



# KIRKWOOD CITY COUNCIL AGENDA

Kirkwood City Hall

December 15, 2016 – 7:00 p.m.

*Revised: December 13, 2016*

WHERE COMMUNITY AND SPIRIT MEET

**I. PLEDGE OF ALLEGIANCE**

**II. ROLL CALL**

**III. PRESENTATIONS**

**IV. INTRODUCTIONS AND RECOGNITIONS**

**V. PUBLIC HEARINGS**

**VI. PUBLIC COMMENTS – 3 MINUTE LIMIT PER PERSON**

The Public Comments portion of the meeting is an opportunity for the City Council to listen to comments from citizens. It is not a question and answer session and the City Council will not respond to comments or answer questions during this period. The Mayor may refer any matter brought up to the City Council to the Chief Administrative Officer or City Clerk if action is needed.

**VII. APPROVAL OF CONSENT AGENDA**

**VIII. CONSENT AGENDA**

The Consent Agenda is a meeting method that many City Councils use to help make City Council meetings more efficient and meaningful to the members of the audience. The City Council voted to begin using the Consent Agenda method as of June 1, 1998. All matters listed within the Consent Agenda have been distributed to each member of the Kirkwood City Council for reading and study, are considered to be routine, and will be enacted by one motion of the Council with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request of a member of the City Council. The expenditures listed in the consent agenda are items already approved in the current city budget.

- a) Approval of the December 1, 2016 City Council Meeting Minutes
- b) Resolution 162-2016, transferring funds from one Water Department Operating Account to another to cover the increase in repair and maintenance of water mains (\$11,000)
- c) Resolution 163-2016, appointing Matthew Barthelmass to the Greentree Festival Committee
- d) Resolution 164-2016, transferring funds from the Contingency Account to an Expenditure Account to finish the Street Tree Inventory in this fiscal year (\$10,000)
- e) Resolution 165-2016, amending Resolution 36-2016 to increase the not exceed amount of the contract with Enterprise Industrial Construction for water main replacement on Nelda and Norton (Increase to \$309,221.67)
- f) Resolution 166-2016, amending Resolution 114-2016 to increase the not to exceed amount of the contract with Sungard for testing of the current file transfer routine from the Elster AMI System (Increase to \$15,800)
- g) Resolution 167-2016, renewing the contract with Ameritas Group for vision insurance (\$22,861.44)
- h) Resolution 168-2016, accepting the proposal of Mueller & Neff Real Estate Appraisers and Consultants for real estate appraisal services relating to the Kirkwood Road Signal Optimization Project and directing the Mayor to enter into a contract (not to exceed \$18,000)
- i) Resolution 169-2016, accepting the proposal of Mueller & Neff Real Estate Appraisers and Consultants for the TAP 5502 (607) South Kirkwood Road-Nipher Middle School SRTS project and directing the Mayor to enter into a contract (not to exceed \$5,000)
- j) Resolution 171-2016, accepting the bid of J.F. Electric for transmission system MRSI-KIRK T2 Upgrades and directing the Mayor to enter into a contract (\$205,326)
- k) Resolution 172-2016, directing the Mayor to enter into a 20-year agreement with the Missouri Joint Municipal Electric Utility Commission for 25 megawatts of wind generation (\$20 per megawatt)
- l) Resolution 173-2016, accepting the bid of ERMCO c/o Electrorep Energy Products for single phase dual voltage pole mount transformers for the Electric Department and directing the issuance of a Purchase Order (\$88,075)

**IX. OLD BUSINESS**



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1. Bill 10523, granting a Special Use Amendment to expand the outdoor seating area into the existing courtyard at 10310/10312 Manchester Road
2. Bill 10524, vacating a utility easement at 1035 North Kirkwood Road
3. Bill 10525, calling an election on whether to continue to impose capital sales tax for funding capital improvements
4. Bill 10526, appropriating funds from the Equitable Sharing Fund Balance for the purchase of 90 Sig Sauer P320 pistols for the Police Department (\$19,507)
5. Bill 10527, appropriating funds from the Park Sales Tax Fund Reserves, accepting the bid of Nutoys Leisure Products, Inc. (pursuant to HGACBuy Cooperative Contract) and directing the Mayor to enter into a contract (\$175,077)
6. Bill 10528, amending the Code of Ordinances regarding Purchasing
7. Bill 10529, appropriating funds from the Electric Fund to the Circuit Upgrades Account for distribution system upgrades to Circuit 8 for the Electric Department (\$312,382)

**X. NEW BUSINESS**

1. Bill 10530, adopting a revised Chapter 17 "Offenses" of the Kirkwood Code of Ordinances pursuant to SB491
2. Bill 10531, appropriating funds from the Electric Fund (fund balance), amending the contract with Quanta Technology for distribution system model CYME hosting and support and directing the Mayor to enter into an amended contract (not to exceed \$47,000)
3. Bill 10532, appropriating funds from the Electric Fund (fund balance), accepting the bid of Black & McDonald for distribution system Circuit 9 upgrades and directing the Mayor to enter into a contract (not to exceed \$336,210)
4. Resolution 170-2016, transferring funds, amending the contract with Jacobs Engineering Group, Inc. to include Space Plan Analysis and Development for Performing Arts Center and directing the Mayor to enter into an amended contract (not to exceed \$22,500)

**XI. CONSENT AGENDA ITEMS FOR DISCUSSION (IF ANY)**

**XII. CITY COUNCIL REPORTS**

**XIII. CHIEF ADMINISTRATIVE OFFICER REPORTS**

**1.**

*\*Other Items may be added after the publication of the agenda. Please contact the City Clerk's Office at 822-5802 for any additional information that may have been added after the publication of the agenda.*

**XIV. CITY ATTORNEY REPORTS**

**XV. CITY CLERK REPORTS**

**1. Report of the Planning and Zoning Commission meeting of December 7, 2016**

*\*Other Items may be added after the publication of the agenda. Please contact the City Clerk's Office at 822-5802 for any additional information that may have been added after the publication of the agenda.*

**XVI. MEETING ADJOURNMENT**

**PLEASE NOTE:** The next regular meeting of the Kirkwood City Council will take place **at 7:00 p.m. on January 5, 2017.**



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**UPCOMING PUBLIC HEARINGS**

**NONE SCHEDULED**

**CONTINUED ITEMS**

**NONE**

**TABLED ITEMS**

Bill 10243, vacating a water utility easement at 603 West Jewel Avenue

THE CITY OF KIRKWOOD IS INTERESTED IN EFFECTIVE COMMUNICATION FOR ALL PERSONS. PERSONS REQUIRING AN ACCOMMODATION TO ATTEND AND PARTICIPATE IN THE MEETING SHOULD CONTACT THE CITY CLERK AT 314-822-5802 AT LEAST 48 HOURS BEFORE THE MEETING. WITH ADVANCE NOTICE OF SEVEN CALENDAR DAYS, THE CITY OF KIRKWOOD WILL PROVIDE INTERPRETER SERVICES AT PUBLIC MEETINGS FOR LANGUAGES OTHER THAN ENGLISH AND FOR THE HEARING IMPAIRED. UPON REQUEST, THE MINUTES FROM THIS MEETING CAN BE MADE AVAILABLE IN AN ALTERNATE FORMAT, SUCH AS CD BY CALLING 314-822-5802.

# ***THE CONSENT AGENDA IS ATTACHED***

- a) Approval of the December 1, 2016 City Council Meeting Minutes
- b) Resolution 162-2016, transferring funds from one Water Department Operating Account to another to cover the increase in repair and maintenance of water mains (\$11,000)
- c) Resolution 163-2016, appointing Matthew Barthelmass to the Greentree Festival Committee
- d) Resolution 164-2016, transferring funds from the Contingency Account to an Expenditure Account to finish the Street Tree Inventory in this fiscal year (\$10,000)
- e) Resolution 165-2016, amending Resolution 36-2016 to increase the not exceed amount of the contract with Enterprise Industrial Construction for water main replacement on Nelda and Norton (Increase to \$309,221.67)
- f) Resolution 166-2016, amending Resolution 114-2016 to increase the not to exceed amount of the contract with Sungard for testing of the current file transfer routine from the Elster AMI System (Increase to \$15,800)
- g) Resolution 167-2016, renewing the contract with Ameritas Group for vision insurance (\$22,861.44)
- h) Resolution 168-2016, accepting the proposal of Mueller & Neff Real Estate Appraisers and Consultants for real estate appraisal services relating to the Kirkwood Road Signal Optimization Project and directing the Mayor to enter into a contract (not to exceed \$18,000)
- i) Resolution 169-2016, accepting the proposal of Mueller & Neff Real Estate Appraisers and Consultants for the TAP 5502 (607) South Kirkwood Road-Nipher Middle School SRTS project and directing the Mayor to enter into a contract (not to exceed \$5,000)
- j) Resolution 171-2016, accepting the bid of J.F. Electric for transmission system MRSI-KIRK T2 Upgrades and directing the Mayor to enter into a contract (\$205,326)
- k) Resolution 172-2016, directing the Mayor to enter into a 20-year agreement with the Missouri Joint Municipal Electric Utility Commission for 25 megawatts of wind generation (\$20 per megawatt)
- l) Resolution 173-2016, accepting the bid of ERMCO, c/o Electreprep Energy Products for single phase dual voltage pole mount transformers for the Electric Department and directing the issuance of a Purchase Order (\$88,075)



WHERE COMMUNITY AND SPIRIT MEET<sup>®</sup>

# DRAFT

**KIRKWOOD CITY COUNCIL  
KIRKWOOD CITY HALL  
December 1, 2016  
7:00 p.m.**

Pursuant to notice of meeting duly given by the Mayor, the City Council convened on Thursday, December 1, 2016, at 7:00 p.m. at Kirkwood City Hall, 139 South Kirkwood Road, Kirkwood, Missouri. Present were Mayor Griffin, Council Members Duwe, Edman, Luetzow, Sears, Ward, and Zimmer. Also in attendance were Chief Administrative Officer Russell Hawes, Assistant Chief Administrative Officer Georgia Ragland, City Clerk Betty Montaño, and City Attorney John Hessel.

## **PRESENTATIONS**

Deanna Jones, City Clerk with the City of Berkeley and the Chair of the Missouri City Clerks and Finance Officers Association PR Committee, recognized Deputy City Clerk Laurie Ashe on receiving the IIMC Certified Municipal Clerk designation. It takes a lot of hard work including focus on education and commitment to the responsibilities that are part of the City Clerk's Office to receive the CMC designation. Ms. Ashe received a standing ovation.

## **INTRODUCTIONS AND RECOGNITIONS**

NONE

## **PUBLIC HEARINGS**

NONE

## **PUBLIC COMMENTS**

1. David Mulcahy, 17 Forest Glen, spoke in regards to the Vianney baseball field. Would like a change of the Vianney School from a Permanent Use to a Special Use.
2. David Powell, 80 Forest Glen, spoke in regards to the pedestrian crosswalk lights on South Geyer Road. Unsure if the color yellow helps to slow and stop vehicles and asks if the lights could be changed to red.

## **CONSENT AGENDA**

Motion was made by Council Member Ward and seconded by Council Member Duwe to approve the Consent Agenda. It was requested that item f) be pulled and placed at the end of the agenda for further discussion. The Consent Agenda was unanimously approved.

- a) Approval of the November 17, 2016 City Council Meeting Minutes



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# DRAFT

- b) Resolution 156-2016, transferring funds, accepting the proposal of Brady Construction, Inc. for the Aquatic Center slide bridge and tower platform repair and directing the Mayor to enter into a contract (not to exceed \$68,056)
- c) Resolution 157-2016, accepting the bid of First Student for bus transportation for Parks and Recreation Department and directing the Mayor to enter into a contract for one year with the option to renew (rates listed in bid sheet)
- d) Resolution 158-2016, amending Resolution 22-2016 by increasing the amount of the contract with Planning Design Studio for Fillmore Park Construction Period Services (change not to exceed amount to \$85,975)
- e) Resolution 160-2016, accepting and approving the City of Kirkwood Deferred Compensation Restated Plan Document effective January 1, 2017
- f) Resolution 161-2016, authorizing a contract amendment to be issued to JW Fuller Construction, LLC for Firehouses 1 and 3 surface repairs and painting for the Facilities Operations Department (not to exceed \$51,378) ***\*Pulled and placed at the end of the agenda***

## OLD BUSINESS

Bill 10520, approving a petition requesting the creation of the Kirkwood Square Community Improvement District; establishing the District as a Political Subdivision of the State of Missouri; approving the appointment of the initial Board of Directors of the District; and directing the City Clerk to notify the Missouri Department of Economic Development of the creation of the District, was brought before the council.

Roll Call Vote as Follows:

Council Member Edman	"Yes"
Mayor Griffin	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Ward	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"

The bill, having received majority approval of the council, was adopted and became Ordinance 10368.

Bill 10521, enabling the City of Kirkwood, Missouri, to join the Missouri Clean Energy District pursuant to Sections §67.2800 to §67.2835, inclusive, RSMO., the "Property Assessed Clean Energy Act," and stating the terms under which the City will conduct activities within the City as a Member of such District, was brought before the council.



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## Roll Call Vote as Follows:

Council Member Edman	"Yes"
Mayor Griffin	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Ward	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"

The bill, having received majority approval of the council, was adopted and became Ordinance 10369.

Bill 10522, appropriating \$45,050 from the Equitable Sharing Fund Balance to Account #205-1201-429.75.05, accepting the proposal of Ti Training Corp. in the amount of \$45,050 for Portable Use of Force Training Simulator for the Police Department and authorizing and directing the Mayor to enter into a contract, was brought before the council. A discussion took place.

## Roll Call Vote as Follows:

Council Member Edman	"Yes"
Mayor Griffin	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Ward	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"

The bill, having received majority approval of the council, was adopted and became Ordinance 10370.

## NEW BUSINESS

Bill 10523, granting a Special Use Permit Amendment for a restaurant with outdoor seating and approving the Site Plan on the property known as 10310/10312 Manchester Road subject to certain conditions, was brought before the council. Motion was made by Council Member Ward and seconded by Council Member Luetzow to accept the bill for first reading approval. The motion was unanimously approved.

The bill received first reading approval and was held over.



WHERE COMMUNITY AND SPIRIT MEET<sup>4</sup>

## DRAFT

Bill 10524, vacating a 158' x 5' utility easement at 1035 North Kirkwood Road as recorded in Book 363, Page 310, St. Louis County, Missouri, was brought before the council. Motion was made by Council Member Sears and seconded by Council Member Duwe to accept the bill for first reading approval. The motion was unanimously approved.

The bill received first reading approval and was held over.

Bill 10525, providing for the continuation of a sales tax in the amount of one-half of one percent for the purpose of funding Capital Improvements and calling an election on the question of whether to continue to impose such sales tax; designating the time of holding said election; and authorizing and directing the City Clerk to give notice of said election, was brought before the council. Motion was made by Council Member Zimmer and seconded by Council Member Luetzow to accept the bill for first reading approval. A discussion took place. The motion was unanimously approved.

The bill received first reading approval and was held over.

Bill 10526, appropriating \$19,507 from the Equitable Sharing Fund Balance to Account #205-1201-429.75.05 for the purchase of 90 Sig Sauer P320 Pistols for the Police Department, was brought before the council. Motion was made by Council Member Ward and seconded by Council Member Luetzow to accept the bill for first reading approval. A discussion took place. The motion was unanimously approved.

The bill received first reading approval and was held over.

Bill 10527, appropriating \$146,150 from the Park Sales Tax Fund Reserves to Account #302-2001-600.75.04, Project #PR1701, accepting the bid of Nutoys Leisure Products, Inc. in the amount of \$175,077 (pursuant to HGACBuy Cooperative Contract) for playground equipment for Fillmore Park and authorizing and directing the Mayor to enter into a contract, was brought before the council. Motion was made by Council Member Sears and seconded by Council Member Luetzow to accept the bill for first reading approval. A discussion took place. The motion was unanimously approved.

The bill received first reading approval and was held over.

Bill 10528, amending the Kirkwood Code of Ordinances, Chapter 2, Article VI. Divisions 1-7, "Purchasing", was brought before the council. Motion was made by Council Member Ward and seconded by Council Member Zimmer to accept the bill for first reading approval. A discussion took place. The motion was unanimously approved.



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# DRAFT

The bill received first reading approval and was held over.

Bill 10529, appropriating \$312,382 from the Electric Fund to the Circuit Upgrades Account, Project #EL1701 for Distribution System Upgrades to Circuit 8 for the Electric Department, was brought before the council. Motion was made by Council Member Duwe and seconded by Council Member Zimmer to accept the bill for first reading approval. The motion was unanimously approved.

The bill received first reading approval and was held over.

Resolution 159-2016, transferring funds in the amount of \$58,000 from Account #301-1401-600.75.14 to Account #302-2001-600.75.04 (Park Improvements), Project #PR1701, accepting the bid of Ideal Landscaping Group, Inc. in the amount not to exceed of \$533,098 (which includes a contingency of \$25,000) for Fillmore Park Implementation and authorizing and directing the Mayor to enter into a contract, was brought before the council. Motion was made by Council Member Sears and seconded by Council Member Luetzow to accept the Resolution as read. A discussion took place.

Roll Call Vote as Follows:

Council Member Edman	"Yes"
Mayor Griffin	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Ward	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"

### CONSENT AGENDA ITEMS FOR DISCUSSION

Resolution 161-2016, authorizing a contract amendment to be issued to JW Fuller Construction, LLC for an amount not to exceed \$51,378 (includes \$8,563 contingency) for Firehouse 1 and 3 surface repairs and painting for the Facilities Operations Department, was brought before the council. Motion was made by Council Member Zimmer and seconded by Council Member Luetzow to accept the Resolution as read. A discussion took place.

Roll Call Vote as Follows:

Council Member Edman	"Yes"
Mayor Griffin	"Yes"
Council Member Luetzow	"Yes"



WHERE COMMUNITY AND SPIRIT MEET

# DRAFT

Council Member Sears	"Yes"
Council Member Ward	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"

## CITY COUNCIL REPORTS

Mayor Griffin reported that the Kirkwood High Pioneers football team and Vianney both won the Football State Championship in their classes. The Kirkwood School District, along with support from the City of Kirkwood, will be holding a pep rally for the Kirkwood High Pioneers on Saturday, December 3<sup>rd</sup> at 2 p.m. at Station Plaza.

Council Member Sears commended staff and all those involved in drafting the new Purchasing Ordinance.

Council Member Luetzow thanked staff for the new Purchasing Ordinance and reported that the Board of Adjustment will hold another special meeting on Monday, December 5<sup>th</sup> at 7 p.m. to continue discussion of Vianney's variance request.

## CHIEF ADMINISTRATIVE OFFICER REPORT

Mr. Hawes reported that the City of Kirkwood received a Liquor License Application to sell intoxicating liquor by the drink, plus Sundays, for Kirkwood Brewhouse, 10312 Manchester Road. Motion was made by Council Member Ward and seconded by Council Member Sears to approve the request. The request was unanimously approved.

## CITY ATTORNEY REPORT

Mr. Hessel had nothing to report.

## CITY CLERK REPORT

Mrs. Montañó had nothing to report.

## ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned. The next regular council meeting is scheduled for December 15, 2016, at 7:00 p.m.

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Betty Montañó, MMC/MPCC  
City Clerk

**Approved:**

City of Kirkwood – Council Meeting Minutes  
December 1, 2016

RESOLUTION 162-2016

A RESOLUTION TRANSFERRING \$11,000 FROM ONE WATER DEPARTMENT OPERATING ACCOUNT TO ANOTHER TO COVER THE INCREASE IN REPAIR AND MAINTENANCE OF WATER MAINS.

WHEREAS, there are excess funds in Account #505-2215-481.75.06, Project WA1705 due to the low bid received for the purchase of the Water Department back hoe, and

WHEREAS, there has been an increase in the number of repairs and maintenance of water mains and \$11,000 is needed in anticipation of water main breaks brought on by cold weather temperatures, and

WHEREAS, staff recommends that \$11,000 be transferred from Account #505-2215-481.75.06, Project WA1705 to Account #505-2214-481.66.13 to fund future water main breaks.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Funds in the amount of \$11,000 are hereby transferred from Account #505-2215-481.75.06, Project WA1705 to Account #505-2214-481.66.13 to fund anticipated water main breaks.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The Water Department is requesting the transfer for \$11,000 from Project WA1705 account 505-2215-481.75-06 to account 505-2214-481.66-13 (Operating Supplies, mains, pipes, fittings). Funds in the operating account are used in the daily repair and maintenance of water mains. This year the department has been able to increase their maintenance activities. The \$11,000 request is needed in anticipation of water main breaks brought on by cold weather temperatures.

There is excess funds in Project WA1705 account 505-2215-481.75-06 due to the low bid received for the purchase of the Water Department back hoe.

Recommendations and Action Requested:

It is recommended that the City Council authorize the transfer of \$11,000 from Project WA1705 account 505-2215-481.75-06 to account 505-2214-481.66-13 (Operating Supplies, mains, pipes, fittings).

Alternatives Available:

Cost: \$11,000.00 Account #: 50522154817506 Project #: WA1705 Budgeted: YES

If YES, Budgeted Amount: \$42,199.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Bill Bensing

Date: 12/5/2016

Authenticated: bensingwe

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/6/2016

Authenticated: weidledc

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Transfer of Funds

From Account # or Fund Name: 505-2215-481.75-06

To Account # or Fund Name: 505-2214-481.66-13

Finance Director's Comments:

BY: John Adams

Date: 12/6/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 12-9-16

RESOLUTION 163-2016

A RESOLUTION APPOINTING MATTHEW BARTHELMASS TO THE GREENTREE FESTIVAL COMMITTEE FOR A TERM THROUGH DECEMBER 2019.

WHEREAS, the Greentree Festival Committee has three individuals formally appointed to the Committee, and

WHEREAS, current members include Debbie Stream and Linda Ross who are appointed through the 2017 and 2018 festivals respectively, and

WHEREAS, Matthew Barthelmaass has agreed to serve on the Committee for a term to commence upon appointment through December 31, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Matthew Barthelmaass is hereby appointed to the Greentree Festival Committee for a term through December 2019.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

**CITY OF KIRKWOOD**

**Volunteer Profile**

**139 S. Kirkwood Road, Kirkwood, Missouri 63122**

**(314) 822-5802**

**Fax: (314) 822-5863**

**Website: www.kirkwoodmo.org**

**\*The website address contains information on the various boards that may assist in making your decision.**

**PLEASE NOTE:** *This City Council is composed of Board and Commission Members living within the*

**Supplying the following information will assist the Mayor and City Council in considering your interest in a City Board or Commission. (Forms remain on file with the City Clerk for two years). The information provided is considered public information. Submission of a completed form does not guarantee placement on a Board or Commission. You must reside in the City of Kirkwood to be considered for placement on a Board of Commission.**

**Personal/Home Information**

**Date:** 12-07-2016

**Name:** Matthew R Barthelmass

**Address:** 753 Craig Drive, Kirkwood, MO

**Employment Information:**

**Employer's Name:** City of St John Police Dept

**Address:** 8944 St Charles Rock Rd, 63114

**Contact Information:**

**Day Phone:** 314-909-4913

**Evening Phone:** 314-575-4883

**Fax:** \_\_\_\_\_

**Email:** barthelmass@sbcglobal.net

**Part I: Please indicate the areas in which you have an interest:**

Write (1) for STRONG INTEREST or (2) for MODERATE INTEREST. Leave blank if limited or no interest.

	Aquatic Advisory Committee		Landmarks Commission
	Architectural Review Board		Library Board
	Board of Adjustment		Local Housing Authority
	Civil Service Commission		Market Committee
	Finance Committee		Park Board
1,2	Greentree Festival Committee		Pension Board
	Human Rights Commission*		Planning and Zoning Commission
	Industrial Development Authority		Urban Forestry Commission
	Kirkwood Arts Commission		Public Facilities Authority

**Part II: Background Information:** This section is designed to learn more information about you – your community interests and your educational and professional background. If you have a resume, please attach a copy to this form. Please note, some appointments must be filled by specific professionals (engineer, attorney, architect, etc.) This information is available through the City Clerk at 314-822-5802.

**Education & Employment Information:**

Police Sergeant, St John Police Department-15 years

Bachelors in Criminal Justice-Columbia College

Master in Criminal Justice Administration (Completion May 2017)-Lincoln University

**Previous Board and Commission Appointments:**

Greentree Festival Committee Member August 2007-Present

**Community Activities:**

Robinson Elementary PTO President 2013-2015

**Other Information:**

**Please return completed form to:**

**Betty Montaño, City Clerk**

139 S. Kirkwood Road

Kirkwood, MO 63122

(314) 822-5802 Fax: (314) 822-5863

**USE BACK OF FORM TO PROVIDE ADDITIONAL INFORMATION**

RESOLUTION 164-2016

A RESOLUTION TRANSFERRING \$10,000 FROM THE CONTINGENCY ACCOUNT TO AN EXPENDITURE ACCOUNT TO COMPLETE THE STREET TREE INVENTORY IN FISCAL YEAR 2016/2017.

WHEREAS, the Street Tree Inventory is approximately 60% complete, and

WHEREAS, the City received notice that we will receive a TRIM grant again this fiscal year in the amount of \$10,000, and

WHEREAS, staff recommends that \$10,000 be transferred from Contingency Account #101-1102-412.69.04 to Expenditure Account #101-1102-412.31.08 to fund completion of the Street Tree Inventory.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Funds in the amount of \$10,000 are hereby transferred from Contingency Account #101-1102-412.69.04 to Expenditure Account #101-1102-412.31.08 to fund completion of the Street Tree Inventory.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

Step #1:

Strategic Plan Select... Goal # & Title

### Background To Issue:

Emerald Ash Borer has been found in Creve Coeur and in Webster Groves. The tree inventory is approximately 60% complete. The city received notice that we will receive a TRIM grant again this fiscal year in the amount of \$10,000 but that will not allow us to complete the inventory this year. To develop an effective plan to manage the city's Ash trees, the inventory needs to be completed sooner rather than later.

### Recommendations and Action Requested:

Staff is recommending transferring \$10,000 from Contingency account 101-1102-412.69-04 to expenditure account 101-1102-412.31-08 in order to complete the street tree inventory this fiscal year.

### Alternatives Available:

Cost: \$10,000.00 Account #: 10111024123108 Project #: Budgeted: NO

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

ArborPro is scheduled to be in Kirkwood in late December to continue the tree inventory under the terms of the TRIM grant from the MO Dept of Conservation. We would like to ask them to extend their time in Kirkwood and complete the inventory so we can move forward with developing a management plan for the Ash trees.

BY: Georgia Ragland

Date: 11/23/2016

Authenticated: raglangl

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

### Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/7/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Transfer of Funds

From Account # or Fund Name: 10111024126904

To Account # or Fund Name: 10111024123108

Finance Director's Comments:

BY: John Adams

Date: 12/7/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 12-9-16

RESOLUTION 165-2016

A RESOLUTION AMENDING RESOLUTION 36-2016 BY INCREASING THE AMOUNT OF THE CONTRACT WITH ENTERPRISE INDUSTRIAL CONSTRUCTION FROM THE AMOUNT NOT TO EXCEED OF \$286,258 TO AN AMOUNT NOT TO EXCEED OF \$309,221.67 FOR WATER MAIN REPLACEMENT ON NELDA AVENUE AND NORTON AVENUE.

WHEREAS, the Director of Public Services is requesting that the amount of \$286,258 approved in Resolution 36-2016 be increased to \$309,221.67, and

WHEREAS, the construction cost exceeded the Council approved limit by \$22,963.67 due to an additional 100' extension of water main on Norton Avenue, additional pavement replacement on Norton Avenue and additional pavement restoration on Nelda Avenue due to a conflict with an MSD storm water main, and

WHEREAS, funds are available in Account #505-2215-481.75.15, Project #WA1701.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The amount of the contract with Enterprise Industrial Construction in the amount not to exceed of \$286,258 is hereby increased to the amount not to exceed of \$309,221.67 for water main replacement on Nelda Avenue and Norton Avenue.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal No. 4 Improve Public Infrastructure; Objective B.

### Background To Issue:

In April of this year the City Council authorized \$286,258 for the removal and replacement of deteriorating water mains on Nelda and Norton. The construction cost exceeded the Council approved limit by \$22,963.67. These cost were related to an additional 100' extension of water main on Norton, additional pavement replacement on Norton and additional pavement restoration on Nelda due to a conflict with an MSD storm water main. This increase will require the transfer of \$17,978.70 from Project WA1703 to Project WA1701

### Recommendations and Action Requested:

It is recommended that the City Council authorize an increase of \$22,963.67 for Contract No. 11287 for these additional construction cost for the replacement of water main and pavement repairs on Nelda and Norton.

In addition authorize the transfer of \$17,978.70 from Project WA1703 to Project WA1701.

### Alternatives Available:

Cost: \$22,963.67 Account #: 50522154817515 Project #: WA1701 Budgeted: YES

If YES, Budgeted Amount: \$22,963.67 If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

BY: Bill Bensing

Date: 12/5/2016

Authenticated: bensinwe

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (**Must have Purchasing Director's approval**).

### Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/7/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Transfer of Funds

From Account # or Fund Name: \_\_\_\_\_

To Account # or Fund Name: \_\_\_\_\_

Finance Director's Comments:

Same account number transfer from one project to another no overall budgetary increase.

BY: John Adams

Date: 12/7/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

\_\_\_\_\_

BY: 

Date: 12-9-16

RESOLUTION 36-2016

A RESOLUTION ACCEPTING THE BID OF ENTERPRISE INDUSTRIAL CONSTRUCTION IN THE NOT TO EXCEED AMOUNT OF \$286,258 (INCLUDES CONTINGENCY OF \$37,338) FOR WATER MAIN REPLACEMENT ON NELDA AVENUE AND NORTON AVENUE AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City solicited bids for water main replacement on Nelda Avenue and Norton Avenue, and

WHEREAS, the most responsible bid received was that of Enterprise Industrial Construction in a not to exceed amount of \$286,258 (includes contingency of \$37,338) which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Purchasing and the Director of Public Services, and

WHEREAS, funds are available in Account #505-2215-481.75.15, Project WA1601.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Enterprise Industrial Construction in the not to exceed amount of \$286,258 (includes contingency of \$37,338) for water main replacement on Nelda Avenue and Norton Avenue is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Enterprise Industrial Construction in the not to exceed amount of \$286,258 for water main replacement on Nelda Avenue and Norton Avenue.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 7<sup>TH</sup> DAY OF APRIL 2016.

  
\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

  
\_\_\_\_\_  
City Clerk

RESOLUTION 166-2016

A RESOLUTION AMENDING RESOLUTION 114-2016 BY INCREASING THE AMOUNT OF THE CONTRACT WITH SUNGARD FROM THE AMOUNT NOT TO EXCEED OF \$13,640 TO AN AMOUNT NOT TO EXCEED OF \$15,800 FOR TESTING OF THE CURRENT FILE TRANSFER ROUTINE FROM THE ELSTER AMI SYSTEM.

WHEREAS, the Director of Electric is requesting that the amount of \$13,640 approved in Resolution 114-2016 be increased to \$15,800, and

WHEREAS, Sungard requires an additional \$2,160 to test the modifications to the current file transfer routine from the Elster AMI system, and

WHEREAS, funds are available in Account #501-2115-480.75.15, Project #EL1614.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The amount of the contract with Sungard in the amount not to exceed of \$13,640 is hereby increased to the amount not to exceed of \$15,800 for testing of the current file transfer routine from the Elster AMI System.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal 1 - Enhance the Quality of Life for Kirkwood Citizens

### Background To Issue:

The Electric Department received council approval to move forward with a new Automated Metering Infrastructure (AMI) system. The department also received approval to spend \$13,640 to have Sungard make modifications to the Itron file transfer routine associated with the billing system in order to accommodate the new AMI system. Sungard now requires an additional \$2,160 to test the modifications to the system.

### Recommendations and Action Requested:

Approval of a resolution authorizing the Mayor to modify the agreement with Sungard to test the current file transfer routine to process bills associated with meter readings from the new Elster AMI system. The new agreement is not to exceed \$15,800.00 during the system installation period and is subject to council budget approval in subsequent years.

### Alternatives Available:

Sungard has proprietary rights to the current billing software. The department has no choice but to utilize Sungard to test the modifications to the system.

Cost: \$2,160.00 Account #: 50121154807515 Project #: EL1614 Budgeted: YES

If YES, Budgeted Amount: \$67,303.00 If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

The department strongly recommends approval of this resolution.

BY: Mark Petty

Date: 12/6/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

### Approve

### Purchasing Director's Comments:

BY: David Weidler

Date: 12/7/2016

Authenticated: weidledc

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 12/7/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 12-9-16

RESOLUTION 114-2016

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SUNGARD AS A SINGLE SOURCE PROVIDER IN AN AMOUNT NOT TO EXCEED \$13,640 TO MODIFY THE CURRENT FILE TRANSFER ROUTINE FROM THE ELSTER AMI SYSTEM.

WHEREAS, the City Council approved Resolution 84-2016 authorizing the Mayor to enter into a contract with Elster Solutions, LLC for an Automatic Meter Reading System for the Electric Department, and

WHEREAS, in order to process electric service bills, Sungard, the City of Kirkwood's billing software system provider, must modify the file transfer routine to accommodate the Elster AMI System, and

WHEREAS, Sungard is a single source provider to provide the current file transfer routine from the Elster AMI System, and

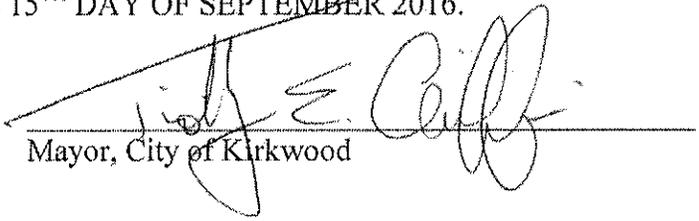
WHEREAS, funds are available in Account #501-2115-480.75.15, Project #EL1614.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into an agreement with Sungard as the single source provider in an amount not to exceed \$13,640 to modify the current file transfer routine from the Elster AMI System.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF SEPTEMBER 2016.

  
\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

  
\_\_\_\_\_  
Deputy City Clerk

RESOLUTION 167-2016

A RESOLUTION RENEWING THE CONTRACT FOR VISION INSURANCE WITH AMERITAS GROUP FOR A 4-TIER BENEFIT IN THE AMOUNT OF \$22,861.44 FOR A FOUR-YEAR PERIOD FROM APRIL 1, 2017 THROUGH MARCH 31, 2021.

WHEREAS, the City's vision insurance benefit contract expires as of March 31, 2017, and

WHEREAS, Gallagher Benefit Services has been working with Ameritas to finalize quotes on renewing coverage, and

WHEREAS, Ameritas offers two plans, from different networks,

WHEREAS, staff recommends renewing with Ameritas Group for a four-year period with no increase in premiums for the Eyemed and the VSP options, and

WHEREAS, funds are available in various departmental accounts.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The contract for vision insurance with Ameritas Group for the Choice Plan with no increase in premiums for the Eyemed and the VSP options is hereby renewed for a four-year period from April 1, 2017 through March 31, 2021 at a cost of \$22,861.44 per year.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan NO

Goal # & Title

### Background To Issue:

The current contract for employee vision insurance will end on 3/31/17 so we asked Gallagher Benefit Services to conduct a bid process. Bid results are difficult to compare since each company's vision benefit offered is slightly different. One thing that all carriers were asked to do was to present 4-tier pricing similar to the four tiers used in health insurance (single, EE+spouse, EE+children, family). The current provider, Ameritas, offers the only dual-network and includes VSP which is the most popular network with employees. Other providers are able to offer vision insurance cheaper but not with apples to apples benefits and with some disruption to the current providers employees are utilizing in-network.

### Recommendations and Action Requested:

Usually Gallagher Benefit Services can provide a clear-cut recommendation but with as many variables that are present, they did not have a favorite. Ameritas has provided good service and increased the benefits provided at no increase in premiums. Staff is recommending accepting the 4-tier benefit of Ameritas for a four year period ending 3/31/21.

### Alternatives Available:

Either NVA or EyeMed could be options with slightly different benefit offerings at lower cost but some employees would find their current vision providers would no longer be in-network.

Cost: \$22,861.44

Account #: various

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$23,821.00

If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

Although the current contract ends in March, 2017 since open enrollment is the month of February a decision has to be made at least by early January.

BY: Georgia Ragland

Date: 12/6/2016

Authenticated: raglangl

*You can attach up to 3 files along with this request.*



Kirkwood Exec summary  
updated Vision bid  
results12.5.2016.docx  
Microsoft Word Document  
130 KB



Kirkwood Vision Marketing  
Summary - 4 1 17 rev 12-5-  
16.pdf  
Adobe Acrobat Document  
198 KB



Vision network analysis -  
Kirkwood - 4-1-17.pdf  
Adobe Acrobat Document  
121 KB

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing**

Director's approval).

Approve

Purchasing Director's Comments:

.....

BY: David Weidler

Date: 12/7/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

.....

To Account # or Fund Name:

.....

Finance Director's Comments:

.....

BY: John Adams

Date: 12/7/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

.....

BY: \_\_\_\_\_

Date: \_\_\_\_\_



## Group Vision Program Bid - Updated Results – April 1, 2017

**Summary:** The City currently offers an insured group vision program via Ameritas' dual choice (VSP/Eyemed) offering. The City covers the cost of the Single rate in both plan options, with most employees enrolled in the VSP option. The Ameritas rate extension is expiring 3/31/17, so a planned bid process for the Vision program was conducted.

- **Incumbent Renewal (Ameritas):**
  - Initial: Ameritas offered a +0% renewal, for 2 years, at current plan levels
  - Final: Ameritas offered a +0% renewal, for 2 years, to include the following enhancements:
    - Both the contacts and frame allowances increased to \$130 each
    - Separate benefit for “fitting fee” (does not use up the allowance benefit)
  - Ameritas offers richest benefit for transitions (photochromatic lenses), tints/dyes
- **Alternative carriers:** No other carriers offer a dual choice offering, but a number of carriers offered very competitively priced alternatives to the current
  - **Network:** Carrier networks vary from vendor to vendor.
    - EyeMed offers most favorable match (87% of providers used by employees in VSP, and 91% of plan dollars paid.); higher when adding in the City's current EyeMed plan participants. EyeMed match on VSP spend is even slightly better than VSP (86% - 90%)
  - **Benefits:** Carriers in general were willing to match/mirror benefits
    - Superior offers lowest employee out of pocket cost for fitting fees, but a less than ideal network match (though it does include Walmart/Sam's)
  - **Pricing/Overall:** All alternative carrier quotes are below current rates:
    - **VBA** offers lowest cost (37.1% below current), but has quoted a \$110 frame allowance benefit, and has least attractive network match (44%-50%)
    - **NVA** offers next lowest cost (18.8% below current) and generally favorable network match (68% - 79%), including Walmart/Sam's
    - **Superior** offers the next lowest cost (16.5% below current), and offers attractive benefits, but network match is less than ideal (52-53%)
    - **EyeMed** offers pricing at 11.1% below current, offers a \$10 exam benefit (vs. others at \$15) and offers the best network match by far, but does have higher copays than some on Progressives and lens fit/follow up benefit
- **Rate Structure:** We requested pricing on both a 2-tier (current) rate basis, as well as a 4-tier rate basis, and are shown in the attached.
- **Next Steps:** Discussion/Decisions/Implementations for 4/1/17

# City of Kirkwood: Vision Market Analysis; 2-Tier Illustration - 4/1/17 effective date

*The information contained herein is subject to the disclosures and disclaimers on the final page of this illustration*

Carrier	Ameritas Current/Renewal		Ameritas Revised Renewal		NVA Option 2		Superior Vision Option 2		Eyemed Option 1		VBA Option 1	
	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network
Exam copay	Covered 100% after \$15 Copay	Reimbursed up to \$43	Covered 100% after \$15 Copay	Reimbursed up to \$43	Covered 100% after \$15 Copay	Reimbursed up to \$50	Covered 100% after \$15 Copay	Up to \$34 (MD), Up to \$26 (OD)	100% after \$10 Copay	\$40	100% after \$15 Copay	Reimbursed up to \$40
Frames	Covered up to \$120 retail	Up to \$43	Covered up to \$130 retail	Up to \$43	Covered 100% up to \$130 retail; 20% discount for amt over \$130	Up to \$65	\$130 Retail Allowance; 20% discount for amt over \$130	Up to \$63	\$0 Copay; \$130 Allowance; 20% off balance over \$130	Up to \$91	\$50 wholesale allowance (valued at \$125-\$150 retail)	Up to \$50
Lenses												
Single	Covered 100% after \$15 Copay	Reimbursed up to: \$26	Covered 100% after \$15 Copay	Reimbursed up to: \$26	Covered 100% after \$15 Copay	Reimbursed up to: \$25	Covered 100% after \$15 Copay	up to \$29	Covered 100% after \$15 Copay	\$30	100% after \$15 Copay	up to \$40
Bifocal	Covered 100% after \$15 Copay	Reimbursed up to: \$43	Covered 100% after \$15 Copay	Reimbursed up to: \$43	Covered 100% after \$15 Copay	Reimbursed up to: \$40	Covered 100% after \$15 Copay	up to \$43	Covered 100% after \$15 Copay	\$50	100% after \$15 Copay	up to \$60
Tyfoal	Covered 100% after \$15 Copay	Reimbursed up to: \$60	Covered 100% after \$15 Copay	Reimbursed up to: \$60	Covered 100% after \$15 Copay	Reimbursed up to: \$55	Covered 100% after \$15 Copay	Up to \$53	Covered 100% after \$15 Copay	\$70	100% after \$15 Copay	up to \$80
Lenticular	Covered 100% after \$15 Copay	Reimbursed up to: \$91	Covered 100% after \$15 Copay	Reimbursed up to: \$91	Covered 100% after \$15 Copay	Reimbursed up to: \$80	Covered 100% after \$15 Copay	Up to \$84	Covered 100% after \$15 Copay	\$70	100% after \$15 Copay	up to \$120
Contacts (in lieu of frames)												
Elective	\$105 Allowance (incl. lens fitting fees)	Reimbursed up to: \$100	\$130 Allowance (now with separate allowance for lens fitting fees)	Reimbursed up to: \$100	\$130 Retail; (includes lens fitting fee)	Reimbursed up to: \$104	\$130 Retail; \$15 Contact Lens Fitting Copay	Up to \$100	\$130 Allowance; \$40 Contact Lens Fitting Copay	Up to \$130	\$110 Allowance (fitting fee not included, at 15% disc.)	\$110
Medically Necessary	Covered in Full	Reimbursed up to: \$210	Covered in Full	Reimbursed up to: \$210	Covered in Full	Reimbursed up to: \$200	Covered in Full	Up to \$210	Covered in Full	\$240	Covered in Full	\$650
Frequency												
Exams	12 months		12 months		12 months		12 months		12 months		12 months	
Lenses	12 months		12 months		12 months		12 months		12 months		12 months	
Frames	12 months		12 months		12 months		12 months		12 months		12 months	
Rates												
#	VSP		EyeMed		EyeMed		VSP		EyeMed		VSP	
	Current	Renewal	Current	Renewal	Current	Renewal	Current	Renewal	Current	Renewal	Current	Renewal
Employee	151	130	37	37	239	21	37	21	37	37	37	37
Employee + Family	110	\$6.96	\$6.52	\$6.52	\$6.96	\$6.52	\$6.52	\$6.52	\$6.52	\$6.52	\$6.52	\$6.52
Monthly Premium	125	\$17.40	\$17.40	\$16.36	\$17.40	\$16.36	\$16.36	\$16.36	\$16.36	\$16.36	\$16.36	\$16.36
Annual Premium		\$3,201		\$3,201		\$3,201		\$3,201		\$3,201		\$3,201
Annual Premium Difference		\$38,413		\$38,413		\$38,413		\$38,413		\$38,413		\$38,413
Commissions		0%		0%		0%		0%		0%		0%
Rate Guarantee		24 Month		Insight		48 Months		Insight		48 Months		Insight
Network		VSP		Insight		VSP		Insight		VSP		Insight

# City of Kirkwood: Vision Market Analysis; 4-Tier Illustration - 4/1/17 effective date

The information contained herein is subject to the disclosures and disclaimers on the final page of this illustration

Carrier	Ameritas		NVA		Superior Vision		Eyemed		VBA	
	Current/Renewal		Revised Renewal		Option 2		Option 2		Option 1	
In-Network / Out-of-Network	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network	In Network	Out of Network
Exam copay	Covered 100% after \$15 Copay	Reimbursed up to \$43	Covered 100% after \$15 Copay	Reimbursed up to \$43	Covered 100% after \$15 Copay	Reimbursed up to \$30	Covered 100% after \$15 Copay	100% after \$10 Copay	100% after \$15 Copay	Reimbursed up to \$40
Frames	Covered up to \$120 retail	Up to \$43	Covered up to \$130 retail	Up to \$43	Covered 100% up to \$130 retail; 20% discount for amt. over \$130	Up to \$65	\$130 Retail Allowance; 20% discount for amt over \$130	Up to \$91	100% after \$15 Copay	Up to \$50
Lenses										
Single	Covered 100% after \$15 Copay	Reimbursed up to: \$26	Covered 100% after \$15 Copay	Reimbursed up to: \$26	Covered 100% after \$15 Copay	Reimbursed up to: \$25	Covered 100% after \$15 Copay	Covered 100% after \$15 Copay	100% after \$15 Copay	up to \$40
Bifocal	Covered 100% after \$15 Copay	Reimbursed up to: \$43	Covered 100% after \$15 Copay	Reimbursed up to: \$43	Covered 100% after \$15 Copay	Reimbursed up to: \$40	Covered 100% after \$15 Copay	Covered 100% after \$15 Copay	100% after \$15 Copay	up to \$60
Trifocal	Covered 100% after \$15 Copay	Reimbursed up to: \$60	Covered 100% after \$15 Copay	Reimbursed up to: \$60	Covered 100% after \$15 Copay	Reimbursed up to: \$55	Covered 100% after \$15 Copay	Covered 100% after \$15 Copay	100% after \$15 Copay	up to \$80
Lenticular	Covered 100% after \$15 Copay	Reimbursed up to: \$91	Covered 100% after \$15 Copay	Reimbursed up to: \$91	Covered 100% after \$15 Copay	Reimbursed up to: \$80	Covered 100% after \$15 Copay	Covered 100% after \$15 Copay	100% after \$15 Copay	up to \$120
Contacts (in lieu of frames)										
Elective	\$105 allowance (incl. lens fitting fees)	Reimbursed up to: \$400	\$130 allowance (now with separate allowance for lens fitting fees)	Reimbursed up to: \$100	\$130 Retail; (includes lens fitting fee)	Reimbursed up to: \$104	\$130 Retail; \$15 Contact Lens Fitting Copay	Up to \$100	\$110 Allowance (fitting fee not included, at 15% disc.)	\$110
Medically Necessary	Covered in Full	Reimbursed up to: \$210	Covered in Full	Reimbursed up to: \$210	Covered in Full	Reimbursed up to: \$200	Covered in Full	Up to \$210	Covered in Full	\$650
Frequency										
Exams	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months
Lenses	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months
Frames	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months	12 months
Rates										
#	VSP	Eyemed	VSP	Eyemed	VSP	Eyemed	VSP	Eyemed	VSP	Eyemed
Employee	Current 299 Employees	Renewal 37 Employees	Current 239 Employees	Renewal 37 Employees	Current 239 Employees	Renewal 37 Employees	Current 239 Employees	Renewal 37 Employees	Current 239 Employees	Renewal 37 Employees
Employee + Spouse	\$6.96	\$6.52	\$6.96	\$6.52	\$6.96	\$6.52	\$6.96	\$6.52	\$6.96	\$6.52
Employee + Child (ren)	\$17.40	\$13.88	\$17.40	\$13.88	\$17.40	\$13.88	\$17.40	\$13.88	\$17.40	\$13.88
Employee + Family	\$17.40	\$13.04	\$17.40	\$13.04	\$17.40	\$13.04	\$17.40	\$13.04	\$17.40	\$13.04
Monthly Premium	\$17.40	\$18.76	\$17.40	\$18.76	\$17.40	\$18.76	\$17.40	\$18.76	\$17.40	\$18.76
Annual Premium Difference										
Commissions	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Rate Guarantee	24 Month	Insight	48 Months	Insight	48 Months	Insight	48 Months	Insight	48 Months	Insight
Network	VSP	Insight	VSP	Insight	VSP	Insight	VSP	Insight	VSP	Insight



