

MEETING OF THE CITY COUNCIL
CITY HALL, Fifth Floor
6801 Delmar Blvd.
University City, Missouri 63130
Monday, January 27, 2020
6:30 p.m.

A. 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 27, 2020, Mayor Terry Crow called the meeting to order at 6:30 p.m.

B. ROLL CALL

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

Councilmember Stacy Clay; (*Excused*)
Councilmember Paulette Carr
Councilmember Steven McMahon
Councilmember Jeffrey Hales
Councilmember Tim Cusick
Councilmember Bwayne Smotherson

Also in attendance were City Manager, Gregory Rose, and City Attorney, John F. Mulligan, Jr.

Mayor Crow announced the passing of one of U City's stalwart citizens, Henry Luepke, who was not only a great neighbor but a devoted member of U City's Civil Service Board for 34-years. For that, he certainly deserves a commendation, as well as Council's deepest sympathies and well-wishes for his wife and daughter.

C. APPROVAL OF AGENDA

Councilmember Cusick moved to approve the agenda as presented, it was seconded by Councilmember McMahon and the motion carried unanimously.

D. PROCLAMATIONS

1. A Proclamation celebrating the University City Children's Center's 50th Anniversary. A year-long gala kicking off on February 7, 2020, from 10 a.m. to 11 a.m. The Center is located at 6646 Vernon Avenue.

Councilmember Smotherson moved to approve, it was seconded by Councilmember McMahon.

Councilmember McMahon stated he would be remiss if he did not take time to acknowledge UCCC, which came along at a time when one of his children needed help. It's a great organization that really made a difference in his family's lives.

Voice vote on the motion carried unanimously.

E. APPROVAL OF MINUTES

1. January 13, 2020, Regular Meeting Minutes were moved by Councilmember Cusick, it was seconded by Councilmember Hales and the motion carried unanimously; with the exception of Councilmember McMahon who recused himself due to his absence.

F. APPOINTMENTS TO BOARDS & COMMISSIONS

1. William Andrews is nominated to the Historic Preservation Commission as Fill-In replacing Esley Hamilton by Mayor Crow, it was seconded by Councilmember Cusick.

Councilmember Cusick thanked Mr. Hamilton for his many years of service on this Commission. EHE2 - 1

was a constant source of valuable information and his presence will surely be missed.

Voice vote on the motion carried unanimously.

2. Bart Stewart is nominated for re-appointment to the Traffic Commission for a second term by Councilmember Jeff Hales, it was seconded by Councilmember Carr and the motion carried unanimously.

G. SWEARING IN TO BOARDS & COMMISSIONS

H. CITIZEN PARTICIPATION (Total of 15 minutes allowed)

Carl Cibulka, 1421 Coolidge Avenue, University City, MO

Mr. Cibulka stated a 9' by 8'; 21-foot long Pac-Van moving storage box has been sitting in front of 1467 Coolidge Drive for the past eight months. It has no wheels, no license plates, and is unattended because its sole purpose is to advertise their business. There is a fire hydrant in close proximity, which could be problematic in the event of an emergency, and it's located so close to the intersection that it obstructs the vision of vehicles traveling in and out of the street. Mr. Cibulka stated he has talked to Mr. Blizzard on several occasions and while he has been helpful and very responsive, he would like somebody with more authority to look into whether this eyesore can be removed from their neighborhood.

Mayor Crow informed Mr. Cibulka that a member of staff would contact him in the near future to address his concerns.

Tom Jennings, 7055 Forsyth, University City, MO

Mr. Jennings stated this morning he witnessed a young lady; who appeared to be a student, pull up in front of his neighbor's driveway and move all of the trashcans they had set out for pickup so that she could park her car. Later that day he discussed the incident with a driver from Public Works who informed him that this was something he encountered on a regular basis which results in him getting out of his truck to put the trashcans back where they belong. Mr. Jennings stated in spite of the fact that the driver was extremely cordial, and there's probably nothing that can be done to solve this problem, it was upsetting to know that these drivers must exert this unnecessary effort to perform their jobs.

I. PUBLIC HEARINGS

J. CONSENT AGENDA – Vote Required

1. Gunshot Detection Devices

Councilmember Carr moved to approve the Consent Agenda, it was seconded by Councilmember McMahan.

Councilmember Carr asked if someone could tell her where the one-quarter square mile these devices are to be installed, is located? Police Chief Larry Hampton stated the devices will be located in the north-central, northeast areas of the City, which is consistent with the areas where the pilot was conducted.

Voice vote on the motion carried unanimously.

K. CITY MANAGER'S REPORT

1. Legislative Update (Pat Kelly)

Mr. Rose stated on January 13th Council approved the City's 2020 Legislative Platform which provides guidance at both the State and Federal levels.

Tonight, Mr. Pat Kelly, Executive Director for the Municipal League of Metropolitan St. Louis has been invited to provide Council with a legislative update.

Mr. Kelly stated from past experience, it was great to be in attendance at a Board or Council meeting where residents are complimenting the City, so that's something everyone should be proud of. He stated the League adopted their legislative priorities earlier this year since typically, more than a third of the legislation filed on an annual basis impacts municipal government, and most of the time it is in a negative capacity. With this being an election year they are following eight pages of legislation; which he hopes the City is receiving weekly updates on via email. If not, they can be found on the League's website every Friday afternoon; which is accessible to the general public, or municipalities can contact the League's office and they will make sure you start receiving them.

