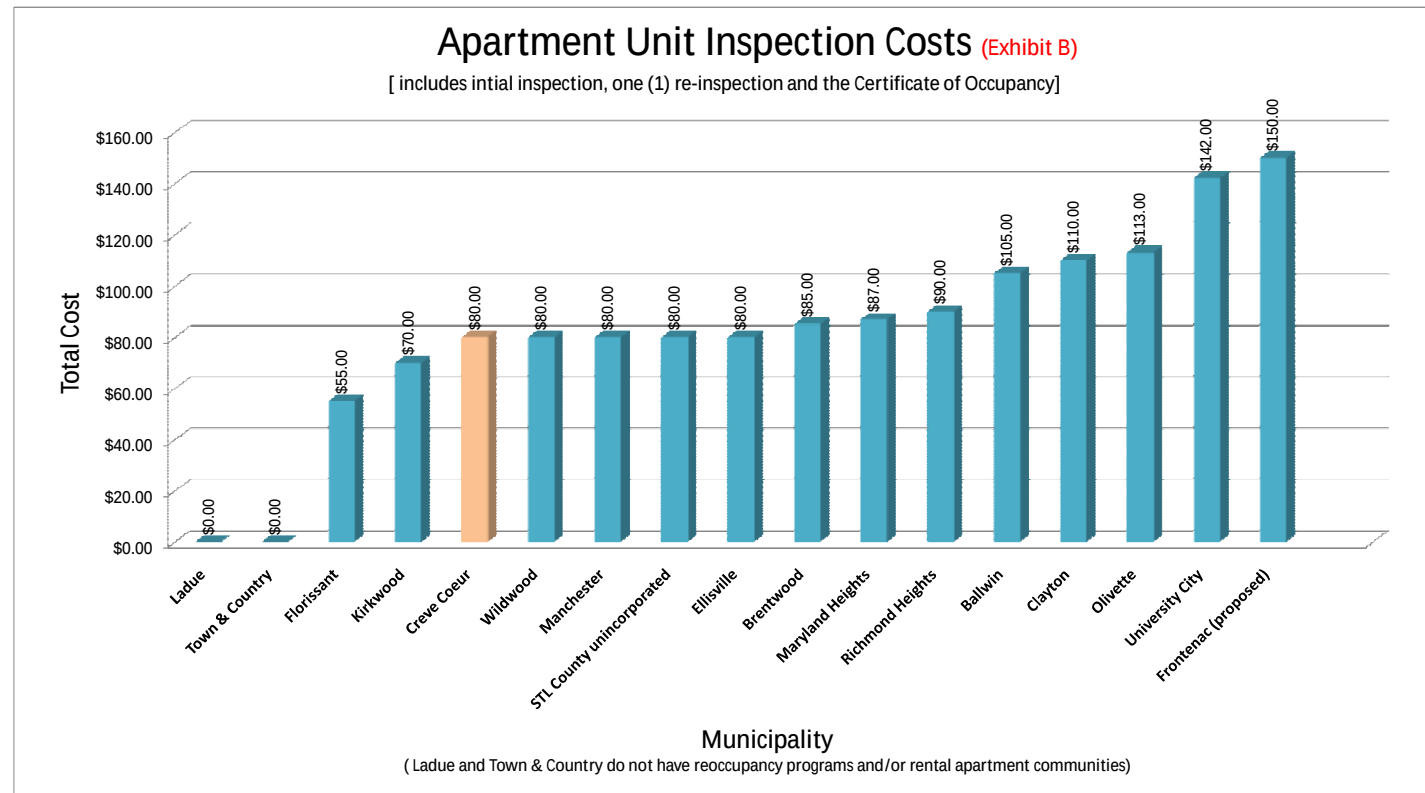


EXHIBIT C

PROJECTED REVENUE AND EXPENDITURE

(Based upon an average of 960 apartment units inspected per year)

Revenue Projections

\$80.00 inspection fee x 960 units inspected^{*} = \$76,800.

PLUS penalty revenue from landlords who allow occupancy before inspection.

PLUS additional permit fees for mechanical or remodeling projects proceeding without permits discovered during occupancy inspections.

PLUS reinspection fees (\$40) if more than 2 inspections are required.

There will be a \$100.00 penalty fee assessed for allowing occupancy before inspection (these inspections take more time to perform, violations are more difficult to correct and there is an increased potential for court action)

^{*} Assume 39% turnover of apartment units per year

Projected Expenditures: \$12,000 = Part-time Office Assistant

\$59,573 = Inspection Costs^{*}

\$71,573 = Total^{**}

- Inspection Costs are based on 960 initial inspections plus 480 re-inspections being made per year x 1 man-hour per inspection x \$41.37 per inspection man-hour (includes wages, benefits, social security, etc.) OR 1,440 man-hours x \$41.37 = \$59,573. These costs may be absorbed by present staff if a full-time code enforcement officer is not hired.

^{**} Total projected expenditures do not include other administrative and overhead costs.

City of Creve Coeur (Exhibit D)

Apartment Re-Occupancy Inspection Checklist



Check the box next to each item that was inspected and found to be in compliance or noncompliance with the 2003 International Property Maintenance Code, as adopted by the City of Creve Coeur. Questions about this report can be directed to the Creve Coeur Building Division at **314-872-2500**.

	Y E S	N O		Y E S	N O		Y E S	N O
Premises / Site: Walkways, stairways, parking lot, fences, swimming pool/barrier, refuse and debris, trash enclosures, retaining walls, storm water drainage, erosion, derelict vehicles.	p	p	Sanitation : Toilets operational, hot water, food preparation facilities, odors, clothes dryer vented to exterior	p	p	Street Address : Street signs intact, unit address visible, numbers minimum 4 inches in height, contrasts with background, missing numbers.	p	p
Interior Envelope : Attic access, draftstopping and/or fire partitions in attic, continuity and integrity of fire resistance rated walls/ceilings, fire sprinkler system.	p	p	Kitchen : Exhaust fan filter, GFCI receptacle, disposal wiring, plumbing under sink, faucets, dishwasher works.	p	p	Floor coverings : Worn carpet/tile, uneven surfaces, trip hazards, thresholds	p	p
Exterior Envelope : Peeling paint, siding, roof covering, guttering, trim, exterior doors, tuck-pointing, caulk, balcony/deck condition, foundation watertight.	p	p	Smoke Detectors : Operational, battery back-up, proper location, expired	p	p	Bathroom : Bathing facilities, exhaust fan, tempered glass by tub, plumbing, privacy, fixtures work.	p	p
Garage / Carport : Fire resistance rated floor/ceiling assemblies, storage areas, lighting, doors, floor surface, fire sprinklers.	p	p	Water Heater : T&P valve, venting, seismic restraint, leakage, gas shut off valve, dielectric unions, discharge tube, floor drain/pan	p	p	Interior Stairway : Structurally sound, guardrails, handrails, treads tight, headroom, lighting	p	p
Windows : Broken glass, screens, window balances, locks, leaks, seals, bedroom windows fully open.	p	p	Furnace/AC : Operational, thermostat, filter, clearance to combustibles, venting, floor drain/pan, proper shut-offs, combustion air.	p	p	Infestation : Evidence of rodents or insects, mold visible	p	p
Interior Surfaces : Holes in walls, paint, trim attached, interior doors, door hardware, closet doors, ceilings, double keyed deadbolts not permitted.	p	p	Electrical : Grounded outlets, service entry cable, panel box cover, cover plates, proper operation of switches, breakers labeled, no extension cords	p	p	Fireplaces : Hearth extension, shut off valve, clearance to combustibles, firebox condition, damper operates.	p	p

Please correct the following violation(s) noted above and below within thirty (30) days of the inspection date and schedule a re-inspection to verify compliance. A Certificate of Occupancy will not be issued until violations within the dwelling unit and exterior violations relating to the life safety of the occupants have been corrected. A separate violation notice may be issued for exterior violations that will take more than thirty (30) days to correct.

Occupancy of this unit is **APPROVED / DISAPPROVED / CONDITIONAL APPROVAL** on this date. Re-inspection Required **YES / NO**.

Inspector Signature _____ Phone # _____ Date _____

Re-inspection Approval _____ Date _____

EXHIBIT E

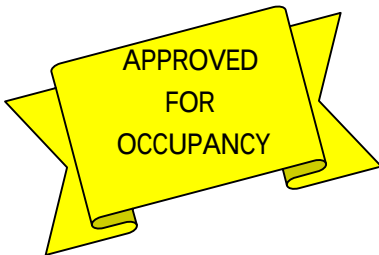


City of Creve Coeur *Certificate Of Occupancy*

This apartment dwelling unit has been inspected and found to be in substantial compliance with the 2009 International Property Maintenance Code as adopted by Ordinance No. _____.

Address _____.

This certificate is non-transferable and is applicable only to the resident who's name appears on this document. A re- inspection and new certificate of occupancy is required whenever this dwelling unit is vacated and before it is occupied by any other person. This certificate is not to be used for any other purpose and does not convey any other rights, warranties or guarantees to the occupant. Use of this property for any other purpose other than as a residential dwelling unit is a violation of the Creve Coeur Zoning Code.



Occupant Name _____

Inspector Certification _____ Date _____

Any questions or concerns about this document should be directed to the Creve Coeur Building Division at 314-872-2500

Village Park



Village Park



Warson Village



Warson Village





city
of

CREVE COEUR

300 North New Ballas Road • Creve Coeur, Missouri 63141
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966
www.creve-coeur.org

M. Bono 3/17/11

Mandy Bono
Apartment Manager
Warson Village Apartments
1000 Darwick Court
Creve Coeur, MO 63132-2910

Dear Mandy,

The City of Creve Coeur, Building Division, has been instructed by City Council to develop and implement an apartment re-occupancy program similar to what most other municipalities already have in place. This program is intended to address safety, health and welfare issues as well as maintain the high property values of this community. City Council is scheduled to discuss this program at their next public meeting; 03/28/11 at 6pm at the Creve Coeur Government. We would like to introduce you to the new procedures and seek your input as to how we can work together to make this a mutually beneficial program.

To further this effort we would like to invite you, your leasing staff and maintenance supervisor to an informal round table discussion on 05/10/2011 at the Creve Coeur Government Center, 300 North New Ballas Road. This meeting will begin at 9:00am in the Multi-Purpose Room. Program handouts, forms and refreshments will be provided. Please RSVP to Mr. Brad Holmes, Senior Plans Examiner, at 314-442-2077 no later than 05/01/2011 if you plan to attend.

Please review this informational packet and prepare for the upcoming meeting with questions and suggestions. It would be very helpful if you could provide us with apartment community maps, street names and addresses for all of your rental units. We look forward to meeting you and your staff and hope that this meeting will help to develop acceptable policies and procedures for this program.

Yours in Building Safety,

Steve Unser,
Building Division Manager, 314-872-2513

BILL NO. 5304

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX B, COMMUNITY DEVELOPMENT AND PUBLIC WORKS FEE SCHEDULE, TO TITLE IV OF THE CITY CODE OF ORDINANCES AND ENACTING A REVISED APPENDIX B TO TITLE IV, COMMUNITY DEVELOPMENT AND PUBLIC WORKS FEE SCHEDULE.

WHEREAS, the city has previously adopted a schedule of fees for building permits and inspections, other permit fees and inspections and other code enforcement charges, and

WHEREAS, surveys of St. Louis County Department of Public Works and other St. Louis County municipalities and an internal Staff review of costs indicate that revision of this Schedule of Fees is warranted and appropriate, and

WHEREAS, the Department of Community Development of the City of Creve Coeur and the Building Code Board of Appeals of the City of Creve Coeur have recommended that the Schedule of Fees outlined in Appendix B to Title IV of the Municipal Code be revised as outlined in this ordinance, and

WHEREAS, a copy of this ordinance has been made available for public inspection prior to its adoption by City Council and this bill having been read by title in open meeting two times before final passage,

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

SECTION 1. Appendix B to Title IV of the Code of Ordinances of the City of Creve Coeur, Missouri, entitled as "Community Development and Public Works Fee Schedule", is hereby amended so as to revise the existing provisions noted in the attached Appendix B therefore.

SECTION 2. Be it further ordained this Ordinance shall become effective on June 1, 2011.

ADOPTED BY THE CITY COUNCIL THIS ____ DAY OF _____, 2011.

AJ Wang
Council President

APPROVED THIS ____ DAY OF _____, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 Of The City Charter

Attest:

Deborah Ryan, City Clerk

(Proposed changes are noted in red)

APPENDIX B TO TITLE IV. COMMUNITY DEVELOPMENT AND PUBLIC WORKS FEE SCHEDULE

Cross Reference—Licenses, permits and miscellaneous business regulations, ch.605

Schedule of Fees
For
Community Development and Public Works

City of Creve Coeur, Missouri
300 N. New Ballas Rd.
Creve Coeur, Missouri 63141

MISCELLANEOUS FEES

1. Fence permit fee.....\$15.00
Plus a minimum of two (2) inspections, each \$5.00
2. Certificate of occupancy **for a commercial building or tenant space.**
Temporary...\$65.00
Permanent ...\$65.00
3. **Certificate of occupancy for an apartment dwelling unit.....\$80.00**
The certificate of occupancy fee shall be doubled when an apartment dwelling unit is found to be occupied without a certificate of occupancy and, in addition, a penalty of up to one hundred dollars (\$100.00) may be levied against the apartment complex owner who has previously allowed occupancy without a certificate of occupancy.

NO OTHER CHANGES TO APPENDIX B ARE PROPOSED.

BILL No 5305

ORDINANCE No. _____

AN ORDINANCE AUTHORIZING THE INSTALLATION OF ONE (1) FIRE HYDRANT FOR LADUE COURT VILLAS LOCATED IN THE CUL-DE-SAC AT THE END OF THE LADUE COURT EXTENSION IN THE CITY OF CREVE COEUR, MISSOURI.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR MISSOURI AS FOLLOWS:

SECTION 1: The Missouri American Water Company, shall in accordance with the terms of franchise contract, ordinance No. 165, between the City of Creve Coeur and the Missouri American Water Company, install one (1) public fire hydrant in the City of Creve Coeur at the following location, to-wit:

One (1) new public fire hydrant in the cul-de-sac at the end of the Ladue Court extension.

SECTION 2: All of said work shall be done under the supervision of the City Council or its proper representative, and for the purpose of this ordinance, the Missouri American Water Company is hereby given permission to make all necessary excavations for the proper execution of said work.

SECTION 3: This ordinance shall become effective in accordance with Section 3.11 (g) of the City Charter.

ADOPTED THIS ____ DAY OF _____, 2011

AJ WANG
PRESIDENT OF CITY COUNCIL

APPROVED THIS ____ DAY OF _____, 2011

HAROLD DIELMANN
MAYOR

ATTEST:

DEBORAH RYAN
CITY CLERK



Creve Coeur FIRE PROTECTION DISTRICT

Administrative Center • 11221 Olive Boulevard • St. Louis, Missouri 63141-7652
Office (314) 432-5570 • Fax (314) 432-2367

March 10, 2011

Ms. Debbie Ryan
City Of Creve Coeur
300 N. New Ballas Road
Creve Coeur, MO 63141

Re: Fire hydrant ordinance for Ladue Court Villas.

Dear Ms. Ryan:

Please prepare an ordinance authorizing the Missouri American Water Company to install one new fire hydrant:

- One (1) – new public fire hydrant shall be installed in the cul-de-sac at the end of the Ladue Court extension.

There will be an extension of an 8-inch water main from the existing public fire hydrant to the proposed public fire hydrant in the cul-de-sac.

Please forward copies of the ordinance to Missouri American Water Company and the Creve Coeur Fire Protection District. If you need additional information, please contact me at 314-432-5570, fax – 314-432-2367 or email – aoestereich@ccfire.org.

Yours in Fire Safety:

A handwritten signature in cursive script, appearing to read "Arthur K. Oestereich".

Arthur K. Oestereich
Fire Marshal

Cc: Susan Moynihan – Missouri American Water Company
Rhein Dabler – The Clayton Engineering Company, Inc.

RESOLUTION NO. 956

A RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO COMMENCE NEGOTIATIONS TO RECONCILE THE SCOPE OF PROJECTS OF THE OLIVE BOULEVARD TRANSPORTATION DEVELOPMENT DISTRICT TO AVAILABLE SOURCES OF FUNDS AND ACHIEVE COMPLETION OF SUCH PROJECTS AS SOON AS PRACTICABLE.

WHEREAS, DESPITE EXTENSIVE EFFORTS SUFFICIENT SOURCES OF FUNDS HAVE NOT BEEN IDENTIFIED TO COMPLETE ALL PLANNED PROJECTS OF THE OLIVE BOULEVARD TRANSPORTATION DEVELOPMENT DISTRICT, AND

WHEREAS, THERE ARE VARIOUS PARTIES IN INTEREST REGARDING SUCH PROJECTS AND RELATED AGREEMENTS, AND

WHEREAS, THE CITY COUNCIL HAS DETERMINED THAT IT WOULD BE IN THE PUBLIC INTEREST TO RECONCILE THE SCOPE OF SUCH PROJECTS WITH AVAILABLE SOURCES OF FUNDS AND ACHIEVE COMPLETION OF SUCH PROJECTS AS SOON AS PRACTICABLE,

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI THAT:

SECTION 1 – The City Administrator shall promptly commence negotiations with all parties in interest to: (i) reconcile the scope of the projects of the Olive Boulevard Transportation Development District to available sources of funds and (ii) achieve completion of such projects as soon as practicable.

SECTION 2 – THIS RESOLUTION SHALL BECOME EFFECTIVE UPON ITS PASSAGE.

ADOPTED THIS 28 DAY OF March, 2011.

AJ Wang, Council President
Acting for Mayor During Temporary Absence
Pursuant to Section 3.4 Of The City Charter

ATTEST:

DEBORAH RYAN
CITY CLERK

From: Bryant, Laura T [<mailto:Laura.T.Bryant@ehi.com>]
Sent: Wednesday, September 29, 2010 2:34 PM
To: Perkins, Mark C.
Cc: Carl Lumley; JeanneRhoades; Ryan, Deborah
Subject: as discussed - request for written analysis of Olive Blvd TDD options

Mark:

As discussed, please provide (at the next City Council meeting) a brief analysis of available options concerning the future of the Olive Blvd. TDD. This analysis need not be in-depth, but should be detailed enough for us to conduct proper due diligence.

Also, Beth's comments about Jeanne's voting record on the Olive Blvd. TDD really begged the question: How has the Council voted on all the previous extensions and restated agreements? I know there have been a lot, so if you (or Debbie) could please provide a summary of the dates?

Thanks!

Laura Bryant
Ward 4/Creve Coeur City Council



WARD IV COUNCIL CORNER

LAURA BRYANT & JEANNE RHOADES



Eminent Domain Petition

We'd like to thank everyone – in all four wards – who signed a Creve Coeur charter amendment petition concerning eminent domain last month. Almost 1500 signatures were collected in only one day at the polls, a clear indication that you not only are interested in how eminent domain should be handled in our community, but that you also have the power to enact significant change.

The proposed charter amendment requires a supermajority of six out of eight Council votes to authorize eminent domain in the future. (The supermajority vote is a well-established provision under Missouri statutes – for example, when a rezoning application is being considered, 30% of the property owners within 185 feet of a parcel can initiate a protest petition to force a supermajority vote.) The charter amendment, which we hope will appear on the April 2007 ballot, would help ensure eminent domain is debated and scrutinized just as carefully as any protested rezoning.

We are proud to have been a part of this effort, which was spearheaded by Council Member Kassander, with assistance from Council Member Wang (Ward 2), plus two other citizens – Chamber of Commerce liaison Susan Murphy (Ward 2) and Neal Breitweiser (Ward 1). Under the proposed charter amendment, business and residential property owners would gain the same protection from indiscriminate eminent domain threats. Furthermore, no matter how important a proposed project might be, the bar would be set high when any property owners' rights are at stake.

TDD Controversies

Unfortunately, the City Council has been extremely divided on eminent domain, especially with three Council members – Kistner (Ward 1), Lynch (Ward 2), and Haddenhorst (Ward 3) – and the Mayor sitting on the Olive Boulevard Transportation Development District (TDD) board.

We became alarmed in June 2005 when the Creve Coeur City Council voted 5-3 to authorize the TDD Board to use eminent domain against a local Amoco gas station and car wash. (Council/TDD Board members Kistner, Lynch and Haddenhorst, as well as former Councilmen Barton and Mitchell, voted yes. We, along with Council Member Kassander, voted against the action.)

Later, we questioned whether TDD threats for a “total-taking” via condemnation were justified for the small sliver of land needed for the Olive Blvd. improvements. We were concerned that due to plans of the TDD

Construction Manager and Developer (The Koman Group) to “assemble property” and construct a building on the Amoco site – as indicated on the Koman Web site – the TDD’s threats appeared to represent the use of eminent domain for private economic development, to benefit Koman’s CityPlace office park.

More recently, Koman announced that projected costs for the TDD improvements already exceed the original \$5.7 million budget by \$3.6 million, although construction has barely begun. Koman is proposing that the Council approve additional public funding to cover the shortfall, in lieu of reducing the scope of the project. This could include increased sales taxes and/or property tax abatements – both attached to Koman’s future CityPlace developments. (All information can be verified on our city’s Web site.)

Accountability & Transparency

Despite the many obstacles encountered to date, we are dedicated to making our city’s traffic infrastructure as safe, efficient and attractive as possible, and truly hope that the public improvements promised by the Olive Blvd. TDD will come to fruition. However, it is just as important to insist on accountability and transparency, especially when property rights are at stake.

We believe that it is critical to adhere to these principles as Creve Coeur moves to redevelop its Central Business District. For example, in our 2000 citywide survey, the only proposal concerning commercial developers that was not favored by residents was: *“allowing taller buildings in exchange for green space or other amenities.”* Two years later, the Comprehensive Land Use Plan featured examples (pp. 90-93) of “town centers” with buildings two-to-six stories high, similar to downtown Kirkwood and University City’s Loop.

However, we have heard that funding the proposed infrastructure improvements in that area, including new streets and multiple parking garages, may necessitate a trade-off with developers, such as allowing greater building heights and/or other financial incentives. Meanwhile, the city is now reviewing the zoning code to possibly increase existing building height restrictions – from the current six-story limit up to ten stories (without a conditional use permit) – in parts of the Central Business District.

We remain committed to protecting property rights, and will strive to keep you informed as these events continue to unfold. As always, we encourage you to share your comments and concerns.

Council Actions

City Council took the following actions on October 23 and November 13:

- Held a public hearing and approved an agreement with AT&T Missouri for the provision of video services in the city.
- Approved the creation of a dog park in Conway Park, accepted a \$2000 donation from Southwest Bank for the dog park, and approved a contract with Kennedy Fence to construct a fence for the dog park for \$26,876.
- Approved an ordinance of a final subdivision plat for Enclave Bellerive, Plat 2, located near Ladue and Mason Roads.
- Approved First Bank as the city’s depository institution for ‘07 & ‘08.
- Approved a resolution expressing support for further investigation into the possible use of other municipal incentives provided by Missouri Chapter 353 for the Olive Boulevard Transportation Development District (TDD).
- Approved a text amendment to the city’s zoning code regarding the permitting of cellular towers and other telecommunications facilities in all zoning districts.
- Had two readings of an ordinance amending the official zoning map to rezone about .83 acres from MX, Mixed Use District to GG, General Commercial for the property at 12520 Olive Boulevard.
- Approved city funding of \$2000 to decorate the Olive/270 bridge for the winter season.
- Had two readings of two ordinances amending the license agreements regarding transmission lines in the public right-of-way.

