

# MINUTES

THE REGULAR MEETING OF THE  
BOARD OF ALDERMEN  
CITY OF BRANSON, MISSOURI  
January 14, 2020

## INTRODUCTORY

The Board of Aldermen of the City of Branson, Missouri, met in regular session in the Council Chambers of the City Hall on January 14, 2020, at 6:00 p.m. Mayor Akers called the meeting to order with the "Pledge of Allegiance" and Ted Martin gave the invocation.

## ROLL CALL

City Clerk Lisa Westfall called roll: Mayor Edd Akers presiding, Kevin McConnell, Brian Clonts, Bob Simmons, Bill Skains, Larry Milton and Rick Castillon.

## AWARDS / RECOGNITIONS

### Employee of the Month

Alderman Milton presented Harold Clements of the Police Department as the January Employee of the Month in recognition for displaying City of Branson Values.

## PUBLIC COMMENT

Mayor Akers began the Public Comments section of the Board of Aldermen meeting and stated in order to give everyone a chance to speak tonight I would like to ask you all who are speaking on an item that you keep your comments as succinct as possible to the topic and as short as possible. You will be allowed to only speak once on an item and please do not repeat after what has already been said by another speaker. Once public discussion has ended on the item and the Board starts their discussion, there will be no additional comments taken from the audience. However, if a Board of Aldermen wishes to bring someone forward for a point of clarification, they can address the Chair of the meeting. Please remember to speak into the mic, state your name and address for the record. Thank you and please seek to stay within the five minute guideline.

Marshall Howden, 106 Rose Oneill Drive, Branson, Missouri commented he'd like to express a philosophical point on the distinction between two very important concepts: marketing versus messaging. He explained the reason he's bringing this up is in reference to the Music and Theater Commission proposal. He mentioned giving many speeches about the proposal and from the information that's been relayed to him, the Board wants to wait until the study from the Chamber is released in April or May to revisit the topic. He said he's perfectly at peace with this and he wants to put a pin in his proposal until then and explained his position is different than some as he believes marketing can have an impact on the future of that industry. He added, so under the umbrella of marketing he can understand wanting to bring together a coalition of the three most influential industries in town to review how Branson's marketing dollars are being used. He commented the ultimate reason he believes there needs to be a Music and Theater Commission to solely represent the interests of that industry is because messaging is different than marketing. Marketing is the result of the tax dollars the City contracts with the entity this Board selects and messaging would be

the signal this Board could send if it instituted something like this commission. He clarified marketing includes the television ads for Branson that people see around the Midwest and messaging is when the Springfield News Leader does a story about the rift between entertainers and City Hall. Unfortunately, marketing has been hash tagged "Not your Grandma's Branson" and messaging has been 60 minutes calling Branson "The Entertainment Capital of the Universe." He asked everyone to not forget the messaging side of it. In response to Alderman Milton's questions regarding the Board's intention to wait until the show study was done in April before taking action, he said on the specific Music and Theater Commission proposal that's the information relayed to him by the City Administrator. Mr. Howden said he's given plenty of speeches and is the reason he wanted to bring it up once again. He said he's following the instructions he's been given, but wanted to keep it in the forefront of everyone's mind.

