



BOARD OF ALDERMAN REGULAR MEETING
1 GOVERNMENT CTR, BALLWIN, MO 63011
MONDAY, OCTOBER 11, 2021 at 7:00 PM

AGENDA

- 1. Call to Order**
- 2. Roll Call**
- 3. Pledge of Allegiance**
- 4. Approval of Minutes**
 - [a.](#) September 27, 2021 Board of Aldermen Meeting Minutes
- 5. Citizen Comments**
- 6. Presentations**
- 7. Old Business**
- 8. Legislation**
- 9. Consent Items**
 - [a.](#) Personnel Manual Chanes
 - [b.](#) PD Building Envelope Bid Award
 - [c.](#) Rotary Club-Liquor License
- 10. Mayor's Report**
- 11. City Administrator's Report**
- 12. City Attorney's Report**
- 13. Staff Reports**
- 14. Aldermanic Comments**
- 15. Closed Session**
- 16. Adjourn**

NOTE: Due to ongoing City business, all meeting agendas should be considered tentative. Additional issues may be introduced during the course of the meeting.

CLOSED SESSION: Pursuant to Section 610.022 RSMo., The Board of Aldermen could, at any time during the meeting, vote to close the public meeting and move to closed session to discuss legal matters, personnel/employee matters, and/or real estate, as provided under Sections 610.021(1) RSMo., 610.021(2) RSMo., 610.021(3) RSMo.

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Section 4, Item a.

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THE MINUTES ARE PREPARED IN SUMMARY TO REFLECT THE OVERALL DISCUSSIONS, NOT VERBATIM QUOTES.

The meeting was called to order by Board President Frank Fleming at 7:00 p.m.

ROLL CALL

Present

Alderman Mike Utt
Alderman Michael Finley
Alderman Kevin M. Roach
Alderman Mark Stallmann
Alderman Frank Fleming
Alderman Jim Leahy
Alderman Ross Bullington
Alderman Raymond Kerlagon
City Administrator Eric Sterman
City Attorney Robert Jones

Absent

Mayor Tim Pogue

The pledge of allegiance was recited.

Board President and Ward 3 Alderman Frank Fleming is chairing this meeting in Mayor Pogue's absence. Alderman Fleming stated that Mayor Pogue and his wife had made their plans over a year ago and they could not be changed; Mayor Pogue also sent his apologies. Alderman Fleming also wanted to clarify that, while Mayor Pogue does not vote unless there is a tie, he would still be voting as an Alderman even though he is chairing.

MINUTES

The minutes from the September 13, 2021, Board of Aldermen meeting were submitted for approval. Alderman Finley requested two changes be made to his comments on page seven of the minutes: to strike "for the meeting as he would like to have paper copies" from the first sentence and add "associated with a park" to the fifth line of the paragraph after "...parking with traffic patterns...". A motion was made by Alderman Finley and seconded by Alderman Roach to approve these amendments. A voice vote was taken with unanimous affirmative result and the motion passed. Alderman Bullington requested a change to his statement on page 8, adding "totaling 4000



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square feet” at the end of the first sentence. A motion was made by Alderman Bullington and seconded by Alderman Roach to approve the amendment. A voice vote was taken with unanimous affirmative result and the motion passed. A motion was made by Alderman Stallmann and seconded by Alderman Finley to approve the minutes from the September 13, 2021 Board of Aldermen meeting as amended. A voice vote was taken with unanimous affirmative result and the motion passed.

The minutes from the September 13, 2021 Board of Aldermen closed meeting were submitted for approval. A motion was made by Alderman Stallmann and seconded by Alderman Bullington to approve the minutes from the September 13, 2021 Board of Aldermen closed meeting as submitted. A voice vote was taken with unanimous affirmative result and the motion passed.

CITIZEN COMMENTS

Lisa Earley, 415 Gatehall Ln., addressed the Board. She asked the Board if they worked for the people of Ballwin or someone else. She also referred to a poll conducted on Next Door (social media) in which a majority of respondents were opposed to the development. She stated the Aldermen need to listen to the citizens of Ballwin. She feels traffic will be excessive and asked if the apartments are for lease or purchase. She also feels residents should be able to vote on the project.

Natasha Detwiler, 332 Country Club Dr., addressed the Board. She stated she has never understood why the new city hall was built. She referenced the Comprehensive Plan and Parks Master Plan. She stated she is disappointed in the City for the lack of transparency.

Shane Earley, 415 Gatehall Ln., addressed the Board. He stated he is opposed to the plan and disappointed. He also stated apartment residents are transient and only the developers will benefit from this project.

Connie Oster, 743 Stoney Creek Ln. addressed the Board. She stated that the Board’s acceptance of the proposed development breaks a promise to the citizens of Ballwin and becomes a lie. She played an audio clip from the Ballwin Life Podcast, episode three, which talked about creating greenspace at the site of the old government center. She asked why they would want to throw away the opportunity to expand greenspace in Vlasik Park. Ms. Oster also stated that the developer, Mr. Evans, has not answered questions from Ballwin residents. She asked the Board if the opinions of 31,000+ Ballwin residents were more important than approximately 342 potential tenants.



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Barb Ryan, 113 Holly Green, addressed the Board. Ms. Ryan feels there are still questions from the previous meeting which need to be answered. She asked if there are other developments financed by Mr. Evans and the Landau Group, will Landau be paying Ballwin for the property which the old government center sits on and how much and is Mr. Evans part of Landau Group or is Landau Group one of his clients. She talked about Bill 4100 which passed at the last meeting and gave the developers approval for the plat, but not where it would be located. She urged the Board to not pass Bills 4101 and 4102 until citizens can be heard. She stated she checked the minutes from the July 6, 2021 Planning and Zoning Meeting; only one Alderman and the Mayor were present and the only citizen comment was that more information was needed. She asked again that the Board either table these two bills until more information is available or vote no.

