

NOTE: THE BOARD OF ALDERMEN MEETING WILL BE HELD **IN-PERSON**
AND VIRTUALLY VIA ZOOM (link is below).

Please note, individuals may attend in-person or virtually via Zoom. Doors will open 30 minutes prior to the start of each meeting.

Please click this URL to join. <https://us02web.zoom.us/j/82656039304>; Webinar ID: 826 5603 9304

Or One tap mobile: +13092053325, 82656039304# US; +13126266799, 82656039304# US (Chicago)

Or join by phone:

US: +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 669 900 6833 or +1 689 278 1000 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 669 444 9171

International numbers available: <https://us02web.zoom.us/j/kduBBzrkMa>

Persons interested in making their views known on any matter on the agenda should send an email with their comments to the City Clerk at jfrazier@claytonmo.gov. All comments received will be distributed to the entire Board before the meeting.

CITY OF CLAYTON BOARD OF ALDERMEN
EXECUTIVE SESSION – 6:30 P.M.
TUESDAY, APRIL 9, 2024
CITY HALL COUNCIL CHAMBERS, 2ND FL
CLAYTON, MO 63105

1. Negotiation of a Contract. (Section 610.021(3) RSMO)

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.

CITY OF CLAYTON BOARD OF ALDERMEN
TUESDAY, APRIL 9, 2024 - 7:00 P.M.
CITY HALL COUNCIL CHAMBERS, 2ND FL
10 N. BEMISTON AVENUE

ROLL CALL

PUBLIC REQUESTS & PETITION

PRESENTATION

1. Plan Commission/ARB Annual Report

CONSENT AGENDA

1. Minutes – March 26, 2024

CITY MANAGER REPORT

1. Ordinance – Contract for #1 Oak Knoll Park for the roof replacement project. (Bill No. 7017)
2. Ordinance – Amendment to Section 130.190, Failure to Appear in Municipal Court as recommended by the Clayton Equity Committee. (Bill No. 7018)

ADJOURNMENT

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021 (9)(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.

Agenda topics may be added or deleted at any time prior to the Board of Aldermen meeting without further notice. To inquire about the status of agenda topics, call 290.8469. Individuals who require an accommodation (i.e., sign language, interpreter, listening devices, etc.) to participate in the meeting should contact the City Clerk at 290.8469 or Relay Missouri at 1.800.735.2966 (TDD) at least two working days prior to the meeting.



PLAN COMMISSION AND ARCHITECTURAL REVIEW BOARD ANNUAL REPORT

Date:	April 9, 2024
Item Type:	PC-ARB Annual Report
Staff:	Anna Krane, AICP, Director of Planning and Development
Summary:	A summary and analysis of the applications reviewed by the Plan Commission and Architectural Review Board for the 2023 Calendar Year

MEMBERSHIP

The Plan Commission and Architectural Review Board (PC-ARB) comprised of the following members for the 2023 calendar year.

- Steve Lichtenfeld (Chairman)
- Carolyn Gaidis
- Bridget McAndrew (Aldermanic Representative)
- Bob Denlow
- Helen DiFate
- Kami Waldman
- David Gipson (City Manager)

Support was provided to the PC-ARB by the following staff members:

- Anna Krane, Director of Planning and Development Services
- Ryan Helle, Planner
- Hobie Kropp, Planning Technician

RESPONSIBILITIES

The PC-ARB are two distinct boards established separately under the City of Clayton Charter and Code of Ordinances; however, they comprise of the same members. The roles and responsibilities of the Plan Commission and Architectural Review Board are similar and closely linked.

Per Section 400.040, the Plan Commission was, “established in order to make adequate provision for and to stimulate, guide, direct, arrange and beautify the City and the future development and growth thereof.” The Plan Commission may also make recommendations for necessary or appropriate legislation to further the development goals of the community. Primary reviews for the Plan Commission include site plan review, rezoning requests, and text amendments.

Per Section 400.110, the Architectural Review Board (ARB) was established “to assure that construction/renovation activities are of high quality design and materials and in general conformity with the style and design of surrounding structures.” The ARB conducts reviews of the design and materials of additions, alterations and improvements to existing structures, buildings and properties as well as the compatibility of new construction.

