



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

February 14, 2011

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The meeting was called to order by Mayor Pogue at 7:02 p.m.

PRESENT

ABSENT

MAYOR TIM POGUE  
ALDERMAN JIMMY TERBROCK  
ALDERMAN MICHAEL FINLEY  
ALDERMAN RON MARKLAND  
ALDERMAN PAT McDERMOTT  
ALDERMAN FRANK FLEMING  
ALDERMAN JIM LEAHY  
ALDERMAN RICHARD BOERNER  
ALDERMAN KEN MELLOW  
CITY ADMINISTRATOR ROBERT KUNTZ  
CITY ATTORNEY ROBERT E. JONES

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *January 24, 2011 Board of Aldermen meeting* were submitted for approval.

**A motion was made** by Alderman Markland and seconded by Alderman Fleming to amend Pages 1, 8, and 2 as follows: remove the statements by Mayor Pogue and Alderman McDermott that he was absent because he was at his home in Florida.

Mayor Pogue said that, for the record, he wanted his statement included in the Minutes because it is appropriate that the constituents know why the alderman was absent from a meeting, especially since there have been three meetings that have been missed for reasons other than work related or because of illness.

Also amend Page 2 – change the second reading motion of Bill 3660 from Alderman Markland to Alderman Terbrock. A voice vote was taken with a unanimous affirmative result on these amendments and the motion passed.

**A motion was made** by Alderman Markland and seconded by Alderman Fleming that in the future, the Minutes show the aldermen as present or absent with no further statement. A voice vote was taken with a unanimous affirmative result and the motion passed.

**A motion was made** by Alderman Fleming and seconded by Alderman McDermott to amend Page 9 paragraph 7 to eliminate his statement in paragraph 7. A voice vote was taken with a unanimous affirmative result and the motion passed.

**A motion was made** by Alderman Boerner and seconded by Alderman Fleming to amend Page 7 paragraph 4 to include Deputy Director of Parks John Hoffman's statement regarding street trees as follows: "Deputy Director of Parks John Hoffman indicated that we have a street tree survey that rates trees between 1 and 12. Problem trees from 8 to 12 have already been removed from the 2006 survey."

**A motion was made** by Alderman McDermott and seconded by Alderman Fleming to approve the Minutes as amended. A voice vote was taken with a unanimous affirmative result and the motion passed.

## PRESENTATION

None.

## PENDING ISSUES

None.

## CITIZEN COMMENTS

*Lynn Goetz, 504 Kenilworth Lane:* Mr. Goetz asked if someone trips on the raised piece of sidewalk in front of his house, can they successfully sue him. City Attorney Jones said he has no opinion if they can successfully sue, but they could sue. Mr. Goetz asked if they could sue the city. City Attorney Jones said yes. Mr. Goetz asked where would they have the better chance of success. City Attorney Jones said this would be up to a judge or jury. Mr. Goetz asked if he decided to fix the bad sidewalk himself, would he be violating any Ballwin regulations. Is he allowed to do this? City Attorney Jones said no, he would not be allowed to do this. It would have to be reported to the City of Ballwin. An appropriate crew would be sent to make the repair. Mr. Goetz asked if he could take out the piece of damaged sidewalk, fill in dirt and grass sod to make it safe? City Attorney Jones said, no, he would not be allowed to do this because the sidewalk is in the City's right-of-way. Mr. Goetz asked if this is city property? City Attorney Jones said yes. Mr. Goetz said that in the newspaper, it was stated that if Ballwin residents don't remove the snow off the sidewalk within 24 hours, the resident could be cited. City Attorney Jones said that it's also the resident's property. Mr. Goetz asked how does that work? City Attorney Jones said the streets and rights-of-way are essentially easements. Mr. Goetz said that it belongs to the city and to him. City Attorney Jones said that is correct.

Alderman McDermott asked if this is consistent throughout the United States where cities have sidewalks? Is it consistent that they are all easements and all in this same situation? City Attorney Jones said unless the city owns the right-of-way in fee simple, which is all of the rights, as opposed to some of the rights, which is what the City of Ballwin has in Mr. Goetz's situation.

## PUBLIC HEARINGS

None.

## NEW BUSINESS

### LEGISLATION

#### **BILL # 3663 - AN ORDINANCE PROVIDING FOR A SPEED LIMIT OF 20 MPH ON JEFFERSON ROAD.**

A motion was made by Alderman Terbrock and seconded by Alderman Fleming for a first reading of Bill No. 3663. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3663 was read for the first time.

A motion was made by Alderman Markland and seconded by Alderman Terbrock for a second reading of Bill No. 3663. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3663 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3663 with the following results:  
Ayes – Markland, Finley, Boerner, Leahy, McDermott, Terbrock, Fleming, Mellow. Nays – None. Bill No. 3663 was approved and became **Ordinance No. 11-07**.

#### **BILL # 3664 - AN ORDINANCE AMENDING THE 2011 BUDGET OF CASH REVENUE AND CASH DISBURSEMENTS FOR THE OPERATING AND CAPITAL FUNDS OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, PROVIDING FOR EXPENDITURE REVISIONS IN ACCORDANCE WITH SAID BUDGETS AND MAKING RE-APPROPRIATIONS THEREOF.**

A motion was made by Alderman Finley and seconded by Alderman Boerner for a first reading of Bill No. 3664. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3664 was read for the first time.

Alderman Fleming asked for City Administrator Kuntz to give a brief summary. City Administrator Kuntz said, "this is an issue that we come across at the end of a fiscal period. It involves expenditures that had been projected to be made in the prior year are carried over to the following year; in this case, 2011. We have listed those specifically in the area of our grants because of the bid situation and delivery times. In this case, it is necessary to adjust both revenues and expenditures. There are several listed in the capital budget, specifically the engineering related expenses for the Kehrs Mill resurfacing project that were anticipated in 2010 and must be re-budgeted for 2011 when it will be completed. The only other item of major significance is the recommendation from Director of Public Works Kramer to purchase additional salt to re-stock the salt dome because of the higher than anticipated usage this winter. Those are the major purposes for the request for re-budgeting.

Alderman Finley said, "in reading the memo from Finance Officer Loehr, there's mention of a new furnace for the Historical School House. Are there any funds that will come out of the Historical Commission for this project? How does this inter-relate?"

City Administrator Kuntz said, "The Historical Commission's funds are to be used." Director of Parks & Recreation Bruer said, "The furnace will be paid for by the funds from the Historical Commission's escrow, which is made up of funds from the book sales."

