RECORD OF PROCEEDING

MEETING OF THE CITY COUNCIL
OF THE CITY OF CHESTERFIELD
AT 690 CHESTERFIELD PARKWAY WEST

JANUARY 18, 2012

The meeting was called to order at 7 p.m.

Boy Scout Troop #505 from Incarnate Word led everyone in the Pledge of Allegiance and Mayor Geiger followed with a moment of silent prayer. Mayor Geiger recognized and thanked: Spencer Hritz, Austin Mueller, Drew Mitchell, Jacob Cichelero, Garrett French, Brandon Kelly and Tommy Kressig for their participation in this opening ceremony. Also in attendance were Troop Leaders Julia Kressig and Carrie Mueller. Mayor Geiger presented a Proclamation to Boy Scout Troop #505, commemorating their participation.

A roll call was taken with the following results:

PRESENT	ABSENT
Mayor Bruce Geiger	
Councilmember Barry Flachsbart	
Councilmember Matt Segal	
Councilmember Derek Grier	
Councilmember G. Elliot Grissom	
Councilmember Mike Casey	
Councilmember Randy Logan	
Councilmember Bob Nation	
Councilmember Connie Fults	

APPROVAL OF MINUTES

The minutes of the January 4, 2012 City Council meeting were submitted for approval. Councilmember Grissom made a motion, seconded by Councilmember Logan, to approve the City Council minutes. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

INTRODUCTORY REMARKS

Mayor Geiger announced that the next meeting of City Council has been scheduled for Monday, February 6, at 7 p.m.

Mayor Geiger next announced that candidate filing closed yesterday for the April 3, 2012 Municipal Election. Mayor Geiger announced the names of the candidates and recognized those in attendance:

Councilmember – Ward I
Barry Flachsbart (incumbent)
David Arbogast

Councilmember – Ward II
Elliot Grissom (incumbent)
Tania Pappas

Councilmember – Ward III
Mike Casey (incumbent)

Councilmember – Ward IV
Connie Fults (incumbent)

COMMUNICATIONS AND PETITIONS

Mayor Geiger provided an explanation of the procedures for people wishing to speak at tonight's City Council meeting.

Mayor Geiger stated that Councilmember Barry Flachsbart is the Chairman of the Public Health and Safety Committee and Councilmember Randy Logan is the Vice-Chairman of this Committee and one of them will make a motion for the second reading of Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). Mayor Geiger said that after the motion for the second reading is approved and Bill No. 2868 is read for the second time, he will ask City Attorney Rob Heggie to discuss a possible amendment to Bill No. 2868. If the amendment to Bill No. 2868 passes, Mayor Geiger said he will ask for a motion to hold the final vote on Bill No. 2868 until the February 6th City Council meeting, to give everyone an opportunity to understand any changes made on Bill No. 2868.

Ms. Beth Feldman, who resides at 14060 Ladue Road in Chesterfield, stated she is a current member of the Parkway Board of Education and announced that she has filed for the April 3 election to retain her seat on the Parkway Board of Education. Mayor Geiger thanked Ms. Feldman for her service to the Parkway School District.

Mr. Dan Hoag, who resides at 14756 Thornhill Terrace Drive in Chesterfield and is the Director of the Nooning Tree Homeowners Association, stated that he has had a lot of interaction with the Monarch Fire Protection District (MFPD) in the past ten years. Mr. Hoag stated that 95% of the MFPD included the City of Chesterfield and he requested that City Council discuss possibilities for the City to absorb or take over the MFPD. Councilmember Flachsbart stated that he believes that the City cannot do anything under the law until the City's population reaches 50,000 and the City's current population is under 50,000. Councilmember Logan asked if the City would have to wait until the next census to consider this possibility or could this be considered if annexation increased the population. Councilmember Flachsbart replied that he believes that if the City's population is over 50,000 through annexation, the City could consider this.