CreveCoeurVoter.com

Dr. Robert Hoffman- W-3

02/23/2011

My name is Bob Hoffman, candidate for Council Member Ward 3, running for the one year unexpired that I was appointed to last fall. Since being seated on the Council I have met many constituents of Ward 3 and the city in general. The major concern that I have encountered is zoning. The major issue that got me involved in city politics was the attempted rezoning of the Thompson Center. I learned much about the process and was involved in many meetings. While we were successful in the blocking of a large development proposed several years ago, I am sure the issue for the site will come forward again. I am strongly committed to continue the present -A-zoning for the site.

My priority for Ward 3 is to maintain the present zoning and development in accordance with our Comprehensive Plan. There are several parcels of land that may come before P&Z and City Council. I am a firm believer in the Comprehensive Plan. The feeling of many people that I have spoken to is that maintaining the residential quality of our neighborhoods is the highest priority.

Regarding our budget, I would like to see us explore more cooperative efforts similar to the dispatching services soon to go live with neighboring communities. I believe that this will be the best option going forward to save dollars. Regionalization will become necessary for the entire area to survive. I think it would be worthwhile for all departments to examine their options.

I believe that the framework to oversee our pension plan is already in place. As with any business entity, this plan needs to be reexamined with regularity, especially in light of our present economic environment.

At present I do not support any new tax revenues. I do believe that businesses and private citizens alike need to pay their fair share of fees and inspections. Increasing revenue was never the goal of red light cameras. The purpose of the cameras remains safety. The behavior changes that have occurred in regards to red light running are already apparent. We should continue to monitor the intersections and adjust the placement of cameras to decrease the number of crashes.

I voted against the recent proposals for two CIDs because I believe that citizens should have a direct voice in increasing taxes. **The present TDD needs a rapid exit strategy.** If additional funding cannot be obtained, we need to find a quick and effective way to end the TDD. I am greatly concerned that lighting has been removed along Olive. We should never sacrifice control of such matters to a TDD board without direct oversight. The resultant lack of lighting, proper medians and other beautification need to be addressed. I understand that the funding is lacking for such amenities, but alternative funding must be explored.

In regards to a downtown area, I believe we need to look at a central theme or idea to bring people to the area. It should be pedestrian friendly and have bike racks to minimize auto traffic.

Regarding *informal vetting*: There is a need to have preliminary discussions with developers in order to bring in the commerce necessary to maintain the high quality of service our residents demand. With that said, disclosure is a must even if it occurs in executive session. We have the means per our Charter to discuss delicate matters in private session and this is where it may belong. With the advent of electronic data, all of our records are public and accessible. It will be interesting to see how the public hearings work out at P&Z.

Politically, I did recuse myself at P&Z for the issue of the Ronald McDonald House. While I am not paid by St. John's Hospital, I am a practicing pediatrician and use St. John's as a major admission facility for my patients. In the future, I see no other conflicts on the horizon. I have not received any contributions from anyone who does business in the city. I do not oppose seeking such donations along with complete disclosure.

My contact information is: Hoddman@aol.com
Home phone: 314-576-4885

Thank you, Bob Hoffman Council Member Ward 3

<http://www.crevecoeurvoter.com/editorials.asp#93>

CreveCoeurVoter.com

You Paid For It- A Nice Road

11/22/2010

Following is a transcript of KTVI's November 21, 2010 9 PM news broadcast, featuring Eliot Davis.

There is commentary at the end. First the transcript:

Straight ahead on **You Paid For It**, a dream project in West County becomes a nightmare. Why an Olive Blvd. beautification may cost tax payers \$9 million for one mile of work.

A troubled West County beautification project with an ugly price tag for tax payers. We head to Creve Coeur to shine a bright light on this deal in tonight's **You Paid For It**.

This beautification project was supposed to transform this stretch of Olive Blvd. in Creve Coeur from just a dull, dry road to a shining example of tax dollars at work. Instead officials are stuck trying to regroup and figure out just which way to proceed on this beautification dream that's turned into a nightmare.

I talked to Creve Coeur Mayor Harold Dielmann. He also sits on the board in charge of the projects.

Elliott Davis: *What was the initial budget?*

Mayor Dielmann: *\$5 million*

Davis: *So what do you anticipate it's going to cost?*

Dielmann: *\$9 million*

Davis voice over: And how much beautification would you now get for that \$9 million?

Davis: *How many miles of this road are you improving?*

Dielmann: *Approximately a mile.*

Not only will this deal cost almost double what it was supposed to, it's several years behind schedule. And some of what was promised may not happen. A mile of Olive was supposed to be widened. That may not happen now. The median down the middle of the street is iffy.

Creve Coeur resident David Caldwell says you were supposed to have new lighting all along Olive along with the new sidewalks.

Caldwell: *They have tore down streetlights that they (don't) have not put in money in the project to replace the street lights.* (Editor- pardon my grammar- there's a reason I write this blog instead of speaking it.)

Davis voice over: Caldwell criticized the plan when it was first rolled off the City Hall drawing board saying it was ill-conceived, ill-planned, and under-funded.

Caldwell: *I don't think they engaged the proper amount of professional input.*

The project is funded through an Olive Transportation Development District or TDD. Sales taxes generated from businesses and customers in the area were put into a fund to pay for the beautification. Things went wrong from the get-go. They couldn't widen the street as planned.

That affected the new sidewalk. They found they couldn't bury the unsightly utility lines after all. And everything ended up costing more than the city thought.

Dielmann: *The whole project has changed totally since its begin and that's why it's behind schedule and over budget.*

Davis: *Somebody didn't do all their homework.*

Dielmann: *We did our homework, but when you change the rules it changes the project.*

Still the mayor is confident the city will eventually be finished with the project- with a lot more time and, of course, a lot more of your money.

Davis: *Right now you see it as a failure?*

Caldwell: *Yes, I see it as a failure.*

Davis: *You think overall this thing has been a good deal for tax payers?*

Dielmann: *Yes, they're going to have a nice road when it's all done.*

Davis: *How do you answer critics who say this project has been a disaster?*

Dielmann: *Well, it hasn't been a disaster ... (cut off)*

To have your say here's the person to call- Creve Coeur Mayor Harold Dielmann- 314-432-6000. Tell him what you think. After all, **You Paid For It.**

Commentary:

So much to say and so little time to say it- and then it gets edited. That's a fact, not a complaint. We thank Eliot Davis for covering this matter. He listened to both sides and did his homework. Mayor Dielmann and CCV have plenty of time and opportunity to make their case without being on TV. Mayor Dielmann would like to explain in detail the problems caused by MoDOT and the delays caused by the I-64 shutdown, among other things. And we would have liked to have heard the completion of his explanation why the project was not a disaster, which was cut off in mid-sentence. Probably he would point out a few things which did get done. CCV would like to talk more about the sidewalk to nowhere and the high overhead cost of doing anything via a TDD. Some would like to talk about the timeline and all the political misdeeds of the project, such as the eminent domain threats and anonymous mailers which disrupted the city for months.

Creve Coeur residents deserve complete transparency on the Olive TDD now, as the city officials who sit on the TDD board recently pushed through yet another plan to downsize the project and keep spending money. There is approximately \$2 million of the original \$5 million which has not been spent. Ward 4 Council Members Laura Bryant and Jeanne Rhoades wrote in the November Creve Coeur Newsletter, *Given these recently acknowledged problems, along with the lack of funding and necessary right-of-way, it may be high time to seriously consider an exit strategy for the Olive Blvd. TDD, and look for a way to best utilize the remaining funds, pay off all bonds and then shut it down.* CCV agrees. If \$3 million has been spent, and spending another \$2 million is just a step along the way to spending \$9 million- and we will bet anything that it will go higher- is that what Creve Coeur residents want to do to get, as Mayor Dielmann says, *a nice road when it is all done?*



Ward IV Council Corner

Laura Bryant & Jeanne Rhoades



In this column, we discuss significant issues that impact our Ward 4 neighbors as well as residents in the other three wards. This is one of the most important functions of the monthly "Council Corner," because it enables Council Members to publicly document certain topics – like those below – that deserve greater scrutiny.

Civics 101

Under the First Amendment, U.S. citizens are empowered to "petition the Government for a redress of grievances." So it was certainly shocking when, almost nine years ago, a former Creve Coeur Mayor and Councilwoman simultaneously sued a Ward 4 resident for submitting a petition – with 23 other signatures – that merely asked our city government to apply consistent conflict-of-interest standards to all city officials.

Although the two baseless suits eventually were thrown out of court, we are recalling those events not only because history teaches the best lessons about government, but because the petitioning process recently became controversial again in Creve Coeur. Ward 3 resident Charlotte D'Alfonso submitted more than 450 signatures to document extensive grassroots support and request that the Mayor appoint her to fill David Kassander's empty Council seat. The number of signatures her supporters collected actually exceeded what most Council Members receive during typical municipal elections.

Unfortunately, the power of the petitioning process was diminished when Mayor Dielmann ignored this unprecedented effort and instead appointed another resident. Although we both voted no, the Mayor's appointment was approved by four Council Members, three of whom also serve on the Olive Blvd. Transportation Development District (TDD) board.

Just as troubling were a Council/TDD Board Member's public comments, on the record, that the Ward 3 citizen petition somehow represented a "perversion" of the appointment process. On the contrary, we applaud those hundreds of Ward 3 residents for their active involvement in the political process, because we both strongly believe that the right of the people to select their own representative is the single most fundamental tenet of any democracy.

Further, we believe it is again time to state the obvious: that petitioning the Creve Coeur government is a constitutional right

and a responsible way to communicate citizen concerns, whether the issue is inconsistent application of the ethics code, eminent domain or even the Mayor's appointments.

Exit Strategy?

Meanwhile, we remain as concerned as ever about the grossly over-budget and behind-schedule Olive Blvd. TDD – especially since three Council Members and our Mayor sit on the seven-member board and control the majority vote. What is currently alarming is that the TDD is now asking city staff to provide free or subsidized project management services (courtesy of Creve Coeur taxpayers). Aside from this request for yet another bailout, we are very worried by the precedent such an arrangement might represent.

Given these recently acknowledged problems, along with lack of funding and necessary right-of-way, it may be high time to seriously consider an "exit strategy" for the Olive Blvd. TDD, and look for a ways to best utilize remaining funds, pay off all bonds and then shut it down. It is possible that such action might open up new opportunities for grants and other funding mechanisms for future Olive Blvd. improvements – possibly including some of the lighting, landscaping and other streetscape "beautification" enhancements the TDD originally promised.

This is why we both have now directly approached MoDOT (Missouri Department of Transportation), asking if any of the TDD's construction plans can be re-prioritized to preserve some existing pedestrian access and ensure road and intersection improvements that suit the interests of our City overall – not just the "vision" of one individual.

Due Diligence

A Ward 4 resident recently sent a letter to subdivision trustees about the proposed sales tax increase. Regardless of whether or not we agree with all of his comments, we do value his opinion, respect his efforts and, most importantly, acknowledge his fundamental point – when the City asks for a tax increase, it is appropriate for taxpayers to demand greater scrutiny.

As always, we urge all citizens to conduct their own due diligence, including reading the city newsletter and web site, local newspapers and the CreveCoeurVoter.com blog.

Council Activity

City Council activity on September 27 and October 11 included the following:

- Approved Ordinance 5154 ordering the levy and establishment of the rates of annual taxes for 2010.
- Adopted Resolution 931 entering an agreement with Adler Custom Signworks to construct a sign for LaVerne Collins Park.
- Adopted Resolution 932 entering an agreement with Horner & Shifrin for engineering design services related to the Emerson Road Concept Plan.
- Approved Ordinance 5155 to change the name of Cardinal Ritter Drive to Ronald McDonald House Lane.
- Approved Ordinance 5456 executing a co-operation agreement with St. Louis County regarding emergency communications system.
- Adopted Resolution 933 authorizing the purchase of seven police vehicles.
- Approved Ordinance 5157 authorizing the issuance of a conditional use permit for a Jimmy John's Gourmet Sandwiches restaurant at 11429 Olive Blvd.



CITY OF CREVE COEUR

March 24, 2011

To: Mayor and City Council

Re: Re-Appointment of Municipal Judge and Provisional Judge

The terms of the Municipal Judge and Provisional Judge expire in April 2011. Tim Engelmeyer and Marc Fried were appointed in 2010 to fill unexpired terms.

The City Council appoints the Municipal Judge and Provisional Judge pursuant to Section 7.2 of the City Charter. The term of office is 4 years, effective April 12.

I have spoken with both judges, who have indicated their desire to remain in office. I recommend the re-appointment of both officials effective April 12, 2011.

Sincerely,

Mark Perkins
City Administrator

To: Mark Perkins
City Administrator
City of Creve Coeur

MEMORANDUM

Please be advised that the City of Creve Coeur currently has pending on the Certified Docket of St. Louis County Associate Circuit Court, 68 counts against the Defendants Michelson Commercial Realty and Development, LLC, and Triple Crown Properties II, LLC. These matters are set for trial on May 25, 2011. Previously, Tim Berry of Michelson Realty was listed as a Defendant, however he has been dismissed individually from any liability.

These complaints center on the development known as Mill Crossing. These complaints center upon the Defendants failure to finalize building permits and comply with the terms of the building and landscaping permits. They include complaints involving signage, fencing, landscaping, retaining walls, planting new trees, removing temporary driveways, electrical guide wires, general maintenance involving painting, repair and concrete work, and removing debris.

The developer has abandoned the project, and construction of additional condominium units are not contemplated at this time. The remaining property was taken back by the bank under a threatened foreclosure proceeding. Maintenance of the existing property now rests with the Mills Crossing Condominium Association which has had the exclusive responsibility of the grounds maintenance since November, 2009. It is my understanding that the City is attempting to correct many of the remaining deficiencies through the Association.

Based on correspondence with the developer's attorney, I am confident that they are going to argue that the owner of the development project was an entity known as Triple Crown Properties II, LLC. They deny any responsibility emanating from Michelson Commercial Realty and Development, LLC. In addition, they argue that the Condominium Association is a necessary party, since they are now in control of the grounds. Defendants have made an offer to settle this matter for the nuisance value of One Thousand Dollars (\$1,000.00).

The City has circumstantial evidence reflecting Michelson Commercial Realty and Development, LLC's involvement in the project. It does appear that Triple Crown Properties II, LLC, was the technical, legal owner, however. The original site plan was under Michelson's name, together with minutes from the Planning and Zoning Commission meetings which refer to

Michelson. Several other documents and correspondence refer to Michelson Realty, but research does tend to indicate that the owner is Triple Crown Properties II, LLC.

Should the counsel have any additional questions or if I may address other issues, I would be happy to speak with you individually.

Very truly yours,

Dennis L. Beckley
Prosecuting Attorney, City of Creve Coeur

Date: March 24, 2011



DEPARTMENT OF COMMUNITY DEVELOPMENT OFFICE MEMO

DATE: March 23, 2011

TO: Mark Perkins, City Administrator;
Paul Langdon, Director of Community Development

FROM: George Seifried, Project Manager

SUBJECT: Mill Crossing Subdivision Update:

March 23, 2011- I talked to Denny Beckley, City Attorney and he confirm our court case against Michelson is on the docket for May 25, 2011. Denny said he will have a memo to you shortly about offers to settle the case we have against Michelson.

March 22, 2011- I had a meeting with Jim Honeywell, President Mill Crossing Condominium Association to review the landscaping plan additions, which will correct the light barrier issue on the east side of the property. Jim had two proposed landscaping plans; I reviewed both and made corrections so we can have one combine plan. Jim is having the designer make revisions and he will forward me a copy as soon as they are complete.

February 23, 2011- I responded to Jim Honeywell's letter dated February 18, 2011, see attached. I have not received a response to date. I forgot to mention to Jim at our meeting on March 22, 2011 that I need a response to this letter; I will contact him tomorrow.

February 18, 2011- Received letter from Jim Honeywell, see attached.

Summary:

I am happy with the progress we are making. Jim Honeywell has been responsive to my concerns and he is addressing the issues. I know the association has a deficiency of funds, and it is my belief the violations will be corrected as quickly as funds become available.

MILL CROSSING CONDOMINIUM ASSOCIATION

February 18, 2011

Carl J. Lumley
Curtis, Heinz, Garrett & O'Keefe
130 S. Bemiston, Suite 100
Clayton, MO 63105

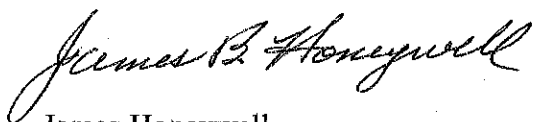
Dear Mr. Lumley:

This letter is the result of a meeting I had with George Seifried on Feb. 28th. He asked that the association be more specific as to when we would complete certain items listed in the violation notice dated April 5, 2010.

1. Hole in retaining wall on east side of property will be repaired by June 1st.
2. At the present time funds are not available to replace all missing landscaping the builder failed to install.
3. Temporary plywood fence will be removed after the new opaque barrier is installed per item 16.
4. The light barriers on the sight of building A will be done by the contractor if and when building is completed..
5. Painting of rusty fence and railings will be completed by June 1st.
6. Holes around loose railings will be filled with concrete by May 1st
7. Funds are not available at this time to replace dead trees. Money will be budgeted for this purpose in the future.
8. Along the east property line dead trees will be replaced with the planting of the opaque barrier.
9. The miscellaneous building materials will be removed by April 1st.
10. It was agreed the retaining walls will not be installed.
11. The temporary driveway has been removed by MODOT. A chain across each entrance to the Building A construction area will be installed by April 1st.
12. The ruts along the driveway near the entrance will be repaired by May 1st.
13. The three trees will be included in the plans for the opaque border.
14. The plans for the opaque border will include mulching and restoration of the flower beds
15. The chipping paint on the exterior of the buildings will be touched up by July 1st.
16. Action has been taken to obtain an overall plan for the opaque barrier suitable for submission to the Planning and Zoning Commission and neighbors for approval before getting bids for completion of the work. This should be done by March 1st. The completion of the work should be done by June 1st.

I believe this includes all items discussed with George Seifried on April 5th.

Sincerely yours,



James Honeywell
President



city of **CREVE COEUR**

300 North New Ballas Road • Creve Coeur, Missouri 63141
(314) 432-6000 • Fax (314) 872-2539 • Relay MO 1-800-735-2966
www.creve-coeur.org

February 23, 2011

James Honeywell
1163 Mill Crossing Drive #101
Creve Coeur, MO 63141

Dear Mr. Honeywell;

In response to your letter dated February 18, 2011 I want to clarify the following items:

1. Item 1- we will need a drawing ... will need to make inspections;
2. Item 7- we will need a timeline;
3. Item 10- it was agreed that the retaining wall along the southwest of the property backing up to the Lenard property could be eliminated. The retaining wall near building lot A will need to be constructed with the construction of this building.
4. Item 16- in addition to the plan for the opaque barrier along the east property line you also need to include landscaping, which will replace the 4' high opaque concrete barrier walls shown on the original landscape plan. We will need a definitive time line for item 16.

Genuinely,

George Seifried
Project Manager
Department of Community Development
Planning Division
City of Creve Coeur, Missouri

cc. Carl Lumley (City Attorney)



city
of

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March 18, 2011

Howard M. Oppenheimer
Executive Vice President
Delmar Gardens Enterprises
14805 N. Outer 40 Road
Suite 300
Chesterfield, MO 63017-6060

Dear Howard:

Last week's *St. Louis Business Journal* article regarding Delmar Gardens' future plans generated some discussion at the City Council meeting this past Monday.

The article indicated that you plan to submit a master plan to the city for the project in late April. If you have any additional information regarding your plans or timeline for submitting any proposal to the city for this property which you believe would be appropriate to share at this time, then please advise.

I encourage you to engage the residents in the surrounding neighborhoods as early in your planning process as practical.

Sincerely,

Mark Perkins
City Administrator

From: Howard Oppenheimer [<mailto:HOppenheimer@DelmarGardens.com>]
Sent: Monday, March 21, 2011 2:49 PM
To: Perkins, Mark C.
Cc: Langdon, Paul
Subject: RE: additional background information (four PDF attachments)

Dear Mark:

Rest assured that as in any other project we have submitted to the City of Creve Coeur, we will review preliminary plans with staff before we formally submit.

Howard

From: Perkins, Mark C. [<mailto:MPerkins@ci.creve-coeur.mo.us>]
Sent: Monday, March 21, 2011 1:51 PM
To: Howard Oppenheimer
Cc: Langdon, Paul
Subject: RE: additional background information (four PDF attachments)

Howard,

[see attached letter.](#)

Thanks,

Mark Perkins, ICMA-CM
City Administrator
City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, MO 63141
314.872.2511
www.creve-coeur.org

From: Laura Bryant [<mailto:laura.bryant@yahoo.com>]
Sent: Friday, March 18, 2011 12:14 PM
To: Howard Oppenheimer
Cc: Perkins, Mark C.
Subject: follow-up request: additional background information (four PDF attachments)

Mr. Oppenheimer:

By the way, are you able to share with us a copy of whatever plans you do have thus far? Obviously, we already have seen the proposed plans for Olive Blvd, but I have only personally heard heard rumors about Delmar Gardens' plans for Ladue Road (my understanding is that you hope to construct a nursing-home facility in the back with single-family homes in the front of the property).

Certainly, we all understand that plans can and do change, but it might help to at least to see what Delmar Gardens is envisioning, even if the details have not yet been ironed out.

Thanks again,
Laura Bryant
Ward 4/Creve Coeur City Council

From: Howard Oppenheimer [<mailto:HOppenheimer@DelmarGardens.com>]
Sent: Tuesday, March 15, 2011 2:34 PM
To: LauraBryant
Cc: Perkins, Mark C.
Subject: RE: additional background information (four PDF attachments)

Dear Councilwoman Bryant:

Thanks for sharing this with me. We will certainly keep this information in mind when we are ready to proceed. Please note, however, that we have not yet reached that stage and are not ready to present anything to anyone at this time because we are still in the planning stages. Please be aware that because we do not yet have anything ready to present that we have not met with anyone at the city.

Howard Oppenheimer

From: Laura Bryant [<mailto:laura.bryant@yahoo.com>]
Sent: Tuesday, March 15, 2011 11:52 AM
To: Howard Oppenheimer
Cc: Mark Perkins City Administrator
Subject: additional background information (four PDF attachments)

Mr. Oppenheimer:

Hi, I would like to introduce myself. My name is Laura Bryant and I represent Ward 4 on the Creve Coeur City Council (in fact, I will be term-limited out next month). During my ten years on the Council, I have tried to look out for residents -- as well as businesses -- in all four wards, so my ongoing interest in the two Delmar Gardens proposals in Ward 3 is understandable and fairly well documented.

Last night, as you may know, the City Council discussed some statements in the March 11th St. Louis Business Journal article (PDF attached). We asked our City Administrator to contact Delmar Gardens for further clarification, because, as you can imagine, nearby Ward 3 and 4 residents are very interested in how these two proposed Creve Coeur projects are moving forward.

In addition, part of my direct question for the City Administrator included ongoing concerns about what has now become known as the "informal vetting" process -- and how previous behind-the-scenes communications with elected officials might still be shaping Delmar Gardens' long-term plans today.

Part of the confusion surrounding the so-called "informal vetting" process came from the lack of information promised more than a year ago. For additional background on this important issue, please see my Nov. 5, 2009, email to your attorney (PDF attached).

My confusion only increased last night when a Council Member suddenly declared that such issues and concerns are "water under the bridge." To the contrary, I believe it is critically important for all parties to understand the full context of Delmar Gardens' two interrelated projects -- and I don't know how that could be possible if the clock is arbitrarily "reset" to the March 2011 with no historical perspective.

Also, as you may already know, the local CreveCoeur.Patch.com news site covered this topic March 12 and today, March 15 (PDF attached). You might find this information enlightening, since this is what Creve Coeur residents are reading.

Also, I would encourage you to carefully review the citizen timeline covering 1989 through 2009 (PDF attached) -- several Ward 3 residents worked very hard to put this together. Again, it provides significant context and understanding, and not incidentally, it also helps document ongoing citizen concerns about the lingering impact of elected officials' "informal vetting" on where things stand right now.