Alderman Finley asked, "is the proposal that we supplement the project?" Director of Parks & Recreation Bruer said, "This is just allowing the escrow funds to be used."

Alderman Finley said, "If I'm recalling correctly from the last discussion about salt, is the reason for the split of 2,000 tons in October and 2,000 tons in November and December, are there limits and why not 4,000 tons in October?" Director of Public Works Kramer said, "There are two sources; one is a co-op and one is our own. The co-op only provides delivery sometime in November or December for the first go-around. We picked October for our secondary supplier because we could pick the day ourselves. That would keep us out of the leaf pickup season. The salt delivery in November, we would be heavy into leaves and wouldn't have anyone to load the salt into the dome. Taking delivery in October wouldn't be a huge burden to put the salt in the dome. With the co-op, there's no choice when it's delivered."

Mayor Pogue said he read in an e-mail that some of the co-op members are still not able to get salt. Director of Public Works Kramer said, "The opportunities for delivery is November/December and/or January/February. The letter advised that the January/February delivery is being delayed by the salt mine, and will not be coming until late February, or maybe March into April. This is not necessarily the time we need it. There have been delays in the past when the river is too shallow and the barge can't get into the dock."

Mayor Pogue said, "Some of the cities, Manchester and Richmond Heights, that were relying on that delivery are running short of salt. Chesterfield went to Kansas to get salt." Director of Public Works Kramer said that University City got salt from near Chicago.

A motion was made by Alderman Fleming and seconded by Alderman Boerner for a second reading of Bill No. 3664. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3664 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3664 with the following results: Ayes – Fleming, Terbrock, Leahy, Mellow, Markland, Boerner, Finley, McDermott. Nays – None. Bill No. 3664 was approved and became **Ordinance No. 11-08**.

**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. Street Sweeping: (Contractor & Municipal Sweeping Services, \$19,688.50 for 3 sweepings.)
- B. Mini Pickup Truck: (Lou Fusz Automotive, \$18,637)
- C. Recreation Apparel: (Just Me Apparel, \$16,235.86)
- D. Pool (Painting and Sandblasting): (Joseph Ward Painting Co., \$35,001)
- E. North Pointe Request: (City of Wildwood, limited number of family passes)

Alderman Fleming requested that Item A be removed for further discussion.

A motion was made by Alderman Boerner and seconded by Alderman Fleming to accept Consent Items B, C, D, & E. A voice vote was taken with a unanimous affirmative result and the motion passed.

## **MAYOR'S REPORT**

**Prosecuting Attorney:** Mayor Pogue said, "Due to the resignation of Keith Cheung, I would like to appoint Dave Porta to fill this position on a permanent basis. I talked to Dave last week. Dave has served as a Commissioner on our Board of Adjustment, appointed initially by former Mayor Walt Young to serve as an alternate in that position. I recently appointed him to serve as a full-time commissioner. Dave has an extensive criminal prosecution background, has worked in the St. Louis County Prosecuting Attorney's office, including felony work before a Grand Jury. He has a private practice and he has assured that he will have adequate and qualified backup to serve if there ever was a conflict of interest or another scheduling conflict. This is my recommendation for this appointment."

Alderman Markland said, "I sent an e-mail out yesterday with essentially my concerns. The resume that we got is at least five years old. To say that it's professional would be a real push. He has penciled in responses. There's a gap of the last five years, if not more. If you look at the phone number that he has on his resume, that's the Avioli law firm. When you look into them, you find that the name was changed to Avioli and Porta. Then, a short time after that, the name was changed back to Avioli. It's kind of like, what's going on here? There's a gap in the resume. If somebody came to your company and gave you a resume that looks like this, you wouldn't accept it. You wouldn't hire them. Are we hiring him or are we hiring a firm. If he's not available, what do we do to fill in his space? Regarding the Greenburg case, who would this be handled? I've been told that he does not have a lot of experience in municipal court type of functions. These are enough reasons to question the appointment."

Mayor Pogue said, "As you see in his resume, he says he has been in private practice from 1998 to current. He commented that he was partnered with a gentleman and has since split and is back in his regular private practice."

Alderman Markland said, "Those are my questions and I would like to know the answers. I would like for Mr. Porta to explain this to me instead of information on a computer."

Mayor Pogue said, "I explained his partnership and that he has adequate backup. Regarding the situation with Greenburg, I believe that Bob (Jones) was going to represent this and was discussed at a previous meeting."

City Attorney Jones said that's correct. Alderman Markland said, "I was told that is the job of the Prosecuting Attorney." City Attorney Jones said, "only in the municipal division. That's what the ordinance says. The City Attorney represents the city in State courts. It is an appeal of a motion that was denied by Judge Permuetter. That is the only remaining action."

Alderman Markland said, "I may be incorrect, but I thought I remember we were told that the Prosecuting Attorney is responsible for defending the Judge, and you said that."

City Attorney Jones said, "That was when there were two different actions pending. That was the writ of habeas corpus, which was dismissed. The only one still pending is an appeal in the Missouri Eastern District Court of Appeals of two motions which were denied in November. A different case. It still stems from Mr. Greenburg's prosecution in incarceration, but it's a different case than the one in which the prosecutor was defending the judge."

Alderman Fleming said, "I understand your point about the resume, but the Mayor invited me on February 3 to speak to this gentleman when he talked to him on February 4. Because the situation with Keith was unexpected, if you called him or me out of the blue and said can you come down here quickly with a resume, I probably don't have a current electronic resume and would probably have to grab an old printed one and come as I was. I bet that's why it's out of date. One of the questions you asked was how do we hire this person? Do we hire him or his firm? That was confusing when we hired Keith Cheung. When I look at the ordinance and the actual agreement. If we could get some clarification on that, it would be appreciated. I would also like to know if we are required to post this position in any way."

Mayor Pogue said, "My thoughts were that we were hiring Dave Porta, not as a firm. Dave is in private practice. There are no partners, but stated that he has adequate and qualified backup that has municipal background as well."

City Administrator Kuntz said, "That person would be administered an Oath of Office to be a representative of the court in the event of a conflict or non-attendance."