Gary Groman, 350 S. Wildwood Drive, Branson, Missouri, recalled during the Public Comments Section of the December 10<sup>th</sup> Board of Aldermen meeting, Alderman Milton attempted to ask him a question regarding his comments related to concerns about the City Attorney's position that the Mayor had the authority to change an Aldermen's abstention on a vote to a no vote. He stated the Mayor, in what he believes was a violation of proper decorum and City Ordinance, interrupted Alderman Milton by saying "we do not ask questions until all the speakers are finished, that's why I read the thing to start with Larry." Mr. Groman said the thing referred to and upon which the Mayor appears to base his interruption as relates to this presentation said, "you will be allowed to speak only once on an item, please don't repeat what has already been said by another speaker. Once the public discussion has ended on an item, the Board starts their discussion." Mr. Groman recalled during the exchange between Alderman Milton and the Mayor, Alderman Milton pointed out this was a big change from the way public comments had been done in the past and he asked for clarification that what the Mayor was saying is that after everyone has spoken then the Board could ask questions. Mr. Groman remembered Mayor Akers' reply was "yes that's right, then it's our turn." Additionally, he recalled Mayor Akers saying "this is the same document that I have read at every meeting that we have had, where we have had a group of people, I haven't changed it a bit, this was provided by our City Clerk." Mr. Groman commented outside the fact that the Mayor announced policy for the public comment section of the meeting, it appears to be in violation of subsection 2-70c of the Branson Municipal Code governing the conduct of the public comment portion of the meeting. The tapes of the public comment periods from April 2019 to the first meeting of 2019 shows that the Mayor read no such statement, if at all, before the vast majority of public comments periods involved in those meetings. He explained these public comments included one person or a group of people, which makes his contention that he hasn't changed it a bit as meaningless as the portion of his statement saying that this is the same document that he's read at every meeting when there's been a group of people. Mr. Groman commented particularly abhorable to him is what he believes was the Mayor's attempt to distort the truth by using information out of contexts for his own purposes by throwing the City Clerk under the bus. He stated she is one of the finest and most professional women he knows and the City is blessed to have her. Although I can picture her giving the Mayor that precise verbiage for use in some other part of the meeting, such as the Regular Agenda portion, he will bet his reputation on the fact that she never gave the Mayor that verbiage for use as the introduction for public comment portion of the meeting. Mr. Groman said he personally believes the Mayor misused that verbiage for his own purposes and what he believes was a vain attempt to control and muzzle the Aldermen's ability to interact with the public during the public comment period of the meeting. He pointed out that although he did not mention the fact that he is a retired attorney or representing himself as an attorney, the City Attorney with what he presumes was with the blessing of senior City Staff using City resources, made inquiries about his registration and disciplinary status with the Illinois Bar Association. The City Attorney then sent an email out with the results to the Board and Senior Staff. Mr. Groman asked for what legitimate purpose was such action taken. He requested information on the situation through a Freedom of Information Act request and received a copy of the email with all the information redacted, including his name. He asked the Board what message this action by the City sends to its residents and businesses about interacting with the City and what to expect. To this citizen and voter, it's nothing related to honor, integrity, transparency or trust. In response to Alderman Milton's question, Mr. Groman explained he didn't recall any meetings in the past with public comment sections in which Aldermen called people back up to ask them questions. He stated including this Mayor, when the sports people were here there were about 15 to 20 people and were asked questions as they went along. Mr. Groman commented Aldermen Simmons, McConnell and Skains could testify that this is a change from the way the City's been doing it and it's a change from what the City ordinance reads. He reported City ordinance says people get

5 minutes, the Mayor or Aldermen may interrupt during the five minutes and the time is extended. He added, obviously this can only happen if someone interrupts and there's also a second part where the Mayor, Aldermen and Staff can ask questions of the respondent and that is limited to five minutes. He said he's never seen anything like this and feels it's almost inconceivable the Mayor can violate City Ordinance with impunity and everyone else has to follow the rules. He said he just doesn't understand it.

## CONSENT AGENDA

Mayor Akers stated it's my responsibility as Mayor under state law to take care of the ordinances of our City and the state law relating to our City that are complied with. Under one of our ordinances, Branson Municipal Code 2-64, I am tasked with the responsibility of being the Presiding Officer of the Board and am required to preserve strict order and decorum of the meetings. The citizens of Branson elected us to make decisions on policy matters and we make those decisions by voting. We are obligated to vote unless a conflict of interest prevents us from doing so. The common law of the State of Missouri supports this. Although I cannot force any member of the Board to cast a vote, and no member can be required to cast a vote, I do have the ability to control the order and decorum of these meetings. As a result, I'm announcing under my authority to preserve order and decorum of these meetings and any abstention by any member of the Board during this meeting will be recast as a no vote.

Mayor Akers asked if there were any citizens who had any items they wished to have removed from the Consent Agenda for further discussion. Hearing none, Mayor Akers asked if any member of the Board had any items they wished to have removed from the Consent Agenda. Hearing none, Mayor Akers asked City Clerk Lisa Westfall to read the items on the Consent Agenda. City Clerk Lisa Westfall read the following Consent Agenda items by title.

Approval of Board of Aldermen Minutes:

- a) December 4, 2019 Special Meeting
- b) December 10, 2019 Regular Meeting

Acknowledge Receipt of Minutes:

- a) Advisory Park Board meeting of October 15, 2019
- b) Budget & Finance Committee and Capital Improvement Committee meeting of October 31, 2019.

### **BILL NO. 5745**

**Ord. No. 2020-0001**

**Approving amendments to the City of Branson's Human Resources Manual.**

Final Reading of Bill No. 5745, an ordinance approving amendments to the City of Branson's Human Resources Manual was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0001 was duly enacted.

### **BILL NO. 5750**

**Ord. No. 2020-0002**

**Approving High Density Residential (HDR) Zoning for the property located at 115 Lakefront Drive, Branson, Missouri.**

Final Reading of Bill No. 5750, an ordinance approving High Density Residential (HDR) Zoning for the property located at 115 Lakefront Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0002 was duly enacted.

