

**CITY OF BRENTWOOD, MISSOURI  
BOARD OF ALDERMAN REGULAR MEETING  
MAY 6, 2013**

**MEETING CALLED TO ORDER**

Mayor Pat Kelly called the regular meeting to order at 7:00pm, in the Council Room at Brentwood City Hall located at 2348 S. Brentwood Blvd., Brentwood, MO 63144.

**Roll Call**

Deputy Clerk Pittman performed roll:

Alderman Harper	Present	Alderman Toohey	Present
Alderman Wynn	Present	Alderman Leahy	Present
Alderman Robertson	Present	Alderwoman Manestar	Present
Alderman Kramer	Absent	Alderwoman Saunders	Present
Mayor Kelly	Present		

Members present constituted a quorum. Also present were City Clerk/Administrator Bola Akande, City Attorney Frank Albrecht, and Deputy City Clerk Octavia Pittman.

**APPROVAL OF AGENDA**

**Board Of Aldermen May 6, 2013**

Alderman Leahy made a motion to approve the agenda as submitted. Motion seconded by Alderwoman Manestar. Unanimous vote in favor taken; **MOTION PASSED.**

**CONSIDERATION AND APPROVAL OF THE MINUTES**

**Board of Aldermen Regular Meeting Minutes April 1, 2013**

After noted corrections, Alderwoman Saunders made a motion to accept the changes to the minutes. Motion seconded by Alderwoman Manestar. Unanimous vote in favor taken; **MOTION PASSED.**

Alderman Leahy made a motion to approve the minutes as amended. Motion seconded by Alderman Wynn. Unanimous vote in favor taken; **MOTION PASSED.**

**Board of Aldermen Regular Meeting Minutes April 15, 2013**

After noted corrections, Alderwoman Saunders made a motion to accept the changes to the minutes. Motion seconded by Alderwoman Manestar. Motion seconded by Alderwoman Manestar. **VOICE VOTE; 6-yes, Leahy-no, 1-absent.**

Alderwoman Saunders made a motion to approve the minutes as amended. Motion seconded by Alderman Robertson. **VOICE VOTE; 6-yes, Leahy-no, 1-absent.**

**PRESENTATION/RECOGNITION**

Mayor Kelly announced that the next meeting will begin at 6pm to designate time to discuss the recreation center and next steps.

**Dr. Kenneth Warren (Warren Poll) – Community Survey Results**

Dr. Warren presented a report of the findings from conducting the Community Wide Survey. Contracted for 400, there was a total of 646 participants using both land line and cell phone numbers; this reduced the error margin to 3.75%. The poll was also weighted for age and

gender and the report is representative of Brentwood residents overall. A summary of the major findings was reported as:

- Brentwood is an aging community with long time residents
- The average gross family income is \$67,854+, above the overall in St. Louis County, the State of Missouri and the United States
- People generally enjoy living in Brentwood and the quality of services is high; ranking the top 3 as trash, fire, then police – recreation facilities were ranked last \* in very dissatisfied but when you combine dissatisfied and very dissatisfied streets and sidewalks ranked last \*
- Residents support, in principal, modernizing the community center and features residents would most like to see were indoor running/walking tracks \*when combined ranked 4<sup>th</sup>. The multipurpose space came in last but when combined came in 1<sup>st</sup>. The ice rink came in 6<sup>th</sup> and 11<sup>th</sup> when combined. Residents are very satisfied with the Parc C-op Agreement 28.4% very satisfied 55.6% satisfied and only 15.9% were dissatisfied or very dissatisfied. A very very healthy plurality of people, 48.7% say to continue to subsidize the Parc Co-op Agreement. Only 30.3% say devote to modernizing and 21% undecided.\* They were not in favor of paying for the renovations.
- Residents were in support of trails
- Overall residents were not in favor of moving city hall unless it will save money.

\*Dr. Warren does not believe a bond issue will pass.

