MEETING OF THE CITY COUNCIL

CITY HALL, Fifth Floor

6801 Delmar Blvd.

University City, Missouri 63130

**January 09, 2017**

**6:30 p.m.**

1. **MEETING CALLED TO ORDER**

At the Regular Session of the City Council of University City held on the fifth floor of City Hall, on Monday, January 9, 2017, Mayor Shelley Welsch, called the meeting to order at 6:30 p.m.

1. **ROLL CALL**

In addition to the Mayor, the following members of Council were present:

Councilmember Rod Jennings

Councilmember Paulette Carr

Councilmember Steven McMahon

Councilmember Terry Crow

Councilmember Michael Glickert;

Councilmember Bwayne Smotherson

Also in attendance were Acting City Manager, Charles Adams, and LaRette Reese, as Acting City Clerk.

1. **APPROVAL OF AGENDA**

Councilmember Carr requested that the hiring of an Assistant City Clerk, under Council Business, be removed from the agenda since it has already been addressed.

Councilmember Glickert moved to approve the agenda as amended, was seconded by Councilmember Jennings and the motion carried unanimously.

1. **PROCLAMATIONS**
2. **APPROVAL OF MINUTES**
   1. December 12, 2016, Regular session minutes were moved for approval by Councilmember Jennings, seconded by Councilmember Smotherson, and the motion carried unanimously.
3. **APPOINTMENTS TO BOARDS & COMMISSIONS**
   1. Thomas Jennings was nominated for appointment to the Pension Board by Councilmember Crow, seconded by Councilmember Glickert and the motion carried unanimously.
   2. Cynthia Head was nominated for appointment to the Plan Commission by Councilmember Jennings, seconded by Councilmember Smotherson and the motion carried unanimously.
   3. Judith Rogers Gainer was nominated for appointment to the Plan Commission by Councilmember Carr, seconded by Councilmember Crow and the motion carried unanimously.
4. **SWEARING IN TO BOARDS & COMMISSIONS**
5. **CITIZEN PARTICIPATION (Total of 15 minutes allowed)**

**David Harris, 8039 Gannon, University City, MO**

Mr. Harris stated that each Councilmember, the Acting City Manager, and the City Clerk, should have received a courtesy copy of a Petition for Declaratory Judgment that he filed in the St. Louis County Circuit Court on behalf of two U City residents against Councilmembers Carr, Crow, McMahon and Smotherson. The Petition challenges the four Councilmembers' passage of Resolution 2016-31 that extended the term of Councilmember McMahon to April 2018, rather than April 2017, as stated on the November election ballot. Through the Petition the residents seek to remove uncertainty and achieve finality regarding the date for the end of the term for the Council seat, and to ensure fairness for the 6,389 U City voters who cast their votes in a special election, wherein the ballot stated they were voting for *"Councilmember Ward 1, unexpired term ending April 2017"*. The Petitioners have asked the Court to issue a judgment that declares, (1) The four Councilmembers' act of changing Councilmember McMahon's term from the term set forth on the ballot is ultra vires; (2) that because they acted ultra vires in passing the Resolution, the Resolution is of no force or effect, and (3) that the date for the end of the term for Councilmember McMahon remain April 2017, as stated on the ballot.

Mr. Harris concluded that there is absolutely no authority in the letter or spirit of the Missouri election laws for such a procedure, therefore, any action taken by Councilmember McMahon as a Councilmember after April 2017, could be subject to question and challenge unless this issue is resolved. *(Mr. Harris made copies of the Petition available to all interested parties, and requested that a copy of his written statement be attached to the minutes.)*

**Andrew Roberts, 940 Alanson Drive, University City, MO**

Mr. Roberts stated that with the incoming President's anti-immigrant policies pending, his belief is that it would be beneficial for U City to consider becoming a Sanctuary City; one that directs its municipal police to not directly enforce federal immigration investigations. He then provided an explanation of how this could be accomplished, and why it should be accomplished. Mr. Roberts concluded that becoming a Sanctuary City is constitutional, legal and the right thing to do.