Brian Neary, 809 Westwood, addressed the Board. He thanked the Mayor and members of the Board for the time they have served the citizens of Ballwin, but was here because he feels they have not been listening to their constituents. He stated there is so much wrong with this development, but he was only going to talk about parking. Mr. Neary shared that the national average of vehicles per household is 1.88 and in Ballwin, it is 2. Using the 1.5 ratio used to figure parking for the development, this will leave 73 vehicles trying to find parking. The Parc Place development is completely isolated space along a road dedicated for park use with zero opportunity for residential street parking. People will be left to find parking in any available place such as the church, bank, Vlasik Park, etc. He asked how the situation will be handled when cars in overflow parking at the food truck park need to be moved for the food trucks and wanted to know how the parking issues would be enforced.

Janice Viazanko, 809 Westwood, addressed the Board. She stated that, in 2019, the City adopted the Comprehensive Plan called the Ballwin Blueprint and as part of that, the former city hall site was to become a gateway into Vlasik Park. She stated that, technically, the former city hall site is city property and technically, the building we are currently in (the new government center) is park property; if the City doesn't distinguish between the two, residents won't either. Residents have been waiting for the City to seek their input for the old site. The proposed development doesn't have enough parking for residents so how will it support retail as well. The development is mixed-use in name only.

Therese Wegan, 11 Sweet Meadows, addressed the Board. She talked about seeing a wedding party in the park on the weekend prior, taking pictures around the lake and gazebo. In the future, there will not be a beautiful park worthy of pictures and memories. She stated that, depending on how they vote, there will just be an apartment building and urged the Board to vote no.

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Bev Gabbert, 420 Briarwyck, addressed the Board. She stated she has emailed eight of the Board members, but only heard back from three, so she's hoping they received her email. She wanted to express her dismay over the project and has no idea how this got so far. She agrees with the points made by other speakers and feels that this is a money grab. She doesn't feel the Aldermen are listening to their constituents.

Janice Bueg, 25 Steeple Hill, addressed the Board. She stated that if the Board wants truly mixed-use development, they should look at Main Street St. Charles where they have utilized the space beautifully. Adjacent to Vlasik Park is not the right place for the Parc Place development. She is feeling discouraged as she has enjoyed the park for most of her life and also stated that no greenspace can be acquired once it has been taken away. She also asked if anyone would want to eat at a food truck park that sits on a leach field; she would not want to sit on top of that as she knows how it is when a septic system backs up. She asked about the plan to handle this situation. She also stated this "gateway to Ballwin" will look no different than any of the other new apartment projects in the area.

David Knieram, 401 Far Hill, addressed the Board. He stated he brought his son so he could see democracy in action. Mr. Knieram stated Missouri Statute 89.040, the Manchester Road Revitalization Overlay and Comprehensive Plan are all being violated and that this is spot zoning, which is illegal. He stated he is an attorney and there is a lawsuit coming. He also said that if the Board passes this tonight, it's a bill to spend money which they should not be doing.

Joshua Johnson, 20 Log Hill Ln, addressed the Board. He stated he and his family just moved here three months ago. Out of all the parks they have been to, Vlasik is his son's favorite and it's the only one within walking distance of their home. As a parent of young children, he is concerned about the parking situation and subsequent traffic issues which will arise. He feels that people trying to find parking will become frustrated when driving on the park roads.

Marilyn Panter, 857 Hollyridge, addressed the Board. She thanked the Board for the opportunity to speak and to be heard. She asked where was the logic used to provide and substantiate the rationale for putting an apartment building in park space and is this really the best use for this space. She asked the Board to please listen to the citizens and to hear what is being said.

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Kat Albert, 405 Briarhill, addressed the Board. She presented a timeline of the proposed development. She stated the Urban Land Institute study was completed in May 2019 and it stated the space should be used for civic or community use. The Comprehensive Plan came out in June 2019 and was commensurate with the ULI study. In November 2019, Brent Evans presented his letter of intent which was not accepted as he did not follow procedure. The next time Mr. Evans was seen was at the July 6, 2021 Planning and Zoning meeting. She asked the Board to please consider not approving the project and maybe create more parking for residents using the park. Lastly, she stated kudos to Aldermen Finley and Utt for listening to their constituents and voting no and thanked Alderman Roach for responding to her email.

Steve Newsome, 902 Palm Bay, addressed the Board. He doesn't understand why they want to do this and it's just wrong.

Susan Newsome, 902 Palm Bay addressed the Board. She stated the people and the parks are what makes Ballwin so special so she doesn't understand why we'd give away space in Vlasik Park, Ballwin's primary park. Vlasik is where everything big in Ballwin happens such as Ballwin Days. Traffic tie-ups will be a mess. She urged the Board to vote no and not give the park away.

Alderman Fleming noted there were no more requests to speak and gave the petitioner an opportunity to address any concerns at this time. George Restovich, attorney for Brent Evans and the Landau Group spoke. He stated they had not anticipated making a presentation as they feel everything had been covered before. He stated this is a \$50-55 million redevelopment that is not in the park or the domain of the park. The space being used is the old city hall and JB Automotive to the west. He understands that there is no easy way to satisfy everyone. He also shared that the owners of JB Automotive had emailed the Board letting them know that they are wanting the project to go through as they are looking forward to retirement in Ballwin. Mr. Restovich also talked about similar concerns in other municipalities such as Twin Oaks and Ellisville, but feels this will be the nicest of all. The revenue from the sale of the building can be used by the City for other infrastructure issues and the project will eliminate current utility costs for the City as well. He stated again that they are not taking away any greenspace, but building into a difficult topographic area; they are maximizing the use of the property and beautifying it. The funding for the project is coming from someone local and they are not asking for any TIF or tax abatements.

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Brent Evans then spoke, stating he believes this will make Ballwin better. He uses the park just as much as anyone. He stated he is not here to destroy the park, but to change three pieces of worn out commercial property. He stated change is coming; he is taking responsibility for the environmental issues that exist on the property. This complex will give an alternative for people who wish to have maintenance free living and it's a building he'd like to live in.

