

## CITY COUNCIL MEETING OF APRIL 10, 2023

A meeting of the Warrensburg City Council was held on April 10, 2023 at 7:00 p.m., at 200 S. Holden and via Zoom, with Mayor Kushner presiding. Mayor Kushner called the meeting to order and led in the Pledge of Allegiance. Roll was called as follows, Present: Osborne, Lund, Uhler, Kushner. Absent: Bentley.

The minutes of the March 27, 2023 meeting were considered. Osborne moved to approve the minutes. Yes: Osborne, Lund, Uhler, Kushner. No: none.

The adoption of the agenda was considered. Lund moved to adopt the agenda. Yes: Osborne, Lund, Uhler, Kushner. No: none.

Mayor Kushner read a proclamation recognizing Historical Preservation Month for May 2023. The proclamation called upon all residents of Warrensburg to join their fellow citizens across the United States in celebrating the historic resources within our community and increasing public awareness of the importance of historic preservation.

Mayor Kushner read a proclamation recognizing National Volunteer Week April 16-22, 2023. The proclamation provided an opportunity to thank the City's volunteers, and particularly the more than thirteen board, commission and task force member volunteers that reflect the community's varied interests and challenge all residents of Warrensburg to look for ways to be active participants in our local community.

Bill No. 04-01-2023 being for an Ordinance Declaring the Results of the Election of Two Council Members for a Three-Year Term at the General Election held on Tuesday, April 4, 2023, was read for a first time by title. City Clerk Schneider presented the official Certification of Election Results for the two candidates elected as follows: Jim Kushner, 802 votes and Jan Jones, 820 votes. Uhler moved said bill be passed to a second reading by title. Carried unanimously. Said bill was read a second time. Roll was called for the adoption or rejection of said bill as follows: Yes: Osborne, Lund, Uhler, Kushner. No: none. Said bill was declared duly adopted and given Ordinance No. 5788.

Bill No. 04-02-2023 being for an Ordinance Declaring the Results of an Election Imposing a One Percent (1%) Increase to General Sales Tax in the City of Warrensburg, Missouri on April 4, 2023 General Municipal Election, was read for a first time by title. City Clerk Schneider presented the official Certification of Election Results, as follows: For the Sales Tax Increase 520 votes and Against the Sales Tax Increase 586 votes. The majority of those voting in the election voted against the sales tax increase ballot question. Osborne moved said bill be passed to a second reading by title. Carried unanimously. Said bill was read a second time. Roll was called for the adoption or rejection of said bill as follows: Yes: Osborne, Lund, Uhler, Kushner. No: none. Said bill was declared duly adopted and given Ordinance No. 5789.

Bill No. 04-03-2023 being for an Ordinance Declaring the Results of an Election Imposing a Three Percent (3%) Sales Tax on all Tangible Personal Property Retail Sales of adult use marijuana sold in the City of Warrensburg, Missouri on the April 4, 2023 General Municipal Election, was read for a first time by title. City Clerk Schneider presented the official Certification of Election Results, as follows: For the Sales Tax 848 votes and Against the Sales Tax 260 votes. The majority of those voting in the election voted to approve the sales tax ballot

question. Lund moved said bill be passed to a second reading by title. Carried unanimously. Said bill was read a second time. Roll was called for the adoption or rejection of said bill as follows: Yes: Osborne, Lund, Uhler, Kushner. No: none. Said bill was declared duly adopted and given Ordinance No. 5790.

Mayor Kushner declared Council Sine Die. Mayor Kushner presented a six-dollar plaque to Council Member Lund and thanked him for six years of service on the city council. Council Member Lund presented a mayoral gavel plaque to Mayor Kushner in honor of his service this past year as Mayor.

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City Clerk Schneider swore in the newly elected council members Jim Kushner and Jan Jones for three-year terms to which they were elected on April 4, 2023.

Roll was called as follows, Present: Osborne, Jones, Uhler, Kushner. Absent: Bentley.

The adoption of the new business agenda was considered. Osborne moved to adopt the agenda. Yes: Osborne, Jones, Uhler, Kushner. No: none.