**Elise Glickert, 6712 Etzel, University City, MO**

Ms. Glickert directed her comments to Councilmembers beholden to the Firefighters’ Union, whose mantra has been about outsourcing the City's ambulance service to Gateway, and the removal of City Manager, Lehman Walker. She stated that outsourcing has been a great tax savings to the City, and that the unjustified suspension of Lehman Walker was in complete violation of the City's Charter; Article II, Section 11. Ms. Glickert urged Council to reinstate Mr. Walker and stop wasting tax dollars that must now be utilized to pay two salaries for the same position.

**Jo Ann Roberts, 940 Alanson Drive, University City, MO**

Ms. Roberts stated that when reviewing the City's website she had noticed the word *"Preliminary"* appended to the fourth quarter 2016 budget. She then questioned when residents could expect to see the final 2016 budget, and when community meetings would be initiated to review the proposed budget for 2018?

**Irv Logan, 1336 Waldron, University City, MO**

Mr. Logan expressed disappointment with the suspension of the City Manager, which appears to be racially motivated, blatantly political, and unacceptable to many citizens in this community. Mr. Logan based this belief on his own personal experiences, and stated that from his perspective, discrimination is a lot like pornography, it's hard to describe, but he knows it when he sees it.

1. **PUBLIC HEARINGS**
   1. Public Hearing on vacating and surrendering a tract of land being part of Westview Drive and Mapleview Drive

Mayor Welsch opened the public hearing at 6:47 p.m.

Citizen's Comment

**Tim O'Connor, 536 Mapleview Drive, University City, MO**

Mr. O'Connor, a resident of University View for 24 years, expressed concerns about the recommendation because of the impact it could have on his neighborhood. He stated that currently there are 47 properties in University View; 11 of which are owned by shell companies and utilized as rental properties. He stated that the substandard quality of education in U City Schools appears to be another factor that has led to this increase, as well as the mounting concerns now being expressed by homeowners who wish to stay in this great little neighborhood.

Hearing no other requests to speak, Mayor Welsch closed the public hearing at 6:50 p.m.

1. **CONSENT AGENDA**
2. **CITY MANAGER’S REPORT**
   1. Approval of a Site Plan for a commercial development at 7577-7593 Olive Blvd (NE corner of Olive Blvd and North and South Rd) in the “GC”, General Commercial District.

Andrea Riganti, Director of Community Development, stated that in terms of the process, this is a site plan coming before Council for technical review and approval, in accordance with the Zoning Code. The brewery and restaurant are permitted uses, therefore no conditional use or zoning is warranted, nor was the application presented to any of the City's Boards or Commissions for review. The technical requirements of the Zoning Code have been met and staff will be recommending approval of this application.

Ms. Riganti stated that since this is an item of interest she has asked one of the partners to speak to Council about the operation, followed by the architect who will discuss the site plan details. Finally, staff will follow up with their report, and then open the floor up for any questions.

**Dustin Chalfant, 231 East Washington Avenue, Kirkwood MO 63122.**

Mr. Chalfant, President and co-founder of Senn Bierwerks, introduced himself; James Hellmuth, Vice President; Kristen Chalfant, Director of Marketing, and stated that they are super excited about coming to the corner of Olive and North and South. He then provided the following overview:

* Senn Bierwerks is a family-friendly production style brewery that will also consist of a tasting room and restaurant. The projected sales revenue for the first year is 1.4 million dollars, with an anticipated 60 percent increase by 2019. Initially the business will employ seven full-time employees, with an anticipated goal of adding two to three employees annually for the next four years.

**James Plohr, 8 Floral Court, O'Fallon, MO 63368**

Mr. Floor stated that as the companion restaurant to Senn Bierwerks, he looks forward to doing great things for this community, as exemplified by their new name Brew & Que Enterprises; formerly the St. Louis Rib House.