Alderman Fleming recapped what had happened with the bills at the last meeting. Bill 4100 passed (5-3) at the last meeting. Bills 4101 and 4102 were read once and tabled. Discussion was held on both bills. Our process is to ask for a second reading; after the second reading, there is a vote with no further discussion. He asked that if any of the Aldermen had further comments, they save them for the Aldermanic Comments at the end of the meeting. He also noted that Bill 4102 will be a second reading as amended due to the changes made in the last meeting.

OLD BUSINESS

Bill 4101 - AN ORDINANCE AMENDING ORDINANCE NO. 557, KNOWN AS "THE ZONING ORDINANCE" OF THE CITY OF BALLWIN, AND AMENDING "THE DISTRICT MAP" BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN LAND IN THE CITY OF BALLWIN FROM PA PUBLIC ACTIVITY DISTRICT TO C-1 COMMERCIAL.

A motion was made by Alderman Stallmann and seconded by Alderman Leahy for a second reading of Bill 4101. A voice vote was taken with seven aye votes and one nay vote; Alderman Fleming noted that we are not required to observe procedure and would continue. Bill 4101 was read for the second time. Alderman Roach asked if we would have questions; Alderman Fleming responded no.

A roll call vote was taken for passage and approval of Bill 4101 with the following results:

Ayes – Aldermen Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays - Aldermen Finley, Utt, Roach

Bill No. 4101 was approved and became Ordinance No. 21-18

Bill 4102 - AN ORDINANCE ADOPTING A MANCHESTER ROAD REVITALIZATION OVERLAY DISTRICT FOR CERTAIN LAND COMMONLY KNOWN AS 14811, 14819 AND 14821 MANCHESTER ROAD IN THE CITY OF BALLWIN AND CURRENTLY ZONED C-1 COMMERCIAL.

A motion was made by Alderman Bullington and seconded by Alderman Stallmann for a second reading of Bill 4102 as amended. A voice vote was taken with seven aye votes and one nay vote ; Alderman Fleming again noted we would continue as we are not required to observe procedure. Bill 4102 was read for the second time.

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A roll call vote was taken for passage and approval of Bill 4102 with the following results:

Ayes – Aldermen Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays -- Aldermen Finley, Utt, Roach

Bill No. 4102 was approved and became Ordinance No. 21-19.

Board President Fleming asked for a motion for a five-minute adjournment due to crowd disruption. A motion was made by Alderman Bullington and seconded by Alderman Kerlagon. A voice vote was taken with unanimous affirmative result and the motion passed. The Board adjourned at 7:52.

A motion was made by Alderman Stallmann and seconded by Alderman Finley to reconvene. A voice vote was taken with unanimous affirmative result and the motion passed. The Board reconvened at 7:57.

LEGISLATION

Bill 4103 - AN ORDINANCE AMENDING PROVISIONS OF CHAPTER 3 OF THE CITY CODE OF ORDINANCES REGARDING ALCOHOLIC BEVERAGES.

A motion was made by Alderman Bullington and seconded by Alderman Kerlagon for a first reading of Bill 4103. A voice vote was taken with unanimous affirmative result and Bill 4103 was read for the first time.

Discussion:

Alderman Roach asked City Attorney Bob Jones if the amendments to our ordinance were to bring it into compliance with state law changes. Mr. Jones replied yes and further explained the changes which were to change the Sunday sales hours and to codify the emergency order enacted during the pandemic for to-go cups.

A motion was made by Alderman Bullington and seconded by Alderman Leahy for a second reading of Bill 4103. A voice vote was taken with unanimous affirmative result and Bill 4103 was read for the second time.

A roll call vote was taken for passage and approval of Bill 4103 with the following results:

Ayes – Aldermen Finley, Utt, Roach, Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays -- None.

Bill No. 4103 was approved and became Ordinance No. 21-20.



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Bill 4104 - AN ORDINANCE AMENDING MOTORCYCLE HELMET LAWS FOR DRIVERS AND PASSENGERS.

A motion was made by Alderman Finley and seconded by Alderman Kerlagon for a first reading of Bill 4104. A voice vote was taken with unanimous affirmative result and Bill 4104 was read for the first time.

Discussion:

Alderman Roach again asked City Attorney Jones if the amendments to our ordinance were to bring it into compliance with state law. Mr. Jones stated yes and further explained that a person over the age of 26 can ride without a helmet if they can prove they have financial responsibility. An operator and/or passenger under the age of 26 must wear a helmet.

A motion was made by Alderman Roach and seconded by Alderman Kerlagon for a second reading of Bill 4104. A voice vote was taken with unanimous affirmative result and Bill 4104 was read for the second time.

A roll call vote was taken for passage and approval of Bill 4104 with the following results:

Ayes – Aldermen Finley, Utt, Roach, Stallmann, Fleming, Leahy, Bullington, Kerlagon

Nays – none

Bill No. 4104 was approved and became Ordinance No. 21-21.

MAYOR'S REPORT

Nothing to report from Mayor Pogue.

CITY ADMINISTRATOR'S REPORT

City Administrator Sterman reminded the Board that there will be budget workshops before both October meetings. The workshops will begin at 6 p.m.

CITY ATTORNEY'S REPORT

Nothing to report

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STAFF REPORTS

Public Works – Leaf Collection 2021

Staff recommends awarding the unit price contract to West County Landscaping not to exceed \$91,188.

Discussion:

Public Works Director Jim Link stated that only one bid was received and he is asking the Board's approval as recommended. Alderman Leahy asked if there would be four passes through Claymont this year; Mr. Link replied there would be. Alderman Utt asked if Public Works was down seven employees right now; Mr. Link replied yes.

A motion was made by Alderman Roach and seconded by Alderman Stallmann to approve staff's recommendation. A voice vote was taken with unanimous affirmative result and the motion passed.