**BILL NO. 5751**  
**Ord. No. 2020-0003**      **Approving High Density Residential (HDR) Zoning for the property located at 125 Lakefront Drive, Branson, Missouri.**

Final Reading of Bill No. 5751, an ordinance approving High Density Residential (HDR) Zoning for the property located at 125 Lakefront Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0003 was duly enacted.

**BILL NO. 5752**  
**Ord. No. 2020-0004**      **Approving High Density Residential (HDR) Zoning for the property located at 111 Chateau Cove Drive, Branson, Missouri.**

Final Reading of Bill No. 5752, an ordinance approving High Density Residential (HDR) Zoning for the property located at 111 Chateau Cove Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0004 was duly enacted.

**BILL NO. 5753**  
**Ord. No. 2020-0005**      **Approving High Density Residential (HDR) Zoning for the property located at 250 Chateau Cove Drive, Branson, Missouri.**

Final Reading of Bill No. 5753, an ordinance approving High Density Residential (HDR) Zoning for the property located at 250 Chateau Cove Drive, Branson, Missouri, was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0005 was duly enacted.

**BILL NO. 5757**  
**Ord. No. 2020-0006**      **Authorizing an agreement with the Conservation Commission of the State of Missouri for water main easements on the Ruth and Paul Henning Conservation Property.**

Final Reading of Bill No. 5757, an ordinance authorizing an agreement with the Conservation Commission of the State of Missouri for water main easements on the Ruth and Paul Henning Conservation Property and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0006 was duly enacted.

**BILL NO. 5758**  
**Ord. No. 2020-0007**      **Accepting the proposal of Kirk's Excavation Inc. for a Sanitary Sewer Main Extension in the area of Harmony Lane.**

Final Reading of Bill No. 5758, an ordinance accepting the proposal of Kirk's Excavation Inc. for a Sanitary Sewer Main Extension in the area of Harmony Lane and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0007 was duly enacted.

**BILL NO. 5760**  
**Ord. No. 2020-0008**

**Approving an agreement between Empire District, A Liberty Utilities Company and the City of Branson for relocation costs of street light facilities relating to the Gretna Road median island removal.**

Final Reading of Bill No. 5760, an ordinance approving an agreement between Empire District, A Liberty Utilities Company and the City of Branson for relocation costs of street light facilities relating to the Gretna Road median island removal and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0008 was duly enacted.

**BILL NO 5761**  
**Ord. No. 2020-0009**

**Approving the Intergovernmental Cooperative Agreement with the City of Kimberling City, Missouri Police Department pertaining to the donation of TASER X26 Equipment.**

Final Reading of Bill No. 5761, an ordinance approving the Intergovernmental Cooperative Agreement with the City of Kimberling City, Missouri Police Department pertaining to the donation of TASER X26 equipment and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0009 was duly enacted.

**BILL NO 5762**  
**Ord. No. 2020-0010**

**Accepting the proposal of Ace Pipe Cleaning for Sanitary Sewer System Improvements.**

Final Reading of Bill No. 5762, an ordinance accepting the proposal of Ace Pipe Cleaning for Sanitary Sewer System Improvements and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0010 was duly enacted.

**BILL NO 5763**  
**Ord. No. 2020-0011**

**Accepting the proposal of Technology International, Inc. for the purchase of a waste feed grinder for the Cooper Creek Wastewater Treatment Plant.**

Final Reading of Bill No. 5763, an ordinance accepting the proposal of Technology International, Inc. for the purchase of a waste feed grinder for the Cooper Creek Wastewater Treatment Plant and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0011 was duly enacted.

**BILL NO 5764**  
**Ord. No. 2020-0012**

**Amending Chapter 18 of the Branson Municipal Code pertaining to Electrical Provisions within the 2018 International Residential Code.**

Final Reading of Bill No. 5764, an ordinance amending Chapter 18 of the Branson Municipal Code pertaining to Electrical Provisions within the 2018 International Residential Code was read by title by City Clerk Lisa Westfall. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Ordinance No. 2020-0012 was duly enacted.

Mayor Akers opened the floor for a motion to approve all items on the Consent Agenda. Alderman Skains moved to approve all items on the Consent Agenda, seconded by Alderman Clonts. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: none. Abstain: Castillon. Motion carried. Alderman Castillon disclosed the reason for his abstention is due to not being at the meeting.