City Attorney Jones said, "Our ordinances are not very detailed regarding this process. As far as the hiring process is concerned, the Prosecuting Attorney is an appointed official. The Mayor can advance that appointment like he did. He doesn't need to wait for a motion from the Board. He just needs the consent of a majority of this Board of Aldermen, if you are so inclined. That will result in the appointment of Mr. Porta. His compensation must be established by ordinance. The second step in the process would be a motion to prepare legislation which sets forth the appropriate compensation for the Prosecuting Attorney. Regarding assistance, much like Mr. Cheung would use an associate on a date when he was unavailable, prosecutors have traditionally done that in the past. The assistant or associate would be sworn and be able to stand in when necessary."

Alderman Fleming said, "I agree that our ordinances and State law says that the Mayor appoints and the Board approves. In our personnel rules and regulations, is this position required to be posted?" City Administrator Kuntz said, "It does not have to be posted."

Alderman Markland said, "The mayor does appoint, but there was another sentence that the Board can make other qualifications." Alderman Fleming said, "The State law says that the Mayor appoints and the Board approves." Alderman Markland said, "In Section 79.280, it says 'The Board of Aldermen may adopt procedures to fill vacancies consistent with this section.' "

City Attorney Jones said, "The last sentence of Section 79.280 says 'If a vacancy occurs, the Mayor shall appoint a suitable person to discharge the duties of such office until the first regular meeting of the Board of Aldermen thereafter, at which time such vacancy shall be permanently filled.' " He said, "This is for a temporary appointment, and Mayor Pogue has offered his appointment for a permanent position. If it is approved by a majority of the Board of Aldermen, that person will become our new Prosecuting Attorney."

Alderman Boerner asked, "In terms of Mr. Porta, what other cities has he had experience with?" Mayor Pogue said, "As far as criminal prosecution, he has worked in the County Prosecuting Attorney's office. As far as individual cities, I do not know."

Alderman Boerner asked, "Were there any other applicants or anyone else who expressed an interest in becoming the Prosecuting Attorney?" Mayor Pogue said, "I have received one letter from someone that was interested." City Administrator Kuntz said, "I have received 3 or 4 resumes." Alderman Boerner

asked, "Did any of the others have experience with municipalities and current experience?" Mayor Pogue said, "The recommendation from myself is for Dave Porta. I have asked for that to be consented by the Board. The Board as the option to vote to approve or disapprove at this point." Alderman Boerner said, "Okay, then I will vote against it."

Alderman Finley said, "I agree with Alderman Markland as far as the status of the resume. As an attorney, I would not submit a resume with grammatical errors and the other things that Alderman Markland mentioned. There is another candidate who prepared a resume and went ahead and updated it. In a professional position like this, someone should be able to revise their resume on their computer. Therefore, I have a concern is this individual going to pay the proper attention to issues. If there's not the proper attention to a resume, I want to be optimistic that this is a good choice, but there are some questions to be answered. What did this gentleman do between 1983 and 1993? That's left off the resume. According to the statutes, it is the Mayor's appointment, but I feel that I have to do my due diligence and ask questions. The statute makes reference to the next meeting. I propose that we have the opportunity to ask Mr. Porta more questions, and be able to make a motion to fix the time at which to adjourn this meeting. Basically, leave this meeting open so that we could either have a special meeting and ask questions. Considering the recent history, I think there should be some time to deliberate."

Alderman Fleming said, "The Mayor is looking for approval of a recommendation for Mr. Porta on a permanent basis. I am happy to support that recommendation. If there aren't enough votes to support this on a permanent basis, keep in mind that next Tuesday night, February 22, is a trial docket in our court. We need to have somebody there. We've had the need for a prosecutor to represent us on the 8<sup>th</sup> and 10<sup>th</sup>. We didn't have anybody in place. I suggest that he should at least be the interim prosecutor and perhaps set a longer time limit, maybe 6 months, to interview other people. I don't want our court to not be represented. Please don't lose sight of this even if you don't agree with the Mayor's choice on a permanent basis."

Alderman Boerner said, "My concern is that the Mayor has refused to give us his rationale for selecting this individual. This concerns me more than anything else. He has refused to do that." Mayor Pogue said, "I haven't refused to do anything." Alderman Boerner said, "You said you wouldn't do it. When I asked you questions, you said, look, I made the decision, now we need to vote on it." Mayor Pogue said, "I feel Dave Porta is a very qualified candidate for this position. He's got criminal prosecution background all the way up to a Grand Jury level, he's worked in the County Prosecuting Attorney's office, he's a very well qualified candidate." Alderman Boerner said, "He doesn't have municipal experience, at least it's not evident in his resume."

Alderman McDermott asked, "Would it be appropriate that we make a motion to make this a temporary appointment? Is there a mechanism in place that we can interview others, including Dave Porta. I agree with the Board that we should have our questions answered. I have no reason to believe that Dave is or is not qualified, however, I see the rationale behind the comments. I recommend that we do this on a temporary basis."

Alderman Fleming said, "Regarding what is appropriate; since the Mayor asked for this, it deserves a vote. Depending on how that vote goes, the Mayor can decide what he wants to do."

Alderman Finley said, "My proposal would be to ask Mr. Anderson to continue as the interim." Mayor Pogue said no. Alderman Finley said, "I think at the end of the meeting we should set the time to adjourn so that we are adhering to the statute." City Attorney Jones said, "We can't leave the meeting open like that." Mayor Pogue said, "In the event that this receives a negative vote, I will appoint Dave Porta to an interim basis." City Attorney Jones said, "which the Mayor has already done." Mayor Pogue said, "Dave Porta was going to be Don Anderson's backup if he was serving as the Prosecuting Attorney. Don has pulled himself out of that position because of potential conflict of being the Provisionary Judge."

**A motion was made** by Alderman Fleming and seconded by Alderman Terbrock to accept the Mayor's recommendation of Dave Porta as the permanent Prosecuting Attorney. A roll call vote was taken with the following result: Aye: Fleming, Terbrock, Leahy. Nay: Markland, Mellow, Finley, McDermott, Boerner. The motion failed by a vote of 3-5.

Mayor Pogue said, "The motion failed by a vote of 3-5, therefore, I appoint Dave Porta to serve on an interim basis as Prosecuting Attorney." Alderman Fleming asked, "How long should we leave this position as interim? The Board has obviously expressed a desire to do something different." City Attorney Jones said, "There is no specific guidance in the statutes on how long the interim serves, except for the language we just read in Section 79.280, which says that the Mayor shall appoint a suitable person at the next regular meeting. The Mayor's appointment, if it is not consented to by a majority of the Board of Aldermen, it's not approved, it is my position that the interim appointment will serve until an appointment is made which is approved by a majority of the Board of Aldermen."