SUMMARY OF ACTIONS AND ACTIVITY

The PC-ARB reviewed 116 applications in the 2023 calendar year, a 22 percent increase from the 2022 calendar year. Architectural Review remains the most common application; however, Architectural Review decreased as a share of the total number of applications. The table below provides a breakdown. Some projects have required multiple meetings before the PC-ARB; however, the numbers below count each application rather than a tally of the number of times an application appeared on an agenda. Project that required multiple application types are counted for an application in each category. For example, a new single-family house requires Site Plan Review and Architectural Review Board, so one tally would appear in both categories for the project, even if it took multiple PC-ARB meetings to obtain approval.

	2023	2022	Difference	Percent Change
Architectural Review Board	60	66	-6	-9%
Site Plan Review	17	8	9	113%
Conditional Use Permit	13	8	5	63%
Plat Applications	8	4	4	100%
Text Amendment	6	3	3	100%
Rezoning	5	2	3	150%
Planned Unit Development	4	2	2	100%
Conceptual Review	3	2	1	50%
Grand Total	116	95	21	22%

Note: the permit report tracking used for this table was established in 2022, therefore, prior tracking may yield inconsistent totals and was not included in the table.

In the 2023 calendar, the PC-ARB reviewed and approved four Planned Unit Developments. These focused on the Downtown area and included projects known as Forsyth-Central PUD (mixed-use hotel), Meramec-Pershing PUD (mixed-use residential), Sterling PUD (mixed-use residential), and The Shaw PUD (mixed-use residential). The Plan Commission reviewed several text amendments impacting renewable energy, accessory dwelling units, marijuana regulations, and the Maryland Gateway Overlay District.

Additionally, members of the PC-ARB were active participants in the City's ongoing comprehensive planning process. Members of the PC-ARB have participated via either the Interview Committee or the Comprehensive Plan Steering Committee. The comprehensive planning process is expected to conclude in April with the Plan Commission being the governing board responsible for adopting the plan.

THE CITY OF CLAYTON

Board of Aldermen
In-Person and Virtual Meeting
March 26, 2024
6:00 p.m.

MINUTES

Mayor Harris called the meeting to order and requested a roll call. The following individuals were in attendance:

In-person: Ira Berkowitz, Bridget McAndrew, Susan Buse, Becky Patel, Gary Feder, Rick Hummell, and Mayor Michelle Harris.

Staff: City Manager Gipson, City Attorney O’Keefe, and Assistant City Manager Muskopf

PUBLIC REQUESTS AND PETITIONS

None

A PUBLIC HEARING AND A RESOLUTION FOR A CONDITIONAL USE PERMIT FOR 7645 WYDOWN BOULEVARD TO BE KNOWN AS STARBUCK’S

Mayor Harris opened the public hearing and requested proof of publication.

City Manager Gipson reported that this is a public hearing to consider an application for a Conditional Use Permit submitted by Larry Moore, MOA Architecture, on behalf of Mark Sullivan – BCG-BBJ-Denny’s-Starbucks, restaurant owner, to allow for the operation of a 2,296 square foot restaurant to be known as Starbuck’s.

Larry Moore, applicant, was in attendance (virtually) to answer questions.

Karen Fairbank, 611 Forest Court, addressed the Board with concerns of delivery trucks potentially blocking the street and/or alley.

Mayor Harris closed the public hearing.

Motion made by Alderman Berkowitz to approve Resolution No. 2024-03, granting a Conditional Use Permit for 7645 Wydown Boulevard d/b/a Starbucks. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

CONSENT AGENDA

1. Minutes – March 12, 2024
2. Resolution No. 2024-04 - Agreement with Lochmueller Group for a lighting study in Shaw Park and Oak Knoll Park.
3. Motion – Liquor license upgrade for 888 Food LLC d/b/a Jinzen Fusion Cuisine at 8113 Maryland Avenue.

Motion made by Alderman Berkowitz to approve the Consent Agenda. Alderman McAndrew seconded.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye.

PRESENTATION ON RESIDENTIAL PERMIT PARKING

Gary Carter, Director of Economic Development, provided a presentation to the Board.