Here are some of the pieces of legislation the League is following very closely:

- Senate Bill 526. - a video franchise fee legislation drafted by Charter Communications and pre-filed by Senator Emery. This Bill would reduce video franchise fees for municipalities by a minimum of 75 percent, which for a city the size of U City could probably be in excess of \$300,000 a year. There has been no input by the Municipal League on the local or state level. Both offices are adamantly opposed to the legislation and are working to get the legislation defeated or remain at the current rate of a 3 or 5 percent fee.
The League held its first meeting with Senator Emery today, and the first hearing will be held this coming Wednesday at noon. Mr. Mulligan has been very supportive, and will be present to testify on Wednesday, along with Bill Ojile who specializes in telecommunications law for Armstrong Teasdale, and was hired to represent the County and State Municipal Leagues.
- House Bill 1933 - is the Missouri Local Government Expenditure Database proposed by Representative Wiemann. The legislation proposes that all municipalities be required to file monthly reports to the State, which will then be uploaded into a database for the purpose of allowing residents to review every check written by a municipality to determine who it was written to, the amount, and what it was for.
This year the legislation was amended to include counties and to make this a voluntary program. Although the League has worked against this legislation for the past two years, it did not take a position on the amendments because, with the exception of the inclusion of counties, the change from a mandatory action to its current form was viewed as being a more favorable approach. However, the League will be watching this legislation very closely since it would be a Hancock Amendment forcing every municipality to participate in the program.
The State of Ohio has voluntarily utilized this program for about three years, and if you Google Ohio Checkbook, you can see how it works. The program is open to all political subdivisions within the State and has been steadily growing. Mr. Kelly stated the League believes this program should be voluntarily initiated by a municipality or its residents. And the Bill contains language which says this program must be established if 5 percent of the registered voters present a petition requesting participation.
- Senate Bill 529 filed by Senator Cunningham and Senate Bill 872, filed by Senator Crawford, requires the State to give taxes back, meaning that it would have a reduction in the income tax at the State level to offset the increase in internet sales taxes received from consumers. When the Bill came down from the Governor's office it included several stipulations that required that State funds go to disaster relief, paying down the State's debt and infrastructure. The League supports this legislation since it gives municipalities the ability to collect internet sales tax for out-of-state sales and will not impact municipalities, counties, and other taxing districts around the State.
- Senate Bills 648 & 741 - put a cap on local sales taxes related to Wayfair, which the League opposes. This legislation, filed by Senator Koenig and several senators from St. Charles County, basically wants to keep sales revenue-neutral; which means that municipalities could collect these new taxes but that revenue would have to be replaced by receipts amassed from another tax.

Mr. Rose thanked Mr. Kelly for his update and stated he is hopeful that the legislature will keep in mind that a \$356,000 reduction in revenue will equate to the loss of several firefighters or police officers. So while he can appreciate their desire to lower the burden that government places on the private sector, he believes they also have to factor in the services that same government is responsible for providing; especially in the area of public safety.

Mr. Kelly stated St. Louis County is a perfect example of something the legislature has failed to recognize. In 2019 the overall sales tax revenue in the County was down 1 1/2 percent. Now, if it's down by that percentage in this booming economy that means it's really down about 3 percent from where it should be. This shows the impact of internet sales taxes on the local economy which has been building up over the years. And in many instances cities have had to raise taxes in order to offset that loss. So it's not a new tax as some people would have you believe, and the reality is if it were not for the internet most of these products would be purchased locally. These are taxes residents voted for in order to support and pay for those services their city provides for them.

He stated he would also like to add another quick update about the Board of Freeholders, which Councilmember Carr diligently worked to collect signatures for. The League is still waiting for St. Louis City to make their appointments to the Board of Freeholders. There is a lot of debate about whether the clock has started ticking and so forth, but none of those issues are going to be resolved until they make their appointments. Mr. Kelly stated the League is hopeful that it will happen this Friday, but if not, they are considering an effort to see if some of the State's legislators would be willing to ask the Attorney General to intervene and come up with some way of encouraging the Board of Alderman to vote on the Mayor's nominations.

2. Conditional Use Permit (CUP) – PC 19-04
(*Proposed Convenience Store at the property commonly known as 883 Kingsland Ave.*)

Mr. Rose stated staff is recommending that Council issue a Conditional Use Permit for a proposed convenience store and he would ask Mr. Cross to provide the details related to this proposal.

Clifford Cross, Director of Planning & Development stated the Applicant is seeking to establish and operate a convenience store at 883 Kingsland Avenue; an Industrial/Commercial District, for which the Zoning Ordinance requires the approval of a Conditional Use Permit (CUP). Pursuant to the Ordinance, the Application for a CUP was presented to the Plan Commission for consideration in August of last year. A Public Hearing was conducted and the Commission concluded that while the use was appropriate for the site, based on the existing businesses at this location parking could be an issue since it would not meet the fixed requirements.

Staff evaluated the total parking required and learned that parking for the nail salon had previously been reduced by approximately 24 spaces, bringing the total requirement for the proposed use down to 112 spaces versus staff's original determination of 137 spaces. An evaluation of the shared parking ratios associated with the existing uses within the building further reduced the requirement down to 101 spaces, and the fact that the building sits within 500 feet of a transit station provided an additional 10 percent reduction, bringing the requirement down to 96 spaces. However, there are only 85 existing spaces, and at this point, Council is the only governing body that has the authority to reduce parking by up to 20 percent.

Mr. Cross stated the bottom line is that in addition to approving the CUP, staff is recommending that Council include a stipulation that parking be reduced by 11 percent. This would bring the total parking requirement down to 85, and allow this new business to operate at its preferred location.

Councilmember Carr asked if this would be a permanent reduction that could be carried forward if a business similar to the convenience store moved into this location? Mr. Cross stated if another convenience store moved into this location or there is a change in ownership, they would be allowed to operate under the same conditions unless Council decides to restrict the 11 percent reduction to this business; which could be included in the stipulation.

However, under the Code, whenever a new commercial business that is dissimilar to the existing

business moves in, they would be required to apply for their own CUP.