Council Member Osborne nominated Jim Kushner to serve as Mayor. There being no other nominations, roll was called for election of Mayor as follows: Yes: Osborne, Jones, Uhler, Kushner. No: none.

Council Member Jones nominated Bruce D. Uhler to serve as Chairperson Pro Tem. There being no other nominations, roll was called for election of Chairperson Pro Tem as follows: Yes: Osborne, Jones, Uhler, Kushner. No: none.

Mayor Kushner opened a Public Hearing on Ordinance Authorizing a Conditional Use Permit for Land Use 1.111 Single-Family Detached, Site Built Dwelling in the CB: Central Business District Located at 210 E. Gay Street in the City of Warrensburg, Missouri. Community Development Director Carroll said the structure was built over 100 years ago originally as a single-family residence but has operated as the Camel Crossing Bed & Breakfast since the 1970's. This use has also been abandoned since it has not been in operation for over 365 days. Carroll said the table of permissible uses in Section 27-200 allows a single-family dwelling with an approved conditional use permit in a CB District. The applicant, Joyce Barnes, has listed the property for sale, and the potential buyer seeks to use the property as a single-family residence without plans to alter the footprint of the structure. Carroll said surrounding property owners within 300 feet were notified and three public comments requesting general information only were received as detailed in the staff report. Carroll said the Planning & Zoning Commission recommended approval with city staff granted authority to approve the final site plan. City Staff recommended approval. Mayor Kushner closed the public hearing.

Mayor Kushner opened a Public Hearing on Ordinance Enlarging an R3: Low Density Multifamily Residence District by Rezoning Land Located at 115 and 117 W. Oak Street from GB: General Business District to R3: Low Density Multifamily Residence District. Community Development Director Carroll said 117 W. Oak Street is developed with a single-family home and 115 W. Oak Street is vacant (a previously existing multi-family structure had been demolished). Carroll said 117 W. Oak Street is located on the northeast corner of Washington and Oak Streets and 115 W. Oak Street is adjacent to the east. The zoning map is in the packet. Carroll said the north side of Oak Street is currently zoned GB and the south side is

currently zoned R3 district. The request is to extend the R3 district north across the street to include these two lots. There was a Planning and Zoning meeting on April 3<sup>rd</sup> where significant public comment was taken from applicants and surrounding neighbors. At the end of the public comment period, the Planning and Zoning Commission voted 0-5 to deny the request. Carroll detailed the public comments received both from the applicants and surrounding neighbors as well as those comments given to staff prior to tonight's meeting in the council packet report. City staff recommended approval of the proposed rezoning as an extension of an existing R3 District and a down-zoning to a less intensive zoning district, the proposed zone is consisted with the adopted Comprehensive City Plan and Future Land Use Map which shows the property on the north side as multifamily and is in keeping with the development trend of the area. Carroll advised that the proposed ordinance appearing later in the agenda was written in the affirmative, and it would require a 4/5ths majority vote of city council to adopt on its second reading due to the denial by the Planning and Zoning Commission.

Applicant Kristin Dyer, 117 W. Oak St., addressed city council and said that she and her husband wanted to rezone the property because they knew that it was not going to be their forever house. Dyer said they know that banks are less likely to approve a mortgage to a potential buyer who cannot build it back. Dyer explained upon her husband's retirement from the Marine Corps, the decision was made to move back onto his parents' farm in the county. Dyer said while discussing options whether to build a home on the family farm, Dyer accepted employment at the city with a requirement to live in city limits. The requirement was removed at Dyer's request approximately one year ago so that one day they could move onto the farm.

Dyer said Oak Street cannot support commercial traffic even though it is zoned commercial and said the right-of-way width was 10' less than a residential subdivision of 40'. The street width was 7' less than a traditional residential local street and in front of 111 W. Oak Street was 12'8" less than a new residential subdivision. Dyer said it was barely enough room to get two cars on it at the same time. In addition, there were sight distance issues. Dyer and her husband petitioned several years ago to get a stop sign on Maple Street as it exits onto Oak St.

Dyer responded to concerns brought by the fire protection district at the April 3<sup>rd</sup> Planning and Zoning Commission meeting. The fire protection district stated they did not want a 30 ft setback as they may want to expand the driveway on the south side of their property. The district is a taxing entity and does not have to apply for a building permit or conditional use permit. Additionally, a 30 ft setback would not apply to the district's driveway but only to buildings and structures.