* Hours of Operation will be from 11 a.m. to 10 p.m. The projected sales revenue for the first year is 1.3 million dollars, with an anticipated increase of 1.6 million in 2018 and 2 million in 2019. St. Louis Rib House won the *St. Louis Magazine's* A-List Award for its ribs and was voted as one of the best in St. Louis for its beef brisket.

**Joe Dale, 743 St. Mary's Road, Villa Ridge, MO 63089**

Mr. Dale, the Architect for DD Design, displayed a drawing depicting the plans and elevations for the project. He then provided the following details:

* Approximately 18,600 square feet, the building will be comprised of three sections; an 11,000 square foot brewery; a patio for the public tasting room, and a 3,100 square foot restaurant and patio
* The building will be oriented along the existing sidewalk
* One additional curb cut will be added on Olive Blvd, and two will be added on North and South; directly entering the building and to access the service drive between the building
* 92 parking spaces will be available, with a driveway to access Olive Blvd. *(Discussions are still ongoing to secure an adjoining shared access with the adjacent property owner.)*
* The section of undeveloped ground on the site will remain as-is.
* The facade consists of a wall sign, awning, and storefront glass that will allow people walking by to visually see inside the brewery.
* The east elevation depicts the dock access, overhead door and service drive located towards the rear of the building
* The rear elevation depicts several coolers, a wall panel that will be built into the brewery and storage space for the smokers and other restaurant materials.
* The building will be constructed utilizing several architectural components; a panelized system; granite stone on the entrances; galvanized metal awnings with lighting and a horizontal metal panel to provide more of an industrial look.

Ms. Riganti concluded by stating that staff had reviewed this application, determined that it did meet the technical requirements of the Zoning Code, and is recommending approval pursuant to the conditions outlined in Attachment A.

Councilmember Glickert stated that he was very excited about the project, but would like Ms. Riganti to provide Council with an update on the easement problems associated with MSD? Ms. Riganti stated there were no outstanding problems that she is aware of with MSD in terms of the easement. However, the storm water and drainage plans will be subject to MSD approval prior to the issuance of a building permit. Councilmember Glickert asked if MSD's approval was causing the delay in construction? Ms. Riganti stated that that was correct.

Councilmember Carr echoed the same excitement, noting her appreciation of the plans and elevations. However, since additional curb cuts are being added, she was curious whether a response had been received from the two entities who possess jurisdiction over those streets; Olive, which is MoDOT, and North and South, which is St. Louis County? Mr. Dale stated that the Preliminary Plans have been submitted to both entities, and although they have not received an official response, they have been in constant communication with MoDOT, St. Louis County and MSD. Councilmember Carr stated her understanding is that the City has a formal agreement whereby any site plan must first be approved by these entities before Council could proceed. Ms. Riganti stated that each of these entities have received a copy of the plans and issued their conditional approval. But, if either entity denies the request for additional curb cuts or makes any other demands which constitute a substantial change to the site plan, that amendment must then come back to Council for review and approval.

Councilmember Jennings expressed his excitement about this new development in the Third Ward, and also wanted to note that one of the owners is a graduate of U City High School. He stated that from his experience with the School District, a conditional approval was granted first, and then they were allowed to work out any discrepancies prior to the issuance of that agency's final approval.

Councilmember Smotherson stated that a resident had been killed while walking on North and South Road because there were no sidewalks, so he would like to know if the site plan included the addition of any new sidewalks? Mr. Dale stated once they have received approval a formal site plan will be filed and reviewed by staff, and this is where these types of safety issues are usually addressed.

Mayor Welsch stated she liked the idea of trying to connect with the adjacent neighbor, and would like more information on exactly where that connection would be made? Mr. Dale stated that what they have decided to do is continue working with the adjacent owner and if they consent to Senn's use of the common easement, then they would work with staff to determine the most suitable location to connect the two properties.

Voice vote on staff's recommendation to approve carried unanimously.