Councilmember Carr stated there appears to be some square footage in this center that is currently unoccupied, so what problems, if any, would this reduction in parking create if a new business expressed an interest in occupying that vacant unit? Mr. Cross stated the numbers staff is relying on does not include the 6 spaces that would be required to accommodate the approximate 1200 square foot empty unit that remains. However, should such an interest materialize, staff would recommend that Council consider reducing the parking by an additional 5 percent, which would still be in compliance with the 20 percent maximum prescribed by the Code.

He stated something staff did notice when conducting its review, was the parking amendments regarding shared parking ratios. That amendment contained a provision whereby multi-tenant buildings with more than three tenants could receive a 20 percent reduction; two tenants a 15 percent reduction, and a 25 percent reduction for an existing or new commercial business if the new or existing use was established prior to the adoption of the Ordinance. The Ordinance was adopted in '97, so staff was prohibited from exercising that provision.

Councilmember Cusick questioned whether the proposed nursing facility being built on the east side of Kingsland had anticipated utilizing any of the shopping center's parking spaces? Mr. Cross stated per the plan approved by Council, the facility will provide its own required parking. Councilmember Cusick asked whether his assumption that the Plan Commission had recommended the approval of this CUP was correct? Mr. Cross stated while the Commission's recommendation represents a majority vote, at that point, their review of the parking was from the perspective of a non-conforming use, which would require a reduction. However, they are not aware of staff's recommendation to include this reduction as a part of the official conditions of approval.

Councilmember Smotherson asked Mr. Cross if he knew why the building's address is Kingsland when all of the storefronts face another street? Mr. Cross stated while he also thinks the location of the frontage should dictate the address, his only assumption is that when the site plan was approved in '05 Kingsland was the address they assigned to it.

Mayor Crow stated his belief is that the Kingsland address was probably assigned about 40 years ago because the building has been there since he moved here in '94. Mr. Cross stated it could have been assigned when the plat was created.

Councilmember Hales asked Mr. Cross if he was aware of a proposal from the landlord to expand parking? Mr. Cross stated staff had actually looked at this from what they call an impervious surface ratio where underlying zoning districts can have a certain percentage of the lot covered by an impervious surface. And the Site Plan was approved to have a 75 percent ratio. But a couple of years ago, the landlord did come back to the City and request a variance to increase that ratio to 77 percent in order to add more parking in the rear. However, because of the building's close proximity to residential property, stormwater runoff, and a whole flurry of other issues, it drew concerns by some of the neighbors. So after a review of the history staff thought the reduction would be the best approach.

Mr. Cross stated he is all for businesses being required to accommodate their own onsite parking, but in this case, the restaurant throws everything out of whack. Especially since the need to have one space per every 75 square feet means that 66 spaces are required just for the restaurant alone; although during off-peak hours it's likely you'll find some extra spaces. The building was designed at 15,000 square feet and before the restaurant came in there was a surplus of roughly 8 spaces. So, if the restaurant moves, parking as it was originally designed will be back in place.

And the position taken by staff is that they would not be inclined to recommend putting another business in that unit which would exceed the 85 parking space requirement.

Councilmember Hales stated he thinks it would be safe to say that the tenant clearly knows there is an issue with parking, so the hope is that the City won't allow this to be repeated again.

Mr. Cross stated the building was scheduled right for the amount of parking it has, in fact, it was dead on with an extra 8 spaces.

The problems arose with the approval of a new business and the expansion of a business that exceeded parking the moment it was approved. Quite honestly, that should have never been allowed. Ewed: 5

Mayor Crow asked Mr. Cross which businesses he was referring to? Mr. Cross stated in order to comply with the intent of the parking regulations the restaurant should have been required to add additional parking when they came in. Mayor Crow asked if the restaurant was a part of this process? Mr. Cross stated they were not.

Mayor Crow stated even though this is the only option available if Council wants this convenience store to come in, everyone probably has a general concern about further complicating the parking problems in that shopping center.

Mr. Cross stated staff looked at adding additional spaces to the front and shared off-site parking, but neither of those would work. So the reduction is the only available option unless, at some point, they are able to expand by purchasing more land. But the reality is that this location is pretty much landlocked and until they can get their parking back in line, they will be unable to fill their two vacancies. Mayor Crow stated as the parking in this center goes from bad to worse, the only thing he can think about is the number of times his phone is going to ring and the excessive amount of emails filling his inbox.

Councilmember Carr stated the hours of operation for the convenience store versus the restaurant are something she thinks all of her colleagues are concerned about. But it's even more disturbing for her and Councilmember Cusick because this is in their Ward. So, can you address the hours of operation? Mr. Cross stated he does not recall the store specifically stating what their peak hours were, but he got the impression it was mid-afternoon and early evenings, which could present a challenge with the dinner crowd. However, if Council would like the Plan Commission to conduct more discovery he could ask them to revisit it.

Councilmember Cusick stated he thinks that in the future it should be incumbent upon the property owner to address this parking situation; especially if they want to bring in new tenants.

Mayor Crow stated while he hates to impede the progress of someone trying to open a new business, he would like to see something a little more robust. Do employees park on the lot? Do they park across the street? Are there any parking spaces available on Kingsland? The other day, construction workers were utilizing every parking spot on Vernon. And he usually ends up parking in front of the houses, which he's sure bothered residents every now and then. So unless someone can tell me that we're squashing a real good deal, he would like to see this come back to Council with a more vigorous method for moving forward.

Mr. Cross stated both the applicant and owner are aware that the City is trying to look at options, so he does not think it would be out of bounds to take this back to them. There are some decisions the owner will have to make in the long-run because based on the current provisions this is really the only option. He stated the thought was to present this to Council, see where it goes, and then proceed from there.

Mayor Crow stated even if his colleagues from the 2nd Ward are agreeable with this option he still may vote no because he just can't get his mind around adding more vehicular traffic on that parking lot.