## **REGULAR AGENDA**

### **Discussion and Legal Opinion on Mayor Recasting Abstentions.**

Mayor Akers began with a Discussion and Legal Opinion on Mayor Recasting Abstentions and a staff report was provided by City Attorney Chris Lebeck and Attorney James Meadows of Kutak Rock, LLP, special legal counsel for the City. Mr. Meadows provided a handout (see attached). Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion.

### **5 in FIVE: Theatre Industry Study Update presented by Grant Sloan, Vice President of Member Engagement Branson/Lakes Area Chamber of Commerce & CVB.**

A presentation on 5 in FIVE: Theater Industry Study Update was made by Grant Sloan, Vice President of Member Engagement Branson/Lakes Area Chamber of Commerce & CVB. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion.

### **BILL NO. 5732 POSTPONED**

### **Amending the adopted 2019 Budget for the City of Branson, to adjust monies for the Tourism and Capital Projects Funds.**

Final Reading of Bill No. 5732, an ordinance amending the adopted 2019 Budget for the City of Branson, to adjust monies for the Tourism and Capital Projects Funds was read by title by City Clerk Lisa Westfall. She stated this bill was postponed on its Final Reading during the December 10, 2019 Regular Meeting. It is in need of a motion, second and a vote.

Alderman McConnell recused himself from the meeting and read a statement: I've recently been asked by a client to change my vote on undergrounding utilities. I do indeed have a conflict if I change my vote to satisfy a client; it's going to protect my business, but it's an opposition to what I deeply believe. If I don't change my vote, I believe it will hurt my business. This is a conflict in the truest sense of the word. Due to the obvious financial conflict of interest I will be recusing myself, not abstaining, but recusing myself from any further discussion or voting on this measure.

**Alderman McConnell left the meeting at 6:59 p.m.**

**Mayor Akers left the meeting at 7:00 p.m. Acting President Simmons presided over the meeting.**

**The meeting recessed at 7:00 p.m. and reconvened at 7:06 p.m. with Mayor Akers presiding and Brian Clonts, Bob Simmons, Bill Skains, Larry Milton and Rick Castillon present.**

Alderman Skains moved to postpone Bill No. 5732 to January 28, 2020, seconded by Alderman Clonts. Mayor Akers called for a vote on the postponement of Bill No. 5732. Voting aye: Clonts, Simmons, and Skains. Nays: Milton and Castillon. Absent: McConnell. Motion carried.

**BILL NO. 5676  
POSTPONED**

**Approving an agreement between CenturyLink Communications, LLC and the City of Branson relating to relocation costs of CenturyLink Telecommunication Facilities relating to the Highway 76 Country Boulevard Improvements Project.**

Alderman Clonts moved to postpone Bill No. 5676 to January 28, 2020, seconded by Alderman Skains. Mayor Akers called for a vote on the postponement of Bill No. 5676. Voting aye: Clonts, Simmons, and Skains. Nays: Milton and Castillon. Absent: McConnell. Motion carried.

**BILL NO. 5677  
POSTPONED**

**Approving a Special Construction Proposal between CenturyLink and the City of Branson relating to engineering design costs of CenturyLink relating to the Highway 76 Country Boulevard Improvements Project.**

Alderman Clonts moved to postpone Bill No. 5677 to January 28, 2020, seconded by Alderman Skains. Discussion. Mayor Akers called for a vote on the postponement of Bill No. 5677. Voting aye: Clonts, Simmons, and Skains. Nays: Milton and Castillon. Absent: McConnell. Motion carried.

**BILL NO. 5766**

**Amending Appendix A of the Branson Municipal Code pertaining to Lodging Establishment, Swimming Pools and Spas, and Health and Sanitation Fees.**

First Reading of Bill No. 5766, an ordinance amending Appendix A of the Branson Municipal Code pertaining to Lodging Establishment, Swimming Pools and Spas, and Health and Sanitation Fees was read by title by City Clerk Lisa Westfall.

**Alderman McConnell returned to the meeting at 7:11 p.m.**

A staff report was presented by Finance Director Jamie Rouch.

Lisa Marshall, 320 Rinehart Road, Branson, Missouri, introduced herself as a representative with the Taney County Health Department and is here tonight to answer any questions. In response to the Board's questions, she explained in 2017 the Health Department realized it hadn't taken a look at the extra costs associated with doing these inspections and Appendix A is a breakdown of its costs. She mentioned contacting neighboring counties and some larger counties to get a perspective of what's being charged across the state for these inspections and she reported these fees are right in alignment with what's happening across the state.

