

**ROLLA CITY COUNCIL MEETING MINUTES  
MONDAY, JUNE 15, 2009  
ROLLA CITY HALL COUNCIL CHAMBERS  
901 NORTH ELM STREET  
6:30 P.M.**

**Presiding:** Mayor William S. Jenks, III

**Council Members in Attendance:** Don Brown, Monty Jordan, Don Barklage, Stan Spadoni, Susan Eudaly, Gary Hicks, Don Morris, Lou Magdits, Jim Williams, Ken Boeker, Donna Hawley, and Mark Walburg

**Department Directors in Attendance:** Public Works Director Steve Hargis, Police Chief Mark Kearse, Environmental Services Director Brady Wilson, Fire Chief Robert Williams, Finance Director Steffanie Rogers, Recreation Center Director Scott Caron, Parks and Recreation Director Ken Kwantes, and Community Development Director John Petersen

**Other City Officials in Attendance:** City Administrator John Butz, City Counselor John Beger, and City Clerk Carol Daniels

Mayor Jenks called the meeting to order at approximately 6:30 p.m., and asked a member of the Rolla Ministerial Alliance to give the invocation. Following the invocation, Councilman Mark Walburg led in the Pledge of Allegiance.

**I. PUBLIC HEARINGS**

**(A) Request for Ordinance to Rezone Tract A of the McCutchen Acres PUD from R-1 Zoning to PUD District Zoning (McCutchen/Woessner):** Mayor Jenks announced that the developer of the subject property has asked the Council to consider postponing consideration of this item until August 3 because his plans have not been completed and he will be out of town. Mayor Jenks explained, however, that it is the Council's decision whether to consider this request. A motion was made by Eudaly and seconded by Spadoni to set aside consideration of this item until the August 3, 2009, Council meeting. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried.

**(B) Request for Ordinance to Rezone Property at 207 W. 9<sup>th</sup> Street from GI to PUD Zoning (Wands):** Community Development Director John Petersen explained that the subject building was constructed in the 1940's. He reported the developer is proposing a

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**I. PUBLIC HEARINGS (continued)**

**(B) Request for Ordinance to Rezone Property at 207 W. 9<sup>th</sup> Street from GI to PUD Zoning (Wands) (continued):** 20-unit apartment building with a maximum load of 64 residents. Mr. Petersen told the Council that the Planning and Zoning Commission's feeling is that the development of the building, as proposed, would not have an adverse impact on the neighborhood because much of the physical facilities in the area are very similar to this type of structure. The Planning and Zoning Commission recommend approval of the PUD as submitted.

After a brief Council discussion, Mayor Jenks opened the public hearing to anyone wishing to address the Council concerning the subject-rezoning request.

Developer, Mr. Dale Wands, addressed the Council and said that parking has always been a concern in this area. Regardless of what is done with the building, it will require some parking. Mr. Wands asked the Council to consider the first and final readings of the proposed ordinance at this meeting.

No one else present addressed the Council. Mayor Jenks closed the public hearing.

City Counselor John Beger read the following proposed ordinance for its first reading, by title. ORDINANCE NO. 3917: AN ORDINANCE AMENDING THE BASIC ZONING ORDINANCE NO. 3414, CHAPTER 42 OF THE CODE OF THE CITY OF ROLLA, MISSOURI, AFFECTING THE REAL ESTATE KNOWN AS 207 WEST 9<sup>TH</sup> STREET FROM G-I (GOVERNMENT/INSTITUTIONAL) ZONING TO PUD (PLANNED UNIT DEVELOPMENT DISTRICT) ZONING (WANDS). A motion was made by Hicks and seconded by Eudaly to suspend the rules and that the ordinance be read for its final reading, by title. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried. City Counselor Beger then read the proposed ordinance for its final reading, by title. A motion was made by Williams and seconded by Hicks to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Brown, Eudaly, Hawley, Williams, Jordan, Spadoni, Hicks, Barklage, Magdits, Boeker, Morris, and Walburg. Nays; None. Absent; None. Motion carried. The ordinance passed.

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**II. CITIZEN COMMUNICATION**

**(A) Open Citizen Communication:** Mayor Jenks opened the floor to anyone wishing to address the Council.

Dr. Tom Sager, 8 Laird Avenue, Rolla, Missouri, read the attached prepared statement to the Council regarding the proposed motion to censure Councilwoman Donna Hawley.