Mr. David Arbogast, who resides at 13555 C Coliseum Drive in Chesterfield, introduced himself as a candidate for the Office of Councilmember-Ward I in the April 3rd Municipal Election. Mr. Arbogast next spoke in support of Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. Marc Perez, who resides at 1655 Garden Valley Court in Wildwood, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). Mr. Perez provided a handout to Mayor Geiger and the Councilmembers, which was a copy of an email he received from the Missouri Department of Conservation regarding the "Wildlife Code."

Mr. Richard Huck, who resides at 9801 Countryshire Place in Creve Coeur, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons) and said that residents are protected by the Constitution. City Attorney Heggie asked Mr. Huck if he has any cases that support his interpretation of the Missouri or US Constitution. Mr. Huck replied that he addressed the Missouri Constitutional issue and he is not aware of any cases directly on point.

Mr. Vince Throckmorton, who resides at 111 High Valley Drive in Chesterfield, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. Matthew Link, who resides at 16853 Wild Horse Creek Road in Chesterfield, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). Councilmember Nation stated for clarification that any amendment to this ordinance would not affect any resident who lives on ten acres or more.

Mr. James Brattain, who resides at 298 Ridge Trail Drive in Chesterfield, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. Gene Schenberg, who resides at 402 Country Oak Drive in Chesterfield, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). Mr. Schenberg provided a handout to Mayor Geiger and the Councilmembers, which was a proposed amendment to Section 21-104 of Bill No. 2868. Mr. Schenberg stated that every Councilmember, except Councilmember Flachsbart, violated their oath to support and defend the Missouri Constitution when they voted on January 4th. Councilmember Nation stated that the Councilmembers voted only to read Bill No. 2868 on January 4th. Mr. Schenberg replied that he stands corrected and retracted his statement.

Mr. Todd Kamp, who resides at 534 Stablestone Drive in Chesterfield, spoke in support of Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). Councilmember Logan stated that there are several reported incidents in the City about people using pellet guns or other weapons to shoot at squirrels in neighborhoods and this is a public safety item for all residents.

Mr. Harvey Rosenberg, who resides at 217 S. Greentrails Drive in Chesterfield and is a trustee of South Trails Subdivision, spoke in support of Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. David Roland, Director of Litigation for the Freedom Center of Missouri, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons) and stated he was available to answer questions. Mr. Roland said that Mr. Heggie had asked if there was any case law on this issue and Mr. Roland said there is no case law. Mr. Heggie stated that most cities prohibit the discharge of firearms and state law allows cities to regulate this. Discussion ensued regarding the rights of citizens under Missouri's "Castle Doctrine" and if this proposed amendment in any way violates the Missouri Constitution.

Mr. James P. Cittadino, who resides at 16847 Wild Horse Creek Road in Chesterfield, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. Shane Brown, who resides at 2550 Mockingbird Lane in Florissant, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. Herbert Hindelang, who resides at 16160 Walnut Hill Farm Drive in Chesterfield, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons).

Mr. Richard Lofftus, who resides at 598 Timber Creek Trail in O'Fallon, Missouri, spoke in opposition to Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). City Attorney Heggie stated, for clarification, that shooting a BB gun is not in violation of the law; shooting a pellet gun is in violation of the law. Mr. Heggie stated that children's toys are not considered projectile weapons. Councilmember Grier stated, for clarification, that the current law as it is written prohibits the discharge of firearms, except in certain cases. Mr. Heggie said the law prohibits the discharge of a firearm and a projectile weapon, which is specifically defined in the ordinance as "a bow, pellet gun, sling shot or other weapon capable of inflicting serious injury or death by striking a person." Councilmember Segal stated that the City has had multiple incidents and this is not about an argument between two neighbors.

Mayor Geiger entertained a motion to suspend the rules to move to the "Legislation" portion of the agenda to address Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). Councilmember Nation made a motion, seconded by Councilmember Casey, to suspend the rules to address Bill No. 2868 (Proposed amendment regarding the discharge of firearms or projectile weapons). A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

LEGISLATION

Mayor Geiger recognized Councilmember Flachsbart, Chairperson of the Public Health and Safety Committee. Councilmember Flachsbart deferred to Councilmember Logan, Vice-Chairperson of this Committee.