Alderwoman Saunders asked Dr. Warren if in your professional opinion based on the poll could you tell us what % of the population would want to sell City Hall? Dr. Warren stated no. We didn't ask that.\*

After questions, Dr. Warren responded that his questions did not include what percent of the population wants to sell city hall. The full report is attached to the minutes.

### **PUBLIC HEARING**

**None**

### **BIDS**

**None**

### **HEARING OF ANY MATTER OF PUBLIC INTEREST UPON REQUEST OF ANY PERSON PRESENT**

**Matt Saunders 2326 Parkridge**, addressed the Board with questions of what amount of merit raises was distributed to city employees; if the City should be opening bids at Board meetings as listed in the city code and asked why the City Administrator has not produced an inventory as described in city code.

**Peggy Slater 8726 Covington Ct**, addressed the Board in support of BHGH; there's been much misinformation seen and she clarified that kids in BHGH are different from kids in foster programs. She also commented in regards to concerns about the number of non-profits in the community; 5 of the 20 have Brentwood in their name. Lastly she requested that everyone look at BHGH for its merits and not confuse it with other issues that may be apparent.

**Karen Smith** questioned Bills #5754 & #5756, if they went before Ways & Means. She asked for clarity; the specific certificate of participation and if arbitrage is the appropriate type of investments for the city; and what the exact liability is. She also questioned the financial

liability and what dollar amount Bill #5756 is obligating us to and if this amount was included in the budget.

**Denise Soebbing** reported concerns with properties on Manchester Rd; vacant properties with tall grass, misc gravel on Manchester and large cones in the street. She asked if Public Works can address these issues.

**Lynn Devaugh 2469 Louis Ave** offered comments that internal controls are the start of making sure the plans are in place to prevent future fraud or misappropriation of funds.

Mayor Kelly closed public comments and replied that notices have been sent out to businesses on Manchester regarding their violations and the cones may have been in place to allow gravel to settle after some sewer work. He reminded that Brentwood Blvd and Manchester Rd are not roads maintained by the City; they are maintained by MoDOT. He updated with respect to the Bills for Gilmore & Bell (#5754 & 5756); they are both related to the Meridian project and are a part of the settlement. Funds being released have been saved since the first of the year; this is an effort to get the bonds back out in the market to reduce the interest rate so that the tax revenue goes to pay down principal instead of just interest; this is a part of the agreement previously entered into. Mayor Kelly commented that the public should address all comments to the Board of Aldermen rather than staff and added that the inventory has been talked about at Ways & Means and how they want to proceed in hiring a firm; it was not in the budget last year but is included this year.

Alderwoman Saunders objected to Mayor Kelly's inventory comments; she added that the topic was just raised at the last Ways & Means meeting.

#### **INTRODUCTIONS, READINGS, AND PASSAGE OF BILLS AND RESOLUTIONS**

Alderwoman Saunders made a motion to move Bill #5756 to Ways & Means Committee. Motion seconded by Alderman Leahy. A discussion was held and Attorney Mark Grimm (Gilmore Bell) explained that the amounts have not been included because they are subject to change every day; they will be included upon sale. He stated that the settlement agreement requires the city to contribute a portion of the bottom half of revenues to the payment of debt; since January 1, 2012, in furtherance of the settlement agreement the city has been escrowing those funds. This agreement would provide for the release of those escrowed funds and go toward the payment of the debt. Interest differential of the obligation – the city's only obligation is to repay funds from incremental revenues that are pledged under the settlement agreement to the repayment of the bonds; the city's obligation doesn't change – they are paying the 57.65% either now or later. \*alderwoman Saunders asked how does this benefit the city because we are not off the hook for the interest differential? Mark Grimm agreed we are not off the hood for the interest differenential.\* The benefit is it will pay down principal, more money will be available for the payment of principal on the bonds – Thompson Coburn advised that this will facilitate implementation of the settlement agreement and will enhance the likelihood of the refunding that's contemplated by the settlement agreement being expedited.