I sincerely hope the attached proves helpful (four PDFs total). I think it is critically important that Delmar Gardens officials have access to the same information and documentation as the the Creve Coeur City Council and the local neighbors. Total transparency is the only and best way to move forward. My sincere hope is that we can all figure out a fair resolution and, after careful consideration, the City Council can proceed in a way that benefits Delmar Gardens as well as the entire Creve Coeur community.

Many thanks for listening. I hope you can take this information into account when you talk with our City Administrator.

Laura Bryant
Ward 4/Creve Coeur City Council

TIMELINE:

DELMAR GARDENS CREVE COEUR REZONING

Note: This chronology has been personally compiled by Pattye Taylor-Phillips and Christy McCollom Creve Coeur Ward 3 residents. All references are public documents (updated as of November 6, 2009). Please provide all updates and corrections to Pattye Taylor-Phillips (at ptaylorphillips@earthlink.net) or Christy McCollom (at christymccollom@hotmail.com)

1. September 06, 1989 (See Exhibit 1)

Letter to **City Attorney** Leonard Walther, from **City Administrator**, Mike McDowell dated September 6, 1989. Re: Request for Legal Opinion.
One of 4 items covered in this request includes the **Rezoning Request – Delmar Gardens Nursing Home – Country Manor Drive.**

“At present, the subject property targeted for expansion is zoned Single Family Residential. As you know the property that the current nursing home facility sits on is also zoned Single Family Residential and the existing nursing home constitutes a non-conforming use on the side. We have advised Delmar Gardens that the most appropriate mechanism for allowing expansion is to rezone the property targeted for the expansion to GC General Commerce in the GC district. A nursing home would require an additional Conditional Use Permit to allow the expansion on the subject property.”

“Mayor Vickroy requested that I pose a legal question to you regarding the rezoning procedure itself. Here in the City, separate and apart from the Conditional Use Permit process and through the rezoning process itself, impose a condition and/or restriction within the text of the rezoning ordinance with a “reversionary clause?” The substance of the proposed reversionary clause would be to state that the rezoning on the subject property was valid only as long as the use was for a nursing home. I’m uncertain as to whether or not such a conditional zoning is permitted under Missouri Law and would request your opinion as to whether or not such a conditional zoning is permitted under Missouri Law and would request your opinion as to whether or not the city has the legal ability to impose such a condition in the rezoning action itself over and above any conditions and/or restrictions that might be imposed through the Conditional Use Permit process.”

“Your prompt opinion would be appreciated so that we can respond back to Delmar Gardens as to the proper procedure to follow to facilitate planning and zoning deliberations over the expansion.”

2. September 11, 1989 (See Exhibit 2)

Letter to T. Michael McDowell, **City Administrator for Creve Coeur**

From: J. Leonard Walther, **City Attorney**, Czech, Hoffman, & Walther Attorneys at Law, Re: Delmar Gardens Nursing Home – Rezoning Request dated September 6, 1989 (Reply to document in Exhibit 1)

“As you may have been advised the main reason the property where Delmar Gardens now stands and the adjoining property has not been rezoned to commercial use is that the city has always felt that leaving it zoned residential would provide a buffer zone for the subdivisions to the south. Assuming that the Conditional Use Permit is acceptable to the City, I do not believe that a “revisionary clause” in the ordinance rezoning the property would be satisfactory. It would still require a rezoning a time the Conditional Use was discontinued. It cannot happen automatically. A new rezoning procedure would be required. “

In his recommendation, Mr. Walther states “It is my suggestion that in lieu of the revisionary clause we ask the petitioner if they would not be willing to file a deed restriction limiting the use of their property to the nursing home. The deed restriction could be written so that it could be removed with the consent of the City of Creve Coeur or it could have a termination date which should be at least as long as the anticipated use would be.”

3. September 13, 1989 (See Exhibit 3)

Letter to Mr. Howard M. Oppenheimer, **VP Development Delmar Gardens** from T. Michael McDowell, **Creve Coeur City Administrator** regarding “Proposed Expansion of Delmar Gardens Facility- Creve Coeur”

“We have concluded that your best option would be to pursue a rezoning for the property subject to the expansion as discussed at our meeting. In addition, we have determined that the property will require a subsequent issue of a Conditional Use Permit for use as a nursing home within the general commercial district as provided for in the Creve Coeur Zoning Ordinances.”

4. December 1989 (See Exhibits 4 A-C)

A. Planning and Zoning Commission Meeting, December 1989, the Delmar Gardens of Creve Coeur Proposal to rezone from “C” Single Family Residential to “GC” General Commercial and a Conditional Use Permit.

B. Excerpts from the Review of P&Z Agenda Items (December 14, 1989):

“One concern of rezoning would be what if the property were to be sold or converted to some other use permitted in the “GC” zone.

There are uses that could be devaluing to the single family structures. To address this concern, the applicant has agreed to place a deed restriction on the property which states that should the facility ever cease to be operated as a nursing home, the zoning would revert to detached single family zoning.”

C. Conditional Use Permit proposed by Planning and Zoning Item 9 states:

“A Deed restriction, in a form acceptable to the City Attorney, must be recorded which states that should the property or any portion of the property cease to be used as a Nursing Home, the zoning of the ground reverts to “C” Single Family Residential, with the provision that the restriction may only be removed with the consent of the City of Creve Coeur.”(Exhibits are also attached to the letter to the Mayor, from P&Z dated January 3, 1990. See Below).

5. January 3, 1990 – (Exhibit 5)

Letter from George Bakker, **Chairman of Creve Coeur Planning and Zoning Commission to Mayor Peggy Vickroy and the City Council re: Delmar Gardens of Creve Coeur.**

Mr. Bakker states:

“The Planning and Zoning Commission, at their meeting on January 2, 1990 reviewed the requests of Delmar Gardens of Creve Coeur for approval to rezone from “C” Single Family Residential to “GC” General Commercial, issue a Conditional Use Permit, and Preliminary Site Development Plan.”

“By unanimous vote, the Planning and Zoning Commission recommends approval of these requests, subject to all conditions listed under the “Conditional Use Permit” and “Preliminary Site Plan” on page 2 of the Staff Review Dated December 14, 1989, a copy of which is attached.”

6. January 4, 1990 – (Exhibit 6)

Delmar Gardens Plans 7th Care Home, St. Louis Post-Dispatch Article

“The owners of the Delmar Gardens nursing homes have asked Creve Coeur for permission to locate their seventh facility in the city.”

“The new nursing home would be five acres on Country Manor Lane, south of Olive Boulevard near St. Monica Catholic Church, representatives of the company told the Creve Coeur Planning and Zoning Commission Tuesday.”

“The commission recommended that the City Council approve the proposal. The group attached several conditions to its recommendation, including one requiring Delmar Gardens to screen the service area from neighbors.”

“The nursing home would have 204 beds. It also would have a whirlpool therapy facility.”

7. February 8, 1990 – (Exhibit 7)

Letter + 3 drawings sent from John Pfaff from **KROMM, RIKIMARU JOHANSEN INC, Architects Planners Interiors**

To Mr. Vijay Bhasin, PE, **Director of Public Works, City of Creve Coeur** regarding the detailed drawings of the berms to be constructed to control low beam headlights for the Delmar Gardens Creve Coeur Project

Note: There were 12 drawings referenced but only 3 were found.

8. February 26, 1990 (Exhibit 8)
City Council Minutes from 2/26/1990.

Item #5: Bill # 1397: "A Bill for an ordinance for the rezoning of property from "C" Single Family Residential to "GC" General Commercial for Delmar Gardens 850 Country Manor Lane".

Item #6: "Bill for an ordinance authorizing a conditional use permit for Delmar Gardens nursing home located at 850 Country Manor Lane."

Council discussion focused on parking spaces and their orientation to Country Manor, and the green space buffer with Nottingham, and grade of the entry to the facility.

Note: Minutes provided by Nancy O'Loughlin, Exec Office Associate, City of Creve Coeur in an e-mail attachment to Laura Bryant dated August 6, 2009.

9. March 12, 1990 (Exhibit 9)

City Council Minutes from 3/12/1990,

Item # 5: Bill No. 1397 for an ordinance for the rezoning of property from "C" single family residential to "GC" General Commercial for Delmar Gardens, 850 Country Manor Lane, Second Reading

Item # 6: "Bill for an ordinance authorizing a conditional use permit for Delmar Gardens nursing home located at 850 Country Manor Lane, Deferred from meeting of February 26, 1990."

Note: Minutes provided by Nancy O'Loughlin, Exec Office Associate, City of Creve Coeur in an e-mail attachment to Laura Bryant dated August 6, 2009.

10. March 26, 1990 (Exhibits 10 A-D)

A. City Council Minutes from 3/26/1990.

Item #4: Bill # 1397 for an ordinance for the rezoning of property from “C” single family residential to “GC” general commercial for Delmar Gardens, 850 Country Manor Lane, FINAL READING

Item #5: Bill # 1402 for an ordinance authorizing a conditional use permit for Delmar Gardens nursing home located at 850 Country Manor Lane, FINAL READING

Mayor Peggy Vickroy and City Council Members pass Bill 1402, Ordinance 1384 limiting the use of the Delmar Gardens property to “Nursing Home Only” by applying a restriction to the deed and issuing a Conditional Use Permit.

“The Conditional Use Permit granted shall be subject to all ordinances, rules and regulations, and the following conditions:

1. This Conditional Use Permit shall be for the operation of a nursing home.
2. There shall be a maximum of 204 patients residing in the facility in any one time.
3. The existing 6 foot high solid screen fence, along the southern property line shall be maintained and in good condition.
4. The site shall be developed in accordance with the preliminary site development plan prepared by Kromm, Rikimaru and Johansen Architects with the latest revised date of March 6, 1990.
5. There shall be a berm constructed along the western property line between the parking lot and the curb to help screen the service area from the residence to the west.
6. The above noted berm shall be landscaped in a manner which will screen vehicles and the service area on a continuous basis.
7. There shall be no exterior storage of any materials, equipment, or trash containers unless enclosed within a sight-proof area.
8. Valet parking shall be provided for visitors by Delmar Gardens on Sunday afternoons and other special events.
9. Any future enlargement or alteration in the use of the structure or site must be approved by the city council, upon receipt of the recommendation of the planning and zoning commission, as an amendment to the conditional use permit before a building permit for the enlargement or alteration maybe issued.
10. A deed restriction, in the form acceptable to the city attorney, must be recorded which limits the usage of the property solely for nursing home purposes and related activities, as authorized by the city of Creve Coeur zoning regulations, and provides that such usage shall not be changed without the prior written approval of the City of Creve Coeur and further providing that such restriction shall not be modified, amended, or terminated without the prior written consent of the City of Creve Coeur.
11. A copy of all herein attached conditions shall be furnished by the owner or petitioner to the operator(s) or manager(s) who shall forward to the zoning

enforcement officer an acknowledgement that he or she has read and understood each of these conditions and agrees to comply therewith.

12. Any transfer of ownership or lease of the property shall include in the transfer or lease agreement a provision that the purchaser or lessee agrees to be bound by the condition herein set forth and approved development plan for the property.
13. All conditions contained within this permit shall be posted upon the property in such a manner that it is visible to the public and the operator of said facility.
14. Failure to comply with any one or all of the conditions of this permit shall be adequate cause for the revocation of said permit by the City Council, provided, however, no permit shall be revoked without reasonable notice to the owner of the intention of the City Council to revoke and reasonable time granted to the owner to correct any such breach or condition.”

- B. Bill 1402, Ordinance 1384- Ordinance authorizing a Conditional Use Permit
- C. Bill 1397, Ordinance 1383 – Changing Class C Single Residential District to General Commercial per Map notations
- D. Conditional Use Permit

Note: From 1990 to today, the deed restriction was never filed by Delmar Gardens, nor was the Conditional Use Permit enforced by the city.

11. April 10, 1990 (Exhibit 11)

Creve Coeur City Administrator, T. Michael McDowell sends a letter with the Conditional Use Permit for Delmar Gardens of Creve Coeur authorized by Ordinance Number 1384 to Mr. Gabe Grossberg. ***“Please note Condition No. 11, which requires written acknowledgement and agreement to be mailed to the Zoning Administrator of the City of Creve Coeur.”***

(Exhibit: Letter dated April 10, 1990 from City of Creve Coeur to Gabe Grossberg, Delmar Gardens)

12. April 23, 1990 (Exhibit 12)

Letter from Mayor Peggy Vickroy addressed “To whom it may concern:”

“Delmar Gardens of Creve Coeur, a nursing home located in our city has expressed an interest to enlarge their facility. At present, it is a rather small nursing home and they find it inefficient to operate at this level.”

“Since Delmar Gardens took over the management of this facility, it has greatly improved. They have been very cooperative with the community and attempted to meet all of our regulations and the desires of their neighbors. Delmar Gardens has a

very long waiting list at present as there are limited facilities for extended nursing care”

“We support their desire to expand and believe they are doing a fine job in our community”.

13. October 18, 1990 (Exhibit 13)

Letter from Creve Coeur Zoning Administrator, Randall Garner to Mr. John W. Pfaff, KRJ, Inc.

Copies to: Mr. Howard Oppenheimer (Delmar Gardens), Mr. Michael McDowell, Creve Coeur City Administrator, Vijay Bhasin City Engineer.

Memo regarding the approved site plan and the proposed revised overlay.

“Since the total square footage and site coverage will not be changed by this revision and the proposed building modifications are minor in nature, this slight revision to the approved plan will not require an amendment to the Conditional Use Permit which *has been issued* for this facility.”

14. August 25, 1994 (Exhibit 14)

Delmar Gardens Request for Zoning Letter

Debra Spear, Legal Assistant for Husch & Eppenberger Attorneys at Law makes a written request for a zoning letter “outlining the zoning and authorized uses for the property known as Delmar Gardens of Creve Coeur, 850 Country Manor Lane, Creve Coeur, Mo.” Letter is sent to the Zoning Administrator for the City of Creve Coeur, Mr. Randal Garner. (Exhibit)

15. September 6, 1994 (Exhibit 15)

Response to the Zoning Verification Request on August 25, 1994 for Delmar Gardens of Creve Coeur to Ms. Debra A. Spear, **Legal Assistant at Husch & Eppenberger Attorneys at Law**.

Creve Coeur Zoning Administrator, Randall Garner confirms receipt of the request and confirms that “The City of Creve Coeur rezoned this property from residential to “GC” General Commercial by Ordinance Number 1383, adopted on March 26, 1990. This ordinance required the placement of a Deed Restriction on the property, which would limit the usage of the property solely for nursing home purposes and related activities. A copy of the noted ordinance is attached”. Author’s Note: a copy of the ordinance was not attached to the file containing these letters from the City.

16. August 30, 1995 (Exhibit 16)

Letter via TELEFAX from Kathy Jezik, **U.S. Title Guaranty Company, Inc.** to Randy Garner, **Director of Community Development** in the City of Creve Coeur.

Ms. Jezik “would like to get a zoning letter reflecting the zoning classification I received today: GC.” She requests that the response be faxed back to her.

17. September 13, 1995 (Exhibit 17)

Letter from Randy Garner, **Director of Community Development** City of Creve Coeur, replies “Delmar Gardens Creve Coeur has been zoned “GC: General Commercial District by the City of Creve Coeur. Attached is Ordinance Number 1383 which rezoned the subject property to GC General Commercial” Please note the restriction with in the ordinance which limits the use of the property nursing or retirement homes.”

18. April 26, 2007 (Exhibit 18)

Letter from Mayor Dielmann (on City of Creve Coeur letterhead) inviting Matt and Pattye Phillips to attend the opening festivities for Creve Coeur Days 2007 including a garden tour (at their home) for the Creve Coeur Squires and to attend a dinner to be held at Delmar Gardens Chesterfield.

19. May 16, 2007 (See Exhibit 19 – Invitation, Hosts)

The Creve Coeur Squires host a Garden Tour and Dinner @ Delmar Gardens **Chesterfield** to open the **Creve Coeur Days** event. Approximately 100 Squires members and guests tour 2006 Creve Coeur Beautification Award winning gardens and dinner for the group is hosted by Delmar Gardens Chesterfield at their new facility.

20. May 2007 (No Exhibit)

Bob Haddenhorst begins making sales calls with Delmar Gardens. He did not confirm if or when business was secured with them.

Background on source of this information:

Pattye Taylor-Phillips sends an e-mail inquiry to Mr. Haddenhorst on 9/16/2009 to ask when his business relationship began.

On 9/17/09, Christy McCollom files a freedom of information act at Creve Coeur City Hall to ask when Mr. Haddenhorst’s business relationship with Delmar Gardens began. The City Clerk replies that this is personal information and cannot be disclosed. Within an hour, Mr. Haddenhorst calls Ms. McCollom to report that he began “calling on” Delmar Gardens in May 2007. Ms. McCollom explains that if he had a business relationship with Delmar Gardens in the Summer of 2008, then there could have been a conflict of interest as he served as a liaison between the Ward 3 Neighborhood Trustees and Delmar Gardens as conceptual plans were reviewed. Note: CPs Haddenhorst and Kassander told the trustees that there was nothing that could be done about the proposed development until it was presented to P&Z and the Council.

On 9/17/2009, Pattye Taylor-Phillips receives a return phone call from Mr. Haddenhorst. She speaks to him via phone on Sept 17, 2009, Mr. Haddenhorst shares

the same information as reported by Christy McCollom plus, Mr. Haddenhorst indicates that he first connected with Delmar Gardens through the Creve Coeur Squires organization.

21. February 1, 2008 (Exhibit 20)

8- 1 Page Delmar Gardens Site Plans showing 1-5 story office building plus 1- 3 story office building on proposed site.

22. March 24, 2008 (Exhibit 21)

Email correspondence from Paul Langdon (Director Planning) and Deborah Ryan (City Clerk) regarding the Delmar Gardens application for rezoning.

- According to Mr. Langdon, Delmar Gardens first contacts the city to discuss the proposed redevelopment of the Creve Coeur nursing home property on March 24, 2008. The City of Creve Coeur received the application from Delmar Gardens on December 23, 2008.
- Per an e-mail dated Sept 16, 2009 (included in this timeline), Council Person Laura Bryant asks City Administrator Mark Perkins if the Delmar Gardens development plans have changed since February 2008. Mark Perkins replies via phone to Laura Bryant that the plans have not changed.

23. May 28, 2008 – (Exhibit 22 A-B)

A) Meeting Announcement for Ward 3 Town Hall Meeting from Kassander on (dated April 20, 2008)

Ward III Town Hall Meeting is held. Following the meeting, Paul Kutz contacted Nottingham Trustees to share that plans were on the horizon for Delmar Gardens redevelopment. According to information, primary conceptual plans were available describing “a silver building of three or more stories” was proposed.

B) E-mail from Paul Kutz to Nottingham Subdivision Trustees dated 6/6/08.

Ward III Town Hall Meeting is held. Following the meeting, Paul Kutz contacted Nottingham Trustees to share that plans were on the horizon for Delmar Gardens redevelopment. According to information, primary conceptual plans were available describing “a silver building of three or more stories” was proposed.

24. June 26, 2008 (Exhibit 23)

2 E-mails (both from Christy McCollom) to Bob Haddenhorst and David Kassander, Ward 3 Council Members

Nottingham Trustee Christy McCollom contacted City Council members Bob Haddenhorst and David Kassander to request a meeting to include area trustees to discuss Delmar Gardens expansion information. A meeting date is set for July 28, 2008.

25. July 2008 (Exhibit 24)

Traffic Study for the Redevelopment of Delmar Gardens Site prepared by Crawford, Bunte, Brammeier

Phase I (Year 2010) trip generation estimates for a “General Office Building” is reported for new trips in **vehicles per hour**:

AM Peak Hour: 150 trips in, 20 trips out = 170 Total Trips

PM Peak Hour: 30 trips in, 150 trips out = 180 Total Trips

Phase II (Year 2012) trip generation estimates for a “General Office Building” is reported in **vehicles per hour**:

AM Peak Hour: 110 trips in, 15 trips out = 125 Total Trips

PM Peak Hour: 30 trips in, 150 trips out = 180 Total Trips

Excerpts from concluding remarks:

“Ideally, dual westbound left turn lanes are needed on Olive Boulevard at Cross Creek Drive; however, given the recent widening project on Olive Boulevard, it is unlikely that further widening could be achieved to accommodate dual left-turn lanes. Although not as effective, the westbound left-turn movement could be improved by increasing the green time for the movement and/or lengthening the storage bay.”

“...increasing the green time for the westbound movement alone would not mediate the spillback of the left-turns into the through lanes of Olive Boulevard. In addition to increasing the green time, the westbound left turn storage bay would need to be lengthened by 200 feet to provide 400 feet of storage in order to mediate the impact of Phase I of the development”.

“It should be acknowledged that any changes to the signal timing or lengthening of the turn bay would have to be approved by MoDOT. Additionally, in order to lengthen the westbound left-turn, the eastbound left turn storage to go north on I-270 would be impacted. There is approximately 1,000 feet of storage for the eastbound left-turn bays to go north on I-270 so it may be feasible to reduce the storage.”

26. July 7, 2008 (Exhibit 25)

Planning and Zoning Commission Minutes

Discussion on item 08-029: Planned Districts Ordinance

“Mr. Langdon reviewed the changes to the ordinance that were made after various meetings and conversations with the Home Owners Association for the various condominiums, various property owners, and the Creve Coeur/Olivette Chamber of Commerce, all of which he felt brought about some good comments and changes to the proposed Text Amendment. A brief discussion followed.”

Three people spoke: Susan Murphy, representing the Creve Coeur/Olivette Chamber of Commerce, David Caldwell, and Tony Kardis.

“Mr. Caldwell thanked Mr. Langdon for addressing three issues – the Transition Zone, the Buffer Requirement, and Stormwater Management. He expressed another concern he felt many homeowners would have, that of preserving a high quality of upscale housing image in Creve Coeur and felt there should be some guidance in this ordinance for that type of development.”

“Due to the request to add definitions to the definition section of the overall Zoning Ordinance and the added changes discussed, Chair Niedringhaus called for a vote to defer to the next meeting, with all members voting in favor of the deferral”.

27. July 28, 2008 (Exhibit 26)

Email from Christy McCollom to Bob Haddenhorst coordinating the July 28 meeting date for the City Administrator, Mark Perkins, Ward 3 Council Persons and residents.

Meeting between Council Members Bob Haddenhorst and David Kassander and neighborhood trustees from Nottingham, Country Forest, Creve Coeur Place is held at the Creve Coeur Government center. Neighborhood trustees expressed concerns about the density, traffic added to Creve Coeur/neighborhood, and the deep encroachment of commercial development. Council members presented conceptual drawings. City Council members advised the trustees that there was “nothing that could be done” until the proposal was officially submitted to the City for review.

28. July 29, 2008 (Exhibit 27)

Bob Haddenhorst extends a thank you to residents for attending the meeting. Bob Haddenhorst followed up with John King (atty for Delmar Gardens) to relate neighborhood concerns regarding “traffic, building height, and setbacks”. Mr. Haddenhorst also expressed “our desire to meet with the developer once the plans are submitted to the City and BEFORE presentation to P&Z. As I anticipated, he was very cordial and agreed with this plan of action. I inquired as to the timing before plan submittal and he responded at least one month out. “

(Email from Haddenhorst dtd 7-29-08)

29. August 11, 2008 (Exhibit 28)

A public hearing on the Planned Zoning District is held to discuss (draft Bill 5158) – An ordinance to amend the code of ordinances of the City of Creve Coeur, Missouri by inserting new language into Appendix C – Zoning for the creation of Section 26-46, Planned Zoning Districts. The discussion was held to address concerns of the condominium owners in the Old Ballas Neighborhood. They were concerned that they were living in an area zoned commercial and that their homes could be the target of an eminent domain attack.