No one else present addressed the Council.

**III. SPECIAL PRESENTATION**

**(A) Independent Auditors Report for Year Ended September 30, 2008:** Ms. Jo Moore of Evers & Company, CPA's L.L.C., reported that her firm has completed the audit of the City's financial statements for the year ended September 30, 2008. She then provided the Council with an overview of the audit report and management letter. During and following her presentation, Ms. Moore entertained questions from the Council.

Discussion ensued pertaining to whether MoPEP's obligations should be fully disclosed in the audit. Ms. Moore indicated that the State Auditor's report states, "however, pursuant to Governmental Accounting Standard Board statements, it appears the relationship between RMU and the MJMEUC/MoPEP may be a joint venture."

A lengthy discussion followed regarding the State Auditor's recommendation that the City and RMU consult with their auditors about appropriate disclosure of the MJMEUC/MoPEP agreement. Councilwoman Hawley expressed concern that the annual audit does not comply with GASB 14 disclosure requirements for indirect joint ventures of MoPEP. (amendment approved by the Council during its July 6, 2009, City Council meeting)

Councilwoman Hawley stated the City of Rolla is doing a very large disservice to its citizens because it is not disclosing the at least \$130 million worth of debt service that it included in our utility payments. In addition, she said there is nothing to stop MoPEP from going into to ten more coal plants, ten more nuclear plants, and putting the City ten times further in debt. Councilwoman Hawley said this is serious and the City needs to figure out whether MoPEP has anything to do with a good solid investment for the City of Rolla.

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**III. SPECIAL PRESENTATION (continued)**

**(A) Independent Auditors Report for Year Ended September 30, 2008 (continued):**

A motion was made by Jordan and seconded by Hicks to accept the 2008 independent audit.

Councilwoman Hawley objected to the consideration of this audit report in that it does not fully disclose the MoPEP obligations that the City of Rolla is under. She strongly urged the City Council to ask next year's City auditor to include the bond level debt service the City and RMU have been obligated to through MoPEP.

A voice vote on the motion showed eleven ayes, one nay (Councilwoman Hawley), and zero absent. Motion carried.

Councilwoman Hawley asked that the previous motion be voted on by roll call. Mayor Jenks indicated that a roll call vote was not necessary. Councilwoman Hawley noted her objection to not having a roll call vote.

**IV. OLD BUSINESS**

**(A) Ordinance Regarding Clarification on the Gross Receipts Fee on the RMU**

**Service Availability Fee (SAF):** City Administrator John Butz indicated the subject ordinance would clarify the issue the State Auditor raised regarding the Service Availability Fee (SAF). He explained that RMU had been paying a 5% fee on a basis of 5% fee for many years and the position the City has taken is that the SAF is just another operating revenue of the utility and subject to the 5% fee. Mr. Butz indicated the subject ordinance would specify it by ordinance.

Councilwoman Hawley raised concerns of the PILOT charged on power, city, and water customers is a violation of the Missouri Hancock Amendment because it broadens the base of an existing fee. (Amendment approved by the Council during its July 6, 2009, City Council meeting.)

After a lengthy discussion, City Counselor John Beger read the following proposed ordinance for its final reading, by title. ORDINANCE NO. 3918: AN ORDINANCE AMENDING SECTION 35-161 OF THE CODE OF THE CITY OF ROLLA, MISSOURI, PERTAINING TO TRANSFERS TO GENERAL REVENUE FUND. A motion was made by Williams and seconded by Morris to approve the proposed

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**IV. OLD BUSINESS (continued)**

**(A) Ordinance Regarding Clarification on the Gross Receipts Fee on the RMU Service Availability Fee (SAF) (continued):** ordinance. A roll call vote on the motion showed the following: Ayes; Hicks, Magdits, Jordan, Williams, Brown, Boeker, Eudaly, Walburg, Barklage, Morris, and Spadoni. Nays; Hawley. Absent; None. Motion carried.