Alderman Fleming said, "If the ordinance generally sets the compensation, how do we handle this for Mr. Porta, who needs to know what he will be paid. How do we handle the compensation?" City Attorney Jones said, "There is no guidance in this regard. I would say that the interim would continue to be compensated in the same fashion as the previous prosecuting attorney was paid." Alderman Fleming asked, "Is that acceptable to him, has someone talked to him about this?" City Administrator Kuntz said yes.

Alderman Boerner said, "There's a conflict between the ordinance and the agreement. The ordinance says \$2,200 per meeting. The agreement says \$2,200 per month. We probably need to draft a new ordinance." City Administrator Kuntz said, "The contract that was attached to the ordinance was a contract with Mr. Cheung. The ordinance would be what we discussed with him, which was \$2,200 per month retainer." Mayor Pogue said, "with the hourly rate if he has to serve in certified court." Mayor Pogue said, "The ordinance was written as an agreement with Mr. Cheung. That doesn't matter in the agreement with Mr. Porta." Alderman Markland said, "The ordinance says per meeting, the contract says per month."

Alderman Fleming said, "Mr. Porta has agreed to be compensated in the same manner as Mr. Cheung. Mr. Porta was told that it is \$2,200 per month." Alderman Markland said, "Bill 3587, Section 2 states that Mr. Cheung shall be paid \$2,200 per court session. The contract under paragraph 2a states a monthly retainer fee shall be paid to firm by city in the amount of \$2,200 per month as and for the retainer services rendered as prosecuting attorney which services are specifically described as follows:" Mayor Pogue said, "That amount was discussed and agreed on with Mr. Porta."

City Administrator Kuntz suggested, "a motion to draft legislation to appoint Mr. Porta on an interim basis at a monthly rate of \$2,200."

**A motion was made** by Alderman Fleming and seconded by Alderman McDermott to draft legislation appointing Dave Porta as Interim Prosecuting Attorney and to set compensation as \$2,200 per month plus \$160 per hour on certified cases. A voice vote was taken with a unanimous affirmative result and the motion passed.

Alderman Boerner asked, "What is a certified case?" City Attorney Jones said, "There are two different kinds of certifications from the municipal division. One is where a jury is demanded. Since Ballwin doesn't convene a jury, that's one reason cases are certified. The second is a trial which is a vestige of the days when some of the municipal court judges were not attorneys. A defendant in a municipal division has a right to certify the case for a new trial in the circuit division. These are the two ways cases are certified from municipal to state court."

Alderman Fleming asked, "Are all of our certified cases the ones that happen at the county level or above? A certified case means not here, but at a county level." City Attorney Jones said yes.

Alderman Boerner said, "I thought that Mr. Cheung only represented the municipal court." City Attorney Jones said, "He does, but our ordinance is what addresses and sets forth the duties of the City Attorney and the duties of the Prosecuting Attorney. That language is what talks about the municipal court."

Alderman Fleming said, "When someone comes to municipal court, they can automatically request to go to the County if they want to and it will be considered a certified case at that time by requesting a jury." Alderman Boerner said, "It's a municipal case but is tried in the county. The city prosecutor tries to certify cases that arise in the municipality at the county level." City Attorney Jones said yes.

**Great Streets Meeting:** Mayor Pogue said, "The Mayors of the Great Streets had a meeting on Friday, February 11. There will be a legislative committee which will be the steering committee. There will be a meeting again on Feb. 15 at 10:00 a.m. which will include the beginning process of what some of the different legislative options are."

## **CITY ADMINISTRATOR'S REPORT**

**Street Sweeping:** Alderman Fleming asked, "How many times are we required to sweep the streets for the State storm water permit?" Director of Public Works Kramer said, "Our permit and DNR says as many times as you think is necessary, but no fewer than one. It's the city's responsibility to keep the streets clean."

Alderman Fleming said, "I know I asked this question in the past. I'm going to take this as a definitive answer. If the answer is once, my general feeling on this is I don't think street sweeping enhances the city so much that we need to do it three times. Since we are cutting back from four to three because the numbers didn't come in like we thought, I'm happy to cut it back to once. We have to satisfy the requirement. The landfill cost also are costs that were not in the packet which is about \$10,000. Was this based on three sweepings?" Director of Public Works Kramer said, "We used the same tonnage that we had last year which was 4. Alderman Fleming said, "You are recommending \$19,687 for three sweepings in May, September, and December, and then \$10,000 for landfill costs. This is about \$29,000." Mr. Kramer said, "The December sweeping catches the rest of the leaves. We sweep before Ballwin Days. When we had our own sweeper, we swept the mains streets monthly and the rest was quarterly. When we lost our sweeper, we changed to quarterly city-wide."

Mayor Pogue said, "I'm particularly concerned with some of the surface level grates becoming clogged. There one clogged grate on Ramsey Lane that water washes over the curb during a heavy rain."

Alderman McDermott asked, "Will this be a contractual item that we are bound by the number we agree on?" Director of Public Works Kramer said, "I spoke to the president of the company and asked about going to three. She said that three would be fine. Then I asked about two or one. I assume that will be okay." Alderman McDermott asked, "The 26.5% increase is for fuel. Ask about doing one. We can always go back later in the year if the fuel cost does not go up, we can ask for a second quote. If they do go up, we would have to pay a higher price but we wouldn't have to choose to do a second sweeping."

Alderman Pogue said, "If we reduce the number of times we sweep, it will take longer each time. There will be more stops because there will be more debris." Director of Public Works Kramer said, "This is correct, there will be more debris with only one sweeping. One of the reasons DNR and the storm water permit likes sweeping is so that whatever debris is in the street is to keep it from going into the storm sewers and eventually into the creeks."

Alderman Markland said, "I have this memory of Alderman Fleming asking this question. I thought the reason as to why there were four sweepings is because there's something to do with the Clean Water Act or something that we do inspection wise that requires us to clean the streets four times each year. Now we are told that this is not a requirement." Director of Public Works Kramer said the permit does not

have a specific number. We have been doing four ever since we contracted in 2006. Before that we did it four times when we had our own sweeper.” Alderman Markland said, “I do remember that question being asked. I thought there was a definite legal requirement for us to clean the streets four times per year.” Director of Public Works Kramer said, “I wanted to make sure we were not going to violate any laws, so I did further research. It all says that the city needs to keep the streets clean.” Alderman Markland said, “Based on your current understanding, one is enough.” Director of Public Works Kramer said, “They say we should keep track of how much debris we collect. If there’s an exorbitant amount of debris, we’re not sweeping often enough. We won’t know that until we see how much debris will be collected after one sweeping. This has to be documented.”