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BUSINESS WITHOUT BARRIERS™

## City of Kirkwood - Vision RFP eff. 4/1/17 - Additional Discounts/Options Analysis - IN NETWORK

CARRIER	Ameritas	NVA	Superior Vision	EyeMed	VBA
Plan Status:	Incumbent/Rev. Renewal				
In-Network / Out-of-Network:	In-Network	In-Network	In-Network	In-Network	In-Network
Frame Allowance	\$130	\$130	\$130	\$130	\$110
<b>Standard Plastic Lenses</b>					
Standard Progressive	Up to provider's contracted fee for Lined <i>Bifocal</i> Lenses. The patient is responsible for the difference between the base lens and the Progressive Lens	\$50 Charge  \$100 Charge	20% off amount over retail lined <i>trifocal</i> lens, including lens options	\$80 Copay  Tiers 1-3: \$100 - \$125 Copay; Tier 4: \$80 copay then 20% off charge less \$120 allowance	\$45 Charge  \$80/\$101 Charge
Premium Progressive					
<b>Contact Lens Exam Options</b>					
Standard Contact Lens Fit & Follow-Up	Member cost up to \$60	Fees deducted from lens retail allowance - fee deduction is provider specific	\$15 Copay Covered up to \$50 retail allowance, following \$15 co-pays	\$40 copay  10% off retail price	15% off Usual, Customary, and Reasonable allowed amount
Premium Contact Lens Fit & Follow-Up					
<b>Lens Options - Additional charges unless otherwise noted</b>					
UV Treatment	\$16	\$12	\$15	\$15	\$12
Tint (Solid & Gradient)	Covered in Full	\$10-\$12	\$25	\$15	\$10
Standard Plastic Scratch Coating	\$17-\$33	\$10	\$13	\$15	Covered in full
Standard Polycarbonate - Adults	\$33	\$25-\$30	\$40 - 20% off retail	\$40	\$19-\$30
Standard Polycarbonate - Under 19/Dependents	Covered in Full	\$25-\$30	\$40 - 20% off retail	\$40	Covered in full
Standard Anti-Reflective Coating	\$43-\$85	\$40	\$50	\$45-\$68	\$40
Transitions (Photochromatic lens option)	Covered in Full	\$65-\$70	\$80 - 20% off retail	\$75	\$60-\$70
Other Add-Ons	20% discount above allowed retail allowance	20% off retail	30% discount after member has utilized covered benefit	40% discount after member has utilized covered benefit	Frame: 20% off amount over allowance; Lens: 20% off retail
<b>LASIK Surgery</b>					
Laser Vision Correction	15% off standard pricing & 5% off promotional pricing	15% off standard pricing & 5% off promotional pricing	15-50% with in Network Provider (provider dependent)	15% off standard pricing & 5% off promotional pricing	10% off TLC Laser Eye Centers Procedure 40-50% off Quasight Lasik centers

### Vision - Network Provider Disruption Report: Current VSP (Recent 12 months claims) vs. Key Competitors

Provider Name	Charges	Allowed	Paid	VSP Choice Network	NVA	Superior Vision	VBA	EyeMed	NVA		Yes %		NVA		Yes %	
									Row Labels	Count of Provider Name	Row Labels	Sum of Paid	Row Labels	Count of Provider Name	Row Labels	Sum of Paid
Collier, Janet L	\$ 4,152.00	\$ 1,080.00	\$ 900.00	Yes*	Yes	Yes	N	Yes	Yes	57	Yes	\$12,920	Yes			
Kassel, Jerry P	\$ 3,067.00	\$ 965.75	\$ 815.75	Yes*	Yes	Yes	N	Yes	Yes		Yes	\$170	Yes			
Pasterb, Patrick T	\$ 3,456.00	\$ 958.15	\$ 808.15	Yes	Yes	Yes	Y	Yes	Yes	1	**Yes	\$3,527	Yes			
Wal,	\$ 1,046.00	\$ 770.00	\$ 650.00	No	Yes	Yes	Y	No	Yes	27	No	\$16,617	No			79%
Riley, Carrie C	\$ 1,655.00	\$ 728.70	\$ 608.70	Yes	Yes	Yes	Y	Yes	Yes	85	68%		Yes			
Bernier, Paul M	\$ 2,444.00	\$ 695.45	\$ 575.45	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Castellano, Joseph C	\$ 3,026.00	\$ 652.18	\$ 532.18	Yes	No	No	Y	Yes	Yes				Yes			
Thatch, Lisa R	\$ 1,233.00	\$ 493.16	\$ 433.16	Yes*	Yes	Yes	N	Yes	Yes	4	Superior Vision		Yes			
Wilson, Diane G	\$ 1,034.00	\$ 484.50	\$ 394.50	Yes	Yes	Yes	N/A	Yes	Yes	37	N/A	\$759	Yes			
Turtile, Nathan	\$ 1,351.00	\$ 450.00	\$ 390.00	Yes	Yes	Yes	Y	Yes	Yes	37	No	\$7,094	No			
Kahroff, Mark A	\$ 895.00	\$ 438.53	\$ 378.50	Yes	Yes	Yes	Y	Yes	Yes	44	Yes	\$8,784	Yes			
Schroeder, Doug A	\$ 1,691.00	\$ 441.45	\$ 366.45	Yes	Yes	Yes	Y	Yes	Yes	85	52%		Yes			53%
Rosen, Karen B	\$ 1,337.00	\$ 390.50	\$ 345.50	Yes	No	No	Y	Yes	Yes				Yes			
McReynolds, Lorie Michelle	\$ 848.00	\$ 402.75	\$ 342.75	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Schad, Lindsay	\$ 1,374.00	\$ 401.15	\$ 326.15	Yes*	Yes	Yes	N	Yes	Yes	43	VBA		Yes			
Craig, Margit	\$ 1,133.00	\$ 373.50	\$ 313.50	Yes*	Yes	Yes	N	Yes	Yes	43	N	\$7,335	Yes			
Sawyer, Scott M	\$ 937.00	\$ 377.00	\$ 302.00	Yes	No	No	N	Yes	Yes	5	(blank)	\$1,020	Yes			
Birsinger, Jerri L	\$ 925.00	\$ 329.00	\$ 299.00	Yes	Yes	Yes	Y	Yes	Yes	85	44%		Yes			50%
Gonzales, Courtney M	\$ 569.00	\$ 329.00	\$ 299.00	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Gubanyi, Peter M	\$ 1,079.00	\$ 333.95	\$ 273.95	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Smith, Robert E	\$ 903.00	\$ 331.25	\$ 271.25	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Wolf, Michael L	\$ 950.00	\$ 330.25	\$ 270.25	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Lucas, Timothy M	\$ 1,233.00	\$ 344.50	\$ 269.50	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Kesler, Bradford B	\$ 811.00	\$ 313.00	\$ 268.00	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Jessen, Diane M	\$ 697.00	\$ 283.50	\$ 238.50	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Dr,	\$ 268.00	\$ 259.00	\$ 199.00	No	Yes	Yes	N	Yes	Yes				Yes			
Thubbs, Cody	\$ 595.00	\$ 226.00	\$ 196.00	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Bellamy, Todd	\$ 540.00	\$ 224.00	\$ 194.00	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Klinger, Jennifer M	\$ 1,059.00	\$ 247.42	\$ 187.42	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Cerutti, Daniel D	\$ 734.00	\$ 215.00	\$ 170.00	Yes*	**Yes	No	Y	Yes	Yes				Yes			
Toal, Larry	\$ 511.00	\$ 167.00	\$ 152.00	Yes	Yes	Yes	N	Yes	Yes				Yes			
Huff, Douglas L	\$ 460.00	\$ 166.50	\$ 151.50	Yes	No	No	Y	Yes	Yes				Yes			
Brown, Andrew	\$ 437.00	\$ 164.50	\$ 149.50	Yes*	No	No	Y	Yes	Yes				Yes			
Doiron, Ernest C	\$ 354.00	\$ 164.50	\$ 149.50	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Brigham, David W	\$ 485.00	\$ 164.50	\$ 149.50	Yes	Yes	Yes	N	Yes	Yes				Yes			
Murphy, Mary A	\$ 449.00	\$ 164.50	\$ 149.50	Yes	No	No	N	Yes	Yes				Yes			
Bret, Sean M	\$ 875.00	\$ 174.75	\$ 144.75	Yes	Yes	Yes	N	Yes	Yes				Yes			
Spurrer, Mark H	\$ 585.00	\$ 174.75	\$ 144.75	Yes	Yes	Yes	N	Yes	Yes				Yes			
Brawley, Craig M	\$ 1,085.00	\$ 173.70	\$ 143.70	Yes	No	No	Y	Yes	Yes				Yes			
Cole,	\$ 268.00	\$ 140.00	\$ 140.00	No	Yes	No	Y	Yes	Yes				Yes			
Durham, Lisa A	\$ 820.00	\$ 168.50	\$ 138.50	Yes*	Yes	No	N	Yes	Yes				Yes			
Lucas, Cynthia J	\$ 693.00	\$ 167.75	\$ 137.75	Yes	No	No	Y	Yes	Yes				Yes			
Scherman, James	\$ 764.00	\$ 166.50	\$ 136.50	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Shear, Colleen C	\$ 811.00	\$ 166.50	\$ 136.50	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Stroetker, Joseph A	\$ 474.00	\$ 150.02	\$ 135.00	Yes	No	No	Y	Yes	Yes				Yes			
Monie, Thomas L	\$ 633.00	\$ 178.50	\$ 133.50	Yes	No	No	Y	Yes	Yes				Yes			
WORKS, NA, V	\$ 728.00	\$ 163.00	\$ 133.00	No	Yes	No	Y	No	No				Yes			
Ford, Shane E	\$ 385.00	\$ 148.50	\$ 132.50	Yes	No	No	N	Yes	Yes				Yes			
Noonan, Kathryn L	\$ 383.00	\$ 155.52	\$ 125.50	Yes	No	No	N	Yes	Yes				Yes			
Friederich, John	\$ 727.00	\$ 153.74	\$ 123.74	Yes	No	No	Y	Yes	Yes				Yes			
Becker, William L	\$ 545.00	\$ 144.00	\$ 114.00	Yes	No	No	Y	Yes	Yes				Yes			
Hubbard, Joel T	\$ 186.00	\$ 105.00	\$ 105.00	Yes*	Yes	Yes	N	Yes	Yes				Yes			
Malzahn, Schwamb, Kayji B	\$ 117.00	\$ 105.00	\$ 105.00	Yes	Yes	Yes	N	Yes	Yes				Yes			
Bohgan, George M	\$ 610.00	\$ 115.25	\$ 100.25	Yes	No	No	Y	Yes	Yes				Yes			
Kilgore, Abby C	\$ 488.00	\$ 115.25	\$ 100.25	Yes	Yes	Yes	Y	Yes	Yes				Yes			
Crown Na, Crown	\$ 139.00	\$ 100.00	\$ 100.00	No	Yes	Yes	N	Yes	Yes				Yes			

Ritzel,William V	\$	594.00	\$	114.25	\$	99.25	Yes	No	No	N	Yes
OPTICAL,NA, W	\$	93.00	\$	93.00	\$	93.00	No	Yes	Yes	N	No
Costco,	\$	168.00	\$	105.00	\$	90.00	No	No	No	Y	No
Born-Wolf,Bernita	\$	196.00	\$	119.00	\$	89.00	Yes	Yes	Yes	Y	Yes
Reddan,Mark J	\$	222.00	\$	102.00	\$	87.00	Yes	Yes	Yes	Y	Yes
Charles,	\$	386.00	\$	116.00	\$	86.00	No	No	No	N	Yes
Hands,Andrea L	\$	283.00	\$	103.25	\$	73.25	Yes	Yes	Yes	N	Yes
Haring,Stephen E	\$	505.00	\$	103.25	\$	73.25	Yes	Yes	Yes	Y	Yes
Crowe,Justin M	\$	249.00	\$	96.00	\$	66.00	Yes	Yes	No	N	Yes
Prange,David P	\$	260.00	\$	90.00	\$	60.00	Yes	No	No	Y	Yes
Fogarty,Cortney	\$	231.00	\$	59.50	\$	44.50	Yes*	Yes	Yes	Y	Yes
Hubbard,Sarah D	\$	197.00	\$	59.50	\$	44.50	Yes	Yes	Yes	N	Yes
Kiefer Jr,William F	\$	174.00	\$	59.50	\$	44.50	Yes*	Yes	Yes	N	Yes
Wolk,Deanne M	\$	226.00	\$	59.50	\$	44.50	Yes*	Yes	Yes	N	Yes
Blankenship, Timothy	\$	210.00	\$	59.50	\$	44.50	Yes	Yes	No	N	Yes
Kadlec,Janae U	\$	227.00	\$	59.50	\$	44.50	Yes	No	No	Y	Yes
Mcroy,Kirk P	\$	255.00	\$	59.50	\$	44.50	Yes	N/A	N/A	N	Yes
Sturm,Julie M	\$	130.00	\$	59.50	\$	44.50	Yes	No	No	N	Yes
MCCULLOUGH,EYECARE P	\$	75.00	\$	58.00	\$	43.00	Yes	Yes	No	N	Yes
Bagvasi OD,Thebe	\$	62.00	\$	58.00	\$	43.00	No	Yes	Yes	Y	Yes
Michael,	\$	60.00	\$	58.00	\$	43.00	No	No	No	N	No
Smith,	\$	80.00	\$	58.00	\$	43.00	No	Yes	Yes	N	No
Steele,	\$	60.00	\$	58.00	\$	43.00	No	No	Yes	N	No
Giesler,Gary J	\$	125.00	\$	56.25	\$	41.25	Yes	Yes	No	Y	Yes
Unger,Alice E	\$	137.00	\$	51.75	\$	36.75	Yes	Yes	Yes	N	Yes
Non-MBR-Dr.-Paid-To,	\$	50.00	\$	50.00	\$	35.00	No	No	No	N	No
Hamm,Richard B	\$	75.00	\$	44.11	\$	29.11	Yes	No	No	N	Yes
Hill,Ryan C	\$	69.00	\$	36.50	\$	21.50	Yes	Yes	Yes	N	Yes
Dowling Jr,Patrick	\$	60.00	\$	30.00	\$	15.00	Yes	Yes	Yes	Y	Yes

RESOLUTION 167-2016

A RESOLUTION RENEWING THE CONTRACT FOR VISION INSURANCE WITH AMERITAS GROUP FOR A 4-TIER BENEFIT IN THE AMOUNT OF \$22,861.44 FOR A TWO-YEAR PERIOD FROM APRIL 1, 2017 THROUGH MARCH 31, 2019.

WHEREAS, the City's vision insurance benefit contract expires as of March 31, 2017, and

WHEREAS, Gallagher Benefit Services has been working with Ameritas to finalize quotes on renewing coverage, and

WHEREAS, Ameritas offers two plans, from different networks,

WHEREAS, staff recommends renewing with Ameritas Group for a two-year period with no increase in premiums for the Eyemed and the VSP options, and

WHEREAS, funds are available in various departmental accounts.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The contract for vision insurance with Ameritas Group for the Choice Plan with no increase in premiums for the Eyemed and the VSP options is hereby renewed for a two-year period from April 1, 2017 through March 31, 2019 at a cost of \$22,861.44 per year.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

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Mayor, City of Kirkwood

ATTEST:

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City Clerk

RESOLUTION 168-2016

A RESOLUTION ACCEPTING THE PROPOSAL OF MUELLER & NEFF REAL ESTATE APPRAISERS AND CONSULTANTS, INC. IN A NOT TO EXCEED AMOUNT OF \$18,000 FOR REAL ESTATE APPRAISAL SERVICES FOR THE CMAQ 5502 (605) KIRKWOOD ROAD SIGNAL OPTIMIZATION PROJECT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, a Request for Qualifications was developed and proposals were received for Real Estate Appraisal Services for the CMAQ 5502 (605) Kirkwood Road Signal Optimization Project, and

WHEREAS, a Selection Committee consisting of the Director of Purchasing, Director of Electric, Director of Public Services, City Engineer, and Assistant Director of Purchasing reviewed the proposals, and

WHEREAS, the Selection Committee recommends Mueller & Neff Real Estate Appraisers and Consultants, Inc., as the most qualified to provide Real Estate Appraisal Services for the CMAQ 5502 (605) Kirkwood Road Signal Optimization Project, and

WHEREAS, fund are available in Account #501-2115-480.75.15, Project #EL1616.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The proposal of Mueller & Neff Real Estate Appraisers and Consultants, Inc. in the amount not to exceed of \$18,000 for Real Estate Appraisal Services for the CMAQ 5502 (605) Kirkwood Road Signal Optimization Project is hereby accepted and approved as the most qualified.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Mueller & Neff Real Estate Appraisers and Consultants, Inc. in the amount not to exceed of \$18,000 for Real Estate Appraisal Services for the CMAQ 5502 (605) Kirkwood Road Signal Optimization Project.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal #4 - Improve Public Infrastructure

### Background To Issue:

Kirkwood Electric is funding the City's match associated with the Congestion Mitigation Air Quality grant involving the upgrade of the traffic signal on Kirkwood Rd. The Public Works department is in need of Real Estate Services in conjunction with the projects right-of-way activities. The Purchasing Department conducted a selection process to obtain a vendor for these services.

### Recommendations and Action Requested:

The department recommends approval of resolution for \$18,000 authorizing the Mayor to enter into an agreement for Real Estate Services with Mueller & Neff.

### Alternatives Available:

The City of Kirkwood is required by law to perform the necessary acquisition of right-of-way and other easements necessary for the ADA improvements at the intersections along Kirkwood Road from Big Bend Blvd to Manchester Road as part of the project.

Cost: \$18,000.00 Account #: 50121154807515 Project #: EL1616 Budgeted: YES

If YES, Budgeted Amount: \$85,140.00 If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

The Electric Department has grant reimbursement requests totaling \$288,611 this year to cover the expense of the appraisal services. The department recommends approval of the resolution.

BY: Mark Petty

Date: 12/6/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (**Must have Purchasing Director's approval**).

## Approve

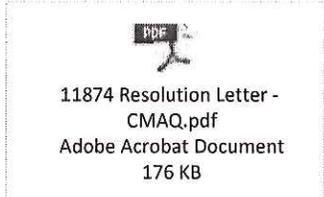
Purchasing Director's Comments:

BY: David Weidler

Date: 12/8/2016

Authenticated: weidledc

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name: \_\_\_\_\_

To Account # or Fund Name: \_\_\_\_\_

Finance Director's Comments:

BY: John Adams

Date: 12/8/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: \_\_\_\_\_

Date: 12-9-16

December 7, 2016

**To:** Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Selection Committee's Recommendation for Real Estate Appraisal Services for the CMAQ 5502(605) Kirkwood Road Signal Optimization and Interconnect Project and TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project, RFP #11874.

Per Article VI. Purchasing, Division 7. Section 2-486, a Selection Committee was appointed by the Chief Administrative Officer and chaired by the Director of Procurement to review and recommend to Council a qualified firm to provide Real Estate Appraisal Services for the CMAQ 5502(605) Kirkwood Road Signal Optimization and Interconnect Project and TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project.

A Request for Proposals for Real Estate Appraisal Services for the CMAQ 5502(605) Kirkwood Road Signal Optimization and Interconnect Project and TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project was sent to Graham Appraisal Co. Hottle Appraisal Company, Inc., McReynolds Realty Advisors, McReynolds, Von Trapp, Daniel-Gentry, Metcalf Real Estate Services, Mueller & Neff Real Estate Appraisers and Consultants, Przada Appraisal, and W. H. Heyden and Associates.

A proposal was received from Mueller & Neff Real Estate Appraisers and Consultants, Inc.

A selection committee which consisted of David Weidler, Director of Procurement, Ted Dunkmann, City Engineer, Bill Bensing, Public Services Director, Mark Petty, Electric Director, and Lynnette Hicks, Assistant Director of Procurement, reviewed the proposal.

The Selection Committee reviewed and evaluated the proposal response on:

- Specialized experience and technical competence of the Firm with respect to the type of services required.
- Capacity and capability of the Firm to perform the work in a timely manner.
- Past record of performance of the Firm with respect to such factors as control of costs, quality of work, and ability to meet schedules.
- The Firm's proximity to and familiarity with the area in which the projects are located.
- Proposed schedule of fees.

After review of the qualified company's proposal to perform these types of services, the Selection Committee is recommending Mueller & Neff Real Estate Appraisers and Consultants, Inc. to perform Real Estate Appraisal Services for the CMAQ 5502(605) Project based on the criteria listed above. This selected qualified firm will provide Real Estate Appraisal Services for the CMAQ 5502(605) Project for the Public Services and Electric Departments at the rates provided in the attached Real Estate Appraisal Services Fee Schedule for a not to exceed cost of \$18,000.00.

Funds are available in the amount of \$85,140.00 in account number 501-2115-480.75-15, project number EL1616.

Attached is a request from Mark Petty, Electric Director, requesting a contract to be issued to Mueller & Neff Real Estate Appraisers and Consultants, Inc. in the amount of not to exceed \$18,000.00 for Real Estate Appraisal Services for the CMAQ 5502(605) Project.

Respectfully,

A handwritten signature in cursive script, appearing to read "David Weidler, CPPO, CPPB".

David Weidler, CPPO, CPPB  
Director of Procurement

RESOLUTION 169-2016

A RESOLUTION ACCEPTING THE PROPOSAL OF MUELLER & NEFF REAL ESTATE APPRAISERS AND CONSULTANTS, INC. IN A NOT TO EXCEED AMOUNT OF \$5,000 FOR REAL ESTATE APPRAISAL SERVICES FOR THE TAP 5502 (607) KIRKWOOD ROAD-NIPHER MIDDLE SCHOOL SRTS PROJECT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, a Request for Qualifications was developed and proposals were received for Real Estate Appraisal Services for the TAP 5502 (607) South Kirkwood-Nipher Middle School SRTS project, and

WHEREAS, a Selection Committee consisting of the Director of Purchasing, Director of Electric, Director of Public Services, City Engineer, and Assistant Director of Purchasing reviewed the proposals, and

WHEREAS, the Selection Committee recommends Mueller & Neff Real Estate Appraisers and Consultants, Inc., as the most qualified to provide Real Estate Appraisal Services for the TAP 5502 (607) South Kirkwood-Nipher Middle School SRTS project, and

WHEREAS, fund are available in Account #301-1401-600.75.14, Project #ST1704.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The proposal of Mueller & Neff Real Estate Appraisers and Consultants, Inc. in the amount not to exceed of \$18,000 for Real Estate Appraisal Services for the TAP 5502 (607) South Kirkwood-Nipher Middle School SRTS project is hereby accepted and approved as the most qualified.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Mueller & Neff Real Estate Appraisers and Consultants, Inc. in the amount not to exceed of \$5,000 for Real Estate Appraisal Services TAP 5502 (607) South Kirkwood-Nipher Middle School SRTS project.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST

\_\_\_\_\_  
City Clerk

# Legislation Request

Resolution

Place On The Agenda Of: 12/15/2016

Step #1:

Strategic Plan YES

Goal # & Title: Goal #4 Improve Public Infrastructure; Objective A

Background To Issue:

As part of the TAP 5502 (607) S. Kirkwood Road - Nipher Middle School SRTS project the City will be required to obtain new temporary easements to construct the improvements. A firm approved by MODOT to provide real estate appraisal services are needed to aid in the acquisitions of new easements and right of way from property owners in accordance with federal regulations. The City sought proposals for real estate appraisal services for this project and the CMAQ 5502(605) project through the Purchasing Department.

Recommendations and Action Requested:

It is recommend the City Council accept the proposal submitted by Mueller & Neff Real Estate Appraisers and Consultants, Inc. and authorize a contract amount of \$5,000 for Real Estate Appraisal Services.

Alternatives Available:

Cost: \$5,000.00 Account #: 30114016007514 Project #: ST1704 Budgeted: YES

If YES, Budgeted Amount: \$46,995.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Ted Dunkmann

Date: 12/7/2016

Authenticated: dunkmatj

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/8/2016

Authenticated: weidledc

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 12/8/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY:

Date: 12-9-16

December 7, 2016

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Selection Committee's Recommendation for Real Estate Appraisal Services for the CMAQ 5502(605) Kirkwood Road Signal Optimization and Interconnect Project and TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project, RFP #11874.

Per Article VI. Purchasing, Division 7. Section 2-486, a Selection Committee was appointed by the Chief Administrative Officer and chaired by the Director of Procurement to review and recommend to Council a qualified firm to provide Real Estate Appraisal Services for the CMAQ 5502(605) Kirkwood Road Signal Optimization and Interconnect Project and TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project.

A Request for Proposals for Real Estate Appraisal Services for the CMAQ 5502(605) Kirkwood Road Signal Optimization and Interconnect Project and TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project was sent to Graham Appraisal Co. Hottle Appraisal Company, Inc., McReynolds Realty Advisors, McReynolds, Von Trapp, Daniel-Gentry, Metcalf Real Estate Services, Mueller & Neff Real Estate Appraisers and Consultants, Inc., Przada Appraisal, and W. H. Heyden and Associates.

A proposal was received from Mueller & Neff Real Estate Appraisers and Consultants, Inc.

A selection committee which consisted of David Weidler, Director of Procurement, Ted Dunkmann, City Engineer, Bill Bensing, Public Services Director, Mark Petty, Electric Director, and Lynnette Hicks, Assistant Director of Procurement, reviewed the proposal.

The Selection Committee reviewed and evaluated the proposal response on:

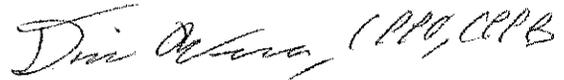
- Specialized experience and technical competence of the Firm with respect to the type of services required.
- Capacity and capability of the Firm to perform the work in a timely manner.
- Past record of performance of the Firm with respect to such factors as control of costs, quality of work, and ability to meet schedules.
- The Firm's proximity to and familiarity with the area in which the projects are located.
- Proposed schedule of fees.

After review of the qualified company's proposal to perform these types of services, the Selection Committee is recommending Mueller & Neff Real Estate Appraisers and Consultants, Inc. to perform Real Estate Appraisal Services based on the criteria listed above. This selected qualified firm will provide Real Estate Appraisal Services for the TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project for the Public Services Department at the rates provided in the attached Real Estate Appraisal Services Fee Schedule for a not to exceed cost of \$5,000.00.

Funds are available in the amount of \$46,995.00 in account number 301-1401-600.75-14, project number ST1704.

Attached is a request from Ted Dunkmann, City Engineer, requesting a contract to be issued to Mueller & Neff Real Estate Appraisers and Consultants, Inc. in the amount of not to exceed \$5,000.00 for Real Estate Appraisal Services for the TAP 5502 (607) Kirkwood Road – Nipher Middle School SRTS Project.

Respectfully,

A handwritten signature in cursive script, appearing to read "David Weidler", followed by the printed text "CPPO, CPPB".

David Weidler, CPPO, CPPB  
Director of Procurement

RESOLUTION 171-2016

A RESOLUTION ACCEPTING THE BID OF J.F. ELECTRIC, IN THE AMOUNT NOT TO EXCEED \$205,326 (WHICH INCLUDES A CONTINGENCY OF \$34,221) FOR TRANSMISSION SYSTEM MRSL-KIRK T2 UPGRADES FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City solicited bids for Transmission System MRSL-KIRK T2 Upgrades for the Electric Department, and

WHEREAS, the most responsible bid received was that of J.F. Electric in the amount not to exceed \$205,326 (which includes a contingency of \$34,221) which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Purchasing and the Director of Electric, and

WHEREAS, funds are available in Account #501-2115-480.75.15, Project #EL1612.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of J.F. Electric, in the amount not to exceed \$205,326 (which includes a contingency of \$34,221) for Transmission System MRSL-KIRK T2 Upgrades for the Electric Department is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract in the amount not to exceed \$205,326 (which includes a contingency of \$34,221) with J.F. Electric.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

---

Mayor, City of Kirkwood

ATTEST:

---

City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal 1 - Enhance the Quality of Life for Kirkwood Citizens

### Background To Issue:

The purchasing department conducted a competitive bid process for high voltage line construction services for the upgrading of the MRSL-Kirk T2 sub-transmission line that connects the Alfred substation to the Ameren sub-transmission network.

### Recommendations and Action Requested:

The Electric Department recommends approval of a resolution authorizing the mayor to enter the city of Kirkwood into an agreement for construction services to upgrade the MRSL-Kirk T2 sub-transmission line in the amount of \$171,105 with a contingency of \$34,221.

### Alternatives Available:

The upgrading of the sub-transmission line is required to enable the distribution system to handle the increased capacity associated with the new Alfred substation.

Cost: \$205,326.00 Account #: 50121154807515 Project #: EL1612 Budgeted: YES

If YES, Budgeted Amount: \$260,259.00 If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

The department strongly recommends approval of the resolution so that the department can attempt to energize the substation prior to the summer peaking season.

BY: Mark Petty

Date: 12/9/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (**Must have Purchasing Director's approval**).

### Approve

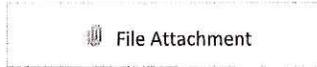
Purchasing Director's Comments:

BY: David Weidler

Date: 12/9/2016

Authenticated: weidledc

You can attach up to 3 files along with this request.



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 12/9/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY:

*Russ Haves*  
*Russ Haves*

Date:

*12/9/16*

December 9<sup>th</sup>, 2016

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Transmission System MRSL-KIRK T2 Upgrades, Bid # 11847

Sealed bids were publicly opened on December 7<sup>th</sup>, 2016. The bid tabulation is as follows:

<u>Vendor</u>	<u>Total</u>
J. F. Electric	\$171,105.00
Black & McDonald	\$184,950.00

Bid requests were also sent to Gerstner Electric, Hooper Corporation, L. E. Myers Co., Par Electric, Sachs Electric, Streib Company and TGB Inc.; however they did not submit bids.

The bids were provided to Mark Petty, Electric Director, for review. It is recommended that the bid be awarded to J. F. Electric, as their bid of \$171,105.00 is the lowest responsible bid meeting specifications.

Funding is available in the amount of \$260,259.00 to account number 501-2115-480.75-15, project number EL1612.

Attached is a request from Mark Petty, Electric Director, for a resolution authorizing a contract to be issued to J. F. Electric in the amount of \$171,105.00 with a contingency of \$34,221.00 for a total not to exceed value of \$205,326.00 for Transmission System MRSL-KIRK T2 Upgrades for the Electric Department.

Respectfully,



David Weidler, CPPO, CPPB  
Director of Procurement

RESOLUTION 172-2016

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A 20-YEAR AGREEMENT (WITH AN OPTION TO EXTEND FOR AN ADDITIONAL FIVE YEARS) WITH THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION FOR 25 MEGAWATTS OF WIND GENERATION.

WHEREAS, on June 16, 2016 the City Council approved Resolution 76-2016 authorizing the Electric Department to negotiate a wind purchase power agreement, and

WHEREAS, the Electric Department has negotiated a favorable agreement with the Missouri Joint Municipal Electric Utility Commission for 25 Megawatts of wind generation and recommends that the City enter into a 20-year agreement for said purchase, and

WHEREAS, the entry level price is \$20 per megawatt with 2% annual escalator associated with the price and the wind generation has a capacity of 52%, and

WHEREAS, funds are available in Account #501-2111-480.62.01.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a 20-year agreement (with an option to extend for an additional five years) with the Missouri Joint Municipal Electric Utility Commission for 25 Megawatts of Wind Generation to be delivered to the City of Kirkwood via the Green Belt Express Clean Line transmission project starting in the year 2020 at the entry price of \$20 per megawatt with 2% annual escalator

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal 1 - Enhance the Quality of Life for Kirkwood Citizens

### Background To Issue:

On June 16, 2016 council approved Resolution 76-2016 authorizing the Electric Department to negotiate a wind purchase power agreement. The department has been able to negotiate a favorable agreement and is requesting approval of a purchase power agreement with the Missouri Joint Municipal Electric Utility Commission. The agreement calls for the delivery of 25 megawatts of wind generation at an entry level price of \$20 per megawatt with a 2% annual escalator associated with the price. The wind generation has a capacity factor of 52%. The term of the agreement is 20 years with an option to extend for an additional 5 years. The annual expenditure for the wind power is estimated to be \$4.38M. The wind is to be delivered to Kirkwood via the Missouri Joint Municipal Electric Utility's Commission's agreement with Infinity Renewables to deliver wind power from the 300 MW Iron Star wind generation facility currently under development in Kansas. The wind power is to be delivered starting in 2020. The power will be delivered utilizing the transmission service agreement that MJMEUC has with the Green Belt Express Clean Line project.

### Recommendations and Action Requested:

The Electric Department recommends approval of a resolution authorizing the mayor to enter the City of Kirkwood into an agreement for 25 megawatts of wind generation with the Missouri Joint Municipal Electric Utility Commission to be delivered to the City of Kirkwood via the Green Belt Express Clean Line transmission project starting in 2020.

### Alternatives Available:

The terms and conditions of this agreement have been developed by Kirkwood Electric's purchase power legal representatives and are very favorable to Kirkwood. The timing of the transaction takes advantage of current incentives for construction of renewable projects. The entry level price is superior to any other offer presented to Kirkwood and would represent the lowest price portion of Kirkwood's purchase power portfolio.

Cost: \$0.00

Account #: 50121114806201

Project #:

Budgeted: YES

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

The department recommends approval of the resolution.

BY: Mark Petty

Date: 12/9/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/9/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:

*Russ Hawes for*  
*Russ Hawes*

Date:

12/9/16

RESOLUTION 173-2016

A RESOLUTION ACCEPTING THE BID OF ERMCO, c/o ELECTROREP ENERGY PRODUCTS IN THE AMOUNT OF \$88,075 FOR SINGLE PHASE DUAL VOLTAGE POLE MOUNT TRANSFORMERS FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PURCHASING TO ISSUE A PURCHASE ORDER.

WHEREAS, pursuant to law, the City solicited bids for Single Phase Dual Voltage Pole Mount Transformers for the Electric Department, and

WHEREAS, the most responsible bid received was that of ERMCO, c/o Electrorep Energy Products in the amount of \$88,075 which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Purchasing and the Director of Electric, and

WHEREAS, funds are available in Account #501-2115-480.75.15, Project #EL1701.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of ERMCO, c/o Electrorep Energy Products in the amount of \$88,075 for Single Phase Dual Voltage Pole Mount Transformers for the Electric Department is hereby accepted and approved.

SECTION 2. The Director of Purchasing is hereby authorized and directed to issue a Purchase Order in the amount of \$88,075 to ERMCO, c/o Electrorep Energy Products.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

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Mayor, City of Kirkwood

ATTEST:

---

City Clerk

# Legislation Request

Resolution

Place On The Agenda Of: 12/15/2016

Step #1:

Strategic Plan YES

Goal # & Title Goal 1 - Enhance the Quality of Life for Kirkwood Citizens

Background To Issue:

The purchasing department conducted a bid process for the selection of a vendor for pole mount transformers. These new transformers are associated with the department's voltage upgrade project.

Recommendations and Action Requested:

The department recommends approval of a resolution authorizing the mayor to enter the City of Kirkwood into an agreement with ERMCO in the amount of \$88,075 for pole mount transformers.

Alternatives Available:

It is critical that we have the necessary equipment to continue our aggressive pace to upgrade our system. Placing this order now will enable us to receive the material and provide this material to contractors that are ready to upgrade the system.

Cost: \$88,075.00 Account #: 50121154807515 Project #: EL1701 Budgeted: YES

If YES, Budgeted Amount: \$98,286.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

The department recommends approval of the resolution.

BY: Mark Petty

Date: 12/9/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/9/2016

Authenticated: weidledc

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 12/9/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: *Betty Meadows for Russ Hawes*

Date: 12/9/16

December 9, 2016

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: Single Phase Dual Voltage Pole Mount Transformers, Bid # 11869

Sealed bids were publicly opened on December 6<sup>th</sup>, 2016. The bid tabulation is as follows:

Vendor	Lump Sum
ERMCO, c/o Electrorep Energy Products	\$88,075.00
Graybar Electric	\$71,038.00
Paradoxe Corporation	\$87,094.00
Fletcher Reinhardt Co.	\$82,196.00
Wesco St. Louis	\$90,515.00

Bid requests were also sent to Anixter, Inc., Brownstone Electric, Central Maloney, Inc, City Electric Supply, Crescent Electric Supply Co, Crestview Lighting and Power Supply, Electrorep Energy Products, Evans, Lipka & Associates, Moehn Electrical Sales Company, Pauwels Transformers, Inc, Power Equipment Sales Co, Sunbelts Transformer and T & R Electric Supply; however they did not submit bids.

Pole mounted transformers will be purchased and installed as part of the Electric Department's distribution system voltage upgrade capital projects in FY 2017. Kirkwood Electric always evaluates and awards pole mounted transformer purchases based on the specification and energy efficiency. It is recommended that the bid be awarded to ERMCO, c/o Electrorep Energy Products in the amount of \$88,075.00. After performing an energy loss evaluation it was determined that their bid has the most advantageous solution for the City's transformer requirement do to their energy efficiency rating, providing the lowest cost of ownership.

Funds are available in the account number 501-2115-480-75-15 in the amount of \$98,286.00. The project number is EL1701.

Attached is a request from Mark Petty, Electric Director, for a resolution authorizing a purchase order to be issued to ERMCO, c/o Electrorep Energy Products, in the amount of \$88,075.00 for Single Phase Dual Voltage Pole Mount Transformers.

Respectfully,



David Weidler, CPPO, CPPB  
Director of Procurement

BILL 10523

ORDINANCE

AN ORDINANCE GRANTING A SPECIAL USE PERMIT AMENDMENT FOR A RESTAURANT WITH OUTDOOR SEATING AND APPROVING THE SITE PLAN ON THE PROPERTY AT 10310/10312 MANCHESTER ROAD SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Jonathan Browne made application (PZ-04-17) for an amendment to its current Special Use Permit granted by Ordinance 8313 for the expansion of an outdoor seating area at the tenant space addressed as 10310 and 10312 Manchester Road on the property known as 10300 Manchester Road; and

WHEREAS, the Planning and Zoning Commission did on the 19<sup>th</sup> day of October, 2016, by adopting the Planning and Zoning Commission Report dated October 19, 2016, (attached hereto as Exhibit "A" and incorporated by reference herein), recommend the granting of said Special Use Permit subject to certain conditions and did find that granting of said permit would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities, and that granting such permit would be consistent with the zoning laws; and

WHEREAS, the Council did on the 17<sup>th</sup> day of November, 2016, hold a public hearing with respect to such application after duly advertising and giving proper notice of such hearing and does find that the granting of such permit, subject to certain conditions, would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities; and

WHEREAS, the Council does further find that the general welfare requires that such permit be subject to the conditions hereinafter set out.

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

SECTION 1. A Special Use Permit Amendment and Site Plan Approval for a restaurant with outdoor seating is granted to Jonathan Browne for the tenant space of 10310/10312 Manchester Road on the property known as 10300 Manchester Road subject to the following conditions:

1. The project shall be constructed and maintained in accordance with the site plan stamped "Received October 26, 2016, City of Kirkwood Public Works Department", except as noted herein.
2. A performance guarantee, in an amount to be determined by the Public Services Department, and an administrative fee shall be submitted to the City within 1 year of approval and prior to the issuance of a building permit.
3. Outdoor seating shall be in conformance with Article I, Section A 140.1(111) of the City's Zoning Code.
4. The hours of operation of the outdoor seating area shall not be greater than the hours of the indoor restaurant. However, the use of outdoor speakers and live music shall be prohibited after 11:30 PM on Friday and Saturday and 10:00 PM on Sunday through Thursday.

5. A security gate shall be provided at the top of the existing stairway that will be locked when the lower-level tenants are not open for business. Said gate shall be installed to meet all local building and fire codes prior to issuance of an occupancy permit for the outdoor dining area.
6. A surveillance system shall be installed for the lower level and signage provided to indicate that such surveillance is in place prior to issuance of an occupancy permit for the outdoor dining area.
7. Improvements shown on the Site Plan directly related to the construction of the stand-alone coffee shop, Starbucks, as approved per Ordinance 10275 shall not be required unless otherwise stated herein.
8. Adequate parking for the additional proposed seating area shall be provided in accordance with Section A-1000 of the City's Zoning Code. The proposed parking lot located at 1015 North Woodlawn Avenue must be completed and must provide a total minimum number of 255 parking spaces.
9. Required landscaping shall be provided as previously approved for the parking lot on 1015 North Woodlawn Avenue as part of the PZ-24-15 approval.
10. A shared parking agreement between the property owners of 1011 North Woodlawn Avenue and 10300 Manchester Road for parking on 1015 North Woodlawn Avenue shall be approved by the City and recorded in the St. Louis County Recorder of Deed's office and a copy filed in the Public Services Department office prior to issuance of any permits.
11. Copies of letters from the property owner (10300 Manchester Road) to each tenant acknowledging that employees may be directed at the discretion of the property owner to park in a specific location, per signed lease agreement, shall be filed in the Public Services Department prior to the issuance of any permits.
12. Pick-up and drop-off for the Dance Studio shall be via the new Woodlawn Ave. entrance at 1015 N. Woodlawn Ave. with vehicles progressing in a clock-wise manner and exiting via the existing Woodlawn entrance as acknowledged during the approval process of PZ-24-15.
13. In order to provide access to the Kirkwood Electric substation an access easement agreement between the owner of Greentree Center and the City of Kirkwood shall be approved by the City and recorded in the St. Louis County Office of the Recorder of Deeds and a copy filed in the Public Services Department office prior to issuance of any permits.
14. The existing dumpster, southeast corner of Greentree Center, and any new dumpsters shall be enclosed with a new six foot high, sight-proof fence constructed of materials similar to the materials of the primary structure. The latching gate will consist of matching or complementary materials.
15. Any new dumpster area and dumpster pad shall be constructed of 7" thick concrete pavement on a 6" thick rock base and sized to fit dumpster.
16. All planned site lighting (patio and new parking lot) shall be designed in accordance with Zoning Code Section A-1040. New site lighting shall be installed at the rear of the existing Greentree Center to provide sufficient lighting, as determined by the Public Services Director, for employees utilizing the rear parking lot.
17. The parking and driveway area at the southwest corner of the Greentree Center shall be repaired and overlaid for proper drainage to the existing storm inlet.

18. A consolidation plat for 10300 Manchester and 1015 North Woodlawn Avenue shall be approved by the City and recorded in the St. Louis County Office of the Recorder of Deeds and filed in the Public Services Department office prior to issuance of a building permit. All required city easements shall be shown on the plat.
19. The Sugar Creek Gardens property (1011 N. Woodlawn) shall maintain a minimum of 20 off-street parking spaces. Parking spaces located on the proposed parking lot (1015 N. Woodlawn) shall not be included in the required total.
20. An occupancy permit for the outdoor dining area shall not be issued until such time as the proposed parking lot and new lighting, to be located at 1011/1015 North Woodlawn Avenue, is completed as approved with PZ-24-15.
21. Architectural Review Board shall approve all signs and building architecture prior to the issuance of any building permits.
22. All rooftop mechanical equipment shall be fully screened from view of adjoining properties. The exact dimensions and materials of the screening shall be approved by the Building Commissioner.
23. Storm water management plan shall be submitted to the Metropolitan St. Louis Sewer District (MSD) and City for review and approval prior to the issuance of a grading, foundation, or building permit. Storm water greater than one c.f.s. shall not be directed across the public sidewalk or driveway entrances.
24. The water system shall meet the requirements of the Kirkwood Fire and Water Departments.
25. Erosion and sediment control devices shall be sufficient to protect all off-site property from siltation and shall be installed prior to the beginning of any grading or construction. The siltation control measures shall be installed and approved by the Public Works Department prior to issuance of a permit and shall be maintained during construction activities.
26. During excavation and construction activities, the construction area, as designated by the Building Commissioner's Office, shall be fully enclosed by a 6-foot high chain link fence to prevent the entry of unauthorized persons. The gate for the fence shall be locked during non-working hours.

SECTION 2. The approval of this special use permit amendment shall not authorize any person to unreasonably alter, increase, or redirect the surface water run off so as to cause harm to any person or property.

SECTION 3. The premises and improvements as approved by this Special Use Permit amendment shall be in good working order and maintained in good repair at all times.

SECTION 4. The applicant by accepting and acting under the Special Use Permit amendment herein granted accepts the permit subject to the reservations, restrictions, and conditions set forth in the Code of Ordinances and in this Ordinance and agrees to comply with each provision subject to the penalties prescribed under Section 1-8 of the Code of Ordinances and subject to revocation of this permit in the event such provisions are not complied with.

SECTION 5. The applicant and his successors and assigns by accepting and acting under the approval herein granted accepts the approval subject to the condition that failure to abate any violation of this approval or any provisions of the Code of Ordinances of the City of Kirkwood within five (5) days after notice by hand delivery or first-class mail shall result in an administrative investigation fee of \$500 due to the City of Kirkwood. An invoice shall be issued. A Stop Work Order to cease all work on the

premises except such work as directed by the Public Works Director to abate the violation may be issued for any work on the premises until the investigation fee is paid in full. The City may demand payment of said fee from the holder of the letter of credit, any bond, or escrow if not paid within 30 days of the invoice.

SECTION 6. The applicant further agrees by accepting and acting under this Special Use Permit herein granted that this Ordinance does not grant applicant any special rights, privileges, or immunities.

SECTION 7. This ordinance shall become null and void in the event the petitioner does not obtain a building permit for the construction approved by this ordinance within one year of the passage of this ordinance.

SECTION 8. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS

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Mayor, City of Kirkwood

ATTEST:

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City Clerk  
Public Hearing: November 17, 2016  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

## Ordinance

Place On The Agenda Of:

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The southeast tenant space in the Greentree Center at Manchester Road and Woodlawn Avenue (10310/10312 Manchester Road) is requesting an amendment to expand their outdoor seating into the existing interior courtyard of the center. The original Special Use Permit for this space was granted to St. Louis Bread Company and was most recently occupied by Winfield's.

Recommendations and Action Requested:

At the October 19, 2016 Planning and Zoning Commission meeting, the Commission recommended approval of the request with conditions by a vote of 7-1.

Alternatives Available:

Cost: \$0.00

Account #: 0

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Jonathan Raiche

Date: 11/10/2016

Authenticated: raichejd

You can attach up to 3 files along with this request.



