

**MINUTES  
BOARD OF ALDERMEN  
JANUARY 10, 2022  
DES PERES GOVERNMENT CENTER**

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The regular meeting of the Board of Aldermen of the City of Des Peres, Missouri was at the Des Peres Government Center, 12325 Manchester Road 63131, commencing at 7:00 P.M. on Monday, January 10, 2022.

**ROLL CALL**

The City Clerk took roll with the following elected officials present: Alderman Barrett, Alderman Concagh, Alderman Fitzpatrick, Alderman Kleinschmidt, Alderman Osherow, and Alderman Pound. Mayor Becker was also present.

Alderman Concagh and Alderman Kleinschmidt attended the meeting remotely via zoom.

Staff members present included the City Administrator, City Attorney, Director of Finance, Director of Public Safety and Director of Public Works. Assistant City Administrator and Director of Parks & Recreation attended the meeting remotely via zoom.

At this time, those present rose for the Pledge of Allegiance.

**AMENDMENT OF AGENDA – NONE**

**CITIZEN COMMENTS – NONE**

**CONSENT AGENDA**

The Mayor announced that there were six (6) items currently on the consent agenda. At the request of the Mayor, Alderman Concagh read the items on the consent agenda including:

1. Minutes of the Board of Aldermen Meeting of December 13, 2021
2. Warrant List
  - Dated December 23, 2021 (Approved by Mayor)
  - Dated December 28, 2021 (Approved by Mayor)
  - Dated January 4, 2022
3. R22-3533 Authorizing an Agreement with advanced Environmental Solutions for Selective Demolition and Abatement Services Relating to City Hall Levels 2 & 3
4. R22-3534 Authorizing a Professional Services Agreement with Oates Associates to Prepare Plans and Specifications for Lindemann Road Improvements STP 5555(616)
5. R22-3535 Authorizing A Contract with Graphic Resource for Printing and Mailing Services Relating to the City Newsletter Publication
6. R22-3536 Authorizing and Directing the City Administrator to Execute an Easement Agreement with Sansone Olympic Oaks LLC for an Easement and Temporary Construction Easement at Olympic Oaks Village

Alderman Fitzpatrick made a motion, seconded by Alderman Barrett to approve the six items on the Consent Agenda, as presented. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Fitzpatrick, "AYE", Alderman Concagh, "AYE", Alderman Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, and "AYE". Motion passed 6-0.

## **REPORT OF THE MAYOR - NONE**

## **REPORTS OF OFFICERS AND COMMITTEES – NONE**

## **LEGISLATION**

### **Unfinished Business**

- a. **B21-2934 An Ordinance Amending Section 16-127 of the Des Peres Municipal Code Relating to Tampering with an Automobile (2<sup>nd</sup> Reading)**

Alderman Barrett read B21-2934 for the second time.

Alderman Barrett moved to approve Bill 21-2934, second by Alderman Pound. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

- b. **B21-2935 An Ordinance Amending Section 17-1(f) Park Rule of the Des Peres Municipal Code to Prohibit Fires in Des Peres Parks Except for City Sponsored Events (Introduction)**

Alderman Osherow read B21-2935 for the second time.

Alderman Fitzpatrick inquired the reasoning for this bill. City Administrator, Doug Harms expressed the fire pits are used for city sponsored events (hayrides and camping). Concerns have expressed due to individuals starting wood fires (not charcoal) and leaving the park without extinguishing the fire.

Alderman Pound made a motion to approve Bill 21-2934. There was no second. Mayor Becker announced that Bill 21-2934 died for lack of a second.

- c. **B21-2937 An Ordinance Dedicating a Portion of Certain Land Addressed as 1050 Des Peres Road as Right-of-Way and Authorizing Granting of Easements and Temporary Construction Easements for Improvements to the Intersection of Des Peres Road and Old Des Peres Road (Introduction)**

Alderman Concagh read B21-2937 for the second time.

Alderman Concagh moved to approve Bill 21-2937, second by Alderman Kleinschmidt. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman

Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

## **New Business**

1. **B22-2938 Ordinance Accepting Donation of 12833 Manchester Road (0.21 Acres) and Authorizing Release of a Lien on Such Property (Introduction)**

Alderman Barrett read B22-2938 for the first time.

Mayor Becker announced that this bill would be held over until the January 24, 2022 meeting second reading and consideration for passage and approval at that time.

2. **B22-2939 An Ordinance Authorizing the City Administrator to Execute and Amended Adoption Agreement with ICMA-RC for the Government Money Purchase Plan and Trust (Introduction)**

Alderman Kleinschmidt read B22-2939 for the first time.

In response to a question, the Director of Finance responded that this was largely an administrative matter proposed for compliance with IRS regulations which require a review every six years of pension plans. While the review and restatement would allow for changes in place structure, benefit levels or financing, the Amended Adoption Agreement restates our Defined Contribution Plan with no substantive changes.

Mayor Becker announced that this bill would be held over until the January 24, 2022 meeting second reading and consideration for passage and approval at that time.

