



MINUTES OF THE BOARD OF ALDERMEN MEETING  
CITY OF BALLWIN – 300 PARK DRIVE

November 28, 2011

The meeting was called to order by Mayor Pogue at 7:03 p.m.

PRESENT

MAYOR TIM POGUE  
ALDERMAN JIMMY TERBROCK  
ALDERMAN MICHAEL FINLEY  
ALDERMAN MARK HARDER  
ALDERMAN SHAMED DOGAN  
ALDERMAN FRANK FLEMING  
ALDERMAN JIM LEAHY  
ALDERMAN RICHARD BOERNER  
ALDERMAN KATHY KERLAGON  
CITY ADMINISTRATOR ROBERT KUNTZ  
CITY ATTORNEY ROBERT E. JONES

ABSENT

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *October 24, 2011 Board of Aldermen meeting* were submitted for approval. A motion was made by Alderman Boerner and seconded by Alderman Leahy to approve the Minutes as submitted. A voice vote was taken with a unanimous affirmative result and the motion passed.

The Minutes of the *November 14, 2011 Budget Work Session*, were submitted for approval. A motion was made by Alderman Boerner and seconded by Alderman Terbrock to approve the Minutes as submitted. A voice vote was taken with a unanimous affirmative result and the motion passed.

The Minutes of the *November 14, 2011 Board of Aldermen meeting* were submitted for approval. A motion was made by Alderman Boerner and seconded by Alderman Terbrock to approve the Minutes as submitted. A voice vote was taken with a unanimous affirmative result and the motion passed.

PRESENTATION

***Bill Biermann, 1795 Clarkson Road (Rothman Furniture site development):*** Mr. Biermann presented the concept of allowing the establishment of a TDD to fund transportation improvements for the development of the former Rothman Furniture site at 14799 Manchester Road. This would only apply to the 3-lot subdivision on this property. After the plans were approved, it was determined that there was a \$1 million excess cost to offset. The developer would buy the bonds. No public sale is expected. He has not set a percentage rate yet for the sales tax needed to cover the costs. He wanted to know if the concept is palatable to Ballwin. They have done everything possible to bring down the unexpected cost. A huge portion of the cost was due to an error in the estimate cost of hauling off the surplus dirt. At this time, no alternate options have been economically acceptable. He said he would incur the costs now, hoping that over time, this amount would be recovered through the TDD. He said this was an honest mistake on a big dollar item.

Alderman Terbrock asked if Ballwin is expected to approve this at this meeting. City Attorney Jones said, "No. It's not on the agenda. Ballwin is a transportation authority. It depends on which one of the

three statutory transportation development mechanisms they decide to follow. The City could be an active participant, it could be a participant only because we're one of the transportation authorities affected by the Transportation Development District. That's up to the developer to tell us which one of the mechanisms."

Mr Biermann said, "My purpose for addressing the Board on this is to get a general feel of the Board's position on this. Is the Board against us going down this path."

Alderman Boerner asked, "Is this a deal breaker?" Mr. Biermann said, "No. The land has been purchased, but the TDD would help offset some of the extraordinary cost."

City Administrator Kuntz asked, "What's in this for the City of Ballwin?" Mr. Biermann said, "The improvements that would be within the district is the improvement of Seven Trails Drive to accommodate more traffic. There was discussion about constructing a sidewalk on the Government Center property, street lights along Seven Trails Drive behind the park. There was a fair amount of work at the intersection that benefits everyone."

Alderman Finley asked, "Have you given consideration to working with a few of the surrounding businesses about expanding this idea?" Mr. Biermann said he has not done this. This could be looked into. The piece of property that is behind the property is owned by a firm in Arizona. They have been very uncooperative. This is common. They wouldn't even respond. He asked for a temporary grading easement to bring the wall down to the edge of the property line. They said no."

Alderman Dogan asked, "What is the reason this expense wasn't anticipated?" Mr. Biermann said, "The property is high above Manchester Road. An assumption was made that the removed dirt would be taken to a local site. That would have been a hefty cost savings. The individual who initially wanted the dirt said it didn't have enough clay and therefore, didn't meet their specs. Now it has to be hauled a long distance. There's a baseball field here in the park where some of the dirt can be relocated, with re-grading. There's a drainage problem at this field and the extra dirt will improve the field. The original budget included that the site was 3 feet higher. This was well over half of the extra cost."

Alderman Dogan asked, "What percentage the cost increase is going to be?" Mr. Biermann said, "Roughly \$500,000 to \$700,000 extra, most likely at least \$700,000. It could be as high as \$1 million. The final calculations have not been completed."

Alderman Harder asked, "Are you working with another user of the dirt, since your first candidate fell through?" Mr. Biermann said, "We're still working on this to find another location. Five or six years ago, there were many locations to take the dirt, and it could even be sold."

Alderman Harder asked, "If you could find a vendor or person who could use the dirt, that would take the \$700,000 down to what?" Mr. Biermann said, "It could go down to \$500,000."

## **PENDING ISSUES**

None.

## **CITIZEN COMMENTS**

***Robert Klein, 2452 Capitol Landing:*** Mr. Klein said, "I would like to congratulate Mr. Biermann on his presentation. That's the most honest discussion I have heard from a developer in the three years that I've been coming to these meetings. He should get an award for being so open with the Board."

***New Schnucks store:*** Mr. Klein said, "The new Schnucks store is an affront to the character of the adjoining neighborhoods. It appears to actually sit on top of Clarkson road. The building has less of a setback than the fences and houses along any road throughout Ballwin. The building is shameful and is

prime-face evidence that Ballwin officials have no business participating in any Great Streets discussion regarding Manchester Road.”

*Election Fraud:* Mr. Klein said, “As we all know, two of our sitting Board of Aldermen members falsified their sworn Candidate Qualifications forms and our city government turned a blind eye to this hypocritical behavior. Obviously, the citizens can expect the same disingenuous and bereft of character behavior from our officials while sitting in office, as they exhibit while running for office. We, the citizens, are being held to a more strict level of citizenship behavior than our public officials who serve us. What steps are being taken by the Ballwin Government to restore honesty and integrity to our city by assuring we have citizens of high character holding our public offices?”

Mr. Klein asked, “How many of our Ballwin officials are actually contractors or suppliers to the new Schnucks store being constructed at Clarkson and Kehrs Mill Road? If you will raise your hands, I will appreciate it.” No one raised their hands. Alderman Fleming said, “I don’t know if anyone minded raising their hand or if no one is, I’m not.” Alderman Terbrock said, “I’m not being dishonest, I’m not either.”

## **PUBLIC HEARINGS**

None.