Mayor Akers asked for a motion approving Bill No. 5766. Alderman Castillon so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5767**

**Amending the adopted 2020 Budget for the City of Branson to adjust monies for the Public Safety Fund.**

First Reading of Bill No. 5767, an ordinance amending the adopted 2020 Budget for the City of Branson to adjust monies for the Public Safety Fund was read by title by City Clerk Lisa Westfall and a staff report was presented by Finance Director Jamie Rouch. Mayor Akers asked for a motion approving Bill No.

5767. Alderman Milton so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5768**

**Approving a contract with Metrohm USA to provide a handheld narcotics analyzer with maintenance services.**

First Reading of Bill No. 5768, an ordinance approving a contract with Metrohm USA to provide a handheld narcotics analyzer with maintenance services and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5768. Alderman Skains so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5769**

**Approving a contract with Ed Roehr Safety Products Co. to provide Active Shooter, Hostile Event Response Kits.**

First Reading of Bill No. 5769, an ordinance approving a contract with Ed Roehr Safety Products Co. to provide Active Shooter, Hostile Event Response Kits and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Police Chief Jeff Matthews. Mayor Akers asked for a motion approving Bill No. 5769. Alderman Castillon so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5770**

**Accepting a Warranty Deed for property from BH Land Company, LLC pertaining to the Summit Ridge Residences Subdivision.**

First Reading of Bill No. 5770, an ordinance accepting a Warranty Deed for property from BH Land Company, LLC pertaining to the Summit Ridge Residences Subdivision and authorizing the Mayor to execute the Acceptance of Conveyance was read by title by City Clerk Lisa Westfall and a staff report was presented by Planning and Development Director Joel Hornickel. Mayor Akers asked for a motion approving Bill No. 5770. Alderman Skains so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5771**

**Accepting the proposal of the Salvation Army pertaining to the provision of services to provide temporary public assistance.**

First Reading of Bill No. 5771, an ordinance accepting the proposal of the Salvation Army pertaining to the provision of services to provide temporary public assistance and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Fire Chief Ted Martin. Mayor Akers asked for a motion approving Bill No. 5771. Alderman Skains so moved, seconded by Alderman Clonts. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter.

Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5772**

**Approving a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities.**

First Reading of Bill No. 5772, an ordinance approving a contract with S & S Pumping, Inc. to accept holding tank and special waste for treatment at the Branson Wastewater Treatment Facilities and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5772. Alderman Milton so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5773**

**Authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services for replacement of the Lift Station #17 forcemain.**

First Reading of Bill No. 5773, an ordinance authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services for replacement of the Lift Station #17 forcemain and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5773. Alderman Skains so moved, seconded by Alderman Clonts. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

**BILL NO. 5774**

**Authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services to engineer upgrades for the Spring Creek water and sewer systems.**

First Reading of Bill No. 5774, an ordinance authorizing an agreement with SW Missouri Engineering LLC, dba Cochran, for professional design services to engineer upgrades for the Spring Creek water and sewer systems and authorizing the Mayor to execute the contract was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5774. Alderman McConnell so moved, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains and Milton. Nays: Castillon. Motion carried.

**BILL NO. 5775**

**Amending Appendix A of the Branson Municipal Code pertaining to Utilities Fee Schedule.**

First Reading of Bill No. 5775, an ordinance amending Appendix A of the Branson Municipal Code pertaining to Utilities Fee Schedule was read by title by City Clerk Lisa Westfall and a staff report was presented by Utilities Director Mike Ray. Mayor Akers asked for a motion approving Bill No. 5775. Alderman

McConnell so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

## **APPOINTMENTS**

Mayor Akers stated this appointment process is in accordance with the Board and Committee Appointments Procedure. Mayor Akers requested the following appointments be made for Category 5:

### **Category 5:**

#### **Historic Downtown Branson Community Improvement District (CID) Board:**

Jerry Jeschke, Re-appointment to the Historic Downtown Branson CID Board with a term expiring April 18, 2024.

Tom Motley, Re-appointment to the Historic Downtown Branson CID Board with a term expiring April 18, 2024.

Mayor Akers asked for a motion to approve the appointments as listed for Category 5. Alderman Skains so moved, seconded by Alderman Simmons. Mayor Akers asked for comments from the Board. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: None. Motion carried.

## **DISBURSEMENTS**

Mayor Akers stated the next item is the review of disbursements [(October 17, 2019 through November 15, 2019) See Master File for copies of disbursements] Mayor Akers asked if there were any questions regarding the disbursements. No discussion. Mayor Akers asked for a motion to acknowledge the receipt of disbursements from October 17, 2019 through November 15, 2019. Alderman Simmons so moved, seconded by Alderman Skains. Mayor Akers asked for any comments. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: None. Motion carried.