Mayor Pogue asked, “Is there a chance that this price would not be honored if we swept only one time?” Director of Public Works Kramer said, “I would have to ask. I only asked about three.”

Alderman Boerner said, “If we are going to reduce this based on tonnage, we should reduce it one at a time, and that we do three sweepings, and then go down gradually.” Mr. Kramer said, “The bid was for four sweepings, but it was over budget. Three sweepings puts the cost under budget.” Alderman Boerner asked, “What do you recommend?” Mr. Kramer said, “I suggested three instead of four.”

Alderman Fleming said, “I would like to see in previous Minutes what the answer to the question. I have heard everything from one to three. I guess I will go with what Gary said, which is however much you think you need to sweep. Based on what I heard, we need to sweep in December and another time to clean the grates. I’m going to make a motion that we sweep the streets twice this year.”

**A motion was made** by Alderman Fleming and seconded by Alderman Leahy to accept the rate from the low bid of \$13,125 for two sweepings between May and December or as deemed appropriate by staff. A voice vote was taken with the following result: Aye: Finley, Markland, McDermott, Fleming, Boerner, Mellow. Nay: Leahy, Terbrock. The motion passed by a vote of 6-2.

**Board Room Updates:** City Administrator Kuntz said, “Pursuant to Board direction following a very rainy meeting that made the audio difficult to work through a few months ago, staff was directed to investigate potential upgrades, both audio and visual, for the Board room. This room has not had many changes since the building was built in 1971. The panel across the back was added and the brick was painted. We are behind regarding visual opportunities for presentations. Regarding the audio, it has been modified over the years. Heavy rain on a tin roof makes it difficult to hear the dialog in this room. The City Clerk and Mr. Aiken met with a representative from an audio visual company. It was informally discussed what could be done to improve the situation. This has not been included in the 2011 budget. The process has been started to see what the Board would like to do with further investigation or to defer this into the 2012 budget.”

Alderman Fleming said, “I don’t want to spend \$50,000 to update the room. Even on nights when the room is crowded, people complain that they can’t hear the discussions. My feeling is to make some minor improvements that will make things better for the audience, for presenters, and participants and the Board. The speakers are from the early 1990s. The representative recommended that a couple more speakers in the back of the room will help the situation. I would at least like to add a couple of speakers or replacing the two and purchasing four new speakers. I’d like to get a new white board with different colored markers or even use it to project on. A pull-down screen could be used to project on. This will be better for presentations. There are Planning & Zoning meetings in this room. A projector should be in this room also. I’d like to progress into the digital age instead of tape cassettes with a digital recorder, which is in the \$3,000 - \$5,000 range. Another dream would be to have wireless access in this room.”

Alderman McDermott said, “My suggestion is to put the screen in the upper corner and stop printing the paper copies of the agenda for the audience. If you get a projector that has high enough lumens, the projector can be placed far enough back and big enough so that the audience can read it. It all makes sense. We probably have some qualified employees of the city than can do some of the installation.”

Alderman Fleming said, “Generally the projector is suspended from the ceiling, which will mean wiring costs, etc. It would be cheaper to have a projector on the table.”

**A motion was made** by Alderman Fleming and seconded by Alderman Leahy to direct staff to pursue Board room improvements as discussed. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Investment Policy:** City Administrator Kuntz said, “This is a section in the Policy Manual and also addressed by legislation. A copy of the policy and the ordinance, which was adopted in 1989, are provided to the Board. It might be appropriate to have it in one section, incorporate the changes, by the ordinance itself, or take it out of the Policy Manual, or amend the ordinance to reflect the change. The only change being recommended is in the collateralization section. It currently, there’s a level of 102% of market value, principal and accrued interest. We’re recommending that, from a practical standpoint, that 100% of market value, coupled by the FDIC insurance or the collateralization would give us more competitiveness with respect to securing investment proposals. At the next meeting, an investment strategy will be proposed for the Board to consider. If the policy itself could be amended to take out the section of collateralization, I believe that we are all in agreement that this is the recommendation that we would like to make to the Board.”

City Attorney Jones asked, “Do you want to repeal the ordinance and then just amend the policy?” City Administrator Kuntz said, “We either have to amend the ordinance to include the new policy, or ....” City Attorney Jones said, “Since the ordinance incorporates by reference the policy, if the Board is comfortable having an investment policy, there’s no need for the ordinance. You just repeal the ordinance and amend the policy with a 2/3 vote as has been done in the past.”

**A motion was made** by Alderman Terbrock and seconded by Alderman McDermott to draft legislation to repeal the ordinance. A voice vote was taken with a unanimous affirmative result and the motion passed.

**A motion was made** by Alderman Terbrock and seconded by Alderman Boerner accept the policy as amended. A voice vote was taken with a unanimous affirmative result, and the motion passed.

## **STAFF REPORTS**

None.

## **CITY ATTORNEY’S REPORT**

**Legal Issues and Updates:** City Attorney Jones reported on the 3 pending cases: The Schnuck’s development became final and no appeal was filed. That litigation is now over. The remaining Greenburg appeal is in the Missouri East District Court of Appeals, the record on appeal was due today. There is no indication that it was filed. If not, an appropriate motion will be filed to dismiss the appeal. In the sewer lateral class action, the respondent’s brief was filed on February 10.

**Door-to-Door Solicitation:** City Attorney Jones said, “On the solicitation ordinance, I made a number of changes following our discussion at the last meeting. The most significant change is in the definition section 1, which takes out or exempts a candidate that has filed for public office from the provisions of this ordinance. I also changed the “invited” solicitor language which is Section 14-6H, which is at the top of the last page. Beyond that, I didn’t make any changes in the ordinance, pending further direction from the Board.”

Alderman Markland said, “I was asked a question that one of the residents thought this prohibited political solicitation, and he really enjoyed that.” City Attorney Jones said, “That has been taken care of

in the definition section on the first page of Section 1 (4) and it's also on page 8 of the Minutes.” Alderman McDermott said, “I followed up with that individual.”