## **NEW BUSINESS**

### **LEGISLATION**

#### **BILL # 3711 - AN ORDINANCE AMENDING THE SIGN CODE OF THE CITY OF BALLWIN WITH RESPECT TO MOVABLE DYNAMIC DISPLAY SIGNS OWNED AND OPERATED BY THE CITY OF BALLWIN.**

A motion was made by Alderman Boerner and seconded by Alderman Finley for a first reading of Bill No. 3711. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3711 was read for the first time.

Alderman Harder said “This came up because of the two or three signs that we have, that we purchased used from the State. They are different than what we required stores on Manchester Road to do. I have a problem with that because we’ve told the businesses that this is what you have to do and spend your money, yet, I see a conflict. If a business came to us and said they didn’t want to do theirs, but yours are okay, but I have to do “X”, I don’t know if this is the way to handle this.”

Mayor Pogue said, “The way the bill is written, it addresses the times that Ballwin uses these signs for warning motorists of notification of dangerous conditions. The language here would not allow us to use the signs for advertising Concerts in the Parks etc. The signs could only be used to warning motorists of dangerous conditions.” City Attorney Jones said this is correct. The drug-take back would be another example of an exempted use of the signs. The Ballwin Days parade would be a proper use of the city’s police power exemption of its own regulation because it would be notifying of detour and traffic conditions.”

Alderman Finley said, “There is a legitimate public interest, the public safety and Police power. That gets me on board with it.”

Alderman Boerner said, “This is for the purpose of providing warning to the motorists. It should get attention and you want people to see it.”

Alderman Harder said, “The criteria is the delay between changing the message. These signs cannot be set to have long enough timing between message changes.”

City Administrator Kuntz said, “Every city that I know is using the same technology. The signs are portable, easy to put at a strategic location for a short period of time, very specific to a message, and then easily removed.”

Alderman Harder asked, “Should a statement be made that this is a temporary sign, as opposed to a permanent sign?” Alderman Terbrock said, “For us or another governmental agency, this does not apply.” Alderman Harder said, “From the standpoint of it being a temporary or emergency situation, if the sign is up for a month or a day, what is temporary?”

City Attorney Jones said, “In the first phrase, we could add ‘*a movable or a temporary dynamic display sign owned and operated*’. By adding this, we haven’t changed the character of this bill. The word movable is in the title.”

Alderman Finley said, “From a cost perspective, the City already owns the movable digital signs, they work, we need them for the public safety and police power. I don’t think we can justify explaining to our citizens that we need to buy new movable signs in order to comply with what we have already approved into law. Our signs function, do the task that we need them to do, and therefore, I’m satisfied with this bill.”

A motion was made by Alderman Finley and seconded by Alderman Terbrock for a second reading of Bill No. 3711. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3711 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3711 with the following results: Ayes – Finley, Terbrock, Boerner, Leahy, Fleming, Dogan, Kerlagon. Nays – Harder. Bill No. 3711 was approved by a vote of 7-1 and became **Ordinance No. 11-54**.

**BILL # 3712 - AN ORDINANCE OF THE CITY OF BALLWIN, ADOPTING THE 2012 EDITION OF THE “INTERNATIONAL RESIDENTIAL CODE”, REGULATING AND GOVERNING THE CONSTRUCTION, ALTERATION, MOVEMENT, ENLARGEMENT, REPLACEMENT, REPAIR, EQUIPMENT, LOCATION, REMOVAL, AND DEMOLITION OF DETACHED ONE AND TWO-FAMILY DWELLINGS AND MULTIPLE SINGLE-FAMILY DWELLINGS (TOWNHOUSES) NOT MORE THAN THREE STORIES IN HEIGHT WITH SEPARATE MEANS OF EGRESS IN THE JURISDICTION; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFOR; REPEALING ORDINANCE NO. 06-27 OF THE CITY OF BALLWIN AND ALL OTHER ORDINANCES OR PARTS OF LAWS IN CONFLICT THEREWITH.**

A motion was made by Alderman Fleming and seconded by Alderman Terbrock for a first reading of Bill No. 3712. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3712 was read for the first time.

Alderman Finley requested that Section 4 (Saving Clause) be amended to change “impending in any court” to “pending in any court”. The Board and City Attorney agreed.

Alderman Finley asked, “Is the series of bills that the Board is considering, is this done every 5 years?” City Attorney Jones said, “New model code editions are released every 3 years.” Assistant City Administrator Aiken said, “We usually adopt every second edition because the codes don’t change much from one edition to the next. These codes are used all over the country, and certain issues are different depending on the region of the country. We have to update the parts that are applicable to our part of the country. For example, the code is different for Minneapolis than St. Louis County.”

City Attorney Jones said, “It’s my understanding that this legislation is replacing the 2006 version with the 2012 version, except for the things that are called out specifically in Section 2.” Assistant City Administrator Aiken said, “When you replace the old code and adopt the new code, you’re adopting much

of the same code that's been in place for years. There are certain provisions that change. That's why a newer edition is released. You have to adopt the edition that's applicable to where you live."

A motion was made by Alderman Terbrock and seconded by Alderman Fleming for a second reading of Bill No. 3712, as amended. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3712 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3712 with the following results:  
Ayes – Terbrock, Harder, Dogan, Finley, Kerlagon, Fleming, Boerner, Leahy. Nays – None. Bill No. 3712 was approved and became **Ordinance No. 11-55**.

**BILL # 3713 - AN ORDINANCE ESTABLISHING THE MINIMUM REGULATIONS GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PROPERTY, BUILDINGS AND STRUCTURES BY PROVIDING THE STANDARDS FOR SUPPLIED UTILITIES AND FACILITIES AND OTHER PHYSICAL THINGS AND CONDITIONS ESSENTIAL TO ENSURE THAT STRUCTURES ARE SAFE, SANITARY, AND FIT FOR OCCUPATION AND USE; AND THE CONDEMNATION OF BUILDINGS AND STRUCTURES UNFIT FOR HUMAN OCCUPANCY AND USE AND THE DEMOLITION OF SUCH STRUCTURES: KNOWN AS THE BUILDING CODE.**

A motion was made by Alderman Fleming and seconded by Alderman Finley for a first reading of Bill No. 3713. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3713 was read for the first time.

Alderman Finley requested that Section 4 (Saving Clause) be amended to change "impending in any court" to "pending in any court". The Board and City Attorney agreed.

A motion was made by Alderman Kerlagon and seconded by Alderman Terbrock for a second reading of Bill No. 3713, as amended. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3713 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3713 with the following results:  
Ayes – Kerlagon, Terbrock, Leahy, Fleming, Harder, Boerner, Dogan, Finley. Nays – None. Bill No. 3713 was approved and became **Ordinance No. 11-56**.