The idea behind creating a Planned Zoning District was that such a district would by definition allow both residential and commercial properties, the composition of the district would be defined as it was created, and the property owners would be protected from an unwanted change in the character of the district. Thus the immediate problem was solved, but a Pandora's box was opened.
(Creve Coeur City Council Minutes from 8-11-2008)

30. August 25, 2008 (Exhibit 29)

City Council Meeting Minutes.

The council continues discussion on Bill No. 5158, An Ordinance to amend the code of ordinances of the City of Creve Coeur, Missouri by Inserting New Language into Appendix C – Zoning for the creation of section 26-46, Planned Zoning Districts. Final Reading and Passage.

Resident David Caldwell expresses concerns about the density and how it could be applied in Creve Coeur.

In quoting from his e-mail (part of the city council public record):
“It is important that high standards be set in zoning matters and all negotiations with developers start from a position of strength.”

Later in his letter, he continues, “ Residents will be watching the Council on this matter and the upcoming buffer zone ordinance. Will you vote for high standards and protecting the property values and quality of life for long-term residents? Or will you vote for lining developer's pockets, protest petitions, lawsuits, and destroying the Creve Coeur we enjoy today? ”

Paul Langdon states that “... FAR allows us to limit the bulk of buildings on a site. Right now the AR and GC districts all allow .4 FAR. The floor area can be 40% of the lot area regardless of stories. “

After discussion, the council voted unanimously to defer the vote until staff took another look at the standards.

31. September 4, 2008 (Exhibit 30)

Creve Coeur City Council Meeting Minutes

A public hearing on the Planned Zoning District is held to address Bill 5158 – An ordinance to amend the code of ordinances of the City of Creve Coeur, Missouri by inserting new language into Appendix C – Zoning for the creation of Section 26-46, Planned Zoning Districts. Final Reading and Passage. Paul Langdon, Creve Coeur Planning Director recommends a 0.4 FAR for a PCD. This FAR is equivalent to the General Commercial Zoning allowance; it would allow a 100,000 square foot building on the Delmar Gardens property.

Former Ward 2 CP Jill Schupp questioned Mr. Langdon to ask if the 0.4 FAR was the correct number from a professional planning perspective. Mr. Langdon believed a higher number might be better in the core business area (downtown), but added that a PCD could go anywhere in the city and each project could be a decision of the character of the community and drawing a balance. CP Ward 1 Kreuter moved, Seconded by Ward 1 CP Kistner to amend the Bill to change the allowable FAR from 0.4 to 0.6. With this change, the 100,000 square foot building becomes a 150,000 sq. ft building.

Ward 4 CP Bryant said that the 0.6 FAR would be a bigger issue on Olive as opposed to an area like Lindberg and did not agree with it. (Vote NAY)

Ward 3 CP Kassander said that the FAR should not be changed from what Mr. Langdon had proposed without a better understanding of the full impact. (Vote NAY)

Vote For: Kistner, Kreuter, Wang, Schupp, Haddenhorst

Absent: Jeanne Rhoades

32. October 10, 2008 (Exhibit 31)

St. Louis Business Journal Article, *Sitdown with the Mayor*
Harold Dielmann shares his vision of a town center, discusses hold-ups for that plan, and reveals what keeps him coming back to work.

Question from the author: “Some people believe it’s almost laughable that the plan has taken this long. What do you have to say to people like that?”

Reply: “When you don’t have 100 percent of the people on your council that want it, they usually find ways to drag their feet and make it more difficult to do. We very easily could have gotten along without the traffic study. That was another nine-month delay”.

33. December 3, 2008 (Exhibit 32)

Email document from Bob Haddenhorst to Ward 3 neighborhood representatives.
Meeting follow-up from July 2008: Bob Haddenhorst schedules a follow-up meeting with Delmar Gardens and trustees from adjacent neighborhoods to be held Dec 17th at Creve Coeur Delmar Gardens.

34. December 9, 2008 (Exhibit 33)

E-mail from Council Person Bob Haddenhorst to Christy McCollom, Nottingham Trustee/Homeowner.

E-mail notification from Bob Haddenhorst that no city staff will be present at meeting on Dec. 17 but that he and David Kassander would be “observing from the wings”. Also mentioned in this email was that the developer wanted initially to hold meeting at “their corporate HQ’s which is similar in design to the proposed development.”

35. December 15, 2008 (Exhibit 34)

Planning and Zoning Meeting Minutes

“Upcoming projects include Delmar Gardens office project.”

36. December 17, 2008 (No Exhibit)

Meeting organized by Bob Haddenhorst, held at Delmar Gardens Creve Coeur to discuss the proposed redevelopment of the property. Participants included: Bob Fry, Carolyn Wright, Tom Robinson (from the Nottingham subdivision) and Mayor Dielmann, Bob Haddenhorst (from the City), and Howard Oppenheimer (Delmar Gardens) and representatives from the design and engineering contractors.

37. December 23, 2008 (See Exhibit 21, dated March 24, 2008)

Delmar Gardens formally submits its plans to the City of Creve Coeur to re-develop the property at Country Manor Lane and Olive Blvd.

Reference March 24, 2008 exhibits which include e-mail correspondence (to verify first city contact and submission dates for the plans – between Council Person Laura Bryant and Mark Perkins on 9/16/2009).

38. January 15, 2009 (See Exhibit 35)

Mayor Dielmann ‘s Campaign literature states:

“Although Creve Coeur has experienced tremendous growth during my tenure as your Mayor, *my vision for our city is not yet complete.*” This statement appears in a number of published campaign documents for the April 2009 Mayoral election.

“We continue to monitor and ensure that commercial development is done smartly and occurs only when it makes sense and benefits our residents.”

39. January 20, 2009 (See Exhibit 36)

P&Z Minutes, Other Business (Section 8A: Planning Department Report)

“Mr. Langdon said Delmar Gardens, who is proposing five-story and three-story office buildings, underground parking, and extensive landscaping, will be before the Commission as soon as the project receives approval from MoDOT.”

40. February 2009 (See Exhibit 37)

Creve Coeur Newsletter, Planning Update: Westgate Park and Delmar Gardens Under Review

Delmar Gardens Creve Coeur Campus located at the Southeast corner of Country Manor Lane and Olive Boulevard.

Description: Application for rezoning from “GC” General Commercial to “PCD” Planned Commercial Development and site development plan approval for a 5-story office building and 3 story office building.

Status: Presentation of applications to P&Z is scheduled for February 2.

41. April 2009 (Exhibit 38)

Dielmann for Mayor Campaign Brochure

Mayor Dielmann ‘s Campaign literature theme “Continue the Vision”.

“Mayor Dielmann’s vision for the next 3 years includes these items:

- Maintain and grow our commercial tax base through smart development
- Create a mixed use downtown district with ample green space, where our residents can live, work and play.”

42. April 12, 2009 (Exhibit 39)

April 12, 2009 –From the Creve Coeur City News – Ward 3 Newsletter from David Kassander: New Development to be reviewed at P & Z on April 20.

“The Planning & Zoning Commission will review the **Delmar Gardens rezoning/site plan proposed for Olive and Country Manor**. This office park will replace the current Delmar Garden Nursing Home on Country Manor and the white home that last held a realtor’s office on Olive. On this property, a 5- story and 3-story office building would be built in 2 phases. The 150,000 square feet of office space is more that what is currently permitted for this area. This project would be a significant increase to traffic in this area. As part of the proposal to help minimize the impact, increased capacity for left turns from Westbound Olive at Cross Creek would be required by MoDOT.”

P&Z meeting agenda indicated that the topic was “New Business” and was scheduled for discussion only.

43. April 20, 2009 - (Exhibit 40)

Staff Report to the Planning and Zoning Commission
P&Z Agenda and Meeting Minutes

Information from the Staff Report to the Planning and Zoning Commission:

“As the first opportunity for the Commission to consider an entirely new planned development under Section 26-46, Planned Zoning Districts, and given the highly visible location of this project, the applicant and the Planning Division staff believe it prudent that the first presentation be centered around the full discussion of the proposal without a recommendation to the City Council being sought.”

Information from the P&Z meeting minutes:

09-002 Delmar Gardens Rezoning is discussed as New Business – Discussion Only.

John P. King, Lanthrop & Gage, L.C. represented Delmar Gardens in a request for approval of Rezoning and Site Development Plan for Delmar Gardens at 850 Country Manor Lane and 12152 Olive Boulevard.

“Mr. King presented general facts and an overview of what is being proposed for this site. He pointed out that the site is located in the southwest quadrant of Highway 270 and Olive Boulevard and consists of 5.9226 acres.”

“The site is zoned GC, General Commercial, and allows for 120,000 square feet, with a maximum height of three stories. Mr. King stated that they are requesting a PCD, Planned Commercial Development zoning that will allow 150,000 square feet, including two buildings, one being five stories high which is not allowed under the existing “GC” zoning. They propose to build the five-story building in the first phase and the three-story, 60,000 square foot building in phase two. Mr. King pointed out that the second building will only be built after another location in the City of Creve Coeur has been found for the nursing home. Two water features will be provided, as well as large buffer area to the south. He suggested that the Commission members visit their facility in Chesterfield.”

Concerns were expressed by residents on a number of issues. Mr. John Winter presented a petition signed by residents who have concerns about the proposal (submitted to the P&Z commission). Other residents spoke to the commission and voiced concerns including increased traffic (in general), cut through traffic in surrounding neighborhoods, geese control, the effect of buried power lines on the burials in the St. Monica cemetery, devaluation of property, construction damage to neighboring properties due to the vibration of heavy construction equipment, and height of the buildings.

44. April 24, 2009 (Exhibit 41)

Letter from Steven Kling, **President of the Creve Coeur – Olivette Chamber of Commerce** to **Mayor** Harold Dielmann, City of Creve Coeur regarding the Creve Coeur Squires Organization.

Mr. Kling states that “I have had several discussions by e-mail with Mark Perkins, City Administrator regarding the Creve Coeur Squires insurance controversy. That issue let to further general questions regarding the Squires which Mark Perkins forwarded to you. After discussing this with a few board members, it became clear that many of our board members do not know anything about the Squires. Inasmuch as the Chamber has supported the Squires, it is important we understand some facts about the Squires. Since I have not heard from you, I thought I would capture our concerns in a letter for your ease of response.”

Continued quotes from the letter:

- 1) “Can you identify what type of legal entity is the Squires? The Missouri Secretary of State website shows it was formed as a not-for-profit corporation in 1971 but has since forfeited its charter. A copy of the forfeiture information is enclosed.
- 2) I understand you are the president of this entity but please advise us how officers are elected.
- 3) Who are the current members of this entity and how is a member admitted?
- 4) Who are the current directors of this entity and how is a director elected?
- 5) Since the Chamber and others are paying money to this entity for events, where does this money go and how is it used?
- 6) Is this entity a not-for-profit and registered as such so contributions are tax deductible.
- 7) How does the entity decide who is honored at its events?
- 8) Are there official organizational documents for this entity? If so, we would like to see a copy.”

45. May 1, 2009 (Exhibit 42)

Response to Steven Kling, **President of the Creve Coeur – Olivette Chamber of Commerce** from **Mayor** Harold Dielmann, City of Creve Coeur regarding the Creve Coeur Squires Organization

Mr. Dielmann states “The Creve Coeur Squires was formed in 1971 and was modeled after the Academy of Missouri Squires established by Gov. James T. Blair, Jr. in 1960 to honor Missourians for their accomplishments in the community, state or national level. The founding members of the Creve Coeur Squires – myself included – wanted a similar but local organization to recognize and honor citizens who were contributing support and leadership here in our immediate community.”

“Each year since its inception, the organization identifies a few individuals to become new members of the Squires in recognition of their community or public service. New members are selected from among recommendations made by current Squires members. It is not a formal process.”

“When it was initially established, the Squires was formed as a not-for-profit corporation in the State of Missouri. Over time, and similar to many community organizations nationally, this organization has become less formal in its structure. I’m not certain of its current official legal status”.

“In conclusion, the Creve Coeur Squires is a simple civic organization. Although not as formal as it once was, I feel it still serves a valid purpose in encouraging and recognizing involvement and leadership contributions in Creve Coeur, and providing a venue for similarly-active individuals to connect with one another.”

In addition, the Creve Coeur Official Website shows that Mayor Dielmann, Robert Haddenhorst (President of the City Council) and David Kreuter are members of the Creve Coeur Squires. (also included in this Exhibit)

46. May 2009 (Exhibit 43)

City of Creve Coeur Newsletter, From the Desk of Mayor Dielmann

Mayor Dielmann writes:

“We have several new projects that will be coming in the near future. Negotiations are underway between the property owner and the city to bring a new hardware store to Creve Coeur. Delmar Gardens has proposed a new office building on Olive Boulevard between St. Monica’s Church and Pulaski Bank. A CVS Pharmacy is under consideration at the old Essen Hardware site on Olive Boulevard and Old Ballas Road.”

47. May 2009 – City of Creve Coeur Newsletter (See Exhibit 44)

Planning Update: CVS Pharmacy and Delmar Gardens Under Review

Delmar Gardens Creve Coeur Campus located at the Southeast corner of Country Manor Lane and Olive Boulevard.

“Description: Application for rezoning from “GC” General Commercial to “PCD” Planned Commercial Development and site development plan approval for a 5-story office building and 3 story office building.”

“Status: The applicant believes they have resolved issues with access from Olive Boulevard and is tentatively scheduled to present the project to P&Z on April 20 for discussion and issues identification only.”

48. May 11, 2009 (Exhibit 45)

Creve Coeur City Council Meeting Minutes

Regarding Discussions about a Potential Hardware Store:

“Council Member Bryant stated in the May issue of the newsletter it states that “negotiations are underway between the property owner and the City to bring a new

hardware store to Creve Coeur” and asked Mark Perkins if he could enlighten the Council.”

“Mark Perkins stated he was not aware personally of any discussion but the Mayor could possibly comment on it. Mayor Dielmann asked where it was in the Newsletter.”

Council Member Bryant stated in your column and it states that it is the City so assuming when the term City is used that involves the City staff.

Mayor Dielmann stated that it was him because he has been working on getting a hardware store in the City since he was elected the first time. A property owner and hardware store are getting close.

Council Member Bryant stated the column doesn’t say that and the question is how are these negotiations moving forward without City Administrator?

Mayor Dielmann stated they are not but has been talking to the property owner and the hardware store to find a location.

Council Member Bryant asked the Mayor if he has an objection to including the City Administrator in those discussions.

Mayor Dielmann stated no.

Council Member Kassander asked if the discussions were City initiated.

Mayor Dielmann stated he is part of the City and he has had a number of citizens asking why the City doesn’t have a hardware store.

Council Member Kassander stated as he has also received a number of requests but the discussions were held as the Mayor of Creve Coeur.

Mayor Dielmann stated yes.

Council Member Wang asked if the Council could go back to the Community Garden. Council Member Wang stated he has 9 acres in Chesterfield on Conway Road and it would be a good place for a garden.

Doug Wolter stated to have a true community garden it really needs to be located in Creve Coeur.”

49. May 18, 2009 (Exhibit 46)

E-mail from Council Person Bryant to Mayor Harold Dielmann regarding meetings with developers

Quoting from Council Person Laura Bryant’s e-mail “As you know, at our last Council meeting, I inquired about the public statement in the Creve Coeur newsletter that “the

city” was in negotiations with a hardware store. I was confused until Mark explained that neither he nor his staff were in any such negotiations – and in fact, you then clarified your lead role for the public record.”

“As a result, I asked if you would please include Mark, as our city administrator – or any staff member he designates – in future meetings with developers. You graciously agreed to do so.”

“Meanwhile, I have obtained some documentation from the City of Wildwood concerning their Council’s discussion of a similar issue late last year.”

“Attached are three highlighted items (PDF format):

- 1) Wildwood Council work sessions minutes dated Nov 24;
- 2) Regular Wildwood Council minutes dated Nov 24, and
- 3) The decision by Wildwood Council’s Planning Committee (on Dec. 16) to not pass a formal ordinance or resolution, but to proceed instead with their unwritten policy”.

“I am sharing these with you to underscore the importance of transparency and accountability – and how even benign, yet private, meetings with developers can create conflict in any city. Miscommunications and perceived behind-the-scenes politics can upset what otherwise might be a perfectly ideal proposal”.

50. June 2009 (Exhibit 47)

City of Creve Coeur Newsletter – Ward IV Council Corner

Council Persons Jeanne Rhodes and Laura Bryant write to Creve Coeur citizens concerning **Land-Use issues**:

“...from development projects to eminent domain to rezoning – often dominate municipal controversies, and Creve Coeur is no exception. AS a result, transparency and accountability are just as critical at the local level as they are at the state and federal levels. And that is precisely why we have asked our mayor to include our city administrator in all initial discussions with developers. This is consistent with the City of Wildwood’s new policy of discouraging elected officials from scheduling private meetings or discussions with developers – which, in turn, minimizes miscommunications and potential behind-the-scenes politics.”

51. June 1, 2009 (Exhibit 48)

Creve Coeur Planning and Zoning Meeting Minutes

The City Attorney read a statement from Council Person Bob Haddenhorst who is officially recusing himself from participating in hearings, discussions, and voting regarding the Delmar Gardens Rezoning request due to an existing business relationship with the applicant.

Quoting from the minutes.... Ms Shawn White from Crawford, Bunte, Brammeier, presented a traffic study for the proposed project. Ms. White pointed out that the study was developed in accordance with MoDOT's direction. Mr. Moskowitz expressed concerns with the two left turns and Phase II. Mr. King told him that the two left turns have been approved by MoDOT.

Note: Nottingham resident (Ann Fingerhood) corresponded with MoDOT in May 2009 and July 2009 and received written replies stating that traffic concerns should be directed to City Officials rather than MoDOT – they have been consulted on this project. (See e-mails from Ann Fingerhood dated: July 29, 2009)

During the P&Z meeting:

“Speakers from the audience voiced objection to the project, expressing concerns with the traffic problems and various other issues.”

“Paul Kutz presented a signed protest to which City Attorney Lumley recommended they have an attorney verify that it is in the correct format.”

Mr. Bob Fry thought the “building was beautiful but stated that he did not want it in his front yard.”

Mr. Red Guymon stated “the project should be for the benefit of the City as well as the community.”

Mr. David Kassander, Ward 3 Council Representative, “was curious why retail has not been mentioned and suggested underground detention in lieu of the water feature”.

“Mr. David Schuehler added that “the applicant has gone to great lengths to appease the corporate neighbors, the church, and now the City of Creve Coeur with various enticements, but it does not seem like that are doing much for the subdivision itself.”

Ms. Joanna Neckline “felt that the project would negatively impact families, traffic and property values”.

Mr. Moskowitz moved to continue application 09-002 to the meeting of June 15, 2009 to allow the applicant time to address the concerns of the public, members of the Planning Commission, and the staff. Mr. Madden seconded the motion, which unanimously carried.

Note: There was no June 15, 2009 Planning and Zoning Commission meeting.

52. July 2009 (Exhibit 49)

City of Creve Coeur Newsletter, From the Desk of Mayor Dielmann

Mayor Dielmann writes “I am constantly seeking new businesses that may contribute to our mix of needs, whether it's new restaurants, potential developers for our vacant

property, or tenants for our first-class office space. As Mayor, I often have the opportunity to attend gatherings of local and regional business leaders , and I'm always on the lookout for opportunities to promote Creve Coeur as a great community in which to do business.”

Mayor Dolman states “All of this is designed to ensure that only the highest quality projects get final approval; *most simply don't survive the informal and formal vetting process...*”

53. July 6, 2009 – P&Z meeting (Exhibit 50)

Delmar Gardens asked for a deferral to the August 3rd meeting.

Mr. Langdon pointed out a couple of conditions in the draft ordinance that the applicant wished to resolve before proceeding: namely, provision of parking for Pulaski Bank employees, and the provision of an acceleration lane on Olive Boulevard from Country Manor.

54. July 29, 2009 (Exhibit 51)

Outside of the meeting discussion, Nottingham resident, Ann Fingerhood, corresponded with MoDOT in May 2009 and July 2009 and received several written replies stating that traffic concerns should be directed to City Officials rather than MoDOT. (See E-mail history from Ann Fingerhood dated: July 29, 2009)

55. Aug 3, 2009 (Exhibit 52)

Planning and Zoning Meeting Minutes

“Planning & Zoning Commission, at its meeting of August 3, 2009, reviewed the request of Delmar Gardens for approval of Rezoning and Site Development Plan for an office campus to be located at 850 Country Manor and 12152 Olive Boulevard.”

“By a vote of 3 ayes and 2 nays, the P&Z Commission submits a negative recommendation to the requested rezoning of 5.9226 acres from “GC” General Commercial to “PCD” Planned Commercial Development according to the conditions in the draft ordinance.”

56. August 4, 2009 (Exhibit 53)

Letter sent Re: Delmar Gardens 09-002 from the Chair of Planning & Zoning, Marcia Niedringhaus to the Mayor & City Council Members

“By a vote of 3 ayes and 2 nays, the P&Z Commission submits a negative recommendation to the requested rezoning of 5.9226 acres from “GC” General Commercial to “PCD” Planned Commercial Development according to the conditions in the draft ordinance.”

57. August 10, 2009 (Exhibit 54)

City Council Meeting Minutes regarding Delmar Gardens

Council Member Bryant stated that she asked Mark Perkins and Paul Langdon to review the City's files to find more history on the Delmar Gardens site and is trying to understand the historic perspective on this particular piece of property. Wanted to let everyone know that there was a public hearing in 1990 and apparently the transcript is missing and we are still looking for it. That is when the property was rezoned to GC. There is also supposed to be a deed restriction on the property that limits the use of the property to nursing home only.

Paul Langdon stated he had a conversation with John King today regarding the deed restriction and he was the attorney at the time and recalls the discussion but not following through. Mr. King's recollection was that at the time it was a degree of limitation that was more than necessary and so it was dropped as a requirement by the City. Mr. King has not contacted Delmar Gardens to see if their records show anything different.

Council Member Bryant stated letter after letter of the files that the City does have indicates the deed restrictions including the CUP.

Mayor Dielmann asked when was the nursing home was built because it could have been in the county at the time.

Council Member Bryant stated the property was rezoned and it went from residential to GC and a condition was placed upon the rezoning to only allow another nursing home.

Carl Lumley stated we could contact the title company to have it researched.

Mark Perkins stated the developer is to provide the title report for the property.

58. August 18, 2009 (Exhibit 55)

City of Creve Coeur Newsletter – August 2009

Announcement: Ward 3 Town Hall will be held at Creve Coeur City Hall and hosted by CPs David Kassander and Bob Haddenhorst on August 18, 2009.

The first half of the meeting addressed various Ward 3 neighborhood concerns recycling, road work, trash pick-up at the curb.

The remainder of the meeting discussion focused on the proposed re-zoning of Delmar Gardens. Mr. Haddenhorst recused himself from the discussion because of his existing business relationship with Delmar Gardens. Residents' comments focused on the issues related to the proposed Delmar Gardens rezoning to the entire city (especially traffic & congestion) as well as neighboring residential properties. Citizens asked specific questions about the deed restrictions and the intent of Delmar Gardens. Citizens were

told that the Council would have to look into the matter, and could not offer an opinion on the development until presented to the City Council at the Public Hearing.

59. August 24, 2009 (Exhibit 56)

Creve Coeur City Council Meeting Minutes

The Delmar Gardens Rezoning Request is discussed. Updates are provided from the August 10 meeting. "Council member Haddenhorst recused himself and removed himself from the dais."

Mark Perkins stated there were two items that came up at the last meeting regarding the deed restriction and the public hearing transcript. Staff has been contacting John King the attorney for Delmar Gardens to obtain a letter from the Title Company which he claims they have that indicating that there are no deed restrictions pertaining to future zoning or land use restrictions relating to the 1990 City Conditional Use Permit and Ordinance. Staff has been trying to obtain a copy of that and we will continue trying to get that.

Council Member Bryant asked is there any reason he wouldn't share that?