1. **UNFINISHED BUSINESS**
2. **NEWBUSINESS**

*RESOLUTIONS*

*BILLS*

*Introduced by Councilmember Jennings*

* 1. **BILL 9302-**An ordinance vacating and surrendering a tract of land being part of the Westview Drive right-of-way, fifty (50) feet wide, being adjacent to Block 2 and Block 5 of University View, as recorded in Plat Book 19, Page 45 of St. Louis County Records, being located in St. Louis County, Missouri; reserving any public easements, and directing that this ordinance be recorded in the office of the Recorder of Deeds of St. Louis County, Missouri. Bill 9302 was read for the first time.

*Introduced by Councilmember Jennings*

* 1. **BILL 9303–**An ordinance clarifying that the compensation for the position of City Manager under ordinance 7012 shall be paid to an Acting City Manager or Interim City Manager. Bill 9303 was read for the first time.

1. **COUNCIL REPORTS/BUSINESS**
   1. Boards and Commission appointments needed

Mayor Welsch made the appointments that were needed.

* 1. Council liaison reports on Boards and Commissions
  2. Boards, Commissions and Task Force minutes

Mayor Welsch acknowledged that Council had received minutes from several Boards and Commissions.

* 1. Other Discussions/Business
     + Legal Opinions of Special Election. Vote to make these public documents.

Requested by Councilmembers Carr and Smotherson.

Councilmember Carr stated that what is now before Council are three emails between the City Clerk, City Attorney, Lehman Walker provided by request to Councilmember Carr that have been marked as confidential, attorney/client privileged communications. And since this election is now at issue, she believes they should be placed in the public realm. She stated that in spite of her numerous attempts to obtain information or a legal opinion about the election; and the fact that Mr. Walker had been in possession of this information, she was not made aware that the expiration of the term noted on the ballot was April 2017, until receiving a call from Ms. Gillerman of the West End Word. Thereafter, she contacted Ms. Forster about Ms. Forster’s email responses to Ms. Gillerman, but not the legal opinions issued by the City Attorney earlier. Councilmember Carr made a motion that the three emails be made public documents, seconded by Councilmember Glickert.

Roll Call Vote Was:

**AYES**: Councilmember Jennings, Councilmember Carr, Councilmember McMahon, Councilmember Crow, Councilmember Glickert, and Councilmember Smotherson

**NAYS:** Mayor Welsch.

Councilmember Carr requested that the documents be attached to the minutes, and Mayor Welsch said that would be done.

* Hiring an Assistant City Clerk

Requested by Councilmembers Carr and Smotherson.

*(Removed)*

1. **CITIZEN PARTICIPATION (continued if needed)**

**Jeff Hales, 7471 Kingsbury, University City, MO**

Mr. Hales expressed concerns about three Sunshine Requests he had submitted a month ago, and another separate request submitted in August. He stated that on August 8th he received a response from Ms. Pumm informing him that it would cost $49.00 and some change, for an hour of the Fire Chief's time to produce three documents. And the only response he has received from his three requests stated that Ms. Pumm was checking on whether the documents could be released. Both responses are contrary to the treatment he has received in the past from Clayton and St. Louis County, and since it has been well over 30 days, it would be deeply appreciated if they could be fulfilled.

Mr. Hales stated that this whole business about Councilmember McMahon's term is nonsense. Terms are established by the Charter, the Charter is clear, and Mayor Welsch was explicitly clear on July 11th, that whoever was successful would serve until 2018. So the question that everyone should be asking is why is it that when various individuals received information that differed from the consensus of the Council they did not believe it was incumbent upon them to share that information?

**Mary Shapiro, 7475 Amherst, University City, MO**

Ms. Shapiro stated that tonight is the second time she has been called on the carpet for being a racist for not supporting the City Manager. She stated that she and her husband moved here because they wanted to live in a diverse community, and has stayed here when everybody else was moving to West County. So the reason she is not in support of the City Manager has nothing to do with his race, merely the fact that she was in disagreement with the lawsuit regarding Ruth Park, and that he had outsourced the City's ambulance service.