Dyer said it was not clearly addressed what would happen in the event of a total loss of the garage and house at 113 W. Oak Street. Dyer said for instance if our house remained as GB and their house was a total loss, they would have to come before the Planning & Zoning Commission and City Council to either rezone or obtain a conditional use permit. Dyer said if our house was rezoned to R3 with 30 ft setback, the process would be the same. They would have to either get a conditional use permit with 30 ft setback or request to rezone the property. Dyer said as to the property to the north having the greater setback issues, there is still buildable area with the 30 ft setback. Dyer said this request is consistent with rezoning that was approved in 2019 at 615 Lakeview Drive located behind the Warrensburg Animal Hospital from GB to R3. The Land Use Map and 2017 Comprehensive Plan Update approved by the Planning and Zoning Commission and City Council show the properties along W. Oak Street as residential.

Fire Chief Larry Jennings, Johnson County Fire Protection District at 122 W. Young Street, addressed city council. Jennings wanted to clarify an issue stated incorrectly. The district had no intention of expanding the driveway. Jennings said the comment made was if the district needed to expand anything on the upper end of the parking lot, the building that was up there, or if the district chooses to sell that piece off, the rezoning will basically make it so no one else could ever build up there on that hill where there is adequate room to build. Jennings said the district's issue was not about the driveway but about the lot space. Jennings reiterated his comments made on behalf of the district at the April 3<sup>rd</sup> Planning and Zoning Commission meeting and tonight's meeting mean no disrespect, but that lot has been zoned GB for many years and it was that way when they purchased the house. Jennings said the district is against the rezoning request because it does affect the district's future use even as a taxing entity. As a taxing entity, the district can build up there without a permit, but the district is restricted from being able to sell it as it restricts drastically on what somebody could buy or use.

Vicki Carey, on behalf of her parents at 111 and 113 W. Oak Street, addressed city council and said when she and her sister, Martha Wallace, attended the April 3<sup>rd</sup> Planning & Zoning Commission meeting, they did not know whether they were for or against the rezoning as they were unsure of what it entailed. After sitting through the meeting and learning of the 30 ft setback, no sign, and no lights, Carey said that she and her sister came to the realization that they wanted to leave the zoning the way it has been since her Dad started as a general business fifty years ago.

John Angel, 625 NE State Route 13, addressed the city council and said that he and his wife own the property directly to the north of the Dyers' property. Angel said that they have owned the property for fifty years and want to maintain it as general business. Angel said they do not want to have infringement on their boundary line and against the lighting and sign usage also. The applicants made a comment about borrowing money and that should not be a factor to borrow money if their credit is good, or then borrow money somewhere else and maybe pay a higher interest rate but it is zoned general business and we would like to see it remain as general business.

Council Member Jones asked for clarification on the issue. Carroll said the applicants' request to rezone is from a general business to a residential R3 district and on occasion, a build back letter is requested by a bank for a refinance or mortgage application when a house is in a central business or a general business zone because a house is not allowed by right in a commercial district. Carroll said in our zoning table, instead of having a "z" for house in central business or in general business, there is a "c," which means you need a conditional use permit. The city cannot grant a conditional use permit proactively in advance. For instance, a conditional use permit cannot be approved this year as the house may not get hit by a tornado or burn down for thirty years; and, in thirty years, will that council make the same decision. City Attorney Harris said another issue to consider is a house that exists in a general business zone when that zone was adopted is a nonconforming use, and the city ordinances provide that if a structure is more than 75% destroyed that it loses its nonconforming status. Once the nonconforming status is lost, the house cannot be repaired or rebuilt at that point and must come into compliance with the zoning code.

Further, Carroll said the bank states that it cannot accept the house as collateral to secure a loan if the borrower does not have the ability to have a house if a tornado comes through. At the time of damage, a conditional use permit application can be submitted and the council at that time would decide whether to approve if deemed appropriate based on current trends of single-family homes in a general business district. The city does not have the ability to grant a

build back letter due to its inability to grant a conditional use permit on the front-end. Carroll said when the question to sell the house in the future arises, there is a concern that a seller might not be able to get a loan because it is a single-family house in a general business district.