Mr. Cross stated he would agree, that's why they wanted to be very clear that this option was site-specific because they do not want to set a precedent of reducing parking. He stated staff's goal is to allow property owners to achieve the highest and best use of their properties, but unfortunately, they have been handed down the sins from the past.

Councilmember Cusick stated his understanding is that the owner has had conversations with some of the neighboring properties to see if they would be willing to share any of their parking.

Specifically, the business located to the south of them who has plenty of extra spaces in the evening, but no one was interested. So they really are landlocked.

Councilmember Carr asked if it was correct that the landlord currently has roughly 2400 square feet of un-leased property? Mr. Cross stated the unit for the convenience store is 1800 square feet and the other one is 1200 square feet. Councilmember Carr stated she does not like the idea of pushing this parking out on the streets because most of her constituents don't have a garage or even a driveway, so they should be able to park in front of their homes. And Vernon is a very busy street. She stated she has sat in on all of the Plan Commission's meetings where they have literally turned this thing inside out and still been unable to come up with a resolution. So honestly, we are all scratching our heads. On one hand, you don't want to see empty storefronts; on the other, not only do you not want to see parking pushed into the streets, but there is nowhere for you to push it to. So she understands and shares the same reluctance to approve something that further stresses the region, but she just does not know what to do.

Councilmember Cusick asked Mr. Cross if it would be possible to go back to the applicant with these concerns to see if they could come up with any new ideas? Mr. Cross stated he would be happy to.

Mr. Rose stated he believes the Plan Commission, staff, as well as the property owner and applicant have reviewed every alternative they could think of in an attempt to identify a way of enhancing the parking in this area without exacerbating the existing problem. And that the option being proposed by the Commission and staff today is the best alternative they could identify to support the leasee. He stated if this item is approved staff would make certain the owner has a clear understanding that he would not be allowed to lease his remaining unit since there is no way to add an additional business in that area.

Mayor Crow questioned if anyone knew whether the neighboring properties simply said no, or if their refusal was based on some other factors? Mr. Cross stated he really did not have a clear understanding of why they couldn't make it work. Although he does know that the Neighborhood Association was working with them on the piece of land where the butterfly garden is located. So perhaps, it was based on logistics or financial feasibility, but whatever the case, it was not going to solve their problem.

Councilmember Hales asked whether the scope of the convenience store would include selling food? Mr. Cross stated there will be a small deli, which actually caused them to teeter about whether they were a deli or a convenience store; which turned out to be a pretty important decision in this case. The store drove the CUP process, but the deli would have been approved administratively. He stated a review of the Ordinance led staff in the right direction by providing this definition; a convenience store is less than 3,000 square feet and sells home goods. And that's how it got classified.

Councilmember Hales stated he would agree that this is a challenging situation because in all honesty, even if you eliminated one of the existing businesses that lot would be full or overflowing Wednesday through Saturday nights, and even during the day, just because of the restaurant. Yet, we have a property owner who knows there's a problem and a potential tenant who knows there's a problem, but both are willing to move forward. Councilmember Hales stated his biggest concern is people parking in front of residents' homes. So the question in his mind is how much worse can it get? Because you can't add more cars to a lot that is already full.

Mr. Cross agreed and stated no matter what you do, you've got a real parking problem.

Councilmember Cusick asked Mr. Rose if he could explain why staff had recommended a reduction in parking? Mr. Rose stated staff worked very hard to identify options that would promote, rather than hinder economic development, and lessen the impact on the business and property owners. So even though they understood this option would not cure the problem, the plan was to mitigate some of the challenges a new business could have. And as he mentioned earlier, the property owner is fully aware that if Council votes to approve this application the other vacant unit will have to remain unoccupied. John Mulligan, City Attorney stated he certainly agrees with the City Manager on the amount of time and resources that have been spent on this issue since last August, which also includes a reasonable amount of legal analysis.

The owner recognized there was a parking problem that needed to be addressed and in 2017 he filed an Application for a Variance on the maximum site coverage. The Code sets the site coverage at 7

70 percent, but when the Site Plan was approved in '01 and '02, they received an additional 4 percent, bringing the current total up to 74 percent. Under the CUP process, you could be granted up to 77 percent, but even that would not solve the problem of achieving additional spaces. Hence the Application for a Variance, which could take the coverage up to 90 percent and allow for quite a few more spaces. That application was withdrawn, and since he was not involved in the process he is not exactly sure why. Although legally, there would certainly be a question as to whether it would meet the criteria for granting such a variance without making a change in the Code. So if Council is interested in exploring amending the Code to authorize an increase in the maximum site coverage; under this particular circumstance, to a higher number, he thinks the owner could take some of the additional space and physically convert it into parking.

The other option mentioned by Mr. Cross was to use neighboring properties. Mr. Mulligan stated the property to the south was mentioned during the Plan Commission meeting based on the understanding that they did have a surplus parking situation there. And the Code does permit offsite parking arrangements. However, he was told that the owner of that business was not interested in allowing the use of those spaces for that purpose. So, absent a nearby business or location where the owner could achieve this arrangement, the only other option is to leave the 3,000 square feet of rental space vacant.

Mayor Crow stated his assumption is that this problem is not associated with employee parking? Mr. Cross stated he does not believe that it is because on the occasions he has visited the area, employees were parked in the rear of the building in the fire lane, which is also prohibited.

Councilmember Hales moved to approve, it was seconded by Councilmember Carr and the motion carried unanimously, with the exception of Councilmember Smotherson and Mayor Crow.

Mayor Crow stated increasing the site coverage to 90 percent right after listening to the Stormwater Task Force present their report, does not seem like a good option either. So the reality is there is no good answer.