Alderwoman Saunders commented that this seems to benefit the developer more than the city at the back end and they haven't fulfilled their section of the obligation agreement. They reference supplemental finance documents in which we don't have to review. Grimm responded that there are no other documents being executed at this time; other documents referenced were previously executed. After questions of the no recourse clause, Grimm explained that this protects Board members from personal liability; it is also included in the reimbursement agreement.

Mayor Kelly explained that we are releasing the funds to reduce the interest rate in the bonds; paying down more principal than interest, we are currently paying prime +4 and we will be

reducing it to less than 2. We can do nothing, but after 23 years, either the developer or bank will be holding the bonds and our obligation stops.

Alderman Leahy clarified that the premise of the settlement agreement was to get all parties back on the same page. Now DCM is complaining that if we reissue the bonds would be a much higher rate; their hesitant to contribute their portion to buy the bonds that we would be reissuing. If we initiate this action, does this obligate DCM to buy the bonds? Grimm explained that this does not result in the reissuance of the bonds; Compass Bank (letter of credit) would continue to hold the bonds. This lowers the interest rate while the bonds are held by Compass Bank. The rate would be lowered basically through the end of the year. The trial to the settlement agreement is scheduled for December. Thompson Coburn, as litigation counsel for the city, has advised that this; A) doesn't cost the city any more money and B) that it will further the city's interest by showing the judge that the city is doing everything it can to implement the settlement agreement and the thought is that this would be a good thing.

Alderman Leahy added his opinion that the settlement agreement does cost the city more money; we agreed to give up some of the bottom half that we originally didn't have to. Alderwoman Saunders commented that it seems to give the developer less incentive; it helps them out as opposed to us. We've done everything in regards to the settlement agreement; they had a personal guarantee and are still suing the city. Mayor Kelly clarified that the city is a necessary party in the law suit but they are suing Compass Bank. Alderwoman Saunders added that we keep incurring cost.

Alderman Leahy questioned if we move forward and things go south in the courts and we have to either renegotiate the settlement agreement or end up in trial; is there anything in the current document that gives this money back to the city pending a new outcome of court jurisdiction that we have to follow, or, are we spending and there is no way to recoup. Grimm explained that this does not say that the city will forever contribute the 57.65%.

Mayor Kelly added that this is what we have agreed to do, our legal counsel advised that this is in the best interest of the city. The bank is currently getting the interest payment and will be giving up that revenue; 7.5% on \$20million and reducing it back down to less than 2%.

Alderman Leahy asked, we have guaranteed a ceiling, have we reached it? Finance Director Jarvis explained that the minimum through 2012 was 285 and we have met that ceiling.

Alderwoman Saunders also questioned what is meant by "except for defaults or events of defaults that occur prior to the settlement agreement including the city's failure to reimburse the bank for the 2007 reimbursement obligation" listed in the contract. Grimm explained that one of the agreements with Compass is called a reimbursement agreement and it is with the city; there are other agreements where the city passes through this obligation under the reimbursement agreement to the developer. This references the city's failure to reimburse but it is from monies provided by the developer.

The motion and second were withdrawn to move Bill #5756 to the Ways & Means Committee.

Alderman Wynn made a motion for the 1<sup>st</sup> and 2<sup>nd</sup> readings of Bills #5752, 5753, 5754, 5755, 5756. Motion seconded by Alderman Leahy. Unanimous vote in favor taken; **MOTION PASSED.**

**Bill #5752 - An Ordinance Granting Site Plan Approval For A Signage Plan For The Meridian Development; Amending The Signage Plan Approved By Ordinance No. 4082; Providing For The Enforcement Of This Ordinance; And, Establishing The Effective Date Of This Ordinance - 1<sup>st</sup> & 2<sup>nd</sup> Reading**