Public Works – Temporary Labor 2021

Staff recommends awarding the contract to Westside Personnel for the unit price of \$19.74 per hour.

Discussion:

Mr. Link stated only two bids were received and he is asking the Board's approval on both in case they cannot get enough staff from the low bidder. Alderman Utt asked if the budgeted amount would be enough since we are down seven employees; Mr. Link replied it would be as the temporary labor is used only for raking leaves.

A motion was made by Alderman Roach and seconded by Alderman Utt to approve staff's recommendations. A voice vote was taken with unanimous affirmative result and the motion passed.

ALDERMANIC COMMENTS

Alderman Finley read his comments from the last Board meeting and feels his reasons for voting no still apply. He thanked everyone who stayed and also those who engaged with the Board. He also stated that, while the vote did not go the way most people wanted, he, as the most senior member of the Board in the minority, believes his colleagues are honorable individuals. He respects their opinions and knows they reviewed everything. He also knows they are trying to think of what is best for Ballwin. He also shared that things he has read on social media are very unfair and that we need to resist hatred. This has been a strong issue which everyone cares about and he appreciates everyone coming out.

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Alderman Utt thanked everyone who came out. He stated that as a citizen of Ballwin for 44 years, a commissioner on Planning and Zoning for 10 years and an Alderman for two and a half years, he does not take decisions like this lightly and he can confidently say that none of the other gentlemen on the Board do either. He also read social media comments and feels they are not fair and not true. He stated that this building, at seven stories, would be the tallest building in Ballwin. In his opinion, he doesn't feel it fits in the surrounding area. He also believes it would negatively affect the character of the immediate vicinity and for these reasons, he voted no.

Alderman Roach stated he did not feel there was anything he could add that hasn't already been said.

Alderman Stallmann thanked everyone who took time to share their thoughts and concerns about the project which was approved this evening. He stated he has heard from people opposed, those who have concerns and those who want the project to move forward. He wanted to share his thoughts regarding the project. He stated the three parcels of land are not part of Vlasia Park nor have they ever been since the park was established in the early 1960's. The old government center site, and the only one of the three parcels controlled by the City, was acquired by the City in 1996 from Charter Communications. It was acquired not for park land, but to become the new city hall which needed to move out of the police department. He shared that, for many years, the City has recognized the need for mixed use and commercial development on Manchester. As far back as the early 2000's, then Mayor Walt Young told the comprehensive plan steering committee that he would like to see city hall relocated to the Ballwin Golf Course and the government center be made available for commercial development; per our current planning director, the proposed project is consistent with many of the goals of our current comprehensive plan. In accordance with these goals, the current Board of Aldermen voted unanimously to approve the petitioner's bid to purchase the government center subject to approval of their plan. The Planning and Zoning Commission also reviewed this proposal and unanimously recommended its approval to the Board of Aldermen. The other two parcels which are part of this proposal are privately owned and already zoned commercial; they are for sale and the City has limited authority to control what commercial entities eventually purchase the property. Alderman Stallmann also stated he would not vote for the project if any financial assistance was being asked for by the petitioner; the project is 100% privately funded. While Ballwin does not impose a real estate tax on property owners, the funds received from the property taxes paid by the apartment owners will more than offset any costs incurred by the school district, fire district, sewer district and any other entity as a result of this project. He also shared that the petitioner has increased parking within the structure to meet the requirements of our commercial zoning regulations and has doubled the retail component of the project to 4000 square feet. The completed project apartments will be offered to potential tenants at market rents and no government backed rent assistance is being sought. Alderman Stallmann also stated he knows everyone on the Board supports and is dedicated to improving our parks and the development of usable greenspace. Turning the government center into greenspace would cost upwards from \$400,000 to \$500,000 to turn it into a grassy hill next to Manchester Rd. and next to commercial operations. This is not usable greenspace and not a good use of tax dollars. He believes it would be a better idea to use the proceeds of the sale of the old government center and relocate the cell tower to improve and renovate

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our existing greenspace and its amenities as well as to acquire additional usable greenspace for citizens. Alderman Stallmann then stated that all of the members of the Board of Aldermen have taken an oath to uphold the laws of the City of Ballwin and they must evaluate all matters that come before them in light of the laws of the City, state and nation. In his opinion, the proposal meets the requirements of the zoning codes.

Alderman Fleming shared that he appreciates all the emails, phone calls and other communications received regarding the apartment complex. Many comments were negative, but there were some positive comments as well. Either way, some group of people would be disappointed. Ballwin is 12,000 homes and 32,000 people; a lot of people are vocal while others wait to see the process. He stated he tries to break this into two pieces; one is whether it follows our processes and if we have a valid proposal to consider. The Board has always been very careful about this. The petitioner worked with staff to make sure the requirements for Planning and Zoning were met. It was submitted to and approved by Planning and Zoning. Once something is approved it becomes more difficult to deal with as Planning and Zoning has said it is valid and fits our requirements. The Board asked the petitioner to respond to some specific things brought up from Planning and Zoning; the parking ratio (raised to 1.5 from 1.2) and retail space. Alderman Fleming believes at that point the requirements had been met and there was a valid proposal to decide on. It is difficult to turn down something which meets requirements set forth by the City. That was his first test and everything appeared to be in order. He considered all feedback received and stated the old saying “if you’re not growing, you’re dying” applies here. Literally any development in the City (Old Towne, Schnucks for example) would not have been built if they relied upon a few vocal opponents. He also stated, lots of times this Board is almost in complete unanimous agreement on topics. This one is a little unusual for the Board because it’s easy to see both points of view. Alderman Fleming said he is trying to focus on the future without sacrificing the present. With regard to some of the objections raised about greenspace, it is true there are documents and a podcast from a former city employee talking about that space in particular and what should happen with that space. It is also true that the Manchester Overlay District and Comprehensive Plan allows that. We sent out RFP’s on the property and we’ve always kept our options open on what can happen on that piece of property and very recently we considered it as a possible location of the new police department. We’ve kept our options open to find the best use for it. It is a very difficult site as it is below street level and has some encumbrances upon it with telecommunications equipment and the cell phone tower. It would have been expensive for the City to simply turn it into grass even before putting anything on it. We are not neglecting greenspace. For example, we have purchased properties around town including at Ferris Park which allowed us to build it out and turn it into something nicer. Greenspace is very important to us and we pride ourselves on our parks and recreation facilities and golf course. Traffic was another objection made by many. Every proposal received for a development on Manchester Rd. is going to have some effect on traffic but that doesn’t mean we can never build anything on Manchester Rd. Regarding the comments about building it elsewhere or we don’t need more apartments, the petitioner brought the proposal for that piece of property and at the last meeting and this evening, gave his reasons on how it complimented the park and why they wanted to build it there. The Board has to decide on what is brought before them and that is what was brought to them. The petitioner is an individual