2016-10-19 PZ Report  
Approved.pdf  
Adobe Acrobat Document  
1.23 MB



2016-10-26 Site Plan.pdf  
Adobe Acrobat Document  
1.21 MB



2016-11-17 PZ-4-17  
Ordinance.doc  
Microsoft Word 97 - 2003  
Document  
45.5 KB

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

11-10-16

CITY OF KIRKWOOD  
PLANNING AND ZONING COMMISSION  
SUBCOMMITTEE REPORT  
October 19, 2016

**PETITION NUMBER:** PZ-4-17

**ACTION REQUESTED:** SPECIAL USE PERMIT AMENDMENT/SITE PLAN REVIEW  
(RESTAURANT, OUTDOOR SEATING)

**PETITIONER:** JONATHAN BROWNE

**PROPERTY OWNER:** JONATHAN BROWNE, BROWN & SONS FOODLINER, INC.

**PROPERTY LOCATION:** 10310 AND 10312 MANCHESTER ROAD

**CURRENT ZONING:** B-3 HIGHWAY BUSINESS DISTRICT

**DRAWINGS SUBMITTED:** SITE PLAN (1 SHEET) PREPARED BY VANCE  
ENGINEERING, INC STAMPED "RECEIVED SEPTEMBER 19,  
2016, CITY OF KIRKWOOD PUBLIC WORKS DEPARTMENT"

SPACE PLANS (SHEET SP1) PREPARED BY UHLIG  
ARCHITECTURE, LLC STAMPED "RECEIVED SEPTEMBER 19,  
2016, CITY OF KIRKWOOD PUBLIC WORKS DEPARTMENT"

STRUCTURAL DETAILS (SHEET S1.0) PREPARED BY  
FRONTENAC ENGINEERING GROUP STAMPED "RECEIVED  
SEPTEMBER 19, 2016, CITY OF KIRKWOOD PUBLIC WORKS  
DEPARTMENT"

SEATING LAYOUT PREPARED BY SAINT LOUIS DESIGN  
ALLIANCE ARCHITECTS STAMPED "RECEIVED SEPTEMBER  
19, 2016, CITY OF KIRKWOOD PUBLIC WORKS  
DEPARTMENT"

**DESCRIPTION OF REQUEST:**

The petitioner is requesting a Special Use Permit Amendment and Site Plan approval for the expansion of the outdoor dining currently permitted at the site. The current Special Use Permit for this tenant space was approved on May 5, 1994 for St. Louis Bread Company and limited outdoor seating to 4 tables and 8 chairs in front of the restaurant, and 8 tables and 21 chairs in the patio to the west of the restaurant. The proposed area of expansion, as shown on the proposed site plan, is the existing courtyard located west of the tenant space.

The proposal is to build a composite deck in the courtyard space which would be at the same level as the main floor of the shopping center and the restaurant space. This deck expansion would create approximately 600 additional square feet of seating area

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(approximately 1,000 square feet total) which could accommodate approximately 12 tables and 40-50 seats according to the applicant's project summary.

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A similar request was submitted to the Planning & Zoning Commission in April of 2015; however, the Commission recommended during that process that an alternative patio location be considered. The sub-committee reviewing that proposal also stated that there was serious concern related to the inadequate parking that would be available for the expansion of the restaurant use. As a result of that concern, the Planning & Zoning Commission voted 7-1 to deny the proposal in October. After that decision by the Commission, the application was withdrawn.

#### **LAND USE AND ZONING:**

The subject property is currently zoned B-3 Highway Business District. Surrounding land uses and zoning include the following:

- To the south: Directly abutting 10300 Manchester Road is a legal, non-conforming landscape nursery zoned R-4, Single-Family District.
- To the north: Across Manchester Rd. is St. Agnes Home (Senior Living) split-zoned zoned R-3, Single-Family District and B-3, Highway Business District.
- To the east: Across Woodlawn Avenue at the corner of Woodlawn and Manchester is a Financial Services Company zoned B-3, Highway Business District and single-family houses zoned R-4, Single-Family District.
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#### **COMPREHENSIVE PLAN:**

This site is designated for General Commercial Use by the Vision 2015 Comprehensive Plan. The proposed use is considered General Commercial and is consistent with the development policies presented by the Plan.

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**DEPARTMENTAL/AGENCY COMMENTS:**

Electric: No Comments

Building/Fire: All egress paths shall be proper length and width per code. Egress and emergency lighting shall be provided per code.

Water: No Comments

**DISCUSSION:**

Zoning Matters signs were placed on the property on September 29, 2016. The petitioner presented the proposed plan at the Planning & Zoning Committee meeting on October 5, 2016. Discussion was held and a subcommittee was appointed. The discussion at the October 5<sup>th</sup> meeting included concerns regarding adequate lighting provided for the courtyard under the deck and a concern that adequate parking be provided to accommodate the expansion. The availability of bicycle racks was also mentioned at the October 5, 2016 meeting. The current center provides 2 separate bicycle racks to accommodate approximately 11 bicycles and there is an additional bicycle rack that is required with the Starbucks project.

The subcommittee met on-site on October 12, 2016 and a list of individuals in attendance can be seen in "Exhibit A". The discussion focused on the effects of the proposal on the lower level access and security. Lighting will be required by building and fire code to ensure that egress and emergency lighting is provided. The subcommittee also discussed the need to provide a locking gate at the top of the stairwell (with emergency egress hardware), signage to indicate the area is under surveillance, and actual surveillance provided for the lower level. A condition regarding these security issues has been added into the recommendations section of this report.

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The applicant was requested by Staff to provide detailed parking information with their application. The base parking requirement for the existing center that was used for these calculations was the 229 parking spaces required in the 1994 variance granted via Ordinance 8313.

The results of this information indicate that if the proposed patio was added with no change to the current parking, there would be a shortage of 11 spaces (231 provided; 242 required). If the aforementioned proposed parking lot at 1015 N. Woodlawn Ave. would be built with the proposed outdoor seating expansion, this would result in an excess of 29 spaces (271 provided; 242 required). However, because the proposed stand-alone Starbucks has already been approved, including modifications to the existing parking lot, the applicant was asked to provide the parking information if the Starbucks and proposed patio expansion were both built. If this scenario occurs, there would be a shortage of 1 parking space (254 provided; 255 required).

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RECOMMENDATION:

The Subcommittee recommends that this petition be approved with the following conditions:

1. The project shall be constructed and maintained in accordance with the site plan stamped "Received September 19, 2016, City of Kirkwood Public Works Department", except as noted herein. Prior to proceeding to City Council, revised plans that incorporate all conditions of approval herein shall be submitted to the Public Services Department.
2. A performance guarantee, in an amount to be determined by the Public Services Department, and an administrative fee shall be submitted to the City within 6 months of approval and prior to the issuance of a building permit.
3. Outdoor seating shall be in conformance with Article I, Section A 140.1(111) of the City's Zoning Code.
4. The hours of operation of the outdoor seating area shall not be greater than the hours of the indoor restaurant. However, the use of outdoor speakers and live music shall be prohibited after 11:30 PM on Friday and Saturday and 10:00 PM on ~~Monday~~ SUNDAY through Thursday.
5. A security gate shall be provided at the top of the existing stairway that will be locked when the lower-level tenants are not open for business. Said gate shall be installed to meet all local building and fire codes prior to issuance of an occupancy permit for the outdoor dining area.
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8. Adequate parking for the additional proposed seating area shall be provided in accordance with Section A-1000 of the City's Zoning Code. The proposed parking lot located at 1015 North Woodlawn Avenue must be completed and one additional space must be located on-site for a total minimum number of 255 parking spaces provided.
9. Required landscaping shall be provided as previously approved for the parking lot on 1015 North Woodlawn Avenue as part of the PZ-24-15 approval.

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10. A shared parking agreement between the property owners of 1011 North Woodlawn Avenue and 10300 Manchester Road for parking on 1015 North Woodlawn Avenue shall be approved by the City and recorded in the St. Louis County Recorder of Deed's office and a copy filed in the Public Services Department office prior to issuance of any permits.
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12. Pick-up and drop-off for the Dance Studio shall be via the new Woodlawn Ave. entrance at 1015 N. Woodlawn Ave. with vehicles progressing in a clock-wise manner and exiting via the existing Woodlawn entrance as acknowledged during the approval process of PZ-24-15.
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15. Any new dumpster area and dumpster pad shall be constructed of 7" thick concrete pavement on a 6" thick rock base and sized to fit dumpster.
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17. The parking and driveway area at the southwest corner of the Greentree Center shall be repaired and overlaid for proper drainage to the existing storm inlet.
18. A consolidation plat for 10300 Manchester and 1015 North Woodlawn Avenue shall be approved by the City and recorded in the St. Louis County Office of the Recorder of Deeds and filed in the Public Services Department office prior to issuance of a building permit. All required city easements shall be shown on the plat.

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19. The Sugar Creek Gardens property (1011 N. Woodlawn) shall maintain a minimum of 20 off-street parking spaces. Parking spaces located on the proposed parking lot (1015 N. Woodlawn) shall not be included in the required total.
20. An occupancy permit for the outdoor dining area shall not be issued until such time as the proposed parking lot and new lighting, to be located at 1011/1015 North Woodlawn Avenue, is completed as approved with PZ-24-15.
21. The petitioner shall comply with all standard conditions as listed in Exhibit B.

Respectfully submitted,

  
Cindy Coronado

  
Jim O'Donnell

  
Matt Mallinckrodt

October 19, 2016

Exhibit A  
Attendance List

October 12, 2016

Cindy Coronado -	Subcommittee
Madt Mallinckrodt -	Subcommittee
Jim O'Donnell-	Subcommittee
Allen Klippel -	P&Z Commission Chair
Jonathan Browne -	Novus Development (Petitioner)
Michael Koch -	Novus Development
Steve Stolze -	Prospective Tenant
Leo Meyer -	City of Kirkwood
Jack Schenck -	City of Kirkwood
Ted Dunkmann -	City of Kirkwood
Jonathan Raiche -	City of Kirkwood

October 19, 2016

**EXHIBIT B**  
**STANDARD CONDITIONS**

1. The premises and improvements as approved by this Special Use Permit shall be in good working order and maintained in good repair at all times.
2. Architectural Review Board shall approve all signs and building architecture prior to the issuance of any building permits.
3. All rooftop mechanical equipment shall be fully screened from view of adjoining properties. The exact dimensions and materials of the screening shall be approved by the Building Commissioner.
4. Storm water management plan shall be submitted to the Metropolitan St. Louis Sewer District (MSD) and City for review and approval prior to the issuance of a grading, foundation, or building permit. Storm water greater than one c.f.s. shall not be directed across the public sidewalk or driveway entrances.
5. The water system shall meet the requirements of the Kirkwood Fire and Water Departments.
6. Erosion and sediment control devices shall be sufficient to protect all off-site property from siltation and shall be installed prior to the beginning of any grading or construction. The siltation control measures shall be installed and approved by the Public Works Department prior to issuance of a permit and shall be maintained during construction activities.
7. During excavation and construction activities, the construction area, as designated by the Building Commissioner's Office, shall be fully enclosed by a 6-foot high chain link fence to prevent the entry of unauthorized persons. The gate for the fence shall be locked during non-working hours.

October 19, 2016



# PROCEDURE FOR PUBLIC HEARING

Mayor: At this time the council will recess to conduct a public hearing regarding:

**A request to amend the Special Use Permit and Site Plan for the restaurant at 10310 and 10312 Manchester Road to expand the outdoor seating area.**

Mayor: Mr. Hessel, do you wish to enter any exhibits into the record?

Mayor: Mr. Hawes, who will present this issue to the City Council?

**City Planner Jonathan Raiche  
Petitioners Jon Browne & Michael Koch**

Mayor: Georgia, has anyone completed a card to speak regarding this proposal?

Mayor: Is there anyone in the audience that did not complete a card that wishes to speak regarding this issue? (Please be sure to fill out a card before you leave so your name and address is reflected in the record)

Mayor: Hearing no further discussion, the council will take this matter under advisement and consider the hearing to be recessed.



AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI  
COUNTY OF ST. LOUIS

} S.S.

Before the undersigned Notary Public personally appeared **Karie Clark** on behalf of **THE COUNTIAN, ST. LOUIS COUNTY** who, being duly sworn, attests that said newspaper is qualified under the provisions of Missouri law governing public notices to publish, and did so publish, the notice annexed hereto, starting with the **November 01, 2016** edition and ending with the **November 01, 2016** edition, for a total of 1 publications:

11/01/2016

**CITY OF KIRKWOOD  
NOTICE OF PUBLIC HEARING  
Before the City Council of  
Kirkwood, Missouri**

The Council of the City of Kirkwood will hold a public hearing in City Hall, 139 South Kirkwood Road, Kirkwood, Missouri at the hour of 7:00 p.m., Thursday, November 17, 2016 to consider the following:

***A request to amend the Special Use Permit and Site Plan for the restaurant at 10310 and 10312 Manchester Road to expand the outdoor seating area.***

Betty Montaño, MMC/MPCC  
City Clerk

The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.  
11198877 County Nov 1, 2016

**Karie Clark**

Subscribed & sworn before me this 1 day of Nov, 2016  
(SEAL)

Notary Public

KIMBERLY KAEMMERER  
Notary Public - Notary Seal  
State of Missouri, St Louis City  
Commission #14967146  
My Commission Expires Apr 27, 2018



## AFFIDAVIT OF PUBLICATION

**City of Kirkwood**

Attn: Betty Montano / Laurie Asche  
City Clerk  
139 S. Kirkwood Rd.  
Kirkwood, MO 63122

I, Terry Cassidy, verify that the attached Public Hearing  
Notice was published in the Webster-Kirkwood Times on  
November 4, 2016

Terry Cassidy  
Advertising Consultant

Special Use permit  
10310, & 10312 Manchester



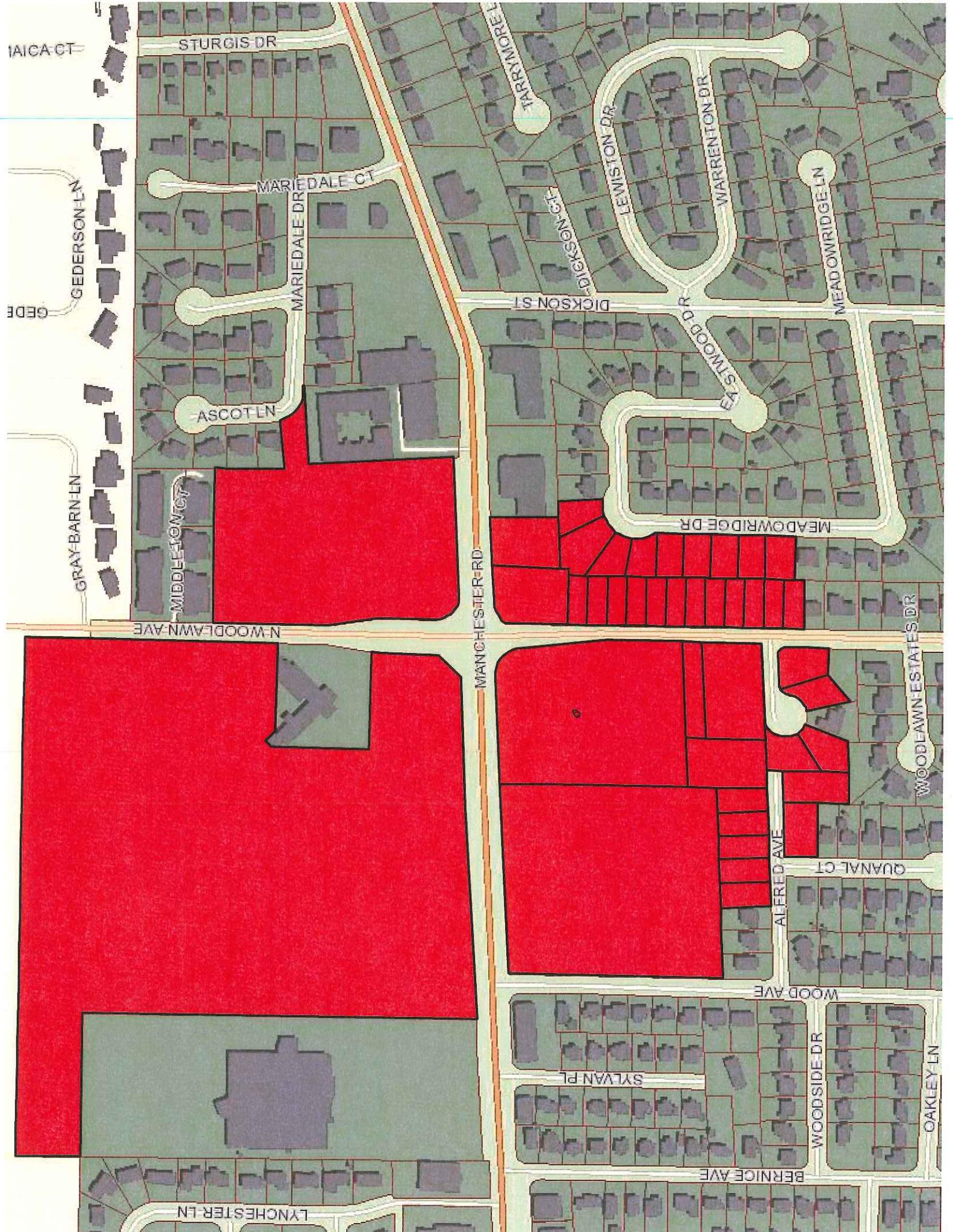
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PROPERTY OWNER  
1012 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1036 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
22 HUNTLEIGH WOODS  
SAINT LOUIS, MO 63131

PROPERTY OWNER  
501 EASTWOOD DRIVE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
419 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
10341 MANCHESTER ROAD  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
418 WOODLAWN GROVE LN  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
440 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
433 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
437 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1075 BARBERRY LANE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
3030 LONGFELLOW ROAD  
SAINT LOUIS, MO 63104

PROPERTY OWNER  
11420 LACKLAND ROAD  
SAINT LOUIS, MO 63146

PROPERTY OWNER  
1048 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1033 MEADOWRIDGE DR  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1009 MEADOWRIDGE DR  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
423 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1040 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1028 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
P.O. BOX 8430  
KANSAS CITY, MO 64114

PROPERTY OWNER  
1024 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
427 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
442 WOODLAWN GROVE LN  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
450 WOODLAWN GROVE LN  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
10256 MANCHESTER ROAD  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1031 MEADOWRIDGE DRIVE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1003 MEADOWRIDGE DRIVE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1011 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
441 ALFRED AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
4615 CLIFF FOREST DRIVE  
PACIFIC, MO 63069

PROPERTY OWNER  
1044 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1020 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1027 MEADOWRIDGE DRIVE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
30 BERRY PARK ROAD  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
20 ALLEN AVENUE, STE 400  
SAINT LOUIS, MO 63119

PROPERTY OWNER  
1016 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1032 N WOODLAWN AVENUE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
1015 MEADOWRIDGE DRIVE  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
426 WOODLAWN GROVE LN  
SAINT LOUIS, MO 63122

PROPERTY OWNER  
960 QUANAL COURT  
SAINT LOUIS, MO 63122



WHERE COMMUNITY AND SPIRIT MEET

October 20, 2016

Russell B. Hawes  
Chief Administrative Officer

At the October 19, 2016, meeting of the Planning and Zoning Commission, the following action was taken:

1. Approved an amendment to the Special Use Permit and Site Plan for the restaurant at 10310 and 10312 Manchester Road to expand the outdoor seating area. After a revised plan is submitted, a public hearing is required by the City Council.

Respectfully submitted,

CITY OF KIRKWOOD

Wanda Drewel, Vice Chair  
Planning and Zoning Commission

**CITY OF KIRKWOOD  
PLANNING AND ZONING COMMISSION  
SUBCOMMITTEE REPORT  
October 19, 2016**

**PETITION NUMBER:** PZ-4-17

**ACTION REQUESTED:** SPECIAL USE PERMIT AMENDMENT/SITE PLAN REVIEW  
(RESTAURANT, OUTDOOR SEATING)

**PETITIONER:** JONATHAN BROWNE

**PROPERTY OWNER:** JONATHAN BROWNE, BROWN & SONS FOODLINER, INC.

**PROPERTY LOCATION:** 10310 AND 10312 MANCHESTER ROAD

**CURRENT ZONING:** B-3 HIGHWAY BUSINESS DISTRICT

**DRAWINGS SUBMITTED:** SITE PLAN (1 SHEET) PREPARED BY VANCE  
ENGINEERING, INC STAMPED "RECEIVED SEPTEMBER 19,  
2016, CITY OF KIRKWOOD PUBLIC WORKS DEPARTMENT"

SPACE PLANS (SHEET SP1) PREPARED BY UHLIG  
ARCHITECTURE, LLC STAMPED "RECEIVED SEPTEMBER 19,  
2016, CITY OF KIRKWOOD PUBLIC WORKS DEPARTMENT"

STRUCTURAL DETAILS (SHEET S1.0) PREPARED BY  
FRONTENAC ENGINEERING GROUP STAMPED "RECEIVED  
SEPTEMBER 19, 2016, CITY OF KIRKWOOD PUBLIC WORKS  
DEPARTMENT"

SEATING LAYOUT PREPARED BY SAINT LOUIS DESIGN  
ALLIANCE ARCHITECTS STAMPED "RECEIVED SEPTEMBER  
19, 2016, CITY OF KIRKWOOD PUBLIC WORKS  
DEPARTMENT"

**DESCRIPTION OF REQUEST:**

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October 19, 2016

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20. An occupancy permit for the outdoor dining area shall not be issued until such time as the proposed parking lot and new lighting, to be located at 1011/1015 North Woodlawn Avenue, is completed as approved with PZ-24-15.
21. The petitioner shall comply with all standard conditions as listed in Exhibit B.

Respectfully submitted,

  
\_\_\_\_\_  
Cindy Coronado

  
\_\_\_\_\_  
Jim O'Donnell

  
\_\_\_\_\_  
Madt Mallinckrodt

**Exhibit A  
Attendance List**

**October 12, 2016**

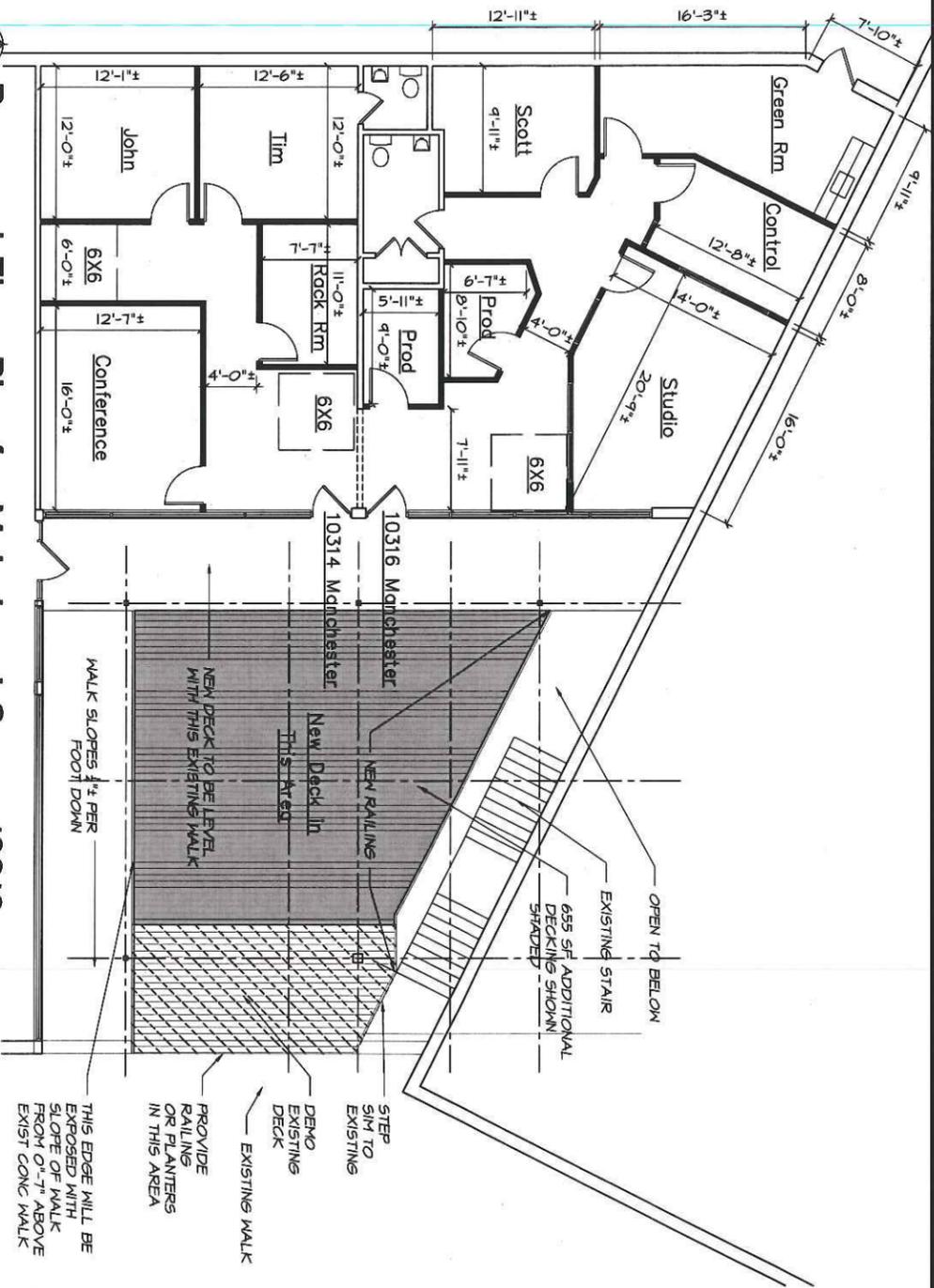
Cindy Coronado -	Subcommittee
Madt Mallinckrodt -	Subcommittee
Jim O'Donnell-	Subcommittee
Allen Klippel -	P&Z Commission Chair
Jonathan Browne -	Novus Development (Petitioner)
Michael Koch -	Novus Development
Steve Stolze -	Prospective Tenant
Leo Meyer -	City of Kirkwood
Jack Schenck -	City of Kirkwood
Ted Dunkmann -	City of Kirkwood
Jonathan Raiche -	City of Kirkwood

October 19, 2016

**EXHIBIT B**  
**STANDARD CONDITIONS**

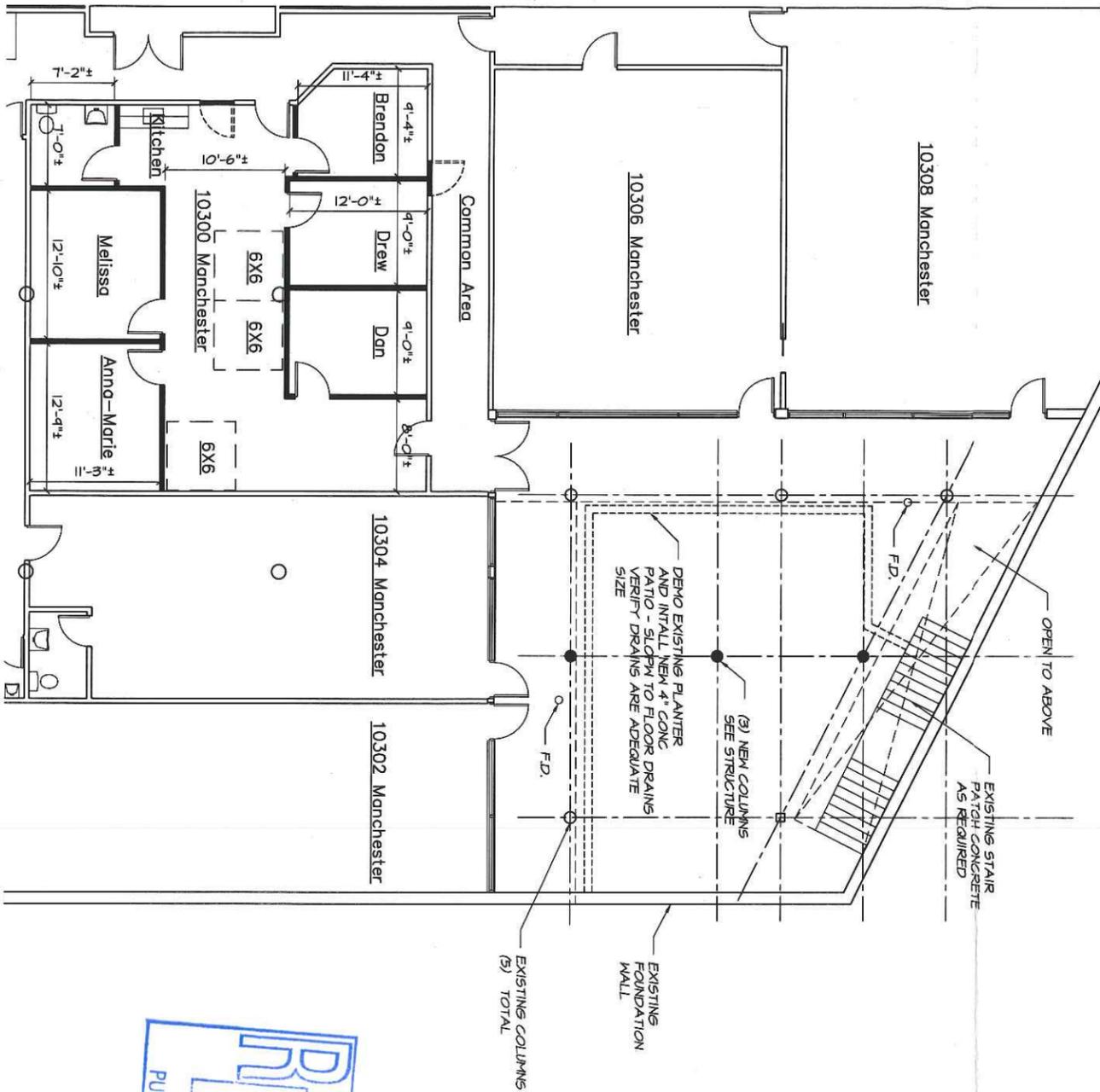
1. The premises and improvements as approved by this Special Use Permit shall be in good working order and maintained in good repair at all times.
2. Architectural Review Board shall approve all signs and building architecture prior to the issuance of any building permits.
3. All rooftop mechanical equipment shall be fully screened from view of adjoining properties. The exact dimensions and materials of the screening shall be approved by the Building Commissioner.
4. Storm water management plan shall be submitted to the Metropolitan St. Louis Sewer District (MSD) and City for review and approval prior to the issuance of a grading, foundation, or building permit. Storm water greater than one c.f.s. shall not be directed across the public sidewalk or driveway entrances.
5. The water system shall meet the requirements of the Kirkwood Fire and Water Departments.
6. Erosion and sediment control devices shall be sufficient to protect all off-site property from siltation and shall be installed prior to the beginning of any grading or construction. The siltation control measures shall be installed and approved by the Public Works Department prior to issuance of a permit and shall be maintained during construction activities.
7. During excavation and construction activities, the construction area, as designated by the Building Commissioner's Office, shall be fully enclosed by a 6-foot high chain link fence to prevent the entry of unauthorized persons. The gate for the fence shall be locked during non-working hours.





Proposed Floor Plan for Main Level Space 10316

1/8" = 1'-0"



Proposed Floor Plan for Lower Level Space 10300

1/8" = 1'-0"



12473 Robbyn Road  
St. Louis, Missouri 63127  
314.713.3255  
carl@uhligarchitecture.com

**NOVUS**  
COMPANIES  
20 Allen Avenue, Suite 400  
Webster Groves, Missouri  
314.968.0842

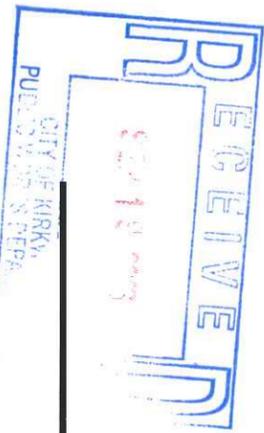
Tenant Improvement Plans for:

**KFNS**

Greentree Center  
10300, 10314 and  
10316 Manchester  
Kirkwood, MO

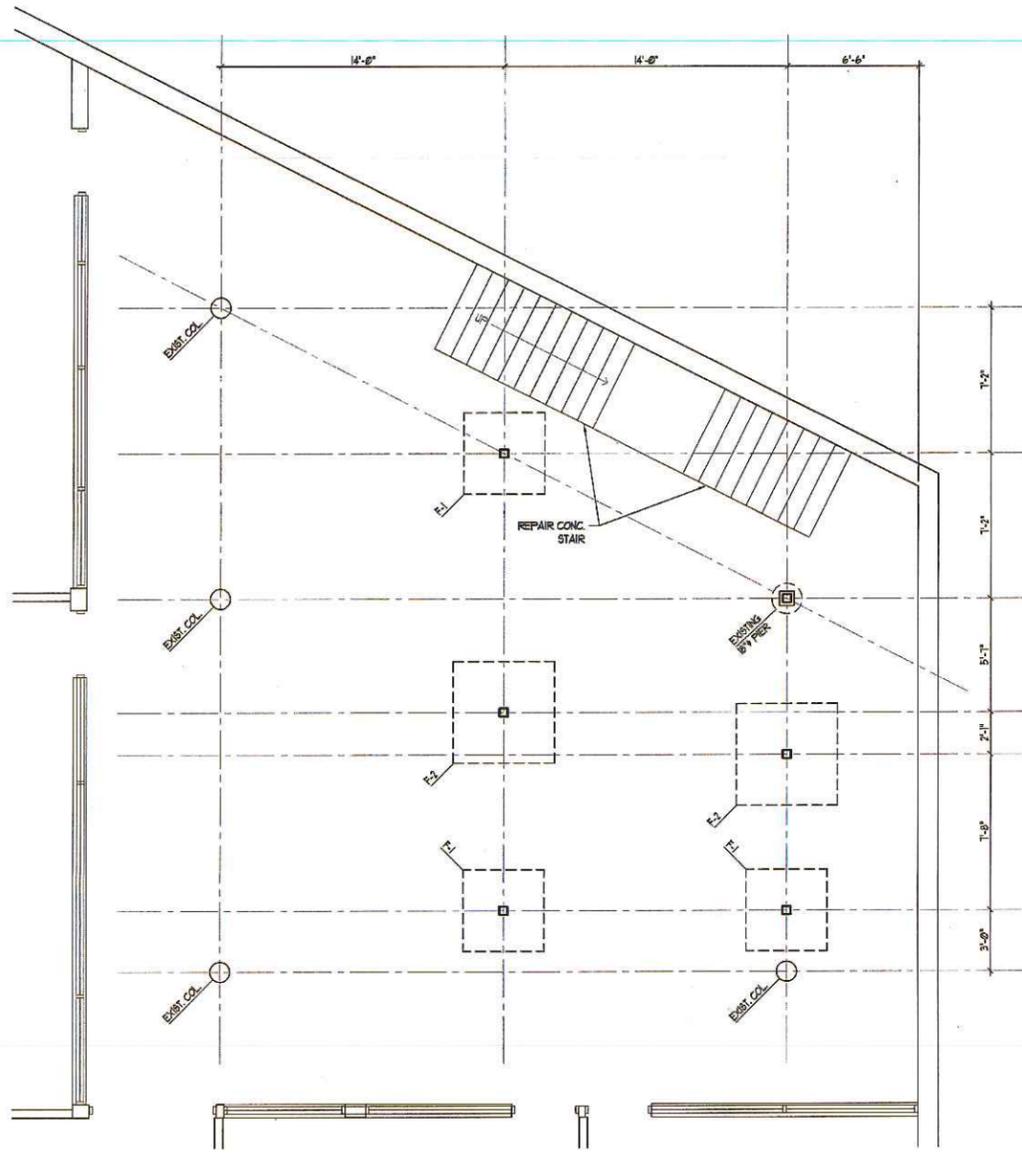


6-23-16 For **HAWK**  
6-24-16 For Review  
7-13-16 For Review  
9-8-16 SF Added



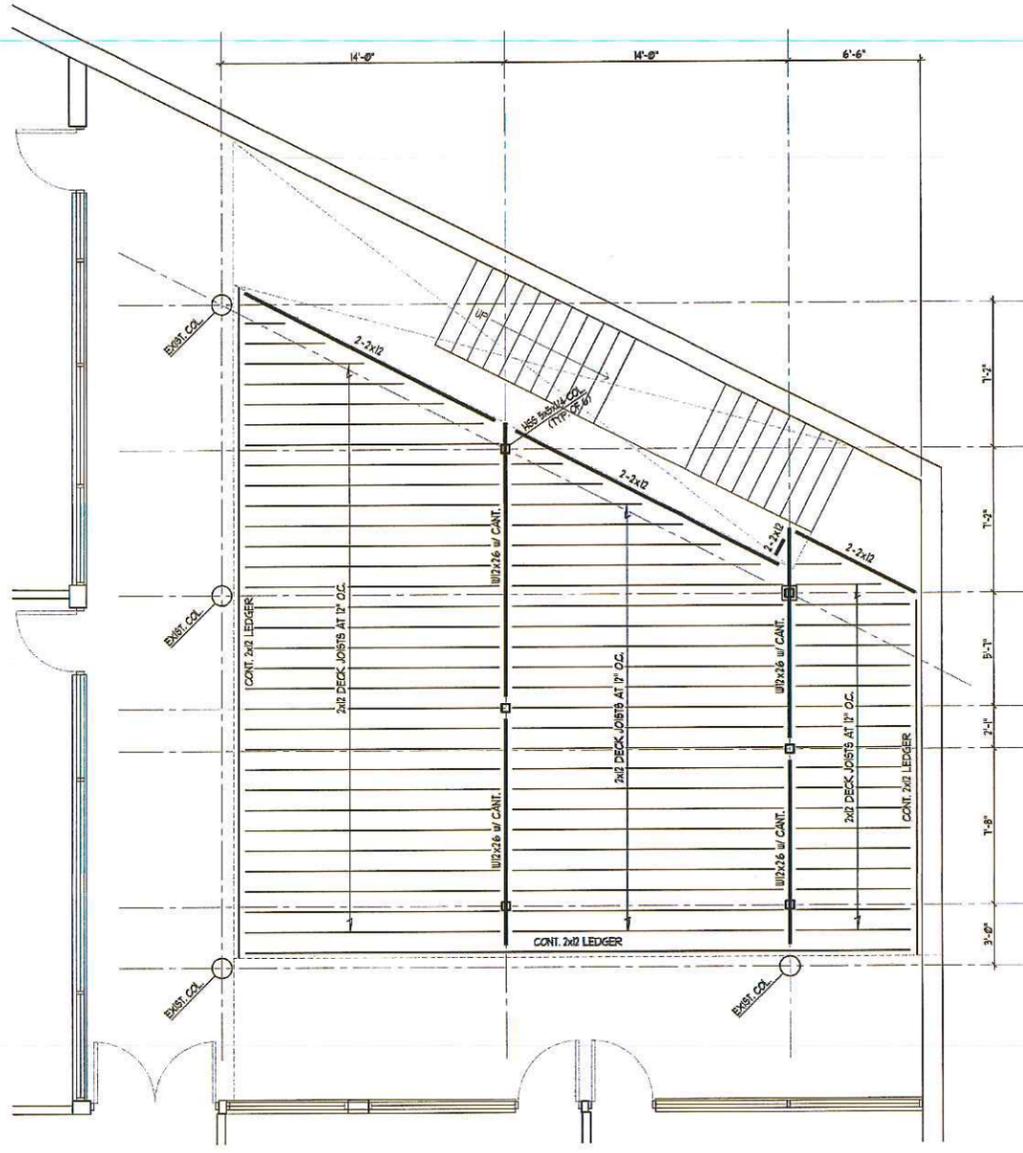
Space Plans  
**SP1**

KFNS  
Greentree Center  
2016.111

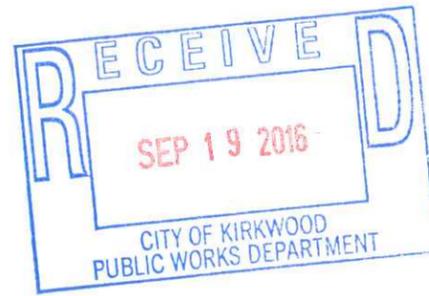


DECK FOUNDATION PLAN  
SCALE: 1/4"=1'-0"

MARK	SIZE			REINFORCING
	WIDTH (W)	LENGTH (L)	DEPTH (D)	
F-1	4'-0"	4'-0"	1'-0"	(4) #5 BOTTOM BARS, EA WAY
F-2	5'-0"	5'-0"	1'-0"	(5) #5 BOTTOM BARS, EA WAY



DECK FRAMING PLAN  
SCALE: 1/4"=1'-0"



PRELIMINARY - NOT FOR CONSTRUCTION



JOSHUA J. SCHMITZ, PROFESSIONAL ENGINEER  
LICENSE # PE-01318107

THIS PROFESSIONAL SEAL AND SIGNATURE APPLY ONLY TO THIS DOCUMENT TO WHICH THEY ARE APPLIED AND ONLY FOR THE CIVIL AND SURVEYING AS APPLICABLE. THE PROFESSIONAL ENGINEER OR SURVEYOR SHALL BE RESPONSIBLE FOR ALL OTHER PLANS, SPECIFICATIONS, ESTIMATES, REPORTS, OR OTHER DOCUMENTS PREPARED OR USED FOR ANY PART OR PARTS OF THIS DOCUMENT. REPRODUCTION OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER OR SURVEYOR IS PROHIBITED.

NO.	DATE	REVISION	ISSUE / REVISION DESCRIPTIONS

FRONTENAC ENGINEERING GROUP  
CIVIL / STRUCTURAL / LAND SURVEYING  
2725 SUTTON BLVD.  
ST. LOUIS, MISSOURI 63143  
PHONE: (314) 6442200 FAX: (314) 6446645  
WWW.FEESTL.COM



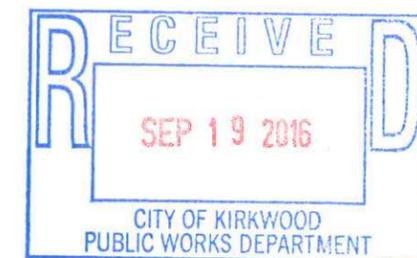
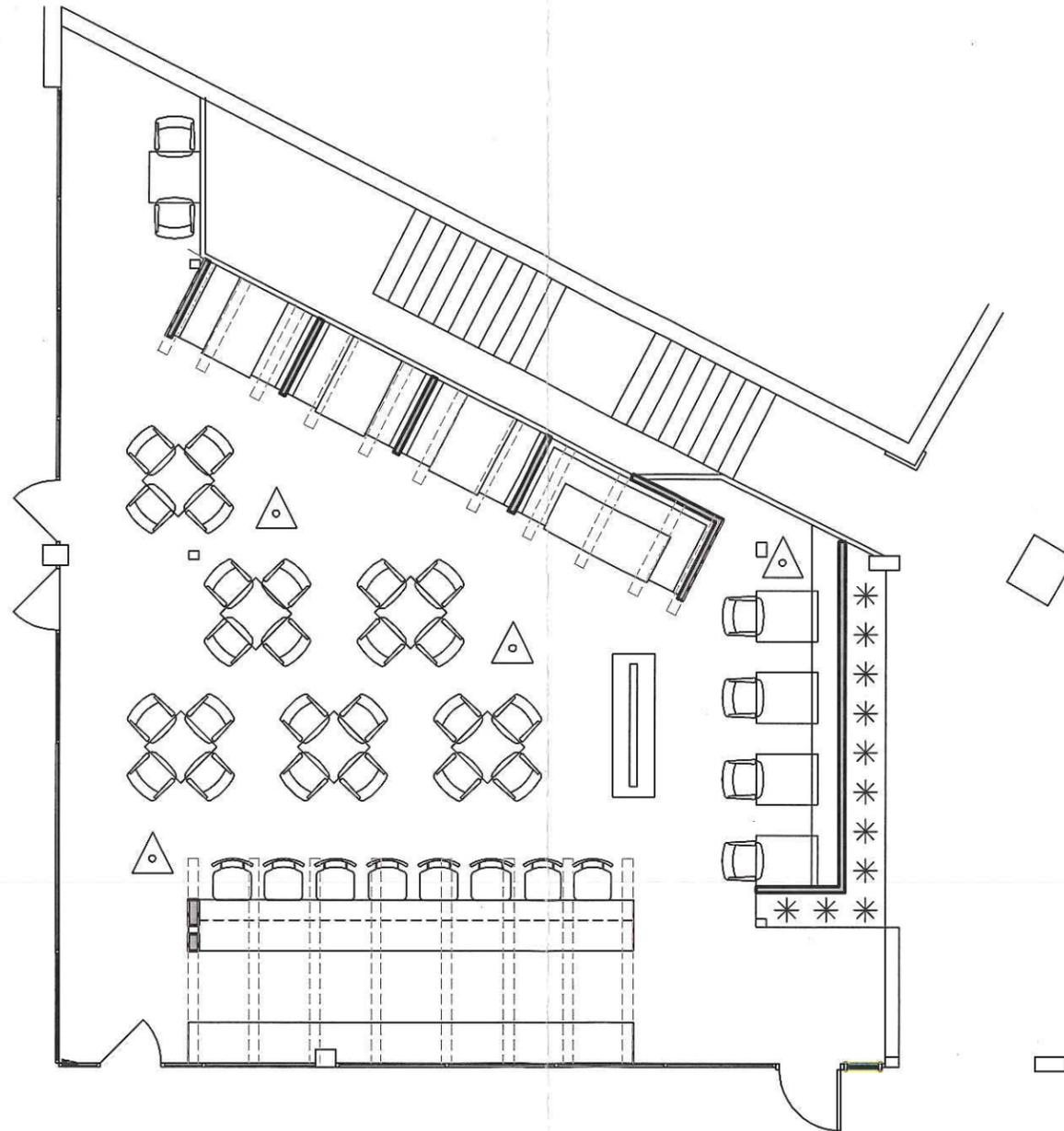
DATE: 9/7/16  
CHECKED: JLS  
DRAWN: RWT  
SCALE: 1/4" = 1'-0"

STRUCTURAL DETAILS

**S1.0**

KFNS  
GREENTREE CENTER  
10300, 10314, 10316 MANCHESTER RD.  
KIRKWOOD, MISSOURI 63122

K:\2016\10003 Jobs - GreenTree Center\10003 GreenTree.dwg Plotter Date: 9/7/16 Time: 1:27 PM



BILL 10524

ORDINANCE

AN ORDINANCE VACATING A 158' X 5' UTILITY EASEMENT AT 1035 NORTH KIRKWOOD ROAD AS RECORDED IN BOOK 363, PAGE 310, ST. LOUIS COUNTY, MISSOURI.

WHEREAS, the property owners at 1035 North Kirkwood Road wish to vacate the existing easement, and

WHEREAS, the easement grantee is the City of Kirkwood for the purpose of constructing, operating, and maintaining electric lines, and

WHEREAS, the property owners have obtained letters of approval to vacate the easement from the Kirkwood Electric Department, and

WHEREAS, no public improvements exist in the easement, and

WHEREAS, the Engineering Department recommends approval of the vacation of the utility easement as recorded in Plat Book 363, Page 515, St. Louis County, Missouri.

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

SECTION 1. There is hereby vacated a 158' x 5' utility easement at 1035 North Kirkwood Road as recorded in Book 363, Page 310, St. Louis County, Missouri, and more particularly described as follows and as shown on Exhibit B (attached):

An easement, five feet wide in Lot 1 of Hughes Subdivision Block One Lot Consolidation Plat as recorded in Plat Book 363 Page 310 of the St. Louis County Records in Northwest ¼ of Section 36, Township 45 North, Range 5 East, City of Kirkwood, St. Louis County, Missouri per Book 3568 Page 497: a five (5) foot easement 158 feet long, being the east 5 feet of the west 18 feet 4 inches of Lot 1 of Block 1 of Hughes Subdivision of a part of the northwest one fourth of Sec. 36, T45N R5E and running north 158 feet from the north line of Maple Avenue, also known as:

Beginning at the Southeast corner of said Lot 1 and being on the western right of way line of North Kirkwood Road, 96.00 feet wide; thence along the southern line of said Lot 1, also being the north right of way line of West Maple Avenue, 50.00 feet wide, North 88 degrees 58 minutes 47 seconds west, a distance of 213.67 feet; thence leaving said north right of way line of West Maple Avenue, North 01 degrees 01 minutes 13 seconds Est a distance of 158.00 feet, being the centerline of said 5.00 foot wide easement vacation.