**BILL # 3714 - AN ORDINANCE ADOPTING THE 2012 EDITION OF THE INTERNATIONAL PLUMBING CODE, REGULATING AND CONTROLLING THE DESIGN, CONSTRUCTION, QUALITY OF MATERIALS, ERECTION, INSTALLATION, ALTERATION, REPAIR, LOCATION, RELOCATION, REPLACEMENT, ADDITION TO, USE OR MAINTENANCE OF PLUMBING SYSTEMS IN THE CITY OF BALLWIN; PROVIDING FOR THE ISSUANCE OF PERMITS THEREFORE; REPEALING ORDINANCE NO. 06-29 THE CITY OF BALLWIN AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.**

A motion was made by Alderman Boerner and seconded by Alderman Fleming for a first reading of Bill No. 3714. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3714 was read for the first time.

Alderman Harder asked, "Where it refers to Section 2, the changes with misdemeanor \$1,000, inserting \$100 and \$500, what does that refer to?" Assistant City Administrator Aiken said, "I honestly don't know. \$1,000 is the maximum fine established by State law. This is the maximum fines for these types of violations. Those are probably left blank in the code to be inserted by the local jurisdiction."

City Attorney Jones said, "We increased our maximum fine in the municipal division from \$500 to \$1,000 in 2007." Assistant City Administrator Aiken said, "We send a notice of violation. If they refuse to comply, they go to court, and the court can assess a fine up to \$1,000 and/or 90 days in jail." Alderman Harder asked about the \$100 and \$500. Assistant City Administrator Aiken said, "I apologize. I don't know. I don't know the plumbing code well enough to tell you what those represent." Alderman Harder and Alderman Finley asked for this information to be provided to the Board at the next meeting.

Alderman Finley requested that Section 4 (Saving Clause) be amended to change "impending in any court" to "pending in any court". The Board and City Attorney agreed.

A motion was made by Alderman Terbrock and seconded by Alderman Fleming for a second reading of Bill No. 3714, as amended. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3714 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3714 with the following results:  
Ayes – Terbrock, Fleming, Leahy, Kerlagon, Dogan, Boerner, Finley, Harder. Nays – None. Bill No. 3714 was approved and became **Ordinance No. 11-57**.

**BILL # 3715 - AN ORDINANCE ADOPTING THE 2012 EDITION OF THE INTERNATIONAL MECHANICAL CODE, REGULATING AND CONTROLLING THE DESIGN, CONSTRUCTION, QUALITY OF MATERIALS, ERECTION, INSTALLATION, ALTERATION, REPAIR, LOCATION, RELOCATION, REPLACEMENT, ADDITION TO, USE OR MAINTENANCE OF MECHANICAL SYSTEMS IN THE CITY OF BALLWIN; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFORE; REPEALING ORDINANCE NO. 06-30 OF THE CITY OF BALLWIN AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.**

A motion was made by Alderman Leahy and seconded by Alderman Fleming for a first reading of Bill No. 3715. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3715 was read for the first time.

Alderman Finley requested that Section 4 (Saving Clause) be amended to change "impending in any court" to "pending in any court". The Board and City Attorney agreed.

A motion was made by Alderman Kerlagon and seconded by Alderman Leahy for a second reading of Bill No. 3715, as amended. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3715 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3715 with the following results:  
Ayes – Kerlagon, Leahy, Finley, Boerner, Dogan, Harder, Terbrock, Fleming Nays – None. Bill No. 3715 was approved and became **Ordinance No. 11-58**.

**BILL # 3716 - AN ORDINANCE AMENDING ARTICLE III, SECTION 7-48 OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN WITH RESPECT TO THE ADOPTION OF THE 2011 EDITION OF THE NATIONAL ELECTRIC CODE PERTAINING TO THE INSTALLATION OF ELECTRICAL WIRING AND APPARATUS, PROVIDING FOR THE ISSUANCE OF ELECTRICAL PERMITS, FEES, AND RELATED INSPECTION REQUIREMENTS, AND INCLUDING PENALTIES FOR VIOLATION THEREOF.**

A motion was made by Alderman Finley and seconded by Alderman Leahy for a first reading of Bill No. 3716. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3716 was read for the first time.

Alderman Harder asked, "How does this tie into our approval of certifying people to be able to do their own electrical work in their home?" Assistant City Administrator Aiken said, "We'll update the test to reflect the current code. Other than that, there's no change." City Attorney Jones said, "The language states the edition of the code that is current as of the time of the testing." Alderman Harder asked, "Does the code allow us to test?" Assistant City Administrator Aiken said, "Absolutely. This is the same code we have in place now. It's just the updated version of it. Adopting this version doesn't change any basic precepts of the code."

Alderman Finley requested that Section 4 (Saving Clause) be amended to change "impending in any court" to "pending in any court". The Board and City Attorney agreed.

A motion was made by Alderman Harder and seconded by Alderman Finley for a second reading of Bill No. 3716, as amended. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3716 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3716 with the following results:  
Ayes – Harder, Leahy, Kerlagon, Finley, Fleming, Boerner, Terbrock, Dogan. Nays – None. Bill No. 3716 was approved and became **Ordinance No. 11-59**.

**BILL # 3717 - AN ORDINANCE ADOPTING THE MINIMUM REGULATIONS GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PROPERTY, BUILDINGS AND STRUCTURES BY PROVIDING THE STANDARDS FOR SUPPLIED UTILITIES AND FACILITIES AND OTHER PHYSICAL THINGS AND CONDITIONS ESSENTIAL TO ENSURE THAT STRUCTURES ARE SAFE, SANITARY AND FIT FOR OCCUPATION AND USE AND THE CONDEMNATION OF BUILDINGS AND STRUCTURES UNFIT FOR HUMAN OCCUPANCY AND USE AND THE DEMOLITION OF SUCH STRUCTURES; KNOWN AS THE FUEL GAS CODE.**

A motion was made by Alderman Kerlagon and seconded by Alderman Boerner for a first reading of Bill No. 3717. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3717 was read for the first time.

Alderman Finley requested that Section 4 (Saving Clause) be amended to change "impending in any court" to "pending in any court". The Board and City Attorney agreed.

A motion was made by Alderman Boerner and seconded by Alderman Leahy for a second reading of Bill No. 3717, as amended. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3717 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3717 with the following results:  
Ayes – Boerner, Leahy, Terbrock, Harder, Kerlagon, Fleming, Dogan, Finley. Nays – None. Bill No. 3717 was approved and became **Ordinance No. 11-60**.