Attorney Albrecht read Bill #5752 by title only. Alderman Leahy provided the synopsis, “this Bill is for an ordinance granting a site plan approval for a signage plan for the Meridian Development and amending the signage plan approved by ordinance 4082. At its April 11, 2012 meeting, the Planning & Zoning Commission asked the petitioner, Eager Road Associates, to develop a comprehensive signage plan for the entire Meridian site, including both existing and any proposed signage. The Planning and Zoning Commission recommends approval of the Meridian Signage Plan”. Attorney Albrecht read Bill #5752 by title only. Alderman Robertson made a motion to perfect Bill #5752 into ordinance form. Motion seconded by Alderman Harper. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – yes; Alderman Robertson – yes; Alderman Kramer – absent; Alderman Toohey – yes; Alderman Leahy – yes; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

***BILL #5752 IS HEREBY PASSED AND ORDINANCE #4426 IS ASSIGNED TO SAID BILL.***

**Bill #5753 – An Ordinance Authorizing The City Administrator To Execute A Second Amendment To The Medical Director Agreement Between The City Of Brentwood Missouri, SSM Health Care St. Louis And Clayton Emergency Group LLC – 1<sup>st</sup> & 2<sup>nd</sup> Reading**

Attorney Albrecht read Bill #5753 by title only. Alderman Leahy provided the synopsis, “this Bill is for an ordinance authorizing the mayor and/or city administrator to enter into and execute the second amendment to the agreement with SSM Healthcare Saint Louis and Clayton Emergency Group, LLC. Due to the absence of a quorum, the Public Safety Committee did not meet. The bill sponsor is Chairman of the Public Safety Committee, Alderman Lee Wynn. The current agreement expires on May 21, 2013.” Attorney Albrecht read Bill #5753 by title only. Alderman Leahy made a motion to perfect Bill #5753 into ordinance form. Motion seconded by Alderman Wynn. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – yes; Alderman Robertson – yes; Alderman Kramer – absent; Alderman Toohey – yes; Alderman Leahy – yes; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

***BILL #5753 IS HEREBY PASSED AND ORDINANCE #4427 IS ASSIGNED TO SAID BILL.***

**Bill #5755 – An Ordinance Amending Chapter 5, Animals And Fowl, Of The Revised Code Of The City Of Brentwood, Missouri, By Amending Article I, In General; Providing For The Raising Of Chickens In The City Limits – 1<sup>st</sup> & 2<sup>nd</sup> Reading**

Attorney Albrecht read Bill #5755 by title only. Alderman Leahy provided the synopsis, “This Bill is for an ordinance amending Chapters 2, 4 and 5 of the municipal code to allow backyard chickens. The amendments include Section 200.020, 210.010, 210.040, 210.060, 210.090, 210.100, 220.010, 220.020, 220.030, 400.020, 400.1870, and Chapter 500 – Animal and Fowl. Public Works Committee recommends approval”. As requested, Lisa Koerkenmeier, Former Planning Consultant, explained that the ordinance proposes to permit the keeping of up to 6 chickens and there are several conditions included to eliminate potential nuisances; noise, odor, unsanitary conditions and roaming. If all of these conditions are met, they can secure a permit and inspection (\$50). Violations of these conditions can lead to revocation of the permit by the Director of Planning. After comments of the possibility of not capturing all applicable code sections for violations, Director Rottjakob explained that the general nuisance provision will cover anything that disturbs your neighbor. Alderman Wynn offered comments of not being in favor of chickens and waiting until more loop holes are worked out before passing. After further discussion it was announced that residents currently with chicken will be required to apply for a permit. Attorney Albrecht read Bill #5755 by title only. Alderman Robertson made a motion to perfect Bill #5755 into ordinance form. Motion seconded by Alderwoman Manestar. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – no; Alderman Robertson – yes; Alderman Kramer – absent; Alderman Toohey – yes; Alderman Leahy – no; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

***BILL #5755 IS HEREBY PASSED AND ORDINANCE #4428 IS ASSIGNED TO SAID BILL.***

**Bill #5754 – An Ordinance Authorizing The Mayor Of The City Of Brentwood, Missouri To Enter Into And Execute An Agreement With Gilmore And Bell; And Providing For The Effective Date Of This Ordinance – 1<sup>st</sup> & 2<sup>nd</sup> Reading**