SECTION 2. A certified copy of this ordinance shall be recorded with the Recorder of Deeds, St. Louis County.

SECTION 3. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS

---

Mayor, City of Kirkwood

ATTEST:

---

City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

## Ordinance

Place On The Agenda Of: 12/1/2016

### Step #1:

Strategic Plan NO

Goal # & Title

### Background To Issue:

A 158'x5' easement exists in Lot 1 of Hughes Subdivision Block One Lot Consolidation Plat as recorded in Plat Book 363, Page 310 of the St. Louis County Records in the Northwest 1/4 Section 36, Township 45 North, Range 5 East, City of Kirkwood, St. Louis County, Missouri per book 3568 page 497. The easement grantee is the City of Kirkwood for the purpose of constructing, operating, and maintaining lines of electric. No utilities or public improvements exist in the easement. The property owners have obtained letters of approval to vacate the easement from the Kirkwood Electric Department.

### Recommendations and Action Requested:

It is recommended the council approve the vacation of the easement as recorded in Plat Book 363, Page 310

### Alternatives Available:

Cost: \$0.00 Account #: 00000000000000 Project #: 0 Budgeted: YES

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

BY: Ted Dunkmann

Date: 11/15/2016

Authenticated: dunkmatj

You can attach up to 3 files along with this request.



Easement Vacation App and Exhibits.pdf  
Adobe Acrobat Document  
1.01 MB



CVS Easement vacation\_201611111036.pdf  
Adobe Acrobat Document  
211 KB

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 11/16/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment	 File Attachment	 File Attachment
---	---	---

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

11-23-16

# CITY OF KIRKWOOD

## APPLICATION FOR PLANNING AND ZONING COMMISSION ACTION

CASE NUMBER: \_\_\_\_\_

DATE: 11-4-16

PROJECT ADDRESS: 1035 N. Kirkwood Road, Kirkwood MO 63122

ZONING DISTRICT: B-3 LOT SIZE: +/- 2.45 Acres

LOCATOR NUMBER: 22M140951

### ACTION REQUESTED

- Zoning Change From \_\_\_\_\_ to \_\_\_\_\_
- Community Unit Plan, Type: \_\_\_\_\_
- Special Use Exception: \_\_\_\_\_
- Subdivision Development, Number of Lots: \_\_\_\_\_
- B4 Development Plan     B5 Development Plan

- Site Plan Review
- Right-of-Way/Easement Vacation
- Other: \_\_\_\_\_
- Comments: \_\_\_\_\_

### PETITIONER INFORMATION

Name: Cory Redmond      Signature: [Signature]      Phone No.: 401-258-1370  
Street Address: 16455 Hollister Crossing Dr.      City: St. Louis      State: MO      Zip: 63011  
E-mail Address: cory.redmond@cvscaremark.com      FAX No.: 401-733-0176

Petitioner's Status:  Corporation     Partnership     Individual  
Relationship of Petitioner to Property:  Owner     Tenant     Option Holder (Attach Copy of Contract)     Other

I(We) hereby certify that I(we) have legal interest in the hereinabove described property and that all information given herein is true and a statement of fact.

### AGENT INFORMATION

Agent's Name: Matt Fogarty      Signature: [Signature]      Phone No.: 314-925-7444  
Street Address: 308 TCW Court      City: Lake St. Louis      State: MO      Zip: 63367  
E-mail Address: mfogarty@premiercivil.com      FAX No.: 314-925-7459

(NOTE: The above-named person shall receive the official notice of public hearing)

### PROPERTY OWNERS

(Signature required or submit proof petitioner has legal interest in property)

Name: _____	Name: _____
Signature: _____	Signature: _____
Address: _____	Address: _____
C/S/Z: _____	C/S/Z: _____
Phone: _____	Phone: _____

### FOR CITY USE ONLY

Date Received: 11-10-16      Total Received: \$ 75<sup>00</sup>      Agenda Date: \_\_\_\_\_

- Rezoning: \$1,000
- Zoning Code Amendment: \$1,000
- Special Use Permit: \$1,000
- Site Plan Review: \$700
- Site Plan Review Amendment or Extension: \$500
- Preliminary Site Plan Review, Mixed Use in B2 Zoning District, more than 5 acres: \$1,000 (includes SPR fee) + \$25/acre or portion over one acre
- Preliminary Community Unit Plan: \$1,000 + \_\_\_\_\_ Dwelling units @ \$20/each = \$ \_\_\_\_\_ = \$ \_\_\_\_\_
- Preliminary Subdivision: \_\_\_\_\_ Lots @ \$500/Lot = \$ \_\_\_\_\_
- Preliminary B-4/B-5 Development Plan: \$1,000 + \_\_\_\_\_ Acres @ \$100/Acre or portion over one acre = \$ \_\_\_\_\_
- Easement Vacation: \$75
- Right-of-way Vacation: \$100
- Letter of Credit Extension: \$100

\*\*\*\*\*  
Date Received: \_\_\_\_\_      Total Received: \$ \_\_\_\_\_      Agenda Date: \_\_\_\_\_  
Final Subdivision Plat/Community Unit Plan/B-4 or B-5 Development Plan

- Final Subdivision Plat/CUP Type A: \_\_\_\_\_ Lots @ \$100/Lot = \$ \_\_\_\_\_ + 1-1/4% of \$ \_\_\_\_\_ = \$ \_\_\_\_\_ + Sidewalk Waiver on \_\_\_\_\_ @ \$30/Foot = \$ \_\_\_\_\_ = \$ \_\_\_\_\_
- Final CUP Type C: \$500 + 1-1/4% of \$ \_\_\_\_\_ = \$ \_\_\_\_\_
- Amend Approved Community Unit Plan Type A or Type C: \$500
- Amend Final Development Plan of Approved Subdivision Plat: \$200
- Final B-4/B-5 Development Plan or Amend Approved B4 Plan (when public hearing is not required): \$1,000
- Amend Approved B5 Plan (when public hearing is not required): \$500
- Final Site Plan Review, Mixed use in B2 Zoning District, more than 5 acres: \$500
- Amend Approved Final Site Plan, Mixed use in B2 Zoning District, more than 5 acres: \$300

SUBCOMMITTEE ( \_\_\_\_\_ )

Date	Invoice Number	Comment	Amount	Discount Amount	Net Amount
11/4/2016	EASEMENTFE	easment vacation filing fee	75.00	0.00	75.00

Check: 001025      11/4/2016      City of Kirkwood      Check Total:      75.00

**TMC Missouri 2, LLC**  
 501 Pennsylvania Parkway  
 Suite 160  
 Indianapolis, IN 46240  
 (317) 705-8800

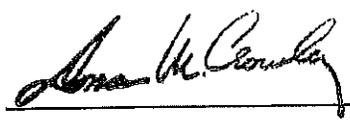
**Fifth Third Account**  
 Indianapolis, IN

001025

\*SEVENTY-FIVE AND XX / 100

DATE	AMOUNT
11/4/2016	*****75.00*

**PAY**      City of Kirkwood  
**TO THE**  
**ORDER**  
**OF:**



⑈001025⑈ ⑆074908594⑆ 7653345459⑈

Security features. Details on back.

City of Kirkwood  
 \*\*\* CUSTOMER RECEIPT \*\*\*  
 Oper: BLDGNTER      Type: BP      Drawer: 1  
 Date: 11/10/16 00      Receipt no: 101874

Description	Quantity	Amount
PZ BOARD/COMMISSION FEES	1.00	\$75.00
VACATE EASEMENT CVS		

Tender detail  
 CK CHECK      1025      \$75.00  
 Total tendered      \$75.00  
 Total payment      \$75.00

Trans date: 11/10/16      Time: 14:41:04

THANK YOU FOR YOUR PAYMENT

DOCUMENT TYPE EASEMENT VACATION

DATE OF DOCUMENT 11-4-16

GRANTOR MISSOOURI CVS PHARMACY, LLC  
ONE CVS DRIVE  
WOONSOCKET, RI 02895

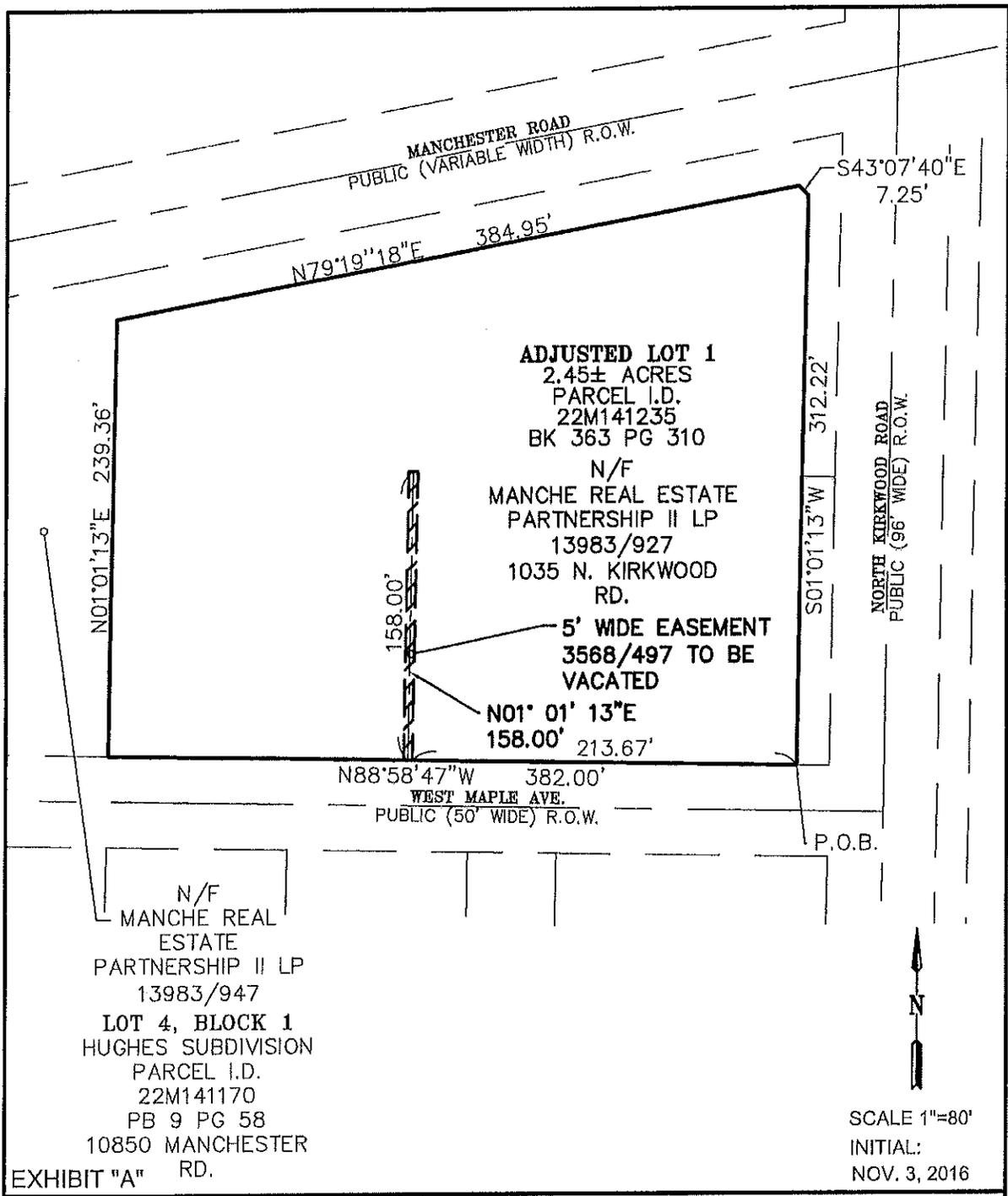
GRANTEE CITY OF KIRKWOOD  
139 S. KIRKWOOD ROAD  
KIRKWOOD, MO 63122

PROPERTY ADDRESS 1035 N. KIRKWOOD RD.  
KIRKWOOD, MO 63122

COUNTY LOCATOR # 22M140951

CITY/ MUNICIPALITY CITY OF KIRKWOOD, MISSOURI

LEGAL DESCRIPTION A TRACT OF LAND BEING LOT 1 OF HUGHES SUBDIVISION BLOCK ONE LOT  
CONSOLIDATION PLAT AS RECORDED IN P.B. 363 PG. 310 OF THE ST. LOUIS  
COUNTY RECORDS IN NORTHWEST ¼ OF SECTION 36, TOWNSHIP 45 NORTH,  
RANGE 5 EAST, ST. LOUIS COUNTY, MISSOURI



**EASEMENT VACATION**

A TRACT OF LAND BEING LOT 1 OF HUGHES SUBDIVISION BLOCK ONE LOT  
CONSOLIDATION PLAT AS RECORDED IN P.B. 363 PG. 310 OF THE ST. LOUIS  
COUNTY RECORDS IN NORTHWEST ¼ OF SECTION 36, TOWNSHIP 45 NORTH, RANGE  
5 EAST, CITY OF KIRKWOOD, ST. LOUIS COUNTY, MISSOURI

EXHIBIT "B"

EASEMENT VACATION LEGAL DESCRIPTION

An easement, five feet wide in Lot 1 of Hughes Subdivision Block One Lot Consolidation Plat as recorded in Plat Book 363 Page 310 of the St. Louis County Records in Northwest  $\frac{1}{4}$  of Section 36, Township 45 North, Range 5 East, City of Kirkwood, St. Louis County, Missouri per Book 3568 Page 497: a five (5) foot easement 158 feet long, being the east 5 feet of the west 18 feet 4 inches of Lot 1 of Block 1 of Hughes Subdivision of a part of the northwest one fourth of Sec. 36, T45N R5E and running north 158 feet from the north line of Maple Avenue, also known as:

Beginning at the Southeast corner of said Lot 1 and being on the western right of way line of North Kirkwood Road, 96.00 feet wide; thence along the southern line of said Lot 1, also being the north right of way line of West Maple Avenue, 50.00 feet wide, North 88 degrees 58 minutes 47 seconds west, a distance of 213.67 feet; thence leaving said north-right of way line of West Maple Avenue, North 01 degrees 01 minutes 13 seconds East a distance of 158.00 feet, being the centerline of said 5.00 foot wide easement vacation.

3568 497

**A E R T A L E A S E M E N T**

TO WHOM IT MAY CONCERN:

KNOW ALL MEN BY THESE PRESENTS, that, Paul W. Cook and Adelaide F. Cook, his wife, GRANTOR, for and in consideration of the sum of One Dollar (\$1.00), and other valuable considerations, the receipt of which is hereby acknowledged, do hereby grant and convey unto the CITY OF KIRKWOOD, a municipality, GRANTEE, its successors, assigns, lessees and tenants forever, a permanent easement for use of public utilities over the property described below, to-wit:

The southwest corner of Lot A1 of Woodlawn Terrace No. 3 Subdivision in the City of Kirkwood, St. Louis County, Mo.

*Paul W. Cook*  
*Adelaide F. Cook*

STATE OF MISSOURI ) ss.  
COUNTY OF ST. LOUIS

On this 24th day of May, A.D., 1955, before me personally appeared Paul W. Cook and Adelaide F. Cook, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

BY STEPHEN W. VERNER, I have heretofore set my hand and affixed my official seal in St. Louis County, Missouri, the day and year first above written.

My commission expires February 23, 1959

*Stephen W. Verner*  
Notary Public



Filed for Record Feb. 29 1956 at 12:08 P. M. Gerald J. Homovich Recorder

**U T I L I T I E S E A S E M E N T**

TO WHOM IT MAY CONCERN:

KNOW ALL MEN BY THESE PRESENTS, that ED LOEHR, GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt of which is hereby acknowledged, do hereby grant and convey unto the CITY OF KIRKWOOD, municipality, GRANTEE, its successors, assigns, lessees and tenants, forever, a permanent easement to construct, reconstruct, operate, maintain and remove lines of electric and other appurtenances thereto, together with the right to trim or remove trees and other obstructions, on over across, under and through the following described property, to-wit:

A five (5) foot easement 158 feet long, being the east 10 feet of the west 18 feet 4 inches of Lot 1 of Block 1 of Hughes Subdivision of a part of the northeast one fourth of Sec. 24, T42N-R2E and running north 158 feet to the north line of Maple Avenue.

*Ed Loehr*  
*Ed Loehr*

STATE OF MISSOURI ) ss.  
COUNTY OF ST. LOUIS

On this 3 day of F E O. , A.D., 1956, before me appeared



3568  
497  
2/28/56

BOOK 3568 PAGE 498

F. D. LOEHR to me personally known, who, being by me duly sworn, did say that he is the President of F. D. LOEHR MTR. INC. a corporation duly organized under the laws of the State of Missouri, and that the seal affixed to the authority of its Board of Directors, and the said F. D. LOEHR acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

My commission expires 1/24/61

*Edward J. ...*  
Notary Public

Filed for Record Feb 29 1956 at 12:09 P. M. Gerald J. Donworth Recorder

AERIAL EASEMENT

TO WHOM IT MAY CONCERN:

KNOW ALL MEN BY THESE PRESENTS, that Irvin Roy Gray

GRANTOR, for and in consideration of the sum of One Dollar (\$1.00), and other valuable considerations, the receipt of which is hereby acknowledged, do hereby grant and convey unto the CITY OF KIRKWOOD, a municipality, CHAIRMAN, its successors, heirs, assigns and tenants forever, a permanent aerial easement for use of public utilities over the property described below, to-wit:

Lot 2 of Resubdivision of Parts of Lots 6 & 7 of Louisa Heights, City of Kirkwood, Missouri

*Irvin Roy Gray*

STATE OF MISSOURI } ss.  
COUNTY OF ST. LOUIS }

On this 19th day of January, A.D., 1956, before me personally appeared Irvin Roy Gray

to be known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in St. Louis County, Missouri, the day and year first above written.

My commission expires Oct. 20, 1958

*Anna C. Kelly*  
Notary Public

Notary Seal: Anna C. Kelly, Notary Public, State of Missouri, Commission Expires Oct. 20, 1958

Filed for Record Feb 29 1956 at 12:10 P. M. Gerald J. Donworth Recorder



WHERE COMMUNITY AND SPIRIT MEET

November 11, 2016

Jim DuBois, P.L.A.,  
Premier Civil Engineering  
308 TCW Court  
Lake Saint Louis, MO 63367  
Direct Office: 314-925-7451  
Cell: 636-352-8557  
Fax: 314-925-7459

Re: Request of Easement Vacation -- 1035 N. Kirkwood Rd.

We have investigated the request for the vacation and have no objection to the vacation as proposed in the attached drawings entitled "Exhibit A" and "Exhibit B" describing the vacation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Petty', written over a horizontal line.

Mark Petty  
Director, Kirkwood Electric

Attachments: Exhibit "A", Exhibit "B"

CC: Ted Dunkman, P.E., City Engineer, City of Kirkwood



## Exhibit "B"

### EASEMENT VACATION LEGAL DESCRIPTION

An easement, five feet wide in Lot 1 of Hughes Subdivision Block One Lot Consolidation Plat as recorded in Plat Book 363 Page 310 of the St. Louis County Records in Northwest ¼ of Section 36, Township 45 North, Range 5 East, City of Kirkwood, St. Louis County, Missouri per Book 3568 Page 497: a five (5) foot easement 158 feet long, being the east 5 feet of the west 18 feet 4 inches of Lot 1 of Block 1 of Hughes Subdivision of a part of the northwest one fourth of Sec. 36, T45N R5E and running north 158 feet from the north line of Maple Avenue, also known as:

Beginning at the Southeast corner of said Lot 1 and being on the western right of way line of North Kirkwood Road, 96.00 feet wide; thence along the southern line of said Lot 1, also being the north right of way line of West Maple Avenue, 50.00 feet wide, North 88 degrees 58 minutes 47 seconds west, a distance of 213.67 feet; thence leaving said north right of way line of West Maple Avenue, North 01 degrees 01 minutes 13 seconds East a distance of 158.00 feet, being the centerline of said 5.00 foot wide easement vacation.

BILL 10525

ORDINANCE

AN ORDINANCE PROVIDING FOR THE CONTINUATION OF A SALES TAX IN THE AMOUNT OF ONE-HALF OF ONE PERCENT FOR THE PURPOSE OF FUNDING CAPITAL IMPROVEMENTS AND CALLING AN ELECTION ON THE QUESTION OF WHETHER TO CONTINUE TO IMPOSE SUCH SALES TAX; DESIGNATING THE TIME OF HOLDING SAID ELECTION; AND AUTHORIZING AND DIRECTING THE CITY CLERK TO GIVE NOTICE OF SAID ELECTION.

WHEREAS, the City Council desires to propose the continuance of the one-half of one percent sales tax for capital improvements, and

WHEREAS, this sales tax will be used for capital improvements such as roads, sidewalks, essential equipment, police and fire vehicles and equipment, and

WHEREAS, the City Council desires that this proposition be placed on the April 4, 2017 ballot.

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

SECTION 1. There is hereby established the continuance of a sales tax in the amount of one-half of one percent on all retail sales made in the City of Kirkwood, Missouri.

SECTION 2. Said sales tax shall remain in force as provided by law upon approval thereof by a majority of the votes cast on the proposition by the qualified voters of the City voting thereon.

SECTION 3. An election is hereby ordered to be held in the City of Kirkwood, Missouri, on Tuesday, April 4, 2017, on the following proposition:

**PROPOSITION 1**

Shall the City of Kirkwood, Missouri, continue its sales tax of one-half of one percent for the purpose of funding capital improvements? The approval of the proposition will authorize the continuance of the existing one-half of one percent sales tax without increasing such sales tax.

YES

NO

SECTION 4. The form of the Notice of Election for said election, a copy of which is attached hereto and made a part hereof, is hereby approved.

SECTION 5. The City Clerk is hereby authorized and directed to notify the Board of Election Commissioners of St. Louis County, Missouri, of the adoption of this Ordinance no later than 5:00 p.m. on Tuesday, January 24, 2017, and to include in said notification all of the terms and provisions required by Chapter 115 of the Revised Statutes of Missouri, as amended.

SECTION 6. Upon passage of said election, the City Clerk shall forward to the Director of Revenue of the State of Missouri by United States registered mail or certified mail (1) a certified copy of this Ordinance, (2) a copy of the abstract of votes cast on the proposition at said election, and (3) a map clearly showing the boundaries of the City.

SECTION 7. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

**NOTICE OF ELECTION  
CITY OF KIRKWOOD, MISSOURI**

Notice is hereby given to the qualified voters of the City of Kirkwood, Missouri, that the City Council of the City has called an election to be held in the City on Tuesday, April 4, 2017, commencing at 6:00 a.m. and closing at 7:00 p.m. on the question contained in the following sample ballot:

**OFFICIAL BALLOT  
CITY OF KIRKWOOD, MISSOURI  
APRIL 4, 2017**

**PROPOSITION 1**

Shall the City of Kirkwood, Missouri, continue its sales tax of one-half of one percent for the purpose of funding capital improvements? The approval of the proposition will authorize the continuance of the existing one-half of one percent sales tax without increasing such sales tax.

YES

NO

**INSTRUCTIONS TO VOTERS:** If you are in favor of the question, place and X in the box opposite "YES." If you are opposed to the question, place and X in the box opposite "NO."

BILL 10526

ORDINANCE

AN ORDINANCE APPROPRIATING \$19,507 FROM THE EQUITABLE SHARING FUND BALANCE TO ACCOUNT #205-1201-429.75.05 FOR THE PURCHASE OF 90 SIG SAUER P320 PISTOLS FOR THE POLICE DEPARTMENT.

WHEREAS, the Police Chief recommends appropriating the funds necessary to purchase ninety Sig Sauer P320 Pistols for the Police Department, and

WHEREAS, funds in the amount of \$19,507 need to be appropriated from the Equitable Sharing Fund Balance to Account #205-1201-429.75.05.

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

SECTION 1. Funds in the amount of \$19,507 are hereby appropriated from the Equitable Sharing Fund Balance to Account #205-1201-429.75.05 for the purchase of ninety Sig Sauer P320 Pistols for the Police Department.

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

Ordinance

Place On The Agenda Of: 12/1/2016

Step #1:

Strategic Plan Select...

Goal # & Title

Background To Issue:

The Police Department wishes to upgrade the present issued Sig Sauer pistol to an updated Sig Sauer model. The newer model is a Sig Sauer P320 9mm, which would replace the Sig Sauer P226 .40 caliber pistol now in use. The P320 is one half pound lighter than the P226, and through testing and evaluation it was found to be more comfortable both for officers to carry and as a shooting platform. There are a variety of different grip sizes available to accommodate officers having different sized hands, and all of the variables cited above resulted in a notable increase in shooter accuracy during testing and evaluation. Also, the FBI has recently tested modern 9mm law enforcement ammunition and found it to have favorable characteristics for law enforcement use. The FBI has issued 9mm duty ammunition to agents.

As a part of this transaction, Sig Sauer has agreed to receive 80 P226 pistols from Kirkwood PD as trade-in weapons, significantly reducing the cost of the new weapons.

Recommendations and Action Requested:

The Police Department is requesting Council approval of the purchase of 90 Sig Sauer P320 pistols directly from Sig Sauer, while trading in 80 Sig Sauer P226 pistols. A greater amount of pistols are being purchased than are being traded in because the P320 is also available in a sub-compact model suitable for some plain clothes positions. The total cost to the City of Kirkwood for this will be \$9,507, with an additional \$10,000 to be required for the purchase 9mm ammunition for transition training and duty issue. Therefore, the Police Department is requesting the appropriation of \$19,507 from the Equitable Sharing Fund Balance for the purchase.

Alternatives Available:

Not purchase new pistols.

Cost: \$19,507.00

Account #: 20512014297505

Project #:

Budgeted: NO

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Jack Plummer

Date: 11/14/2016

Authenticated: folluojd

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Approve

Purchasing Director's Comments:

Sig Sauer directly provides firearms to government agencies meeting the criteria of a single source purchase as defined in Article VI. Purchasing, Division 1. Generally, Sec. 2-377 Sing source purchasing procedure, Item (1) Supplies are proprietary and only available from the manufacturer or a single distributor.

BY: David Weidler

Date: 11/21/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (Must have Finance Department's approval).

Appropriation

From Account # or Fund Name: Equitable Sharing Fund Balance

To Account # or Fund Name: 20512014297505

Finance Director's Comments:

BY: John Adams

Date: 11/22/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 11-23-16

BILL 10527

ORDINANCE

AN ORDINANCE APPROPRIATING \$146,150 FROM THE PARK SALES TAX FUND RESERVES TO ACCOUNT #302-2001-600.75.04, PROJECT #PR1701, ACCEPTING THE BID OF NUTOYS LEISURE PRODUCTS, INC. IN THE AMOUNT OF \$175,077 (PURSUANT TO HGACBUY COOPERATIVE CONTRACT) FOR PLAYGROUND EQUIPMENT FOR FILLMORE PARK AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by HGACBuy Cooperative Contract, and

WHEREAS, staff recommends that the City enter into a contract with Nutoys Leisure Products, Inc. for Playground Equipment for Fillmore Park under HGACBuy Cooperative Contract #PR31 in the amount of \$175,077, and

WHEREAS, funds in the amount of \$146,150 need to be appropriated from the Park Sales Tax Fund Reserves to Account #302-2001-600.75.04, Project #PR1701.

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

SECTION 1. Funds in the amount of \$146,150 are hereby appropriated from the Park Sales Tax Fund Reserves to Account ##302-2001-600.75.04, Project #PR1701.

SECTION 2. The bid of Nutoys Leisure Products, Inc. in the amount of \$175,077 (pursuant to HGACBuy Cooperative Contract #PR31) for Playground Equipment for Fillmore Park is hereby accepted and approved.

SECTION 3. The Mayor is hereby authorized and directed to enter into a contract with Nutoys Leisure Products, Inc. in the amount of 175,077 (pursuant to HGACBuy Cooperative Contract #PR31) for Playground Equipment for Fillmore Park.

SECTION 4. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

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Mayor, City of Kirkwood

ATTEST:

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City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

Ordinance

Place On The Agenda Of: 12/1/2016

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

Expansion of Fillmore Park through the acquisition of a.4 acre neighboring property offered an opportunity to add to the park's amenities while improving circulation and access to park features. A planning grant from the Municipal Park Grant Commission of St. Louis County was used to gather neighborhood input and develop a conceptual plan for the park incorporating the new property. A second grant for \$525,000 was secured from the Park Grant Commission for actual construction of the project. During the public input and design process playground equipment from Landscape Structures was identified as the type of equipment desired by the neighborhood. A proposal was sought from Landscape Structures for provision and installation of the playground equipment and safety surface under the HGAC procurement program. this legislative request asks that a contract be entered into to provide this equipment.

Recommendations and Action Requested:

The specific request is to increase the project budget by appropriating \$146,150.00 from reserves for the Local Parks and Storm Water Sales Tax fund to Account 302-2001-600.75-04, Project PR1701, and that a contract be entered into with Landscape Structures, Inc. to provide and install playground equipment for the Fillmore Park Improvement Project.

Alternatives Available:

Costs could be reduced by utilizing poured in place safety surface for the proposed "playground grass" safety surface, with a further cost reduction possible by placing poured in place safety surface over crushed aggregate as opposed to a concrete pad. The first alternative would save \$3,155, the second would save \$17,670. Other cost saving measures could potentially eliminated some of the playground equipment, but cost savings are more difficult to calculate without input on what elements should be cut.

Cost: \$175,077.00 Account #: 30220016007504 Project #: PR1701 Budgeted: YES

If YES, Budgeted Amount: \$28,927.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

See attached memorandum.

BY: Murray Pounds

Date: 11/18/2016

Authenticated: poundsm

You can attach up to 3 files along with this request.



Landscape Structure Leg  
Memo.docx  
Microsoft Word Document  
138 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 11/22/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*



11877 Resolution Letter.pdf  
Adobe Acrobat Document  
162 KB

File Attachment

File Attachment

Step #3: If budgetary approval is required **(Must have Finance Department's approval).**

Appropriation

From Account # or Fund Name: Park Sales Tax Fund Reserves

To Account # or Fund Name: 302-2001-600.75-04 PR1701

Finance Director's Comments:

BY: John Adams

Date: 11/22/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

*From the desk of:*  
Murray Pounds, Director of Parks and Recreation  
111 S. Geyer Road, Kirkwood, MO 63122  
Phone: 314-822-5857 Fax: 314-984-5931  
E-mail: poundsm@kirkwoodmo.org



## Memo

**To:** Kirkwood City Council  
**From:** Murray Pounds  
**CC:** David Weidler, John Adams, Russ Hawes  
**Date:** November 18, 2016  
**Re:** Fillmore Park Playground Legislative Request

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This memo offers information relative to the request to enter into a contract to provide playground equipment, safety surface and installation for the Fillmore Park Improvement Project. Information presented covers both the contractual information and information related to the funding request for the playground.

Specifically the request is to enter into a contract with Landscape Structures to provide two separate, age appropriate play structures, installation of the play structures, and provision and installation of 4815 square feet of "playground grass" safety surface. These play structures and playground grass safety surface were identified as desired during the design process and strongly supported by the neighborhood representative involved with design development. Also incorporated in the design for the playground is a repurposing of two existing swing sets currently in use at Fillmore Park.

The total cost for these items is \$175,077.00. This price is offered through the Houston-Galveston Area Council Cooperative purchasing contract, a program that assists local governments in reducing costs through this government to government procurement service. As such the costs for the equipment and installation have already been bid and a full bid process on our part is not required. It also important to note that at least \$166,300 of this cost for playground and safety surface will be reimbursed through the \$525,000 Municipal Park Grant Commission grant received for the project.

Assuming the passage of other legislative requests for the Fillmore Park Improvement project, including contracts for the construction, architectural Construction Period Services and appropriation of funds from the Capital Sales Tax Fund, available funding for the

playground will be inadequate and require an appropriation from reserves of the Local Parks and Storm Water Sales Tax Fund. The amount requested for appropriation is \$146,150.00.

A recap of the budget for the overall project and proposed funding is as follows:

As currently conceived, the proposed costs for the project break down as follows:

• Bid Document Development	\$ 57,900.00 (already committed)
• Ideal Construction Contract w/Contingency	\$533,098.00 (including contingency)
• Architect's Construction Period Services	\$ 28,075.00
• Playground and Safety Surface & Install	\$175,077.00
• Park Benches and Trash Cans	\$ 7,000.00
• Geotechnical and Testing Services	<u>\$ 3,000.00</u>
<b>Total Project Budget</b>	<b>\$804,150.00</b>

The original allocation for this project was \$600,000. Of that amount, \$57,900 is already committed for the development of bid documents. Remembering that a grant of \$525,000 from the Municipal Park Grant Commission of St. Louis County is supporting a substantial portion of this project (reimbursable at the end of the project), the following funding scenario is proposed:

• Existing Project Funding in the Park Sales Tax Fund	\$600,000.00
• Proposed Funding From Public Works for Alternate #1*	\$ 58,000.00
• Additional Appropriation from Park Sales Tax Fund	<u>\$146,150.00</u>
<b>Total Funding</b>	<b>\$804,150.00</b>

The specific actions requested are as follows:

- Appropriation of \$146,150.00 from the reserves to Account 302-2001-600.75-04 (park improvements), Project PR1701 (Fillmore Park Improvements).
- Approval to enter into a contract with Landscape Structures, Inc. for provision and installation of playground equipment and safety surface as part of the Fillmore Park Improvement Project, with costs to be charged to Account 302-2001-600.75-04, Project PR1701.

If approved, playground installation will be scheduled as part of the Fillmore Park project and should be completed by late spring.

November 22, 2016

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Playground Equipment for Fillmore Park.

Vendor	Total
Nutoys Leisure Products, Inc.	\$175,077.00

The City of Kirkwood may use cooperative contracts that are competitively bid. HGACBuy competitively bid playground equipment and Nutoys Leisure Products, Inc. was the lowest responsible and responsive proposal. The HGACBuy contract number is PR31.

Funds are available in the amount of \$28,927.00 in account number 302-2001-600.75-04, project number PR1701. Additional funds in the amount of \$146,150.00 are request to be ~~transferred~~ *APPROPRIATED* from the Local Parks and Storm Water Sales Tax fund to 302-2001-600.75-04, project number PR1701.

Attached is a request from Murray Pounds, Director of Parks and Recreation, for a resolution authorizing a contract in the amount of \$175,077.00 to be issued to with Nutoys Leisure Products, Inc. for Playground Equipment for Fillmore Park.

Respectfully,



David Weidler, CPPO, CPPB  
Director of Procurement

BILL 10528

ORDINANCE

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 2, ARTICLE VI. DIVISIONS 1- 7, "PURCHASING."

WHEREAS, The Director of Purchasing recommends certain revisions, updates and clarifications to the Purchasing Ordinance in order to make the Ordinance more modern, easier to understand, increase compliance and create efficiency and are in the best interest of the City of Kirkwood.

WHEREAS, it is recommended that the amendments include a change from "Purchasing" to "Procurement" to be in line with industry standards, and encompass the true functions of the centralized purchasing department.

WHEREAS, the amendments allow for the correct sequential order of the provisions relating to procurement.

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

SECTION 1. The Kirkwood Code of Ordinances, Chapter 2, Article VI. is hereby renamed "Procurement" and "purchasing" shall be replaced with "procurement" as applicable in Chapter 2, Article VI.

SECTION 2. The Kirkwood Code of Ordinances, Chapter 2, Article VI. "Procurement" is hereby amended as follows:

**ARTICLE VI. PURCHASING PROCUREMENT**  
**DIVISION 1. GENERALLY**

**Sec. 2-371. Definitions.**

As used in this Article, the following terms shall have the meanings ascribed to them:

- (1) **Best Interest.** Grants the City the discretion to take the most advantageous action on behalf of the city in the absence of law or regulation.
- (2) **Change Order.** A written alteration to modify or amend a purchase order or contract.
- (3) **Contract.** A legally enforceable written or oral agreement between two or more competent parties.
- (4) **Contractual Services** means and includes all contractual obligations and services required under a contract, including professional services, ~~personal services, all telephone, gas, water, electric light and power services, towel and cleaning services, leases for all grounds, buildings, offices or other space required by the using agency, and the rental, repair or maintenance of equipment, machinery and other city owned personal property. The term shall not include insurance, professional and other contractual services which are in their nature often unique and not subject to normal competitive bidding.~~

- (5) *Cooperating Agency* means any department, agency, commission, bureau or other unit in the city government not under the direction and control of the city council, or in any other governmental unit whether school district, special authority, other municipality, county or otherwise which cooperates with the city. ~~through its director of purchasing in purchasing any items covered by this article~~
- (6) *Cooperative Purchasing Programs* are formally organized programs that offer contracts that have been competitively bid on behalf of multiple entities and may result in discounted prices.
- (7) *Director of ~~purchasing~~ Procurement* means ~~the purchasing agent of the city.~~ The person holding the position as head of the procurement department and who serves as the procurement agent for the city.
- (8) *Procurement.* Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations.
- (9) *Procurement Card.* A Procurement Card is a type of Commercial Card that allows organizations to take advantage of the existing credit card infrastructure to make business-to-business (B2B) electronic payments for a variety of low dollar purchases under controlled restrictions.
- (10) *Professional Services.* Services rendered by members of a recognized profession or possessing a special skill.
- (11) *Purchase Order.* The City's document used to authorize a purchase transaction with a vendor/contractor/consultant. It should contain salient provisions for construction, supplies and/or services ordered, applicable terms as to payments, discounts, date of performance and transportation, and other factors or conditions relating to the transaction. Acceptance of a Purchase Order by a vendor shall constitute a contract, except instances in which a Purchase Order is used only as an internal encumbrance document, then the salient terms of the contract document shall prevail.
- (12) *Requisition.* An internal document by which a using agency sends details of supplies, services, professional services or materials required to the Procurement Department and pre-encumbers approved funding.
- (13) *Responsible Bidder.* A vendor/business or individual who is fully able to meet all the requirements of the solicitation and subsequent contract and must possess the full capability, including financial and technical, to perform contractually as required.
- (14) *Responsive Bidder.* A vendor/business or individual who has submitted a bid or proposal that conforms in material aspects to the solicitation document and its requirements, including form and substance.
- (15) *Reverse Auction.* A fixed-duration bidding event hosted by a single buyer, in which multiple suppliers compete for business through the posting of their selling prices, which are viewable by all submitting suppliers.
- (16) *Supplies* means and includes all supplies, materials, equipment, commodities and capital outlays.
- (17) *Using Agency* means any department, agency, commission, bureau or other unit in the city government using supplies or procuring contractual services as provided for in this Article. ~~and which shall be under the direction and control of the city council.~~

(Ord. No. 7497, §1, 3-13-86)

**Sec. 2-372. Contracts to be made ~~Officers to make contract from~~ through Director of **purchasing Procurement**.**

Except as provided in this Article, it shall be unlawful for any city ~~officer or officers~~ **employee** to make any contract **for a procurement** within the purview of this Article other than through the Director of **purchasing Procurement**. Any purchase order or contract made contrary to the provisions of this Article shall not be approved by the city council **except as otherwise set forth herein** and the city shall not be bound thereby **unless otherwise approved by the city council**. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-373. Conflicts of interest.**

Any purchase order or contract within the purview of this Article in which the Director of **purchasing Procurement** or any ~~other officer or~~ employee of the city is financially interested, directly or indirectly, shall be void unless the city council waives compliance with this section before the execution of a purchase order or contract. The city council shall waive this section only when the best interests of the city require such action and the laws of the state do not prohibit the transaction. The Director of **purchasing Procurement** shall immediately report to the ~~council~~ **Chief Administrative Officer** any information that the Director of **purchasing Procurement** has or that comes to his attention that would indicate any such interest either before or after a ~~purchase~~ **procurement** has been made. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-374. Acceptance of gifts or ~~rebates~~ payment.**

The Director of **Purchasing Procurement** ~~and each officer and~~ or any other employee of the city shall not accept or be influenced in his duties by an offer of any gift or payment from any source, other than his regular compensation from the City as further detailed in Appendix E: Personnel Rules and Regulations. ~~is expressly prohibited from accepting, directly or indirectly, from any person to which any purchase order or contract is or might be awarded any rebate, gift, money, or anything of value whatsoever, except where given for the use and benefit of the city.~~ (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-375. Requisitions and estimates; emergency requirements; revision of requisitions.**

All ~~using agencies~~ **city departments**, either by or with the authorization of the head of the ~~department agency~~, shall to the extent practicable file with the Director of **Purchasing Procurement**, **procurement plans prior to the start of the fiscal year and provide** detailed requisitions or estimates of their requirements of supplies and contractual services in such manner, at such times and for such future periods as the Director of ~~purchasing~~ **Procurement** shall prescribe. **Such requisitions shall include a cost estimate which may be based upon the budgeted amount, independent cost estimate, actual cost or other reliable information and must precede the procurement.**

- (1) *Unforeseen requirements.* A ~~using agency~~ **department** shall not be prevented from filing in the same manner with the Director of **purchasing Procurement** at any time a requisition or estimate for any supplies ~~and~~ or contractual services it needs that were not foreseen when the detailed estimates were filed, subject to budgetary limitations.
- (2) *Revision powers.* The Director of **purchasing Procurement** may examine each requisition or estimate and may suggest revisions as to quality, quantity, ~~or~~ **estimated cost, specifications or any other factor.**

(Ord. No. 7497, §1, 3-13-86; Ord. No. 7962, §§ 1, 2, 4-5-90)

**Sec. 2-376. Emergency ~~purchasing~~ procurement procedures.**

**In the event of an emergency which requires immediate procurement of supplies or contractual services the Chief Administrative Officer is empowered to authorize the head of any using agency to secure any supplies or contractual service, regardless of the amount of the expenditure. The head of the using agency shall send to the Director of Procurement a copy of the delivery record or invoice together with a full written report of the circumstances of the emergency. A report of the circumstances of an emergency procurement shall be filed by the Chief Administrative Officer with the city council and shall be entered into the records. In the absence or unavailability of the Chief Administrative Officer, the Assistant Chief Administrative Officer may authorize an emergency procurement.**

~~———— (a) ——— In the event of an apparent emergency which requires immediate purchase of supplies or contractual services, the Chief Administrative Officer is empowered to authorize the director of purchasing to secure by an open market procedure as provided in this division, at the lowest obtainable price, any supplies or contractual service regardless of the amount of the expenditure. A full report of the circumstances of an emergency purchase shall be filed by the Chief Administrative Officer with the city council and shall be entered into the official records of the council and shall be open to public inspection. In the absence or unavailability of the Chief Administrative Officer, the director of finance may authorize the director of purchasing to make an emergency purchase.~~

~~———— (b) ——— In the event of an actual emergency and with the consent of the director of purchasing and the approval of the Chief Administrative Officer, the head of any using agency may purchase directly any supplies the immediate procurement of which is essential to prevent delays in the work of the using agency that may affect the life, health or convenience of citizens. The head of the using agency shall send to the director of purchasing a requisition and a copy of the delivery record together with a full written report of the circumstances of the emergency. The report shall be filed with the council and be made a part of the permanent records of the council and be open to public inspection.~~

(Ord. No. 7497, §1, 3-13-86)

**Sec. 2-377. Single source ~~purchasing~~ procurement procedure.**

The requirement of competitive bids or proposals for supplies may be waived when the Director of ~~Purchasing Procurement~~ has determined in writing that there is only a single feasible source for the supplies. ~~Immediately upon discovering~~ **In the event it is determined** that other feasible sources exist, the Director of ~~Purchasing Procurement~~ shall rescind the waiver and proceed to procure the supplies through the competitive processes as described in this Article.

A single feasible source exists when **the procurement meets one or more of the following:**

- (1) Supplies are proprietary and only available from the manufacturer or a single distributor; or
- (2) Based on past procurement experience, it is determined that only one distributor services the region in which the supplies are needed; or
- (3) Supplies are available at a discount from a single distributor for a limited period of time.

(Ord. 8771, §1, 11-19-98)

**Sec. 2-378. Reserved.**

~~Editor's note~~ Ord. No. 7962, § 3, adopted April 5, 1990, repealed § 2-378 which pertained to information as to funds available to using agency and derived from Ord. No. 7497, § 1, adopted March 13, 1986.

**Sec. 2-378. Purchase orders required; rejection of nonconforming shipments, contractual services; approval of invoices and prompt payment.**

(a) All ~~purchases~~ procurements of contractual services and supplies made pursuant to this Article, **except for procurements made through a procurement card or check requisition**, shall be on such purchase order forms as shall be developed by the Director of ~~purchasing~~ **Procurement**, and each purchase order shall reflect salient conditions of the purchase such as description, specification, unit purchase price, aggregate amounts, freight conditions and place of delivery.

(b) A copy of all purchase orders **and contracts** shall be available to the ~~receiving department using agency~~ which will receive the contractual services or supplies ~~purchased~~ **procured**, and the ~~receiving department or using agency~~ shall reject delivery of any contractual services or supplies, which do not conform to the purchase order ~~conditions and specifications~~, **scope of work or contract terms. The using agency shall report to the Director of Procurement any issues with nonconforming shipments, specifications, scope of work or contractual terms.**

~~(c) All invoices for purchases made pursuant to this article shall be approved as being in conformity with the purchase order. Said approval will be made in accordance with procedures established by the director of finance, and agreed to by the director of purchasing.~~

(c) **Invoices for the procurement of supplies and contractual services will not be paid unless there is a corresponding purchase order or contract in place or unless the ordinance exempts the procurement from having a purchase order. The Director of Procurement shall review and approve all payments for procurements including purchase orders and check requisitions for compliance with the appropriate procurement procedures and contractual terms.**

(e) **Unless contrary to any federal or state funding requirements or unless funds from a grant are not timely received by the city but notwithstanding any other law to the contrary, all public works contracts made shall provide for prompt payment, as defined by the State of Missouri.**

(f) **In general, all invoices are to be paid within the terms of the procurement document. All Using Agencies must cooperate with the procurement department in receiving, documenting and any and all other requirements needed by the procurement department in order to comply with the terms of the purchase order and contract in terms of prompt payment.**

(Ord. No. 7497, §1, 3-13-86; Ord. No. 7962, §4, 4-5-90)

**Sec. 2-379. Competitive bidding required for procurements ~~purchases or sales of property.~~**

All ~~purchases and contracts for procurements of supplies and contractual services and all sales of personal property which has become obsolete and unusable~~ shall, except as expressly provided in this Article, be based wherever possible on competitive bids. **The Director of Procurement may authorize a request for proposal process whenever the procurement of supplies or contractual services may**

be facilitated by such a process if the Director of Procurement deems it is in the best interest of the city. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-380. Inspections, tests of goods-supplies.**

(a) The Director of ~~purchasing~~ **Procurement** or the Using Agency ~~ies under the authority of the director of purchasing~~ shall be responsible for ensuring that all supplies and contractual services conform to the specifications **and scope of work** set forth in the **purchase** order or contract.

(b) The Director of ~~purchasing~~ **Procurement** shall have the authority to require chemical tests of samples submitted with bids and samples of deliveries which are necessary to determine their conformance with the specifications. In the performance of such tests, the Director of ~~purchasing~~ **Procurement** shall have authority to make use of laboratory facilities of any agency of the city or any outside laboratory.

(Ord. No. 7497, §1, 3-13-86; Ord. No. 7962, §5, 4-5-90)

**Sec. 2-381. Surplus, report; transfer or sale of property.**

(a) At least annually, all using agencies shall submit to the Director of ~~purchasing~~ **Procurement**, at such times and on such forms as the Director of ~~purchasing~~ **Procurement** shall prescribe, reports showing stocks of all supplies, **equipment or any asset** which are no longer used or which have become obsolete, worn out or scrapped.