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with a group of investors. They decide where to invest their money; if they wanted to build someplace else, they would have brought that proposal. He believes our processes were followed. As far as we don't need any more apartments, anytime a gas station or something else is built, people will say we don't need it here. If you look at apartments all along Manchester, from Des Peres to Wildwood, some of these complexes are aging. Many of the aging complexes have a lot of surface parking which can lead to lots of car break-ins. Parking for much of this complex will be underground which will be good. With regard to other objections such as this being a tax grab and overwhelming the school district, this project will probably benefit Ballwin to some degree from a tax perspective but everyone needs to remember that we don't collect property tax as a City. School and fire districts do, so they will benefit from this but we are not doing this because it benefits us. As far as school overcrowding, he feels that if 50 families with children moved in, he would say that is good for the community and school districts will adjust accordingly. While all this can be debated, there's no wrong answer. People are entitled to their feelings, but the Board has to decide if it is a legal and proper proposal which has met our requirements and take feedback into account and make the best decision possible. Alderman Fleming stated he made a decision that was different from some others which was upsetting to some, but these are his answers to questions raised. He thanked everyone for their participation and making their voices heard. He also thanked staff for making the meeting work. He stated there is still a lot to do with the project and still some challenges ahead, but we will make sure the project continues to meet requirements set out and that the project is done very well.

Alderman Leahy had no comments.

Alderman Bullington stated he took several pages of notes during the meeting and has received emails and met with some people personally. He knows that many are disappointed in how this has come about. He has always wanted to add greenspace to all of our parks where possible. Challenges as outlined in the conclusion of the redevelopment of the city hall area, such as the topography and JB Automotive area, have to be dealt with. He thanked his fellow Aldermen for their dedication, stating that this was not something that was done easily. He also shared that he is a retired principal and today he attended the funeral of a great kid. He encouraged people to always reach out to those you care for.

Alderman Kerlagon stated he feels everything's been said and he can leave with a clear conscience; they are not being bribed. He also stated he felt insulted by comments insinuating that they are.



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A motion was made by Alderman Roach and seconded by Alderman Stallmann to adjourn. The motion was passed by unanimous affirmative voice vote and the meeting adjourned at 8:23 p.m.

TIM POGUE, MAYOR

ATTEST:

POLLY MOORE, CITY CLERK



Consent Item

RE: Personnel Manual Revision

Department/Program: Administration

Explanation:

- **ALCOHOL & CONTROLLED SUBSTANCE USE, ABUSE & TESTING POLICY**

Include for Full-time employees who are in their qualifying period to be terminated if they have a positive drug/BAT test result. Draft policy is attached.

- **UNPAID LEAVE FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE (VESSA)**

Please be advised that new Missouri statutes 285.625 to 285.670 require employers (including political subdivisions) with at least 20 employees to provide unpaid domestic violence leave (with no interruption of health insurance). Safety accommodations may also be requested by the employee. The leave is 2 weeks for employers with more than 50 employees. I have attached a policy drafted by City Attorney Jones, to be added to the personnel manual. This will be added to section VI. Leaves of Absence.

Recommendation: Accept personnel manual revisions as provided.

Submitted By: Haley Morrison

Date: 10/4/2021

ALCOHOL & CONTROLLED SUBSTANCE USE, ABUSE & TESTING POLICY

It is the policy of the City of Ballwin to provide safe, dependable, and economical services to its citizens, to provide safe working conditions for its employees, and to comply with the requirements of federal law and regulations related to the Drug Free Workplace Act of 1988 and all other applicable law, as amended. It is also the policy of the City to provide healthy, satisfying, working environments for its employees.

To meet these goals, it is the policy of the City to insure that its employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; to create a work place environment free from the adverse effects of alcohol and controlled substances, abuse or misuse; to prohibit the unlawful manufacture, distribution, dispensing, possession or use of alcohol and controlled substances; and to encourage employees to seek professional assistance when personal problems, including alcohol and controlled substance dependency, adversely affect their ability to perform assigned duties.

Policy Administrator

Unless otherwise designated by the City Administrator in writing, the Human Resource Coordinator shall be the Alcohol and Controlled Substance policy administrator for the City. Any inquiries concerning this policy, its application, its administration, or its interpretation shall be made to the policy administrator.

Alcohol & Controlled Substances Prohibitions

An employee is prohibited from the operation of a commercial motor vehicle and/or from engaging in any work related functions, for alcohol related conduct:

1. while consuming alcohol or being under the influence of alcohol
2. within four hours of consuming alcohol; or
3. after refusing to submit to an alcohol test;

An employee is prohibited from the unauthorized use, possession, or sale of alcohol or a controlled substance at any time, whether on or off duty. These prohibitions shall not apply to legitimate undercover activities of police officers which are undertaken in accordance with the direction of the Police Department.

Any employee convicted of illegal conduct related to controlled substances or alcohol or who fails to report such a conviction to the policy administrator within five calendar days shall be subject to immediate termination from City service.