Mark Perkins stated no and as soon as staff receives it we will make it available.

Council Member Nealey asked if the attorney indicated if it was a letter from the Title Company from before or something that has been completed recently in response to our inquiries.

Paul Langdon stated they have indicated the search has been completed since the last rezoning and Conditional Use Permit but the exact date is unknown. Mr. King has indicated that there are no recorded restrictions or other limitations on the property.

Mark Perkins stated there was a public hearing held in 1990 when the City authorized a Conditional Use Permit for that property. Staff has not been able to locate that in our records.

Council Member Bryant stated she thought that was the Public Hearing where the rezoning was completed?

Paul Langdon stated there was a both a rezoning and Conditional Use Permit in 1990.

Council Member Bryant stated it was zoned residential, they wanted an expansion and the City came back and said they couldn't do an expansion without the rezoning. The rezoning was completed with this deed restriction provision and the deed restriction staff cannot locate and we also cannot locate the transcript of the public hearing where this was discussed.

Mark Perkins stated correct.

Council Member Bryant stated there are no records of it in the Council minutes because it was all done as a public hearing so it is circular.

Mark Perkins stated correct and none of the current staff were with the City in 1990.

Jim Martin resident of 12656 Villa Hills stated he spent a lot of hours in this City in charrettes. Back in the time when Delmar Gardens purchased Country Manor Nursing home there was a lot of controversy that went on. It was a lot worse than the CVS Parking lot problem. It was a tremendous issue and people were upset. There was negotiation that for whatever reason the property owner felt the property needed to be General Commercial and agreed that they would give a conditional use permit providing that it would continue as a nursing home. Just as the ordinance indicated that it will be a nursing home and continue to stay a nursing home. The fact that through a clerical error it didn't get posted to the title is the reason why CPS and some attorney carry E&O insurance because they made a mistake. That does not mean it did not happen. It just means they didn't get it recorded and it also does not mean that it is free and clear. If someone says that there no reason to believe that there is an impediment to this title they are mistaken. The impediment is Ordinance No 1383 passed in 1990. In those meetings all those years ago we discussed the zoning and it was out of all those meetings that Arlene Bartholomew came up with a great master plan of which we have this core business area here and not west of St. Monica. We discussed rings of influence and rings of business and rings of enterprise need to go out like and echo to the community and it emendated from here. That idea coupled with the fact that the Council passed the ordinance with the restriction needs to be very seriously considered. Those bargains that are struck among the citizens really ring hollow when the City says they don't count. It is really important that we do what we said we were going to do because general commercial isn't good enough anymore and we need it to be planned commercial development. And for Howard Oppenheimer to say that this isn't the case is bunk. There are plenty of two story buildings out on Mason Road and they are junk but tolerable. To take a deal that we struck over 19 years ago and try to undo it now is bad faith. We owe it to the citizens of the city to stick by the deals that were made otherwise that deal may have never been cut in the first place.

60. Sept 2, 2009 (Exhibits 57 A-B)

A) E-mail from Council Person Laura Bryant to Ann Fingerhood (Nottingham subdivision resident) regarding the Deed Restriction- Title search.

"Attached is a copy of the most recent title search. It appears -- but I have no way of verifying --that a deed restriction was not recorded as initially indicated."

B) Letter dated August 27, 2009 from U.S Title Guaranty Company to Curtis, Heinze, Garrett, and O'Keefe, Attn: Debbie Neumann, Re: 850 Country Manor Lane

"Please find enclosed your Letter Report and Invoice on the above described property."

The Letter Report dated August 11, 2009 is attached with Exhibit “A” Legal Description and an Invoice for \$175.00 (remittance copy + Due upon receipt).

61. Sept 8, 2009 (No Exhibit)

Neighborhood Meeting Held – Creve Coeur Concerned Citizens

During a concerned citizens meeting regarding Delmar Gardens proposed rezoning, David Kassander informs the group that the square footage for the proposal is incorrect. The developer submitted a proposal that included miscalculations that were missed during the Planning and Zoning review. Mr. Kassander found the calculation errors. The calculations misstated the % increase of permissible square footage for the PCD zoning vs. the General Commercial zoning.

62. Sept 10, 2009 (Exhibit 58)

Letter from Delmar Gardens Attorney John P. King to Mr. Paul Langdon, Director of Community Development for the City of Creve Coeur.

Request for continuation on Creve Coeur City Council Agenda from Sept 14, 2009 to Sept 29, 2009.

63. Sept 10, 2009 (No Exhibit)

Notification of Deferral

Creve Coeur residents are informed via the Creve Coeur City Website that Delmar Gardens has requested that the rezoning proposal scheduled for Sept 14th be deferred. Because the public hearing has already been announced, the hearing will be opened and immediately deferred.

64. Sept 14, 2009 (Exhibit 59)

Creve Coeur City Council Meeting Minutes

Creve Coeur residents attend the Public Hearing. The City Council opens the public hearing for the Delmar Gardens Proposal. Council Member Bob Haddenhorst recused himself from the discussion and left the dias due to a conflict of interest. Council Member Kistner stated the applicant has requested to have this hearing continued for their presentation until Tuesday, September 29, 2009.

Paul Kutz speaks to let the Council know that there are a number of residents from all wards across Creve Coeur that oppose this development. Paul asks the following questions:

- 1) We are told that the developer has been working this proposal for more than a year with our commercial counterparts. Since the city doesn't benefit from

developments such as this (revenue wise) and the residents don't want it, who in City government is encouraging this redevelopment? Paul asked the City Council members if anyone has had meetings with Delmar Gardens prior to the presentation. The mayor admits that he met with Delmar Gardens to discuss this redevelopment about a year ago (a specific date was not provided). More follow-up is required.

- 2) Paul Kutz asks if the deed restriction has been added to the Delmar Gardens title yet. The answer was "no".
 - a. Paul asked if the Council could ask for the deed restriction to be applied. John King, attorney for Delmar Gardens, was asked if Delmar Gardens would apply the deed restriction. John King said that he would advise his client not to comply with the request.
 - b. The public hearing was closed. Discussion will continue on Tuesday, September 29th.
 - c. Later in the City Council meeting, the city council voted to ask the City Attorney, Carl Lumley to send a correspondence to Delmar Gardens to ask that they apply the deed restriction.
- 3) The following individuals spoke in opposition to the application:
 - a. Vivian H. "Red" Guymon
 - b. Paul Kutz
 - c. Bob Fry
- 4) David Caldwell asked about access to documents.

Mr. Dickinson asked whether there would be a first reading tonight.
Attorney John King answered some questions directed to the applicant.
- 5) "Council Member Kistner moved, seconded by Council Member Nealey to continue the Public Hearing until Tuesday, September 29, 2009."

65. Sept 15, 2009 (Exhibit 60)

Letter from Carl Lumley, City Attorney City of Creve Coeur to John P. King, Legal Counsel for Delmar Gardens

"On behalf of the City, and at the direction of the City Council, I hereby request that Delmar Gardens present a proposed deed restriction to me as City Attorney for approval and subsequent recording in accordance with the requirements of the ordinance."

"If your client does not intend to satisfy this request, as you indicated might be the case during council meeting last night, then please provide written confirmation of that decision and a detailed explanation of the grounds for that decision, so that the City can evaluate your client's position. "

"As has been discussed at various meetings, there are other issues concerning Delmar Garden's compliance with the requirements of Ordinance 1384 and other city requirements, and the City reserves all rights to address those issues separately from the issue concerning the deed restriction. We request a response to this letter prior to the next council meeting, with is scheduled for September 29, 2009."

66. Sept 15, 2009 (Exhibit 61)

CreveCoeurVoter.com article titled “The Devil in PZD”

An editorial is published that outlines the creation of Planned Zoning District Ordinance in Creve Coeur and the potential impact to the City of Creve Coeur.

67. Sept 16, 2009 (Exhibit 62)

**E-mail from Laura Bryant (CP Ward 4) to Mark Perkins (City Administrator)
+ copies of 13 Delmar Gardens Proposal Drawings**

“Based on the attached, it appears that the Delmar Gardens proposal has not changed since February 2008. Is that a correct assessment?” Attached files contain plans of the proposed development.

Mark Perkins replied via phone to Laura Bryant saying that the plans have not changed.

68. Sept 17-18, 2009 (Exhibit 63)

Freedom of Information Request, Financial Disclosures for Creve Coeur City Councilman Robert Haddenhorst, Ward III for years 2006 – 2009.

Request seeks information to determine if or when Mr. Haddenhorst may have a conflict of interest with Delmar Gardens and City Business such as the Delmar Gardens Rezoning proposal.

Missouri Ethics Commission replies with copies of Mr. Haddenhorst’s Personal financial disclosure. The completed forms did not disclose information pertinent to his business relationship with Delmar Gardens.

69. Sept 23, 2009 (See Exhibit 64)

CreveCoeurVoter.com Editorial “Our Zoning Bill of Rights”

This article quotes the text from the **Zoning Ordinance of the City of Creve Coeur, Section 26-2 Purpose and Intent.**

The end quote from the article states that the zoning practices do not say anything about “... maximizing the profitability of commercial activities or bailing out private businesses. It does not mention increasing tax revenues. It does not subscribe to a goal of using property to its highest and best use, a phrase that often comes up. This is our Constitution and Bill of Rights with respect to zoning. It was established to mold commerce to the needs and best interests of the people, not the other way around.”

70. Sept 29, 2009 (Exhibit 65)

Reply from Legal Assistant Nancy Neske (for John P. King) to Carl Lumley, City Attorney for City of Creve Coeur

“Carl, I am in receipt of your letter requesting that my client, Delmar Gardens, file a Deed Restriction on the property located at 12152 Olive Boulevard and 850 Country Manor which is the subject of the petition for rezoning from GC Commercial to PDC Planned Development Commercial.”

“I also am aware that the City is seeking the additional information which was requested by several of the Councilman at the last Council meeting. I have not gathered all of this information as yet. Since the matter was going to be continued to a later date, I would have plenty of time to provide answers to all the questions. I promise that you and the City will have all of this information before our next scheduled hearing. Thank you, John.”

71. Sept 29, 2009 (Exhibit 66)

City Council Minutes from Tuesday, September 29, 2009

Questions from Creve Coeur residents about the missing deed restriction and enforcement of the Conditional Use Permit for the current Delmar Gardens Creve Coeur property.

Comments from a resident asking City Council Members to represent the interests of residents on the Delmar Gardens matter.

Council Defers the Delmar Gardens Proposal to November 9, 2009 and states that if Delmar Gardens is not ready to present, they need to start the process over by resubmitting to Planning and Zoning.

During the public hearing, discussion was held about the current Delmar Gardens proposal to rezone, the absence of a deed restriction (required by the City in 1990), and enforceability of the 1990 conditional use permit.

“Mr. Lumley stated the other complexity to this is that the Conditional Use Permit for the expansion was never exercised and after one year it lapsed and became invalid. Any requirements in there aren’t really enforceable. On the other hand the rezoning has the deed restriction and can’t recall if there is berming in that ordinance or not. That document is in place unless it is revoked. The City is not in a position to enforce the Conditional Use Permit because Delmar Gardens did not exercise it.”

“Mr. Fry stated he heard it two different ways and asked for clarification. If Delmar Gardens moves forward and they build part A, the northing building, that doesn’t belong there, if the existing nursing home stays until such a point they wish to relocate it then the City would force them to build the berms and do what they should have in 2989/1990 by the agreement?”

Carl Lumley stated if they are enforceable requirements but if they are only in the Conditional Use Permit ordinance they have lapsed because Delmar Gardens did not build the addition. Mr. Lumley stated the citizens could reasonably expect the City to require compliance with that site if it is going to stay as is for an extended period of time.

Mr. Fry asked that should be written into any agreement that is written moving forward from this?

Carl Lumley stated yes, that is a legitimate point.

Mr. Fry asked if the nursing home stays as it is then your direction to the City would be to enforce the term which was required before as screening.

Council member Bryant stated the direction would come from the Council.”

“John Winter resident of 12205 Blackheath stated many of the citizens in this room have worked for and put many hours in helping some of the Council Members and Mayor get elected. Citizens not want your help in defeating this rezoning. Please listen to the citizens as we do not want the rezoning for the many reasons that have been expressed and it is now time for the elected officials to help the residents.”

The City Council moved to defer the Public Hearing for Delmar Gardens until the November 9, 2009 City Council meeting.

72. Sept 30, 2009 (Exhibit 67)

Response from City Clerk Deborah Ryan to Christy McCollom regarding records requested for Council Person Bob Haddenhorst need for recusal.

The City of Creve Coeur does not have that information.

73. October 9, 2009 (Exhibit 68)

Email from Laura Bryant, original e-mail from Mark Perkins, City of Creve Coeur Administrator, dated 10/9/2009

“Belle Maison Property Ownership—A representative from First Bank has informed city staff that Delmar Gardens is now the owner of the property.”

74. October 10, 2009 (Exhibit 69)

Creve Coeur Council Defers Delmar Gardens Rezoning Request and Continues Public Hearing (Press Release)

Ward 3 Residents Create Non-Partisan Grassroots Organization,
Hire Land-Use Attorney and Develop Timeline to Answer Questions

Contact Information: Jeanne Rhoades, Ward 4 Creve Coeur City Council Member

75. October 29, 2009 (Exhibits 70 A - B)

**Original Delmar Gardens Rezoning file is found by Creve Coeur City Officials
Documents provided by Deborah Ryan, Creve Coeur City Clerk**

A) Conditional Use Permit & Change in Zoning Applications dated November 2, 1989 submitted by Delmar Gardens Enterprises

Note: Read details within the exhibit to understand the points addressed in the request. Note that this document was drafted by Delmar Gardens and one item of note **does not match** the language contained in the Planning and Zoning Meeting minutes dated 12/14/1989 regarding this request. Specifically, the P&Z minutes state that “the applicant has agreed to place a deed restriction on the property which states that ***should the facility ever cease to be operated as a nursing home that the zoning would revert to detached single family zoning.***” The CUP dated November 2, 1989 (Section IV Rationale, paragraph 1) written and submitted by Delmar Gardens Enterprises states that “Since the proposed use is solely for nursing home purposes, applicant is willing to impose a deed restriction on the property which would limit its usage to nursing home purposes, with a provision ***that the restriction may only be removed with the consent of the City of Creve Coeur.***” The CUP language (at this time) does not match the direction given by the P&Z commission in December 1989 that was referenced in P&Z’s approval recommendation to the Mayor and City Council on January 3, 1990.

**B) City of Creve Coeur Public Hearing Minutes, February 12, 1990
Re: Request by Delmar Gardens of Creve Coeur, 850 Country Manor Lane, to rezone property from “C” Single Family Residential to “GC” General Commercial, amendment of a conditional use permit and approval of preliminary site development plan for Delmar Gardens Nursing Home.**

76. November 1, 2009 (Exhibits 71 A-C)

City of Creve Coeur November Newsletter – 3 articles (noted below)

A) Cover Page Article: Understanding the Delmar Gardens Office Complex Proposal

The city of Creve Coeur details the specifics of the Delmar Gardens Proposal and citizen’s concerns with the proposed development, including traffic on Olive, cut-through traffic in adjacent neighborhoods. The article summarizes the P&Z review dates and the commission vote of a negative recommendation.

“The City Council opened the public hearing on September 14, but the hearing has been deferred until November 9, while Delmar Gardens evaluates resident concerns and possible ways to address them.” All residents are encouraged to contact the Planning Division for updates to the City Council agenda and status of the project.”

B) Planning Update: Delmar Gardens Office Proposal & Adult-Oriented Business Regulations Under Review

The following items are currently under review by the Department of Planning, the Planning & Zoning Commission (P&Z) and the City Council:

Delmar Gardens proposal and review history is summarized in this article.

C) Ward IV Council Corner (Laura Bryant and Jeanne Rhoades)

Council Members speak to how they are trying to understand the Delmar Gardens Proposal including the missing deed restriction, the increase in floor area ratio (FAR) and Delmar Gardens being the first to apply using that factor, and the historical timeline of questions and confusion. Concluding remarks : “Ultimately, our hope is that a reasonable compromise will be reached so that all parties feel the process was transparent and fair – and that the Mayor and City Council all keep an open mind while protecting the public trust.”

“After all, elected officials are the ones – the only ones – who take an oath of office and we are the ones who owe the citizens and businesses in Creve Coeur a straight answer.”

77. November 5, 2009 (Exhibits 72 A-B)

A) City Council Working Session for Monday, November 5th is published. The agenda shows that the meeting is closed to the public.

B) City Council Agenda for November 9th, 2009 is published. Delmar Gardens is not scheduled to present or withdraw. Resolution No. 890 is placed on the agenda.

“Resolution No. 890 – A Resolution of the City Council of the City of Creve Coeur, Missouri authorizing the Mayor to Execute An Agreement With Delmar Gardens Regarding Suspension Of Disputes Over the Rezoning Of Property Located At 12152 Olive Boulevard and 850 Country Manor Lane.”

“Summary: Delmar Gardens Enterprises, Inc. and related entities have proposed an agreement in connection with their contemplated withdrawal of the application for rezoning, which would result in a suspension of any efforts by them or the City to rezone the property for a period of one year.”

From: Laura Bryant <laura.bryant@yahoo.com>
Subject: [mayor-council] Follow-up: Delmar Gardens {01}
To: jpkking@lathropgage.com
Cc: "Carl Lumley" <clumley@lawfirmemail.com>, "Creve Coeur Mayor-Council" <mayor-council@ci.creve-coeur.mo.us>, "Ann Fingerhood" <afingerhood@charter.net>, "Christy McCollom" <christymccollom@hotmail.com>, "Patty Taylor-Phillips" <ptaylorphillips@earthlink.net>, "Kutz on Country Manor" <jpkutz@sbcglobal.net>, "D Bomkamp" <dbomkamp@sbcglobal.net>, "Planning & Zoning Commission" <planningandzoning@ci.creve-coeur.mo.us>, "David Caldwell" <davidc@granprixbowling.com>, "Deborah Ryan" <dryan@ci.creve-coeur.mo.us>, "Mark Perkins City Administrator" <mperkins@ci.creve-coeur.mo.us>, "Paul Langdon" <plangdon@ci.creve-coeur.mo.us>
Date: Thursday, November 5, 2009, 3:59 PM

Mr. John King:

As you know, I have always had great respect for you personally and professionally, as you have demonstrated over the years that you are a man of your word.

I also have been very adamant that Delmar Gardens, a well-known and trusted Creve Coeur institution, not be unfairly criticized for merely fulfilling its fiduciary responsibilities and attempting to maximize its financial investments. If there is any question about my position on this matter, please see attached press release (Oct. 10, 2009).

My concern -- every step of the way -- clearly has been with elected officials inserting themselves into the land-planning and development process prematurely and privately. If you are not clear about this, please see attached email to Mayor Dielmann (May 18, 2009) and our Ward 4 newsletter column (June 2009).

Not surprisingly, this very issue came up when the Delmar Gardens public hearing began a few months ago. The question is -- and remains -- whether any elected officials were meeting and discussing the proposed office complex with Delmar Gardens representatives before any official plans were submitted to Paul Langdon in December 2008.

Mayor Dielmann, during the public hearing, clearly stated he had met with Delmar Gardens early on. Your follow-up email (Sept. 29, 2009) -- also attached -- indicated that Delmar Gardens understood what was being requested (which is why a six-week delay, while odd, didn't seem all that alarming).

In summary, it should be obvious that I -- advocating on behalf of Creve Coeur citizens -- have been asking about about any private, preliminary meetings or discussions Delmar Gardens has had with elected officials **PRIOR** to their Dec. 23, 2008, site plan submission and rezoning request.

Although you promised all of the requested information, your attached letter (Nov. 3, 2009) is at best, disappointing, and at worst, a misguided attempt to obfuscate the facts. For example, to include any meetings after Dec. 23, 2008, is pointless since the drawings were by then a matter of public record.

So why list a Sept. 4, 2009, meeting with David Kassander, Steve Kling, Mark Perkins, Paul Langdon and me in the cover letter? Not only is this misleading and confusing, but the list of attendees is wrong -- there were no Delmar Gardens representatives present except for yourself. Or have I misread your letter in some way?

Furthermore, I find it extremely odd that the Mayor himself indicated during the public hearing that he attended at least one such meeting -- and yet your so-called timeline doesn't include him at all. How can that be possible?

What the citizens of Creve Coeur -- and the Nottingham residents in particular -- want to know is simple. Were any Delmar Gardens officials having discussions, at meetings or in private or on the phone, with any elected officials -- up to and including our Mayor -- in advance of the Dec. 23, 2008, rezoning request?

This question has everything to do with the public trust and how our municipal government works at its most basic level. And the question has become even more pertinent since Delmar Gardens is now proposing yet another project along Ladue Road. Have these plans, as rumored, likewise been discussed privately and on a preliminary basis with elected officials such as the Mayor?

I continue to fight for accuracy, fairness and transparency in our City. But it is very difficult to do so when the facts are not presented in a clear and understandable way.

I am hoping that you and your client, Delmar Gardens, will quickly answer these outstanding questions in a more comprehensive manner and help restore greater confidence in our City's review process.

Sincerely,

Laura Bryant
Ward 4/Creve Coeur City Council

--- On **Thu, 11/5/09, Ryan, Deborah** <dryan@ci.creve-coeur.mo.us> wrote:

From: Ryan, Deborah <dryan@ci.creve-coeur.mo.us>

Subject: Delmar Gardens

To: "aj wang" <ajwang@ci.creve-coeur.mo.us>, "beth kistner" <bkistner@ci.creve-coeur.mo.us>, "bob haddenhorst" <rhaddenhorst@ci.creve-coeur.mo.us>, "david kassander" <dkassander@ci.creve-coeur.mo.us>, "david kreuter" <dkreuter@ci.creve-coeur.mo.us>, "jeanne rhoades" <jrhoades@ci.creve-coeur.mo.us>, "laura bryant" <lbryant@ci.creve-coeur.mo.us>, "Mayor" <Mayor@ci.creve-coeur.mo.us>, "tara nealey" <tnealey@ci.creve-coeur.mo.us>

Cc: "Perkins, Mark C." <MPerkins@ci.creve-coeur.mo.us>, "Langdon, Paul" <plangdon@ci.creve-coeur.mo.us>, clumley@lawfirmemail.com

Date: Thursday, November 5, 2009, 9:25 AM

Attached are the following documents for Delmar Gardens:

- Deferral letter from Mr. King
- Final version of the proposed standstill agreement
- Mr. King's responses to the questions of Council Member Bryant and residents

This information will be included in your packet. I have had a records request and wanted to get the information out to the residents that keep calling to see if there was a deferral or withdrawal from Delmar Gardens. So the attached information has been released to the public this morning.

Please contact should you have any questions. Thank you.

Deborah Ryan
City Clerk
City of Creve Coeur
300 N. New Ballas Road
Creve Coeur MO 63141
314 872 2517 (direct)
314 872 2539 (fax)



city
of

CREVE COEUR

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FOR IMMEDIATE RELEASE

Contact Information:

Jeanne Rhoades, Ward 4 Creve Coeur City Council Member

jrhoades@ci.creve-coeur.mo.us

Creve Coeur Council Defers Delmar Gardens Rezoning Request and Continues Public Hearing

Ward 3 Residents Create Non-Partisan Grassroots Organization, Hire Land-Use Attorney and Develop Timeline to Answer Questions

Saturday, Oct. 10, 2009 (CREVE COEUR, MO) – The Creve Coeur City Council unanimously voted on Sept. 29 to defer the Delmar Gardens rezoning request – and continue the public hearing – to provide the applicant additional time to respond to Council members' questions and community feedback. The Delmar Gardens public hearing and proposed office complex project will be back on the City Council's Nov. 9 agenda.