Alderman Boerner said, “I received one comment regarding the time limits. It's going to be dark at one hour after sunset. I was thinking that it should be changed to one-half hour after sunset. This will eliminate soliciting after dark.”

City Attorney Jones said, “The cases that I read involving the ACORN organization had to do specifically with the time limit restrictions and generally speaking, they held that you can't make it so restrictive that it effectively bans solicitation. If you make it too early and assume that one or both members of the household are working during an 8-5 time period, if you make it too early in the winter, you have banned solicitation. We need to make sure we leave the window long enough so that it provided for meaningful opportunity for the solicitor to approach the resident. Half an hour after sunset is probably good.”

Alderman Fleming said, “This still doesn't take it as far as I'd like to see it. I'm willing to push it farther, but I doubt that's everyone else's pleasure. I differentiate that ACORN is not a for-profit endeavor going door to door. Case law on that is different than the situation we are trying to address. My question to the City Attorney is, when I brought this up, you said you had looked at our ordinance and it needed a couple of changes so now is a good time to do it. What were those items that had to be addressed?”

City Attorney Jones said, “The main one was the time limit. As I understand it, the application and the permit has time limits and our ordinance doesn't. Is that correct, Chief, there's something in the application or in the permit that restricts it to 7:00 p.m.?” Police Chief Schicker said, “Yes, that had been placed in there. At what point, I have no idea because it's been there for years.” City Attorney Jones said, “It was in an earlier version of our ordinance when I looked back historically. That was the main thing that we are putting out an application and permit which is not consistent with our ordinance.”

Alderman Terbrock asked what do we do about this now? City Attorney Jones said, “Someone needs to indicate that it's ready to be placed in legislation because we've already had a motion to draft the legislation.”

Alderman McDermott asked, “Did we discuss having the Chief go back and give us some numbers as far as cost recovery on the time it took to follow up with permitting?” City Attorney Jones said, “I saw that in the Minutes, yes.” Alderman McDermott asked, “Were you able to get those numbers? Are we consistent in what we are doing here? Are we recovering the cost?” Police Chief Schicker said, “Yes, at \$20 per day, is the amount needed to recover the cost. A background check is about \$10. There's time involved for personnel, depending on how deep they have to dig into it. It could be 15 minutes to 30 minutes of dispatch time.” Alderman McDermott asked, “So in your opinion, the fee is sufficient?” Police Chief Schicker said yes.

Alderman Finley said, “I think that \$20 per day is burdensome to keep coming back every day to renew. It sounds like there's justification for a cost. I was going to suggest \$20 per month or \$20 per week.” Police Chief Schicker said, “When the application is filled out, they indicate a time frame in which they want to solicit. They are charged \$20 based on that number of days. We issue a permit for that given time frame. They don't come back every day to renew the permit.”

Alderman Finley asked, “Should The United Way be left off because I thought it was a private charity?” City Attorney Jones said, “The United Way, as I understand it, accepts funds that it distributes to a number of organizations. The idea was to try to distinguish non-profit and charitable organizations from other organizations, and ones that are either recognized by the Internal Revenue Service under 501c3 or a participant in The United Way fund, or someone who is recognized by the Better Business Bureau as a charitable organization. These are different ways to identify a charitable organization.”

Alderman Finley said, "Section 14, 6A, Time limits, it starts off with no person shall solicit. I feel that it should be no solicitor shall solicit, canvass or distribute handbills. The other is Section 14 6B, such should be added, no person holding such a license."

**A motion was made** by Alderman Finley and seconded by Alderman McDermott to amend the legislation in three ways, the first being taking out the reference to The United Way fund, the second being changing Section 14 6A, no person to no solicitor, and then Section 14 6B, no person to no solicitor holding such a license. A voice vote was taken with a unanimous affirmative result and the motion passed.

**A motion was made** by Alderman Boerner and seconded by Alderman Fleming to amend the time limit to be 9:00 a.m. to one-half hour after the time designated as sunset. A voice vote was taken with the following result: Aye: Terbrock, Markland, McDermott, Fleming, Leahy, Boerner, Mellow. Nay: Finley. The motion passed by a vote of 7-1.

**A motion was made** by Alderman Terbrock and seconded by Alderman Finley to assign a bill number for the next agenda. A voice vote was taken with a unanimous affirmative result and the motion passed.

Alderman Fleming asked City Attorney Jones for clarification of the December 13 Minutes under the City Attorney's report. He said, "The Minutes show that regarding the Greenburg case, City Attorney Jones received today an amendment to the petition for a writ of habeas corpus in the Supreme Court. The petitioner has now joined the judge, which should have been done a long time ago. The City is still not a party, but by procedure when the judge is joined in an extraordinary writ, the prosecuting attorney would represent the judge and file a responsive plea on behalf of the judge. Since this particular motion requires a response from his firm and the prosecuting attorney, that he will speak with the judge about this and find out if he does want us to prepare the response." Alderman Fleming said, "It doesn't say who is the judge." City Attorney Jones said, "Lawrence Permuter is the judge". Alderman Fleming asked, "Did you end up going ahead and filing this? Is that what you said earlier?" City Attorney Jones said, "I didn't have to. The suit was dismissed before I filed. I contacted the judge, and he did indeed want us to represent him, as provided in the rule, and before I could complete and file that response, it got dismissed."

**Clayton Corners:** City Attorney Jones said, "You may recall that we made demand upon the surety for the principal, GHH Investments, to complete the items of construction and maintenance at Clayton Corners. The surety assigned an engineer to the project, who confirmed that he is in the process of sending out bid packages to the list of contractors that was provided by Gary Kramer, and all of the work on the list that staff prepared will be the subject of this bid. He expects the process to be completed within 30 days, so that by the first or second meeting in March, the work should be let to contractors. There is still going to be some negotiation over how much of the work can and will be completed. The bond is less than the total amount of work that was listed by our staff as needing to be done at Clayton Corners. We're sort of in an awkward position because the bond itself does not provide a direct right of action against the surety. In other words, we can't sue the surety to make them pay us some money until we do the work first, and then we get reimbursed. What we've been trying to do is negotiate a settlement by which the surety will contact directly with the contractors and do the work. It will save us time and money. We were given at least oral assurance today that this is going to happen. It's just a matter of the amount that they are going to agree to pay. I think it's fairly certain that the overlay of the streets and the curbs and gutters will be completed. Some of the other issues are a bone of contention. The engineer is going to come to Ballwin, not this week, but next week. Gary and I said to pick a time and let us know and we will make arrangements to take him to the site."