~~\_\_\_\_\_ (b) \_\_\_\_\_ The director of purchasing shall have the authority to transfer surplus stock to other using agencies.~~

~~\_\_\_\_\_ (c) \_\_\_\_\_ The director of purchasing shall have the authority to sell all supplies which have become unsuitable for possible use, or exchange or trade the supplies for new supplies, in accordance with the procedures set forth in this article.~~

(b) **The Director of Procurement, upon the review of the Chief Administrative Officer, shall have the authority to arrange for transfer, disposal or the competitive sale of city surplus as necessary.**

(c) **The Director of Procurement has the authority to declare surplus “scrap” or “salvage” when it no longer has resale value.**

(d) **The Director of Procurement has the authority to use any procurement, sales or trade-in methodology in order to obtain the highest price for surplus for any amount of bid/sales and has the authority to sell at highest price when highest price is achieved through proper surplus sales methods.**

(e) **The Director of Procurement will provide notification of any transfers, trade-ins, sales or disposals of items to the Director of Finance.**

(Ord. No. 7497, §1, 3-13-86)

**Sec. 2-382. Council approval of contracts; endorsement of Director of ~~purchasing~~ Procurement required.**

No resolution or ordinance shall be finally passed approving any contract for supplies, contractual services ~~(except for professional services)~~ **(including any renewals, amendments, or other contractual events), licensing agreements or cost sharing agreements unless the request for such resolution or ordinance shall contains the endorsement of the Director of purchasing Procurement on the face thereof, indicating his recommendation and stating that proper purchasing procurement procedures have been followed.**

**Sec. 2-383. Adherence with additional requirements for federal, state and other grant funds.**

**The city must adhere to any additional requirements that relate to grants as it pertains to procurement. The Director of Procurement will follow statutory guidance on the proper manner to incorporate requirements if different from, or in addition to, the city's requirements.**

**Sec. 2-384. Electronic Procurement**

**The Director of Procurement may electronically post, bid, notify and contract. Surplus sale items may be solicited through electronic auction.**

**Sec. 2-385. Reverse Auctions**

**The use of reverse auctions is permissible to satisfy the requirements for soliciting bids under the formal and informal procurement procedures as provided in this Article if the Director of Procurement determines it is in the best interest of the city in obtaining supplies or contractual services.**

**Sec. 2-386. Procurement Card**

**The Director of Procurement shall be responsible for the evaluation, planning, management and administration the Procurement Card Program, including all associated training and manuals. The Procurement Card Program is the preferred method for procurement and payment for procurements less than or equal to \$1,500.**

**Secs. 2-387—2-398. Reserved.**

**DIVISION 2. DIRECTOR OF PURCHASING PROCUREMENT**

**Sec. 2-399. Office created; appointment; position to be filled from civil service.**

There is hereby created the office of Director of ~~purchasing~~ **Procurement**, who shall be appointed by the Chief Administrative Officer subject to civil service provisions of this Code, and which office shall be filled in accordance with the civil service provisions of the city whenever a vacancy exists therein. (Ord. No. 7497, §1, 3-13-86)

**~~Sec. 2-399. Bond.~~**

~~————The director of purchasing shall, upon appointment, give an official bond in an amount prescribed by the Chief Administrative Officer, to be approved by the city attorney or be covered by a blanket bond applicable to several employees of the city. (Ord. No. 7497, §1, 3-13-86)~~

**Sec. 2-400. Authority, duties generally.**

The Director of ~~purchasing~~ **Procurement** shall have the authority and the duty to **procure** ~~purchase~~ or contract for all supplies and ~~contractual~~ services needed by any using agency that derives its support entirely or in part from the city. **Purchasing Procurement** procedures as prescribed by this Article and such rules and regulations as the Director of ~~purchasing~~ **Procurement**, with the consent of the city council, shall adopt for the internal management and operation of the office of the Director of ~~purchasing~~ **Procurement** shall be followed. ~~The authority of the Director of purchasing Procurement to make all purchases for all using agencies shall not be abridged or excepted by any using agency.~~ (Ord. No. 7497, §1,3-13-86)

**Sec. 2-401. Additional powers and duties enumerated.**

In addition to the ~~purchasing~~ **procurement** authority conferred in this Article, and in addition to any other powers and duties granted and imposed by this Article, the Director of ~~purchasing~~ **Procurement** shall:

- (1) Procure for the city the highest quality in supplies and contractual services at the least expense to the city.
- (2) **Procure for the city all professional services following the correct methods of competitive proposals and requests for qualifications.**
- (3) Discourage ~~uniform~~ **collusive or restrictive** bidding and endeavor to obtain as full and open competition as possible ~~on~~ **for all purchases procurements** and sales.
- (4) Recommend and, with the consent of the city council, establish and amend when necessary all rules and regulations authorized by this Article and any others necessary to its operation.
- (5) Keep informed of current developments in the field of ~~purchasing~~ **procurement**, prices, market conditions and new products and secure for the city the research done in the field of ~~purchasing~~ **procurement** by other governmental jurisdictions, national technical organizations and by private businesses and organizations.
- (6) Prepare and maintain such forms as are reasonably necessary to the operation of this Article.
- (7) Prepare and adopt a standard ~~purchasing~~ **procurement** nomenclature for using agencies and suppliers.
- (8) Prepare, adopt and maintain a vendors' ~~database-catalog-file~~.
- (9) Explore the possibility of buying "in bulk" so as to take full advantage of bulk prices and discounts, whether for the city alone or together with cooperating agencies.
- (10) Act so as to procure for the city all federal and state tax exemptions to which it is entitled.
- (11) ~~Be subject to the direction of the director of finance and cooperate with all persons within the director of finance's office to secure for the city the maximum efficiency in budgeting and accountability.~~ **Work in coordination and cooperation with all departments.**

- (12) Report immediately to the Chief Administrative Officer any vendors who default in their qualifications and any irresponsible bidders and make recommendations to the Chief Administrative Officer for the disqualification of any vendors and bidders from receiving any business from the city for a stated period of time.
- (13) Tabulate at the beginning of each fiscal year the items to be ~~purchased~~ **procured** by all using agencies as reflected by their approved budgets in order ~~that purchases of~~ **to ensure the items to be used by several using agencies can be properly scheduled and procured** ~~bulk buying employed employing procurement plan documents or other methods.~~
- (14) Furnish the Chief Administrative Officer and the Director of Finance with such reports as ~~both or either~~ **may be required** from time to time as to activities of the office of Director of ~~purchasing, Procurement,~~ and file monthly with the Chief Administrative Officer a summary of the activities of the office of the Director of ~~purchasing Procurement.~~
- (15) ~~Post monthly in a conspicuous place in the city hall a notice of the bids which are to be received during the coming month, with a brief description of the items involved and the date and time when bids are to be received, and a brief tabulation of the bids which were received during the prior month. Electronically post formal bids on the city's website as the official repository of bid announcements and post bid tabulations of previous bid results.~~
- (16) Keep a permanent file of all written bids received and a ~~memorandum record of all oral bids or proposals received for a period of not less than ten (10) years in conformance with state law. Such retention may be in electronic form. All such records, after a period of ten (10) years, may be destroyed.~~
- (17) ~~Through cooperation from and with the advice of department heads of the city, all officers of the city and private citizens appointed by the city council to assist the director of purchasing, classify all the supplies used by the various branches of the city, adopt as standards the minimum number of qualities, sizes and varieties of supplies consistent with the successful operation of the city, and prepare and adopt written specifications of all such standard supplies. All specifications shall be as definite and certain as possible and shall be drawn to permit competition. This requirement, however, shall not apply to noncompetitive types and kinds of supplies. Adopt as standards the minimum number of qualities, sizes and varieties of supplies consistent with the successful operation of the city and prepare and adopt written specifications of all such standard supplies. All specifications shall be as definite and certain as possible and shall be developed to permit competition.~~
- (18) Require, whenever necessary, that a prospective vendor or bidder furnish a performance, **payment** or bid bond or deposit.
- (19) **The Director of Procurement and Chief Administrative Officer shall be responsible for interpreting the meaning and intent of this Article for all city employees.**
- (Ord. No. 7497, §1, 3-13-86; Ord. No. 7962, §§ 6, 7, 4-5-90)

**Sec. 2-402. Supervision of warehouses with inventory-controlled stock.**

The Director of ~~purchasing~~ **Procurement** shall be in control of and supervise all storerooms and warehouses where an inventory-controlled stock is maintained by the city or any using agency of the city. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-403. Inventories.**

The Director of ~~purchasing~~ **Procurement** shall maintain an ~~perpetual~~ inventory record of all materials, supplies or equipment stored in the storerooms and warehouses **where an inventory-controlled stock is maintained by the city or using agency of the city.** ~~under the supervision of the director of purchasing.~~ (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-404. Authority to engage in cooperative purchasing.**

The Director of ~~Purchasing~~ **Procurement** shall have the authority, to the extent permitted by law, to join with other units of government or other government agencies or authorities in cooperative purchasing, ~~when it would serve the best interests of the city~~ **under appropriate circumstances, to utilize cooperative purchasing programs.** Cooperative agreements may be prepared or led by the city or by other local, state, or national entities. In order for a cooperative purchasing program to be considered an appropriate procurement method, the contract that the city desires to purchase under must have been competitively sourced, and must meet or exceed city needs related to specification, availability and cost per all local and state requirements. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-405. Check of market conditions.**

Before extending or renewing an existing contract, the Director of Procurement will conduct market research, commensurate with the value of the contract or award, to ascertain that the proposed contract is still advantageous to the city before it is extended. (Ord. No. 7497, §1, 3-13-86)

**Secs. 2-406—2-419. Reserved.**

**DIVISION 3. FORMAL PROCUREMENT ~~PURCHASING AND SALES~~ PROCEDURES**

**Sec. 2-420. When required.**

All contracts for supplies and or contractual services, except as otherwise provided herein, when ~~the extended cost thereof shall equal or that exceed seven thousand five hundred dollars (\$7,500.00)~~ **fifteen thousand dollars (\$15,000) during a fiscal year or when the full term of such contract may be annually renewed for more than five years and has a total contract price that will exceed forty-five thousand dollars (\$45,000) shall be ~~purchased~~ procured through by formal written contract from the lowest responsible bidder after due notice inviting proposals.** ~~All sales of personal property that has become obsolete and unusable and has an estimated value of seven thousand five hundred dollars (\$7,500.00) or more shall be sold by formal written contract to the highest responsible bidder after due notice inviting proposals.~~

(Ord. No. 7497, §1, 3-13-86; Ord. No. 8668, §1, 11-6-97)

**Sec. 2-421. Subdivision of contract to evade requirements of this division prohibited.**

No contract or ~~purchase~~ procurement shall be subdivided to avoid the requirements of this division. **The value for said contract or procurement shall adhere to this section cumulatively in one fiscal year.** (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-422. Solicitation of bids.**

The Director of ~~purchase~~ Procurement shall, by certified or registered mail, **electronic means** or ~~in his discretion~~ by first-class mail, solicit sealed bids from at least ~~five (5)~~ **three (3)** responsible prospective suppliers **wherever possible, including all suppliers with whom the city has done business within the preceding two (2) years setting forth detailed specifications and all pertinent information necessary for the prospective suppliers to file a bid.** Prospective suppliers to whom invitations to bid are sent shall be limited to those who are part of the trade group offering commodities and services **that are similar in character to that those being purchased procured.** ~~If the director of purchasing is unable to reasonably find five (5) responsible suppliers, he shall certify that fact to the director of finance who shall then certify to the director of purchasing a number less than five (5) to whom invitations to bid shall be sent and such lesser number, when sent by the director of purchasing, shall be deemed to be in compliance with the requirements of this section. The provisions of this section may be waived when the director of purchasing, the agency director involved, and the chief administrative officer agree that following this section's provisions may cause excessive delay, public inconvenience, and/or a significant cost penalty. If a lesser number of bids are received, the Director of Procurement will certify the attempt to obtain three (3) bids. If the Director of Procurement, the head of the using agency, and the Chief Administrative Officer believe, after receipt of less than three bids, re-solicitation may cause excessive delay, public inconvenience and/or a significant cost penalty, this section's provisions may be waived. The Director of Procurement shall at a minimum electronically post all bid opportunities. Additionally, the Director of Procurement may advertise, fax, email or mail solicitation notices as is customary within the public procurement profession.~~ (Ord. No. 7497, §1, 3-13-86; Ord. No. 7962, §8, 4-5-90)

**Sec. 2-423. Bid deposit; when required, refund, forfeiture.**

When deemed necessary by the Director of ~~purchase~~ Procurement, or when requested by a using agency or when directed by the city attorney, bid deposits shall be prescribed in inviting bids. An unsuccessful bidder shall be entitled to return of any **bid deposit surety** required. A successful bidder shall forfeit **the bid deposit required by the bid in the amount of any damages incurred by the City as a result of the any surety required by the director of purchasing upon failure on the bidder's part to enter into a contract within ten (10) days after the award, and the invitation to bid shall so state.** (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-424. Manner of submission of bids; opening; recommendations to the council.**

- (1) Sealed bids shall be submitted to the Director of ~~purchase~~ Procurement and shall be identified as bids on the envelope. The bids shall be opened in public at the time and place stated in the invitations to bid and in any public notices. **If the city elects to receive bids electronically the bid submittals shall be delivered in accordance with the instructions concerning electronic bidding.** After the opening, the Director of ~~purchase~~ Procurement shall tabulate all bids received and file a report of the bids with **the Chief Administrative Officer** and city council, together with the Director of ~~purchase~~<sup>2</sup>s Procurement's recommendations as to whom the award shall be made.
- (2) **Resolution or ordinance requests for procurements or contracts that require a contingency shall be detailed in the resolution and recommendation from the Director**

**of Procurement. Change orders may be made administratively for amounts that do not exceed council approved contingency.**

(Ord. No. 7497, §1, 3-13-86)

**Sec. 2-425. Award of contract to lowest responsive and responsible bidder.**

The city council, upon receiving the **bid** tabulation and recommendation of the Director of ~~purchasing,~~ **Procurement** shall award the contract to the lowest **responsive and** responsible bidder. ~~but~~ **The Director of Procurement and city council** shall have the right to reject any and all bids. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-426. Factors for determination of lowest responsive and responsible bidder.**

In determining the lowest **responsive and** responsible bidder, the **Director of Procurement and** city council shall consider:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the services required.
- (2) Whether the bidder can perform the contract or provide the services promptly or within the time specified, without delay or interference.
- (3) The character, integrity, responsibility, judgment, experience and efficiency of the bidder.
- (4) Whether the bidder is in default on the payment of taxes, licenses or other moneys due the city. This factor alone ~~shall~~ **may** justify disqualification.
- (5) The quality and performance of previous contracts or services.
- (6) The previous and existing compliance by the bidder with laws, the provisions of this Code and other city ordinances relating to the contract or service.
- (7) The sufficiency of the financial resources and ability of the bidder to perform and contract or provide the service.
- (8) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- (9) The ability of the bidder to provide future maintenance and service of machines for the use of the subject of the contract.
- (10) ~~The number and scope of conditions attached to the bid.~~ **The extent the bid conforms in material respects to the Invitation for Bid.**

**Sec. 2-427. Specifications.**

**The Director of Procurement shall monitor the use of specifications for supplies and contractual services required by the city. The Director of Procurement shall obtain advice and assistance from personnel of using agencies in the development of specifications. All specifications**

shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs and shall not be unduly restrictive.

Specifications and scope of work prepared by non-city personnel, including, but not limited to, those prepared by architects, engineers, and designers shall be provided to the Director of Procurement who has the authority to edit specifications as necessary to make them less restrictive and require and obtain full cooperation from all using agencies and outside contractors.

(Ord. No. 7497, §1, 3-13-86)

Secs. 2-4278—2-442. Reserved.

#### DIVISION 4. INFORMAL PROCUREMENT PURCHASING AND SALES PROCEDURES

**Sec. 2-443. When allowed; requirements.**

All ~~purchases~~ procurements of supplies and contractual services and all sales of personal property that has become obsolete and unusable for less than the estimated value of seven thousand five hundred fifteen thousand dollars (~~\$7,500.00~~)(**\$15,000**) or less, but equal to or in excess of the estimated value of one thousand five hundred three thousand dollars (~~\$3,000~~)(**\$1,500**), shall be made upon the basis of at least three (3) written bids from three (3) prospective suppliers, ~~of the city wherever possible or such lesser number as shall be certified by the director of finance in the event three (3) prospective suppliers shall not exist.~~ The provisions of this section may be waived when the director of purchasing, the agency director involved, and the chief administrative officer agree that following this section's provisions may cause excessive delay, public inconvenience and/or a significant cost penalty. **If a lesser number of bids are received, the Director of Procurement will certify the attempt to obtain three (3) bids. If the Director of Procurement believes, after receipt of less than three bids, re-solicitation, may cause excessive delay, public inconvenience and/or a significant cost penalty, this section's provisions may be waived.** Additionally, the Director of Procurement may advertise, fax, email or mail solicitation notices as is customary within the public procurement profession. (Ord. No. 7497, §1, 3-13-86; Ord. No. 7962, §9, 4-5-90; Ord. No. 8668, §2, 11-6-97)

**Sec. 2-444. Subdivision of contract to evade requirements of this division prohibited.**

No contract or ~~purchase~~ procurement shall be subdivided to avoid the requirements of this division. **The value for said contract or procurement shall adhere to this section cumulatively in one fiscal year.** (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-445. Solicitation of bids.**

~~The director of purchasing shall solicit bids by direct mail or telephone request to prospective vendors.~~ **The Director of Procurement shall solicit quotes by mail, telephone, email, internet or other appropriate means to achieve competition.** (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-446. Award to lowest responsive and responsible bidder.**

The award shall be made to the lowest **responsive and** responsible bidder in accordance with the standards set forth in section 2-426 by the Director of ~~purchasing~~ **Procurement** after consultation with ~~the director of finance and the head of the department using agency.~~ **in which the using agency operates.** (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-447. Justification of award to other than low bidder.**

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Director of ~~purchasing~~ **Procurement** and filed with the other ~~papers~~ **documentation** relating to the transaction. (Ord. No. 7497, §1, 3-13-86)

**Sec. 2-448. Award to local bidder; tie bids.**

If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder. If there shall be no local bidder or more than one (1) local bidder with a low equal bid, the Director of ~~purchasing~~ **Procurement** shall award the contract to one of the tie bidders by drawing lots in public. (Ord. No. 7497, §1, 3-13-86)

~~Sec. 2-449. Reserved.~~

~~Editor's note~~ Ord. No. 7962, § 10, adopted April 5, 1990, repealed § 2-449, which pertained to the Director of purchasing's **Procurement's** monthly report and its contents and derived from Ord. No. 7497, § 1, adopted March 13, 1986.

~~Secs. 2-449—2-464. Reserved.~~

~~DIVISION 5. OPEN MARKET PROCEDURE~~

~~Sec. 2-465. When allowed.~~

~~All purchases of supplies and contractual services and all sales of personal property that has become obsolete and unusable for the estimated value of less than three thousand dollars (\$3,000.00), but equal to or in excess of the estimated value of one thousand five hundred dollars (\$1,500.00), shall be made on the open market without newspaper advertisement and without the procedures prescribed in this article for purchases of more than three thousand five hundred dollars (\$3,000.00). (Ord. No. 7497, §1, 3-13-86; Ord. No. 8668, §3, 11-6-97)~~

~~Sec. 2-466. Subdivision of contract to evade requirements of this division prohibited.~~

~~No contract, purchase or sale shall be subdivided to avoid the requirements of this division. (Ord. No. 7497, § 1, 3-13-86)~~

~~Sec. 2-467. Bids; award to lowest responsible bidder.~~

~~All open market purchases shall, wherever possible, be based on at least three (3) competitive bids which may be either oral or written, and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in section 2-426. (Ord. No. 7497, §1, 3-13-86)~~

~~Sec. 2-468. Solicitation of bids.~~

~~The director of purchasing shall solicit bids by direct mail request to prospective suppliers, or by telephone, or by such other method as the director of purchasing shall deem appropriate, in order to receive competitive proposals. (Ord. No. 7497, §1, 3-13-86)~~

~~Sec. 2-469. Reserved.~~

~~Editor's note~~ Ord. No. 7962, § 10, adopted April 5, 1990, repealed § 2-469, which pertained to records and report to chief administrative officer and derived from Ord. No. 7497, § 1, adopted March 13, 1986.

~~Secs. 2-470—2474. Reserved.~~

~~DIVISION 65. PURCHASES AND SALES PROCUREMENTS OF LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS OR LESS~~

~~(DIVISION RENUMBERED)~~

~~Sec. 2-465. Bids and proposals not required.~~

~~All procurements purchases of supplies and contractual services and all sales of personal property that have become obsolete and unusable for less than the estimated value of one thousand five hundred dollars (\$1,500) or less shall be made on the open market without bids or proposals. Ord. No. 7497, § 1, 3-13-86; Ord. No. 8668, § 4, 11-6-97)~~

~~Sec. 2-466. Check of market conditions.~~

~~The director of purchasing shall from time to time, at least annually, make random checks as to prices being quoted by several competing suppliers for contractual services and supplies. (Ord. No. 7497, § 1, 3-13-86)~~

~~Sec. 2-467. Reserved.~~

~~Editor's note~~ Ord. No. 7962, § 10, adopted April 5, 1990, repealed § 2-477, which pertained to the report to the chief administrative officer and its contents and derived from Ord. No. 7497, § 1, adopted March 13, 1986.

~~Secs. 2-467—2-479. Reserved.~~

DIVISION 76. POLICY AND PROCEDURE FOR THE PROCUREMENT  
OF ARCHITECTURAL, ENGINEERING, LAND SURVEYING  
~~MAINTENANCE SERVICES, AND OTHER PROFESSIONAL SERVICES~~

**(DIVISION RENUMBERED)**

**Sec. 2-480. Adoption of policy and procedure.**

The City does adopt and establish a policy and procedure for the selection and procurement of professional services **including architectural, engineering and land surveying**, in accordance with the following provisions.

**Sec. 2-481. Implementation of policy.**

The ~~Chief Administrative Officer~~ **Director of Procurement** is hereby directed to implement the provisions of the policy **and have the authority and responsibility to fully manage and direct all using agencies and procurement staff in the procurement process** set forth herein.

**Sec. 2-482. Policy, procedures.**

The following shall be the policy and procedures for selecting architectural, engineering, land surveying services and other professional services (hereinafter referred to as Professional Services) for the City of Kirkwood.

**Sec. 2-483. Definitions.**

*Architectural Services* shall mean those services within the scope of practice of architecture as defined by the laws of the State of Missouri, ~~Section 327.091 RSMo.~~

*City* shall mean the City of Kirkwood.

*City Council* shall mean the Mayor and Council of the City of Kirkwood.

*Engineering Services* shall mean those services within the scope of practice of engineering as defined by the laws of the State of Missouri, ~~Section 327.181 RSMo.~~

*Firm* shall mean any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, engineering, or land surveying, or other professional services and provide said services.

*Land Surveying Services* shall mean those services within the scope of practice of land surveying services as defined by the laws of the State of Missouri, ~~Section 327.272 RSMo.~~

~~**MAINTENANCE SERVICES** shall mean the repair, but not replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased.~~

*Other Professional Services* shall mean those services of a vocation requiring specialized knowledge and intensive academic or technical training in such fields as land appraisal, urban planning, finance, real estate, and others **as determined by the Director of Procurement.**

**Request for Qualifications** shall mean a negotiated procurement process for selection of architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required.

**Selection Committee** shall mean at least three qualified individuals selected by the Director of Procurement and appointed approved by the Chief Administrative Officer including the department head of the using department agency, and the Director of purchasing Procurement. The Director of Procurement who shall oversee and coordinate the selection process and shall serve as the chair of the selection committee. The selection process shall only be instituted under the supervision and direction of the Director of Purchasing Procurement who may with the approval of the Chief Administrative Officer establish procedural rules so long as they are not inconsistent with this ordinance or state law.

~~USING DEPARTMENT~~ shall mean the City department which requested the professional service and be the prime user and oversee the service.

(Ord. No. 8668, §5, 11-6-97; Ord. No. 8767, §1, 11-5-98)

#### **Sec. 2-484. Qualifications Based Selection**

Present provisions of law notwithstanding; in the procurement of architectural, engineering or land surveying services, the Director of Procurement shall encourage firms engaged in the lawful practice of their professions to submit qualifications and performance data to the Director of Procurement. Whenever a project requiring architectural, engineering or land surveying services is proposed for the city, the Director of Procurement along with the approved selection committee shall evaluate statements of qualifications and performance data of firms, submitted regarding the proposed project. In evaluating the qualifications of each firm, the following criteria shall be used:

- (1) The specialized experience and technical competence of the firm with respect to the type of services required;
- (2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
- (3) The past record of performance of the firm with respect to such factors as control of costs, quality of work and ability to meet schedules;
- (4) The firm's proximity to and familiarity with the area in which the project is located.

The Director of Procurement will chair the selection committee and solicit a proposal from the recommended most qualified firm or firms to perform these services. Recommendation and selection will be based on the qualifications of the firms. Council has the right to approve or reject the recommendation.

Upon successful evaluation of the Firms in correlation to the proposed project the City will proceed with evaluation as defined in Sec. 2-485 Classes of Services for Architectural, Engineering, Land Surveying, and Other Professional Services. The designation and use of Qualifications Based Selection will supplement and satisfy the requirements for the number of firms and proposals required under Class A and Class B Professional Services.

#### **Sec. 2-485. Classes of Services for Architectural, Engineering, Land Surveying, and Other Professional Services.**

Projects will be divided into ~~four~~ **three** classes as follows:

- (a) **Class A – Professional services** for projects where fees **have an estimated value of more than will exceed \$10,000; fifteen thousand dollars (\$15,000)**, the ~~using department~~ **Director of Procurement shall will** select at least ~~five~~ **three firms, wherever possible**, to be contacted for an “Expressions of Interest”. After “Expressions of Interest” are received and reviewed, at least three detailed proposals shall be requested. Request for “Expressions of Interest” and detailed proposals may be combined into a single request.

After reviewing the detailed proposals, the Selection Committee shall make a recommendation to the Chief Administrative Officer, **through the Director of Procurement**. The Chief Administrative Officer shall present the recommendation to the City Council for approval or rejection of the proposal. ~~The Council has the right to approve or reject any and all Proposals.~~

- (b) **Class B – Professional Services** for projects where fees **have an estimated value of fifteen thousand dollars (\$15,000) or less, are less than \$10,000** but more than **five thousand dollars (\$5,000)**; three written proposals are required, ~~when~~ **wherever possible**. The three written proposals may be solicited by mail or by ~~telephone~~ **electronic means**. After reviewing the detailed proposals, the Selection Committee ~~then makes~~ **shall make** a recommendation to the Chief Administrative Officer **through the Director of Procurement** for approval or rejection of the proposal.

- (c) **Class C – Professional Services** for projects where fees ~~are~~ **have an estimated value of less than five thousand dollars (\$5,000) or less** may be made by the ~~director of the using department~~ **Director of Procurement upon recommendation of the head of the using agency** without soliciting competitive proposals. ~~upon approval of the Chief Administrative Officer.~~

- ~~(d) **Class D – Maintenance service** where the costs are less than 5,000 may be made by the director of the using department without soliciting competitive proposals upon approval of the Chief Administrative Officer.~~

#### **Sec. 2-486. General Procedures and Responsibilities.**

- (a) **Expressions of Interest Class A Projects and B Professional Services** - For Class A and B services, the ~~using department~~ **Director of Procurement** shall solicit proposals from qualified firms approved by the Selection Committee. The request should invite comments as to their special experience in the project being considered and describe previous experience with similar projects. The Expressions of Interest will be reviewed by the ~~department~~ **using agency** requesting the services. Factors to be determined in the initial screening will include:
- (1) **The specialized experience and technical competence with respect to the type of services required.**
  - (2) **Quality of services previously performed by the firm for the City. The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project**
  - (3) **The past record of performance of the firm with respect to such factors as cost control of cost, quality of services, and ability to meet schedules.**
  - (4) ~~Community relations including evidence of sensitivity to citizen concerns.~~

(5)(4) The firm's proximity to and familiarity with the area where the project is located.

(b) **Detailed Proposals** - Firms submitting detailed proposals will provide the information prescribed by the using agency. The information shall include:

- (1) Project name for which firm is filing.
- (2) Name and address of firm.
- (3) Previous related experience.
- (4) Outside firms or outside personnel to be used on projects.
- (5) Brief resume of key persons, specialists.
- (6) Special experience in the project being considered.
- (7) Any work previously or currently performing for City.
- (8) Description of resources.
- (9) **Proposed cost**

(Ord. No. 8668, §5, 11-6-97)

**Sec. 2-487. Selection.**

Upon receipt of the detailed proposals for Class A or B **Professional Services** projects, the Selection Committee will review the Proposals; interview the prospective firms, if necessary; and make a recommendation of ~~two~~ **three** firms, best qualified and capable of performing the desired work.

The **Director of Procurement with the using department agency** shall negotiate a contract with the top firm selected. If a satisfactory contract cannot be negotiated with the top firm, negotiations with that firm shall be terminated with the approval of the Selection Committee. Negotiations may then begin with the second firm. **If a satisfactory contract cannot be negotiated with the second firm, negotiations with that firm shall be terminated with the approval of the Selection Committee. Negotiations may then begin with the third firm.** If there is a failing of accord with the ~~second~~ **third** firm, negotiations with such firm may be terminated with the approval of the Selection Committee.

If an agreement cannot be negotiated with the ~~three~~ **two**-selected firms, the **Director of Procurement and using department agency** shall re-evaluate the professional services, including scope and fee requirements, and proceed in accordance with this policy.

(Ord. No. 8668, §5, 11-6-97)

**Sec. 2-488. Award.**

**All professional services, including architectural, engineering and land surveying will require a professional services agreement and purchase order, if applicable, through the Director of Procurement.**

**Sec. 2-489. Prohibition Against Contingent Fees.**

- (a) Each contract entered into by the City Council for professional services shall contain a prohibition against contingent fees as follows:

~~The architect, engineer or land surveyor (as applicable) Firm warrants that he~~  
**they has have** not employed or retained any company or person, other than a bonafide employee working solely for ~~the architect, engineer, or land surveyor~~  
**Firm** to solicit or secure ~~person, company, corporation, individual, or firm other~~  
~~than a bonafide employee working solely for the architect, engineer or land~~  
~~surveyor,~~ any fees, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement.

- (b) For the breach or violation of the foregoing provision, the City Council shall have the right to terminate the agreement without liability and at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Sec. 2-490. Exceptions.**

- (a) ~~When, in the opinion of the Chief Administrative Officer, the nature of other professional services is so specialized that there is only a sole supplier of a professional service that can meet the City's needs the Chief Administrative Officer may select such firm or recommend the Council select such firm. An exception shall be promptly reported to the City Council with an explanation of the reasons therefore. The requirement of~~  
**competitive proposals for other professional services may be waived when the Director of Procurement has determined in writing that there is only a single feasible source for the services. In the event it is determined that other feasible sources exist, the Director of Procurement shall rescind the waiver and proceed to procure the services through the competitive processes as described in this Article.**

- (b) The City Council in its sole and absolute discretion, may waive any and all aforementioned procedural requirements.

(Ord. No. 8668, §5, 11-6-97)

**Secs. 2-491—2-497. Reserved.**

**DIVISION 7. PROTEST TO PROCUREMENT RECOMMENDATION FOR AWARD**

**Unless specified otherwise in the bid documents, any protest to the recommendation of the Director of Procurement shall be provided in writing to the Director of Procurement for review no later than 5:00 p.m. on the fifth day following the public notice of recommendation or award of contract, which ever may come first. No hearing will be held on any protest; evaluation of the protest will be made by the Director of Procurement and the Chief Administrative Officer solely upon the written information provided.**

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS

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Mayor, City of Kirkwood

ATTEST:

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City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

## Ordinance

Place On The Agenda Of: 12/1/2016

Step #1:

Strategic Plan NO

Goal # & Title

### Background To Issue:

The City's external auditing firm, Hochschild, Bloom & Company LLP, provided findings in regard to the Purchasing Ordinance. City staff responded with comments to their findings and committed to update, clarify and revise the Purchasing Ordinance.

### Recommendations and Action Requested:

The approval of the revision to the City's Purchasing Ordinance to reflect the current environment and enhance the City's ability to perform future procurements.

### Alternatives Available:

Retain current ordinance.

Cost: \$0.00

Account #: n/a

Project #:

Budgeted: YES

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

Due to the modernization of Procurement, new statutory requirements, an increase in the requirement for immediate services, and the need for better compliance, we are recommending the ordinance be revised.

BY: David Weidler

Date: 11/21/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*



Purchasing Ordinance Memo  
11-22-16.doc  
Microsoft Word 97 - 2003  
Document  
37.0 KB



Purchasing Ordinance Revision  
Final 11-22-16.doc  
Microsoft Word 97 - 2003  
Document  
166 KB

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 11/21/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

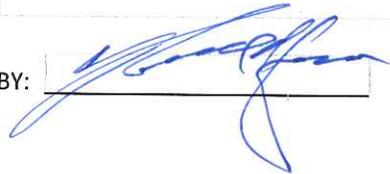
Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

11-23-16

**TO:** Mayor and Council  
**FROM:** David Weidler, Director of Purchasing  
**DATE:** 11/22/2016  
**RE:** Recommended Purchasing Ordinance Revision

The City's external auditing firm, Hochschild, Bloom & Company LLP, provided findings for the year ending March 31, 2016 in regard to the Purchasing Ordinance. City staff responded with comments to their findings and committed to update, clarify and revise the Purchasing Ordinance. A draft black lined version of the document with the changes is attached.

**History:**

The most comprehensive changes in the last thirty years were made in 1986, when Kirkwood became a charter city and the Purchasing Ordinance was changed to reflect the Charter. Subsequent revisions were made in 1990 and in 1997. These revisions were minor and were required to incorporate single source and professional services provisions.

**Background:**

The field of Supply Management and Procurement has changed significantly since 1997. Since the latest revision, new changes to legislation and rulings from legal actions have occurred at the state and federal levels which have significantly impacted this profession. Due to these changes and rulings, along with an increasingly global marketplace, there has been a shift to a more transparent environment creating major trends in Procurement for the use of centralized processes, to implement new procurement techniques and technology, and to separate duties between finance and procurement departments, which allows for a system of checks and balances.

Through the centralization process, procurement departments are able to provide additional value added services which translate into direct savings and allow for the reduction of liabilities and risk from the City's procurements. Coupled with this process the city is able to enact new technologically advanced methods of solicitation, purchase, receipt, and payment, which in turn yield higher returns than conventional methods. This process also allows for the oversight of global company programs such as our Procard program, which allows individuals to enact small dollar purchases in order to reduce the cost of ordering.

The City was ahead of its time enacting the groundwork for the changes in the last thirty years, which is currently reflected in the City's ordinance. What is now required are some additional modifications in order to provide clarity for new methods of procurement and to define the departmental and reporting structure for today's environment. New trends in organizational structure have been enacted by other public entities and in the private marketplace showing a transition to a separation of duties of the Finance

Department and the Procurement Department. The City was in the foreground of this movement and began implementation of these policies prior to the rapidly growing trend in the industry. This organizational structure allows for increased transparency, enhanced fiscal tracking, and the separation of ordering and billing.

The City of Kirkwood also differs from most public entities, as it is a full service entity. This array of services has a dramatic effect on the requirement for an expedient delivery of services by the Procurement Department, namely for the utility departments. The City has seen success through the operation of the utility enterprise funds and as such they have become some of the largest clients for the Procurement Department. In order to expedite lower dollar purchases to improve response time, new internal measures are required to encompass a full review of products while reducing the time of procurement for these departments. As such, the City is recommending changes to the bidding thresholds and the threshold structure itself. This will increase control of the procurements while reducing administrative overhead and allowing for concentration on the procurements that are not easily specified and result in higher dollar returns, cost avoidance and savings.

Due to the modernization of Procurement, new statutory requirements, an increase in the requirement for immediate services, and the need for better compliance, we are recommending the ordinance be revised. This new ordinance will increase oversight of purchases made in the City by requiring increased use of the centralized purchasing department and increased compliance and transparency in the purchase, while separating it from payment without proper purchasing methods and overall approvals.

## **Summary of Recommended Changes**

### ***Significant Changes***

The most significant changes and additions are as follows:

- 1) Changed name from “Purchasing” to “Procurement” to reflect the current services provided by the department.

In the last thirty years terminology changed in the Supply Management field. The term “purchasing” is currently related to order processing. The proposed term “procurement” reflects the additional services already provided by our department in the form of sourcing, contract management, and specification assistance, to name a few. This rebranding will provide immediate recognition from individuals within our field and to our vendors of the types of services that we provide.

- 2) Increased formal bids from \$7,500 to \$15,000.01 plus added a qualifier for number of contract terms of **“or when the full term of such contract may be annually renewed for more than five years and has a total contract price that will exceed forty-five thousand dollars (\$45,000)”**, removed open market bids (oral), changed informal bids from \$3,000-\$7,499.99 to \$1,500.01 - \$15,000 and added verbiage to reflect that these values are based on cumulative procurements in a

fiscal year. Also, revised Section 2-485 to change thresholds for Class A services to \$15,000.01 and Class B services to \$5,000.01 - \$15,000, keeping Class C services to \$5,000.

The formal bid and proposal thresholds are increased from \$7,500 and \$10,000 respectively to \$15,000.01 plus added a qualifier for number of contract terms of **“or when the full term of such contract may be annually renewed for more than five years and has a total contract price that will exceed forty-five thousand dollars (\$45,000)”**. We believe increasing these thresholds to \$15,000.01 will increase productivity, decrease prices, increase the number of bids received, and enable all departments to become more effective and efficient, including Purchasing, as the time needed for bids and approvals will substantially decrease. This decrease will effectively allow Purchasing and the other departments to bid quickly, efficiently and purchase their goods and services approximately 4-6 weeks quicker. This decrease in staff time allocation for smaller procurements will also allow Purchasing to improve training measures that will result in better return on investment and decrease City risk.

The \$15,000.01 threshold is supported as follows:

- By using the CPI Inflation index calculator, calculating our bid threshold of \$2,500 in 1973 to 2016, the CPI index calculation equates to \$13,593.92.
- In a recent bid threshold survey of all the cities in Missouri with a population of 25,000 or more (two did not respond), our council threshold is in the lowest 11.5% as there are two other cities that have a threshold lower than \$15,000 out of the responding 26. Cities that include utilities in this survey all have approval limits of \$15,000 or more.

The informal bid and proposal thresholds were modified to reflect the removal of oral quotes, to prevent improper documentation and to improve traceability and quote verification, as well as the changes to the formal thresholds.

### 3) Added Division 7 Protest to Procurement Recommendation for Award

This division was added to provide our Citizens and Vendors clarity for any protests, as well as to provide structure for City representatives.

### *Global Changes*

- Changed name from “Purchasing” to “Procurement” to reflect the current services provided by the department (see Significant Changes for further detail).
- Updated ordinance to include necessary definitions for overall understanding.
- Moved sales and surplus from multiple sections to Section 2-381.
- Increased formal bids from \$7,500 to \$15,000.01 plus added a qualifier for number of contract terms of **“or when the full term of such contract may be annually renewed for more than five years and has a total contract price that**

**will exceed forty-five thousand dollars (\$45,000)",** removed open market bids (oral), changed informal bids from \$3,000-\$7,499.99 to \$1,500.01 -\$15,000 and added verbiage to reflect that these values are based on cumulative procurements in a fiscal year. (see Significant Changes for further detail).

- Changed procedure for solicitation of bids to 3 bids and included new methodologies of soliciting and posting bids to reflect changes made by the state.
- Added verbiage to clarify responsive and responsible bidders in multiple sections by adding the term responsive.
- Revised Division 7 to remove all instances of maintenance services as these services are now covered under rate based agreements.

BILL 10529

ORDINANCE

AN ORDINANCE APPROPRIATING \$312,382 FROM THE ELECTRIC FUND TO THE CIRCUIT UPGRADES ACCOUNT, PROJECT #EL1701 FOR DISTRIBUTION SYSTEM UPGRADES TO CIRCUIT 8 FOR THE ELECTRIC DEPARTMENT.

WHEREAS, the Purchasing Department conducted an invitation for bids for distribution system upgrades to Circuit 8, a circuit in the northeast portion of Kirkwood, and

WHEREAS, council approved the award of the upgrade work to Black & MacDonald under Resolution 151-2016 on November 17, 2016, and

WHEREAS, staff is requesting an appropriation of funds in the amount of \$312,382 to cover the expense of the distribution system upgrades to Circuit 8, and

WHEREAS, staff recommends funds in the amount of \$312,382 be appropriated from the Electric Fund to the Circuit Upgrades Account #501-2115-480.75.15, Project #EL1701.

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

SECTION 1. Funds in the amount of \$312,382 are hereby appropriated from the Electric Fund to the Circuit Upgrades Account #501-2115-480.75.15, Project #EL1701 for distribution system upgrades to Circuit 8 for the Electric Department.

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED DAY OF.

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Mayor, City of Kirkwood

ATTEST:

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City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

Ordinance

Place On The Agenda Of: 12/1/2016

Step #1:

Strategic Plan YES

Goal # & Title: Goal #4 - Improve Public Infrastructure

Background To Issue:

The Purchasing Department conducted an Invitation for Bids for distribution system upgrades to Circuit 8, a circuit in the northeast portion of Kirkwood. Council approved the award of the upgrade work to Black & MacDonald under resolution 151-2016 on November 17th for \$260,318 with an additional \$52,064 contingency. The Electric Department's requests transferring funding from the Electric Fund Balance to cover the expense.

Recommendations and Action Requested:

The Electric Department recommends approval of an ordinance to transfer #312,382 from the Electric Fund to cover the expense associated with the Circuit 8 work.

Alternatives Available:

The Department plans to continue upgrading the system without interruption by moving fund balance dollars into the budget.

Cost: \$312,382.00 Account #: 50121154807515 Project #: EL1701 Budgeted: NO

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

The Department recommends approval of the ordinance

BY: Mark Petty

Date: 11/23/2016

Authenticated: pettyma

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Transfer of Funds

From Account # or Fund Name:

Electric Fund - Fund Balance

To Account # or Fund Name:

50121154807515 - Project EL1701 - Circuit Up...

Finance Director's Comments:

BY: John Adams

Date:

11/23/2016

Authenticated:

adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

11-23-16

BILL 10530

ORDINANCE

AN ORDINANCE DELETING CHAPTER 17 "OFFENSES" OF THE KIRKWOOD CODE OF ORDINANCES IN ITS ENTIRETY AND REPLACING IT WITH A REVISED CHAPTER 17.

WHEREAS, SB491 will go into effect on January 1, 2017 and affects Chapter 17 "Offenses" of the Kirkwood Code of Ordinances, and

WHEREAS, staff met with the City Attorney to determine what needed to change in Chapter 17 to be compliant with state law, and

WHEREAS, during the review process it was discovered that there were some sections in Chapter 17 that are obsolete and need to be deleted, and

WHEREAS, staff recommends that a revised Chapter 17 "Offenses" of the Kirkwood Code of Ordinances be adopted, and

WHEREAS, the City Council believes it to be in the best interest of the citizens of Kirkwood to adopt a new Chapter 17 "Offenses" of the Kirkwood Code of Ordinances.

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

SECTION 1. Chapter 17 "Offenses" of the Kirkwood Code of Ordinances is hereby deleted in its entirety and the following inserted in lieu thereof:

**Chapter 17**

**OFFENSES**

- Art. I. **General Provisions, §§ 17-1—17-11**
- Art. II. **Offenses Against the Person, §§ 17-12—17-29**
- Art. III. **Offenses Concerning Administration of Justice, §§ 17-30—17-51**
- Art. IV. **Offenses Concerning Public Safety, §§ 17-52—17-65**
- Art. V. **Offenses Concerning Public Peace, §§ 17-66—17-82**
- Art. VI. **Offenses Concerning Weapons and Firearms, §§ 17-83—17-101**
- Art. VII. **Offenses Concerning Property, §§ 17-102—17-134**
- Art. VIII. **Offenses Concerning Prostitution, §§ 17-135—17-149**
- Art. IX. **Sexual Offenses, §§ 17-150—17-166**
- Art. X. **Offenses Concerning Pornography, §§ 17-167—17-179**
- Art. XI. **Offenses Concerning Drugs, §§ 17-180—17-196**
- Art. XII. **Offenses Concerning Minors, §§ 17-197—17-209**
- Art. XIII. **Offenses Concerning Tobacco, Alternative Nicotine Products or Vapor Products, §§ 17-210—17-209**
- Art. XIV. **Railroads, §§ 17-231—17-240**
- Art. XV. **Water Control and Land Disturbance Control, §§ 17-241—17-250**
- Art. XVI. **Clean Air Act, §§ 17-251—17-259**

ARTICLE I  
GENERAL PROVISIONS

**Section 17-1. Definitions.**

In this Chapter, unless the context requires a different definition, the following shall apply:

**ACCESS** — To instruct, communicate with, store data in, retrieve or extract data from, or otherwise make any use of any resources of, a computer, computer system, or computer network.

**AFFIRMATIVE DEFENSE** —

1. The defense referred to is not submitted to the trier of fact unless supported by evidence; and
2. If the defense is submitted to the trier of fact the defendant has the burden of persuasion that the defense is more probably true than not.

**BURDEN OF INJECTING THE ISSUE** —

1. The issue referred to is not submitted to the trier of fact unless supported by evidence; and
2. If the issue is submitted to the trier of fact any reasonable doubt on the issue requires a finding for the defendant on that issue.

**COMMERCIAL FILM AND PHOTOGRAPHIC PRINT PROCESSOR** — Any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency.

**COMPUTER** — The box that houses the central processing unit (CPU), along with any internal storage devices, such as internal hard drives, and internal communication devices, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally. Thus, "computer" refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments will be referred to collectively as "peripherals" and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. "Information" refers to all the information on a computer system, including both software applications and data.

**COMPUTER EQUIPMENT** — Computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network.

**COMPUTER HARDWARE** — All equipment which can collect, analyze, create, display, convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or data. "Hardware" includes, but is not limited to, any data processing devices, such as central processing units, memory typewriters and self-contained laptop or notebook computers; internal and peripheral storage devices, transistor-like binary devices and other memory storage devices, such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two (2) or more computers connected together to a central computer server via cable or modem; peripheral input or output devices, such as keyboards, printers, scanners, plotters, video display monitors and optical readers; and related communication devices, such as modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices and electronic tone-generating devices; as well as any devices, mechanisms or parts that can be used to restrict access to computer hardware, such as physical keys and locks.

**COMPUTER NETWORK** — Two (2) or more interconnected computers or computer systems.

**COMPUTER PROGRAM** — A set of instructions, statements, or related data that directs or is intended

to direct a computer to perform certain functions.

**COMPUTER SOFTWARE** — Digital information which can be interpreted by a computer and any of its related components to direct the way they work. Software is stored in electronic, magnetic, optical or other digital form. The term commonly includes programs to run operating systems and applications, such as word processing, graphic, or spreadsheet programs, utilities, compilers, interpreters and communications programs.

**COMPUTER SYSTEM** — A set of related, connected or unconnected, computer equipment, data, or software.

**COMPUTER-RELATED DOCUMENTATION** — Written, recorded, printed or electronically stored material which explains or illustrates how to configure or use computer hardware, software or other related items.

**CONFINEMENT** —

1. A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court and remains in confinement until:
  - a. A court orders the person's release; or
  - b. The person is released on bail, bond or recognizance, personal or otherwise; or
  - c. A public servant having the legal power and duty to confine the person authorizes his/her release without guard and without condition that he/she return to confinement.
2. A person is not in confinement if:
  - a. The person is on probation or parole, temporary or otherwise; or
  - b. The person is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport the person to or from a place of confinement.