"The deferral was requested by Delmar Gardens, and the Council typically accommodates requests like these," said Laura Bryant, Ward 4 Council Member. "In addition, Delmar Gardens representatives have been very forthright and responsive to our questions. Just as importantly, Delmar Gardens is a well-respected corporate citizen and a longtime member of our Creve Coeur community, so I believe we all want to be as reasonable as possible."

Rezoning

Twenty years ago, the City likewise conducted a public hearing to consider a Delmar Gardens request to expand the facility and rezone the Ward 3 property from Residential to General Commercial. The General Commercial rezoning was granted in 1990 via City Ordinance 1384. However, that ordinance also included a specific condition to "*limit the usage of the property solely for nursing home purposes and related activities ...and provides that such usage shall not be changed without the prior written approval of the City of Creve Coeur, and further providing that such restriction shall not be modified, amended or terminated without the prior written consent of the City of Creve Coeur.*"

Although subsequent correspondence in 1994 and 1995 referred to a Delmar Gardens deed restriction, it was recently discovered that the deed restriction was never properly recorded with St. Louis County.

"There does not seem to be any documentation or rationale to explain the missing deed restriction," explained Jeanne Rhoades, Ward 4 Council Member. "Even more confusing is that the City's public hearing transcript apparently also has been missing for many years. On top of this, additional rumors are circulating about Delmar Gardens' intent to relocate its existing nursing home operation to residentially zoned property on Ladue Road – also in Ward 3 – if this rezoning request and office complex are approved. We both agree that there is simply no good reason to rush through any land-use decision that has such long-term ramifications, particularly one as complicated as this one appears to be."

Delmar Gardens officials are currently requesting that the property be rezoned again, this time from General Commercial to a new district called Planned Commercial Development. The Delmar Gardens project marks the first time any Creve Coeur property owner has requested the Planned Commercial Development zoning designation, which has added to the controversy in Ward 3. In the meantime, the Creve Coeur Council has unanimously requested that Delmar Gardens record a deed restriction in accordance with the requirements of Ordinance 1384. (**See attachment #1**)

Floor Area Ratio

The Creve Coeur City Council approved two new zoning districts – Planned Commercial Development (PCD) and Planned Residential Development (PRD) – four months before Delmar Gardens officially submitted a request to rezone to PCD.

The impetus for creating these new zoning categories was part of an overall effort by the City to address concerns of Ward 2 Coeur de Royale condominium residents, who had been publicly expressing fears about eminent domain and commercial redevelopment. However, Bryant observed at the Aug. 25, 2008, City Council meeting that: “...*We have gone so far beyond what the original focus was.*”

At the next City Council meeting on Sept. 4, 2008, Ward 1 Council Members David Kreuter and Beth Kistner made a motion to increase the suggested maximum PCD Floor Area Ratio (FAR) from 0.4 to 0.6 – despite strong, on-the-record objections from Bryant and Ward 3 Council Member David Kassander.

By comparison, the maximum FAR for the existing General Commercial district as well as the new Planned Residential Development district is 0.4. (**NOTE:** The City of Creve Coeur defines Floor Area Ratio as the “*sum of the floor area of all buildings on any lot divided by the land area of such lot.*” The term “Floor Area” – also known as “gross leasable floor area” – is the “*total interior floor area of a building or structure measured at the inside face of the exterior walls but excluding stairwells, lobbies, common corridors and other non-leasable circulation area, elevator shafts, parking structures and space occupied by mechanical equipment or space related to the operation and maintenance of the building as well as that floor surface covered by walls or partitions enclosing these common areas or elements of a building.*”)

According to the Sept. 4, 2008, minutes, Kassander stated: “*The random application of FAR, without understanding the full impact, is not a good way to legislate.*”

Nonetheless, five Council Members supported the maximum 0.6 FAR for the Planned Commercial Development district, which represented a 50 percent increase over the maximum 0.4 FAR currently allowed in the General Commercial zoning district. The amendment passed 5-2. (Ward 1 Members Kreuter and Kistner; Ward 2 Members Schupp and Wang, and Ward 3 Member Haddenhorst all voted in the affirmative. Kassander and Bryant voted no, and Rhoades was absent.)

As discussion proceeded on the final vote for the Planned Commercial Development and the Planned Residential Development zoning districts, Kassander and Bryant both acknowledged the new districts as the best foreseeable means to resolve Ward 2 residents’ immediate concerns. However, the meeting minutes also captured their significant reservations about creating a Pandora’s Box.

According to the minutes, Bryant stated, “*Under normal circumstances, I would vote against this because I believe that the City has gotten itself into a situation which started off with great intentions and this has morphed into something that it is not intended to be. Down the road, people are going to look back and ask how could the Council let something like this happen? I will be voting yes for the final approval with tremendous reservations, and predict that the Council will be back changing this after a few projects get through that are undesirable.*”

Today, Bryant expresses regret about her vote. “It was clearly a serious mistake,” Bryant stated. “I take full responsibility for my part and for the eventual ramifications in Ward 3, which have become apparent all too soon.”

Timelines and Due Diligence

The Delmar Gardens office project has motivated some nearby residents to create a neighborhood network, organized by subdivision trustees and grassroots leaders including Pattye Taylor-Phillips and Christy McCollom. In addition, the subdivision has created a Web site (www.stopdelmargardensrezoning.com), posted large yard signs and hired a land-use attorney.

"It's unfortunate that yet another group of Creve Coeur citizens feels they have to hire an attorney, at their own personal expense, to protect their property values and interests," Rhoades stated. "But who can blame them, given all of the confusion?"

In the meantime, Rhoades, Kassander and Bryant are encouraging Ward 3 residents to compile, organize and document a comprehensive timeline. "Well-documented timelines can be incredibly useful because they help everyone stay focused on the facts and keep emotions in check," Bryant said. "Timelines help residents, elected officials and the media discern the difference between garden-variety 'NIMBY' battles and legitimate, non-partisan public policy issues that deserve closer scrutiny and public accountability."

Kassander also has carefully reviewed the Delmar Gardens FAR calculations. To ensure clarity and prevent unintended consequences, he requested a chart documenting the differences between the current General Commercial zoning district and the proposed Planned Commercial Development rezoning on the property. Delmar Gardens responded with a detailed chart Sept. 21. (**See attachment #2**)

Another Creve Coeur citizen who supports due diligence is David Caldwell, a Ward 1 resident and business owner who sponsors and edits a local, independent blog, www.CreveCoeurVoter.com. He consistently attends Planning & Zoning and City Council meetings to keep track of local government matters and to hold Creve Coeur officials more accountable. For example, after the April 2009 Creve Coeur Mayoral and City Council elections, Caldwell posted an editorial, "*The 270 Divide*," noting: "*Ward 3 and 4 voters are more in tune with current issues and have faced some controversial development proposals over the last few years.*"

Caldwell has been closely following the Delmar Gardens project in Ward 3 with online notes, plus two editorials on this topic alone ("*If a Tree Falls*" and "*The Devil in PZD*"). Caldwell emphasized that "*the devil is in the details...we have to dig down into the legislative timeline to understand the situation...*"

He concluded that, "...*Considering the nature of Wards 3 and 4, any CP [Council Person] voting in favor of higher density would not be effectively representing their constituents. And Ward 1 and 2 CPs were not thinking about residents, they were thinking about developers....The Delmar Gardens project may be the tip of the iceberg.*"

Private Meetings?

Ward 3 resident Paul Kutz has expressed similar concerns about Creve Coeur elected officials' relationships with developers. After being sworn in at the City Council's Sept. 14 public hearing, Kutz asked the Council several questions, including whether any elected officials had met privately with developers or property owners to discuss the Delmar Gardens project.

The Delmar Gardens representative, attorney John King, was then asked to provide a list of all such meetings held prior to Dec. 23, 2008 – the day Delmar Gardens formally submitted its site plan. King recently sent an email to the Creve Coeur City Attorney stating: "*I promise that you and the City will have all of this information before our next scheduled meeting [on Nov. 9].*" (**See attachment #3**)

Coincidentally, the issue of elected officials participating in preliminary, private meetings with developers was raised earlier this year at the May 11 Creve Coeur City Council meeting. Bryant followed up with an email to the Mayor, forwarding some documents from the City of Wildwood covering the same issue. She wrote to the Mayor: "*I am sharing these with you to underscore the importance of transparency and accountability – and how even benign, yet private, meetings with developers can create conflict in any city.*" (**See attachment #4**)

Rhoades and Bryant, in turn, re-emphasized their concerns in the Ward 4 "Council Corner" column in the City's June newsletter. They wrote: "...*we have asked our Mayor to include our City Administrator in all initial discussions with developers. This is consistent with the City of Wildwood's new policy of discouraging elected*

officials from scheduling private meetings or discussions with developers – which, in turn, minimizes miscommunications and potential behind-the-scenes politics.” **(See attachment #5)**

“Informal” Vetting Process

However, the Mayor, sticking close to his 2009 “Continue the Vision” campaign promise, explained in the July City newsletter that he is “*constantly seeking new businesses*” and that most projects “*simply don’t survive the informal and formal vetting process*” at the City.

Rhoades and Bryant believe that Kutz and other Ward 3 residents are asking about just that – whether there has been a so-called “informal” aspect to the Delmar Gardens proposal, and if so, exactly whose “vision” is being promoted. “Were other elected officials included? Were any city staff members included to provide professional, non-political guidance?” Bryant asked. “And what kind of feedback did elected officials provide to the Delmar Gardens’ representatives prior to their site plan submission, in that they decided to proceed with such a major rezoning request?”

Rhoades stresses that having the City Administrator, City Planner or some other designated city employee in attendance is critical at all such meetings, formal or informal. “Our professional full-time planning staff – who reports directly to the City Administrator – works very hard to keep the review process comprehensive and free of political influence,” said Rhoades. “That is why part-time elected officials need to be extremely careful about inserting themselves into the process prematurely.”

Protecting the Public Trust

Rhoades continued: “Too many times the Council vote is split in the same 5-3 pattern whenever developers seek approval for proposals that significantly infringe upon other established residences or businesses – ranging from eminent domain threats to disregarding standard buffer requirements when commercial and residential properties interface.”

It is well documented that the massively over-budget, behind-schedule Olive Blvd. Transportation Development District (TDD) in Ward 2 not only issued multiple eminent domain threats for the purpose of economic development, but also requested blighting and a tax abatement that would have directly affected the Parkway School District, the Creve Coeur Fire Protection District and other taxing entities. The seven-member Olive Blvd. TDD Board includes four City officials – Ward 1 Council Members Kistner and Kreuter, Ward 3 Council Member Haddenhorst, plus Mayor Harold Dielmann (who serves as Chair of the TDD).

“One former corporate Olive Blvd. TDD Board Member even went so far as to establish a Political Action Committee – ironically named ‘Vision Creve Coeur’ – in support of a pro-eminent domain City Council candidate,” she stated. “Worse yet, those of us who question such strategies too often have been subjected to underhanded political attacks, such as SLAPP suits, bogus ethics complaints and anonymous mailers.”

With this in mind, Rhoades and Bryant supported Kassander in the April 2009 Creve Coeur mayoral campaign. At the time, they wrote an endorsement letter: “*We believe in working together to protect the public good, and standing up to those who promote their own personal and political agendas at the expense of others....David, like us, believes in the ‘Golden Rule’ – he does not play favorites with special interests or turn a blind eye toward potential problems.*”

Six months later, Rhoades and Bryant remain concerned about double-standards and behind-the-scenes politics – and they want to make sure Delmar Gardens and the nearby residents are treated fairly and consistently.

Bryant stated, “In our opinion, there is still a lot of information to sort through. However, our hope is that a reasonable compromise eventually will be reached so that all parties feel the process was transparent and fair and that the Mayor and Council did a good job of protecting the public trust. After all, Creve Coeur elected officials are the ones – the only ones – who take an oath of office, and we are the ones who owe the citizens and businesses in our community a straight answer.”

#

From: laura.bryant@yahoo.com <laura.bryant@yahoo.com>
Subject: meetings with developers
To: "Harold Dielmann Creve Coeur Mayor" <hdielmann@ci.creve-coeur.mo.us>
Cc: "Deborah Ryan" <dryan@ci.creve-coeur.mo.us>, "Mark Perkins City Administrator" <mperkins@ci.creve-coeur.mo.us>, "Carl Lumley" <clumley@lawfirmemail.com>
Date: Monday, May 18, 2009, 4:27 PM

Mayor Dielmann:

As you know, at our last Council meeting, I inquired about the public statement in the Creve Coeur newsletter that "the city" was in negotiations with a hardware store. I was confused until Mark explained that neither he nor his staff were in any such negotiations -- and in fact, you then clarified your lead role for the public record.

As a result, I asked if you would please include Mark, as our city administrator -- or any staff member he designates -- in future meetings with developers. You graciously agreed to do so.

Meanwhile, I have obtained some documentation from the City of Wildwood concerning their Council's discussion of a similar issue late last year.

Attached are three highlighted items (PDF format):

- 1) Wildwood Council work session minutes dated Nov. 24;
- 2) Regular Wildwood Council minutes dated Nov. 24; and
- 3) the decision by Wildwood Council's Planning Committee (on Dec.16) to not pass a formal ordinance or resolution, but to proceed instead with their unwritten policy.

I am sharing these with you to underscore the importance of transparency and accountability -- and how even benign, yet private, meetings with developers can create conflict in any city. Miscommunications and perceived behind-the-scenes politics can upset what otherwise might be a perfectly ideal proposal.

I appreciate your commitment to our City -- as well as your willingness to include Mark Perkins (or Paul Langdon, or someone else designated by Mark) in any upcoming meetings with developers.

Thank you so much,

Laura Bryant
Ward 4/Creve Coeur City Council



Ward IV Council Corner

JEANNE RHOADES & LAURA BRYANT



Congratulations to Ward 4 for leading the way during the 2009 elections. Almost 20 percent more voters in Ward 4 cast ballots than in any of the other Creve Coeur wards. We are proud of Ward 4's level of engagement and sense of independence – we have all made a difference since our 1995 annexation.

We'd also like to applaud all three mayoral candidates – as well as the sole City Council challenger – who had the courage to put their names and reputations on the line. Running for office, even at the municipal level, can be daunting, especially when personal attacks and exaggerations confuse citizens about the public record. As a result, we'd like to highlight a few important truths about your Creve Coeur government.

When Creve Coeur citizens organized a charter commission more than 30 years ago, they ushered in a new era. As a charter city, Creve Coeur not only became more independent and empowered, but it also implemented a city-administrator form of government.

This decision placed a professional, non-political and full-time city administrator at the helm, with responsibility for submitting annual budgets, overseeing municipal services and managing all employees, including our outstanding police force. (In fact, our charter prohibits all part-time elected officials, which includes the mayor and council, from giving directions to employees. This important principle was incorporated into our charter to protect honest employees from manipulative or abusive politicians – and if it is violated, an elected member may be removed from office.)

Our current city administrator, Mark Perkins, has been with us since 1999. Mark's leadership, integrity and work ethic make him highly effective, and he is well-known among his peers throughout St. Louis County

as well the state of Missouri. However, too many Creve Coeur residents are unaware of his local role. So, through this column, we would like to publicly thank and recognize Mark – and his terrific staff – for their collective efforts and many contributions.

“Talkin’ trash” normally stops when the elections are over, but it's time to take another hard look at how much our community spends on trash service. Despite recent campaign rhetoric (one mayoral candidate spent months bragging about a short-term surplus of \$1.5 million), we are faced with some very serious decisions and choices in order to balance our budget in these tough economic times.

One high-priced item up for discussion – trash – hinges on whether individual households would be willing to pay a small fee each month to continue rear-yard pick-up. Our citizen surveys indicate only 50 percent of Creve Coeur homeowners benefit from this premium service – but they include a passionate, vocal group! We look forward to hearing all points of view in the coming months.

Land-use issues – from development projects to eminent domain to rezonings – often dominate municipal controversies, and Creve Coeur is no exception. **As a result, transparency and accountability are just as critical at the local level as they are at the state and federal levels. And that is precisely why we have asked our mayor to include our city administrator in all initial discussions with developers. This is consistent with the City of Wildwood's new policy of discouraging elected officials from scheduling private meetings or discussions with developers – which, in turn, minimizes miscommunications and potential behind-the-scenes politics.**

As always, we thank you for your support and interest.

Council Activity

City Council activity on April 13 and 27 included the following:

- Approved Resolution No. 851 to purchase a leaf vacuum.
- Approved Resolution No. 852 to purchase mulch.
- Approved Ordinance No. 5081 amending the maximum structure height requirements in the “RO” Research Office Park Zoning District.
- Approved Ordinance No. 5082 revising the deadlines imposed by Ordinance Nos. 5051, 5052, 5053, 5062 and 5071 revising the deadlines set for Graeser TDD formation.
- Held a public hearing to consider a conditional use permit for expansion of an existing Subway Restaurant at 11272 Olive Boulevard.
- Approved Resolution No. 853 adopting the Capital Improvement Program for FY 2010 - FY 2014.
- Completed the first reading of Bill No. 5188 amending Section 2-168 of the City Code of Ordinances.
- Completed the first reading of Bill No. 5190 amending Ordinance No. 905 to change the street name Conway Gardens Court to Conway Gardens Lane.

From: Neske, Nancy J. [mailto:NNeske@LathropGage.com]
Sent: Tuesday, September 29, 2009 12:05 PM
To: Carl Lumley
Subject: RE: E-mail from John King

Carl, I am in receipt of your letter requesting that my client, Delmar Gardens, file a Deed Restriction on the property located at 12152 Olive Boulevard and 850 Country Manor which is the subject of the petition for rezoning from GC Commercial to PDC Planned Development Commercial.

I also am aware that the City is seeking the additional information which was requested by several of the Councilman at the last Council meeting. I have not gathered all of this information as yet. Since the matter was going to be continued to a later date, I would have plenty of time to provide answers to all the questions. I promise that you and the City will have all of this information before our next scheduled hearing. Thank you, John.

Nancy Neske

Legal Administrative Assistant to John King,
Senator Eric Schmitt and Jeff Wagener
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CARL J. LUMLEY
PRINCIPAL

CLUMLEY@LAWFIRMEMAIL.COM

September 15, 2009

John P. King
Lathrop & Gage, LC
7701 Forsyth Blvd, Suite 400
St. Louis, Missouri 63105

Via fax 613-2801

Re: Delmar Gardens/Creve Coeur

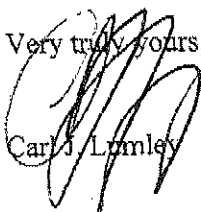
Dear John:

As you are aware from discussions at recent Creve Coeur City Council meetings, the City only recently learned that the deed restriction required pursuant to Ordinance 1384 (authorizing a CUP for the Delmar Gardens nursing home on Country Manor Drive, adopted March 26, 1990) was apparently never recorded. On behalf of the City, and at the direction of the City Council, I hereby request that Delmar Gardens present a proposed deed restriction to me as City Attorney for approval and subsequent recording in accordance with the requirements of the ordinance.

If your client does not intend to satisfy this request, as you indicated might be the case during the council meeting last night, then please provide written confirmation of that decision and a detailed explanation of the grounds for that decision, so that the City can evaluate your client's position.

As has been discussed at various meetings, there are other issues concerning Delmar Garden's compliance with the requirements of Ordinance 1384 and other city requirements, and the City reserves all rights to address those issues separately from the issue concerning the deed restriction. We request a response to this letter prior to the next council meeting, which is scheduled for September 29, 2009.

Very truly yours,


Carl J. Lumley

cc: Mark Perkins, City Administrator

LATHROP & GAGE_{LLP}

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November 3, 2009

Honorable Harold L. Dielmann
Mayor City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, Missouri 63141

Re: Delmar Gardens Enterprises

Dear Mayor Dielmann:

At one of the prior City Council meetings of the City of Creve Coeur, I was asked to provide a summary of any meetings that anyone from Delmar Gardens had with any city official regarding the petition for zoning filed by Delmar Gardens. The following is a summary to the best of my recollection of the meetings which took place:

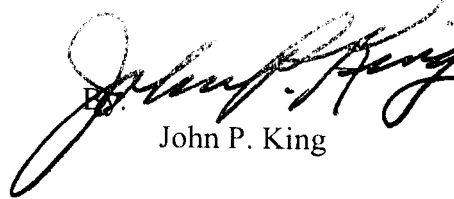
- 1) Gabe Grossberg, Howard Oppenheimer, Larry Milles and Ron Dierker had two meetings with the Mayor and Paul Langdon. The initial meeting was to show them a very preliminary plan and the second meeting was to present the final plan that we were filing with the Planning Commission to change the zoning of the site.
- 2) Several meetings were held with other members of the City Council. I, along with Shawn White of Crawford, Bunte & Brammeier, our traffic engineer, met with David Kassander and Robert Haddenhorst to explain the proposed Olive Street Road improvements. A second meeting was later held with Laura Bryant, David Kassander and Paul Langdon on the details of our proposed site plan and proposed road improvements. There were several Delmar Garden representatives in attendance including myself and Steve Kling but Howard Oppenheimer and Gabe Grossberg were not present at these meetings.
- 3) A meeting at Delmar Gardens with the neighbors prior to the first Planning Commission meeting.
- 4) A detailed timeline of the meetings with Paul Langdon and other city officials is attached hereto.

Honorable Harold L. Dielmann
November 3, 2009
Page 2

If you have any questions, please do not hesitate to contact me.

Sincerely,

LATHROP & GAGE LLP

A handwritten signature in black ink, appearing to read "John P. King", is written over the printed name. The signature is fluid and cursive, with a large initial "J" and "K".

John P. King

JPK:njn

DELMAR GARDENS – CREVE COEUR

Meeting with City officials timeline

04/14/08	w/ P. Langdon, Building Commissioner, Fire Marshall
05/12/08	received approval of Fire Marshall, Art Oesterich, for turning movements
10/14/08	w/ P. Langdon to discuss applications, variances, misc. calculations
11/25/08	w/ P. Langdon to discuss variances requested for plan. It was mentioned by P. Langdon at this meeting that the City had recently approved the Planned Zoning District. It was suggested that requesting a re-zoning to 'PCD' would avoid the need for the variances.
12/17/08	meeting at the facility to present project to neighbors. Councilperson Haddenhorst was present at this meeting
02/09/09	meeting with MoDOT to discuss traffic issues. This meeting was led by Shawn White of CBB
03/31/09	w/ P. Langdon to discuss traffic issues and results of meeting with MoDOT
04/20/09	Informational presentation to Planning Commission.
05/12/09	w/ P. Langdon to present revisions and additions to plan based on Planning Commission comments from P & Z meeting 04/20/09
06/01/09	Planning and Zoning meeting. Formal presentation of project and request re-zoning for property. Discussion was continued to next meeting.
07/20/09	w/ P. Langdon to discuss revisions, additions and omissions to plans and proposed Ordinance.
08/03/09	Planning and Zoning meeting. Additional presentation and discussion continued from 06/01/09 P & Z meeting
09/21/09	w/ P. Langdon to discuss various issues, including the requested zoning comparison chart.

Grossberg's growth plans include medical buildings

BY ANGELA MUELLER
amueler@bizjournals.com

Gabe Grossberg has more than \$100 million in projects on the drawing board at senior-living provider Delmar Gardens, but most of them are not senior-living facilities.

Grossberg currently is seeking rezoning approval for a 5-acre parcel on North Outer 40 Road in Chesterfield, just east of Delmar Gardens' corporate headquarters, where he plans to build a \$30 million medical office building. Delmar Gardens also is finalizing a master plan for what Grossberg calls a "dream project" — the development of an \$80 million, multi-use campus on 28 acres on Ladue Road in Creve Coeur.

"Development in the commercial real estate world, especially when it ties into specialty medical office development, is something we find to be very appealing and positive for the company," said Grossberg, Delmar Gardens president and chief executive. "We've had the good fortune to acquire some beautiful pieces of real estate that would work well for us, and we have found that to be a positive growth area for the Delmar Gardens family."