**BILL # 3718 - AN ORDINANCE AMENDING THE PROVISIONS OF THE CABLE COMMUNICATIONS REGULATIONS WITH RESPECT TO VIDEO SERVICE PROVIDERS.**

A motion was made by Alderman Finley and seconded by Alderman Leahy for a first reading of Bill No. 3718. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3718 was read for the first time.

A motion was made by Alderman Kerlagon and seconded by Alderman Fleming for a second reading of Bill No. 3718. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3718 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3718 with the following results:  
Ayes – Kerlagon, Fleming, Dogan, Boerner, Leahy, Terbrock, Harder, Finley. Nays – None. Bill No. 3718 was approved and became **Ordinance No. 11-61**.

## **A RESOLUTION REGARDING THE METROPOLITAN SEWER DISTRICT (MSD) PENDING CONSENT DECREE AND RATE INCREASES.**

Mayor Pogue said, “This Resolution is asking MSD to take a step back and use a slower approach to what they are proposing to do in trying to control some of the overflows that they are getting into the waterways. Their current plan would significantly increase the amount that they charge the residents and businesses throughout St. Louis. One of the reports said that what their plan is, really won’t help. The Municipal League has asked them to reconsider this rather than making a hefty increase in the bills, and to find another approach that will make an impact on this.

Alderman Harder asked, “Is this the Resolution that the Municipal League has provided?” City Administrator Kuntz, said, “Yes. It is their model for our use.” Mayor Pogue said, “This was discussed at the last Municipal League meeting that this would be coming to the cities for discussion.” City Administrator Kuntz said, “The Resolution will be sent to MSD, the EPA, and Municipal League. It’s asking MSD to take another look at their plan.”

*A motion was made* by Alderman Boerner and seconded by Alderman Terbrock to adopt the Resolution from the Municipal League regarding pending rate increases and be sent to MSD. A voice vote was taken with a unanimous affirmative result and the motion passed.

**CONSENT ITEMS:** (Budgeted items which are low bid and do not exceed expenditure estimates and/or items which have been previously approved in concept.)

A. None.

## **MAYOR’S REPORT**

**Holiday Tree Lighting – December 3** at Olde Towne Plaza from 5:00 p.m. – 6:00 p.m. We will be working with the Circle of Concern for a canned food drive.

**Future Meeting:** Mayor Pogue proposed that the December 26 Board of Aldermen meeting be cancelled. *A motion was made* by Alderman Boerner and seconded by Alderman Fleming to cancel the December 26 Board meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

## **CITY ADMINISTRATOR’S REPORT**

None.

## **STAFF REPORTS**

None.

## **CITY ATTORNEY’S REPORT**

**Canvassing / Solicitation:** City Attorney Jones said, “The Board has been provided with a marked up edition of the Canvassing/Soliciting/Peddling bill. We are effectively taking out the generic definition of solicitor, that included peddlers, handbillers, canvassers, and we’re carving out an edge for those canvassers that are not soliciting money. I’m proposing keeping in place the time, place and manner



restrictions on the time of day when solicitation, including handbilling, can take place; and also requiring the badges of all solicitors, except those that are exempted under this rule, which would be non-profit and charitable organizations recognized by the IRS or Better Business Bureau.

City Attorney Jones said, "The second proposed bill is to clean up a miscommunication that I had with Chief Schicker. We adopted an ordinance which raised the fee for solicitation per day by \$5.00 on both the for-profit and non-profit organizations. Chief Schicker had intended to raise it by \$5.00 one time for the preparation of the badge. What I've proposed is to change Section 14-6(b), which would be a \$5 increase on the first day to make up the cost of creating the badge, and would be attributable only to the solicitors that are not non-profit and charitable organizations. If this is acceptable, it can be brought back as two clean bills at the next meeting."

Alderman Harder said, "We've changed who is under this law and we're dealing with people that are peddling, selling things door to door. We're still exempting licensed people by the State, as well as non-profit, which would come under charities, Girl Scouts, churches." City Attorney Jones said, "We're exempting from fees to be collected, non-profit and charitable organizations. The only organizations that we're really exempting from the license application, where they have to fill out the application and go through the process of investigation by the Police Department, are canvassers or handbillers that are not soliciting donations or money." Alderman Harder asked, "Someone putting something on a door knob with a rubber band, are they covered or not covered?" City Attorney Jones said, "If all they are trying to do is get out a political message, they are exempt. If they are trying to convince someone to buy replacement windows, they should be going through the whole process of applying and going through the investigation necessary to be given a license."

Alderman Harder said, "I'm trying to remember back when we first started talking about this. Anyone that is licensed through the State, whether it be an accountant, dentist, chiropractor, real estate agent, are they exempt from this because they are licensed through the State as professionals?" City Attorney Jones said, "No. We don't have an exemption for this." Alderman Harder asked, "Isn't there some kind of State law that says that those people are exempt from any kind of..." City Attorney Jones said, "I don't think so. I don't think that I could, as a licensed attorney, go door to door and be exempt." City Administrator Kuntz said, "This means exempt from a business license." Alderman Harder said, "Someone like a real estate agent, like myself, or an Edward Jones rep, or an attorney, are they exempt through the State?" City Attorney Jones said, "I don't think they could be. This is a license that's particularly placed on the activity of solicitors. They're not selling something at their visit, and the act of going door to door and soliciting that we're requiring an application and taking a fee. It's a different license than a business license based on gross receipts or square footage, or the other calculations that we use." Alderman Harder asked, "If someone shows up at our door and says 'I just opened up an XYZ office down the street, and I'd like you to come by and let me show you how I can sell you some stocks and bonds.' Does that person need a license to do that through us?" City Attorney Jones said, "Yes, which is actually a permit with an identification card to identify them to the person at the door, that they have been checked at the police department, and for our record if a resident calls to inquire." Alderman Harder said, "For some reason it stuck because I am in that business. If a real estate agent went door to door and said, 'I've got a listing down the street, just want to let you know.' Is that considered solicitation over somebody that's coming in with windows and saying let me put windows in your house." City Attorney Jones said, "I don't think there's any difference. This legislation does not make that distinction. As a real estate agent or an attorney, we could advertise on our own premises with a sign. We could advertise in the media and would be exempt from the city's business license based on gross receipts or square footage. I don't think those businesses would be exempt from the necessary application and fees required under this ordinance."

City Administrator Kuntz said, "Your example is more specifically targeting a new financial planner in town with an office would be more likely to want to canvass a whole city and would want to have the license and I.D. card so that more people would be responsive. The idea is to work together so that people are more responsive to open their door. It works both ways, not just a burden on the solicitor. It's

to insure that they have registered with the Police Department, they are who they say they are, they're not trying to gain entrance under false pretenses. At least that was my interpretation."