Controlled Substance & Alcohol Provisions

Employees covered by this policy shall be subject to controlled substances and alcohol testing including the following types of test: pre-employment testing, random testing

(except as provided herein), reasonable suspicion testing; post-accident testing; return to work testing; and follow-up testing to rehabilitation programs.

Part-time, ~~and~~ Seasonal and Full-time employees who are in their qualifying period, may be immediately terminated following a positive test. Full-time employees, who are not in qualifying period shall have the opportunity to enter into a rehabilitative agreement and considered “an eligible employees.” If the employee declines this agreement, or fails the return to work test, he or she may be immediately terminated from employment. If an eligible full-time employee has a second positive test during his or her employment, he or she may be immediately terminated from employment.

Tested Substances

The substances that are tested pursuant to this policy are alcohol and those controlled substances listed below, which may be updated from time to time.

Marijuana metabolites/THC

Cocaine metabolites

Amphetamines (including methamphetamine, MDMA)

Opiates (including codeine, heroin (6-AM), morphine)

Phencyclidine (PCP)

Any other substances that may be tested using the same method used to test for controlled substances will not be tested and, if found, will not be reported.

Prescription Drugs

Use of prescription drugs is allowed if the employee is capable of performing regular work duties as determined by a physician. If there arises any question about an employee's ability to safely perform the duties of his or her job, a supervisor must be contacted immediately to evaluate the situation.

Testing Methods

Any drug and/or alcohol testing required or requested by the City will be conducted with specimen collection on-site at the lab.

Licensed Laboratories

Any drug and/or alcohol testing required or requested by the City will be conducted by a laboratory properly licensed under all applicable laws, rules and regulations.

Pre-Employment Testing

Pre-employment urine drug testing shall be required of all applicants for positions covered by this policy as a condition of the application procedure. Satisfactory test results are required prior to commencement of employment and/or engaging in safety sensitive functions, and the failure of a controlled substance or alcohol test disqualifies an applicant from appointment to City employment. For certain positions, evidence of the absence of controlled substances or alcohol dependency from a Substance Abuse Professional

(SAP) and negative controlled substance and alcohol tests shall be required prior to further consideration for any employment, including reports from prior employers by employee written authorization.

Reasonable Suspicion Testing

Reasonable suspicion testing shall be used to determine fitness for duty evaluations, including appropriate urine and/or breath testing when any person (even anonymously) reports to the City that there are reasons to believe that controlled substance or alcohol use is adversely affecting an employee's job performance or that the employee has violated this policy. Reasonable suspicion observations and reports that result in testing can only be made by supervisory or management personnel who are trained to detect the signs and symptoms of controlled substance and alcohol use and who may reasonably conclude that an employee may be adversely affected or impaired in the employee's work performance due to the use of the controlled substance or alcohol. The observing supervisor or manager, whether or not the person is the employee's immediate supervisor, is required to complete the appropriate required documentation concurrent with the observation and consideration to impose reasonable suspicion testing.

Reasonable suspicion testing shall be required and completed whenever possible within two hours of the observation, but in any case no later than before eight hours after the observation for breath alcohol testing and 32 hours for controlled substance testing.

Post-Accident Testing

Post-accident testing shall be required of employees after any work-related injury or accident, including but not limited to, a vehicular accident in which a fatality has occurred, or when a traffic citation is issued after an accident. Testing may be required where injury to a person requires transport to a medical treatment facility, or disabling damage to one or more vehicles requires towing from the accident site to occur. Testing shall include both breath alcohol and urine drug testing of the employee(s). The testing shall be imposed on all employees whose performance may have contributed to the accident, as well as the employee who were involved in the accident.

Post-accident testing shall be required and completed whenever possible within two hours of the accident occurrence, but in any case no later than before eight hours after the accident for breath alcohol testing and 32 hours for controlled substance testing. An employee involved in an accident shall refrain from alcohol consumption for eight hours following the accident.

Random Testing

Random testing shall be conducted on all positions that require a CDL, safety sensitive duties, emergency services duties, law enforcement duties and other positions as assigned. Random testing may be applied to all other employees consistent with the

limitations stated in this policy. Random testing shall be unannounced and conducted with unpredictable frequency throughout the year using an established scientifically based selection method. Testing shall be conducted whenever and as ordered by appropriate supervisory personnel, but no less frequently than required by federal law and regulations, and in such numbers as are minimally determined under the regulations.

Random testing shall be conducted on a monthly basis for **all CDL and Safety Sensitive** employees.

Return to Work Testing

Return to work urine drug and alcohol testing shall be required for all **eligible** full-time employees who previously tested positive on a controlled substance or alcohol test, and may be required for all full-time employees upon return to work from any type of extended period of leave. To return to work after testing positive, an employee must test negative and be evaluated and released to return to work by a SAP before being permitted to return to work

Follow-up Testing

Follow-up testing of **eligible** full-time employees returning to work shall be required. **Eligible** full-time employees shall submit to frequent unannounced random urine drug and breath alcohol testing for at least the following 12 months after return to work, which random testing may be continued for a period for up to 60 months from the employee's return to work date.

Any employee who questions the results of a required urine drug test under this policy may request that an additional test be conducted. The test must be conducted on a split sample that was provided at the same time as the original sample and the test analysis shall be conducted at a different qualified laboratory than where the original test was conducted. All costs for employee-requested testing shall be paid by the employee unless the second test invalidates the original test. An employee's request for a re-test must be made to the Medical Review Officer (MRO) within 72 hours of the notice to the employee of the initial test result. Requests made after the 72 hour limit will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

The method of collecting, storing, and testing the split sample required under this policy shall be consistent with the procedures established in 49 CFR Part 40.

Failure to Test

Any employee who fails to submit to the required testing under this policy is considered to have tested positive and shall be subject to all of the consequences that follow related to positive testing.