Alderman Terbrock asked, "When you come to an agreement in this negotiation with the surety company, will we have to have the work done and then try to get reimbursed?" City Attorney Jones said that's

right. He said, "This is the only thing we could do to enforce the bond. If push comes to shove, we have to spend the money first, and then, if the surety doesn't pay us, we can sue them."

Alderman Terbrock asked, "What they deem not to do under that negotiation, can we do the work and then go back and sue for that money?" City Attorney Jones said, "probably not. If we negotiate to the point that they are willing to do some but maybe not all of the work, it's going to be conditioned by a release from the city, I'm sure. With staff's help, we've prepared a wish list or a ranking of what's most important, what must be done, what should be done, and what we would like to have done."

## **ALDERMANIC COMMENTS**

**Financials:** Alderman Boerner said, "In the enclosures in the packet, there are two levels shown and it also ties into the report that Glenda produces on a monthly basis. The last page of the packet shows the general fund and capital fund and combined totals for each one of the funds. It shows what our investments and cash at the beginning of the period, and it's compared to both 2010 and 2009, and it shows revenues for the year on a comparison basis, and then it shows what the change in the fund balance is, and then there's some adjustments, and these are non-cash adjustments that are accounting adjustments. The important thing about this report is for 2010 and 2009, it shows what the increases in our cash are. What this suggests is that we have done quite well in terms of managing the finances. The other thing that we've done that is on the report is that down at the bottom of the page, it shows what investments that we had and what cash we had at the end of the year, at the end of the period. If you take the cash and investments and add that to the beginning of the year, we're going to get the total at the bottom. If you look at the beginning of 2009 where we show how much cash we have, \$2,066,000, and look at the cash we have at the end of 2010, which is \$1,097,000, we have about half the amount of cash that we have on hand, which suggests that we're doing a better job of investing our money. We have less cash and more money invested earning interest. Those are all positive things."

Alderman Boerner said, "At the next level, there's a total of the revenues and expenses, and it shows the general categories of revenues and comparison, and then shows the percentage of the budget, and the general sales tax for 2010, we're 4% over the budget, and that's a good thing. Our total revenues were, our operating revenues on a cash flow basis were 98.8% of budget, which is very good. If one is going to look at the expenses, if you look at the expense line and underneath that where it says Planning & Zoning, Inspections, Community Service, legislation, and legal administrative support services, all those tie into the individual programs. If you want to get into the detail of what makes up those totals, then you can go to Glenda's reports. This shows on a comparative basis how do we look in 2010 vs 2009. In 2010, we're, and this is on a cash flow basis, at 91.3% of our total expenses. I think the administration has done a great job, as they always have, in terms of controlling the expenses."

Alderman Boerner said, "The next page is the graph. This graph is what we use, this would tie into, in terms of what we want to do, and that would be, if you look at the investment policy 4.2, the investment policy that deals with liquidity, this ties directly into that in determining our liquidity. This shows five years, and each and every year, we have more cash and more investments at the end of each year. The thing that we need to do in looking and developing the investment strategy, if you look at July, we reach a high every year, and it's the same pattern in terms of what our cash balances are, and then it goes down, our cash investments goes down dramatically, and it goes down roughly \$2 million each year. This is important in terms of developing what kind of a reserve do we want in terms of cash reserve, and also determining when do our investments mature. We want the cash to be maturing at the point in time, and it did here, as you can see, on July, 2010, the cash balance goes up, and those are investments that are maturing, so that funded our cash needs, our expenditures. If we had not had that, I think that some other, it's kind of a reserve to, a working capital reserve is what it is. This amount that we need, the \$2 million, is that if all we had was \$2 million in cash at the end of the year, then we would need to borrow money at that point in time in order to fund our cash needs from July through October. Each year, our cash balance and investments begin to go back up again and level out and begin to go back up in December when we get most of our revenues in. This information is used to develop our investment strategy because it tells

us how much that we want to have as far as our laddering. We can ladder for five years and how much we need to mature at this point in time. Because this meeting is lengthy, I asked to wait until the next meeting to go over our investment strategy. This was used to develop our investment strategy. The last page is the data that went into the graph. It only shows two years, in 2009 and 2010, August, September, October, and November are months that we have negative cash flow. Those are the things that we need to look at very closely. The other thing we need to consider is there a couple of months during the year that we have three payrolls. The payrolls don't exactly coincide when our revenues come in, so we have to be aware of this to keep up the reserves. This will be considered when we finalize the investment strategy at the next meeting."

Alderman Boerner said, "I would like to see this made a regular agenda item on a quarterly basis. Not necessarily with my explanation, but perhaps Glenda to discuss it."

**Public Works Committee:** The Public Works Committee met at 4:00 p.m. on this date at the Government Center. The meeting was open to the public. Those in attendance were Chairman/Alderman Terbrock, Aldermen Markland, Mellow and Fleming. Also in attendance were Mayor Pogue, Alderman McDermott, Director of Public Works/City Engineer Kramer, City Administrator Kuntz, Assistant City Administrator Aiken, and City Attorney Jones.

Alderman Terbrock said, "The committee discussed the supplemental slab replacement money, the extra \$1 million, and how this should be applied to the project. Mr. Kramer gave three scenarios, the original list that we got in the beginning, the volume base streets, which are the streets with the most traffic, and the ones on the need base. It was determined that the money is better spent going with the original list. It will have a better impact. It has more lower scoring streets to help bring up the whole aggregate. We threw out the volume based streets because it's half the list. With the rise in costs, it will be less than that or even more. To make a better impact on the whole city, it was basically between the original list and the need list. The original list was more appropriate for how spent, on the need list, the numbers were less. The committee decided to recommend that the original list that Gary provided would be the list that we apply the supplemental slab money to."

Alderman Terbrock said, "We discussed some of the environmental standards. We've talked a lot in Planning & Zoning and Board meetings when developers came in, about using pervious pavement or swales or rain gardens. We don't have any standards in place for this. Alderman Fleming pointed out in doing that, what we're doing on a case by case basis is not very consistent. We're applying 1 to 1 and not to the other. Some developers have obliged us with doing some of these things. We are trying to get direction to start forming standards to put in place in our practices around the city. We're going to do research and come up with a basis to grow out of at this point. Tom and Gary are going to present some things look at to implement now to take care of some of the areas such as MSD's water quality standards. We have detention standards, but we don't have water quality standards that we can impose. We get caught on some of our smaller parcels for development because if they fall under the MSD threshold, that's where we're floating on whatever we want to do. We don't have any standard to hold that to. There are issues with retrofitting properties as to how far we are going to go and what we're going to do with those. They are going to put something together for review and hopefully go in that direction and it can grow from there."