BILL NO. 2868 AMENDS SECTIONS 21-103 AND 21-104 OF THE CODE OF ORDINANCES OF THE CITY OF CHESTRFIELD, MISSOURI, RELATING TO THE DISCHARGE OF FIREARMS OR PROJECTILE WEAPONS TO PROTECT CROPS OR OTHER PROPERTY **(SECOND READING**; **PUBLIC HEALTH AND SAFETY COMMITTEE RECOMMENDS APPROVAL**)

Councilmember Logan made a motion, seconded by Councilmember Segal, for the second reading of Bill No. 2868. A voice vote was taken with an affirmative result (7-1 – Councilmember Flachsbart voted "no") and the motion was declared passed. Bill No. 2868 was read for the second time.

Mayor Geiger repeated his previous statement that there will be a motion brought forward and voted on; and if this motion passes, he will seek a motion to hold the final vote on Bill No. 2868 until the February 6th City Council meeting.

Mayor Geiger recognized City Attorney Heggie, who provided an outline of what the current ordinance prohibits and allows. He said the ordinance currently prohibits the discharge of firearms and projectile weapons within 150 yards of any building. There are exceptions contained in the ordinance if you are on a lot that is greater than ten (10) acres

in size. A projectile weapon under the current ordinance is defined as a bow, pellet gun, sling shot or other weapon capable of inflicting serious injury or death if it strikes a person. This does not include children's toys, such as BB guns, Nerf guns, paintball guns, etc. There are exceptions in the ordinance that provide for the discharge of weapons by police officers, certain shooting ranges, blanks for sporting events and theaters. There is also an exception that allows for the discharge of firearms to protect life, livestock, crops, or other property. This ordinance does not address hunting and there is a long tradition of hunting in the City. The proposed amendments, as drafted, would eliminate the exception. The current ordinance allows the discharge of firearms to protect crops or other property. Some members of City Council think that elimination of that exception will enable the City to better protect the public safety of its residents. There have been several instances in City neighborhoods when neighbors have repeatedly discharged projectile weapons and sometimes firearms to protect their homes against squirrels, rodents or other small animals. The Missouri State legislature has given cities the ability to control and regulate the discharge of firearms within city limits. Most cities have very strict regulations regarding the discharge of weapons within city limits.

Mr. Heggie stated that he thinks it is very clear that the Second Amendment to the US Constitution is not really an issue here. There is certain language in the Missouri Constitution which does not prohibit the City Council from acting, as set out in the proposed amendment. There are no cases that address that issue and Federal courts have held that cities have the right to do what the City of Chesterfield City Council is considering tonight. The right to bear arms versus the right to discharge is two different things and City Council is charged with protecting public safety. The proposed amendment as it currently exists would only say that you cannot use or discharge firearms or projectile weapons to protect crops or other property. The proposed amendment has language in it that does not impede the use of deadly force in the Missouri "Castle Doctrine."

Mr. Heggie stated that some Councilmembers have asked if there are any alternatives and in response, Mr. Heggie proposed a "blue sheet" amendment to Bill No. 2868, which would reinstate the exception for protecting crops or other property, but would prohibit the discharge of firearms **to protect crops or other property from squirrels, rodents, birds, or other small animals**. If this amendment is adopted by City Council, it would clearly leave everything in the current ordinance in place and would clarify that within the City of Chesterfield, squirrels, rodents, birds, or other small animals cannot be shot at to protect crops or other property. All other exceptions under the current ordinance would stay in full force and effect, and that is contained in the "blue sheet" amendment.