Any employee ordered to test shall report immediately to the test site upon being ordered to submit to testing. No delay of any type may be granted or taken. Delay in reporting by the employee shall be treated as a refusal to test and shall subject the employee to all of the consequences that follow related to positive testing. Failure to provide a sufficient sample or for providing an adulterated sample may be considered as a refusal to test and shall subject the employee to all of the consequences that follow.

In either case, full-time employees that have a first-time positive test shall have the ability to enter into a rehabilitative assistance plan. Full-time employees that have a second positive test may be immediately terminated without recourse.

Employment Assessment

An **eligible** full-time employee who tests positive for the presence of controlled substances or alcohol above the minimum thresholds set forth in the federal regulations shall be evaluated by a SAP. The SAP shall evaluate each employee who tests positive to determine what assistance, if any, the employee needs in resolving problems associated with the controlled substance or alcohol.

Assessment by a SAP does not protect an employee from disciplinary action or guarantee continued employment or reinstatement by the City. The City's disciplinary policy provides guidance to the discipline that may be imposed, unless otherwise stated in this policy.

Rehabilitation Effort

Any **eligible** full-time employee who voluntarily presents himself/herself to appropriate City officials for the treatment and/or rehabilitation for a controlled substance or alcohol related problem prior to investigation or detection shall be permitted to seek rehabilitation under the rehabilitation contract with the City.

Any **eligible** full-time employee who is determined to be in need of assistance for a controlled substance or alcohol related problem under this policy or by the SAP may be permitted to enter into the City's rehabilitation plan, provided the employee agrees to adhere to the terms of the rehabilitation contract with the City.

Education & Training

The City shall make available to all employees a copy of this policy and materials related to the effects of the use and/or abuse of alcohol and controlled substances. The City shall also provide information to employees regarding treatment and rehabilitation available. Employees shall be required to confirm receipt of this policy and any revisions and of the educational materials in writing noting the date of receipt and acknowledgment by signature witnessed by the supervisor providing the materials.

Confidentiality

All records developed and/or acquired pursuant to this policy shall be maintained under strict confidentiality by the City, the testing laboratory, the MRO and the SAP, when and as applicable. The records shall be maintained separately from other personnel records and shall be kept in a secured location with other medical records. Materials shall not be released to others without the written consent of the affected employee, except under provisions provided in the federal regulations, as needed with regard to the rehabilitation contract, in litigation or quasi-judicial and administrative proceedings related to positive test results and/or to matters initiated by an employee.

Any person who breaches the confidentiality provisions of this policy shall be subject to immediate termination from employment and/or from any contractual relationship with the City without recourse.

Disciplinary Issues

Unless otherwise specified in this policy, the City policies related to disciplinary action shall be followed when imposing discipline for violation of this policy.

The acceptance by an **eligible** employee of the rehabilitation assistance plan and contract does not serve as a bar to the City imposing disciplinary action related to violations of the policy.

Any supervisor or manager who knowingly permits an employee to violate this policy or engage in work activity while consuming or under the influence of alcohol or a controlled substance or fails to enforce this policy shall be subject to disciplinary action up to and including immediate termination from employment with the City.

This policy does not displace any other penalties that may be imposed or be incurred as a result of violation of City policy or state and federal laws, or as provided in the workers' compensation laws.

UNPAID LEAVE FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

1. As used in this section, the following terms mean:

- (1) **“Abuse”**, the same meaning as in section 210.110 RSMo;
- (2) **“Domestic violence”**, the same meaning as in section 455.010 RSMo;
- (3) **“Employee benefit plan”** or **“plan”**, an employee welfare benefit plan or an employee pension benefit plan or a plan that is both an employee welfare benefit plan and an employee pension benefit plan;
- (4) **“Employment benefits”**, all benefits provided or made available to employees, including life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of the City or through an “employee benefit plan”;
- (5) **“Family or household member”**, for employees with a family or household member who is a victim of domestic or sexual violence, a spouse, parent, son, daughter, other person related by blood or by present or prior marriage, other person who shares a relationship through a son or daughter, and persons jointly residing in the same household;
- (6) **“Parent”**, the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter who is a victim of domestic or sexual violence;
- (7) **“Qualified individual”**, an applicant or employee who, but for being a victim of domestic or sexual violence or with a family or household member who is a victim of domestic or sexual violence, can perform the essential functions of the employment position that such individual holds or desires;
- (8) **“Reasonable safety accommodation”**, an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic violence. Any exigent circumstances or danger facing the employee or his or her family or household member shall be considered in determining whether the accommodation is reasonable;
- (9) **“Reduced work schedule”**, a work schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;
- (10) **“Sexual violence”**, a sexual assault, as defined in section 455.010 RSMo, and trafficking for the purposes of sexual exploitation as described in section 566.209 RSMo;

(11) **“Son or daughter”**, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen years of age, or is eighteen years of age or older and incapable of self-care because of a mental or physical disability and is a victim of domestic or sexual violence;

(12) **“Undue hardship”**, significant difficulty or expense, when considered in light of the nature and cost of the reasonable safety accommodation;

(13) **“Victim of domestic or sexual violence”**, an individual who has been subjected to domestic violence, sexual violence, or abuse;

(14) **“Victim services organization”**, a nonprofit, nongovernmental organization that provides assistance to victims of domestic violence or to advocates for such victims, including a rape crisis center, a child advocacy center, an organization carrying out a domestic violence program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process;

2. An employee who is a victim of domestic or sexual violence or who has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence may take unpaid leave from work to address such violence by:

(1) Seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's family or household member;

(2) Obtaining services from a victim services organization for the employee or the employee's family or household member;

(3) Obtaining psychological or other counseling for the employee or the employee's family or household member;

(4) Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's family or household member from future domestic or sexual violence or to ensure economic security; or

(5) Seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's family or household member, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence.

3. Subject to subsection 6, an employee shall be entitled to a total of two workweeks of leave under subsection 2 during any twelve-month period. For purposes of this subsection **“workweek”** shall mean an individual employee's standard workweek. The total number of workweeks to which an employee is entitled shall not decrease during the relevant twelve-month period.