L. UNFINISHED BUSINESS

1. **BILL 9398 - AN ORDINANCE AMENDING SECTION 120.940 OF MUNICIPAL CODE OF THE CITY OF UNIVERSITY CITY, RELATING TO THE LOOP SPECIAL BUSINESS DISTRICT ADVISORY COMMISSION, BY AMENDING SUBSECTION A.1 THEREOF, RELATING TO MEMBERSHIP.** Bill Number 9398 was read for the second and third time.

Councilmember Carr moved to approve, it was seconded by Councilmember Cusick.

Councilmember Carr stated as she mentioned when this was first put on the agenda, this is not so much a change to the Ordinance, as it is a clarification. And as you heard the Director of Planning and Zoning say, he goes back to the definitions in the Code because that is the most prudent way to achieve a clear understanding.

So this is not about eliminating opportunities; making the Commission more exclusive; narrowing, or any of those red herrings, it's about clarifying the definition of who is eligible to become a member, and who is not.

Councilmember Carr stated forty years ago most of the real property and licensed businesses were owned by individuals, a term delineated by the Code. But today, they are owned by partnerships, LLC(s), and trusts, none of which fall under the definition of an individual. Therefore, what has happened over time is that individuals associated with these entities have been appointed to the Commission. And in 2015 that definition was further reinterpreted to allow for the issuance of Business Licenses to four churches and an attorney.

However, Federal statutes convey that churches are not businesses, and certain protected classes of professionals; doctors, lawyers, et cetera, are regulated by the State. So she is unclear as to why a license would be issued to any entity that is not regulated by the City. Councilmember Carr stated as a result of these misinterpretations, there is a need to make certain that members of the LSBDC represent those businesses and property owners who actually pay into the District. So this amendment asks that their designation/appointment, be a formal designation and that the person being designated has some

relationship with ownership of those properties. This means they could designate someone who does not possess a Business License, or even a not-for-profit, as long as that entity is willing to pay their share of the assessed taxes.

The second amendment of Bill No. 9398 clarifies;

- a. That the real property or licensed business must be subject to the additional tax in Municipal Code Section 120.910 and not be in arrears. Revenue from the taxes is used to pay all costs and expenses incurred in the operation of the District, and
- b. That if the owner of real property or a licensed business within the district is a partnership or a business organization or other entity, including a limited partnership, corporation, estate or trust, the owner may designate in writing an individual as the owner's legally authorized representative and such individual may be appointed to the Advisory Commission provided the individual is formally affiliated with the owner and the owner is subject to the additional tax in Section 120.910 and not in arrears.

Councilmember Carr stated in her mind this is merely a peripheral change, as there is no mention of caps, elections, or any of those things. It's purely the clarification of a definition that will continue to promote inclusion and expansion.

Councilmember Hales stated this issue was brought to the forefront during Council's retreat and what followed was a really robust and deliberative discussion that provided a great deal of clarity. So while he does not take issue with anything Councilmember Carr said or the Ordinance, he would like to share his thoughts. Councilmember Hales stated his recollection is the City Manager and Attorney both expressed a willingness to attend the next meeting of the LSBSD to further discuss this issue. And if that is still the case, then his preference would be to have an opportunity to look at this from a holistic perspective by allowing them to present Council with their findings in 45 days.

Councilmember Cusick stated having attended every LSBSD meeting since being elected to Council, he thinks they need direction, and they feel as though they are in limbo about who is eligible to participate on their Board. So they are anxious to move this issue forward. He stated he is thankful for the ideas presented at the retreat by Mr. Rose and his hopeful that Council will be able to move some of these items down the road. But as a quasi-government that ultimately this Council is responsible for, he believes the Board needs this clarification.

Councilmember Cusick stated although he had questioned Mr. Rose's use of the word "*inclusion*," as it relates to this Board and their meetings, he would like to note that these meetings are open to the public. Anyone is more than welcome to come in, express their ideas or talk about their issues.

And his final thought with respect to not-for-profits is while it is permissible for organizations of this nature to become a member of the LSBSD Board once they join the City's tax rolls, this might not be a door the City wants to open. There is a very large not-for-profit organization in our midst that if allowed to participate, has the potential to take-over the LSBSD and use it as another arm of their large not-for-profit institution.

Mayor Crow acknowledged Council's vigorous and lengthy conversation on this issue and stated he would like to see this Ordinance become a part of the overall revamping of the LSBSD's operations. So while he is not sure what his colleagues' plans are, he believes this is a more appropriate way to move forward.

Councilmember Carr stated Council has been kicking this can down the road for well over a year. They have held two meetings with the LSBSD and multiple meetings in their absence, all the while, delivering Council's desires.

In fact, the City Manager showed up at an LSBSD meeting to discuss these concerns where he was treated rather rudely and told that the Board knew what was best for them. They have a rather large budget and a controlling personality focused on structuring a Board that ceases to function as an advisory commission to Council.

When Council talked to the Board about hiring an executive director to fulfill the requirements established by the Ordinance, the motion was killed for lack of a second. After almost a year, the City's Financial Department has still been unable to reconcile their ledgers; which in her opinion illustrates the misappropriations of funds. And because it appears as though they do not have the infrastructure to

place to accomplish tasks on their own, staff from the Legal, Financial, and Economic Development Departments are present at every meeting. Nevertheless, she is not, nor is this Ordinance addressing any of those issues. Or the fact that this is the only Board/Commission Council has not been able to bring into compliance. Or even that "we" shouldn't be undertaking this overwhelming task. What she is saying is that this overhaul will not happen while she is sitting on the dais because quite frankly, she and Councilmember Cusick are the only members of Council who have ever shown up at LSBDB meetings. Even though this Council seems to be the one that has primarily experienced what is going on with the Board, the attendance at meetings consists of representatives from the City of St. Louis, Wash U, The East Loop, Audrey Jones from Mannequins in The Loop, and members of the LSBDB Board. No one else is showing up. So, while her assumption is that these are all things Council intends to address, there is no guaranteed timeline. Especially when you look at some of the issues that have been presented to the LSBDB that keep getting pushed further out because there's going to be a snowstorm; there's a lack of a quorum, or their inability to put legislation together because of other priorities. Years ago, when she first started attending these meetings they were packed. Today, residents have simply given up because they no longer see its value.