Council Member Uhler asked if it is about collateral on a property that is 75% destroyed, how does property insurance cover that for the bank. Harris said it is typical in the lending industry for mortgages to be marketable on secondary market that insurance would be required to be maintained on the property. Council Member Jones asked if the applicants owned the property now. Carroll said the applicants have owned the property since 2016. Council Member Jones requested more time to review the issue. City Attorney Harris explained the procedure for council's ability to defer action on a second reading to the next meeting.

Chief Larry Jennings suggested that Carroll explain the ramifications of changing zoning to residential on that property and how that affects the general business properties on the 30 ft setback to help with clarification. Carroll explained that when you have a general business district adjacent to any residential district, the general business district property has a 30 ft setback then placed on it on the boundary line that is adjacent to the residential property. Carroll said in a GB district adjacent to GB district there is a 0 ft side setback and a 10 ft rear setback. Carroll said if it was changed and adjacent to R3 or residential district, a 0 ft side setback would become a 30 ft setback and a 10 ft rear setback would become a 30 ft rear setback. The 30 ft setback would apply to structures and to parking. Carroll noted that driveways have been allowed to be in that 30 ft setback. Carroll said there are properties to the north and east of the ones in this rezoning application that are general business now and would have that 30 ft setback applied to them if the rezoning is approved. If approved and the 30 ft setback applied to them, whatever structures are there now on that 30 ft setback would be grandfathered in. If, however, the structures were destroyed beyond 75% of the fair market value or if an addition on the structure is wanted, then they would have to come into compliance with that 30 ft setback. Councilmember Jones asked for clarification on the Planning and Zoning Commission action. Carroll said that the five Planning and Zoning Commission members did not approve of the rezoning application, and all five voted against it. Mayor Kushner closed the public hearing.

Bill No. 04-04-2023 being for an Ordinance Authorizing a Conditional Use Permit for Land Use 1.111 Single-Family Detached, Site Built Dwelling in the CB: Central Business District Located at 210 E. Gay Street in the City of Warrensburg, Missouri, was read a first time by title. There being no questions, Osborne moved said bill be passed to a second reading by title. Carried unanimously. Said bill was read a second time. Roll was called for the adoption or rejection of said bill as follows: Yes: Osborne, Uhler, Jones, Kushner. No: none. Said bill was declared duly adopted and given Ordinance No. 5791.

Councilmember Uhler moved to Table Item 14.II An Ordinance Enlarging an R3: Low Density Multifamily Residence District by Rezoning Land Located at 115 and 117 W. Oak Street from GB: General Business District to R3: Low Density Multifamily Residence District to next meeting. Roll was called to table Item 14.II as follows: Yes: Osborne, Uhler, Jones, Kushner. No: none. Motion carried 4-0.

Bill No. 04-05-2023 being for an Ordinance Vacating a Portion of an Easement and Approving the Final Plat of Southwest Estates, Lots 12A & 13A, a Subdivision in the City of Warrensburg, Missouri, Located at 323 and 325 Jones Avenue, was read for a first time by title. Community Development Director Carroll said applicants have submitted a revised minor plat for a lot line adjustment between their properties to put up a fence. The Planning and Zoning Commission

recommended approval with two conditions incorporated into the ordinance. There being no questions, Uhler moved said bill be passed to a second reading by title. Carried unanimously. Said bill was read a second time. Roll was called for adoption or rejection of said bill as follows: Yes: Osborne, Uhler, Jones, Kushner. No: none. Said bill was declared duly adopted and given Ordinance No. 5792.

Bill No. 04-06-2023 being for an Ordinance Authorizing the City Manager and City Clerk to Execute a Cooperative Agreement with Johnson County Economic Development for Legislative and Government Relations, was read a first time by title. City Manager Dulin said the city has exercised its first of two one-year renewals with Hahn/DeBoef for legislative and government relations services in Jefferson City. These services are mutually beneficial and JCEDC agrees to reimburse the city in the amount of \$10,000. There being no questions, Osborne moved said bill be passed to a second reading by title. Carried unanimously. Said bill was read a second time. Roll was called for adoption or rejection of said bill as follows: Yes: Osborne, Uhler, Jones, Kushner. No: none. Said bill was declared duly adopted and given Ordinance No. 5793.