Alderman Harder said, "If somebody wanted to go door to door, I thought that as long as they weren't selling anything, just for information purposes, they didn't need to have a badge for that type of activity." City Attorney Jones said, "I did not draft this bill to make that distinction. If the Board is so inclined, we can do that. That was not part of the discussion we had when we adopted the earlier legislation. The only thing that I was trying to remedy with this was to look at the line of cases that we discussed before dealing with protecting free speech. I think the examples you're talking about are commercial free speech."

Alderman Terbrock said, "There may be confusion over licenses and permits. Maybe we should change the title of Section 14-3 from license application to permit application, and anywhere else it may fall in there. This will keep someone from getting confused about business license or solicitation permit." City Attorney Jones said, "We can do that."

Alderman Boerner asked, "The permit, is it a one-time \$25 fee?" Police Chief Schicker said, "The permit fee is a one-time \$25 fee. They pay a fee for every day that they solicit, but there's a one-time \$5 fee for each I.D. card." City Attorney Jones said, "\$25 the first day, and \$20 on each successive day is how I read this. The ordinance that's been in place for years already says \$20 per day. We inadvertently changed it to \$25 per day, but should be \$25 for the first day, and then \$20 for each day after that. The \$5 per card is to recoup our cost in producing the I.D. card." Alderman Boerner said, "As Alderman Harder said, if his intent was to go to a couple of houses on the street where he had a listing, he would be required to get the permit and pay \$25 for the first day, and \$20 for each day."

Alderman Boerner asked, "How many people on a routine basis do you have that get a permit?" Police Chief Schicker said, "It fluctuates from season to season, and year to year. Earlier this year from January to July, we issues one or two permits. When the weather changed, we had a flood of permit applications." Alderman Boerner asked, "How many permits did you issue in 2011?" Police Chief Schicker said, "I think we're up to around 11 permit applications. Keep in mind that applications do not equate to how many days. They make a permit application for Friday evening through Sunday. We may have a construction company and say they will be here for a week or two, possibly three weeks. You're looking at dollar amounts compared to actual permits issues." Alderman Boerner said, "There has to be a lot more people out there than the ones that apply for permits." Police Chief Schicker said, "They might have 20 solicitors out there." Alderman Boerner said, "There would have to be a lot more people that did that than the ones that applied for permits. You had more than 11 groups. If a company said they want to send 10 people out, there would be \$5 for each I.D. card and \$20 per day per person." Police Chief Schicker said, one application had 12 solicitors." Alderman Kerlagon said, "You're saying actually events as opposed to the number of solicitors?" Police Chief Schicker said, "You may have one application where 2 or 3 people come in and solicit over a given time period. Another applicant may have 10 or 15 solicitors on one application."

Alderman Boerner said, "There's a likelihood that there's a lot of people soliciting that don't apply for an application and no one complains about it." Police Chief Schicker said, "We get complaints, and we follow up on those. It's a seasonal activity. When the temperature is extremely high, the young people are not usually out knocking on doors, nor are they going to get the reception from the residents."

Alderman Harder said, "For clarification, somebody hanging coupons on your door is covered or not covered?" City Attorney Jones said, "If they are trying to get across a message about a political candidate or a political issue, or some other non-commercial free speech, and just leaving that message on the door, they would be exempt under this new revised version of the ordinance. If the door hanger was soliciting your business to purchase goods, product, or service, then they should be applying for and obtaining a permit." Alderman Harder said, "We probably have more of those people who are putting coupons on mail boxes or front doors than there are people knocking on the door." City Attorney Jones said, "By the

same token, people probably find that less offensive if they don't have to answer the door and have concerns about their safety."

**A motion was made** by Alderman Fleming and seconded by Alderman Terbrock to follow the City Attorney's recommendation regarding previous ordinance 11-09 and draft new legislation. A voice vote was taken with the following result: Aye: Terbrock, Finley, Dogan, Fleming, Leahy, Boerner, Kerlagon. Nay: Harder. The motion passed by a vote of 7-1.

Alderman Fleming said, "I suggest that if anyone has any thoughts on how they want to do this differently in the future, let's tell City Administrator Kuntz before we come to the next meeting, as opposed to sitting up here trying to do it on the fly. There could be some wrinkles to this like Alderman Harder brought up, so he might want to satisfy his own curiosity in advance, like are the professionals exempt, etc. Please bring anything like that to Bob's attention ahead of time, otherwise we won't be able to take action on it if there's substantive changes. The questions asked tonight would be substantive changes." City Attorney Jones said, "Yes they would."

**A motion was made** by Alderman Fleming and seconded by Alderman Terbrock to draft a bill for Board consideration, in accordance with the City Attorney's recommendation, to modify the previous ordinance regarding the daily fee for solicitation. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Property Demolition:** City Attorney Jones said, "We have a property at 74 Breezeview, which has fallen into disrepair. It's been abandoned and unoccupied for a number of years. We've taken the first step toward declaring the building unsafe and seeking to demolish it. The notice went out 30 days ago. The 30-day period will expire on Wednesday. The next step is to have a hearing before the City Administrator, who then, based on this show-cause order, will determine whether or not the building should be demolished.

City Attorney Jones said, "We sent out the notice based upon a review of the chain of title that I did in the Recorder of Deeds office. I received a letter report today that there's a \$3,000 Deed of Trust that's 25 years old on the property. I initiated a call to the attorney that's holding the Deed of Trust to see if I can get him to waive that. We may have to start the notice process over again. It may even be barred by the passage of time. In any event, we are going to seek demolition of this property and I'll keep you posted as it develops."

Alderman Harder asked, "Is the property in a residential neighborhood?" City Attorney Jones said yes. Alderman Boerner asked, "Does the property have any property taxes or anything outstanding against it?" City Attorney Jones said, "Yes. There were two years. They're paying the taxes. Sometimes, they cut the lawn. It's boarded up but not very well. In some places it appears that animals are getting in and out. No one has occupied it in quite a long time. The status of the title to the property is a mess. The owner went through a divorce. The property was transferred to one spouse, who had a judgment against her. The Sheriff sold the property, and the husband brought the property back, and transferred it to a trust. It's a mess."