That said, Councilmember Carr stated this Ordinance represents the first step in addressing some of these broader issues by clarifying who is eligible to become a member of the Board. It identifies the elephant in the room; the appointment process. Something that was not discussed during Council's lengthy conversations about governance, diversity, caps, and not-for-profit memberships. Several things the City Attorney said could be accomplished through the Bylaws and Council's Rules. And by the way, there is one major not-for-profit who does pay their assessed taxes, and at this point could become a member of the Board; Craft Alliance. But the point is; it will be up to her colleagues to decide whether or not they want to address this issue. And while she has been willing to grant postponements in the past, they have led to very little in terms of questions or concerns. In fact, she has had to initiate contact in order to determine if her colleagues had any apprehensions. Therefore, she would humbly ask that a determination be made on this issue tonight because the question of membership is an issue for Council to decide and not the LSBDB Board.

Councilmember Carr stated while she is amenable to whatever her colleagues decide, the success not only of the LSBDB Board but The Loop, will ultimately be the responsibility of this Council.

Councilmember Smotherson stated he would like to get a better understanding of how this Ordinance would be put into practice if it is approved? Mr. Rose stated upon approval, it would become effective immediately. However, during the retreat there was a brief discussion related to governance and whether or not the LSBDB Board should be comprised of not-for-profit organizations, as well as those occupations that are not subject to a Business License. Therefore, he thinks it would be worthwhile for the City Attorney to provide an overview of exactly what this Ordinance will achieve because it may not necessarily prevent those entities from serving on the Board.

Mr. Mulligan stated this Bill clarifies the existing language in Section 120.910 of the Ordinance, which states that in order to be appointed to the LSBDB Advisory Commission the individual must either own real property or have a licensed business that is subject to the additional tax in the Municipal Code. That additional or assessed value is taxed at .85 cents per \$100, and the fee for a Business License is 50 percent of the annual gross receipts. What the current Code does not say; in so many words, is that the individual has to be subject to the license fee or tax.

The State law which applies to and governs cities, states that these occupations are not subject to a Business License; ministers, teachers, professors, lawyers, dentists, physicians, chiropractors, optometrists, CPAs, and Christian Science practitioners.

However, you could have an individual in one of these occupations who also owns property in The Loop, and in that case, they would not be exempt, unless they were incorporated as a not-for-profit. So, even though that not-for-profit is not subject to a Business License fee, they would be subject to real property taxes, and under the Ordinance, that individual property owner would be eligible to serve on the LSBDB Board. Mr. Mulligan stated the current Code, which speaks in terms of a municipally licensed business, raises questions as to the intent of the Ordinance when it was passed back in 1980. Was it to allow an individual in that protected class to be licensed and serve? Or do you look at the Ordinance as a whole; Section 120.91 in particular, which imposes this additional license fee and .85 cents per \$100 of assessed valuation? So Bill 9398 seeks to clarify Council's intent, which is that you must be subject to that additional tax as prescribed in the Municipal Code.

The second major clarification is with respect to the owner of real property. Over the years, the practice seems to have been that if a corporation, LLC or trust, owned property in The Loop then somebody was entitled to serve on the Board. But what the current Ordinance states is that in order to be appointed to the LSBDA Advisory Commission an "individual" must either own real property or have a licensed business that is subject to the additional tax. Bill 9398 seeks to clarify that when property is owned by an entity that entity may designate an "individual" who is affiliated; meaning officially attached or connected, with that business, and say I want this individual to serve as my authorized representative for appointment to the Board.

So this Bill seeks to clarify and eliminate questions about whether any of these entities or members of a protected class are eligible to serve on the Board.

Councilmember Smotherson questioned whether the passage of this Bill would have any impact on current members of the LSBDA Board? Mr. Mulligan stated although he would need to look at the specifics before providing his definitive legal opinion, his understanding is that the current individuals or at least those whose terms have not expired, would not be excluded under this amendment or the existing version of the Ordinance.

Mr. Rose stated existing Board members were appointed under different legislation. So if the approval of this Bill impacts any of those members his recommendation would be that they are grandfathered in and allowed to serve out the remainder of their term.

Mr. Mulligan stated pursuant to the Missouri Constitution any person holding an office may continue to serve until a successor is appointed and sworn. So in this case, it would be up to the Mayor and Council to determine when that replacement should take place.

Councilmember McMahon stated while he understands the impetus behind the change in language, it seems like the language in Bill 9398 virtually mirrors the language in the current Ordinance. So would the phrase "*formally affiliated with*" include an individual who might have a contract with one of these corporations? Mr. Mulligan stated not necessarily because they have to be more than just a designee. The dictionary definition of affiliation is officially attached or connected, and that's the distinction that would be applied to determine the type of relationship and contract the individual has with that entity. Councilmember McMahon asked how far down the line that affiliation could go? Would it be possible to designate an employee? Mr. Mulligan stated while he does not think the individual has to be an officer or a director; he does think that an agency relationship would have to be established. However, if a corporation wanted to designate a specific individual, he's sure they could come up with a way to structure the relationship so that it satisfies this requirement. He stated at the end of the day, it will be up to Council to determine whether that affiliation is significant enough to justify appointing that individual.