**CONSENT** — Consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

1. It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or
2. It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
3. It is induced by force, duress or deception.

**CONTROLLED SUBSTANCE** — A drug, substance, or immediate precursor in Schedules I through V as defined in Chapter 195, RSMo.

**CRIMINAL NEGLIGENCE** — Failure to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

**CUSTODY** — A person is in custody when he/she has been arrested but has not been delivered to a place of confinement.

**DAMAGE** — When used in relation to a computer system or network, means any alteration, deletion, or destruction of any part of the computer system or network.

**DANGEROUS FELONY** — The felonies of arson in the first degree, assault in the first degree, attempted rape in the first degree if physical injury results, attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical injury results, attempted forcible sodomy if physical injury results, rape in the first degree, forcible rape, sodomy in the first degree, forcible sodomy, assault in the second degree if the victim of such assault is a special victim as defined in Subdivision (14) of Section 565.002, RSMo., kidnapping in the first degree, kidnapping, murder in the second degree, assault of a Law Enforcement Officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree when the victim is a child less than twelve (12) years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve (12) years of age at the time of the commission of the act giving rise to the offense, child molestation in the first or second degree, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under Section 568.060, RSMo., child kidnapping, parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty (120) days under Section 565.153, RSMo., and an "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is found to be an "habitual offender" or "habitual boating offender" as such terms are defined in Section 577.001, RSMo.

**DANGEROUS INSTRUMENT** — Any instrument, article or substance which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

**DATA** — A representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer or computer network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic storage media, punched cards and as may be stored in the memory of a computer.

**DEADLY WEAPON** — Any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged; or a switchblade knife, dagger, billy club, blackjack or metal knuckles.

**DIGITAL CAMERA** — A camera that records images in a format which enables the images to be downloaded into a computer.

**DISABILITY** — A mental, physical, or developmental impairment that substantially limits one (1) or more major life activities or the ability to provide adequately for one's care or protection, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings.

**ELDERLY PERSON** — A person sixty (60) years of age or older.

**FELONY** — An offense so designated or an offense for which persons found guilty thereof may be sentenced to death or imprisonment for a term of more than one (1) year.

**FORCIBLE COMPULSION** — Either:

1. Physical force that overcomes reasonable resistance; or
2. A threat, express or implied, that places a person in reasonable fear of death, serious physical injury, or kidnapping of such person or another person.

**INCAPACITATED** — A temporary or permanent physical or mental condition in which a person is unconscious, unable to appraise the nature of his/her conduct, or unable to communicate unwillingness to an act.

**INFRACTION** — A violation defined by this Code or by any other Statute of this state if it is so designated or if no sentence other than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction.

**INHABITABLE STRUCTURE —**

1. A vehicle, vessel or structure:
  - a. Where any person lives or carries on business or other calling; or
  - b. Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or
  - c. Which is used for overnight accommodation of persons.
2. Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually present.
3. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an inhabitable structure of another.

**KNOWINGLY —**

1. When used with respect to conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or
2. When used with respect to a result of conduct, means a person is aware that his or her conduct is practically certain to cause that result.

**LAW ENFORCEMENT OFFICER —** Any public servant having both the power and duty to make arrests for violations of the laws of this State, and Federal Law Enforcement Officers authorized to carry firearms and to make arrests for violations of the laws of the United States.

**MISDEMEANOR —** An offense so designated or an offense for which persons found guilty thereof may be sentenced to imprisonment for a term of which the maximum is one (1) year or less.

**OF ANOTHER —** Property that any entity, including but not limited to any natural person, corporation, limited liability company, partnership, association, governmental subdivision or instrumentality, other than the actor, has a possessory or proprietary interest therein, except that property shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security arrangement.

**OFFENSE —** Any felony, ordinance violation, misdemeanor or infraction.

**PHYSICAL INJURY —** Slight impairment of any function of the body or temporary loss of use of any part of the body.

**PLACE OF CONFINEMENT —** Any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held.

**POSSESS or POSSESSED —** Having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his/her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one (1) person alone has possession of an object, possession is sole. If two (2) or more persons share possession of an object, possession is joint.

**PROPERTY —** Anything of value, whether real or personal, tangible or intangible, in possession or in action.

**PUBLIC SERVANT —** Any person employed in any way by a government of this State who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this State, or any person elected to a position with any government of this State. It includes, but is not limited to, legislators, jurors, members of the judiciary and Law

Enforcement Officers. It does not include witnesses.

**PURPOSELY** — When used with respect to a person's conduct or to a result thereof, means when it is his/her conscious object to engage in that conduct or to cause that result.

**RECKLESSLY** — Consciously disregarding a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

**SERIOUS EMOTIONAL INJURY** — An injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition. Serious emotional injury shall be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty.

**SERIOUS PHYSICAL INJURY** — Physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

**SERVICES** — When used in relation to a computer system or network, means use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage or retrieval functions.

**SEXUAL ORIENTATION** — Male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender.

**SPECIAL VICTIM** — Any of the following:

1. A Law Enforcement Officer assaulted in the performance of his or her official duties or as a direct result of such official duties;
2. Emergency personnel, any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician, assaulted in the performance of his or her official duties or as a direct result of such official duties;
3. A probation and parole officer assaulted in the performance of his/her official duties or as a direct result of such official duties;
4. An elderly person;
5. A person with a disability;
6. A vulnerable person;
7. Any jailer or corrections officer of the State or one (1) of its political subdivisions assaulted in the performance of his/her official duties or as a direct result of such official duties;
8. A highway worker in a construction or work zone as the terms "highway worker," "construction zone" and "work zone" are defined under Section 304.580, RSMo.;
9. Any utility worker, meaning any employee of a utility that provides gas, heat, electricity, water, steam, telecommunications services, or sewer services, whether privately, municipally, or cooperatively owned, while in the performance of his/her job duties, including any person employed under a contract;
10. Any cable worker, meaning any employee of a cable operator, as such term is defined in Section 67.2677, RSMo., including any person employed under contract, while in the performance of his/her job duties; and
11. Any employee of a mass transit system, including any employee of public bus or light rail companies, while in the performance of his/her job duties.

**VEHICLE** — A self-propelled mechanical device designed to carry a person or persons, excluding

vessels or aircraft.

**VESSEL** — Any boat or craft propelled by a motor or by machinery, whether or not such motor or machinery is a principal source of propulsion used or capable of being used as a means of transportation on water, or any boat or craft more than twelve (12) feet in length which is powered by sail alone or by a combination of sail and machinery, and used or capable of being used as a means of transportation on water, but not any boat or craft having, as the only means of propulsion, a paddle or oars.

**VOLUNTARY ACT** —

1. A bodily movement performed while conscious as a result of effort or determination. Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his/her control for a sufficient time to have enabled him or her to dispose of it or terminate his/her control; or

2. An omission to perform an act of which the actor is physically capable. A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by law.

**VULNERABLE PERSON** — Any person in the custody, care, or control of the Department of Mental Health who is receiving services from an operated, funded, licensed, or certified program. (RSMo. §§556.061, 565.002[14], 2014 effective 1-1-2017)

**Section 17-2. Attempt.**

A. Guilt for an offense may be based upon an attempt to commit an offense if, with the purpose of committing the offense, a person performs any act which is a substantial step towards the commission of the offense. A "substantial step" is conduct which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

B. It is no defense to a prosecution under this Section that the offense attempted was, under the actual attendant circumstances, factually or legally impossible of commission, if such offense could have been committed had the attendant circumstances been as the actor believed them to be. (RSMo. §562.012, 2014 effective 1-1-2017)

**Section 17-3. Conspiracy.**

A. Guilt for an offense may be based upon a conspiracy to commit an offense when a person, with the purpose of promoting or facilitating the commission of an offense, agrees with another person or persons that they or one or more of them will engage in conduct which constitutes such offense.

B. It is no defense to a prosecution for conspiring to commit an offense that a person, who knows that a person with whom he or she conspires to commit an offense has conspired with another person or persons to commit the same offense, does not know the identity of such other person or persons.

C. If a person conspires to commit a number of offenses, he or she can be found guilty of only one offense so long as such multiple offenses are the object of the same agreement.

D. No person may be convicted of an offense based upon a conspiracy to commit an offense unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or her or by a person with whom he or she conspired.

E. *Exceptions.*

1. No person shall be convicted of an offense based upon a conspiracy to commit an offense if, after conspiring to commit the offense, he/she prevented the accomplishment of the objectives of the conspiracy under circumstances manifesting a renunciation of his/her criminal purpose.

2. The defendant shall have the burden of injecting the issue of renunciation of criminal purpose

under Subsection (E)(1).

F. For the purpose of time limitations on prosecutions:

1. A conspiracy to commit an offense is a continuing course of conduct which terminates when the offense or offenses which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he or she conspired;

2. If an individual abandons the agreement, the conspiracy is terminated as to him/her only if he/she advises those with whom he/she has conspired of his/her abandonment or he/she informs the law enforcement authorities of the existence of the conspiracy and of his/her participation in it.

G. A person shall not be charged, convicted or sentenced on the basis of the same course of conduct of both the actual commission of an offense and a conspiracy to commit that offense. (RSMo. §562.014, 2014 effective 1-1-2017)

**Section 17-4. through Section 17-11. (Reserved)**

## ARTICLE II OFFENSES AGAINST THE PERSON

**Section 17-12. Assault.**

A. A person commits the offense of assault if:

1. The person attempts to cause or recklessly causes physical injury, physical pain or illness to another person;

2. With criminal negligence the person causes physical injury to another person by means of a firearm;

3. The person purposely places another person in apprehension of immediate physical injury;

4. The person recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person;

5. The person knowingly causes or attempts to cause physical contact with a person with a disability, which a reasonable person, who does not have a disability, would consider offensive or provocative; or

6. The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative. (RSMo. §565.056, 2014 effective 1-1-2017)

**Section 17-13. Domestic Assault.**

A. A person commits the offense of domestic assault if the act involves a domestic victim, as the term "domestic victim" is defined under Section 565.002, RSMo., and:

1. The person attempts to cause or recklessly causes physical injury, physical pain, or illness to such domestic victim;

2. With criminal negligence the person causes physical injury to such domestic victim by means of a deadly weapon or dangerous instrument;

3. The person purposely places such domestic victim in apprehension of immediate physical injury by any means;

4. The person recklessly engages in conduct which creates a substantial risk of death or serious physical injury to such domestic victim;

5. The person knowingly causes physical contact with such domestic victim knowing he or she will

regard the contact as offensive; or

6. The person knowingly attempts to cause or causes the isolation of such domestic victim by unreasonably and substantially restricting or limiting his or her access to other persons, telecommunication devices or transportation for the purpose of isolation. (RSMo. §565.076, 2014 effective 1-1-2017)

#### **Section 17-14. (Reserved)**

#### **Section 17-15. Harassment.**

A person commits the offense of harassment if he/she, without good cause, engages in any act with the purpose to cause emotional distress to another person. (RSMo. §565.091, 2014 effective 1-1-2017)

#### **Section 17-16. Stalking — Definitions.**

A. *Definitions.* As used in this Section:

**DISTURBS** — Shall mean to engage in a course of conduct directed at a specific person that serves no legitimate purpose and that would cause a reasonable person under the circumstances to be frightened, intimidated, or emotionally distressed.

B. A person commits the offense of stalking if he or she purposely, through his or her course of conduct, disturbs, or follows with the intent to disturb another person.

C. This Section shall not apply to activities of Federal, State, County, or Municipal Law Enforcement Officers conducting investigations of any violation of Federal, State, County, or Municipal Law.

D. Any Law Enforcement Officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this Section. (RSMo. §565.227, 2014 effective 1-1-2017)

#### **Section 17-17. Kidnapping.**

A person commits the offense of kidnapping if he or she knowingly restrains another unlawfully and without consent so as to interfere substantially with his or her liberty. (RSMo. §565.130, 2014 effective 1-1-2017)

#### **Section 17-18. Endangering the Welfare of a Child.**

A. A person commits the offense of endangering the welfare of a child if he/she:

1. With criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen (17) years old; or

2. Knowingly encourages, aids or causes a child less than seventeen (17) years of age to engage in any conduct which causes or tends to cause the child to come within the provisions of Paragraph (d) of Subdivision (2) of Subsection (1) or Subdivision (3) of Subsection (1) of Section 211.031, RSMo.; or

3. Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen (17) years of age, recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him/her from coming within the provisions of Paragraph (c) of Subdivision (1) of Subsection (1) or Paragraph (d) of Subdivision (2) of Subsection (1) or Subdivision (3) of Subsection (1) of Section 211.031, RSMo.; or

4. Knowingly encourages, aids or causes a child less than seventeen (17) years of age to enter into any room, building or other structure which is a public nuisance as defined in Section 579.105, RSMo.

B. Nothing in this Section shall be construed to mean the welfare of a child is endangered for the sole reason that he/she is being provided non-medical remedial treatment recognized and permitted under the laws of this State. (RSMo. §568.050, 2005, 2006, 2014 effective 1-1-2017)

**Section 17-19. Leaving a Child Unattended in a Motor Vehicle — Definitions.**

A. *Definitions.* As used in this Section, the following terms mean:

COLLISION — The act of a motor vehicle coming into contact with an object or a person.

INJURES — To cause physical harm to the body of a person.

MOTOR VEHICLE — Any automobile, truck, truck-tractor, or any motor bus or motor-propelled vehicle not exclusively operated or driven on fixed rails or tracks.

UNATTENDED — Not accompanied by an individual fourteen (14) years of age or older.

B. A person commits the offense of leaving a child unattended in a motor vehicle if such person knowingly leaves a child less than eleven (11) years of age unattended in a motor vehicle and such child injures another person by causing a motor vehicle collision or by causing the motor vehicle to injure a pedestrian.

C. The offense of leaving a child unattended in a motor vehicle is an ordinance violation. (RSMo. §577.300, 2014 effective 1-1-2017)

**Section 17-20. Hate crimes.**

(a) *Definitions.* For purposes of this section, the following terms mean:

1. “Disability,” a physical or mental impairment which substantially limits one or more of a person’s major life activities, being regarded as having such an impairment, or a record of having such an impairment, and

2. “Sexual orientation,” male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one’s gender.

(b) For all violations of the following Ordinances, which the city believes to be knowingly motivated because of the race, color, religion, national origin, sex, sexual orientation, or disability of the victim or victims, the city may charge the crime or crimes under this section:

1. Sections 17-12 and 17-13, relating to assault;
2. Section 17-15, relating to harassment;
3. Sections 17-103 and 17-104, relating to damaging, defacing property or another;
4. Sections 17-106, 17-107, 17-108 relating to trespass;
5. Section 17-85, relating to possession of dangerous weapons; or
6. Section 17-84, relating to concealed weapons.

(c) Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be subject to the penalty provided in Chapter 1, Section 1-8 of the Code of Ordinances of the City of Kirkwood, but in no event shall the penalty be less than \$500.00.

(Ord. No. 8988, §1, 1-18-01)

**Section 17-21. through Section 17-29. (Reserved)**

ARTICLE III  
**OFFENSES CONCERNING ADMINISTRATION OF JUSTICE**

**Section 17-30. Concealing an Offense.**

A. A person commits the offense of concealing an offense if he or she:

1. Confers or agrees to confer any pecuniary benefit or other consideration to any person in consideration of that person's concealing of any offense, refraining from initiating or aiding in the prosecution of an offense, or withholding any evidence thereof; or
2. Accepts or agrees to accept any pecuniary benefit or other consideration in consideration of his/her concealing any offense, refraining from initiating or aiding in the prosecution of an offense, or withholding any evidence thereof. (RSMo. §575.020, 2014 effective 1-1-2017)

**Section 17-31. Hindering Prosecution.**

A. A person commits the offense of hindering prosecution if, for the purpose of preventing the apprehension, prosecution, conviction or punishment of another person for conduct constituting an offense, he or she:

1. Harbors or conceals such person; or
2. Warns such person of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law; or
3. Provides such person with money, transportation, weapon, disguise or other means to aid him/her in avoiding discovery or apprehension; or
4. Prevents or obstructs, by means of force, deception or intimidation, anyone from performing an act that might aid in the discovery or apprehension of such person. (RSMo. §575.030, 2014 effective 1-1-2017)

**Section 17-32. Refusal To Identify as a Witness.**

A person commits the offense of refusal to identify as a witness if, knowing he or she has witnessed any portion of an offense, or of any other incident resulting in physical injury or substantial property damage, he or she refuses to report or gives a false report of his or her name and present address to a Law Enforcement Officer engaged in the performance of his or her duties. (RSMo. §575.190, 2014 effective 1-1-2017)

**Section 17-33. Disturbing a Judicial Proceeding.**

A person commits the offense of disturbing a judicial proceeding if, with the purpose to intimidate a judge, attorney, juror, party or witness and thereby influence a judicial proceeding, he or she disrupts or disturbs a judicial proceeding by participating in an assembly and calling aloud, shouting, or holding or displaying a placard or sign containing written or printed matter, concerning the conduct of the judicial proceeding, or the character of a judge, attorney, juror, party or witness engaged in such proceeding, or calling for or demanding any specified action or determination by such judge, attorney, juror, party, or witness in connection with such proceeding. (RSMo. §575.250, 2014 effective 1-1-2017)

**Section 17-34. Tampering With a Witness or Victim.**

- A. A person commits the offense of tampering with a witness or victim if:
1. With the purpose to induce a witness or a prospective witness to disobey a subpoena or other legal process, absent himself or herself, avoid subpoena or other legal process, withhold evidence, information, or documents, or testify falsely, he or she:
    - a. Threatens or causes harm to any person or property; or
    - b. Uses force, threats or deception; or
    - c. Offers, confers or agrees to confer any benefit, direct or indirect, upon such witness; or
    - d. Conveys any of the foregoing to another in furtherance of a conspiracy; or
  2. He or she purposely prevents or dissuades or attempts to prevent or dissuade any person who has

been a victim of any crime or a person who is acting on behalf of any such victim from:

- a. Making any report of such victimization to any peace officer, State, Local or Federal Law Enforcement Officer, prosecuting agency, or judge;
- b. Causing a complaint, indictment or information to be sought and prosecuted or assisting in the prosecution thereof;
- c. Arresting or causing or seeking the arrest of any person in connection with such victimization. (RSMo. §575.270, 2005, 2014 effective 1-1-2017)

**Section 17-35. Tampering With Physical Evidence.**

A. A person commits the offense of tampering with physical evidence if he/she:

1. Alters, destroys, suppresses or conceals any record, document or thing with the purpose to impair its verity, legibility or availability in any official proceeding or investigation; or
2. Makes, presents or uses any record, document or thing knowing it to be false with the purpose to mislead a public servant who is or may be engaged in any official proceeding or investigation. (RSMo. §575.100)

**Section 17-36. Improper Communication.**

A person commits the offense of improper communication if he/she communicates, directly or indirectly, with any juror, special master, referee or arbitrator in a judicial proceeding, other than as part of the proceedings in a case, for the purpose of influencing the official action of such person. (RSMo. §575.290, 2014 effective 1-1-2017)

**Section 17-37. False Impersonation.**

A. A person commits the offense of false impersonation if such person:

1. Falsely represents himself/herself to be a public servant with the purpose to induce another to submit to his/her pretended official authority or to rely upon his/her pretended official acts, and
  - a. Performs an act in that pretended capacity; or
  - b. Causes another to act in reliance upon his/her pretended official authority.
2. Falsely represents himself/herself to be a person licensed to practice or engage in any profession for which a license is required by the laws of this State with purpose to induce another to rely upon such representation, and
  - a. Performs an act in that pretended capacity; or
  - b. Causes another to act in reliance upon such representation; or
3. Upon being arrested, falsely represents himself/herself, to a Law Enforcement Officer, with the first and last name, date of birth or social security number, or a substantial number of identifying factors or characteristics as that of another person that results in the filing of a report or record of arrest or conviction for an infraction or offense that contains the first and last name, date of birth and social security number, or a substantial number of identifying factors or characteristics to that of such other person as to cause such other person to be identified as the actual person arrested or convicted.

B. If a violation of Subsection (A)(3) hereof is discovered prior to any conviction of the person actually arrested for an underlying charge, then the prosecuting attorney bringing any action on the underlying charge shall notify the court thereof, and the court shall order the false-identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate identifying factors from the arrest and court records.

C. Any person who is the victim of a false impersonation and whose identity has been falsely reported in arrest or conviction records may move for expungement and correction of said records under the procedures set forth in Section 610.123, RSMo. Upon a showing that a substantial number of identifying factors of the victim was falsely ascribed to the person actually arrested or convicted, the court shall order the false-identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate factors from the arrest and court records. (RSMo. §575.120, 2004, 2014 effective 1-1-2017)

**Section 17-38. False Reports.**

A. A person commits the offense of making a false report if he/she knowingly:

1. Gives false information to any person for the purpose of implicating another person in an offense; or
2. Makes a false report to a Law Enforcement Officer that an offense has occurred or is about to occur; or
3. Makes a false report or causes a false report to be made to a Law Enforcement Officer, security officer, Fire Department or other organization, official or volunteer which deals with emergencies involving danger to life or property that a fire or other incident calling for an emergency response has occurred or is about to occur.

B. It is a defense to a prosecution under Subsection (A) of this Section that the person retracted the false statement or report before the Law Enforcement Officer or any other person took substantial action in reliance thereon.

C. The defendant shall have the burden of injecting the issue of retraction under Subsection (B) of this Section. (RSMo. §575.080, 2014 effective 1-1-2017)

**Section 17-39. Resisting or Interfering With Arrest, Detention or Stop.**

A. A person commits the offense of resisting or interfering with arrest, detention, or stop if he or she knows or reasonably should know that a Law Enforcement Officer is making an arrest or attempting to lawfully detain or stop an individual or vehicle, and for the purpose of preventing the Officer from effecting the arrest, stop or detention, he or she:

1. Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer; or
2. Interferes with the arrest, stop or detention of another person by using or threatening the use of violence, physical force or physical interference.

B. This Section applies to:

1. Arrests, stops or detentions with or without warrants;
2. Arrests, stops or detentions for any offense, infraction or ordinance violation; and
3. Arrests for warrants issued by a court or a probation and parole officer.

C. A person is presumed to be fleeing a vehicle stop if he or she continues to operate a motor vehicle after he or she has seen or should have seen clearly visible emergency lights or has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing him or her.

D. It is no defense to a prosecution under Subsection (A) of this Section that the Law Enforcement Officer was acting unlawfully in making the arrest. However, nothing in this Section shall be construed to bar civil suits for unlawful arrest. (RSMo. §575.150, 2009, 2014 effective 1-1-2017)

**Section 17-40. Escape or Attempted Escape From Custody.**

A person commits the offense of escape from custody or attempted escape from custody if, while being held in custody after arrest for any offense, he/she escapes or attempts to escape from custody. (RSMo. §575.200, 2014 effective 1-1-2017)

**Section 17-41. Interference With Legal Process.**

A. A person commits the offense of interference with legal process if, knowing another person is authorized by law to serve process, he or she interferes with or obstructs such person for the purpose of preventing such person from effecting the service of any process.

B. "Process" includes any writ, summons, subpoena, warrant other than an arrest warrant, or other process or order of a court. (RSMo. §575.160, 2014 effective 1-1-2017)

**Section 17-42. Tampering with police dog.**

No person may taunt, torment, tease, beat, strike, interfere with, endanger, injure or kill or administer or subject any desensitizing drugs, chemicals or substance to any dog used by a law enforcement officer in the performance of his duties or when the dog is placed in kennel or enclosure while off duty. Note: Does not apply to emergency euthanasia by a veterinarian. (Ord. No. 8858, §1, 10-7-99)

(Ord. 9430, §4, 10-7-04)

**Section 17-43. through Section 17-51. (Reserved)**

ARTICLE IV

OFFENSES CONCERNING PUBLIC SAFETY

**Section 17-52. Abandonment of Airtight or Semi-Airtight Containers.**

A. A person commits the offense of abandonment of an airtight or semi-airtight container if he or she knowingly abandons, discards, or permits to remain on premises under his or her control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other airtight or semi-airtight container which has a capacity of one and one-half (1 1/2) cubic feet or more and an opening of fifty (50) square inches or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein.

B. Subsection (A) of this Section does not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouse operator or repair person.

C. The defendant shall have the burden of injecting the issue under Subsection (B) of this Section.

D. The offense of abandonment of an airtight or semi-airtight container is an ordinance violation. (RSMo. §577.100, 2014 effective 1-1-2017)

**Section 17-53. Littering.**

A person commits the offense of littering if he or she places, deposits, or causes to be placed or deposited, any glass, glass bottles, wire, nails, tacks, hedge, cans, garbage, trash, refuse, or rubbish of any kind, nature or description on the right-of-way of any public road or State highway or on or in any of the waters in this City or on the banks of any stream, or on any land or water owned, operated or leased by the State, any board, department, agency or commission thereof or on any land or water owned, operated or leased by the Federal Government or the City, or on any private real property owned by another without the owner's consent. (RSMo. §577.070, 2014 effective 1-1-2017)

**Section 17-54. Littering Via Carcasses.**

A. A person commits the offense of unlawful disposition of a dead animal if he or she knowingly places or causes to be placed the carcass or offal of any dead animal:

1. Into any well, spring, brook, branch, creek, pond, or lake; or
2. On any public road or highway, river, stream, or watercourse or upon premises not his or her own for the purpose of annoying another or others. (RSMo. §577.076, 2014 effective 1-1-2017)

**Section 17-55. Tampering With a Water Supply.**

A. A person commits the offense of tampering with a water supply if he or she purposely:

1. Poisons, defiles or in any way corrupts the water of a well, spring, brook or reservoir used for domestic or municipal purposes; or
2. Diverts, dams up and holds back from its natural course and flow any spring, brook or other water supply for domestic or municipal purposes, after said water supply shall have once been taken for use by any person or persons, corporation, town or city for his/her, their or its use.

B. The offense of tampering with a water supply is an ordinance violation. (RSMo. §577.150, 2014 effective 1-1-2017)

**Section 17-56. through Section 17-65. (Reserved)**

ARTICLE V  
**OFFENSES CONCERNING PUBLIC PEACE**

**Section 17-66. Definitions.**

As used in this Article, the following terms mean:

PRIVATE PROPERTY — Any place which at the time of the offense is not open to the public. It includes property which is owned publicly or privately.

PROPERTY OF ANOTHER — Any property in which the person does not have a possessory interest.

PUBLIC PLACE — Any place which at the time of the offense is open to the public. It includes property which is owned publicly or privately. (RSMo. §574.005, 2014 effective 1-1-2017)

**Section 17-67. Peace Disturbance.**

A. A person commits the offense of peace disturbance if he or she:

1. Unreasonably and knowingly disturbs or alarms another person or persons by:
  - a. Loud noise; or
  - b. Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient; or
  - c. Threatening to commit a felonious act against any person under circumstances which are likely to cause a reasonable person to fear that such threat may be carried out; or
  - d. Fighting; or
  - e. Creating a noxious and offensive odor.
2. Is in a public place or on private property of another without consent and purposely causes inconvenience to another person or persons by unreasonably and physically obstructing:
  - a. Vehicular or pedestrian traffic; or

b. The free ingress or egress to or from a public or private place. (RSMo. §574.010, 2014 effective 1-1-2017)

**Section 17-68. Private Peace Disturbance.**

A. A person commits the offense of private peace disturbance if he/she is on private property and unreasonably and purposely causes alarm to another person or persons on the same premises by:

1. Threatening to commit an offense against any person; or
2. Fighting.

B. For purposes of this Section, if a building or structure is divided into separately occupied units, such units are separate premises. (RSMo. §574.020, 2014 effective 1-1-2017)

**Sec. 17-69. Disturbing noises prohibited.**

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which unreasonably or unnecessarily either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the city. The provisions of this section shall not apply to or be enforced against:

- (a) Any vehicle of the city while engaged in necessary public business.
- (b) Excavations or repairs of streets by or on behalf of the city, county or state at night when public welfare and convenience renders it impossible to perform such work during the day.
- (c) The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

**Sec. 17-70. Conduct constituting disturbing noises.**

The following activity, among others, shall constitute a violation of Section 17-36, but such enumeration shall not be exclusive:

(a) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place in the city except as a danger warning; the creation of any unreasonably loud or harsh sound by means of any such signaling device and the sounding of any such device for an unreasonable period of time; the use of any signaling device, except a police whistle or one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust and the use of any such signaling device when traffic is held up for any reason.

(b) *Radios, televisions, phonographs, etc.* The using, operating or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(c) *Loudspeakers, amplifiers, etc., for advertising.* The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound

amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure without a special permit from the mayor and council. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.

(d) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of any person in the vicinity.

(e) *Animals, birds, etc.* The keeping of any animal or bird which will disturb the comfort or repose of any persons in the vicinity by making long, continual or frequent noise.

(f) *Steam whistle or horn.* The blowing of any train whistle, steam whistle or horn attached to any stationary boiler or locomotive except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper city authorities.

(g) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(h) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(i) *Loading, unloading, opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicles, the delivery of goods or services, or the opening or destruction of bales, boxes, crates and containers.

(j) *Construction and repair work.* The exterior construction, demolition, alteration or repair of buildings involving the operation of machinery or equipment which causes loud or disturbing noise except between the hours of 7:00 a.m. and 8:00 p.m. on Monday through Saturday and between 9:00 a.m. and 8:00 p.m. on Sunday, and except for activities by governmental authorities or public utilities when the activities are in response to emergencies or otherwise in the interest of public health and safety.

(k) *Schools, courts, churches, hospitals, residences.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same is in session or adjacent to any hospital or in any residential area, and which unreasonably interferes with the work of such institution, or which disturbs or unduly annoys patients in the hospital; provided, that conspicuous signs are displayed about such institutions indicating the presence of such institutions.

(l) *Hawkers, peddlers, etc.* The shouting and crying of peddlers, hawkers and vendors which disturb the peace and quiet of the neighborhood.

(m) *Noises to attract attention.* The use of any drum or other instrument or device for the purpose of attracting attention to any performance, show or sale by creation of noise.

(n) *Transportation of metal rails, etc.* The transportation of rails, pillars or columns of iron, steel or other material over and along streets and other public places upon carts, drays, cars, trucks or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.

(o) *Pile drivers, hammers, etc.* The operation from 6:00 p.m. to 7:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise without a special permit from the mayor and council.

(p) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(q) *Sound trucks.* The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes; the use of sound trucks for noncommercial purposes during such hours or in such places or with such volume as would constitute such use a public nuisance.

(r) *Automobile repair.* The doing of any activity in the course of repairing or altering a motor vehicle or equipment thereof, in the nighttime, which creates any disturbing noise audible on the premises of another.

(s) *Trash/sanitation services.* The pickup, servicing, loading, dumping, unloading, of any sanitation receptacle by a vehicle between the hours of 11:00 p.m. and 6:00 a.m. on weekdays and between the hours of 11:00 p.m. and 7:00 a.m. on Saturdays and Sundays.

(Ord. No. 8503, §1, 4-18-96; Ord. No. 9973, §1, 12-16-10)

#### **Section 17-71. Unlawful Assembly.**

A person commits the offense of unlawful assembly if he/she knowingly assembles with six (6) or more other persons and agrees with such persons to violate any of the criminal laws of this State or of the United States with force or violence. (RSMo. §574.040, 2014 effective 1-1-2017)

#### **Section 17-72. Rioting.**

A person commits the offense of rioting if he/she knowingly assembles with six (6) or more other persons and agrees with such persons to violate any of the criminal laws of this State or of the United States with force or violence and thereafter, while still so assembled, does violate any of said laws with force or violence. (RSMo. §574.050, 2014 effective 1-1-2017)

#### **Section 17-73. Refusal To Disperse.**

A person commits the offense of refusal to disperse if, being present at the scene of an unlawful assembly or at the scene of a riot, he/she knowingly fails or refuses to obey the lawful command of a Law Enforcement Officer to depart from the scene of such unlawful assembly or riot. (RSMo. §574.060, 2014 effective 1-1-2017)

#### **Section 17-74. Obstructing Public Places.**

A. *Definition.* The following term shall be defined as follows:

**PUBLIC PLACE** — Any place to which the general public has access and a right of resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

B. It shall be unlawful for any person to stand or remain idle either alone or in consort with others in a public place in such manner so as to:

1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;
2. Commit in or upon any public street, public highway, public sidewalk or any other public place or

building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk, or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto;

3. Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.

C. When any person causes or commits any of the conditions in this Section, a Police Officer or any Law Enforcement Officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this Section.

#### **Section 17-75. Disrupting a House of Worship.**

A. For purposes of this Section, "house of worship" means any church, synagogue, mosque, other building or structure, or public or private place used for religious worship, religious instruction, or other religious purpose.

B. A person commits the offense of disrupting a house of worship if such person:

1. Intentionally and unreasonably disturbs, interrupts, or disquiets any house of worship by using profane discourse, rude or indecent behavior, or making noise either within the house of worship or so near it as to disturb the order and solemnity of the worship services; or

2. Intentionally injures, intimidates, or interferes with or attempts to injure, intimidate, or interfere with any person lawfully exercising the right of religious freedom in or outside of a house of worship or seeking access to a house of worship, whether by force, threat, or physical obstruction. (RSMo. §574.035, 2012, 2014 effective 1-1-2017)

#### **Section 17-76. Unlawful Funeral Protests Prohibited — Definitions.**

A. A person commits the offense of unlawful funeral protest if he or she pickets or engages in other protest activities within three hundred (300) feet of any residence, cemetery, funeral home, church, synagogue or other establishment during or within one (1) hour before or one (1) hour after the conducting of any actual funeral or burial service at that place.

B. *Definitions.* As used in this Section, the following terms mean:

OTHER PROTEST ACTIVITIES — Any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service.

FUNERAL and BURIAL SERVICE — The ceremonies and memorial services held in conjunction with the burial or cremation of the dead, but this Section does not apply to processions while they are in transit beyond any three-hundred-foot zone that is established under Subsection (A) above.

C. The offense of unlawful funeral protest shall be an ordinance violation. (RSMo. §574.160, 2014)

#### **Section 17-77. Garage, Estate, Moving and Yard Sales.**

Any person may engage in the sale of goods or products which is conducted outdoors or partially outdoors such as garage sales, estate sales, moving sales and yard sales, provided, however, that no such sale shall last for more than two (2) consecutive days and not more than two (2) such sales may occur within a calendar year on the same premises. In addition the following conditions shall be enforced:

1. Only items normally found in or around a home shall be sold.
2. No new merchandise or consignment merchandise may be brought in for sale.

3. Neighborhood sales or joint resident sales constitute only one sale.
4. No more than four directional signs, each not exceeding 2' x 3', may be placed off of the property(s) where the sale is conducted.
5. One additional sign may be placed on the property where the sale is being conducted.
6. Signs may not be attached to utility poles or public signs.
7. Signs are allowed on private property only with the consent of the property owner.
8. Signs may be placed on City right-of-way provided it creates no traffic hazard as determined by the Kirkwood Police Department.
9. The Kirkwood Police Department may remove any sign that conflicts with this ordinance without authorization of the individual who placed the sign.
10. Signs must be removed by 4:00 p.m. on the last day of the sale.

**Section 17-78. Business hours for service stations and garages in residentially zoned districts.**

It shall be unlawful for any person to perform work or operate, or allow any person to perform work or operate a service station or garage in a residentially-zoned district except between the hours of 7 a.m. and 7 p.m. Monday through Friday and 9 a.m. to 1 p.m. Saturdays, except during the legal holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day when no work shall be performed. Operate or perform work shall be defined as the repair, altering, operating, towing, or moving of a motor vehicle or equipment on the premises of a service station or garage. This restriction shall not prohibit the quiet deposit of a vehicle on the service station or garage premises at any time. (Sub. Bill 9008, §1, 11-4-99).

**Section 17-79. Misuse of 9-1-1 Emergency Telephone Service.**

(1) Definitions. For purpose of this section, the following words, terms, and phrases shall have the following meanings:

*Emergency.* Any incident involving danger to life or property that calls for an emergency response dispatch of police, fire, EMS or other public safety organizations.

*Misuse the 9-1-1 emergency telephone service.* Calling "9-1-1" for non-emergency situations causing dispatchers, operators or equipment to be in use for such non-emergency situation.

(2) It shall be unlawful for any person to misuse the 9-1-1 emergency telephone service.

(Ord. 9430, §2, 10-7-04)

**Section 17-80. Sale and use of certain fireworks prohibited.**

(a) It shall be unlawful for any person, except the City of Kirkwood, to sell or use any pyrotechnics, commonly known as "fireworks."

(b) This section does not prohibit a manufacturer, distributor or any other person from storing, selling, shipping or otherwise transporting fireworks provided they possess the proper licensing as specified by state and federal law.

**Section 17-81 through Section 17-82. (Reserved)**

## ARTICLE VI

### OFFENSES CONCERNING WEAPONS AND FIREARMS

#### Section 17-83. Definitions.

The following words, when used in this Article, shall have the meanings set out herein:

**ANTIQUÉ, CURIO OR RELIC FIREARM** — Any firearm so defined by the National Gun Control Act, 18 U.S.C. Title 26, §5845, and the United States Treasury/Bureau of Alcohol, Tobacco and Firearms, 27 CFR 178.11:

1. "Antique firearm" is any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, said ammunition not being manufactured any longer; this includes any matchlock, wheel lock, flintlock, percussion cap or similar type ignition system, or replica thereof;

2. Curio or relic firearm is any firearm deriving value as a collectible weapon due to its unique design, ignition system, operation or at least fifty (50) years old, associated with a historical event, renown personage or major war.

**BLACKJACK** — Any instrument that is designed or adapted for the purpose of stunning or inflicting physical injury by striking a person, and which is readily capable of lethal use.

**BLASTING AGENT** — Any material or mixture, consisting of fuel and oxidizer that is intended for blasting, but not otherwise defined as an explosive under this Section, provided that the finished product, as mixed for use of shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

**CONCEALABLE FIREARM** — Any firearm with a barrel less than sixteen (16) inches in length, measured from the face of the bolt or standing breech.

**DEFACE** — To alter or destroy the manufacturer's or importer's serial number or any other distinguishing number or identification mark.

**DETONATOR** — Any device containing a detonating charge that is used for initiating detonation in an explosive, including but not limited to, electric blasting caps of instantaneous and delay types, non-electric blasting caps for use with safety fuse or shock tube and detonating cord delay connectors.

**EXPLOSIVE WEAPON** — Any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury or substantial property damage; or any device designed or adapted for delivering or shooting such a weapon. For the purposes of this Article, the term "explosive" shall mean any chemical compound mixture or device, the primary or common purpose of which is to function by explosion, including but not limited to, dynamite and other high explosives, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cords, igniter cords, and igniters or blasting agents.

**FIREARM** — Any weapon that is designed or adapted to expel a projectile by the action of an explosive.

**FIREARM SILENCER** — Any instrument, attachment or appliance that is designed or adapted to muffle the noise made by the firing of any firearm.

**GAS GUN** — Any gas ejection device, weapon, cartridge, container or contrivance, other than a gas bomb, that is designed or adapted for the purpose of ejecting any poison gas that will cause death or serious physical injury, but not any device that ejects a repellent or temporary incapacitating substance.

**INTOXICATED** — Substantially impaired mental or physical capacity resulting from introduction of any substance into the body.

**KNIFE** — Any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious

physical injury or death by cutting or stabbing a person. For purposes of this Article, "knife" does not include any ordinary pocketknife with no blade more than four (4) inches in length.

**KNUCKLES** — Any instrument that consists of finger rings or guards made of a hard substance that is designed or adapted for the purpose of inflicting serious physical injury or death by striking a person with a fist enclosed in the knuckles.

**MACHINE GUN** — Any firearm that is capable of firing more than one (1) shot automatically, without manual reloading, by a single function of the trigger.

**PROJECTILE WEAPON** — Any bow, crossbow, pellet gun, slingshot or other weapon that is not a firearm, which is capable of expelling a projectile that could inflict serious physical injury or death by striking or piercing a person.

**RIFLE** — Any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger.

**SHORT BARREL** — A barrel length of less than sixteen (16) inches for a rifle and eighteen (18) inches for a shotgun, both measured from the face of the bolt or standing breech, or an overall rifle or shotgun length of less than twenty-six (26) inches.

**SHOTGUN** — Any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire a number of shot or a single projectile through a smooth bore barrel by a single function of the trigger.

**SPRING GUN** — Any fused, timed or non-manually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious physical injury or death.

**SWITCHBLADE KNIFE** — Any knife which has a blade that folds or closes into the handle or sheath, and

1. That opens automatically by pressure applied to a button or other device located on the handle; or
2. That opens or releases from the handle or sheath by the force of gravity or by the application of centrifugal force. (RSMo. §571.010, 2008)

**Section 17-84. Weapons — Carrying Concealed — Other Unlawful Use.**

A. A person commits the offense of unlawful use of weapons if he/she knowingly:

1. Carries concealed upon or about his/her person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use; or
2. Sets a spring gun; or
3. Discharges or shoots a firearm within the City limits; or
4. Exhibits, in the presence of one (1) or more persons, any weapon readily capable of lethal use in an angry or threatening manner; or
5. Has a firearm or projectile weapon readily capable of lethal use on his/her person, while he/she is intoxicated, and handles or otherwise uses such firearm or projectile weapon in either a negligent or unlawful manner or discharges such firearm or projectile weapon unless acting in self defense; or
6. Openly carries a firearm or any other weapon readily capable of lethal use within the City limits; or
7. Carries a firearm, whether loaded or unloaded, or any other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.

8. Possesses a firearm while also knowingly in possession of a controlled substance that is sufficient for a felony violation of Section 579.015, RSMo.

B. Subsections (A)(1) and (7) of this Section shall not apply to the persons described in this Subsection, regardless of whether such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties except as otherwise provided in this Subsection. Subsections (A)(3) and (4) of this Section shall not apply to or affect any of the following persons, when such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties, except as otherwise provided in this Subsection:

1. All State, County and Municipal Peace Officers who have completed the training required by the Police Officer Standards and Training Commission pursuant to Sections 590.030 to 590.050, RSMo., and who possess the duty and power of arrest for violation of the general criminal laws of the State or for violation of ordinances of Counties or Municipalities of the State, whether such officers are on or off duty, and whether such officers are within or outside of the law enforcement agency's jurisdiction, or all qualified retired Peace Officers, as defined in Subsection (11) of Section 571.030, RSMo., and who carry the identification defined in Subsection (12) of Section 571.030, RSMo., or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

2. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

3. Members of the Armed Forces or National Guard while performing their official duty;

4. Those persons vested by Article V, Section 1, of the Constitution of Missouri with the judicial power of the State and those persons vested by Article III of the Constitution of the United States with the judicial power of the United States, the members of the Federal judiciary;

5. Any person whose bona fide duty is to execute process, civil or criminal;

6. Any Federal Probation Officer or Federal Flight Deck Officer as defined under the Federal Flight Deck Officer Program, 49 U.S.C. §44921, regardless of whether such officers are on duty, or within the law enforcement agency's jurisdiction;

7. Any State Probation or Parole Officer, including supervisors and members of the Board of Probation and Parole;

8. Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the Department of Public Safety under Section 590.750, RSMo.;

9. Any coroner, deputy coroner, medical examiner or assistant medical examiner;

10. Any prosecuting attorney or assistant prosecuting attorney, circuit attorney or assistant circuit attorney or any person appointed by a court to be a special prosecutor who has completed the firearms safety training course required under Subsection (2) of Section 571.111, RSMo.;

11. Any member of a Fire Department or Fire Protection District who is employed on a full-time basis as a fire investigator and who has a valid concealed carry endorsement issued prior to August 28, 2013, or valid concealed carry permit under Section 571.111, RSMo., when such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties; and

12. Upon the written approval of the Governing Body of a Fire Department or Fire Protection District, any paid Fire Department or Fire Protection District Chief who is employed on a full-time basis and who has a valid concealed carry endorsement issued prior to August 28, 2013, or a valid concealed carry permit, when such uses are reasonably associated with or are necessary to the fulfillment of such person's official duties.

C. Subsections (A)(1), (5) and (7) of this Section do not apply when the actor is transporting such

weapons in a non-functioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. Subsection (A)(1) of this Section does not apply to any person nineteen (19) years of age or older or eighteen (18) years of age or older and a member of the United States Armed Forces, or honorably discharged from the United States Armed Forces, transporting a concealable firearm in the passenger compartment of a motor vehicle, so long as such concealable firearm is otherwise lawfully possessed, nor when the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in his/her dwelling unit or upon premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this State. Subsection (A)(7) of this Section does not apply if the firearm is otherwise lawfully possessed by a person while traversing school premises for the purposes of transporting a student to or from school, or possessed by an adult for the purposes of facilitation of a school-sanctioned firearm-related event or club event.

D. Subsections (A)(1) and (7) of this Section shall not apply to any person who has a valid concealed carry permit issued pursuant to Sections 571.101 to 571.121, RSMo., a valid concealed carry endorsement issued before August 28, 2013, or a valid permit or endorsement to carry concealed firearms issued by another State or political subdivision of another State.

E. Subsections (A)(3), (4), (5) and (7) of this Section shall not apply to persons who are engaged in a lawful act of defense pursuant to Section 563.031, RSMo.

F. Nothing in this Section shall make it unlawful for a student to actually participate in school-sanctioned gun safety courses, student military or ROTC courses, or other school-sponsored or club-sponsored firearm-related events, provided the student does not carry a firearm or other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any other function or activity sponsored or sanctioned by school officials or the district school board. (RSMo. §571.030, 2010, 2011, 2012, 2013, 2014)

#### **Section 17-85. Possession, Manufacture, Transport, Repair, Sale of Certain Weapons.**

A. A person commits an offense if such person knowingly possesses, manufactures, transports, repairs, or sells:

1. An explosive weapon;
2. An explosive, incendiary or poison substance or material with the purpose to possess, manufacture or sell an explosive weapon;
3. A gas gun;
4. A bullet or projectile which explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm;
5. Knuckles; or
6. Any of the following in violation of Federal law:
  - a. A machine gun;
  - b. A short-barreled rifle or shotgun;
  - c. A firearm silencer; or
  - d. A switchblade knife.