Alderman Harder asked, "What is the procedure if we have to pursue the trust and start over a 90-day notice, a 60-day notice." City Attorney Jones said, "We've already done the 30-day notice, assuming it's effective because of this Deed of Trust. The next step is for the City Administrator to issue a show-cause order and schedule a hearing, give the property owner or lender an opportunity to show up, and then the City Administrator renders an order saying that the property should be demolished if it's not corrected in 10 days. That 10 days passes, then the city would demolish the property as it did on Parker about 10 years ago. A special tax bill was placed against the property, which would have to be paid by any subsequent purchaser or lender, but they wouldn't be able to get title insurance. And then we also follow up by filing a municipal court action to collect a fine of \$200 per day. Those are the two ways the city would attempt to recoup its costs in the proceedings." Alderman Harder asked, "Do we try to recoup the

cost of demolition?" City Attorney Jones said yes, with a special tax bill on the property." Alderman Harder asked, "Is it graded to a tilt to hold the foundation in?" City Administrator Kuntz said, it would be graded, seeded, for it to become lawn as part of the demolition."

Mayor Pogue said, "There was a similar property just north of Holy Infant on Parker that was done a few years ago."

Alderman Finley asked, "Is the notice a public notice, or do we have to notify the owner." City Attorney Jones said, "We are required to notify the owner, the lender, or others with a recorded interest in the property, then required to post the property. We sent the notice to the owner, and we did post the property. As best as I can tell from the plan records, there was no open Deed of Trust, and there may not be. I need to make contact with the lender to see about this. This property could have been vacant for 20 years." Alderman Terbrock said, "I know that it has been that long."

### **ALDERMANIC COMMENTS**

**Street Lights:** Alderman Leahy said, "On December 12, at 6:00 p.m., I would like to have a Public Health & Safety Committee meeting to discuss street lights, the rising costs, possible solutions, and anything else that anyone would like to discuss. I'd like to limit this to 45 minutes because Alderman Terbrock would like to talk to the committee about the deer in the area." Alderman Terbrock said, "I've been looking at things that have gone on around us and would like to see if we need to take action." Mayor Pogue said, "In preparation of this, will Parks Director Bruer get information from the Urban Deer Task Force that we belong to and any updated information be provided to the committee."

**Candidate Filing & Certification:** Alderman Harder said, "I would like to discuss candidate filings for the coming election. I have copies of the current paperwork that we give out, and I've also done some research in surrounding municipalities and what they do, so that we can address this going forward since we have the filings for aldermen starting on December 13."

Alderman Harder said, "For the last 6 months, we've discussed the requirements for election to the Board of Aldermen, as well as enforcement of those policies by the City Clerk and City Administrator. I have given the Board a copy of the past Ballwin election candidate paperwork that every candidate must complete in order to have their name placed on the ballot. The three things that I believe we need to do tonight or in the near future, are: **a)** review the documents and decide that this is what we want the documents to say for the next election; **b)** we need to look at what should be the basic requirements for candidates to have their name placed on the ballot; **c)** whatever we decide should be on this document, that we give adequate enforcement or researchability to the City Clerk to properly certify the candidates for office. We need to give the City Clerk the ability to assess the St. Louis County Revenue website and other sources to verify that taxes, municipal fees, and sewer lateral fees are paid. We need to make sure that residency is checked, as well as the age of the candidate and length of time in the home. An additional requirement that candidates, as in most of the municipalities surrounding us, be citizens of the United States, and that can be checked using a birth certificate, passport, social security card, or any of the above, just like if you were taking a job in one of our businesses."

Alderman Harder said, "I've done research into what other municipalities in our area require for their candidates and the forms they have their candidates complete to be on the ballot. I talked to city clerks in Ellisville, Chesterfield, and also the Rockwood School District. They are wrestling with the same issues that we have dealt with in the past few months. They have made it very specific what their qualifications are for those particular jobs."

Alderman Harder said, "I want to direct your attention to the Declaration of Candidacy of these three jurisdictions. Some do some basic research into the basic qualifications of the candidates, others do nothing, and another leaves it up to the candidate to agree to the conditions and hope that there's not a problem down the road. I'm sure, if I asked more municipalities, there would be more variations of this

practice. To say that our City Clerk can only do ministerial functions does not hold true in different parts of the County. They all can't be right. I believe in all three of these positions, it's not a good practice other than a full consistent verification of the facts, and the requirements that we set forth for qualifications for candidacy."

Alderman Harder said, "What I'm asking tonight is that we discuss the merits of what I've said and decide how we want to conduct our elections in the future. Do we just want to trust the candidates will do the right thing and leave everything up to the status quo, or do we want the ability to verify so that the credibility of this Board and our election process is upheld. At the end of the discussion, I would also like to make a motion to amend our candidate qualifications to add the requirement that our elected officials be U.S. citizens, and that we create a procedure for the City Clerk to verify that what our City says are all of the qualifications for our elected positions, are correct, thus protecting the credibility of our election process."

Alderman Harder said, "I would like to start the discussion with our own election information and make sure that if there are any questions, should we correct this Declaration of Candidacy for our city."

Alderman Fleming said, "We tried to get a definitive answer from different people, and we never got any definitive answers. We received correspondence in September. At that Board meeting, I said if anyone has suggestions how this should be changed, please let us know right away. We still have time before budget sessions and candidate filing opens. Now we are in late November."

City Administrator Kuntz said, "all of the City Clerks that handle candidate filing have been invited to attend the annual seminar at the Election Board. Our City Clerk, Marie Clark, will be attending. This topic will be discussed because this is not just a Ballwin issue. Marie advised me that she is going to ask a lot of these questions. We want clarification as much as this Board does also."

Alderman Fleming said, "The time line is that the packet of form will be handed out at the seminar from the Election Board on Wednesday. Candidate filing starts on December 13. There's not enough time to do anything about this because there's only one Board meeting and then candidate filing opens the next day at 8:00 a.m. I'm not opposed to discussing this, but there's not sufficient time for the Board to make changes."

Alderman Harder said, "The only two things that I see should be changed is adding the citizenship issue and having the Board give our City Clerk and others the way to do research on all of the additional requirements for office, so that we make sure that we have people that are compliant with our laws. The only change on the Declaration of Candidacy form would be the addition of adding that they must be a U.S. citizen."

City Attorney Jones said, "It's my understanding that you can't be a registered voter if you're not a U.S. citizen." City Administrator Kuntz said that the citizenship statement could be added to the form.

Alderman Harder said, "The City of Chesterfield has a checklist under forms to complete for filing that the clerk goes through and checks the I.D., driver's license, passport, to verify age, residency, etc. In that case, they actually do check the tax records because Chesterfield has a property tax, and they check to make sure the candidate has paid the tax. To just take someone's word for verification when they file as a candidate is not the best way either. There's some middle ground when it comes to doing more than we are presently doing. We can change this tonight and have it ready for the coming election."