Under appearances to the council not listed on the agenda, Christopher Barrett, Independence, Missouri requested to speak. Barrett said he is the President of the Missouri Chapter of Gays against Groomers, an organization against the sexualization, indoctrination and medicalization of children. Barrett alerted the city council of an all ages drag show being planned in the community to be held at the Elks Club in Warrensburg. Barrett said he is a gay man, with a husband and has no resentment or problem with drag shows but it should be for adults. Barrett relayed a similar event had been planned in the City of Chesterfield and the city adopted an ordinance against pornographic performance for viewing by a minor. Barrett requested the city use current legislation or adopt legislation within its power to stop this all ages drag show planned for June.

Michael Compton, 5 SE 230 Rd., Warrensburg, requested to speak. Compton said he is a resident and is against an all ages drag show being planned for June 3<sup>rd</sup>. Compton said viewing of a drag show should be by consenting adults and it was every citizens' responsibility to protect children from grown men dressed and performing in sexually provocative ways. Compton said this event places children in an inappropriate situation and requests the council to either enforce current ordinances or adopt an ordinance for enforcement by June 3<sup>rd</sup>.

Peter Zwally, 959 E. Market St., Warrensburg requested to speak. Zwally agreed with both Barrett and Compton and was against an all ages drag show planned for June 3<sup>rd</sup>. Zwally represented We the People Concerned Citizens of Johnson County and said the event was fine for adults, but indoctrination of our children was unacceptable for Warrensburg, Johnson County and Missouri.

Under Miscellaneous Matters from the Mayor and/or City Council, Mayor Kushner welcomed new Council Member Jones.

Under the City Manager Report, City Clerk Schneider will deliver to all boards/commission volunteers a thank you note card and magnet from the city council. Community Development Director Carroll gave a reminder of the Solid Waste Open House for public input and surveys on Tuesday, April 11<sup>th</sup> from 5-7 p.m.

Assistant City Manager/Public Works Director Villegas gave an update on right of way usage from utility locate ticket information. Villegas said from July-August, there were 1,277 utility

locates called in and 27 hits by contractors deemed at fault. In comparison, from September to present, there were 3,046 utility locates and 29 hits by contractors deemed at fault. Villegas said with the adoption of the right of way ordinance, proper enforcement and education, the number of tickets tripled, and the hits were cut in half.

Villegas received several complaints from plumbers not getting paid to fix hit utilities and the city is being asked to step in to obtain payment. The city has allowed contractors to fix hit utilities if fixed to the City's satisfaction and then move on. If the resident hires a plumber to fix a hit utility that is an agreement between the homeowner and the plumber wherein the homeowner pays the plumber. The plumbers have questioned why allow the contractors to perform the work and Villegas said there is no provision barring them from doing the work. It is a matter of policy.

City Manager Dulin reminded the council of the Chamber Annual Update Breakfast on Friday morning. Dulin alerted the council of a work session scheduled at 6:00 p.m. before the regular meeting on April 24<sup>th</sup> led by the consultant to review survey results and on solid waste options and review survey results. Dulin said that budget work sessions will be held with the city council during the months of May, June and July and pass along any scheduling conflicts as early as possible.

Finance Director McCoy said Carey West has been selected for the position of City Collector effective April 17, 2023. McCoy said customers are still finding the automated phone payment system challenging and for the time being, staff will be processing payments if they are having issues. The FY22 audit financial report presented to council at the March 27<sup>th</sup> meeting was submitted to the State Auditor and other regulatory agencies as required. The sales tax 2022 comparison report for March shows a decline of over six percent on sales tax revenue over this year but overall, within budget due to higher receipts in April 2022. McCoy included detailed reports in the city council's packet of revenue comparisons and revenue budget.

As there was no further business, the meeting adjourned at 8:29 p.m.

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Jim Kushner, Mayor

Attest:

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Jodi L. Schneider, City Clerk