**(B) Resolution Authorizing the Agreement with Donald Maggi, Inc., for the 2009 Street Improvements, Phase I:** Public Works Director Steve Hargis recalled that the Council recently awarded the bid for the 2009 Street Improvements, Phase I, Project No. 244, to Don Maggi, Inc. The proposed resolution would authorize the Mayor to enter into a contract with Donald Maggi, Inc.

City Counselor John Beger read the following proposed resolution for one reading, by title. RESOLUTION NO. 1688: A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ROLLA, MISSOURI TO EXECUTE IN BEHALF OF THE CITY OF ROLLA, MISSOURI, A CERTAIN AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI, AND DONALD MAGGI, INC. A motion was made by Hicks and seconded by Eudaly to approve the proposed resolution. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried. The resolution passed.

**V. NEW BUSINESS**

**(A) Resolution Affirming the City of Rolla's Partnership with the 2010 Census:** Community Development Director John Petersen explained that the subject resolution would demonstrate to the Census Bureau that the City of Rolla will do everything it can to make sure there is a complete and fair count and that the City receives its representation. He emphasized that this particular census is very important to the state of Missouri because we are on the edge of losing a U.S. House of Representative seat.

City Counselor John Beger read the following proposed resolution for one reading, by title. RESOLUTION NO. 1689: A RESOLUTION AFFIRMING THE CITY OF ROLLA'S SUPPORT OF AND PARTNERSHIP WITH THE 2010 CENSUS. A motion was made by Williams and seconded by Spadoni to approve the proposed resolution. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried.

**V. NEW BUSINESS (continued)**

**(B) Request for Ordinance to Approve the Blue's Lake Plat No. 7 (St. John's):**

Community Development Director John Petersen explained that the applicants are requesting that a small peninsula of ground be included with an adjacent lot to make it over 6,000 square feet. The applicants would like to be in a position to split the property in the event they wish to sell it. Mr. Petersen reported that the Planning and Zoning Commission recommend approval of the proposed plat. He added that the applicant has requested the first and final readings of the subject ordinance.

City Counselor John Beger read the following proposed ordinance for its first reading, by title. ORDINANCE NO: 3919: AN ORDINANCE APPROVING BLUE'S LAKE PLAT NO. 7, A SUBDIVISION IN ROLLA, MISSOURI (ST. JOHNS CLINIC/NEENAN CO.). A motion was made by Williams and seconded by Jordan to suspend the rules and that the ordinance be read for its final reading, by title. A voice vote on the motion showed twelve ayes, zero nays, zero absent. Motion carried. City Counselor Beger then read the proposed ordinance for its final reading, by title. A motion was made by Williams and seconded by Jordan to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Hawley, Spadoni, Jordan, Brown, Boeker, Williams, Walburg, Barklage, Magdits, Eudaly, Hicks, and Morris. Nays; None. Absent; None. Motion carried. The ordinance passed.

**(C) Request for Ordinance to Execute a Mutual Aid Agreement with the Phelps County Regional Medical Center:**

Fire Chief Robert Williams referred the Council to the proposed mutual aid agreements between the City of Rolla Fire and Rescue Department and the Phelps County Regional Medical Center (PCRMC). He noted the Fire Department already provides PCRMC with fire protection, hazardous materials response, and decontamination of their staff and patrons. Chief Williams indicated that the proposed agreements are some housekeeping type duties the hospital and the joint commission have requested. Staff is requesting the first and final readings of the subject ordinance.

After some discussion, City Counselor John Beger read the following proposed ordinance for its first reading, by title. ORDINANCE NO. 3920: AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF ROLLA, MISSOURI TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI, A MUTUAL AID AGREEMENT FOR FIRE PROTECTION BETWEEN THE PHELPS COUNTY REGIONAL MEDICAL CENTER AND THE CITY OF ROLLA. A motion was made by Williams and seconded by Barklage to suspend the rules and that the ordinance be

**V. NEW BUSINESS (continued)**

**(C) Request for Ordinance to Execute a Mutual Aid Agreement with the Phelps County Regional Medical Center (continued):** read for its final reading, by title. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried. City Counselor Beger then read the proposed ordinance for its final reading, by title. A motion was made by Barklage and seconded by Spadoni to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Spadoni, Walburg, Boeker, Williams, Brown, Hawley, Magdits, Jordan, Morris, Eudaly, Hicks, and Barklage. Nays; None. Absent; None. Motion carried. The ordinance passed.