Mayor Geiger requested, for the benefit of those in attendance, that City Attorney Heggie read the "blue sheet" amendment so everyone is clear about what might be voted on. Mr. Heggie said in Chapter 21, Article VIII, Division 2, Section 21-103 Specific actions prohibited, it adds a new section (i): "It shall be unlawful to fire or discharge a firearm or projectile weapon within one hundred fifty (150) yards of a house, dwelling or apartment to protect crops or other property from squirrels, rodents, birds or other small animals. "

Mr. Heggie next stated that in Section Two of the "blue sheet" amendment, which amends Chapter 21, Article VIII, Division 2, Section 21-104 Exceptions is amended as follows: "The provisions of this Division shall not apply to any police target or police shooting range, nor to any club or individual target, trap, skeet or practice shooting range, nor to the discharge of firearms where necessary to protect life, livestock, crops or other property, nor to any peace officer or Missouri Department of Conservation employee or those directed by them, acting in the discharge of his official duties, nor to the discharge of blank cartridges in theatre performances or sporting events, nor to the firing of salutes by firing squads at military ceremonies. This exception shall not allow the discharge of a firearm or projectile weapon to protect crops or other property from squirrels, rodents, birds or other small animals. "

Mayor Geiger reiterated that he feels this is a public health and safety issue that needs to be addressed. This issue has been discussed with the City Attorney and the City is not creating a violation of either the US or the Missouri Constitution. City Attorney Heggie has advised that the City is not violating either the US or the State Constitution. Mayor Geiger encouraged the City Council to consider the "blue sheet" amendment on Bill No. 2868. Mayor Geiger entertained a motion to accept the "blue sheet" amendment made by Mr. Heggie.

Councilmember Segal made a motion, seconded by Councilmember Logan, to accept the "blue sheet" amendment. Councilmember Flachsbart stated that he feels this amendment is a step in the right direction and he will vote for it; however, he does not feel that it is a step far enough. Councilmember Grissom made a motion, seconded by Councilmember Segal, to amend Chapter 21, Article VIII, Division 2, Section 21-104, to strike the words "or individual" in the second sentence so it will read: "….nor to any club, target…." as opposed to currently reading "….nor to any club or individual target…." Mayor Geiger asked Councilmember Grissom, for clarification, if he is striking the words "or individual target…" Councilmember Grissom replied: "That is correct." Mr. Heggie read the proposed amendment to the "blue sheet" which strikes out the words "or individual target". Discussion ensued regarding individual rights and public health and safety. Mayor Geiger called the question. A roll call vote was taken for the approval of the "blue sheet" amendment with the following results: Ayes – Fults, Grier, Grissom, Logan, Casey, Segal and Flachsbart. Nays – Nation. Whereupon Mayor Geiger declared the motion passed.

Councilmember Logan made a motion, seconded by Councilmember Grier, to hold the final vote on Bill No. 2868 until the February 6 City Council meeting. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

APPOINTMENTS

There were no appointments.

COUNCIL COMMITTEE REPORTS

Finance and Administration Committee

Councilmember Michael Casey, Chairperson of the Finance and Administration Committee, announced that the next meeting of this Committee has been scheduled for Monday, January 30, at 5:30 p.m.

Planning and Public Works Committee

Councilmember Connie Fults, Chairperson of the Planning/Public Works Committee, reported that Bill No. 2869 (Extends until 12/31/2012 A provision allowing for the placement of **OPEN HOUSE SIGNS**, on Saturdays) will be considered for SECOND READING approval and adoption under the "Legislation – Planning Commission" portion of the Agenda.

Councilmember Fults next reported that Bill No. 2872 (Provides for the Acceptance of Streets in the Long Road Crossing Development), Bill No. 2873 (Provides for the Acceptance of Streets in the Chesterfield Ridge Subdivision), and Bill No. 2874 (Provides for the Acceptance of Streets within and adjacent to Central Park) will be read for the first time under the "Legislation" portion of the Agenda.

Councilmember Fults announced that the next meeting of this Committee has been scheduled for Thursday, January 19, at 5:30 p.m.