## **MAYOR/ALDERMEN/ADMINISTRATOR'S REPORTS**

Alderman McConnell stated he was recently asked by a constituent in Ward III how the Mayor was able to change an abstention to a no vote. He mentioned asking City Attorney Chris Lebeck to explain this and the Branson Municipal Code who answered him and copied the entire Board of Aldermen. Alderman McConnell stated because he marked the email confidential attorney client privileged, he was not permitted to share the answer with the very individual who asked him the question. Alderman McConnell stated in a memo dated December 13<sup>th</sup>, the City Attorney wrote that a member of the Board violated their duties and obligations to the Board and the City by knowingly disclosing this privileged attorney client communication to Mr. Groman without permission of the Board. Alderman McConnell added, he went on to say to protect communications, he's asked and received approval to turn off auto forwarding for all aldermen bransonmo.gov email addresses. In the future all communications from the Legal Department will only go to bransonmo.gov email addresses where they will terminate. Alderman McConnell stated lastly he wrote, in the interest of security and continuity, it's important that we protect privileged communications by keeping them internal to the City of Branson. Alderman McConnell said he read this to say there's no transparency and he's quite certain that all six aldermen would approve of answering a municipal code question asked by a constituent. He explained after receiving the reprimand from the City Attorney, he decided to get an outside legal opinion from a trusted law firm with considerably more municipal law experience than the City Board of Aldermen

Attorney. Alderman McConnell reported he was told as elected officials, the Board decides what is confidential attorney client privileged, not the City Attorney. He further explained, otherwise the City Attorney could send the Board his grocery list, slap attorney client privileged on it and the Board would have to treat it as confidential. He reiterated, the decision is up to each member of the Board, not the person working for the Board. He added, of course if the Board were to share proprietary information on the sale of a business or something that adversely affects the City, an individual or business, they would be responsible for that damage. But an answer of municipal code, absolutely not. Mr. McConnell stated before anyone on the Board says they shouldn't question the City Attorney, he would like to remind them about a recent staff recommendation on using tourism tax which is designed for infrastructure on sports fields. He recalled this was a recommendation by City Staff and it took Gary Groman reminding the Board this would be against the law to use these funds in this way, which the City Attorney ultimately agreed. Alderman McConnell said how the City thanked Mr. Groman for his contribution of keeping the City out of legal trouble was the City Attorney accused him of offering pro bono legal advice to the Board. He explained Mr. Groman was searched by City Staff all the way back to 1973 in the State of Illinois where he actually did practice law, but Mr. Groman never presented himself as an attorney to this Board. He feels it's time to stop attempting to conduct City business behind closed doors because it's the people's business and he'll continue to seek input and inform where appropriate those who are really in charge, the citizens and residents of Branson. Alderman McConnell mentioned hearing Board members have been criticized for fighting and that they should all just get along. He said if people get upset because three Board members walk out of a meeting in protest after the Mayor changes the rules of abstention behind their backs with the assistance of the City Attorney, then Ward III elected the wrong Alderman. He stated he will never trade kumbaya or comfort for bad policy and a lack of transparency.

Alderman Skains stated he serves as the Board's representative on the M. Graham Clark Downtown Airport Board. He reported it recently received a very large grant from MoDOT to totally rework the landing strip to improve its condition. He added, the airport actually showed a gain of \$17,000 at the end of the year versus \$12,529 in 2018 as the demand in the second part of the year was significantly up from where it was. Alderman Skains gave kudos to the Fire Department regarding the water rescue go bags and for being on top of all of this as the community needs it. Over the last few days he's received a lot of feedback from constituents about the City's sign ordinance which people seem to be pleased with the changes. He thanked Planning and Development Director Joel Hornickel and his staff for implementing this and he feels there's a better atmosphere of cooperation which the community likes. Alderman Skains said on a sad note, his neighbor Terry Sander's son was killed in a car wreck this last week and his service will be on Saturday. He encouraged everyone to support Terry Sanders as he's been there for the community. Alderman Skains said lastly, he's very much in support of the Board giving an official position on Ozark Mountain Christmas. He understands Branson is America's Christmas Tree City, but it's known for Ozark Mountain Christmas and he hates abandoning that. He feels it could be Ozark Mountain Christmas, Home of America's Christmas Tree City, but doesn't want to see Branson give up on something he personally worked on 30 years ago.

Alderman Milton expressed his concerns about the City's finances. He complimented Utilities Director Mike Ray for doing a great job and said he knows the projects he's coming up with are needed, but he's concerned about the money the City has and its forecasts. He just doesn't see where these needed funds are coming from.