**(D) Request for Ordinance Clarifying the Policy on the Inter-Fund Transfers/General Fund Revenues:** City Administrator John Butz indicated that this issue was discussed by Council a couple of weeks ago and it was an issue raised in the State Audit. The State Auditor asked for a more formal procedure on how the City conducts its transfers. Mr. Butz told the Council that the proposed ordinance contains two sections. One section is entirely unrelated to the State Audit. He explained that this was a confirmation from the Council's budget retreat in December 2008 where Council suggested that formal direction be established for the City's policy for General Fund reserves. Mr. Butz stated that the proposed ordinance provides a requirement for a 25% reserve balance and exceptions if a supermajority of the Council supports them. The second section pertains to the transfer of unencumbered funds. Mr. Butz pointed out there are a number of scenarios to use and he suggested using the more generic wording that basically says the Council is hereby authorizing the transfer of funds. However, as part of the budget process, it is up to staff to provide the detail as to how it is backed.

Following discussion, City Counselor John Beger suggested amending the second to last sentence of Section 2 (b) of the proposed ordinance to read, "Said costs will be assigned by an accounting of the administrative overhead as incurred by each fund as a percentage of the total budget."

After additional discussion, the Council asked that another draft ordinance be presented at the Council's next meeting with the recommended changes.

**(E) Discussion Regarding Solicitation of Donations on Public Streets:** City Administrator John Butz recalled that the issue of soliciting donations on public streets first surfaced about eight years ago with the Muscular Dystrophy Association (MDA) and the Fire Union and it surfaced once again within the last month. He explained that the Council has been asked to either consider a waiver of its prohibition on soliciting donations and funds on any streets or highways in Rolla or reconsider the prohibition.

**V. NEW BUSINESS (continued)**

**(E) Discussion Regarding Solicitation of Donations on Public Streets (continued):**

Mr. Butz noted that City Code states, "There shall be no solicitation on any public street or highway in the City of Rolla." He added it does not provide a mechanism for granting a waiver. Mr. Butz reported there are a number of cities that allow solicitation of donations and State law permits it under RSMo. 67.304. Additionally, limitations may be imposed such as those listed in the agenda materials.

Fire Chief Robert Williams addressed the Council and introduced Mr. Jerry Bear representing MDA who manages several fundraising drives in conjunction with fire departments across the state. Chief Williams told the Council that the Rolla Fire Department has historically conducted "Fill the Boot Drives" at Wal-Mart and they had been very successful until the past two to three years when contributions have declined. He informed the Council that the firefighters approached him asking if there would be any way they could possibly expand the "Fill the Boot Drive" areas by going back into the streets. Chief Williams indicated that the Fire Department would work in conjunction with Public Works Director Steve Hargis and Police Chief Mark Kearse.

Mr. Bear reported that one reason the Rolla Fire Department requested the expansion of the Rolla "Fill the Boot Drive" is because they attended a meeting of a four state firefighter group that included many cities like Omaha, Wichita, Topeka, Kansas City, and St. Louis who are allowed to do on-street donation solicitation. In the history of charitable events, the "Fill the Boot Drive," MDA and the firefighters is one of the longest relationships in the history of charitable events. Since 1954, \$340 million has been raised with the "Fill the Boot Drive." Mr. Bear informed the Council that he represents the Greater Ozarks Chapter, which includes Phelps County, and 51 fire departments. Currently, 48 of the 51 departments are allowed to conduct on-street fundraising solicitations. Mr. Bear reported that in 33 years, no firefighter has been injured during a boot drive. He added that the only individuals who collect during the Boot Drives are firefighters, and MDA carries a \$1 million insurance policy.

After discussion, the Council consensus was to authorize staff to draft an ordinance for Council's consideration at its next meeting to allow fundraising solicitation on public streets that incorporates the twelve on-street collections considerations contained in the agenda materials.

**V. NEW BUSINESS (continued)**

**(F) Motion to Grant Right-of-Way Easements to Intercounty Electric (Rolla National Airport):** City Administrator John Butz told the Council that Intercounty Electric is in the process of rerouting some of the three-phase electric lines on the backside of the Rolla National Airport. Since the Council agenda was distributed, Mr. Butz told the Council that Intercounty Electric advised the City that they now plan to completely replace the fence lines. Staff recommends approval of the three easements.