REPORT FROM THE CITY ADMINISTRATOR

City Administrator Mike Herring reported that Golden China Restaurant, 414 THF Boulevard, has requested a new liquor license, to sell wine by the drink and Sunday sales. Mr. Herring reported that this application has been reviewed and recommended for approval by the Departments of Police and Planning/Public Works. Councilmember Casey made a motion, seconded by Councilmember Grier, to approve issuance of a new liquor license to Golden China Restaurant. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

Mr. Herring next reported that Fiesta Modern Mexican Cuisine, 185 Hilltown Village Center, has requested a new liquor license to sell all kinds of liquor by the drink and Sunday sales. Mr. Herring reported that this application has been reviewed and recommended for approval by the Departments of Police and Planning/Public Works. Councilmember Casey made a motion, seconded by Councilmember Grissom, to approve issuance of a new liquor license to Fiesta Modern Mexican Cuisine. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

NEW BUSINESS

Mayor Geiger recognized Councilmember Flachsbart, who announced that the Parks and Recreation Citizen Advisory Committee is planning a "Tour de Parks" day on May 12, 2012, to help familiarize citizens with the Parks resources in the City.

LEGISLATION

BILL NO. 2872 PERTAINS TO THE ACCEPTANCE OF LONG ROAD CROSSING DRIVE, NORTH SPIRIT DRIVE, NORTH TRADE CENTER BOULEVARD AND NORTH CHESTERFIELD INDUSTRIAL BOULEVARD AS PUBLIC STREETS IN THE CITY OF CHESTERFIELD **(FIRST READING; PLANNING/PUBLIC WORKS COMMITTEE)**

Councilmember Fults made a motion, seconded by Councilmember Logan, for the first reading of Bill No. 2872. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 2872 was read for the first time.

BILL NO. 2873 PERTAINS TO THE ACCEPTANCE OF UPPER CHESTERFIELD DRIVE AND CHESTERFIELD RIDGE CIRCLE AS PUBLC STREETS IN THE CITY OF CHESTERFIELD **(FIRST READING; PLANNING/PUBLIC WORKS COMMITTEE)**

Councilmember Fults made a motion, seconded by Councilmember Logan, for the first reading of Bill No. 2873. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 2873 was read for the first time.

BILL NO 2874 PERTAINS TO THE ACCEPTANCE OF AUGUST HILL DRIVE, LYDIA HILL DRIVE AND VETERAN'S PLACE DRIVE AS PUBLIC STREETS IN THE CITY OF CHESTERFIELD **(FIRST READING; PLANNING/PUBLIC WORKS COMMITTEE)**

Councilmember Fults made a motion, seconded by Councilmember Logan, for the first reading of Bill No. 2874. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 2874 was read for the first time.

LEGISLATION – PLANNING COMMISSION

BILL NO. 2869 REPEALS SECTION 2.5-4 PERTAINING TO OFF PREMISE RESIDENTIAL REAL ESTATE OPEN HOUSE DIRECTIONAL SIGNS; AND TO ESTABLISH NEW RULES FOR THE REGULATION AND PLACEMENT OF RESIDENTIAL REAL ESTATE OPEN HOUSE SIGNS WITHIN THE CITY OF CHESTERFIELD, MISSOURI **(SECOND READING –**

PLANNING & PUBLIC WORKS COMMITTEE RECOMMENDS APPROVAL)

Councilmember Fults made a motion, seconded by Councilmember Logan, for the second reading of Bill No. 2869. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 2869 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 2869 with the following results: Ayes – Flachsbart, Segal, Logan, Fults, Nation, Grissom, Casey and Grier. Nays – None. Whereupon Mayor Geiger declared Bill No. 2869 approved, passed it and it became **ORDINANCE NO. 2688.**

ADJOURNMENT

There being no further business to discuss, Mayor Geiger adjourned the meeting at 9:05 p.m.

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Mayor Bruce Geiger

ATTEST:

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Judith A. Naggiar, City Clerk