Mayor Akers reported he's continuing to seek funding for the protection of the sewer treatment plant and mentioned traveling to Jefferson City to visit with Senator David Sater, Representative Jeff Justice and Missouri Department of Economic Development Director Rob Dixon. He stated there's a lot of things going on and mentioned talking about the legislative agenda and its status which he'll continue to report on and provide updates. Mayor Akers said he thinks it's important for the City to seek sources of funds and mentioned hearing Utilities Director Mike Ray report tonight about seeking additional funds from the County for part of projects to help reduce costs to the City. He said he feels it's important to look at finances and he expressed his desire for focus and agreement on priorities.

## EXECUTIVE SESSION

Mayor Akers asked for a motion to go into closed executive session. Alderman Simmons moved to go into closed executive session pursuant to 610.021.2 RSMo for real estate and 610.021.3 RSMo for personnel, seconded by Alderman Skains. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

## ADJOURN

Mayor Akers asked for a motion to adjourn. Alderman Clonts moved to adjourn, seconded by Alderman Castillon. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried. Meeting adjourned at 8:16 p.m.



E. Edd Akers

Mayor



Lisa Westfall  
City Clerk

HANDOUT SUBMITTED BY JAMES MEADOWS DURING ITEM #15

Handout item 15.

**KUTAKROCK**

Kutak Rock LLP  
300 South John Q Hammons Parkway, Suite 800, Springfield, MO 65806-2550  
office 417.720.1410

James E. Meadows  
417.755.7320  
james.meadows@kutakrock.com

January 14, 2020

**VIA HAND DELIVERY**

Chris Lebeck  
City Attorney  
City of Branson  
110 W. Maddux Street, Suite 205  
Branson, MO 65616

Re: Strategic Abstentions

Dear Mr. Lebeck:

We have examined, at your request, the issue of strategic abstentions from voting by members of the Board of Aldermen. These abstentions occur without a conflict of interest present and are presumably made strategically to prevent a tie vote from occurring which the Mayor can then break by voting.

The Mayor does have the authority to recast strategic abstentions as "no" votes. A tie vote thereby be created that the Mayor can then break. Additionally, any aldermen abstaining from voting create potential grounds for their removal from the Board for neglect of official duty.

*Strategic Abstentions May be Recast as "No" Votes*

In Branson, there are six aldermen. A majority of the aldermen must vote in favor of a bill for it to become an ordinance. Mo. Ann. Stat. § 79.130 (West). The mayor has a seat in and presides over the aldermen but "shall not vote on any question except in case of a tie." Mo. Ann. Stat. § 79.120 (West). The city has adopted the latest version of Robert's Rules of Order, which is currently the 11<sup>th</sup> edition, to govern the procedural aspects of their meetings unless otherwise stated. Branson Municipal Code, Section 2-80 ("The rules of parliamentary practice, comprised in Robert's Rules of Order, latest edition, shall govern the board where applicable, except where otherwise directed.").

Robert's Rules provide that an abstention can be recast as a "no" vote. Robert's Rules acknowledge that there is an obligation to vote and a right to abstain stating "[a]lthough it is the duty of every member who has opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote." Robert's Rules of Order 11th (2011) at 407. The rules provide for a number of scenarios where an "abstention has the same effect as a negative vote." *Id.* at 402-403.

4844-8604-1521.1

# KUTAKROCK

Chris Lebeck  
January 14, 2020  
Page 2

Missouri courts have not considered the question directly of whether a mayor or other presiding officer may recast or treat abstentions as “no” votes, but other states have. In *State v. Yates*, the eight aldermen met for a meeting. 47 P. 1004, 1004 (1897). Four voted in favor of Yates to be the new sheriff and four abstained. *Id.* The court held that the abstentions should be considered “no” votes, and therefore, there was a tie that the mayor could break. *Id.* at 1005. The court noted that considering an abstention to be a no vote was the best position the minority could contend for and further stated “[i]t is an exploded notion that a member of a legislative body such as a city council can be present at a meeting, thus helping to make a quorum of the body, yet defeat the progress of legislation by refusing to vote when the roll is called.” *Id.* The court further stated that allowing a member to benefit from failing in their duty to vote would not be right. *Id.* The Supreme Court of Illinois has reached the same conclusion. *Launtz v. People ex rel. Sullivan*, 113 Ill. 137, 144 (1885).