Councilmember McMahon stated the bottom line is that there will still be some of this moving target kind of approach, which he can work with. But he thinks there are bigger fish to fry as evidenced by the topics that have come up during this discussion, as well as the retreat. And the fact that he keeps hearing "*this Ordinance is not about that,*" is somewhat confusing.

One of the issues he raised during the retreat that was also left off the list, was his belief that the LSBDA does not have the authority to conduct elections. That muddies the waters because it relates to these decisions about who can serve. Perhaps it was omitted because of the support it received from a lot of folks at the meeting, and the fact that it was going to be discussed in two days at the next Council meeting? But to him, this discussion is missing the point.

Councilmember McMahon stated he does not see where an action today changes the practice of what is already in existence. And from a practical purpose, that a delay would really change anything that has occurred today. Because while he is in support of this amendment, he is also in support of working; as Councilmember Hales said, in a more holistic manner on some of these other big issues and getting them done.

Councilmember Carr stated for whatever it's worth; there is something that came with the minutes which says that not only did the Board propose someone, but this someone has been elected and that has been submitted. So are you going to just leave them sitting there? Once again, the elephant in the room

room is, the Mayor makes the appointments, but for several years Council has been relying on these elections. And while you are here talking about not making this retroactive, the Chair of the LSBDD was encouraged to rally his troops; even though no consultation was provided for others, and all of their emails revealed they had already made their elections; this is retroactive. Now, you can leave those people sitting there, and that's fine, with one exception; you are one member short on this Board. Councilmember Carr stated typically, it would not bother Council to let a Commission proceed with an empty seat, but this is a little different in that they have a budget to put together and there is a serious contention.

The fact of the matter is this Ordinance was not included on that list. Mr. Rose labeled the topics one, two, three, four; this was not among those issues listed, nor was there any mention about how we were going to define membership. What was mentioned is whether we should expand that membership, although she can't remember what was ever decided. And while this might appear to be a little braggadocio; if it was unclear to her, she would be surprised if it was clear to anyone else. So perhaps, it might have been her colleagues' preference to include this definition on the list, but in her opinion, not only was it not added, it was never intended to be added. And since the expectation conveyed to her was that there would be something better coming down the pipeline, her belief is that the vast majority of her colleagues expected her to back-off. So are you now trying to say you would like to include this on the list? Because she hasn't heard that.

So for whatever this is, we still don't have an opportune definition, which is all this Ordinance is intended to do; provide clarification. Instead, what you're talking about is setting some Council Rule parameters that won't change the Ordinance in any way, unless you draft a new Ordinance. But in order to do that, you'll need some time to work through the legal, and her guess is that it won't be a smooth transition. In the meantime, there is a very real problem of membership that needs to be addressed.

Councilmember Carr read the following excerpts from the minutes into the record: *"Joe noted that he had stuffed and mailed the ballots."* He also proposed at this meeting, *"making an amendment to the Bylaws which currently defines members-at-large as any individual or entity owning property or operating a municipally licensed business within the boundaries of the District, and recommended the inclusion of not-for-profit entities."* This meeting was held on November 12th, however, her work on this Bill commenced several months prior to that date because it was clear to her that some definitions, boundaries, and explanations for what was going on, were needed.

Mr. Edwards represented that their elections determined who would serve on the Board. But they don't, because these elections are not binding. Their Bylaws state they can hold an election and how, but that's not in any of the City's Ordinances.

However, on the other hand, Mr. Patterson acknowledged that under the current definition Mr. Roam might not be eligible to serve. So they already knew going into this election that there were some questions about eligibility, yet, they decided to proceed, let the results unfold, and leave it up to the City Council to make the final determination. Coincidentally, this Ordinance comes out and all of a sudden we begin to hear its retroactive, discriminatory, exclusive, and a number of other red herrings. Council really does have a big job, and her guess is that even when her colleagues put this all together they're still not going to get compliance.

Councilmember Carr stated at the last meeting one member of Council did ask her for a delay, which she conceded to. However, since that time there's been little to no discussion, yet, here we are again, a month and a half later.

She stated she's aware that some of this is to calm the waters, but thinks the right thing to do is first, clarify this part of the Ordinance and then do whatever else it is you're planning to do. Actually, the Chairperson of the LSBDD has asked to speak with the Legal Department because he has some input into how this Ordinance should read. And although she's not sure he should necessarily have that input, if that is to be the case, then why not hold an open meeting for everybody in U City since everyone has an interest in the success of The Loop.

She stated her hope is that Council will actually consider this Ordinance; which is truly about defining and clarifying one phrase, *"eligible for membership,"* with the seriousness with which it has been offered, and that they will undertake the hard work of making this Commission come into compliance with the Code by whatever means they seek. But to say this can somehow be addressed at the same time as these other issues is an objective she did not hear being expressed on Saturday, and she certainly does not hear being expressed now. She stated The Loop is this City's major economic engine, so she had hoped Council would have been very serious about this; especially since

they have sat here virtually doing little to nothing for over a year.

- Mr. Rose announced that the Legal, Financial and Economic Development Departments would be made available to assist the LSBDB Board.
- Mr. Rose put forward an executive director or manager position, with defined responsibilities.

However, when push came to shove, the Board failed to provide a second on the motion because they wanted to take the money for the executive director and put it into the East Loop.

She stated something we all need to remember is that the name "*Delmar Loop*" does not belong to U City. The Parkview Gardens Plan; written by Wash U, describes The Delmar Loop as any place within 1/2 mile of the Trolley, and that we must build density in order to support the Trolley. The Retail Plan, published in 2011, also provides the same description. So in spite of the fact that U City's downtown area has carried the name Delmar Loop since the early 1900s; it really is not ours anymore. And the reason this information is important is because the President of the LSBDB Board; designed to be an advisory Board to Council, is of the opinion that this area should be joined together and overseen by a 353 Corporation with the right to exercise eminent domain and TIFs; which the City would ultimately be responsible for. Of course, that's something else this Council will have to decide, but the Ordinance also provides for the removal of individuals who do not behave as good stewards.