Attorney Albrecht read Bill #5754 by title only. Alderman Leahy provided the synopsis, “This Bill is for an ordinance authorizing the mayor and/or city administrator to enter into and execute an agreement with Gilmore & Bell to serve as Rebate Analyst for the installment calculation of the \$1,330,000 City of Brentwood, Missouri Certificates of Participation (City of Brentwood, Missouri, Lessee), Series 2003. Federal tax laws require that a rebate computation and a payment to the Federal Government, if applicable, be made at least every five years and upon final redemption or maturity of the Certificates. If rebate has been generated, it must be paid to the IRS within 60 days after the rebate calculation date, or be subject to interest and penalties”. Attorney Grimm explained that arbitrage is, if the city were to borrow at a tax exempt interest rate and takes the bond proceeds and invests at a higher percentage, the differential is arbitrage; the government views arbitrage as rightfully owing to the government. When tax exempt borrowers do tax exempt bond issues they have to do an arbitrage rebate calculation every 5 years while the bonds are outstanding. \*Alderwoman Saunders asked if these are the only COPs outstanding? I know the library has one. Gina Jarvis clarified that this 2003 COP is for the library and City Hall. Gina stated that 2009 COP is the firehouse COP and we owe \$7.5 million on the 2009 COP.\* He also explained that there are three exceptions to the general of being subject to arbitrage rebate, 1) if during the calendar year an issuer does less than \$5 million, 2) if you meet an 18 month spend down exception, 3) if you meet a 24 month spend down exception; there are 6 month targets but if any are missed you no longer qualify for the exception. Attorney Albrecht read Bill #5754 by title only. Alderman Leahy made a motion to perfect Bill #5754 into ordinance form. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – yes; Alderman Robertson – yes; Alderman Kramer – absent; Alderman Toohey – yes; Alderman Leahy – yes; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

***BILL #5754 IS HEREBY PASSED AND ORDINANCE #4429 IS ASSIGNED TO SAID BILL.***

**Bill #5756 – An Ordinance Approving And Authorizing The Execution Of A Temporary Deferral And Pledge Agreement And A Home Office Payment Agreement Relating To The City’s Variable Rate Demand Tax Increment Refunding Revenue Bonds, Series 2007A (8300 Eager Road Project - Phase 1) And Variable Rate Demand Tax Increment Improvement Revenue Bonds, Series 2007B (8300 Eager Road Project - Phase 2) – 1<sup>st</sup> & 2<sup>nd</sup> Reading**

Attorney Albrecht read Bill #5756 by title only. Alderman Leahy provided the synopsis, “with the approval of this bill, Compass Bank and Vectra Bank Colorado, N.A., the owners of 100% of the \$7,675,000 original principal amount City of Brentwood, Missouri Variable Rate Demand Tax Increment Refunding Revenue Bonds, Series 2007A (8300 Eager Road Project - Phase 1) and \$13,235,000 City of Brentwood, Missouri Variable Rate Demand Tax Increment Improvement Revenue Bonds, Series 2007B (8300 Eager Road Project - Phase 2) hereby request that the amount payable by the City as “Additional Pledged Revenue” as defined in the Revised Outline of Settlement Terms and Conditions attached as Exhibit A to the Acknowledgement and Acceptance of Settlement Agreement and Mutual Release of Claims dated as of September 15, 2011, be paid to directly to Compass Bank on behalf of the Owners by mailing first class, postage prepaid, a check payable in immediately available funds to Compass Bank”. Attorney Albrecht read Bill #5756 by title only. Alderman Robertson made a motion to perfect Bill #5756 into ordinance form. Motion seconded by Alderman Wynn. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – yes; Alderman Robertson – yes; Alderman Toohey – yes; Alderman Leahy – no; Alderwoman Manestar – no; Alderwoman Saunders – no; **MOTION FAILED.**

**ACCOUNTS AGAINST THE CITY**

Alderman Leahy made a motion to approve the warrant list in the amount of **\$48,427.46**. Motion seconded by Alderman Wynn. Unanimous vote in favor taken; **MOTION PASSED.**

**REPORTS OF COMMITTEES AND DEPARTMENT HEADS:**

**Mayor Kelly** reminded everyone of the St. Louis County Municipal League Banquet Dinner, May 30<sup>th</sup>, 6:30pm at Glen Echo Country Club.