At common law, an abstention was treated as an acquiescence and a vote with the majority. *Bonsack & Pearce, Inc. v. School District of Marceline*, 49 S.W.2d 1085 (1932); *Mullins v. Eveland*, 234 S.W.2d 639 (Mo. App. 1950). However, the common law rule does not apply if a statute expressly governs the voting requirements. *Braddy v. Zych*, 702 S.W.2d 491, 495 (Mo. Ct. App. 1985); *State ex rel. Stewart v. King*, 562 S.W.2d 704, 706 (Mo. Ct. App. 1978). Here, a statute requires that a majority of the aldermen vote in favor of a bill for it to become an ordinance. Mo. Ann. Stat. § 79.130 (West). This type of affirmative voting requirement has been held to override the common law rule and does not allow the abstentions to be recast as an acquiesce and vote with the majority. *Braddy*, 702 S.W.2d at 49 (holding that abstentions cannot be recast as votes in favor with the majority because the Charter provided that “no bill shall become an ordinance unless a majority of all the members vote in favor of its adoption”); *State ex rel. Stewart*, 562 S.W.2d at 706. A Missouri Attorney General’s opinion from 1981 advises that abstentions might not be able to be counted for either the majority or minority in a vote, but, as the Court of Appeals noted in *State ex re. Stewart v. King*, an “Attorney General’s opinion can be entitled to no more weight ‘than that given the opinion of any other competent attorney.’” *King*, 562 S.W.2d at 709 (quoting *Gershman Investment Corporation v. Danforth*, 517 S.W.2d 33, l.c. 36 (Mo. banc 1974)).

## *Alderman May Be Removed of Neglect of Duty*

An alderman can be removed from the Board for failure to attend meetings or abstaining from votes without cause. Aldermen have a duty to vote. See *Bonsack & Pearce v. Sch. Dist. of Marceline*, 49 S.W.2d 1085, 1088 (1932); *Spencer v. Barton Cty. Ambulance Dist.*, No. 16-05083-CV-SW-RK, 2017 WL 7036658, at \*7 (W.D. Mo. Sept. 13, 2017) (quoting *Mullins v. Eveland*, 234 S.W.2d 639, 641 (Mo. App. 1950)). Aldermen are presumed to know the law because persons are conclusively presumed to know the law, and this principal is especially applicable to public officials. *Russell*, 45 S.W.3d at 497. If the aldermen fail to attend meetings or fail to vote at meetings, they are intentionally failing to act, contrary to their known duty to vote. Therefore, such actions could subject aldermen to removal from office. Further, Branson’s ordinances allow for removal of a board member who neglects his duty, including failing to appear for scheduled meetings of the board three consecutive times. Branson Ordinance, Section 2-201.

4844-8604-1521.1

# KUTAKROCK

Chris Lebeck  
January 14, 2020  
Page 3

Any elected or appointed city official “shall [ ] forfeit his office” and may be removed from office, via the statutory procedure, if the person “fail[s] personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty. . . .” Mo. Rev. Stat. § 106.220. Mere violation of an official duty is not sufficient to remove an official, the misconduct must be a willful or fraudulent violation or willful neglect of an official duty. *State ex rel. Thomas v. Olvera*, 987 S.W.2d 373, 376 (Mo. Ct. App. 1999). Willful neglect of an official duty is “intentionally fail[ing] to act, contrary to a known duty.” *Simmons v. McCulloch*, 501 S.W.3d 14, 19 (Mo. Ct. App. 2016) (quoting *State ex inf. Fuchs v. Foote*, 903 S.W.2d 535, 539 (Mo. banc 1995) (abrogated on other grounds by *State v. Olvera*, 969 S.W.2d 715 (Mo. banc 1998)).

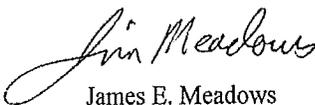
Public officials have been removed from office for willful neglect in Missouri. A sheriff was removed for failing to confine prisoners in accordance with statutory requirements. *State ex rel. Nixon v. Russell*, 45 S.W.3d 487, 497 (Mo. Ct. App. 2001). It did not matter that other sheriffs were not following the statutes, the sheriff at issue still had a duty to follow it. *Id.* In another case, the county recorder was removed from office for changing entries in the official fee book even though she believed she was removing a mistake. *Olvera*, 987 S.W.2d at 376. The county recorder “intentionally failed to act by not making the effort to find out if the unusual \$77.00 entry was in fact accurate, and instead merely assumed a mistake had been made and summarily changed the entry, contrary to the known duty to keep and report an accurate record.” *Id.* at 377.

## Conclusion

As with any legal opinion, slight alternations is facts or condition could impact the validity of this opinion. There are likely factors of which we are currently unaware. If you have any questions or knowledge of additional factors that might impact our analysis, please let us know.

Sincerely,

Kutak Rock LLP



James E. Meadows

JEM/jj

4844-8604-1521.1