Delmar Gardens is one of the region's leading senior-living providers, with nearly \$261 million in revenue in 2010. The company owns and operates senior-living communities across five states.

Delmar Gardens acquired the 5 acres adjacent to its Chesterfield headquarters in 2009 from developer Lou Sachs for an undisclosed amount. The property currently is zoned for a 126,000-square-foot general office building, but Delmar Gardens is seeking to have the property



GABE GROSSBERG
Planning a \$30 million medical office building in Chesterfield

rezoned for medical office use as well.

"In light of how the Highway 40 corridor has evolved, we anticipate demand will be as much for medical office space as for general office space," Grossberg said. Delmar Gardens' headquarters complex at 14805 N. Outer 40 Road includes two 60,000-square-foot buildings, with Delmar Gardens occupying most of one building. The second building is exclusively medical offices, and overall occupancy for the two buildings is about 98 percent, Grossberg said.

Medical office vacancy throughout the St. Louis region peaked in the second quarter of 2009 at 16.2 percent but fell to 15.1 percent by the second half of 2010, according to a report from real

estate firm Marcus & Millichap. Nationally, vacancy in medical office space was around 12 percent in 2010, according to Marcus & Millichap. Grossberg said a timeline for the Chesterfield project has not yet been developed.

"It would be too speculative," Grossberg said. "We want to position ourselves properly as marketplace conditions continue to improve."

That isn't the only project Grossberg has waiting in the wings as he keeps an eye on the economy.

In 2009, Delmar Gardens spent \$6 million to acquire 28 acres along Ladue Road in Creve Coeur. The company "is now on target" to submit a zoning request to the city to develop a multi-use campus on the property that would include a "state-of-the-art" senior-living community and a luxury single-family home development, according to Grossberg.

The property, which is west of Interstate 270 on Ladue Road, was being developed as a high-end residential neighborhood by Levinson Homes but was foreclosed on in 2008. Delmar Gardens bought the property out of foreclosure from First Bank.

Now Grossberg wants to finish the home development that Levinson started. Delmar Gardens plans to partner with a local residential developer on the project. Grossberg said several builders already have contacted him to express interest in the project, but a partner has

not yet been selected. Delmar Gardens hopes to submit a master plan to the city of Creve Coeur for approval by late April.

Delmar Gardens holds one other piece of property where it would like to see a commercial development — about 5 acres adjacent to its Delmar Gardens of Creve Coeur facility. However, in late 2009, Delmar Gardens scrapped plans to build two four-story office buildings on that property after local residents voiced opposition to the project. The residents cited concerns about how the project would increase traffic and commercialize a residential neighborhood.

The property already is zoned for a three-story office building, a project Delmar Gardens might pursue again at some point in the future.

"We will revisit that at an appropriate time," Grossberg said. Delmar Gardens, which typically finances all construction costs internally, continues to scout the area for additional land acquisitions to add to its portfolio. Grossberg said, although it isn't currently working on any specific transactions.

"Right now there are so many things unfortunately hitting the market in a distressed mode," he said. "It does present a lot of potential opportunities in land acquisition. We're always looking down the road 10, 12, 15 years and trying to study things we would love to do."

CreveCoeur.Patch.com

CITY COUNCIL DISCUSSES DELMAR GARDENS REPORT

City leaders also greenlight plan to use metal detectors at council and P&Z meetings.

By Gregg Palermo
March 15, 2011

A welcome improvement or the revival of ongoing discussions about balancing development and traffic concerns in Creve Coeur?

Those were among the questions posed during Monday's city council meeting in light of a recent *St. Louis Business Journal* report that indicated [Delmar Gardens hoped to be ready in April to present a master plan to the city in April for an \\$80 million multi-use development project off Ladue Rd near Interstate 270.](#)

[Delmar Gardens'](#) President and Chief Executive Officer Gabe Grossberg told Creve Coeur Patch Monday afternoon he was unaware that council members were going to discuss the project Monday evening. Grossberg declined to comment extensively on the project, saying that plans were not yet finalized and would not likely be submitted until sometime in April. He did say the reported estimate of an \$80 million price tag on the "dream project" was accurate, and that the project would be done in "multiple phases."

Grossberg said there have been no discussions with any elected officials or staff from the city of Creve Coeur about the project and that the company is still talking with potential builders. Monday night, City Administrator Mark Perkins reiterated what he told Patch Friday, that there had not been discussions with the firm regarding the development.

Council members Monday asked Perkins to make contact with Delmar Gardens about the project, as not much more is known now than was known when the *St. Louis Business Journal* report, which indicated a desire to complete the former Levinson Homes Belle Maison residential development, came out last week.

Ward One Councilwoman Beth Kistner suggested that the project wasn't getting off to the best start in that city leaders appeared to be learning about it through the media, but also cautioned, "They (Delmar Gardens) can say they have detailed plans, it doesn't mean its remotely possible." Ward Three Councilman Bob Hoffman added, "We dont know what the \$80 million dream is."

Ward Four Councilwoman Laura Bryant, who requested Monday's discussion in the wake of news reports about the development and asked city staff to confirm that no informal vetting of the project had taken place, also cautioned the public to keep an open mind. "This could be a huge improvement," Bryant said.

In other developments:

- Council gave final approval to an [ordinance which will allow city Parks and Recreation officials to lower greens fees](#) at the [Creve Coeur Golf Course](#) as part of a new partnership with the website [golfnow.com](#) to attract more customers for off-peak tee times.
- Council members unanimously voted to start a three month trial period for using metal detectors at council meetings and Planning and Zoning Commission meetings.

CreveCoeur.Patch.com

ST. LOUIS BUSINESS JOURNAL: DELMAR GARDENS EYES PROPOSAL FOR CREVE COEUR PROJECT

Report says the company wants to submit a master plan for an \$80 million dollar project on 28 acres on Ladue Rd.

By Gregg Palermo
March 12, 2011

[Delmar Gardens'](#) President and CEO reportedly has his eyes on what [the St. Louis Business Journal](#) calls his company's "Dream Project", which if it comes to fruition could mean an \$80 million dollar multi-use campus located on 28 acres off Ladue Rd. The *St. Louis Business Journal* reported in March 2010 that the company purchased the property, west of Interstate 270, in foreclosure proceedings. Levinson Homes had sought to develop the Belle Maison Home subdivision in Creve Coeur before a bank fraud case sent Ed Levinson to prison, [according to the St. Louis Post-Dispatch](#).

Creve Coeur Patch contacted Delmar Gardens representatives Friday morning for comment and have not had a phone call returned. Late Friday afternoon, the company said any comment would have to come through Delmar President and CEO Gabe Grossberg, who would be out of the office until Monday. Creve Coeur City Administrator Mark Perkins told Patch Friday morning that he had not been in touch with a developer about the potential project.

According to the *St. Louis Business Journal* report, Delmar Gardens hopes to submit a master plan to the city before May and complete the Levinson residential project. [Creve Coeur](#) Community Development Director Paul Langdon told Patch Friday morning "they haven't spoken to me about finishing that master plan at all." Langdon said the Levinson project itself was already approved by the city but that the city would need to approve a re-filed subdivision improvement plan.

A variety of elected city leaders have all said answering the question of how this piece of property gets developed is a key for the community's future. Planning and Zoning Commission meeting minutes dating back to 2009 highlighted a high-profile debate in Creve Coeur over what should happen to another piece of property owned by Delmar Gardens, this one close to their existing Creve Coeur facility. A request to rezone that property was withdrawn.

Creve Coeur City Councilwoman Laura Bryant has requested discussion of the latest proposal as part of Monday night's council meeting.

HB 534 -- Distribution of St. Louis County Sales Tax

Sponsor: Leara

Currently, cities in St. Louis County are divided into two groups, Group A and Group B, for the purpose of distributing the county sales tax. Once a Group A city chooses to become part of Group B, it cannot revert back to Group A. A Group B city cannot choose to become a Group A city.

Beginning January 1, 2012, this bill changes the distribution of revenue from the St. Louis County sales tax to the municipalities and the county back to the way it was distributed prior to January 1, 1994; authorizes a Group B city to adopt an ordinance to become a Group A city; and authorizes a Group A or Group B city that has changed groups to transfer back to its original group.

St. Louis County Municipal League Legislative Update #9
Week Ending March 18, 2011
Changes in Red

Hearings on a wide variety of bills are now being conducted and many are now coming out of committee and being added to the perfection calendar for debate. Bills relating to the same subject are grouped together.

Sales Taxes

[SB 309](#) (Kehoe) – Would allow fire district in St. Louis County to levy sales taxes. Surprisingly, this bill has been filed by a newly elected senator from mid-Missouri, not by someone from St. Louis County. Local Government Committee (Oppose)

[SB 427](#) (Lamping) – Would repeal all state AND LOCAL use taxes. This would seemingly cost the state and cities that have enacted use taxes millions of dollars. Ways & Means Committee

[HB 52](#) (Ellinger) – Implements the streamlined sales and use tax agreement to allow collection of sales taxes on remote sales (catalog, internet, etc.) to help level the playing field for local merchants and recover lost taxes to political subdivisions. Heard in Tax Reform Committee 2/16 (Support)

[HB 55](#) (Sater) – Exempts over the counter drugs from state and local sales tax. Continues the erosion of the local sales tax base. (Oppose) Committee Substitute Passed Ways & Means Committee 2/10

[HB 116 & 316](#)(Flanigan) – Provides sales tax amnesty for businesses for state and local taxes. Could generate \$10-15 million for local governments across the state. Passed House. **Assigned to Senate Ways & Means Committee** (Support)

[HB 278](#) (McNeil) - Implements the streamlined sales and use tax agreement to allow collection of sales taxes on remote sales (catalog, internet, etc.) to help level the playing field for local merchants and recover lost taxes to political subdivisions. Similar to HB 52. Heard in Tax Reform Committee 2/16 (Support)

[HB 534](#) (Leara) – Beginning in 2012, the sharing of sales taxes from the “A” to the “B” cities would end. Depending on the interpretation it may also allow any current “B” city to become an “A” city. Passed House Local Government Committee 3/9. This is a very important bill for all municipalities as the “A” cities would not have to share sales tax revenue and the “B” cities and the County would lose the shared amount. The League Board discussed how services would be affected to the hundreds of thousands of residents who live in the pool area if the legislation passed. It was assumed there would be substantial turmoil in the County. This was similar to the position the Board took to oppose the elimination of the earnings tax in St. Louis because there is no plan to replace the lost revenue. For this reason, the Board voted to support the current sales tax distribution system unless a viable alternative can be developed that does not impact local revenues.

Replacing Income or Property Taxes with Sales Tax

A report from former Republican Budget Director James Moody indicates that the state sales tax rate would have to be over 10% to achieve revenue neutrality. Local taxes would be in addition to the state rate and would cause many shoppers to head to adjacent states for purchases, thereby reducing, instead of increasing revenue to the state. The link to Mr. Moody’s report is:

<http://www.jamesmoody.com/files/January%2024%20State%20Auditor%20submission.pdf>

To put pressure on the legislature to act on this issue, local resident Rex Sinquefeld has filed an initiative petition to place this issue before voters statewide in 2012. The gathering of signatures could begin in May.

[SJR 1](#) (Ridgeway) – “Fair Tax” would replace the state individual and corporate income tax, the corporate and bank franchise tax and state sales and use tax with a STATE tax on the sale, use or consumption or personal property or taxable services equal to five and eleven-one hundredths percent beginning January 1, 2013. The current general state rate is 4%. It is not clear if this would be revenue neutral. Local sales tax rates would have to be recalculated to be revenue neutral. Ways & Means Committee (Oppose)

[HB 152](#) (Kelly, 24) – Expands the sales tax base to cover services and lowers the income tax rates for individuals and businesses (Fair Tax, similar to SJR 1). Tax Reform Committee (Oppose)

[HB 335](#) (Burlison) – Would allow any political subdivision to enact a sales tax or property tax to replace the PERSONAL property as long as the new tax levy is revenue neutral. Heard in Tax Reform Committee 2/23

[HB 408](#) (Koenig) - Eliminates the corporate franchise tax, and adds a .4939% replacement state sales tax. Passed Ways & Means Committee 3/13

[HJR 8](#) (Koenig) – **Expands the sales tax base to cover services and phases out income tax rates through 2019 for individuals and businesses (similar to Fair Tax – SJR 1). Committee Substitute Passed Tax Reform Committee 2/23 (Oppose)** This bill may come up for debate when the legislature goes back into session the week of March 28. As the sales tax rate climbs to absorb the elimination of income taxes, more buyers may shop on-line or in Illinois, hurting Missouri businesses. Contact House members to let them know how detrimental this could be to state and local finances.

Assessment and Property Taxes

[SB 52](#) (Cunningham) - Requires county assessors to consider foreclosures, bank sales, and the average time homes remain on the market when establishing the value of parcels of real property for property tax purposes. Many of these are purchased cheaply in groups and therefore could lower the local property tax base if treated like normal sales. Passed Ways & Means Committee 3/17

[HB 60](#) (Nolte) - Limits the increase in assessed valuation of residential property to the percentage of increase in the federal Social Security benefits in the previous year for an individual who is 65 years of age or older or who is disabled, has a federal adjusted gross income of less than \$72,380, and owns and lives in his or her principal residence. Would reduce needed revenue to cities. Heard in Local Government Committee 2/9 (Oppose)

[HB 175](#) (McNeil) – Increases income limits for property tax circuit breaker. Helps older residents with property taxes without impacting local government revenues. (Support)

[HB 222](#) (Schneider) – Begins assessment of new construction in 4th year, rather than 2nd year following completion for unoccupied property. Passed Ways & Means Committee 3/3

[HB 380](#) (Zimmerman) – Allow seniors to defer property taxes and avoid tax increases. Political subdivisions would receive replacement revenue from the state. The state would recoup its payments when properties are sold.

[HB 490](#) (Diehl) – Would prohibit the use of certificates of value for the sale of property, thereby making assessments much more difficult. Passed General Laws Committee 3/7

[HB 744](#) (Brown, 85) – Would freeze assessments for six years and then reassess property in 2017. Heard in Ways & Means Committee 3/10

Municipal Personnel

[SB 179](#) (Brown) – Allows 4th class cities to enact an ordinance to appoint a marshal. Currently only the voters can change this to an elected position. Local Government Committee.

[SB 231](#) (Lager) – Prohibits political subdivisions from restricting firefighters from serving being a candidate for elective office, except their own fire district. Ironically, current law prohibits municipal employees in St. Louis County from serving on fire boards. Passed Local Government Committee 3/10. **On Perfection Calendar** (Oppose)

[SB 238](#) (Schmitt) – Infectious diseases contracted by firefighters shall be presumed to have occurred in the line of duty for calculation of death or disability benefits. Passed Judiciary Committee 3/9

[HB 51](#) (Taylor) - Authorizes a \$2 surcharge to be collected in all criminal cases involving a violation of state traffic laws, including infractions. The surcharge will be disbursed equally between the Peace Officer Standards and Training Commission (POST) Fund and the newly created Fire Safety Training Fund. Public Safety Committee.

[HB 157](#) (Faith) - No municipal employment contract shall exceed a two-year period, but such contract may be renewed so long as each renewal does not exceed two years. Heard in Local Government Committee 2/9.

[HB 162](#) (Fisher) – Expands workers’ compensation provisions to include occupational diseases. Passed House. Assigned to Senate Criminal Jurisprudence Committee

[HB 295](#) (Hinson) – Would categorize infectious diseases contracted by firefighters as job related for disability purposes. Heard in Public Safety Committee 2/23

[HB 309](#) (Black) – Establishes a \$7 court cost to fund police retirement program.

[HB 635](#) (Silvey) – Fire fighters as candidates for political office. Identical to SB 231. Public Safety Committee (Oppose)

[HB 672](#) (Dugger) – Appointment of 4th class city marshal. Identical to SB 179

[HB 703](#) (Colona) – Would allow police officers to join unions and to meet and confer with the city on salaries and other conditions of employment, similar to other employees. This implements a court decision on this topic from a few years ago.

Payday Loans

[SB 295](#) (Keaveny) - Payday loans under \$500 may not be renewed and the borrower has 90 days to repay. Commerce Committee (Support)

[HB 132](#) (Still) – Prohibits renewal of payday loans and limits interest rate to 36%. Heard in Financial Institutions Committee 3/9 (Support)

[HB 359](#) (Leara) – Limits payday loans to \$500 and sets interest rate at 18% or \$80, whichever is lower. Financial Institutions Committee (Support)

[HB 522](#) (Rizzo) – Payday loans under \$500 may not be renewed and limits interest rate to 15%. Financial Institutions Committee (Support)

[HB 656](#) (Brandom) – Limits payday loan renewals to 3 times, rather than the current 6 times, and limits interest rates to 60% rather than 75%. **Passed Financial Institutions Committee 3/16** (Support)

Billboards

[SB 120](#) (Stouffer) – Prohibits cities from adopting ordinances that: 1) totally ban billboards; 2) are not reasonable; 3) or do not allow for “customary industry usage.” This would remove local control over billboards, including large lighted billboards on commercial/industrial property. Moved to the Senate Informal Perfection Calendar and could be brought up for debate at any time. Contact Senators to allow continued local control over billboard, particularly in metropolitan areas where the citizens generally oppose these garish structures. (Oppose)

[HB 228](#) (Schoeller) - Prohibits cities from adopting ordinances that: 1) totally ban billboards; 2) are not reasonable; 3) or do not allow for “customary industry usage”. Identical to SB 120. Heard in Transportation Committee 2/22 (Oppose)

Economic Development and TIF

[SB 155](#) (Rupp) – Would require TIF proposals to be submitted to East-West Gateway, RCGA and the Regional Business Council for comment. A negative recommendation from the TIF commission would kill a proposal by eliminating current authority for the governing body to override the TIF commission with a supermajority. Since counties now control ½ of the seats on a TIF commission, the counties would effectively first have to agree to a TIF, then the city council. This would dramatically reduce renewal efforts. Heard in Ways & Means Committee 2/24 (Oppose)

[HB 447](#) (Funderburk) – Identical to SB 155. Would require TIF proposals to be submitted to East-West Gateway, RCGA and the Regional Business Council for comment. A negative recommendation from the TIF commission would kill a proposal by eliminating current authority for the governing body to override the TIF commission with a supermajority. **Heard in Local Government Committee 3/16** (Oppose)

Taxpayer Bill of Rights (TABOR) Limits State Spending

[SJR 8](#) (Kraus) - Would require refunds to taxpayers in any fiscal year that total state revenues increase over the preceding fiscal year's total state revenue by five percent or more. **Heard in Ways & Means Committee 3/17**

[SJR 20](#) (Lager) - Would limit state general revenue appropriations to the amount of appropriations made in the previous fiscal year increased by an inflationary growth factor. Excess funds would be used to reduce income taxes. Ways & Means Committee

[HJR 11](#) (Burlison) - prohibits appropriations in any fiscal year from exceeding the total state general revenue appropriations from the previous year by more than the appropriations growth limit, which is the annual rate of inflation and the annual percentage change in Missouri's population. Heard in Downsizing Government Committee 2/17

Traffic Cameras and Traffic Issues

[SB 11](#) (McKenna) – Bans texting by all drivers. Amended by Senator Lembke to require the timing of traffic-control signals to conform to regulations promulgated by the Department of Transportation and to establish minimal yellow light change interval times for traffic-control devices. Senate Calendar of Bills for 3rd Reading

[SB 16](#) (Lembke) - Prohibits political subdivisions from using red light cameras. A recent study from the Insurance Institute for Highway Safety says that red light cameras have prevented fatal accidents in large cities

that use them. See the report here: <http://www.iihs.org/news/rss/pr020111.html>. Heard in Local Government Committee 2/23. (Oppose)

[SB 73](#) (Kraus) - Requires any fine collected for a motor vehicle violation detected through the use of an automated traffic enforcement system to go to the local school district where the violation occurred. Heard in Local Government Committee 2/23 (Oppose)

[SB 277](#) (Lager) No municipality may pass an ordinance that denies the use of commercial motor vehicles on all streets within the municipality. General Laws Committee

[HB 53](#) (Meadows) - Prohibits the use of an automated speed cameras except in a school, construction, or work zone. Public Safety Committee (Oppose)

[HB 104](#) (Nance) - Requires 50% of the revenue generated from fines and court costs collected as a result of a red light traffic violation on a state highway to be distributed to MODOT. Heard in Transportation Funding Committee 2/10 (Oppose)

[HB 105](#) (Nance) – Requires all municipalities to report total annual revenue from fines and court costs for traffic violations to the state department of revenue. Heard in Public Safety Committee 1/26

[HB 177](#) (McNeil) – Prohibits the use of speed cameras except in school zones. Public Safety Committee (Oppose)

[HB 207](#) (Meadows) – Limits red light cameras to school or construction zones. Public Safety Committee (Oppose)

[HB 406](#) (Wieland) - Prohibits political subdivisions from using red light cameras. Heard in Public Safety Committee 3/7 (Oppose)

[HB 735](#) (Hough) - No municipality may pass an ordinance that denies the use of commercial motor vehicles on all streets within the municipality. **At least one street, with lawful traffic movement and access from both directions, to be used by commercial vehicles to access any roads in the state highway system must be designated.** Identical to SB 277. **Heard in Transportation Committee 3/15**

General Senate Bills

[SB 93](#) (Kraus) – Requires municipal business licenses to be issued within 60 days. Heard in Commerce Committee 3/8

[SB 225](#) (Engler) – Outstate circuit and associate circuit judgeships will become nonpartisan elected offices. The League believes the Missouri Plan by which nominees are selected by the governor, followed by voters retaining or not retaining judges is a better solution and has been widely copied across the U.S. Does not apply in St. Louis County. Passed Governmental Organization Committee 2/21

[SB 249](#) (McKenna) – Creates the Political Subdivision Construction Bidding Standards Act" for entities that do not have specific state or local competitive bidding requirements when soliciting construction bids and awarding contracts of \$25,000 or more and creates a central repository for bids. Heard in Local Government Committee 3/9

[SJR 6](#) (Chappelle-Nadal) - Constitutional amendment would require the St. Louis Board of Electors to hold monthly meetings from January 2013 through December 2016. The amendment also authorizes voters in St. Louis City and County to modify the Missouri Constitution regarding the board. Any such modification must be submitted to voters of the city and county separately for their approval. Local Government Committee

[SJR 12](#) (Green) – Increase legislative term limits from 8 to 12 years. Passed Elections Committee 2/28 (Support)

[SJR 19](#) (Chappelle-Nadal) – If approved by voters statewide, St. Louis City would rejoin the County as the 92nd municipality. The bill makes no provisions for what would happen with the “county” offices in the city, the sales tax structure in the County or the multitude of other issues that would need to be addressed. Local Government Committee

General House Bills

[HB 95](#) (Dugger) – Allows municipalities under 10,000 population to cancel elections if the number of candidates is equal to the number of positions to be filled. Passed House Elections Committee 3/1

[HB 139](#) (Smith, 150) – Amended to require municipalities to submit to the state financial and policy information which would be posted on the Missouri Accountability Portal. A copy of the annual audit must also be sent to the state auditor. This seems to be an unfunded mandate. Passed House 2/24. Senate General Laws Committee

[HB 145](#) (Schoeller) – Requires public entities to publish the name of and dues paid to organizations to which they belong and the name and compensation of lobbyists they employ. Heard in Local Government Committee 3/2

[HB 400](#) (Diehl) – Prohibits cities from levying a hotel room tax for tourism promotion if the county already imposes a similar tax, which is the case in St. Louis County. **The goal of the legislation is to require any municipality seeking authority for a hotel tax for tourism to get legislative approval. Many cities in the state currently have specific hotel tax authority. Committee Substitute Passed Local Government Committee 3/16**

[HB 438](#) (Schupp) – Statewide smoking ban. The only exemptions are tobacco stores, 20% of hotel rooms and outdoor work areas, but not outdoor sports stadiums. Heard in Local Government Committee 3/9 (Support)

[HB 467](#) (Diehl) – Missouri Science and Innovation Reinvestment Act which would create a fund to build entrepreneurial infrastructure for job creation in the technology field. It would capture a small percentage of the new growth in wages from science and technology workers to fund the program. Heard in House Economic Development Committee 2/15 (Support)

[HB 566](#) (Denison) - Creates the Political Subdivision Construction Bidding Standards Act" for entities that do not have specific state or local competitive bidding requirements when soliciting construction bids and awarding contracts of \$25,000 or more and creates a central repository for bids. Similar to SB 249. Heard in Local Government Committee 3/2

[HB 709](#) (Nichols) – Would allow municipalities to forgo elections if only one candidate files. Write in candidates would need to complete the process 11 weeks prior to the election. Elections Committee

[HJR 34](#) (Nasheed) - Increases legislative term limits from 8 to 12 years. Identical to SJR 12. (Support)

Understanding the Sales Tax Sharing System

Retail sales in St. Louis County are subject to a 1% local sales tax that is shared among the cities in St. Louis County and the County itself. St. Louis County is the only county in the state which has adopted such a sharing formula. The City of Creve Coeur receives approximately 80% of the sales tax revenue generated by Creve Coeur businesses with the remaining 20% shared with other cities and the County.