B. A person does not commit an offense pursuant to this Section if his/her conduct involved any of the items in Subsections (A)(1) through (5), the item was possessed in conformity with any applicable Federal law, and the conduct:

1. Was incident to the performance of official duty by the Armed Forces, National Guard, a

governmental law enforcement agency or a penal institution; or

2. Was incident to engaging in a lawful commercial or business transaction with an organization enumerated in Subparagraph (1) of this Subsection; or
3. Was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or
4. Was incident to displaying the weapon in a public museum or exhibition; or
5. Was incident to using the weapon in a manner reasonably related to a lawful dramatic performance. (RSMo. §571.020, 2008, 2011, 2012)

#### **Section 17-86. Defacing Firearm.**

A person commits the offense of defacing a firearm if he/she knowingly defaces any firearm. (RSMo. §571.045.1)

#### **Section 17-87. Purchase in Another State by Missouri Residents, Permitted When.**

Residents of the State of Missouri may purchase firearms in any State, provided that such residents conform to the applicable provisions of the Federal Gun Control Act of 1968, 18 U.S.C. §921 et seq., and regulations thereunder, and provided further that such residents conform to the provisions of law applicable to such purchase in the State of Missouri and in the State in which the purchase is made. (RSMo. §571.085, 2011)

#### **Section 17-88. Purchase in Missouri by Non-Resident, Permitted When.**

Residents of any State may purchase firearms in the State of Missouri, provided that such residents conform to the applicable provisions of the Federal Gun Control Act of 1968, 18 U.S.C. §921 et seq., and regulations thereunder, and provided further that such residents conform to the provisions of law applicable to such purchase in the State of Missouri and in the State in which such persons reside. (RSMo. §571.087, 2011)

#### **Section 17-89. Unlawful Transfer of Weapons.**

- A. A person commits the offense of unlawful transfer of weapons if he/she:
  1. Knowingly sells, leases, loans, gives away or delivers a blackjack to a person less than eighteen (18) years old without the consent of the child's custodial parent or guardian or recklessly, as defined in Section 562.016, RSMo., sells, leases, loans, gives away or delivers any firearm to a person less than eighteen (18) years old without the consent of the child's custodial parent or guardian; provided that this does not prohibit the delivery of such weapons to any Peace Officer or member of the Armed Forces or National Guard while performing his/her official duty; or
  2. Recklessly, as defined in Section 562.016, RSMo., sells, leases, loans, gives away or delivers a firearm or ammunition for a firearm to a person who is intoxicated. (RSMo. §571.060.1[2 — 3])

#### **Section 17-90. Carrying Concealed Firearms Prohibited — Penalty for Violation.**

- A. It shall be a violation of this Section, punishable as hereinafter provided, for any person to carry any concealed firearm into:
  1. Any Police, Sheriff or Highway Patrol office or station without the consent of the Chief Law Enforcement Officer in charge of that office or station. Possession of a firearm in a vehicle on the premises of the office or station shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
  2. Within twenty-five (25) feet of any polling place on any election day. Possession of a firearm in a vehicle on the premises of the polling place shall not be a criminal offense so long as the firearm is not

removed from the vehicle or brandished while the vehicle is on the premises;

3. The facility of any adult or juvenile detention or correctional institution, prison or jail. Possession of a firearm in a vehicle on the premises of any adult, juvenile detention or correctional institution, prison or jail shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

4. Any courthouse solely occupied by the Circuit, Appellate or Supreme Court, or any courtrooms, administrative offices, libraries or other rooms of any such court whether or not such court solely occupies the building in question. This Subsection shall also include, but not be limited to, any juvenile, family, drug or other court offices, any room or office wherein any of the courts or offices listed in this Subsection are temporarily conducting any business within the jurisdiction of such courts or offices, and such other locations in such manner as may be specified by Supreme Court Rule pursuant to Subdivision (6) of Subsection (1) of Section 571.107, RSMo. Nothing in this Subsection shall preclude those persons listed in Subsection (B)(1) of Section 17-84 while within their jurisdiction and on duty, those persons listed in Subsections (B)(2), (4) and (10) of Section 17-84, or such other persons who serve in a law enforcement capacity for a court as may be specified by Supreme Court Rule pursuant to Subdivision (6) of Subsection (1) of Section 571.107, RSMo., from carrying a concealed firearm within any of the areas described in this Subsection. Possession of a firearm in a vehicle on the premises of any of the areas listed in this Subsection shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

5. Any meeting of the Kirkwood City Council, except that nothing in this Subsection shall preclude a member of the City Council holding a valid concealed carry permit or endorsement from carrying a concealed firearm at a meeting of the City Council of which he or she is a member. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

6. Any building owned, leased or controlled by the City of Kirkwood identified by signs posted at the entrance to the building. This Subsection shall not apply to any building used for public housing by private persons, highways or rest areas, firing ranges, and private dwellings owned, leased, or controlled by the City of Kirkwood. Persons violating this Subsection may be denied entrance to the building, ordered to leave the building and, if employees of the City, be subjected to disciplinary measures for violation;

7. Any establishment licensed to dispense intoxicating liquor for consumption on the premises, which portion is primarily devoted to that purpose, without the consent of the owner or manager. The provisions of this Subsection shall not apply to the licensee of said establishment. The provisions of this Subsection shall not apply to any bona fide restaurant open to the general public having dining facilities for not less than fifty (50) persons and that receives at least fifty-one percent (51%) of its gross annual income from the dining facilities by the sale of food. This Subsection does not prohibit the possession of a firearm in a vehicle on the premises of the establishment and shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. Nothing in this Subsection authorizes any individual who has been issued a concealed carry permit or endorsement to possess any firearm while intoxicated;

8. Any area of an airport to which access is controlled by the inspection of persons and property. Possession of a firearm in a vehicle on the premises of the airport shall not be a violation so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

9. Any place where the carrying of a firearm is prohibited by Federal law;

10. Any higher education institution or elementary or secondary school facility without the consent of the Governing Body of the higher education institution or a school official or the district school board, unless the person with the concealed carry endorsement or permit is a teacher or administrator of an elementary or secondary school who has been designated by his or her school district as a school protection officer and is carrying a firearm in a school within that district, in which case no consent is

required. Possession of a firearm in a vehicle on the premises of any higher education institution or elementary or secondary school facility shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

11. Any portion of a building used as a child care facility without the consent of the manager. Nothing in this Subsection shall prevent the operator of a child care facility in a family home from owning or possessing a firearm or a concealed carry permit or endorsement;

12. Any riverboat gambling operation accessible by the public without the consent of the owner or manager pursuant to rules promulgated by the Gaming Commission. Possession of a firearm in a vehicle on the premises of a riverboat gambling operation shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

13. Any gated area of an amusement park. Possession of a firearm in a vehicle on the premises of the amusement park shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

14. Any church or other place of religious worship without the consent of the minister or person or persons representing the religious organization that exercises control over the place of religious worship. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

15. Any private property whose owner has posted the premises as being off-limits to concealed firearms by means of one (1) or more signs displayed in a conspicuous place of a minimum size of eleven (11) inches by fourteen (14) inches with the writing thereon in letters of not less than one (1) inch. The owner, business or commercial lessee, manager of a private business enterprise, or any other organization, entity or person may prohibit persons holding a concealed carry permit or endorsement from carrying concealed firearms on the premises and may prohibit employees, not authorized by the employer, holding a concealed carry permit or endorsement from carrying concealed firearms on the property of the employer. If the building or the premises are open to the public, the employer of the business enterprise shall post signs on or about the premises if carrying a concealed firearm is prohibited. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed carry permit or endorsement from carrying a concealed firearm in vehicles owned by the employer;

16. Any sports arena or stadium with a seating capacity of five thousand (5,000) or more. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

17. Any hospital accessible by the public. Possession of a firearm in a vehicle on the premises of a hospital shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

B. Any person violating any of the provisions of Subsection (A) of this Section shall be punished as follows:

1. If the violator holds a concealed carry permit or endorsement issued pursuant to State law, the violator may be subject to denial to the premises or removal from the premises. If such person refuses to leave the premises and a Peace Officer is summoned, such person may be issued a citation for an amount not to exceed one hundred dollars (\$100.00) for the first offense. If a second citation for a similar violation occurs within a six-month period, such person shall be fined an amount not to exceed two hundred dollars (\$200.00). If a third citation for a similar violation is issued within one (1) year of the first citation, such person shall be fined an amount not to exceed five hundred dollars (\$500.00). Upon conviction of charges arising from a citation issued pursuant to this Section, the court shall notify the Sheriff of the County which issued the concealed carry permit, or, if the person is a holder of a concealed carry endorsement issued prior to August 28, 2013, the court shall notify the Sheriff of the County which

issued the certificate of qualification for a concealed carry permit or endorsement and the Department of Revenue.

2. If the violator does not hold a current valid concealed carry permit or endorsement issued pursuant to State law, upon conviction of a charge of violating this Section the defendant shall be punished as provided in Section 1-8 of this Code of Ordinances.

3. Employees of the City of Kirkwood may, in addition to any other punishment hereby, be subject to disciplinary action.

C. It shall be a violation of this Section, punishable by a citation for an amount not to exceed thirty-five dollars (\$35.00), for any person issued a concealed carry permit or endorsement pursuant to State law to fail to carry the concealed carry permit or endorsement at all times the person is carrying a concealed firearm, or to fail to display the concealed carry permit or endorsement upon the request of any Peace Officer. (RSMo. §571.107, 2009, 2013, 2014)

#### **Section 17-91. Open Display of Firearm Permitted, When.**

Any person who has a valid concealed carry endorsement issued prior to August 28, 2013, or a valid concealed carry permit, and who is lawfully carrying a firearm in a concealed manner, may briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. (RSMo. §571.037, 2012, 2013)

#### **Section 17-92. Discharging Air Gun, Etc.**

Any person within the limits of this City who shall discharge any BB gun which expels a projectile by means of a spring, air or any other means, paintball gun or air gun or shall shoot any pebble, bullet, slug, arrow or other hard substance by means of a sling, crossbow, rubber band or bow or any other means shall be deemed guilty of an ordinance violation.

#### **Section 17-93. Turkey Shoots and Other Charitable Events.**

The discharge of firearms in connection with any turkey shoots or other charitable event may be authorized by the City Council.

#### **Section 17-94. through Section 17-101. (Reserved)**

### ARTICLE VII OFFENSES CONCERNING PROPERTY

#### **Section 17-102. Definitions.**

As used in this Article, the following terms mean:

**ENTER UNLAWFULLY or REMAIN UNLAWFULLY** — A person enters or remains in or upon premises when he or she is not licensed or privileged to do so. A person who, regardless of his or her purpose, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he or she defies a lawful order not to enter or remain, personally communicated to him or her by the owner of such premises or by other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

**TO TAMPER** — To interfere with something improperly, to meddle with it, displace it, make unwarranted alterations in its existing condition, or to deprive, temporarily, the owner or possessor of that thing.

**UTILITY** — An enterprise which provides gas, electric, steam, water, sewage disposal, or communication, video, internet, or voice over internet protocol services, and any common carrier. It may

be either publicly or privately owned or operated. (RSMo. §569.010, 2014 effective 1-1-2017)

**Section 17-103. Tampering.**

- A. A person commits the offense of tampering if he/she:
1. Tamper with property of another for the purpose of causing substantial inconvenience to that person or to another; or
  2. Unlawfully rides in or upon another's automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle; or
  3. Tamper or makes connection with property of a utility; or
  4. Tamper with, or causes to be tampered with, any meter or other property of an electric, gas, steam or water utility, the effect of which tampering is either:
    - a. To prevent the proper measuring of electric, gas, steam or water service; or
    - b. To permit the diversion of any electric, gas, steam or water service.
- B. In any prosecution under Subsection (A)(4), proof that a meter or any other property of a utility has been tampered with, and the person or persons accused received the use or direct benefit of the electric, gas, steam or water service with one (1) or more of the effects described in Subsection (A)(4), shall be sufficient to support an inference which the trial court may submit to the trier of fact from which the trier of fact may conclude that there has been a violation of such Subsection by the person or persons who use or receive the direct benefit of the electric, gas, steam or water service. (RSMo. §569.090, 2005, 2014 effective 1-1-2017)

**Section 17-104. Property Damage.**

- A. A person commits the offense of property damage if he/she:
1. Knowingly damages property of another; or
  2. Damages property for the purpose of defrauding an insurer. (RSMo. §569.120, 2014 effective 1-1-2017)

**Section 17-105. Claim of Right.**

- A. A person does not commit an offense by damaging, tampering with, operating, riding in or upon or making connection with property of another if he/she does so under a claim of right and has reasonable grounds to believe he/she has such a right.
- B. The defendant shall have the burden of injecting the issue of claim of right.
- C. No person who, as a tenant, willfully or wantonly destroys, defaces, damages, impairs or removes any part of a leased structure or dwelling unit, or the facilities, equipment or appurtenances thereof, may inject the issue of claim of right. (RSMo. §569.130, 2014)

**Section 17-106. Trespass in the First Degree.**

- A. A person commits the offense of trespass in the first degree if he/she knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property.
- B. A person does not commit the offense of trespass by entering or remaining upon real property unless the real property is fenced or otherwise enclosed in a manner designed to exclude intruders or as to which notice against trespass is given by:
1. Actual communication to the actor; or
  2. Posting in a manner reasonably likely to come to the attention of intruders. (RSMo. §569.140,

2014 effective 1-1-2017)

**Section 17-107. Trespass in the Second Degree.**

- A. A person commits trespass in the second degree if he/she enters unlawfully upon real property of another. This is an offense of absolute liability.
- B. Trespass in the second degree is an infraction. (RSMo. §569.150, 2014 effective 1-1-2017)

**Section 17-108. Trespass of a School Bus.**

- A. A person commits the offense of trespass of a school bus if he or she knowingly and unlawfully enters any part of or unlawfully operates any school bus.
- B. For the purposes of this Section, the terms "unlawfully enters" and "unlawfully operates" refer to any entry or operation of a school bus which is not:
  - 1. Approved of and established in a school district's written policy on access to school buses; or
  - 2. Authorized by specific written approval of the school board.
- C. In order to preserve the public order, any district which adopts the policies described in Subsection (B) of this Section shall establish and enforce a student behavior policy for students on school buses. (RSMo. §569.155, 2014 effective 1-1-2017)

**Section 17-109. Reckless Burning or Exploding.**

A person commits the offense of reckless burning or exploding if he/she recklessly starts a fire or causes an explosion and thereby damages or destroys the property of another. (RSMo. §569.060, 2014 effective 1-1-2017)

**Section 17-110. Negligent Burning or Exploding.**

- A. A person commits the offense of negligent burning or exploding if he/she with criminal negligence causes damage to property or to the woodlands, cropland, grassland, prairie, or marsh of another by:
  - 1. Starting a fire or causing an explosion; or
  - 2. Allowing a fire burning on lands in his or her possession or control onto the property of another. (RSMo. §569.065, 2014 effective 1-1-2017)

**Section 17-111. Stealing.**

- A. A person commits the offense of stealing if he or she:
  - 1. Appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion;
  - 2. Attempts to appropriate anhydrous ammonia or liquid nitrogen of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion; or
  - 3. For the purpose of depriving the owner of a lawful interest therein, receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen. (RSMo. §570.030, 2005, 2014 effective 1-1-2017)

**Section 17-112. Theft of Motor Fuel.**

- A. No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment or authorized charge for motor fuel dispensed has been made.

B. A person found guilty or pleading guilty to stealing pursuant to Section 17-112 for the theft of motor fuel as described in Subsection (A) shall have his/her driver's license suspended by the court beginning on the date of the court's order of conviction. The person shall submit all of his/her operator's and chauffeur's licenses to the court upon conviction and the court shall forward all such driver's licenses and the order of suspension of driving privileges to the Department of Revenue for administration of such order. (RSMo. §302.286)

**Section 17-113. Damaging city property.**

No person shall in this city cut, hack or otherwise injure any awning, post, sign, fire plug, hydrant, ornamental or shade trees, railing, fence or other enclosures, or any other property belonging to the city. (Gen. Ords. 1959, §12.03; Ord. No. 5902, §1, 12-22-75)

**Section 17-114. Damaging, destroying, or unlawfully withholding library property.**

(a) No person shall willfully and wantonly cut, mutilate, tear, write upon or otherwise deface, destroy or injury, either in whole or in part, any book, magazine, pamphlet, or other publication or property belonging to the Kirkwood Public Library, or suffer or permit any such injuries to be inflicted upon any such property while in his possession or his control, or willfully deface, damage or destroy any furniture, fixture or furnishing belonging to the Kirkwood Public Library.

(b) It shall be unlawful for any person to take, remove or withhold from the Kirkwood Public Library any book, pamphlet, periodical, picture, paper, maps written record, article, chattel, films, records, tapes, cash or other property except in accordance with the rules of the library. (Gen. Ords. 1959, §52.44; Ord. No. 5939, §1, 3-4-76)

**Section 17-115. City recycling depository usage.**

(a) *Materials permitted to be deposited:* The following materials may be deposited at the city recycling depository, located at 350 South Taylor Avenue, in areas marked for the deposit of such items:

- (1) Aluminum cans;
- (2) Steel cans (fruit, beverage and vegetable cans);
- (3) Glass jars and bottles which are clear glass, green glass or brown glass;
- (4) Newspaper;
- (5) Corrugated cardboard, Kraft paper bags;
- (6) Mixed paper (junk mail, flat cardboard, office paper);
- (7) Plastic bottles #1 and #2 (such as milk jugs, soda bottles) with lids removed;
- (8) Magazines (no more than 1½" in width);
- (9) Telephone books;
- (10) Textiles

(b) *Depositing of unauthorized materials at Depository:* The dumping, depositing or placing of any material other than those set forth above in Section 17-11(a) at the City of Kirkwood Recycling Depository shall be prohibited.

(c) *Ownership of authorized material deposited at the Depository:* All material authorized by Section 17-11(a) deposited at the Kirkwood Recycling Depository shall become the property of the City of Kirkwood and removal of such material without the expressed authorization of the City of Kirkwood shall be prohibited.

(d) *Violations:* Violations of any of the provisions set forth herein shall subject the violator to the penalties set forth in the Section 1-8 of the Kirkwood Code of Ordinances.

(Ord. No. 8491, §1, 3-7-96; Ord. No. 9077, §1, 9-20-01)

**Section 17-116. Financial Exploitation of an Elderly Person or Person With a Disability — Certain Defense Prohibited.**

A. A person commits the offense of financial exploitation of an elderly person or a person with a disability if such person knowingly obtains control over the property of the elderly person or person with a disability with the intent to permanently deprive the person of the use, benefit or possession of his or her property thereby benefitting the offender or detrimentally affecting the elderly person or person with a disability by:

1. Deceit;
2. Coercion;
3. Creating or confirming another person's impression which is false and which the offender does not believe to be true;
4. Failing to correct a false impression which the offender previously has created or confirmed;
5. Preventing another person from acquiring information pertinent to the disposition of the property involved;
6. Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record;
7. Promising performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not sufficient evidence to prove that the offender did not intend to perform; or
8. Undue influence, which means the use of influence by someone who exercises authority over an elderly person or person with a disability in order to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony. "Undue influence" includes, but is not limited to, the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.

B. Nothing in this Section shall be construed to limit the remedies available to the victim pursuant to any State law relating to domestic violence.

C. Nothing in this Section shall be construed to impose criminal liability on a person who has made a good-faith effort to assist the elderly person or person with a disability in the management of his or her property, but through no fault of his or her own has been unable to provide such assistance.

D. Nothing in this Section shall limit the ability to engage in bona fide estate planning, to transfer property and to otherwise seek to reduce estate and inheritance taxes; provided that such actions do not adversely impact the standard of living to which the elderly person or person with a disability has become accustomed at the time of such actions.

E. It shall not be a defense to financial exploitation of an elderly person or person with a disability that the accused reasonably believed that the victim was not an elderly person or person with a disability.

F. *Medicaid Funds.* It shall be unlawful in violation of this Section for any person receiving or in the possession of funds of a Medicaid-eligible elderly person or person with a disability residing in a facility licensed under Chapter 198, RSMo., to fail to remit to the facility in which the Medicaid-eligible person resides all money owing the facility resident from any source, including, but not limited to, social security, railroad retirement, or payments from any other source disclosed as resident income contained in the records of the Department of Social Services, Family Support Division, or its successor. The Department of Social Services, Family Support Division, or its successor is authorized to release information from its records containing the resident's income or assets to any prosecuting or circuit attorney in the State of Missouri for purposes of investigating or prosecuting any suspected violation of this Section.

G. The offense of financial exploitation of an elderly person or person with a disability is an ordinance violation. (RSMo. §570.145, 2005, 2012, 2014 effective 1-1-2017)

**Section 17-117. Fraudulent Use of a Credit or Debit Device.**

A. A person commits the offense of fraudulent use of a credit device or debit device if he or she uses a credit device or debit device for the purpose of obtaining services or property, knowing that:

1. The device is stolen, fictitious or forged; or
2. The device has been revoked or canceled; or
3. For any other reason his or her use of the device is unauthorized; or

B. A person commits the offense of fraudulent use of a credit device or debit device if he or she uses a credit device or debit device for the purpose of paying property taxes and knowingly cancels such charges or payment without just cause. It shall be prima facie evidence of a violation of this Section if a person cancels such charges or payment after obtaining a property tax receipt to obtain license tags from the Missouri Department of Revenue. (RSMo. §570.130, 2014 effective 1-1-2017)

**Section 17-118. Deceptive Business Practice.**

A. A person commits the offense of deceptive business practice if in the course of engaging in a business, occupation or profession, he or she recklessly:

1. Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;
2. Sells, offers, displays for sale, or delivers less than the represented quantity of any commodity or service;
3. Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he or she furnishes the weight or measure;
4. Sells, offers, or exposes for sale adulterated or mislabeled commodities;
5. Makes a false or misleading written statement for the purpose of obtaining property or credit;
6. Promotes the sale of property or services by a false or misleading statement in any advertisement; or
7. Advertises in any manner the sale of property or services with the purpose not to sell or provide the property or services:
  - a. At the price which he or she offered them;
  - b. In a quantity sufficient to meet the reasonably expected public demand, unless the quantity is specifically stated in the advertisement; or
  - c. At all. (RSMo. §570.140, 2014 effective 1-1-2017)

**Section 17-119. Alteration or Removal of Item Numbers With Intent To Deprive Lawful Owner.**

A. A person commits the offense of alteration or removal of item numbers if he/she with the purpose of depriving the owner of a lawful interest therein:

1. Destroys, removes, covers, conceals, alters, defaces or causes to be destroyed, removed, covered, concealed, altered or defaced the manufacturer's original serial number or other distinguishing owner-applied number or mark on any item which bears a serial number attached by the manufacturer or distinguishing number or mark applied by the owner of the item for any reason whatsoever;
2. Sells, offers for sale, pawns or uses as security for a loan any item on which the manufacturer's

original serial number or other distinguishing owner-applied number or mark has been destroyed, removed, covered, concealed, altered or defaced; or

3. Buys, receives as security for a loan or in pawn, or in any manner receives or has in his/her possession any item on which the manufacturer's original serial number or other distinguishing owner-applied number or mark has been destroyed, removed, covered, concealed, altered or defaced. (RSMo. §570.085, 2014 effective 1-1-2017)

**Section 17-120. Stealing Leased or Rented Personal Property — Enforcement Procedure — Penalty — Venue.**

A. A person commits the offense of stealing leased or rented property if, with the intent to deprive the owner thereof, such person:

1. Purposefully fails to return leased or rented personal property to the place and within the time specified in an agreement in writing providing for the leasing or renting of such personal property;

2. Conceals or aids or abets the concealment of the property from the owner;

3. Sells, encumbers, conveys, pawns, loans, abandons or gives away the leased or rented property or any part thereof, without the written consent of the lessor, or without informing the person to whom the property is transferred to, that the property is subject to a lease;

4. Returns the property to the lessor at the end of the lease term, plus any agreed upon extensions, but does not pay the lease charges agreed upon in the written instrument, with the intent to wrongfully deprive the lessor of the agreed upon charges.

B. The provisions of this Section shall apply to all forms of leasing and rental agreements including, but not limited to, contracts which provide the consumer options to buy the leased or rented personal property, lease-purchase agreements and rent-to-own contracts. For the purpose of determining if a violation of this Section has occurred, leasing contracts which provide options to buy the merchandise are owned by the owner of the property until such time as the owner endorses the sale and transfer of ownership of the leased property to the lessee.

C. Evidence that a lessee used a false, fictitious, or not current name, address, or place of employment in obtaining the property or that a lessee fails or refuses to return the property or pay the lease charges to the lessor within seven (7) days after written demand for the return has been sent by certified mail, return receipt requested, to the address the person set forth in the lease agreement, or in the absence of the address, to the person's last known place of residence, shall be evidence of intent to violate the provisions of this Section, except that if a motor vehicle has not been returned within seventy-two (72) hours after the expiration of the lease or rental agreement, such failure to return the motor vehicle shall be prima facie evidence of the intent of the offense of stealing leased or rented property. Where the leased or rented property is a motor vehicle, if the motor vehicle has not been returned within seventy-two (72) hours after the expiration of the lease or rental agreement, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle, and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate State and local computer system listing stolen motor vehicles. Any Law Enforcement Officer which stops such a motor vehicle may seize the motor vehicle and notify the lessor that he/she may recover such motor vehicle after it is photographed and its vehicle identification number is recorded for evidentiary purposes. Where the leased or rented property is not a motor vehicle, if such property has not been returned within the seven-day period prescribed in this Subsection, the owner of the property shall report the failure to return the property to the local law enforcement agency, and such law enforcement agency may within five (5) days notify the person who leased or rented the property that such person is in violation of this Section, and that failure to immediately return the property may subject such person to arrest for the violation.

D. This Section shall not apply if such personal property is a vehicle and such return is made more difficult or expensive by a defect in such vehicle which renders such vehicle inoperable if the lessee shall

notify the lessor of the location of such vehicle and such defect before the expiration of the lease or rental agreement or within ten (10) days after proper notice.

E. Any person who has leased or rented personal property of another who destroys such property so as to avoid returning it to the owner commits the offense of property damage pursuant to Section 569.100, RSMo., or Section 17-104 of this Code in addition to being in violation of this Section.

F. Venue shall lie in the County where the personal property was originally rented or leased. (RSMo. §570.057, 2014 effective 1-1-2017)

**Section 17-121. Passing Bad Checks.**

A. A person commits the offense of passing a bad check when he/she:

1. With the purpose to defraud, makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money knowing that it will not be paid by the drawee or that there is no such drawee; or

2. Makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that there are insufficient funds in or on deposit with that account for the payment of such check, sight order or other form of presentment involving the transmission of account information in full and all other checks, sight orders or other forms of presentment involving the transmission of account information upon such funds then outstanding, or that there is no such account or no drawee and fails to pay the check or sight order or other form of presentment involving the transmission of account information within ten (10) days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

B. As used in Subsection (A)(2) of this Section, "actual notice in writing" means notice of the non-payment which is actually received by the defendant. Such notice may include the service of summons or warrant upon the defendant for the initiation of the prosecution of the check or checks which are the subject matter of the prosecution if the summons or warrant contains information of the ten-day period during which the instrument may be paid and that payment of the instrument within such ten-day period will result in dismissal of the charges. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept. (RSMo. §570.120, 2005, 2014 effective 1-1-2017)

**Section 17-122. Shoplifting — Detention of Suspect by Merchant — Liability Presumption.**

A. *Definitions.* As used in this Section, the following definitions shall apply:

MERCANTILE ESTABLISHMENT — Any mercantile place of business in, at or from which goods, wares and merchandise are sold, offered for sale or delivered from and sold at retail or wholesale.

MERCHANDISE — All goods, wares and merchandise offered for sale or displayed by a merchant.

MERCHANT — Any corporation, partnership, association or person who is engaged in the business of selling goods, wares and merchandise in a mercantile establishment.

WRONGFUL TAKING — Includes stealing of merchandise or money and any other wrongful appropriation of merchandise or money.

B. Any merchant, his/her agent or employee, who has reasonable grounds or probable cause to believe that a person has committed or is committing a wrongful taking of merchandise or money from a mercantile establishment, may detain such person in a reasonable manner and for a reasonable length of time for the purpose of investigating whether there has been a wrongful taking of such merchandise or money. Any such reasonable detention shall not constitute an unlawful arrest or detention, nor shall it render the merchant, his/her agent or employee criminally or civilly liable to the person so detained.

C. Any person willfully concealing unpurchased merchandise of any mercantile establishment, either on the premises or outside the premises of such establishment, shall be presumed to have so concealed such merchandise with the intention of committing a wrongful taking of such merchandise within the meaning of Subsection (A), and the finding of such unpurchased merchandise concealed upon the person or among the belongings of such person shall be evidence of reasonable grounds and probable cause for the detention in a reasonable manner and for a reasonable length of time of such person by a merchant, his/her agent or employee in order that recovery of such merchandise may be effected, and any such reasonable detention shall not be deemed to be unlawful nor render such merchant, his/her agent or employee criminally or civilly liable. (RSMo. §537.125)

**Section 17-123. Copper Wire or Cable, Catalytic Converters, Collectors and Dealers To Keep Register, Information Required — Penalty — Exempt Transactions.**

A. Every purchaser or collector of, or dealer in, junk, scrap metal or any secondhand property shall keep a register containing a written or electronic record for each purchase or trade in which each type of metal subject to the provisions of this Section is obtained for value. There shall be a separate record for each transaction involving any:

1. Copper, brass or bronze;
2. Aluminum wire, cable, pipe, tubing, bar, ingot, rod, fitting or fastener;
3. Material containing copper or aluminum that is knowingly used for farming purposes as farming is defined in Section 350.010, RSMo.; whatever may be the condition or length of such metal; or
4. Catalytic converter.

B. The record required by this Section shall contain the following data:

1. A copy of the driver's license or photo identification issued by the State or by the United States Government or agency thereof to the person from whom the material is obtained;
2. The current address, gender, birth date, and a photograph of the person from whom the material is obtained if not included or are different from the identification required in Subsection (B)(1) of this Subsection;
3. The date, time and place of the transaction;
4. The license plate number of the vehicle used by the seller during the transaction;
5. A full description of the metal, including the weight and purchase price.

C. The records required under this Section shall be maintained for a minimum of twenty-four (24) months from when such material is obtained and shall be available for inspection by any Law Enforcement Officer.

D. Anyone convicted of violating this Section shall be guilty of an ordinance violation.

E. This Section shall not apply to any of the following transactions:

1. Any transaction for which the total amount paid for all regulated scrap metal purchased or sold does not exceed fifty dollars (\$50.00), unless the scrap metal is a catalytic converter;
2. Any transaction for which the seller, including a farm or farmer, has an existing business relationship with the scrap metal dealer and is known to the scrap metal dealer making the purchase to be an established business or political subdivision that operates a business with a fixed location that can be reasonably expected to generate regulated scrap metal and can be reasonably identified as such a business; or
3. Any transaction for which the type of metal subject to Subsection (A) of this Section is a minor

part of a larger item, except for equipment used in the generation and transmission of electrical power or telecommunications. (RSMo. §407.300, 2008, 2013)

**Section 17-124. Metal Beer Keg, Prohibition on Purchase or Possession by Scrap Metal Dealer — Violation, Penalty.**

A. No scrap metal dealer shall knowingly purchase or possess a metal beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, cut or otherwise alter scrap metal except when the purchase is from the brewer or its authorized representative. For purposes of this Section, "keg" shall have the same meaning as in Section 311.082, RSMo.

B. Anyone who is found guilty of, or pleads guilty to, violating this Section shall be guilty of an ordinance violation punishable only by fine. Nothing in this Section shall be construed to preclude a person violating this Section from also being prosecuted for any applicable criminal offense. (RSMo. §407.301, 2008)

**Section 17-125. Metal Belonging to Various Entities — Scrap Yard Not To Purchase — Violation, Penalty.**

A. No scrap yard shall purchase any metal that can be identified as belonging to a public or private cemetery, political subdivision, telecommunications provider, cable provider, wireless service or other communications-related provider, electrical cooperative, water utility, municipal utility or utility regulated under Chapters 386 or 393, RSMo., including bleachers, guardrails, signs, street and traffic lights or signals, and manhole cover or covers, whether broken or unbroken, from anyone other than the cemetery or monument owner, political subdivision, telecommunications provider, cable provider, wireless service or other communications-related provider, electrical cooperative, water utility, municipal utility, utility regulated under Chapter 386 or 393, RSMo., or manufacturer of the metal or item described in this Section unless such person is authorized in writing by the cemetery or monument owner, political subdivision, telecommunications provider, cable provider, wireless service or other communications-related provider, electrical cooperative, water utility, municipal utility, utility regulated under Chapter 386 or 393, RSMo., or manufacturer to sell the metal.

B. Anyone convicted of violating this Section shall be guilty of an ordinance violation. (RSMo. §407.302, 2008, 2013)

**Section 17-126. Scrap Metal Dealers — Payments in Excess of \$500.00 To Be Made by Check — Exceptions.**

A. Any scrap metal dealer paying out an amount that is five hundred dollars (\$500.00) or more shall make such payment by issuing a prenumbered check drawn on a regular bank account in the name of the licensed scrap metal dealer and with such check made payable to the person documented as the seller in accordance with this Section, or by using a system for automated cash or electronic payment distribution which photographs or videotapes the payment recipient and identifies the payment with a distinct transaction in the register maintained in accordance with Chapter 407, RSMo.

B. Any scrap metal dealer that purchases scrap metal from a seller and pays in the form of cash is required to obtain a copy of the seller's driver's license or non-driver's license if the metal is copper or a catalytic converter. This Section shall not apply to any transaction for which the seller has an existing business relationship with the scrap metal dealer and is known to the scrap metal dealer making the purchase to be an established business or political subdivision that operates a business with a fixed location that can be reasonably expected to generate regulated scrap metal and can be reasonably identified as such a business.

C. Any person in violation of Sections 17-121 to 17-125 by selling stolen scrap metal shall be responsible for consequential damages related to obtaining the scrap metal. (RSMo. §407.303, 2008, 2013)

**Section 17-127. Prohibited uses of licenses.**

It shall be unlawful for any person to display or to permit to be displayed, or to have in his possession, any license knowing the same to be fictitious or to have been canceled, suspended, revoked, disqualified or altered; to lend to or knowingly permit the use of by another any license issued to the person so lending or permitting the use thereof; to display or to represent as one's own any license not issued to the person so displaying the same, or fail or refuse to surrender to the clerk of any division of the circuit court or the director, any license which has been suspended, canceled, disqualified or revoked, as provided by law; to use a false or fictitious name or give a false or fictitious address on any application for a license, or any renewal or duplicate thereof, or knowingly to make a false statement, or knowingly to conceal a material fact, or otherwise commit a fraud in any such application.

**Section 17-128. through Section 17-134. (Reserved)**

ARTICLE VIII

**OFFENSES CONCERNING PROSTITUTION**

**Section 17-135. Article Definitions.**

As used in this Article, the following terms mean:

**DEVIATE SEXUAL INTERCOURSE** — Any sexual act involving the genitals of one (1) person and the mouth, hand, tongue, or anus of another person; or any act involving the penetration, however slight, of the penis, the female genitalia, or the anus by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim.

**PERSISTENT PROSTITUTION OFFENDER** — A person who has been found guilty of two (2) or more prostitution-related offenses.

**PROSTITUTION-RELATED OFFENSE** — Any violation of State law for prostitution, patronizing prostitution, or promoting prostitution.

**SEXUAL CONDUCT** — Sexual intercourse, deviate sexual intercourse, or sexual contact.

**SEXUAL CONTACT** — Any touching of another person with the genitals or any touching of the genitals or anus of another person or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person or for the purpose of terrorizing the victim.

**SEXUAL INTERCOURSE** — Any penetration, however slight, of the female genitalia by the penis.

**SOMETHING OF VALUE** — Any money or property, or any token, object or article exchangeable for money or property. (RSMo. §567.010, 2014 effective 1-1-2017)

**Section 17-136. Prostitution.**

A person commits the offense of prostitution if he or she engages in or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by any person. (RSMo. §567.020, 2014 effective 1-1-2017)

**Section 17-137. Patronizing Prostitution.**

A. A person commits the offense of patronizing prostitution if he or she:

1. Pursuant to a prior understanding, gives something of value to another person as compensation for having engaged in sexual conduct with any person; or

2. Gives or agrees to give something of value to another person with the understanding that such person or another person will engage in sexual conduct with any person; or

3. Solicits or requests another person to engage in sexual conduct with any person in return for something of value.

B. It shall not be a defense that the person believed that the individual he or she patronized for prostitution was eighteen (18) years of age or older. (RSMo. §567.030, 2004, 2014 effective 1-1-2017)

**Section 17-138. (Reserved)**

**Section 17-139. Prostitution Houses Deemed Public Nuisances.**

A. Any room, building or other structure regularly used for any prostitution activity prohibited by this Article is a public nuisance.

B. The City Prosecuting Attorney may, in addition to all criminal sanctions, prosecute a suit in equity to enjoin the nuisance. If the court finds that the owner of the room, building or structure knew or had reason to believe that the premises were being used regularly for prostitution activity, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one (1) year.

C. All persons, including owners, lessees, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance, and they may be enjoined from engaging in any prostitution activity anywhere within the jurisdiction of the court.

D. Appeals shall be allowed from the judgment of the court as in other civil actions. (RSMo. §567.080, 2014 effective 1-1-2017)

**Section 17-140. through Section 17-149. (Reserved)**

ARTICLE IX  
**SEXUAL OFFENSES**

**Section 17-150. Article Definitions.**

As used in this Article, the following terms shall have the meanings set forth herein:

**DEVIATE SEXUAL INTERCOURSE** — Any act involving the genitals of one person and the hand, mouth, tongue or anus of another person or a sexual act involving the penetration, however slight, of the penis, female genitalia, or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim.

**SEXUAL CONDUCT** — Sexual intercourse, deviate sexual intercourse or sexual contact.

**SEXUAL CONTACT** — Any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim.

**SEXUAL INTERCOURSE** — Any penetration, however slight, of the female genitalia by the penis. (RSMo. §566.010, 2006, 2014 effective 1-1-2017)

**Section 17-151. Sexual Misconduct.**

A. A person commits the offense of sexual misconduct in the first degree if such person:

1. Exposes his/her genitals under circumstances in which he/she knows that his/her conduct is likely to cause affront or alarm;

2. Has sexual contact in the presence of a third person or persons under circumstances in which he/she knows that such conduct is likely to cause affront or alarm; or

3. Has sexual intercourse or deviate sexual intercourse in a public place in the presence of a third

person. (RSMo. §566.093, 2004, 2014 effective 1-1-2017)

**Section 17-152. Sexual Abuse.**

A person commits the offense of sexual abuse in the second degree if he/she purposely subjects another person to sexual contact without that person's consent. (RSMo. §566.101, 2013, 2014 effective 1-1-2017)

**Section 17-153. Certain Offenders Not To Physically Be Present or Loiter Within 500 Feet of a Child Care Facility — Violation — Penalty.**

A. Any person who has been found guilty of:

1. Violating any of the provisions of Chapter 566, RSMo., or the provisions of Section 568.020, RSMo., Incest; Section 568.045, RSMo., Endangering The Welfare Of A Child In The First Degree; Section 573.200, RSMo., Use Of A Child In A Sexual Performance; Section 573.205, RSMo., Promoting A Sexual Performance By A Child; Section 573.023, RSMo., Sexual Exploitation Of A Minor; Section 573.025, RSMo., Promoting Child Pornography In The First Degree; Section 573.035, RSMo., Promoting Child Pornography In The Second Degree; Section 573.037, RSMo., Possession Of Child Pornography; or Section 573.040, RSMo., Furnishing Pornographic Material To Minors; or

2. Any offense in any other jurisdiction which, if committed in this State, would be a violation listed in this Section;

shall not knowingly be physically present in or loiter within five hundred (500) feet of or to approach, contact, or communicate with any child under eighteen (18) years of age in any child-care facility building, on the real property comprising any child care facility when persons under the age of eighteen (18) are present in the building, on the grounds, or in the conveyance, unless the offender is a parent, legal guardian, or custodian of a student present in the building or on the grounds.

B. For purposes of this Section, "child care facility" shall include any child care facility licensed under Chapter 210, RSMo., or any child care facility that is exempt from State licensure but subject to State regulation under Section 210.252, RSMo., and holds itself out to be a child care facility.

C. Violation of the provisions of this Section is an ordinance violation. (RSMo. §566.148, 2009, 2014 effective 1-1-2017)

**Section 17-1540. Certain Offenders Not To Be Present Within 500 Feet of School Property, Exception — Permission Required for Parents or Guardians Who Are Offenders, Procedure.**

A. Any person who has been found guilty of:

1. Violating any of the provisions of Chapter 566, RSMo., or the provisions of Section 568.020, RSMo., Incest; Section 568.045, RSMo., Endangering The Welfare Of A Child In The First Degree; Section 573.200, RSMo., Use Of A Child In A Sexual Performance; Section 573.205, RSMo., Promoting A Sexual Performance By A Child; Section 573.023, RSMo., Sexual Exploitation Of A Minor; Section 573.025, RSMo., Promoting Child Pornography; or Section 573.040, RSMo., Furnishing Pornographic Material To Minors; or

2. Any offense in any other jurisdiction which, if committed in this State, would be a violation listed in this Section;

shall not be present in or loiter within five hundred (500) feet of any school building, on real property comprising any school, or in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen (18) are present in the building, on the grounds, or in the conveyance, unless the offender is a parent, legal guardian, or custodian of a student present in the building and has met the conditions set forth in Subsection (B) of this Section.

B. No parent, legal guardian or custodian who has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the offenses listed in Subsection (A) of this Section shall be present in any school building, on real property comprising any school, or in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen (18) are present in the building, on the grounds, or in the conveyance, unless the parent, legal guardian, or custodian has permission to be present from the Superintendent or School Board or in the case of a private school from the Principal. In the case of a public school, if permission is granted, the Superintendent or School Board President must inform the Principal of the school where the sex offender will be present. Permission may be granted by the Superintendent, School Board, or in the case of a private school from the Principal for more than one (1) event at a time, such as a series of events, however, the parent, legal guardian or custodian must obtain permission for any other event he/she wishes to attend for which he/she has not yet had permission granted.

C. Regardless of the person's knowledge of his or her proximity to school property or a school-related activity, violation of the provisions of this Section is an ordinance violation. (RSMo. §566.149, 2006, 2008, 2009, 2014 effective 1-1-2017)

#### **Section 17-155. Halloween, Restrictions on Conduct — Violations.**

A. Any person required to register as a sexual offender under Sections 589.400 to 589.425, RSMo., shall be required on October 31st of each year to:

1. Avoid all Halloween-related contact with children;
2. Remain inside his or her residence between the hours of 5:00 P.M. and 10:30 P.M. unless required to be elsewhere for just cause including, but not limited to, employment or medical emergencies;
3. Post a sign at his or her residence stating "No candy or treats at this residence"; and
4. Leave all outside residential lighting off during the evening hours after 5:00 P.M.

B. Any person required to register as a sexual offender under Sections 589.400 to 589.425, RSMo., who violates the provisions of Subsection (A) of this Section shall be guilty of an ordinance violation. (RSMo. §589.426, 2008)

#### **Section 17-156. Urinating in Public.**

It shall be unlawful for any person within the City to urinate in or upon any street, park, any public place open to the public or private place open to public view other than in the restroom facilities provided for such activity.

#### **Section 17-157. through Section 17-166. (Reserved)**

### **ARTICLE X OFFENSES CONCERNING PORNOGRAPHY**

#### **Section 17-167. Definitions.**

When used in this Article, the following terms shall have the meanings set out herein:

**FURNISH** — To issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide.

**MATERIAL** — Anything printed or written, or any picture, drawing, photograph, motion-picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates, stored computer data, and other latent representational objects.

MINOR — Any person less than eighteen (18) years of age.

NUDITY or STATE OF NUDITY — The showing of the human genitals, pubic area, vulva, anus, anal cleft, or the female breast with less than a fully opaque covering of any part of the nipple or areola.

OBSCENE — Any material or performance if, taken as a whole:

1. Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and
2. The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and
3. A reasonable person would find the material lacks serious literary, artistic, political or scientific value.

PERFORMANCE — Any play, motion-picture film, videotape, dance or exhibition performed before an audience of one (1) or more.

PORNOGRAPHIC FOR MINORS — Any material or performance if the following apply:

1. The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and
2. The material or performance depicts or describes nudity, sexual conduct, the condition of human genitals when in a state of sexual stimulation or arousal or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and
3. The material or performance, taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

PROMOTE — To manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same, by any means including a computer.

SADOMASOCHISTIC ABUSE — Flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

SEXUAL CONDUCT — Actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification.

SEXUAL EXCITEMENT — The condition of human male or female genitals when in a state of sexual stimulation or arousal. (RSMo. §573.010, 2014 effective 1-1-2017)

### **Section 17-168. Promoting Pornography for Minors or Obscenity.**

A. A person commits the offense of promoting pornography for minors or obscenity if, knowing of its content and character, he/she:

1. Promotes or possesses with the purpose to promote any obscene materials for pecuniary gain; or
2. Produces, presents, directs or participates in any obscene performance for pecuniary gain; or
3. Promotes or possesses with the purpose to promote any material pornographic for minors for pecuniary gain; or
4. Produces, presents, directs or participates in any performance pornographic for minors for

pecuniary gain; or

5. Promotes, possesses with the purpose to promote, produces, presents, directs or participates in any performance that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor. (RSMo. §573.030.1, 2009, 2014 effective 1-1-2017)

#### **Section 17-169. Furnishing Pornographic Materials to Minors.**

A. A person commits the offense of furnishing pornographic material to minors if, knowing of its content and character, he/she:

1. Furnishes any material pornographic for minors knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that such person is a minor; or

2. Produces, presents, directs or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing such performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance; or

3. Furnishes, produces, presents, directs, participates in any performance or otherwise makes available material that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

B. It is not a defense to a prosecution for a violation of this Section that the person being furnished the pornographic material is a Peace Officer masquerading as a minor.

C. The offense of furnishing pornographic material to minors or attempting to furnish pornographic material to minors is an ordinance violation. (RSMo. §573.040, 2008, 2009, 2014 effective 1-1-2017)

#### **Section 17-170. through Section 17-179. (Reserved)**

### ARTICLE XI OFFENSES CONCERNING DRUGS

#### **Section 17-180. Possession of Marijuana or Synthetic Cannabinoid.**

A person commits the offense of possession of marijuana or any synthetic cannabinoid, as both terms are defined in Section 195.010, RSMo., if he or she knowingly possesses marijuana or any synthetic cannabinoid, except as authorized by Chapter 579 or Chapter 195, RSMo.<sup>1</sup> (RSMo. §579.015, 2014 effective 1-1-2017)

#### **Section 17-181. Possession of a Controlled Substance.**

A person commits the offense of possession of a controlled substance, as defined in Section 195.010, RSMo., if he or she knowingly possesses a controlled substance, except as authorized by Chapter 579, RSMo., or Chapter 195, RSMo.<sup>2</sup> (RSMo. §579.015, 2014 effective 1-1-2017)

#### **Section 17.182. Limitations on the Retail Sale of Methamphetamine Precursor Drugs.**

A. The retail sale of methamphetamine precursor drugs shall be limited to:

1. Sales in packages containing not more than a total of three (3) grams of one (1) or more methamphetamine precursor drugs calculated in terms of ephedrine base, pseudoephedrine base and phenylpropanolamine base; and

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1. State Law Reference: For similar statutory provisions and the elements setting the levels of this offense, see §§195.010, 195.017 and 579.015, RSMo.

2. State Law Reference: For similar statutory provisions and the elements setting the levels of this offense, see §§195.010, 195.017 and 579.015, RSMo.

2. For non-liquid products, sales in blister packs, each blister containing not more than two (2) dosage units, or where the use of blister packs is technically infeasible, sales in unit dose packets or pouches.

B. The penalty for a knowing violation of Subsection (A) of this Section is found in Section 569.060, RSMo. (RSMo. §195.418, 2014 effective 1-1-2017)

**Section 17.183. Unlawful Possession of Drug Paraphernalia.**

A person commits the offense of unlawful possession of drug paraphernalia if he or she knowingly uses, or possesses with intent to use, drug paraphernalia, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body, a controlled substance or an imitation controlled substance in violation of Chapter 579, RSMo., or Chapter 195, RSMo. (RSMo. §579.074, 2014 effective 1-1-2017)

**Section 17.184. Inhalation or Inducing Others To Inhale Solvent Fumes to Cause Certain Reactions, Prohibited — Exceptions.**

No person shall intentionally smell or inhale the fumes of any solvent, particularly toluol, amyl nitrite, butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite and propyl nitrite and their iso-analogues or induce any other person to do so for the purpose of causing a condition of, or inducing symptoms of, intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of senses or nervous system, or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual or mental processes; except that this Section shall not apply to the inhalation of any anesthesia for medical or dental purposes. (RSMo. §579.097, 2014 effective 1-1-2017)

**Section 17-185. Inducing, or Possession With Intent To Induce, Symptoms by Use of Solvents and Other Substances, Prohibited.**

A. As used in this Section, "alcohol beverage vaporizer" means any device which, by means of heat, a vibrating element, or any method, is capable of producing a breathable mixture containing one (1) or more alcoholic beverages to be dispensed for inhalation into the lungs via the nose or mouth or both.