Alderman Boerner said, "We were doing all of those things sufficiently in terms of citizenship. The main issue that is being brought up is whether their property taxes are paid and up to date, and if we should verify this. When we certify that someone is not in arrears for taxes, according to Missouri Statute 115.346, this has been the real issue. I have a lot of respect for City Attorney Jones. We would not have to make any decision at this meeting. If we decided that we want to evaluate or validate that the taxes

were not in arrears, that could be decided in advance of the closing date. That's when it could be deemed the responsibility of the City Clerk."

Alderman Boerner said, "I feel strongly that we should be doing this. One of the big objections is that St. Louis County has a disclaimer on its website in terms of the validity of the information. They must have updated their system because that disclaimer is no longer on the website. I checked the County website, and it states at the top of the real estate tax history "This page shows the tax payment history for the real estate parcel described below. You may also print a tax history statement when a more official document is needed, such as for use of a title company." You can print out an official document that is suitable to take to a title company to verify that you did pay your taxes. The attestation certification form states that "the certified candidates possess all of the requirements, qualifications, and no candidate's taxes are in arrears." "

Alderman Boerner said, "Based upon the two letters that we received from the Secretary of State and the Missouri Division of Research, it was indicated that verifying the property taxes was ministerial in nature, because you're looking at it and there's no judgment or discretion on the part of the City Clerk. Either the person is or is not in arrears on the property taxes. The sewer lateral fee is prominently displayed on the tax history. One letter said that two court cases suggest that it is not ministerial, and neither one suggest that it is ministerial in nature. There have been other objections that when the taxes were not collected by Ballwin, they cannot be in arrears in Ballwin. We determined that the County is our agent, and the sewer lateral fee is prominently displayed on the tax history statement that they collect on our behalf. Whether it's paid directly to us or not, since they act as our agent, it comes to us. If they haven't paid the County, they haven't paid us."

Mayor Pogue said, "Regarding the sewer lateral, St. Louis County Department of Revenue does not consider that a tax item." Alderman Boerner said, "If it's not a tax item, it's a fee. If it's neither a tax or user fee, we have defined the sewer lateral fee that was enacted as a tax and described as such." Mayor Pogue said, "The St. Louis County Department of Revenue has defined it as a non-tax item." Alderman Boerner said, "We have defined it as a tax. Do they have jurisdiction in terms of whether we define it as a tax or not?" Mayor Pogue said, "They define it as non-tax charges such as sewer lateral insurance." Alderman Boerner said, "If you don't pay it, you're in arrears on it, right?" Mayor Pogue said, "The Department of Revenue does not define it as a tax item."

Alderman Boerner said, "The other thing is we could be sued for checking the tax history. In the handful of suits that were brought, there's probably four or five and some were peculiar circumstances. It was a situation where someone was living out of a hotel because he owned the hotel and he spent most of his time there. He said that was his residence. The other one was a case where an escrow company had not paid the tax and on that basis, the candidate should not be faulted for not having paid the tax. The County website does not contain a disclaimer. One of the comments was that it would be too costly for the city to do this. It took me only about 5 minutes to look at it. It probably wouldn't cost the city more than \$100 to verify if the taxes or fees were paid. It's in the public interest to do this, and I think we should abide by the spirit of the law, as well as the letter of the law, even though \$28 is a small amount. I would like to see the Board vote on this if we should adopt an ordinance that will require our City Clerk to check the County records, the history of the tax, to determine that the fees have been paid."

Mayor Pogue said, "I agree and I would like to see some sort of mechanism, but I don't think the website would be appropriate. They do still have a disclaimer." Alderman Boerner said, "They don't." Mayor Pogue said, "I've got the St. Louis County website on the screen right now. The County privacy statement has a privacy statement that is an accuracy and reliability of data disclaimer, which states: "St. Louis County presents the information on this website as a service to the public. We try to insure that the information contained herein is accurate and reliable, but it is not guaranteed or warranted. Access and reliability of information is the responsibility of the user." Alderman Boerner said, "A title company accepts this, so why can't we accept it? A title company is liable for any misinformation that is put on a title statement. They don't want to be sued if there is an issue, but that doesn't mean that other people

can't use it. This could be followed up by contacting the candidate regarding the information that was found. It would then be up to the candidate to come in and show proof that the taxes were paid."

City Attorney Jones said, "The difference is that a title company can pay the amount that the taxes are in arrears. To keep a candidate off the ballot, that's forever." Alderman Boerner said, "The candidate would have the opportunity to come in and prove or disprove. There is a one-week time frame between the closing of filing and submitting the forms to the Election Board." City Attorney Jones said, "I understand what you're saying, but it's a very risky thing for the City to tell anyone that they cannot appear on the ballot." Alderman Boerner said, "There's a law. Who's going to do it? Everyone here has heard all of the discussion. All I want to do is bring this up for a vote, and however it comes out, that's fine with me. I would like to see this as a vote."

Mayor Pogue said, "I agree, but I have concern of using a third-party source that we don't have any control over as being the determining factor." Alderman Boerner said, "It's not the determining factor, because the candidate would be informed what is on the County website that taxes were not paid. The candidate could then be asked if the taxes were paid and to bring proof. The candidate could then be placed on the ballot." Mayor Pogue said, "If they file for candidacy on the last day and the deadline for the forms to be at the Election Board is only 1 week, we don't want to keep someone off the ballot and end up being sued."

Alderman Boerner said, "There's no damages to it or any financial downside risk. There's still a window of 7 days to present the forms to the Election Board. The candidate would have to provide proof within that timeframe."

Alderman Fleming said, "We asked the City Attorney for his recommendation, and there was no recommendation to make changes at this point in time. Speaking hypothetically, and this will bear some resemblance to a previous candidate, but not I don't know his particular circumstances. Someone files for candidacy. When looking on the County website, it shows that they have not paid their taxes. Their reply to that is as a result of a divorce proceeding, the attorney told me that I don't have to do that right now. What should we do in that circumstance?" Alderman Boerner said, "He didn't pay his taxes, so, I don't think he should be on the ballot." Alderman Fleming said, "So he would be disqualified. The likely result would be that the opponent would probably appeal to the Election Board." City Attorney Jones said yes. Alderman Fleming said, "If we would then put him on the ballot, he wouldn't appeal, but the opponent would. The end result is either person who is likely to disagree with what we come up with is going to end up appealing. We're just changing the person who is going to appeal. We haven't figured out a way that is absolute to make the determination."