**A motion was made** by Alderman Terbrock and seconded by Alderman McDermott to direct staff to do the research for the initial standard and to proceed with the original list of streets. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Comments:** Alderman Markland said that he may have comments but wants to wait until everyone has finished so that he doesn't cover the items twice.

**Prosecuting Attorney Appointment:** Alderman Finley said, “I think it would be good to see the candidate and be able to ask questions, for future reference.” Mayor Pogue said, “Mr. Porta was willing to come to the meeting, but I gave him the night off since it was Valentine’s Day.”

Alderman Markland said, “I would like to wait until the very end to make my comments.”

**Legal Issues:** Alderman Fleming said, “The circumstances around the resignation of Prosecuting Attorney Keith Cheung brought up a couple of issues that I’d like the Board to review tonight. First is Chapter 16 of our ordinances. The second is the possibility of the Board needing to acquire additional representation since we will be asking questions that perhaps City Attorney Jones couldn’t answer because he is a member of the same firm as Mr. Cheung. The third is a closed session regarding personnel. Regarding Chapter 16, the City Attorney is probably ready to address. When all of this was happening, I did the best I could to look at our ordinances and State law. We ended up finding, and I think the City Attorney agrees, that our ordinance, particularly Chapter 16 for several of the positions, they don’t match. The judge section deals with the possibility of a provisional, the prosecuting attorney section doesn’t. It refers us to 79.230 of Missouri State law. That’s of no use because it doesn’t even mention the prosecuting attorney. I suggested that the City Attorney could look at rewriting Chapter 16 for us. I know that we have all spotted things in our ordinances over time. We can’t look at all of the ordinances and fix them all at once. When you spot something like this, it needs to be fixed as it comes up. I don’t know how long the City Attorney wants to go into all of the details of it, but for me it’s as simple as I would like to direct the City Attorney to rewrite Chapter 16 and submit it for approval. Is there anything you would like to add to that?”

City Attorney Jones said, “Just that there’s very little information in the State Statutes. Chapter 479 is the chapter that deals with the Municipal Court and its officers. It’s only section 479.120 that mentions a prosecuting attorney, and it doesn’t really have any detail. Most of Chapter 479 was actually superseded when Missouri Supreme Court rule 37 was passed, and 37 doesn’t mention the duties of the prosecuting attorney other than to indicate that this is the person who prosecutes the violations. If I’m going to rewrite Chapter 16, the Board will want information about interim or provisional prosecutor and how that person is appointed, perhaps the appointment and term of the prosecutor included in the chapter, and maybe additional duties.”

Alderman Fleming said, “In that chapter, of all the jobs that are listed, the municipal judge, public defender, and prosecuting attorney are all very similar. I think it should be written in a uniform way, the same for each one of those. The municipal judge section has a section for office created, jurisdiction, appointment, removal, qualifications, provisional; it should at least cover those in each one of those three jobs so that if something happens like this again, I don’t have to look up prosecuting attorney and find there’s nothing there to tell us what to do.” City Attorney Jones said he can do this. Mayor Pogue said, “As well as reference the appropriate State statutes.”

Alderman Boerner said, “I would like to see the Mayor appoint a provisional prosecuting attorney so that there is accountability to the city itself, as opposed to having the prosecuting attorney identify his backup.” Mayor Pogue said, “My concern on that would be a logistical concern of getting files to the provisional in the case of something suddenly coming up. The prosecuting attorney would probably have a better idea if he could work out an arrangement. For me to do this on my own, would have input from the prosecuting attorney.” City Administrator Kuntz suggested, “Appointed by the Mayor, subject to advice and consent of the designated prosecuting attorney.” Alderman Terbrock agreed. Alderman Boerner said, “There would have to be some coordination, but we should be the ones to appoint.”

**Closed Session – Personnel:** Alderman Fleming said, “I am asking for a closed session to discuss personnel under Missouri State Statute 610.021 (3) personnel. For this closed session, Keith Cheung has indicated that he is willing to attend if the City Attorney will text him and invite him.

**Adjourn to Closed Session:** A motion was made by Alderman Fleming and seconded by Alderman Boerner to adjourn to closed session to discuss personnel under Missouri Statute 610.021 (3) and for City Attorney Jones to ask Keith Cheung to attend. A roll call vote was taken with the following results: Ayes: Aldermen Fleming, Terbrock, McDermott, Boerner, Leahy, Markland, Finley, Mellow. Nays: None. The motion passed by a vote of 8-0 to adjourn to closed session at 9:11 p.m.

**Closed Session:**

The Board convened in closed session at 9:20 p.m.

During the closed session *a motion was made* by Alderman Fleming and seconded by Alderman Boerner that the following statement be read in open session. A roll call vote was taken with the following result: Aye: Mellow, Boerner, Leahy, Fleming, McDermott, Markland, Finley, Terbrock. Nay: None. The motion passed by a vote of 8-0.

*“The Board wishes to express its disappointment that at the January 24, 2011 Board of Aldermen meeting, the Mayor, City Administrator, and City Attorney failed to inform the Board of Aldermen of Keith Cheung’s pending disciplinary action before the Missouri Supreme Court.”*

In the closed session, *a motion was made* by Alderman Markland and seconded by Alderman Leahy to “terminate the agreement with the City Attorney, suspend the City Administrator without pay for two weeks, and to censure the Mayor.” A roll call vote was taken with the following result: Aye: Markland. Nay: Terbrock, Finley, McDermott, Fleming, Leahy, Boerner, Mellow. The motion failed by a vote of 1-7.

A motion was made by Alderman Leahy and seconded by Alderman Boerner to adjourn the closed session. A roll call vote was taken with a unanimous result, and the closed session was adjourned at 10:40 p.m.

The Board reconvened in open session at 10:42 p.m.

Mayor Pogue stated that the Board met in closed session to discuss personnel.

*A motion was made* by Alderman Fleming and seconded by Alderman Boerner to adjourn the open session. The motion passed unanimously and the meeting was adjourned at 10:45 p.m.

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TIM POGUE, MAYOR

ATTEST:

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ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

**February 14, 2011**