3. **B22-2940 An Ordinance Repealing Ordinance 2919 and Adopting an Ordinance in Lieu Thereof to Extend COVID Emergency Paid Sick Leave Established Under Ordinance 2866 thru Calendar Year 2022; Providing for Exceptions Thereto; and Establishing an Effective Date (Introduction)**

Alderman Pound read B22-2940 for the first time.

In response to questions, the City Administrator advised that the board agreed at its last meeting to extend this benefit on a 4-2 vote but the language in that legislation made ended the benefit upon a formal ending of the pandemic by the federal or state governments. The decision of the Governor not to extend the Pandemic State of Emergency in Missouri beyond December 31, 2021 raises the issue if the prior approval of the extension is null and void. Adopting this bill would keep the extension place through 2022 unless rescinded by the board of aldermen. Our current payroll included paid time off for employees since January 1<sup>st</sup> for COVID Emergency Leave and staff needs direction as we process payroll this week.

The Mayor asked if the Directors of Public Safety and Director of Public Works had anything to add. The Director of Public Safety stated that he had 5 employees test positive since January 1<sup>st</sup> which includes two new hires who have no paid leave without approval of this bill. The Director of Public Works stated that he had 3 employees out of 9 street workers test positive with one a relatively new hire with little paid leave.

Alderman Fitzpatrick made a motion to waive the rules and have B22-2940 read for a second time, seconded by Alderman Kleinschmidt. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

Alderman Osherow asked if the City had a policy in place making vaccinations mandatory. City Administrator stated there he has not imposed that requirement administratively and the board of aldermen have not discussed the issue to date

Alderman Pound read B22-2940 for the second time.

Alderman Pound made a motion, seconded by Alderman Kleinschmidt to approve B22-2940. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

4. **B22-2941      An Ordinance Amending Section 2-333 of the Des Peres Municipal Code Relating to Approval of the Warrant List and Payment of Bills and Stating the Intention of the City to Participate in the Missouri Local Government Expenditure Database to be Created and Maintained by the State of Missouri (Introduction)**

Alderman Fitzpatrick read B22-2941 for the first time.

Mayor Becker announced that this bill would be held over until the January 24, 2022 meeting second reading and consideration for passage and approval at that time.

**MISCELLANEOUS BUSINESS**

1. **Report of the City Clerk**

Election Filing Closed December 28, 2021. Candidates certified to the Board of Election Commissioners for the April 2022 election are:

<b>Office</b>	<b>Candidate</b>	<b>Dated Filed</b>
<b>Mayor</b>	<b>Mark Becker</b>	<b>12/7/2021</b>
<b>Alderman Ward One</b>	<b>John Pound</b>	<b>12/7/2021</b>
<b>Alderman Ward Two</b>	<b>Dean Fitzpatrick</b>	<b>12/7/2021</b>
<b>Alderman Ward Three</b>	<b>Patrick Barrett</b>	<b>12/7/2021</b>
<b>Alderman Ward Three</b>	<b>Kathleen McKean Gmelich</b>	<b>12/28/2021</b>

## 2. Report of the City Administrator

### a. FEMA GRANT FOR AIR QUALITY IMPROVEMENTS

#### 1. **B22-2942.1 An Ordinance Authorizing Amendment #7 to the Performance Agreement for Comfort From TRANE (Pact) Relating to Certain Air Quality Improvements to Public Buildings Including the Government Center, The Lodge and Public Safety Building and Adopting a Supplemental Appropriation to the 2022 Capital Improvement Fund Budget in the Amount of \$225,691**

Alderman Fitzpatrick read B22-2942.1 for the first time.

Alderman Pound made a motion to waive the rules and read B22-2942.1 for a second time, seconded by Alderman Fitzpatrick. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

Mayor Becker asked if this was 100% paid for. The Director of Finance, Tracy Hansen stated the Air Quality Improvements are 100% covered by a FEMA grant.

Alderman Kleinschmidt asked if there are any annual costs. City Administrator Douglas Harms stated the filters will need to be changed quarterly. Consequently, there would be a cost but he could not recall the estimated cost but would get the information for the board if they wanted it before voting.

Alderman Fitzpatrick read B22-2942.1 for the second time.

Alderman Concagh made a motion, seconded by Alderman Fitzpatrick to approve B22-2942.1. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

#### 2. **R22-3537 Authorizing Accepting a Grant from the Federal Emergency Management Agency (FEMA) in the Amount of \$225,691 for COVID Related Air Quality Improvements to Public Buildings.**

City Administrator Doug Harms stated this resolution goes hand in hand with B22-2942.1 and the revenue from the grant would be deposited into the Capital Fund which the prior bill amended to reflect both revenues and expenses.

Mayor Becker read R22-3537.

Alderman Barrett made a motion, seconded by Alderman Kleinschmidt to approve R22-3537. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, , "AYE", Alderman Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

b. COVID EMERGENCY ORDERS

The City Administrator Doug Harms advised that COVID Emergency Declaration issued by the Governor in March 2020 was allowed to expire on December 31, 2021 without action to extend the order by Governor Parsons. Executive Order #9 issued by Mayor Becker in September expired on December 31<sup>st</sup>.