Alderman Boerner said, "The way we are doing it now is no longer acceptable. There have been complaints. Why are we using a certification form? Why don't we just say that the candidate has filed all of the documents that are required. We're certifying, via forms provided by the Election Board, that the candidate is in compliance with State Statute 115.346, but we don't know." Alderman Fleming said, "Out of all the information that we have, it's a matter of what you believe is most important and what you put the most weight on. The things that struck me from some of the court cases that I saw was that the end result was, when in doubt, put the person on the ballot, because that's the more grave injustice to deny someone a place on the ballot." Alderman Boerner said, "The candidate said, if it was an issue of violation of 115.346 for non-payment of taxes, that would have been different. That strengthens the argument that if they hadn't paid the taxes, the judgment would have been otherwise and that candidate would not have been put on the ballot."

Alderman Finley said, "Something I found striking from the one case was that the clerk was pro-active and figured out that the requirements were met. My inclination on everything that I've read is that it would be acceptable for the City Clerk to do some checking, but then there's the disclaimer on the County website. What can our City Clerk rely upon that would be totally reliable as far as whether the taxes are paid. Could we draft something that will authorize using the taxing authority, and is the best way of doing this by using the County website?"

City Attorney Jones said, "The thing that's so awkward about it is that if you don't pay your real estate taxes by the date due, you incur penalties and interest. If you miscalculate that and made a payment that was a few dollars short, how do you determine what you paid was short penalties and interest, or the \$28 of our sewer lateral? The sewer lateral fee is the only fee that we can say would qualify as a municipal tax or user fee under 115.346. We don't have a real estate tax or personal property tax. We know that the Collector of Revenue does not consider the sewer lateral program to be a tax. We received a letter to that effect about 6 weeks ago. I'm not saying that it is or isn't, but it's not clear. For all those reasons, no matter what we impose as a duty on the City Clerk, the end result should not be keeping the candidate off the ballot."

Alderman Harder said, "In our own documents, aren't we keeping people that are under 21 years of age off the ballot? Aren't we keeping people that are living in the city for less than a year off the ballot? The rules say must be 21 years of age to be on the Board, must be an inhabitant and a resident of the city for one year. If we're using our City Clerk to find out that information, either by a passport, driver's license, utility record, she is doing that kind of checking right now. Passports and driver's licenses can be forged. We have to use what's available. Checking on payment of taxes is just another item to verify that is equal to the other basic requirements to be on the ballot, in addition to U.S. citizenship. The Rockwood application asks, are you on probation for a felony or crime, plead guilty, registered as a sex offender, etc." City Attorney Jones said, "The statutes are different for school board members."

City Administrator Kuntz said, "A candidate is more likely to carry personal identification than a paid property tax bill because so many people have their property tax escrowed. At the airport, an I.D. is usually a driver's license with the name, address, and date of birth."

Alderman Harder asked, "How are we currently deciding how long someone has lived in Ballwin?" City Clerk Clark said, "The Occupancy Permit data base is used for this verification." City Administrator Kuntz said that one person filed for candidacy in the wrong ward. This was correctible.

Alderman Dogan asked if there is any form of identification that candidates are required to present? City Clerk Clark said this has not been done in the past, but can be a requirement from now on. City Administrator Kuntz said, "This is the first time that I have seen this kind of emphasis in the discussion. It's usually a very cursory review, and these are the forms."

Alderman Fleming said, "It sounds like a motion is forth coming, but I will vote against it because it will be contrary to the City Attorney's opinion., and the annual meeting at the Election Board has not yet been held. I encourage the Board to leave the question open rather than potentially create issues for us by playing lawyer."

Alderman Finley said, "Something I'm concerned about is, at the Election Board meeting this week, will some vehicle be put into place that could have all the municipalities resolve this issue. We're trying to take action tonight ahead of that."

Alderman Dogan said, "I doubt the entire County is going to come up with the answer." City Administrator Kuntz said, "If we can get a form and say this is what we recommend. We can bring it back to the Board as what the County Election Board strongly suggested everyone adopt and use for their local purposes. I'll feel more comfortable if it came from them instead of the opposite." Alderman Dogan said, "We have discretion to go above and beyond whatever the County Election Board recommends. Right?" City Administrator Kuntz said, "That's my understanding." Alderman Dogan said, "It makes people mad that there are people voting on laws, raising taxes or lowering taxes, who haven't paid their own. That's why this Missouri law exists. I take this strongly and that we need to enforce the law. I would rather error on the side of keeping someone off the ballot, given that we have a Missouri law saying that if you haven't paid your taxes, you're not eligible. Deal with the lawsuit later on. If they haven't paid their taxes, they clearly shouldn't be serving. Credit checks are done on job



applicants, research your Facebook account, etc. I think asking the City Clerk to do two or three additional things is the least we can ask of our public servants.”

Alderman Boerner said, “I will be willing to defer this vote until the next Board meeting. The tax information would need to be verified at the closing of candidate filing. The Election Board forms will have been obtained and made available to the Board for discussion.”

Alderman Finley said, “The next meeting is December 12, and Candidate Filing starts December 13. The Declaration of Candidacy form must be ready by 8:00 a.m. on December 13.

Alderman Harder said, “My hot button item is the citizenship issue, which would have to be changed on this form. Can I make a motion that we add to the Declaration of Candidacy form that the candidates for these positions have to be a U.S. citizen?”

City Attorney Jones said, “I think you could. That Declaration of Candidacy form had information in it that was not consistent with a candidate for municipal office. That’s why it was revised. On the Chesterfield form, there is a reference to 115.349, which doesn’t apply to municipalities. Each city changes their form to add particulars, like we did with the codes we adopted at this meeting. There will be some changes that will have to be made to the Declaration of Candidacy form no matter what. It’s not any better or worse to adopt something tonight that would cause that to be changed. We need to do that anyway.”

Mayor Pogue said, “One of the requirements is that the candidate has to be a registered voter, which automatically requires citizenship.” Alderman Finley said, “The only forms that state this is for the school district and Chesterfield.”

City Administrator Kuntz said, “My suggestion is that we will re-do the form, with the U.S. citizenship statement. We can then provide that form again with that addition,, and the form that is provided by the Election Board. A motion could be made that night to adopt form A or B. The Board agreed.

Alderman Finley asked, “Should there be an ordinance or a policy that as people become appointed to the Board of Adjustment and Planning & Zoning Commission, that these individuals should be up to date on payment of their taxes? I would like to see this addressed after the first of the year.”

**Adjourn:** A motion was made by Alderman Fleming and seconded by Alderman Boerner to adjourn. The motion passed unanimously and the meeting was adjourned at 9:29 p.m.

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TIM POGUE, MAYOR

ATTEST:

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ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

November 28, 2011