After some discussion, a motion was made by Hicks and seconded by Spadoni to authorize the Mayor to execute the three separate (but related) easements to Intercounty Electric Cooperative Association. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried.

**VI. CLAIMS and/or FISCAL TRANSACTIONS**

**(A) Motion to Approve the Authorized Financial Institutions and Dealers:** Finance Director Steffanie Rogers recalled that on May 19, 2008, UBS Financial Services requested that they be added to the list of authorized financial institutions for the City's investments and the Council voted to not include them in the listing. Ms. Rogers explained that UBS Financial Services has since requested that the Council reconsider adding them to the authorized financial institutions list. She pointed out that the agenda materials include documentation explaining the allegations made against UBS Financial Services.

Following discussion, a motion was made by Barklage and seconded by Eudaly to approve the submitted list of authorized fourteen financial institutions and dealers with the exception of UBS Financial Services. A voice vote on the motion showed eight ayes, four nays, and zero absent. Motion carried.

**(B) Motion to Award the Fuel Services for the Rolla National Airport:** City Administrator John Butz mentioned that the City periodically request bids for wholesale fuel purchases (100 low lead and Jet-A fuel) for the Rolla National Airport. The City has been using the apparent low bidder, Arrow Energy, since at least 1999, and the City has been pleased with their service. Staff recommends awarding the bid for the fuel services to Arrow Energy for a projected total cost of \$137,034. Following discussion, a motion was made by Hicks and seconded by Morris to award the Rolla National Airport fueling services bid to Arrow Energy (Conoco/Phillips). A voice vote on the motion showed eleven ayes, one nay, and zero absent. Motion carried.

**VII. MAYOR/CITY COUNCIL COMMENTS**

**(A) Appointment of Dan James as an Alternate to the Board of Adjustment:** A motion was made by Eudaly and seconded by Hicks to appoint Mr. Dan James as an alternate member to the Board of Adjustment. A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried.

**(B) Reappointment of Bill Marshall to the Rolla Regional Economic Commission:** A motion was made by Hicks and seconded by Eudaly to reappoint Mr. Bill Marshall to the Rolla Regional Economic Commission (RREC). A voice vote on the motion showed twelve ayes, zero nays, and zero absent. Motion carried.

**(C) Councilmen D. Morris, D. Barklage, and D. Brown: Motion to Consider Official Censure of Councilwoman Donna Hawley:** Mayor Jenks turned the floor over to Councilman Don Morris who read the attached memorandum from Councilmen Don Morris, Don Barklage, and Don Brown regarding a motion to consider an official censure of Councilwoman Donna Hawley.

Councilwoman Hawley asked the Council what their intentions are with the censure. She said it has no teeth, it is spineless, and it is just a public acknowledgement of the fact that they dislike her. Councilwoman Hawley stated the Council dislikes her politics, the fact that she brings forth plenty of research and issues. She added that as far as she knows there is nothing wrong with criticizing City Hall and the actions of City Council people. Councilwoman Hawley pointed out that all of the items listed in the proposed censure are all essentially guaranteed by her right of freedom of speech. She told the Council she voted against the Code of Conduct because she said she knew from the beginning that it would be used as a retaliatory document and had a pretty good idea who it would be used against.

After much dialogue, a motion was made by Brown and seconded by Hawley to censure Councilwoman Donna Hawley for unprofessional conduct as a member of the Rolla City Council and urge her commitment to a spirit of cooperation and constructive debate and dialogue in the affairs of the City of Rolla. After further dialogue, a voice vote on the motion showed ten ayes, one nay. Councilman Williams indicated that he voted against the motion because he did not want to give Councilwoman Hawley the satisfaction of knowing that he had voted for it. Councilwoman Hawley did not vote. Motion carried.

**VIII. COMMENTS FOR THE GOOD OF THE ORDER**

None.

**IX. CLOSED EXECUTIVE SESSION**

None.

**X. ADJOURNMENT**

Having no further business, the meeting adjourned at approximately 9:29 p.m.

Minutes respectfully submitted by City Clerk Carol Daniels.

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CITY CLERK

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MAYOR