Items impacted by expiration of the local order:

1. Suspension of enforcement of Section 406.040 relating to exterior sale, display or storage goods in exterior areas of commercial districts without a permit from the board of aldermen. This allowed retail establishments to conduct exterior sidewalk or parking lot sales to mitigate the impact of County occupancy restrictions in indoor spaces;
2. Allowance for restaurants to provide or expand outdoor service or dining without first obtaining an amendment to their CUP allowing them to do so or by seeking a temporary exterior sales, display or storage permit. This allowed restaurants to establish curbside or drive-up service and for exterior dining to mitigate the impact of county occupancy restrictions in indoor spaces;
3. Easing of temporary sign regulations to allow businesses to advertise they are open for business, take-out or curb-side service etc...

City Administrator stated its staffs intent to ease the business community slowly back into compliance with city codes and not take a hardline short-term approach.

Alderman Barrett made a motion, seconded by Alderman Kleinschmidt to extend the COVID Emergency Order #9 until March 1, 2022 and ease the business community slowly back into compliance with city codes. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, , "AYE", Alderman Kleinschmidt, "AYE" Alderman Osherow, "AYE", Alderman Pound, "AYE". Motion passed 6-0.

c. COUNTY COVID MASKING ORDER

City Administrator stated the County Council approved a motion on January 4, 2021 to impose the masking mandate which requires face coverings be properly worn by all persons age 5 and older while indoors including public buildings and spaces and in all modes of public transportation. The order was effective at 8:30

AM on January 5, 2021. This order applies countywide including within incorporated areas under county charter provisions relating to public health.

The order for masking provides for health exceptions; for persons alone in a separate room, office or interior space; while consuming food or drink including for religious purposes; and while obtaining a service involving the nose or face for which temporary removal is necessary to perform the service. The order does not specify exceptions for persons actively engaged in indoor sports, swimming or in fitness centers which had been included in some prior orders.

In response to questions, the City Attorney Chris Graville stated that the minority votes in the county council voted against the order as being an “unlawful” order under the statutes. The Attorney General of Missouri has since filed litigation in Circuit Court to challenge the county health order as being an “unlawful order” and requested a restraining order but did not seek a temporary restraining order so it remains in effect at this time. He would not anticipate a decision by the courts to resolve the dispute in the short-term

The City Administrator stated that the staff, under his direction, is taking the position that the county order is in effect and applies to Des Peres and our operations and buildings and will attempt to abide by the county health order at The Lodge and in other public buildings unless otherwise directed by a city policy issued by the Mayor or adopted by the Board of Aldermen.

However, in light of prior board discussion on enforcement of county health orders in prior years, the staff has approached this new order with a policy best described as passive enforcement. Citizen feedback in the last week is mixed with some demanding no enforcement of the county order and some demanding strict enforcement as a public health issue.

The current directions he has provided to staff include:

1. Post signs at all entrances to City Hall, the Lodge and Public Safety that masks are mandated for entry into the buildings in accordance with the county health order. Interior signs should be posted at strategic locations within The Lodge to remind patrons of the requirement including near meeting rooms, fitness center and gymnasium.
2. City employees, full time and part-time, have been advised of the mask mandate for indoor spaces and instructed to comply at all times. Failure to do so can result in disciplinary action but we have not been confronted with the need to threaten disciplinary action to date.
3. Customers and members at The Lodge who enter the building without masks are reminded of the requirement when they check in at the front desk and are requested to comply. Once past the front desk, those who take off their masks or fail to wear them properly are reminded of the requirement and asked to comply. However, we are not pro-actively enforcing the rule either on our own or in response to a complaint – active

enforcement which would involve asking the patron to leave the building and involve public safety in the same manner as other private businesses.

4. On private property or businesses in the community, public safety will not proactively attempt to enforce the county health order but will respond to calls for service to a business in which the owner or manager is requesting our assistance in which case enforcement is limited to (1) asking the patron to comply or (2) to leave the premises (when requested to do so by the owner or manager) and then issue a trespassing ticket for those who refuse to leave.

Extensive discussion followed at the end of which the Mayor asked for any specific changes any member of the board might like to see in the enforcement plan. Hearing none, he stated that the enforcement plan as outlined by staff would stand as our enforcement plan.

#### **REQUEST FOR EXECUTIVE SESSION**

Staff has not been notified by the Mayor or City Attorney of a request for Executive Session.

#### **ADJOURNMENT**

Alderman Fitzpatrick made a motion, seconded by Aldermen Barrett to adjourn the regular meeting at 8:05 P.M.

Minutes Prepared by:

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Amanda Hurley  
City Clerk

Minutes approved by the Board of Aldermen on the 24<sup>th</sup> day of January, 2022

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Mark Becker, Mayor

ATTEST:

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Amanda Hurley  
City Clerk