B. No person shall intentionally or willfully induce the symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses or nervous system, distortion of audio, visual or mental processes by the use or abuse of any of the following substances:

1. Solvents, particularly toluol;
2. Ethyl alcohol;
3. Amyl nitrite and its iso-analogues;
4. Butyl nitrite and its iso-analogues;
5. Cyclohexyl nitrite and its iso-analogues;
6. Ethyl nitrite and its iso-analogues;
7. Pentyl nitrite and its iso-analogues; and
8. Propyl nitrite and its iso-analogues.

C. This Section shall not apply to substances that have been approved by the United States Food and Drug Administration as therapeutic drug products or are contained in approved over-the-counter drug products or administered lawfully pursuant to the order of an authorized medical practitioner.

D. No person shall intentionally possess any solvent, particularly toluol, amyl nitrite, butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite and propyl nitrite and their iso-analogues for the purpose of using it in the manner prohibited by **Section 17-184** and this Section.

E. No person shall possess or use an alcoholic beverage vaporizer.

F. Nothing in this Section shall be construed to prohibit the legal consumption of intoxicating liquor. (RSMo. §579.099, 2014 effective 1-1-2017)

**Section 17.186. Possession or Purchase of Solvents To Aid Others in Violations, Prohibited — Violations of **Sections 17-184 to 17-185** — Penalty.**<sup>3</sup>

A. No person shall intentionally possess or buy any solvent, particularly toluol, amyl nitrite, butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite and propyl nitrite and their iso-analogues for the purpose of inducing or aiding any other person to violate the provisions of **Sections 17-184 and 17-185** hereof.

B. Any person who violates any provision of **Sections 17-184 through 17-185** is guilty of an ordinance violation for the first violation. (RSMo. §579.101, 2014 effective 1-1-2017)

**Section 17.187. through Section 17.196. (Reserved)**

ARTICLE XII  
**OFFENSES CONCERNING MINORS**

**Section 17.197. Article Definitions.**

For the purposes of this Article, the following words and phrases are defined as follows:

GUARDIAN — Guardian appointed by court of competent jurisdiction.

MINOR — Any person under the age of seventeen (17).

PARENT — The natural or adoptive father or mother, legal guardian or any other person having the care or custody of a minor child.

PARENTAL NEGLECT — Any act or omission by which a parent fails to exercise customary and effective control over a minor so as to contribute to, cause or tend to cause a minor to commit any offense.

**Section 17-198. Curfew for Persons Under Seventeen.**

A. It shall be unlawful for any person under the age of seventeen (17) years to be in or upon any public place or way within the City of Kirkwood between the hours of 12:01 A.M. and 6:00 A.M. The provisions of this Section shall not apply to any such persons accompanied by a parent or guardian, to any such person upon an errand or other legitimate business directed by such person's parent or guardian, to any such person who is engaged in gainful, lawful employment during said time period, or who is returning or in route to said employment, or to any such person who is attending or in route to or from any organized religious or school activity.

B. *Responsibility Of Parent.* The parent, guardian or other adult person having the care and custody of a person under the age of seventeen (17) years shall not knowingly permit such person to violate this Section.

C. *Notice To Parent.* Any Law Enforcement Officer finding any person under the age of seventeen (17) years violating the provisions of this Section shall warn such person to desist immediately from such violation and shall promptly report the violation to his/her superior officer who shall cause a written

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3. Note: Under certain circumstances this offense can be a felony under state law.

notice to be served upon the parent, guardian or person in charge of such person setting forth the manner in which this Section has been violated. Any parent, guardian or person in charge of such person who shall knowingly permit such person to violate the provisions of this Section, after receiving notice of the first violation, shall be guilty of an offense.

D. *Service Of Notice.* The written notice provided in Subsection (C) may be served by leaving a copy thereof at the residence of such parent, guardian or person in charge of the person in violation of this Section with any person found at such residence over the age of seventeen (17) years or by mailing such notice to the last known address of such parent, guardian or person in charge of such person, wherever such person may be found.

#### **Section 17.199. Parental Responsibility.**

A. Whenever a minor shall be arrested or detained for the commission of any offense within the City, the Police Department shall, as soon as possible thereafter, deliver written notice to the minor's parent of the arrest or detention, and such notice shall advise the parent of his/her responsibility under this Section. The notice shall be in such a form as to be signed by the notified parent signifying receipt thereof. If the parent refuses to sign said notice, the notifying Law Enforcement Officer shall indicate such refusal on the notice.

B. No parent shall fail to exercise customary and effective control over a minor so as to contribute to, cause or tend to cause a minor to commit any offense. Written parental notice as defined in Subsection (A) of this Section shall be prima facie evidence of parental neglect if the minor commits a second or successive violation of any offense.

C. Each violation of the provisions of this Section shall constitute a separate offense. Any person who shall violate this Section shall be subject to a penalty as set forth in Section 1-8 of this Code. In addition, the court may, as a condition of any probation granted to any parent found guilty of violating Subsection (B) of this Section, order the defendant to make restitution to any person who has been damaged by the misconduct of the minor in an amount not to exceed two thousand dollars (\$2,000.00).

#### **Section 17-200. through Section 17.209. (Reserved)**

### ARTICLE XIII

## **OFFENSES CONCERNING TOBACCO, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS**

#### **Section 17.210. Definitions.**

For purposes of this Article, the following definitions shall apply:

**ALTERNATIVE NICOTINE PRODUCT** — Any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved or ingested by any other means. "Alternative nicotine product" does not include any vapor product, tobacco product or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

**CENTER OF YOUTH ACTIVITIES** — Any playground, school or other facility, when such facility is being used primarily by persons under the age of eighteen (18) for recreational, educational or other purposes.

**DISTRIBUTE** — A conveyance to the public by sale, barter, gift or sample.

**MINOR** — A person under the age of eighteen (18).

**PROOF OF AGE** — A driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid.

ROLLING PAPERS — Paper designed, manufactured, marketed or sold for use primarily as a wrapping or enclosure for tobacco which enables a person to roll loose tobacco into a smokeable cigarette.

SAMPLE — A tobacco product, alternative nicotine product or vapor product distributed to members of the general public at no cost or at nominal cost for product promotional purposes.

SAMPLING — The distribution to members of the general public of tobacco product, alternative nicotine product or vapor product samples.

TOBACCO PRODUCTS — Any substance containing tobacco leaf including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, but does not include alternative nicotine products or vapor products.

VAPOR PRODUCT — Any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product" does not include any alternative nicotine product or tobacco product.

VENDING MACHINE — Any mechanical, electric or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products, alternative nicotine products or vapor products. (RSMo. §407.925, 2014)

**Section 17.210.5. No Tobacco Sales to Minors — Alternative Nicotine Products, Vapor Products and Nicotine Liquid Containers — Sale to Minors Prohibited.**

A. Any person or entity who sells tobacco products, alternative nicotine products, or vapor products shall deny the sale of such tobacco products to any person who is less than eighteen (18) years of age.

B. Any person or entity who sells or distributes tobacco products, alternative nicotine products, or vapor products by mail or through the Internet in this State in violation of Subsection (A) of this Section shall be assessed a fine of two hundred fifty dollars (\$250.00) for the first violation and five hundred dollars (\$500.00) for each subsequent violation.

C. Alternative nicotine products and vapor products shall only be sold to persons eighteen (18) years of age or older, shall be subject to local and State sales tax, but shall not be otherwise taxed or regulated as tobacco products.

D. *Nicotine Liquid Containers — Regulations.*

1. Any nicotine liquid container that is sold at retail in this State shall satisfy the child-resistant effectiveness standards set forth in 16 CFR 1700.15(b) as in effect on the effective date of this Section when tested in accordance with the method described in 16 CFR 1700.20 as in effect on the effective date of this Section.

2. For the purposes of this Subsection, "nicotine liquid container" shall mean a bottle or other container of liquid or other substance containing nicotine if the liquid or substance is sold, marketed, or intended for use in a vapor product. A "nicotine liquid container" shall not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product, provided that such cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

3. Any person who engages in retail sales of liquid nicotine containers in this State in violation of this Subsection shall be assessed a fine of two hundred fifty dollars (\$250.00) for the first violation and five hundred dollars (\$500.00) for each subsequent violation.

4. The Department of Health and Senior Services may adopt rules necessary to carry out the provisions of this Subsection. Any rule or portion of a rule, as that term is defined in Section 536.010, RSMo., that is created under the authority delegated in that Section shall become effective only if it complies with and is subject to all of the provisions of Chapter 536, RSMo., and, if applicable, Section 536.028, RSMo. This Section and Chapter 536, RSMo., are non-severable, and if any of the powers vested with the General Assembly under Chapter 536, RSMo., to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid and void.

5. The provisions of this Subsection and any rules adopted hereunder shall be null, void, and of no force and effect upon the effective date of the final regulations issued by the Federal Food and Drug Administration or from any other Federal agency if such regulations mandate child-resistant effectiveness standards for nicotine liquid containers. (RSMo. §407.926, 2015)

**Section 17.211. Unlawful To Sell or Distribute Tobacco Products, Alternative Nicotine Products or Vapor Products to Minors — Vending Machine Requirements.**

A. It shall be unlawful for any person to sell, provide or distribute tobacco products, alternative nicotine products or vapor products to persons under eighteen (18) years of age.

B. All vending machines that dispense tobacco products, alternative nicotine products or vapor products shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than eighteen (18) years of age from purchasing any tobacco product, alternative nicotine product or vapor product from such machine or shall be equipped with a lock-out device to prevent the machines from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking device shall be of a design that prevents it from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required on machines that are located in areas where persons less than eighteen (18) years of age are not permitted or prohibited by law. An owner of an establishment whose vending machine is not in compliance with the provisions of this Subsection shall be subject to the penalties contained in Subsection (D) of this Section. A determination of non-compliance may be made by a local law enforcement agency or the Division of Alcohol and Tobacco Control. Nothing in this Section shall apply to a vending machine if located in a factory, private club or other location not generally accessible to the general public.

C. No person or entity shall sell, provide or distribute any tobacco product, alternative nicotine product or vapor product or rolling papers to any minor or sell any individual cigarettes to any person in this State. This Subsection shall not apply to the distribution by family members on property that is not open to the public.

D. Any person, including, but not limited to, a sales clerk, owner or operator, who violates Subsection (A), (B) or (C) of this Section or **Section 17-214** of this Article shall be penalized as follows:

1. For the first offense, twenty-five dollars (\$25.00);
2. For the second offense, one hundred dollars (\$100.00); and
3. For a third and subsequent offense, two hundred fifty dollars (\$250.00).

E. Any owner of the establishment where tobacco products, alternative nicotine products or vapor products are available for sale who violates Subsection (C) of this Section shall not be penalized pursuant to this Section if such person documents the following:

1. An in-house or other tobacco compliance employee training program was in place to provide the employee with information on the State and Federal regulations regarding sales of tobacco products, alternative nicotine products or vapor products to minors. Such training program must be attended by all employees who sell tobacco products, alternative nicotine products or vapor products to the general public;

2. A signed statement by the employee stating that the employee has been trained and understands the State laws and Federal regulations regarding the sale of tobacco to minors products, alternative nicotine products or vapor products; and

3. Such in-house or other tobacco compliance training meets the minimum training criteria, which shall not exceed a total of ninety (90) minutes in length, established by the Division of Alcohol and Tobacco Control.

F. The exemption in Subsection (E) of this Section shall not apply to any person who is considered the general owner or operator of the outlet where tobacco products, alternative nicotine products or vapor products are available for sale if:

1. Four (4) or more violations per location of Subsection (C) of this Section occur within a one-year period; or

2. Such person knowingly violates or knowingly allows his/her employees to violate Subsection (C) of this Section.

G. If a sale is made by an employee of the owner of an establishment in violation of this Article, the employee shall be guilty of an offense established in Subsections (A), (B) and (C) of this Section. If a vending machine is in violation of **Section 17-214**, the owner of the establishment shall be guilty of an offense established in Subsections (C) and (D) of this Section. If a sample is distributed by an employee of a company conducting the sampling, such employee shall be guilty of an offense established in Subsections (C) and (D) of this Section.

H. A person cited for selling, providing or distributing any tobacco product, alternative nicotine product or vapor product to any individual less than eighteen (18) years of age in violation of Subsection (A), (B) or (C) of this Section shall conclusively be presumed to have reasonably relied on proof of age of the purchaser or recipient, and such person shall not be found guilty of such violation if such person raises and proves as an affirmative defense that such individual presented a driver's license or other government-issued photo identification purporting to establish that such individual was eighteen (18) years of age or older.

I. Any person adversely affected by this Section may file an appeal with the Administrative Hearing Commission which shall be adjudicated pursuant to the procedures established in Chapter 621, RSMo. (RSMo. §407.931, 2014)

**Section 17.212. Minors Prohibited From Purchase or Possession of Tobacco Products, Alternative Nicotine Products or Vapor Products — Misrepresentation of Age.**

A. No person less than eighteen (18) years of age shall purchase, attempt to purchase or possess cigarettes, tobacco products, alternative nicotine products or vapor products unless such person is an employee of a seller of cigarettes, tobacco products, alternative nicotine products or vapor products and is in such possession to effect a sale in the course of employment or an employee of the Division of Alcohol and Tobacco Control for enforcement purposes pursuant to Subsection (5) of Section 407.934, RSMo.

B. Any person less than eighteen (18) years of age shall not misrepresent his/her age to purchase cigarettes, tobacco products, alternative nicotine products or vapor products.

C. Any person who violates the provisions of this Section shall be penalized as follows:

1. For the first violation, the person is guilty of an infraction and shall have any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated;

2. For a second violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated and shall complete a tobacco education or smoking cessation program, if available. (RSMo. §407.933, 2014)

**Section 17.213. Retail Sales Tax License Required for Sale of Tobacco Products, Alternative Nicotine Products or Vapor Products.**

No person shall sell cigarettes, tobacco products, alternative nicotine products or vapor products unless the person has a retail sales tax license. (RSMo. §407.934.1, 2014)

**Section 17.214. Required Sign Stating Violation of State Law To Sell Tobacco Products, Alternative Nicotine Products or Vapor Products to Minors Under Age 18 — Display of Sign Required, Where.**

A. The owner of an establishment at which tobacco products, alternative nicotine products, vapor products or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products, alternative nicotine products, vapor products are sold and on every vending machine where tobacco products, alternative nicotine products, vapor products are purchased a sign that shall:

1. Contain in red lettering at least one-half (1/2) inch high on a white background the following:
  1. IT IS A VIOLATION OF STATE LAW FOR CIGARETTES, OTHER TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO BE SOLD OR OTHERWISE PROVIDED TO ANY PERSON UNDER THE AGE OF EIGHTEEN OR FOR SUCH PERSON TO PURCHASE, ATTEMPT TO PURCHASE OR POSSESS CIGARETTES, OTHER TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS; and
  2. Include a depiction of a pack of cigarettes at least two (2) inches high defaced by a red diagonal diameter of a surrounding red circle and the words "Under 18." (RSMo. §407.927, 2014)

**Section 17.215. Restrictions on Sales of Individual Packs of Cigarettes.**

A. No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless such packs satisfy one (1) of the following conditions prior to the time of sale:

1. It is sold through a vending machine; or
2. It is displayed behind the checkout counter or it is within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter. (RSMo. §407.928)

**Section 17.216. Proof of Age Required, When Defense to Action for Violation Is Reasonable Reliance on Proof — Liability.**

A. A person or entity selling tobacco products, alternative nicotine products or vapor products or rolling papers or distributing tobacco product, alternative nicotine product or vapor product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen (18).

B. The operator's or chauffeur's license issued pursuant to the provisions of Section 302.177, RSMo., or the operator's or chauffeur's license issued pursuant to the laws of any State or possession of the United States to residents of those States or possessions, or an identification card as provided for in Section 302.181, RSMo., or the identification card issued by any uniformed service of the United States, or a valid passport shall be presented by the holder thereof upon request of any agent of the Division of Alcohol and Tobacco Control or any owner or employee of an establishment that sells tobacco products, alternative nicotine products or vapor products for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least eighteen (18) years of age when such person desires to purchase or possess tobacco products, alternative nicotine products or vapor products procured from a registrant. Upon such presentation, the owner or employee of the establishment shall compare the photograph and physical characteristics noted on the license, identification card or passport with the physical characteristics of the person presenting the license, identification card or passport.

C. Any person who shall, without authorization from the Department of Revenue, reproduce, alter,

modify or misrepresent any chauffeur's license, motor vehicle operator's license or identification card shall be deemed guilty of an ordinance violation.

D. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of Subsections (A), (B) and (C) of Section 17-211 of this Article. No person shall be liable for more than one (1) violation of Subsections (B) and (C) of Section 17-211 on any single day. (RSMo. §407.929, 2014)

(Sec. 17-216 through 17-220 Reserved)

#### **ARTICLE XIV. RAILROADS**

##### **Sec. 17-231. Operating regulations.**

(a) No railroad car or locomotive shall obstruct any street crossing in the city by standing thereon longer than five (5) minutes.

(b) The bell of a railroad engine shall be constantly sounded while moving within the city.

(c) A man shall be stationed on top of the car at the end of the train farthest from the engine to give danger signals while any railroad cars are being moved backward in the city.

(d) The whistle of a locomotive engine shall not be sounded within the city. (Gen. Ords. 1959, §52.47)

##### **Sec. 17-232. Trespass on railroad cars.**

No person shall climb upon, hold to, or in any manner attach himself to any locomotive or railroad car while the same is in motion. This section shall not apply to any employee of the railroad company, nor to any passenger, nor to any other person who may be acting by permission or under the rules of the railroad company. (Gen. Ords. 1959, §52.48)

##### **Sec. 17-234. Protection of crossings.**

(a) Each person operating railroad cars upon a railroad track along or across any street shall erect gates at all cross or intersecting streets, and shall keep a watchman or install an automatic mechanism to close the gates immediately before the passage of any engine, train of cars, and to open the gates immediately after such passage.

(b) No engineer, conductor or employee of a railroad company shall operate any engine, car or train of cars along or across any street which has not been provided with the crossing gates required by subsection (a). (Gen. Ords. 1959, §52.49)

##### **Sec. 17-235—17-240. Reserved.**

#### **ARTICLE XV. WATER CONTROL AND LAND DISTURBANCE CONTROL**

##### **Sec. 17-241. Water Courses.**

(a) No person shall disturb the land surface by grading, filling, or excavating in such a manner to allow the natural or established water course to be diverted or reduced in capacity except as part of an approved building permit, subdivision development, site plan development, grading permit, or authorization of the Metropolitan Sewer District.

(b) No person shall disturb a natural or established water course by reducing the capacity of the water course or diverting the water flow, except as part of an approved building permit, subdivision development, site plan development, grading permit, or authorization of the Metropolitan Sewer District.

**Sec. 17-242. Water Control.**

(a) No person shall direct storm water or sump pump discharge water through a pipe, culvert, or drain, which discharges within ten feet of the adjacent property line except for (1) house roof or foundation drains, which may be discharged within two feet of the house foundation, (2) discharge into an open natural swale or creek on the same property, or (3) discharge parallel to the adjacent property line within 5 feet of said property line.

(b) No person shall reconstruct, remove, damage, or restrict a storm water drainage system, private or public, or restrict storm water entry to any storm water drainage system, private or public, except as approved by the City or Metropolitan Sewer District. Property owners shall maintain all private drainage systems on the premises.

(c) No person shall direct water through a pipe, culvert, drain, or sump pump across a public sidewalk. Water may be directed to the street pavement or a pipe may be connected to a street or public storm sewer inlet providing the system is maintained by the property owner.

**Sec. 17-243. Land Disturbance.**

During land disturbance operations and until ground cover is established, adjoining properties (public or private) shall be protected from dust, deposit of mud or silt or erosion damage.

(a) No person shall disturb the land surface in such a manner to cause or allow siltation on adjacent property, public property (including street pavements, sidewalks and storm water systems), or to cause or allow pollution of a watercourse. A grading permit shall be required in accordance with Chapter 20 of this code.

(b) No person shall disturb the land surface to allow the blowing and scattering of dust particles on adjacent property, public or private.

(c) Before Land disturbance operations begin, during land disturbance operations, during the period the land is disturbed and until ground cover is established, siltation and erosion control devices shall be installed in sufficient numbers and sizes, and shall be maintained to function at their design capacity, to prevent siltation, erosion, or pollution on adjacent properties (public or private) or in water courses. The Public Works Director shall approve erosion and siltation control devices.

(d) No person shall disturb the land in such a manner as to allow the ponding or pooling of water at any time.

(e) Disturbed land areas shall be covered by grass, vegetation, or paved as soon as practical after disturbance.

(f) Land disturbance operations shall be performed in such a manner as not to unreasonably alter, increase, or redirect the surface water runoff so as to cause harm to any person or property.

(Ord. No. 9174, §1, 6-20-02)

**Sec. 17-244. Stop Work Order Authorized.**

(a) Failure to install and maintain sufficient siltation control devices as approved by the Public Works Director or failure to effectively control the blowing or scattering of dust shall authorize the Public Works Department to issue a Stop Work Order for any grading, foundation, or building permits issued for work on the premises. (Ord. No. 9174, §2, 6-20-02)

**Sec. 17-245. Right of Entry.**

The Public Works Director or his authorized representative may enter the premises at any reasonable time to perform inspections and the duties imposed by this code. (Ord. No. 9174, §2, 6-20-02)

**Sec. 17-246. Penalties.**

Any person, firm, or corporation who shall violate any provision of this chapter or shall fail to comply with any requirement thereof, shall, upon conviction thereof, be guilty of a misdemeanor, punishable as prescribed in Section 1-8 of the Code of Ordinances of the City of Kirkwood. Each day's violation of, or refusal or neglect to comply with, any provision of this ordinance or the Code hereby adopted, shall constitute a separate and distinct offense. (Ord. No. 9174, §2, 6-20-02)

**Secs. 17-247—17-250. Reserved.**

**ARTICLE XVI.  
CLEAN AIR ACT - SMOKING PROHIBITED**

**Sec. 17-251. Purpose.**

The purposes of this Article are (1) to promote public health by creating environments which reduce citizens' and workers' exposure to secondhand tobacco smoke and (2) to create tobacco smoke free environments for citizens and workers through regulation in public places and the workplace.

**Sec. 17-252. Definitions.**

(a) The following words, terms and phrases, when used in this Article, shall be construed as defined in this Section:

(1) "*Bar*" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) "*Code Enforcement Officer*" means the Code Enforcement Officer of the City of Kirkwood, Missouri or his or her designee.

(3) "*Employee*" means any person who performs services for an employer, with or without compensation.

(4) "*Employer*" means a person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.

(5) "*Enclosed*" means a space bound on all sides by walls or windows continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, lobbies, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or

similar structures, and hallways.

(6) *“Place of Employment”* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

(7) *“Public Place”* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundering facilities, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

(8) *“Restaurant”* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers at no cost or for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include an attached bar.

(9) *“Smoking”* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

**Sec. 17-253. Prohibition of smoking in all enclosed places of employment and all enclosed public places.**

- (a) Smoking shall be prohibited in all enclosed places of employment within the City of Kirkwood.
- (b) Smoking shall be prohibited in all enclosed public places within the City of Kirkwood, including but not limited to the following enclosed places:
  - (1) Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs;
  - (2) Elevators;
  - (3) Restrooms;
  - (4) Libraries, educational facilities, child care and adult day care facilities, museums, auditoriums, aquariums and art galleries;
  - (5) Any health care facility, health clinic or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors’ offices and dentists’ offices;
  - (6) Any place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, bowling alley, arenas, health spas, swimming pools, and roller and ice skating rinks;
  - (7) Any place used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance;
  - (8) Shopping malls;
  - (9) Bars;

- (10) Restaurants;
- (11) Convenience facilities;
- (12) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and train facilities;
- (13) All facilities, buildings, and all vehicles owned, leased, or operated by the City of Kirkwood; and
- (14) Rooms in which meetings or hearings open to the public are held, except where such meetings or hearings are in a private residence; and
- (15) Sidewalks, driveways and other open areas within fifteen (15) feet of the entry to any building owned or occupied by any governmental entity, or within fifteen (15) feet of the entry to any building open to the public; provided, however, that this entryway prohibition shall not apply within outside dining areas where smoking is permitted or to entries that are located less than fifty (50) feet from another public entry.

(Ord. No. 9966, §1, 11-4-10)

**Sec. 17-254. Responsibilities of proprietors, owners and managers.**

(a) A person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in such place. It shall be an affirmative defense to an alleged violation of this Article that a person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished or asked the person to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

(b) A person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 shall clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representations or a burning cigarette enclosed in a red circle with a red bar across it) near all entrances where smoking is prohibited by this Article.

**Sec. 17-255. Where smoking is not regulated.**

Notwithstanding any other provision of this Article to the contrary, smoking shall be permitted in any and all places not specified in Section 17-202. In particular, but not by limitation, the following shall not be subject to this Article.

- (a) Private residences, except when used as licensed child care facilities, adult day care facilities, health care facilities, or enclosed places of employment.
- (b) Private vehicles.
- (c) Twenty percent (20%) of hotel and motel rooms may be permanently designated as smoking rooms.
- (d) Membership associations that were in existence as of March 1, 2009, provided, however, that smoking shall only be allowed in such associations wherein all duties related to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work are performed by members of such association who are at least 18 years of age and who do not receive compensation of any kind for the performance of such duties.

(e) Retail tobacco stores that derive more than eighty percent (80%) of their total gross revenue from the sale of loose tobacco, cigarettes, cigars, pipes, or other tobacco-related products, and which are not merely a department or subsection of a larger commercial establishment.

**Sec. 17-256. Penalty for violation of this article.**

(a) A person who smokes in an area where smoking is prohibited by this Article shall be guilty of an Article violation, punishable by a fine of twenty-five dollars (\$25.00) for the first violation, and fifty dollars (\$50.00) for each subsequent violation.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with this Article shall be guilty of an Article violation, punishable by:

(1) A fine of fifty dollars (\$50.00) for the first violation;

(2) A fine of one hundred dollars (\$100.00) for a second violation within a one (1) year period; and

(3) A fine of two hundred dollars (\$200.00) for a third or subsequent violation within a one (1) year period.

(c) Each day on which a violation of this Article occurs shall be a separate and distinct violation.

**Sec. 17-257. Other applicable laws.**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 17-258. Construction.**

This Article shall be strictly construed in any interpretation of its meaning. The provisions of this Article are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction the remaining provisions shall continue in full force and effect.

**Sec. 17-259. Enforcement of Article.**

(a) The authority to administer the provisions of this Article is vested in the Code Enforcement Officer.

(b) The Code Enforcement Officer may call upon the fire and police departments and other departments of the City to aid in the enforcement of the provisions of this Article.

(c) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Kirkwood, Missouri.

(d) Any person who desires to register a complaint under this Article may initiate enforcement with the Code Enforcement Officer.

(Initiative Petition Vote 11-3-09)

(Article Renumbered and Sections Renumbered with Code Revisions – 2016)

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

\*

# Legislation Request

## Ordinance

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan Select... Goal # & Title

### Background To Issue:

SB 491 will go into effect on January 1, 2017 and affects Chapter 17 "Offenses" of the City's Code of Ordinances. Staff met with City Attorney Hessel to determine what needed to change in Chapter 17 to be compliant with the state law. During the review process it was discovered that there are some sections in our code that are obsolete and need to be deleted. Following is a list of those sections that have been deleted because they are no longer effective or are covered in the new Chapter 17:

### Recommendations and Action Requested:

It is recommended that the City Council approve the new Chapter 17 "Offenses" that will be in compliance with SB491 and remove sections that are obsolete.

### Alternatives Available:

Cost: \$0.00 Account #: 0 Project #: 0 Budgeted: YES

If YES, Budgeted Amount: \$0.00 If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

BY: Betty Montano

Date: 12/8/2016

Authenticated: montanbk

You can attach up to 3 files along with this request.



Chapter 17 Memo.doc  
Microsoft Word 97 - 2003  
Document  
26.0 KB



10530.doc  
Microsoft Word 97 - 2003  
Document  
255 KB

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

12-9-16

# MEMO *from the City Clerk's Office*

---

TO: Mayor and City Council  
Russell Hawes  
John Hessel

FROM: Betty Montaño, MMC/MPCC 

DATE: December 2, 2016

SUBJECT: New Chapter 17 "Offenses" of the Kirkwood Code of Ordinances

SB 491 will go into effect on January 1, 2017 and affects Chapter 17 "Offenses" of the City's Code of Ordinances. Staff met with City Attorney Hessel to determine what needed to change in Chapter 17 to be compliant with the state law. During the review process it was discovered that there are some sections in our code that are obsolete and need to be deleted. Following is a list of those sections that have been deleted because they are no longer effective or are covered in the new Chapter 17:

- 17-1 Consumption of alcoholic beverages in public
- 17-2 Model airplane glue, plastic cement; sale to minors; inhalation and intoxication
- 17-3 Distributing samples of patent medicines
- 17-5 Games in streets
- 17-7 Crowding in places of amusement
- 17-14 Responsibility for the conduct of another
- 17-30 Disorderly conduct
- 17-31 Responsibility of keepers of public resorts to prevent disorderly conduct
- Article VII Gambling

While using the "Offenses" chapter that was drafted by General Code and used by many other municipalities, there are some sections that are unique to Kirkwood and were approved by various ordinances. In addition, there was an Initiative Petition that was approved by the voters to ban smoking and that also remains in the new Chapter 17. These sections remain in the new Chapter 17.

With careful review and discussion staff and City Attorney Hessel recommend adopting the new Chapter 17 as it will be state compliant and removes any obsolete provisions.

<p style="text-align: center;"><b>Betty Montaño, MMC/MPCC</b> City Clerk City of Kirkwood ♦ 139 S. Kirkwood Road ♦ Kirkwood, MO 63122 Phone: (314) 822-5802 ♦ Fax: (314) 822-5863 Email: montanbk@kirkwoodmo.org</p>
--

BILL 10531

ORDINANCE

AN ORDINANCE APPROPRIATING \$47,000 FROM THE ELECTRIC FUND (FUND BALANCE) TO AN EXPENDITURE ACCOUNT, AMENDING THE CONTRACT WITH QUANTA TECHNOLOGY IN THE NOT TO EXCEED AMOUNT OF \$47,000 FOR ONE YEAR AND UP TO FOUR ADDITIONAL ONE-YEAR RENEWALS FOR DISTRIBUTION SYSTEM MODEL CYME HOSTING AND SUPPORT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AMENDED CONTRACT.

WHEREAS, with completion and review of electric distribution system model it was determined a proposal should be sought for Distribution System Model CYME Hosting and Support, and

WHEREAS, this step is to provide model integration and hosting to provide updating of the City's electric distribution system model and integration with its AMI and SCADA systems, and

WHEREAS, the Electric Director recommends the City enter into a contract with Quanta Technology for Distribution System Model CYME Hosting and Support for an initial term of one year at a value of not to exceed \$47,000 and up to four additional one year renewal terms pending budgetary approval, and

WHEREAS, funds in the amount of \$47,000 need to be appropriated from the Electric Fund (Fund Balance) to Account #501-2110-480.32.03.

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

SECTION 1. Funds in the amount of \$47,000 are hereby appropriated from the Electric Fund (Fund Balance) to Account #501-2110-480.32.03.

SECTION 2. The proposal of Quanta Technology in the not to exceed amount of \$47,000 for one year and up to four additional one-year renewals for Distribution System Model CYME Hosting and Support is hereby accepted and approved.

SECTION 3. The Mayor is authorized and directed to enter into an amended contract with Quanta Technology at a not to exceed amount of \$47,000 for Distribution System Model CYME Hosting and Support.

SECTION 4. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

## Ordinance

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal #4 - Improve Public Infrastructure

### Background To Issue:

Quanta Technology developed a model of the Kirkwood Electric Distribution System during its study of the distribution system that verified reductions in line losses after converting the system from the lower voltage to a higher voltage. Kirkwood Electric is now interested in utilizing the model to optimize the operation of its distribution system.

### Recommendations and Action Requested:

The department recommends approval of a resolution to amend Kirkwood's current contract with Quanta to provide circuit model hosting services, distribution system analysis reports, and training in the use and generation of reports associated with the Kirkwood Electric System model for one year with 4 one-year renewable options contingent upon council budgetary approval.

### Alternatives Available:

The department currently performs manual calculations associated with the behavior of the distribution system. Automated calculations associated with the operation of the system are more accurate and could be provided in a more timely manner.

Cost: \$47,000.00

Account #: 50121104803203

Project #:

Budgeted: NO

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

The utilization of automated calculations associated with the behavior of the distribution system are invaluable as it relates to predictions associated with the system during seasonal operations. In addition, automated calculations also assist the department with the optimization of its distribution system configuration as it proceeds with its circuit upgrade program, and also provides predictive analysis of the system when customers are added or removed from the system. Lastly, the circuit model becomes a resident tool that passes the knowledge of the operation of the system throughout the organization as personnel continue to change. The model and the use of the model is a best practice that should be utilized by every electric utility. The department strongly recommends approval of the resolution.

BY: Mark Petty

Date: 12/6/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/8/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*



 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Appropriation

From Account # or Fund Name: Electric Fund - Fund Balance

To Account # or Fund Name: 50121104803203

Finance Director's Comments:

BY: John Adams

Date: 12/8/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 12-9-16

December 8, 2016

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Recommendation of Distribution System Model CYME Hosting and Support, RFP 11895.

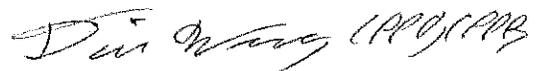
On October 22, 2013, a Request for Qualifications, RFQ #9935 was solicited to multiple firms for Engineering Review of Distribution System Modernization. After review of the submittals Request for Proposal 10039 for Engineering Review of Distribution System Modernization was issued to Quanta Technology resulting in a contract approved by the city council on May 15, 2014. The tasks involved in this process included the development of an electric distribution system model.

With completion and review of electric distribution system model it was determined a proposal should be sought for Distribution System Model CYME Hosting and Support. This step is to provide model integration and hosting to provide updating of the City's electric distribution system model and integration with its AMI and SCADA systems. It is the desire of the Electric Department to enter into a contract with Quanta Technology for Distribution System Model CYME Hosting and Support for an initial term of one year at a value of not to exceed \$47,000.00 and up to four additional one year renewal terms pending budgetary approval.

Funds are requested to be transferred from the electric fund in the amount of \$47,000.00 to account number 501-2110-480.32-03.

Attached is a request from Mark Petty, Electric Director, for a resolution requesting a contract amendment to be issued to Quanta Technology an initial term of one year at a value of not to exceed \$47,000.00 and up to four additional one year renewal terms pending budgetary approval for Distribution System Model CYME Hosting and Support.

Respectfully,



David Weidler, CPPO, CPPB  
Director of Procurement

BILL 10532

ORDINANCE

AN ORDINANCE APPROPRIATING \$336,210 FROM THE ELECTRIC FUND (FUND BALANCE) TO THE DISTRIBUTION CIRCUIT UPGRADES ACCOUNT, ACCEPTING THE BID OF BLACK & McDONALD IN AN AMOUNT NOT TO EXCEED OF \$336,210 (WHICH INCLUDES A CONTINGENCY OF \$56,035) FOR DISTRIBUTION SYSTEM CIRCUIT 9 UPGRADES AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City obtained bids for Distribution System Circuit 9 Upgrades for the Electric Department, and

WHEREAS, the lowest responsible bid received was that of Black & McDonald in the amount not to exceed of \$336,210 (which includes a contingency of \$56,035) and which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Purchasing and the Director of Electric, and

WHEREAS, funds in the amount of \$336,210 need to be appropriated from the Electric Fund (Fund Balance) to the Distribution Circuit Upgrades Account #501-2115-480.75.15, Project #EL1701.

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

SECTION 1. Funds in the amount of \$336,210 are hereby appropriated from the Electric Fund (Fund Balance) to the Distribution Circuit Upgrades Account #501-2115-480.75.15, Project #EL1701.

SECTION 2. The bid of Black & McDonald in the amount not to exceed of \$336,210 (which includes a contingency of \$56,035) for Distribution System Circuit 9 Upgrades for the Electric Department is hereby accepted and approved.

SECTION 3. The Mayor is hereby authorized and directed to enter into a contract with Black & McDonald in the amount not to exceed of \$336,210 (which includes a contingency of \$56,035) for Distribution System Circuit 9 Upgrades for the Electric Department.

SECTION 4. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

## Ordinance

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title Goal #4 - Improve Public Infrastructure

### Background To Issue:

The Purchasing Department conducted an Invitation for Bids for distribution system upgrades to Circuit 9, a circuit in the northeast portion of Kirkwood.

### Recommendations and Action Requested:

The Electric Department recommends awarding the project to Black & McDonald for \$280,175 with an additional \$56,035 contingency.

### Alternatives Available:

The Department plans to utilize the contractual services provided by Black & McDonald in order to accelerate improvements to its distribution system infrastructure.

Cost: \$336,210.00 Account #: 50121154807515 Project #: EL1701 Budgeted: NO

If YES, Budgeted Amount: \_\_\_\_\_ If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

The Department recommends approval of the resolution to award the project to Black & McDonald. The department proposes to transfer the \$336,210 from the Electric Fund to fund the distribution system circuit upgrades. This acceleration of the distribution system modernization will enable the department to have two circuit upgrade contractors working simultaneously and will enhance the department's ability to tie in multiple circuits to the new 12,470 voltage.

BY: Mark Petty

Date: 12/6/2016

Authenticated: pettyma

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

## Approve

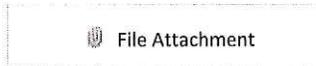
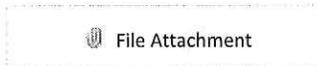
### Purchasing Director's Comments:

BY: David Weidler

Date: 12/8/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Appropriation

From Account # or Fund Name: Electric Fund - Fund Balance

To Account # or Fund Name: 50121154807515 - Project EL1701 - Circuit Up...

Finance Director's Comments:

BY: John Adams

Date: 12/8/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: \_\_\_\_\_

Date: 12-9-16

December 8<sup>th</sup>, 2016

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: Distribution System Circuit 9 Upgrades, Bid # 11864

Sealed bids were publicly opened on November 29<sup>th</sup>, 2016. The bid tabulation is as follows:

<u>Vendor</u>	<u>Total</u>
Black & McDonald	\$280,175.00
J. F. Electric	\$320,416.00
Par Electric	\$339,381.35

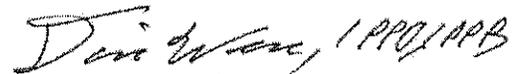
Bid requests were also sent to Gerstner Electric, Hooper Corporation, L. E. Myers Co., Sachs Electric, Streib Company and TGB Inc.; however they did not submit bids.

The bids were provided to Mark Petty, Electric Director, for review. It is recommended that the bid be awarded to Black & McDonald, as their bid of \$280,175.00 is the lowest responsible bid meeting specifications.

Funding is requested to be transferred from the Electric Fund in the amount of \$336,210.00 to account number 501-2115-480.75-15, project number EL1701.

Attached is a request from Mark Petty, Electric Director, for a resolution authorizing a contract to be issued to Black & McDonald in the amount of \$280,175.00 with a contingency of \$56,035.00 for a total not to exceed value of \$336,210.00 for Distribution System Circuit 9 Upgrades for the Electric Department.

Respectfully,



David Weidler, CPPO, CPPB  
Director of Procurement

RESOLUTION 170-2016

A RESOLUTION TRANSFERRING FUNDS IN THE AMOUNT OF \$22,500, AMENDING THE CONTRACT WITH JACOBS ENGINEERING GROUP, INC. TO INCLUDE A NOT TO EXCEED AMOUNT OF \$22,500 FOR SPACE PLAN ANALYSIS AND DEVELOPMENT FOR PERFORMING ARTS CENTER AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AMENDED CONTRACT.

WHEREAS, with completion and review of Phase Three Economic Feasibility Study it was determined a proposal should be sought for Space Plan Analysis and Development for the design, and

WHEREAS, this step is to provide a final analysis of the site area in order to provide a firm structure for cost analysis which would lead to further refinement of potential budget and be used as the foundation for cost evaluation throughout the potential design process, and

WHEREAS, the request resulted in the submittal of a proposal in the amount of \$22,500 from Jacobs Engineering Group, Inc. and it is the desire of the Parks and Recreation Department to enter into a contract with Jacobs Engineering Group, Inc. for Space Plan Analysis and Development for Performing Arts Center, and

WHEREAS, funds in the amount of \$22,500 need to be transferred from Account #302-2001-491.10.10 (Transfer from Other Funds) to Account #302-2001-600.75.07 (Feasibility Studies), Project #1514.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Funds in the amount of \$22,500 are hereby transferred from Account #302-2001-491.10.10 (Transfer from Other Funds) to Account #302-2001-600.75.07 (Feasibility Studies), Project #1514.

SECTION 2. The contract with Jacobs Engineering Group, Inc. is hereby amended to include a not to exceed amount of \$22,500 for Space Analysis and Development for Performing Arts Center.

SECTION 3. The Mayor is hereby authorized and directed to enter into an amended contract with Jacobs Engineering Group, Inc. in a not to exceed amount of \$22,500 for Space Analysis and Development for Performing Arts Center.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF DECEMBER 2016.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST

\_\_\_\_\_  
City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 12/15/2016

### Step #1:

Strategic Plan YES

Goal # & Title #1 Improve the Quality of Life of Citizens

### Background To Issue:

Planning has continued to move forward with the proposed Performing Arts Center in the downtown area. This request is to expand the contract with Jacobs Engineering to conduct a Space Plan Analysis and Development for plans for the proposed building.

### Recommendations and Action Requested:

This request is to extend the current contract with Jacobs Engineering, Inc. to conduct a Space Plan Analysis and Development for the proposed Performing Arts Center for \$22,500.00 and to transfer \$22,500.00 from Account 302-2001-491.10-10 (Transfer to Other Funds) to Account 302-2001-600.75-07 (Feasibility Studies) and Project PR1514.

### Alternatives Available:

This process could be skipped, but would result in less confidence in the ability to afford the construction of the facility prior to expending significant funds on design development.

Cost: \$22,500.00 Account #: 30220016007507 Project #: PR1514 Budgeted: NO

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

### Department Head Comments:

See attached memo

BY: Murray Pounds

Date: 12/7/2016

Authenticated: poundsm

*You can attach up to 3 files along with this request.*



Jacobs Hardline Proposal Rec  
Memo.docx  
Microsoft Word Document  
137 KB

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 12/8/2016

Authenticated: weidledc

*You can attach up to 3 files along with this request.*



 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Transfer of Funds

From Account # or Fund Name: 302-2001-491.10-10

To Account # or Fund Name: 302-2001-600.75-07

Finance Director's Comments:

BY: John Adams

Date: 12/8/2016

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 12-9-16

*From the desk of:*  
Murray Pounds, Director of Parks and Recreation  
111 S. Geyer Road, Kirkwood, MO 63122  
Phone: 314-822-5857 Fax: 314-984-5931  
E-mail: poundsm@kirkwoodmo.org



## Memo

**To:** Kirkwood City Council  
**From:** Murray Pounds  
**CC:** David Weidler, John Adams, Russ Hawes  
**Date:** December 7, 2016  
**Re:** Request for Work by Jacobs on Performing Arts Center

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As the process to create plans for the potential downtown Kirkwood Performing Arts Center has moved forward it has become clear that to get a better handle on the costs for the facility additional information will be necessary this information will help to make sure the building can be constructed and equipped within the proposed \$12 million budget. After discussions with Jacobs it is proposed that the concept plan currently in place be "hardlined" so as to better establish building and area dimensions. This in turn will allow for more accurate information on costs to be developed before commitments are made to expend funds for developing final designs.

Jacob's proposal calls for information to be gathered through a charette style environment involving stakeholders and sub consultants. Outputs of the process would be:

- Floor plans for Levels 1 and 2
- Longitudinal Building Section through house seating
- Overall block massing of the building

Jacobs has proposed a fee of \$22,500.00 for this process, which should take about two weeks to complete. Funds can be made available by transferring excess amounts in Account 302-2001-490.10-10 (Transfer to Other Funds). Funds are available in this account due to the strong performance of the Recreation Division in FY15-16, reducing the amount needed to be transferred to the General Fund to cover the operating costs of the division during that fiscal year.

The specific request is to extend the contract with Jacobs Engineering, Inc. to conduct a Space Plan Analysis and Development for the proposed Performing Arts Center at a cost of \$22,500.00 and to transfer \$22,500.00 from Account 302-2001-491.10-10 (Transfer to Other Funds) to Account 302-2001-600.75-07 (Feasibility Studies), Project PR1514.

December 8, 2016

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Recommendation of Space Plan Analysis and Development for Performing Arts Center, RFP 11894.

On June 17, 2014, a Request for Qualifications, RFQ #10408 was solicited to multiple firms for a Kirkwood Community Center Feasibility Study. After review of the submittals Request for Proposal 10599 for a Kirkwood Community Center Feasibility Study was issued to Jacobs Engineering Group, Inc. resulting in a contract approved by the city council on October 16, 2014 for a not to exceed total of \$43,769.00, for Phase One of the Community Center Feasibility Study. After Completion of Phase One, Phase Two was approved on April 16, 2015 for \$145,600.00 to finalize the conceptual design to the point of requiring, an economic feasibility study. A contract amendment for Phase Three Economic Feasibility Study was approved by council on September 17, 2015.

With completion and review of Phase Three Economic Feasibility Study it was determined a proposal should be sought for Space Plan Analysis and Development for the design. This step is to provide a final analysis of the site area in order to provide a firm structure for cost analysis which would lead to further refinement of potential budget and be used as the foundation for cost evaluation throughout the potential design process. The request resulted in the submittal of a proposal totaling \$22,500.00 from Jacobs. It is the desire of the Parks and Recreation Department to enter into a contract with Jacobs Engineering Group, Inc. for Space Plan Analysis and Development for Performing Arts Center.

Funds are requested to be transferred from account number 302-2001-491.10-10 to account number 302-2001-600.75-07, project number PR1514, in the amount of \$22,500.00.

Attached is a request from Murray Pounds, Director of Parks and Recreation, for a resolution requesting a contract amendment to be issued to Jacobs Engineering Group, Inc. for not to exceed \$22,500.00 for Space Plan Analysis and Development for Performing Arts Center.

Respectfully,



David Weidler, CPPO, CPPB  
Director of Procurement

City Clerk Report

December 8, 2016

Russell B. Hawes  
Chief Administrative Officer

At the December 7, 2016, meeting of the Planning and Zoning Commission, the following action was taken:

1. After a presentation by City Planner Jonathan Raiche and the applicant, Ron Hampp, to rezone 10505 Big Bend Boulevard from R4 to B1 and site plan review to construct a 4,000 square foot retail building, a subcommittee consisting of Cindy Coronado, David Eagleton, and James Diel was appointed. The Subcommittee scheduled a meeting at the site on December 13, at 8:30 a.m.
2. After a presentation by City Planner Jonathan Raiche and The Magic House to amend their Special Use permit at 516 south Kirkwood Road, a subcommittee consisting of Wanda Drewel, Greg Frick, and Allen Klippel was appointed. The Subcommittee scheduled a meeting at the site on December 14, at 8:00 a.m.

Respectfully submitted,

CITY OF KIRKWOOD

Allen Klippel, Chair  
Planning and Zoning Commission