Councilmember Carr stated she applauds Council for wanting to take on the larger tasks but thinks this is the task-at-hand, tonight. So she would urge her colleagues to vote for this first and then undertake the broader issues. She stated if it is turned down not only will they essentially be kicking the can down the road, but she and others will hold this Council responsible for any of the ongoing difficulties the LSBDB Board continues to experience. She stated the approval of this Bill is a responsibility she is asking Council to undertake with a goal of prompting a serious look at an organization that most have paid no attention to.

Mayor Crow stated he does not believe there is a need for three or four members of Council to show up at an LSBDB meeting, especially when there are two members who attend religiously. And while he is uncertain whether that's true for all Board and Commission meetings, unless he is missing something, he does not believe the lack of attendance by numerous members of Council is anything out of the ordinary.

Councilmember Hales stated his recollection is that this Ordinance was clearly a part of the discussions conducted on Saturday.

And in spite of the fact that it was not placed on the whiteboard and he had to leave for a short period of time, the impression he got was that as a group, there was a great deal of consensus. Every member of this Council; or at least he certainly did, spoke rather impassioned about their frustrations related to the appointment process and intent behind the Ordinance.

This Ordinance addresses the definitions associated with eligibility, but a large portion of Saturday's discussion addressed limitations to eligibility; ownership; whether a member of Council could potentially be a liaison, as well as these definitions. So that's where he's coming from with respect to this issue. He stated it seems like Council has agreed on the what, and now they are arguing over the how. And that's probably a healthy thing to do, but if it was somehow inferred that he is not taking this serious; that it's insignificant, or that he has a desire to kick the can, then that would be an incorrect assumption.

Councilmember Hales stated personally, he does not have a problem holding off on the appointments until all of these issues can be resolved. But he does not believe that everything can be covered under Council Rules and that it may require the drafting of some new Ordinances. He stated this is an area that two people may never agree on 100 or even 75 percent, but he really does not want to have an ongoing argument about it, this evening.

Councilmember McMahon made a motion to postpone this discussion for 45 days, it was seconded by Councilmember Smotherson.

Councilmember Carr asked Councilmember McMahon if he would clarify whether he was seeking to postpone this Ordinance or the broader scope of this discussion? Councilmember McMahon stated he was asking that a vote on the Ordinance be postponed. Councilmember Carr asked if the Ordinance would essentially be brought back to Council in 45 days? Councilmember McMahon stated that it would.

Voice vote on the motion carried unanimously, with the exception of Councilmembers Carr and Cusick.

**M. NEW BUSINESS
RESOLUTIONS**

BILLS

Introduced by Councilmember Smotherson

1. **BILL 9399** - AN ORDINANCE FIXING THE COMPENSATION TO BE PAID TO CITY OFFICIALS AND EMPLOYEES AS ENUMERATED HEREIN FROM AND AFTER ITS PASSAGE, AND REPEALING ORDINANCE NO 7109. Bill Number 9399 was read for the first time.

Introduced by Councilmember Smotherson

2. **BILL 9400** - AN ORDINANCE PROVIDING FOR THE REIMBURSEMENT OF CITY OFFICIALS AND EMPLOYEES FOR EXPENSES INCURRED BY THEM IN OPERATING THEIR OWN VEHICLES IN CONNECTION WITH THEIR POSITIONS, AND REPEALING ORDINANCE NUMBER 6847. Bill Number 9400 was read for the first time.

N. COUNCIL REPORTS/BUSINESS

1. Boards and Commission appointments needed
2. Council liaison reports on Boards and Commissions

Councilmember Cusick stated the Historic Preservation Commission has had several meetings with the developers interested in restoring the Old Delmar/Harvard area. He is also aware that the developers have discussed this with Mr. Cross, and that they are under a tight deadline. So based on these discussions, he, along with some of his constituents, and neighbors are curious to know if there has been any progress or whether any meetings have been planned to provide everyone with updates? Mr. Rose stated on the basis of the discussions at the Plan Commission level, several emails, and social media, he believes the next step is for Mr. Cross to ask the Historic Preservation Commission if they would conduct some sort of a public input process. This seems to be an important component that would allow residents to have input into the design. So the hope is that this plan will not delay the project or take any longer than what the developers would experience going through the development process.

3. Boards, Commissions, and Task Force minutes
4. Other Discussions/Business

O. CITIZEN PARTICIPATION (continued if needed)

P. COUNCIL COMMENTS

Councilmember Carr asked if someone could tell her how the postponement would be handled if the 45th day fell on March 12th and the next Council meeting is not until March 23rd? Councilmember McMahon stated his assumption at this point is that he would make a request to put the Ordinance back on the agenda for the March 23rd meeting.

Councilmember Smotherson stated his intent was to welcome Pastor Middleton to the meeting and introduce him to everyone at tonight's meeting, but unfortunately, he just left. But for future reference, he is the Pastor of The City of Life Church.

Councilmember Cusick stated on his way to the meeting he drove down Delmar from the City Limits and noticed tracks and overhead wires hanging down the middle of the road in both lanes. Of course, Bi-State announced last week that they were no longer interested in preserving the Trolley, so he was curious to know if the City had heard anything about the Trolley's future or plans to restore the streets? Mr. Rose stated he has not received any information from the Loop

Transportation District regarding what their next steps will be, and he suspects that at this point, it is too early to tell. But once they have had an opportunity to sit down and discuss things, if they don't reach out to him first, he will reach out and start the dialogue about their plans for U City.

Q. ADJOURNMENT

Mayor Crow thanked everyone and adjourned the Regular City Council meeting at 8:33 p.m.

LaRette Reese
City Clerk