**Public Safety Committee**, Alderman Wynn announced the next meeting will be held May 16<sup>th</sup>.

**Public Works Committee**, Alderman Robertson announced the next meeting will be held May 8<sup>th</sup>.

**Director of Planning & Development**, As requested, Director Rottjakob explained that Bed Bath and Beyond have submitted their application for a special use permit to use storage trailers for their online orders. A discussion was held regarding the possibility of setting precedence as permits have been previously denied for Walgreens and Target. It was explained that their denial was due to failure to meet certain conditions as agreed.

A brief discussion was also held regarding Boys Hope Girls Hope and Director Rottjakob explained that there is an opportunity for public comment at Planning and Zoning meeting.

**Ways and Means Committee**, in Alderman Kramer's absence, committee members agreed to change the time of the upcoming meeting on May 30<sup>th</sup> to 4:30pm.

**City Attorney**, Attorney Albrecht had no new report.

**City Clerk/Administrator**, Administrator Akande had no new report.

**Excise Commissioner**, Commissioner Clements had no report.

**Library**, Alderman Wynn had no new report.

**Municipal League**, Mayor Kelly had no new updates.

**Communication**, Alderman Kramer – absent.

**Historical Society**, Alderman Wynn had no new report.

**Closed Meeting** none

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

Alderman Leahy announced the Ward 3 meeting May 27<sup>th</sup> at 7pm.

Alderwoman Saunders announced the Ward 1 meeting may 14<sup>th</sup> at 6:30pm. She also reminded that the results of the state audit will be presented May 7<sup>th</sup> at 6:30pm at the recreation center.

Mayor Kelly expressed disappointment of the failed Bill #5756; it was recommended by legal counsel. He stated his belief that the wrong decision was made.

Alderman Leahy offered comments that this legal counsel has missed violations of the redevelopment agreement and he believes it is not in the city's best interest to give up more cash for a development that the city told them they would have more problems with; some of

the legal advice may have been flawed. Mayor Kelly clarified that this wasn't Thompson Coburn that did this, it was the legal representation from the insurance company.

Alderwoman Saunders commented that she had been requesting updates from Thompson Coburn. She asked to be brought along if they are working on it instead of it being all of a sudden. After response by Mayor Kelly that they have been keeping the city abreast of depositions via email, Alderwoman Saunders asked for copies of the depositions from the current suit.

**PUBLIC COMMENTS – Hearing Of Any Matter of Public Interest upon Request of Any Person Present**

**Karen Smith** commented that the attorneys offer legal advice but the Board of Alderman makes the final decisions. She also requested further clarity of the reimbursement of bonds; if the developer provides the funds to pay the amount.

**Matt Saunders** again questioned if the city could follow the city's code of opening bids requested what percentage of the funds allocated for raises were given to employees. He also commented that the code states city administrator should contact internal people for inventory information; we should not have to hire an outside firm.

Mayor Kelly responded that we were looking for an outside firm to the inventory because so much was going on; we are working on it. Of the \$195,000 allocated for raises, \$143,000 was distributed. Staff will review the code in regards to bid openings; they are normally conducted in the chambers but not during board meetings.

**ADJOURNMENT**

Alderman Wynn made a motion to adjourn the meeting at 9:30pm. Motion seconded by Alderman Robertson. Unanimous vote in favor taken; **MOTION PASSED.**

**Approved \*with corrections\* the 20<sup>th</sup> day of May, 2013.**

Attest:

\_\_\_\_\_  
Mayor Pat Kelly

\_\_\_\_\_  
Bola Akande, City Clerk/Administrator