4. Leave described in subsections 2-3 may be taken intermittently or on a reduced work schedule.

5. The employee shall provide at least forty-eight hours' advance notice of the employee's intention to take leave under subsection 2 to the Human Resources Coordinator, unless providing such notice is not practicable. When an unscheduled absence occurs, the City will not take any action against the employee if the employee, upon request of the Human Resources Coordinator and within a reasonable period after the absence, provides certification under subsection 6.

6. The Human Resources Coordinator may require the employee to provide certification that the employee or the employee's family or household member is a victim of domestic or sexual violence and that the leave is for one of the purposes enumerated in subsection 2. The employee shall provide such certification to the Human Resources Coordinator within a reasonable period after the Human Resources Coordinator requests certification.

7. An employee may satisfy the certification requirement of subsection 6 by providing a sworn statement of the employee and the following:

(1) Documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee's family or household member has sought assistance in addressing domestic violence or sexual violence and the effects of such violence;

(2) A police or court record; or

(3) Other corroborating evidence.

8. All information provided to the City pursuant to subsection 7 including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee has requested or obtained leave pursuant to this section, shall be retained in the strictest confidence by the City, except to the extent that disclosure is requested or consented to in writing by the employee or otherwise required by applicable federal or state law.

9. Any employee who takes leave under this section shall be entitled, on return from such leave, to be restored to the position of employment held by the employee when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

10. The taking of leave under this section shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave. Nothing in this section shall be construed to prohibit the City from requiring an employee on leave under this section to report periodically to the Human Resources Coordinator on the status and intention of the employee to return to work.

11. Upon the request of the Human Resources Coordinator, an employee requesting a reasonable safety accommodation pursuant to this section, shall provide a written statement signed by the

employee or an individual acting on the employee's behalf, certifying that the reasonable safety accommodation is for a purpose authorized under this section.

12. During any period that an employee takes leave under this section, the City shall maintain coverage for the employee and any family or household member under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

13. The City may recover from the employee the premium that the City paid for maintaining coverage for the employee and the employee's family or household member under such group health plan during any period of leave under this section if the employee fails to return from leave after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of domestic violence, sexual violence, abuse, a sexual assault, or human trafficking that entitled the employee to leave under this section, or other circumstances beyond the control of the employee.

14. The City may require an employee who claims that the employee is unable to return to work because of a reason described in subsection 13 to provide, within a reasonable period after making the claim, certification to the City that the employee is unable to return to work because of that reason by providing the City with:

- (1) A sworn statement of the employee;
- (2) Documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee has sought assistance in addressing domestic or sexual violence and the effects of such violence;
- (3) A police or court record; or
- (4) Other corroborating evidence.

15. All information provided to the City pursuant to subsection 14 including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee is not returning to work because of a reason described in subsection 13 shall be retained in the strictest confidence by the City, except to the extent that disclosure is requested or consented to in writing by the employee, or otherwise required by applicable federal or state law.

16. The City shall make reasonable safety accommodations, in a timely manner, to the known limitations resulting from circumstances relating to being a victim of domestic or sexual violence or a family or household member being a victim of domestic or sexual violence of an otherwise qualified individual:

- (1) Who is an employee of the City;

and

(2) Who is:

(a) A victim of domestic or sexual violence; or

(b) With a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the individual in this subdivision as it relates to the domestic violence, sexual violence, or abuse;

17. Subsection 16 shall not apply if the accommodation would impose an undue hardship on the operation of the City.

18. Nothing in this section shall be construed to supersede any provision of any federal, state, or local law, or employment benefits program or plan that provides:

(1) Greater leave benefits for victims of domestic or sexual violence than the rights established hereunder; or

(2) Leave benefits for a larger population of victims of domestic or sexual violence, as defined in such law, agreement, program, or plan, than the victims of domestic or sexual violence covered under this section.

State law reference: Sections 285.625 et seq RSMO

Consent Item

RE: New Police Station Building Envelope Commissioning Agent Bid Award

Department/Program: Police/Admin

Explanation: The City of Ballwin recently issued an RFQ for an engineering firm to provide building commissioning and building envelope review for the new Police Station. Building commissioning is a part of building design and construction. A level of mechanical systems commissioning is required by current building codes. ASHRAE guidelines describes the commissioning process as, "...a quality-oriented process for achieving, verifying, and documenting that the performance of facilities, systems, and assemblies meets defined objectives and criteria." Building envelope commissioning has become another recommended part of building design and implementation as building envelopes have become more complex and mechanical system design has become more dependent on the building envelope. Having a 3rd party independent expert reviewing the project details during the last phases of design to ensure continuity of the building envelope, reviewing the envelope's coordination with the mechanical systems, and then reviewing and testing performance during construction ensures the building owner is receiving the design intent and that it is performing as designed.

The City has budgeted \$90,000 as a part of the new Police Station project for this work. Nine responses from qualified firms were received for this bid. The City has followed a QBS (Quality Based Selection) process for this work since it is considered professional services under Missouri law. Therefore, a winning firm has been selected based on their qualifications, with a price to be negotiated after selection. If a price with the selected firm cannot be agreed upon, the next qualified firm will be contacted.

After review by City staff and the City's architect and owner's representative, we recommend selecting Faith Group, LLC for this work.

Recommendation: Staff recommends awarding the bid to Faith Group, LLC, not to exceed the budgeted amount of \$90,000.

Submitted By: Eric Sterman

Date: 10/6/21

Consent Item

RE: Rotary Club-Witches Night Out Liquor License

Department/Program: Administration

Recommendation: Staff Recommends Board Approval for the Rotary Club-Witches Night Out Liquor License

Explanation: The Rotary Club of West St. Louis County has applied for a license to sell beer at the Witches Night Out event. The permit shall be effective on October 23, 2021.

Submitted By: Denise Keller

Date: October 7, 2021