In 1993, a revenue sharing plan was adopted that names cities either 'A', 'B' or 'A/B'.

'A' cities, or 'point-of-sales' cities, receive sales tax revenue generated within their city limits, but sharing applies if the average sales tax income per capita city resident exceeds the average sales tax income per capita county-wide. If Creve Coeur's per capita average exceeds the prior year's county-wide per capita average, the city shares 7.5% of the sales tax income. If Creve Coeur's per capita average exceeds the county's prior year per capita average by 25% or more, the city shares 12.5% of the sales tax income with St. Louis County

for the pool. This sharing percentage continues to increase with the city per capita sales tax income.

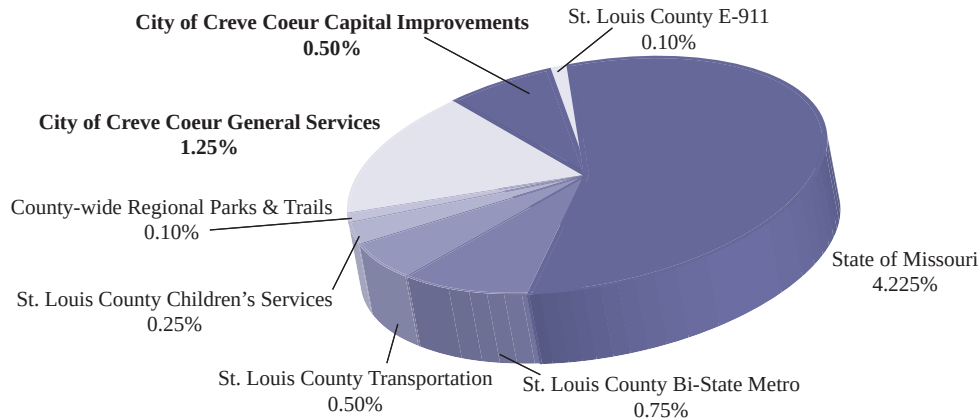
'B' cities, also called 'pool' cities, receive a population based pro-rated share of the sales tax revenue collected by St. Louis County. Newly created cities and areas annexed since the sharing formula became effective are

'B' cities. Cities in existence at the time of the sharing formula are a mixture of 'A' ('point-of-sale') and 'B' ('pool').

Creve Coeur is an 'A/B' city, primarily a 'point-of-sale' ('A') city, except for parts of Ward 4 that were annexed in the 1990s, which are 'pool' ('B'). Total

sales tax revenue generated in Creve Coeur last year was \$6,461,408 for both retail and capital sales tax. However, \$1,268,574 was shared with other cities under the County formula, resulting in net sales tax revenue for Creve Coeur of \$5,192,834. If you have any questions, please contact Dan Smith, Director of Finance, at 872-2519 or dsmith@ci.creve-coeur.mo.us.

Where Does My Sales Tax Go?



Sales Tax Rates Compared

Creve Coeur's total sales tax is among the lowest of area cities. The rate shown below for Creve Coeur includes an additional 0.25% effective April 1, 2011.

Municipality	Sales Tax Rate
Olivette	8.425%
Des Peres	8.425%
Brentwood	8.425%
Richmond Heights	8.425%
Town & Country	8.175%
Chesterfield	7.925%
Creve Coeur	7.675%
Maryland Heights	7.425%

Note: Tax rates do not include special taxing districts, such as Transportation Development Districts (TDD).

This information is from the city's Comprehensive Annual Financial Report (CAFR).

A copy of the CAFR is available at the Government Center.

Award for Outstanding Achievement in Popular Annual Financial Reporting

PRESENTED TO

City of Creve Coeur
Missouri

for the Fiscal Year Ended
June 30, 2009



Jeffrey L. Euse
President
Executive Director

March 9, 2011

Honorable Chuck Gatschenberger
Chairman, House Local Government Committee
Missouri House of Representatives
201 West Capitol Avenue, Room 408B
Jefferson City, MO 65101

Dear Chairman Gatschenberger and
Members of the Local Government Committee:

I am writing on behalf of the City of University City and the mayors of the cities noted below. We are writing to express our opposition to House Bill 534, which is the subject of a hearing by the Local Government Committee today. We are unable to attend your hearing but ask that you consider our grave concerns about the negative effect this bill would have on our communities and all of St. Louis County as you discuss this bill.

Saint Louis County has benefitted over the years from the foresight of previous civic leaders who designed and implemented the system of shared sales tax revenues. Understanding the challenges we faced as a region with so many municipalities; knowing that all communities were not equally positioned to provide a commercial tax base to fund city services; and realizing that the Saint Louis region as a whole would benefit when residents throughout the community had sufficient services, they came up with this unique system for the shared distribution of sales taxes. This system asks some cities to sacrifice part of their revenue for the greater good, and helps cities which cannot expand their tax bases because of long-term housing patterns, size of the community, and a myriad of other issues.

People from throughout Saint Louis County support commercial enterprises throughout the County, not only in their hometowns. The ability to provide this on-going economic boost to their neighbors would be greatly impacted by the increased taxes they might have to shoulder if their local communities lose this shared revenue. Almost 70% of the residents of this region reside in "B" cities that will suffer if this bill is passed.

We respectfully request that you oppose House Bill 534.

Sincerely,

Mayor Shelley Welsch, City of University City
Mayor Tim Pogue, City of Ballwin
Mayor Norman McCourt, City of Black Jack
Mayor Anita Mason, City of Breckenridge Hills
Mayor Jack Agnew, City of Dellwood
Mayor Robert Lowery, City of Florissant
Mayor Richard Magee, City of Glendale
Mayor Benjamin Sutphin, City of Jennings
Mayor Patrick Green, City of Normandy

Mayor Mary Louise Carter, City of Pagedale
Mayor Kenneth Williams, City of Uplands Park
Mayor Robert L. Hensley, City of Velda City
Mayor Earlene Luster, City of Velda Village Hills
Mayor James McGee, City of Vinita Park
Mayor Gerry Welch, City of Webster Groves
Mayor Linda Whitfield, City of Wellston
Mayor Gail M. Winham, City of Winchester
Mayor Lawrence Besmer, City of Woodson Terrace

FIRST REGULAR SESSION

HOUSE BILL NO. 534

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEARA.

1256L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 66.620 and 66.630, RSMo, and to enact in lieu thereof two new sections relating to distribution of local sales taxes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 66.620 and 66.630, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 66.620 and 66.630, to read as follows:

66.620. 1. All county sales taxes collected by the director of revenue under sections
2 66.600 to 66.630 on behalf of any county, less one percent for cost of collection which shall be
3 deposited in the state's general revenue fund after payment of premiums for surety bonds as
4 provided in section 32.087, shall be deposited in a special trust fund, which is hereby created,
5 to be known as the "County Sales Tax Trust Fund". The moneys in the county sales tax trust
6 fund shall not be deemed to be state funds and shall not be commingled with any funds of the
7 state. The director of revenue shall keep accurate records of the amount of money in the trust
8 fund which was collected in each county imposing a county sales tax, and the records shall be
9 open to the inspection of officers of the county and the public. Not later than the tenth day of
10 each month, the director of revenue shall distribute all moneys deposited in the trust fund during
11 the preceding month to the county which levied the tax; such funds shall be deposited with the
12 county treasurer of the county and all expenditures of funds arising from the county sales tax
13 trust fund shall be by an appropriation act to be enacted by the legislative council of the county,
14 and to the cities, towns and villages located wholly or partly within the county which levied the
15 tax in the manner as set forth in sections 66.600 to 66.630.

16 2. In any county not adopting an additional sales tax and alternate distribution system
17 as provided in section 67.581, for the purposes of distributing the county sales tax, the county

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 shall be divided into two groups, "Group A" and "Group B". Group A shall consist of all cities,
19 towns and villages which are located wholly or partly within the county which levied the tax and
20 which had a city sales tax in effect under the provisions of sections 94.500 to 94.550 on the day
21 prior to the adoption of the county sales tax ordinance, except that beginning January 1, 1980,
22 group A shall consist of all cities, towns and villages which are located wholly or partly within
23 the county which levied the tax and which had a city sales tax approved by the voters of such city
24 under the provisions of sections 94.500 to 94.550 on the day prior to the effective date of the
25 county sales tax. For the purposes of determining the location of consummation of sales for
26 distribution of funds to cities, towns and villages in group A, the boundaries of any such city,
27 town or village shall be the boundary of that city, town or village as it existed on March 19,
28 1984. Group B shall consist of all cities, towns and villages which are located wholly or partly
29 within the county which levied the tax and which did not have a city sales tax in effect under the
30 provisions of sections 94.500 to 94.550 on the day prior to the adoption of the county sales tax
31 ordinance, and shall also include all unincorporated areas of the county which levied the tax;
32 except that, beginning January 1, 1980, group B shall consist of all cities, towns and villages
33 which are located wholly or partly within the county which levied the tax and which did not have
34 a city sales tax approved by the voters of such city under the provisions of sections 94.500 to
35 94.550 on the day prior to the effective date of the county sales tax and shall also include all
36 unincorporated areas of the county which levied the tax.

37 3. Until January 1, 1994, **and beginning January 1, 2012**, the director of revenue shall
38 distribute to the cities, towns and villages in group A the taxes based on the location in which
39 the sales were deemed consummated under section 66.630 and subsection 12 of section 32.087.
40 Except for distribution governed by section 66.630, after deducting the distribution to the cities,
41 towns and villages in group A, the director of revenue shall distribute the remaining funds in the
42 county sales tax trust fund to the cities, towns and villages and the county in group B as follows:
43 To the county which levied the tax, a percentage of the distributable revenue equal to the
44 percentage ratio that the population of the unincorporated areas of the county bears to the total
45 population of group B; and to each city, town or village in group B located wholly within the
46 taxing county, a percentage of the distributable revenue equal to the percentage ratio that the
47 population of such city, town or village bears to the total population of group B; and to each city,
48 town or village located partly within the taxing county, a percentage of the distributable revenue
49 equal to the percentage ratio that the population of that part of the city, town or village located
50 within the taxing county bears to the total population of group B.

51 4. [From and] After January 1, 1994, **and before January 1, 2012**, the director of
52 revenue shall distribute to the cities, towns and villages in group A a portion of the taxes based
53 on the location in which the sales were deemed consummated under section 66.630 and

54 subsection 12 of section 32.087 in accordance with the formula described in this subsection.
55 After deducting the distribution to the cities, towns and villages in group A, the director of
56 revenue shall distribute funds in the county sales tax trust fund to the cities, towns and villages
57 and the county in group B as follows: To the county which levied the tax, ten percent multiplied
58 by the percentage of the population of unincorporated county which has been annexed or
59 incorporated since April 1, 1993, multiplied by the total of all sales tax revenues countywide, and
60 a percentage of the remaining distributable revenue equal to the percentage ratio that the
61 population of unincorporated areas of the county bears to the total population of group B; and
62 to each city, town or village in group B located wholly within the taxing county, a percentage of
63 the remaining distributable revenue equal to the percentage ratio that the population of such city,
64 town or village bears to the total population of group B; and to each city, town or village located
65 partly within the taxing county, a percentage of the remaining distributable revenue equal to the
66 percentage ratio that the population of that part of the city, town or village located within the
67 taxing county bears to the total population of group B.

68 5. (1) For purposes of administering the distribution formula of subsection 4 of this
69 section, the revenues arising each year from sales occurring within each group A city, town or
70 village shall be distributed as follows: Until such revenues reach the adjusted county average,
71 as hereinafter defined, there shall be distributed to the city, town or village all of such revenues
72 reduced by the percentage which is equal to ten percent multiplied by the percentage of the
73 population of unincorporated county which has been annexed or incorporated after April 1, 1993;
74 and once revenues exceed the adjusted county average, total revenues shall be shared in
75 accordance with the redistribution formula as defined in this subsection.

76 (2) For purposes of this subsection, the "adjusted county average" is the per capita
77 countywide average of all sales tax distributions during the prior calendar year reduced by the
78 percentage which is equal to ten percent multiplied by the percentage of the population of
79 unincorporated county which has been annexed or incorporated after April 1, 1993; the
80 "redistribution formula" is as follows: During 1994, each group A city, town and village shall
81 receive that portion of the revenues arising from sales occurring within the municipality that
82 remains after deducting therefrom an amount equal to the cumulative sales tax revenues arising
83 from sales within the municipality multiplied by the percentage which is the sum of ten percent
84 multiplied by the percentage of the population of unincorporated county which has been annexed
85 or incorporated after April 1, 1993, and the percentage, if greater than zero, equal to the product
86 of 8.5 multiplied by the logarithm (to base 10) of the product of 0.035 multiplied by the total of
87 cumulative per capita sales taxes arising from sales within the municipality less the adjusted
88 county average. During 1995, each group A city, town and village shall receive that portion of
89 the revenues arising from sales occurring within the municipality that remains after deducting

therefrom an amount equal to the cumulative sales tax revenues arising from sales within the municipality multiplied by the percentage which is the sum of ten percent multiplied by the percentage of the population of unincorporated county which has been annexed or incorporated after April 1, 1993, and the percentage, if greater than zero, equal to the product of seventeen multiplied by the logarithm (to base 10) of the product of 0.035 multiplied by the total of cumulative per capita sales taxes arising from sales within the municipality less the adjusted county average. From January 1, 1996, until January 1, 2000, each group A city, town and village shall receive that portion of the revenues arising from sales occurring within the municipality that remains after deducting therefrom an amount equal to the cumulative sales tax revenues arising from sales within the municipality multiplied by the percentage which is the sum of ten percent multiplied by the percentage of the population of unincorporated county which has been annexed or incorporated after April 1, 1993, and the percentage, if greater than zero, equal to the product of 25.5 multiplied by the logarithm (to base 10) of the product of 0.035 multiplied by the total of cumulative per capita sales taxes arising from sales within the municipality less the adjusted county average. From and after January 1, 2000, the distribution formula covering the period from January 1, 1996, until January 1, 2000, shall continue to apply, except that the percentage computed for sales arising within the municipalities shall be not less than 7.5 percent for municipalities within which sales tax revenues exceed the adjusted county average, nor less than 12.5 percent for municipalities within which sales tax revenues exceed the adjusted county average by at least twenty-five percent.

(3) For purposes of applying the redistribution formula to a municipality which is partly within the county levying the tax, the distribution shall be calculated alternately for the municipality as a whole, except that the factor for annexed portion of the county shall not be applied to the portion of the municipality which is not within the county levying the tax, and for the portion of the municipality within the county levying the tax. Whichever calculation results in the larger distribution to the municipality shall be used.

(4) Notwithstanding any other provision of this section, the fifty percent of additional sales taxes as described in section 99.845 arising from economic activities within the area of a redevelopment project established after July 12, 1990, pursuant to sections 99.800 to 99.865 while tax increment financing remains in effect shall be deducted from all calculations of countywide sales taxes, shall be distributed directly to the municipality involved, and shall be disregarded in calculating the amounts distributed or distributable to the municipality. Further, any agreement, contract or covenant entered into prior to July 12, 1990, between a municipality and any other political subdivision which provides for an appropriation of incremental sales tax revenues to the special allocation fund of a tax increment financing project while tax increment financing remains in effect shall continue to be in full force and effect and the sales taxes so

126 appropriated shall be deducted from all calculations of countywide sales taxes, shall be
127 distributed directly to the municipality involved, and shall be disregarded in calculating the
128 amounts distributed or distributable to the municipality. In addition, and notwithstanding any
129 other provision of this chapter to the contrary, economic development funds shall be distributed
130 in full to the municipality in which the sales producing them were deemed consummated.
131 Additionally, economic development funds shall be deducted from all calculations of countywide
132 sales taxes and shall be disregarded in calculating the amounts distributed or distributable to the
133 municipality. As used in this subdivision, the term "economic development funds" means the
134 amount of sales tax revenue generated in any fiscal year by projects authorized pursuant to
135 chapter 99 or chapter 100 in connection with which such sales tax revenue was pledged as
136 security for, or was guaranteed by a developer to be sufficient to pay, outstanding obligations
137 under any agreement authorized by chapter 100 entered into or adopted prior to September 1,
138 1993, between a municipality and another public body. The cumulative amount of economic
139 development funds allowed under this provision shall not exceed the total amount necessary to
140 amortize the obligations involved.

141 **(5) The provisions of this subsection shall expire January 1, 2012.**

142 6. If the qualified voters of any city, town or village vote to change or alter its boundaries
143 by annexing any unincorporated territory included in group B or if the qualified voters of one or
144 more city, town or village in group A and the qualified voters of one or more city, town or village
145 in group B vote to consolidate, the area annexed or the area consolidated which had been a part
146 of group B shall remain a part of group B after annexation or consolidation. After the effective
147 date of the annexation or consolidation, the annexing or consolidated city, town or village shall
148 receive a percentage of the group B distributable revenue equal to the percentage ratio that the
149 population of the annexed or consolidated area bears to the total population of group B and such
150 annexed area shall not be classified as unincorporated area for determination of the percentage
151 allocable to the county. If the qualified voters of any two or more cities, towns or villages in
152 group A each vote to consolidate such cities, towns or villages, then such consolidated cities,
153 towns or villages shall remain a part of group A. For the purpose of sections 66.600 to 66.630,
154 population shall be as determined by the last federal decennial census or the latest census that
155 determines the total population of the county and all political subdivisions therein. For the
156 purpose of calculating the adjustment based on the percentage of unincorporated county
157 population which is annexed after April 1, 1993, **and before January 1, 2012**, the accumulated
158 percentage immediately before each census shall be used as the new percentage base after such
159 census. After any annexation, incorporation or other municipal boundary change affecting the
160 unincorporated area of the county, the chief elected official of the county shall certify the new
161 population of the unincorporated area of the county and the percentage of the population which

has been annexed or incorporated since April 1, 1993, **and before January 1, 2012**, to the director of revenue. After the adoption of the county sales tax ordinance, any city, town or village in group A may by adoption of an ordinance by its governing body cease to be a part of group A and become a part of group B, **or any city, town, or village in group B may adopt an ordinance to cease to be a part of group B and become part of group A.** Within ten days after the adoption of the ordinance transferring the city, town or village from one group to the other, the clerk of the transferring city, town or village shall forward to the director of revenue, by registered mail, a certified copy of the ordinance. Distribution to such city as a part of its former group shall cease and as a part of its new group shall begin on the first day of January of the year following notification to the director of revenue, provided such notification is received by the director of revenue on or before the first day of July of the year in which the transferring ordinance is adopted. If such notification is received by the director of revenue after the first day of July of the year in which the transferring ordinance is adopted, then distribution to such city as a part of its former group shall cease and as a part of its new group shall begin the first day of July of the year following such notification to the director of revenue. [Once a group A city, town or village becomes a part of group B, such city may not transfer back to group A.]

7. If any city, town or village shall hereafter change or alter its boundaries, the city clerk of the municipality shall forward to the director of revenue, by registered mail, a certified copy of the ordinance adding or detaching territory from the municipality. The ordinance shall reflect the effective date thereof, and shall be accompanied by a map of the municipality clearly showing the territory added thereto or detached therefrom. Upon receipt of the ordinance and map, the tax imposed by sections 66.600 to 66.630 shall be redistributed and allocated in accordance with the provisions of this section on the effective date of the change of the municipal boundary so that the proper percentage of group B distributable revenue is allocated to the municipality in proportion to any annexed territory. If any area of the unincorporated county elects to incorporate subsequent to the effective date of the county sales tax as set forth in sections 66.600 to 66.630, the newly incorporated municipality shall remain a part of group B. The city clerk of such newly incorporated municipality shall forward to the director of revenue, by registered mail, a certified copy of the incorporation election returns and a map of the municipality clearly showing the boundaries thereof. The certified copy of the incorporation election returns shall reflect the effective date of the incorporation. Upon receipt of the incorporation election returns and map, the tax imposed by sections 66.600 to 66.630 shall be distributed and allocated in accordance with the provisions of this section on the effective date of the incorporation.

8. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county for erroneous payments and overpayments

198 made, and may redeem dishonored checks and drafts deposited to the credit of such counties.
199 If any county abolishes the tax, the county shall notify the director of revenue of the action at
200 least ninety days prior to the effective date of the repeal and the director of revenue may order
201 retention in the trust fund, for a period of one year, of two percent of the amount collected after
202 receipt of such notice to cover possible refunds or overpayment of the tax and to redeem
203 dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed
204 after the effective date of abolition of the tax in such county, the director of revenue shall remit
205 the balance in the account to the county and close the account of that county. The director of
206 revenue shall notify each county of each instance of any amount refunded or any check redeemed
207 from receipts due the county.

208 9. Except as modified in sections 66.600 to 66.630, all provisions of sections 32.085 and
209 32.087 shall apply to the tax imposed under sections 66.600 to 66.630.

66.630. 1. County sales taxes imposed pursuant to sections 66.600 to 66.630 on the
2 purchase and sale of motor vehicles, trailers, boats, and outboard motors shall not be collected
3 and remitted by the seller, but shall be collected by the director of revenue at the time application
4 is made for a certificate of title, if the address of the applicant is within a county imposing a
5 county sales tax. The amounts so collected, less the one percent collection cost, shall be
6 deposited in the county sales tax trust fund to be distributed in accordance with section 66.620
7 until March 31, 1988. Beginning April 1, 1988, seventy-five percent of the distributable sales
8 tax revenue shall be distributed in accordance with section 66.620. The remaining twenty-five
9 percent of the distributable sales tax revenue shall be held in an interest-bearing account and, less
10 annual costs of distribution, shall be distributed monthly to each city, town or village and the
11 county based upon the number of transactions occurring within each city, town or village and the
12 unincorporated area of the county during the preceding month as reported to the department of
13 revenue in the monthly dealer sales report subject, however, to the redistribution formula defined
14 in section 66.620 **for taxes distributed before January 1, 2012**, and, except that any city, town
15 or village and the county contained in group B as defined in section 66.620 shall have distributed
16 to it by the director of revenue its share of the remaining twenty-five percent as calculated herein
17 in accordance with section 66.620. The cost incurred by the department of revenue for
18 distribution shall be paid by each city, town or village in proportion to the number of transactions
19 occurring within its boundaries and shall be deducted annually from such distributable revenue.
20 In the event that an alternative distribution system is adopted pursuant to section 67.581, all of
21 the moneys collected under this section shall be distributed in accordance with that formula. The
22 purchase or sale of motor vehicles, trailers, boats, and outboard motors shall be deemed to be
23 consummated at the address of the applicant.

24 2. As used in this section, the term "boat" shall only include motorboats and vessels as
25 the terms "motorboat" and "vessel" are defined in section 306.010.

T