**Jan Adams, 7150 Cambridge Avenue, University City, MO**

Ms. Adams stated she would like to submit a copy of the Petition she filed on December 2nd, a copy of the Motion to Amend the Order filed on January 6th, and a page from the memorandum filed by Ms. Forster, wherein specific attention should be given to page 6, Section B, entitled *"An Injunction Cannot Enjoin What is Already Prohibited by Law."* She stated that her initial Petition; which was denied in part because at that time there was no evidence that this new Council majority had actually expended taxpayer funds for their own personal defense, is an action in equity which seeks only to protect taxpayer's funds. The Judge stated in her Order that she was sure the attorneys for the respondents would instruct their clients on the law, and that the City officials would follow the law. Thereafter, it became apparent that some of those City officials had not followed the law, resulting in the need to file an Amended Petition. Ms. Adams also submitted a copy of the Cease and Desist Notice to Councilmember Carr for defamatory remarks made in this chamber that were harmful; specifically, "*I cannot practice law."* Ms. Adams stated that she voluntarily applied for inactive status with the Bar Association after her retirement from the Attorney General's office, but has recently applied for, and was granted, active status*. (Ms. Adams asked that her written statement and attachments be made a part of the minutes.)*

1. **COUNCIL COMMENTS**

Councilmember Smotherson stated he has only been a member of this Council eight months and since that time he has seen his name on more legal documents than he has in his entire lifetime. Nevertheless, he wants everyone to know that he does not wake up every morning with the thought of doing something wrong against this City or any individual. Which is why Mr. Harris' statement that somebody told him about some of Council's actions, and that prompted him to file a lawsuit; which he has every right to do, rather than taking the time to meet with any member of this Council, is pretty amazing. Councilmember Smotherson stated that he is not just the 3rd Ward Councilperson, he's everybody's Councilperson, because the decisions he makes in this capacity impacts the entire City. So he would encourage Mr. Harris and anyone else, to call him; (314) 726-9572, because he would like to get to know them, and he wants them to get to know him. He stated that there are some great things coming for this City and he would much rather deal with making that progress, than all of these legal issues. But at this point, all he can say is let the reasonable people win out in all of this.

Councilmember Crow stated he thinks that he can speak for his colleague in the 1st Ward, and ensure Mr. O'Connor that they too have questions regarding the surrender of that tract of land. So, his hope is that before this item is placed back on the agenda, the two of them, along with any other interested parties, will have had the opportunity to discuss this with staff in greater detail.

Councilmember Crow commended the Acting City Manager and his staff for their quick response to an issue that occurred over the weekend in the West Kingsbury neighborhood, which led to an amenable agreement between the residents and the City.

Councilmember Crow thanked Councilmember Carr for bringing the legal opinions forth, which he hopes will provide the answers to many questions. He stated it is an embarrassment to this entire body that such measures were even necessary, especially when Council had already reached a consensus on the term of office. Although now everyone is being told by one member of Council through her weekly commentary, that her comments regarding the term of office were not substantive, but merely a passing remark. Nevertheless, the fact still remains that Council would not be in the position they are in today if the individuals in possession of these legal opinions had answered Councilmember Carr's requests and shared that information with members of this Council.

In conclusion**,** Councilmember Crow commended Councilmember Smotherson for his comments. He stated that at some point in time, one member of this Council has to get past the need to keep grasping for those last vestiges of power, because that is not what residents elected any of them to do. The election results are in, they are clear, and it's time for Council to start taking care of all the important things that need to get done.

1. **Roll-Call vote to go into a Closed Council Session according to RSMo 610.021 (1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys and (3) Personnel hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded.**

Councilmember Carr moved to approve, was seconded by Councilmember Smotherson.

Roll Call Vote Was:

**AYES:** Councilmember Carr, Councilmember McMahon, Councilmember Crow, Councilmember Smotherson, Councilmember Glickert, Councilmember Jennings and Mayor Welsch.

**NAYS:** None.

1. **Adjournment**

Mayor Welsch thanked everyone for their attendance and closed the regular City Council meeting at 7:38 p.m., to go into a Closed Session on the second floor. The Closed Session reconvened in an open session at 7:45 p.m.