AN ORDINANCE FOR AN AMENDMENT TO THE FY2024 1ST QUARTER BUDGET

Karen Dilber, Director of Finance, provided an overall summary of the proposed amendments.

Alderman Berkowitz introduced Bill No. 7015, approving the FY2024 1ST Quarter Budget Amendment to be read for the first time by title only. Alderman McAndrew seconded.

City Attorney O’Keefe reads Bill No. 7015, first reading, an Ordinance Amending the Fiscal Year 2023 Budget and Appropriating Funds Pursuant Thereto by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Berkowitz that the Board give unanimous consent to consideration for adoption of Bill No. 7015 on the day of its introduction. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

Alderman Berkowitz introduced Bill No. 7015, approving the FY2024 1ST Quarter Budget Amendment to be read for the second time by title only. Alderman McAndrew seconded.

City Attorney O’Keefe reads Bill No. 7015, second reading, an Ordinance Amending the Fiscal Year 2023 Budget and Appropriating Funds Pursuant Thereto by title only.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye. The bill, having received majority approval, was adopted, and became Ordinance No. 6875 of the City of Clayton.

FY2024 1ST QUARTER FINANCIAL REPORT

City Manager Gipson gave a report to the Board on the FY2024 1ST Quarter Financial report as provided in the Board packet.

Karen Dilber, Director of Finance, was present to answer questions.

AN ORDINANCE TO CONSIDER APPROVING A MUTUAL AID AGREEMENT WITH MUTUAL AID BOX ALARM SYSTEMS (MADAS)

City Manager Gipson reported that the Mutual Aid Box Alarm System (MABAS) was created in Chicago’s northwest suburbs in the late 1960’s for mutual aid service in that immediate area.

MABAS aid includes fire protection, firefighting, rescue, emergency medical services and other activities for the protection of life and property from an emergency or disaster. Over the years, this mutual aid system has grown to include over 2,600 member departments in six states.

The agreement enables mutual aid response to and from departments in the State of Illinois. Missouri Law (RSMo 44.090) authorizes political subdivisions in Missouri to enter into mutual aid agreements which agencies in other states, including Illinois.

Chief Rhodes and Assistant Chief Counts were in attendance to answer questions.

Alderman Berkowitz introduced Bill No. 7016, approving a Mutual Aid Agreement with Mutual Aid Box Alarm Systems to be read for the first time by title only. Alderman McAndrew seconded.

City Attorney O’Keefe reads Bill No. 7016, first reading, an Ordinance Authorizing an Intergovernmental Agreement for Participation in the Mutual Aid Box Alarm System (MABAS Master Agreement 2022) by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Berkowitz that the Board give unanimous consent to consideration for adoption of Bill No. 7016 on the day of its introduction. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

Alderman Berkowitz introduced Bill No. 7016, approving a Mutual Aid Agreement with Mutual Aid Box Alarm Systems to be read for the second time by title only. Alderman McAndrew seconded.

City Attorney O’Keefe reads Bill No. 7016, first reading, an Ordinance Authorizing an Intergovernmental Agreement for Participation in the Mutual Aid Box Alarm System (MABAS Master Agreement 2022) by title only.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye. The bill, having received majority approval, was adopted, and became Ordinance No. 6876 of the City of Clayton.

A RESOLUTION TO CONSIDER APPROVING THE MUNICIPAL GARAGE PROJECT DESIGN AND CONSTRUCTION, OWEN’S REPRESENTATIVE TASK ORDER

City Manager Gipson reported that in 2023 the City of Clayton entered into an on-call services agreement with Navigate Building Solutions, LLC for owners’ representative services. Since that time, Navigate’s team has been working with staff to provide a condition and needs assessment of the Clayton Municipal Garage. Navigate will provide a wide variety of services as detailed in tonight’s materials.

Matt Malick, Director of Public works, is in attendance to answer questions.

Motion made by Alderman Berkowitz to approve Resolution No. 2024-05, a Task Order with Navigate Building Solutions, LLC for Design and Construction Services Related to the Clayton Municipal Garage Renovation Project. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

Motion made by Alderman Berkowitz to adjourn the meeting. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

There being no further business the meeting adjourned at 7:00 p.m.

Mayor

ATTEST:

City Clerk



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
TONI SIERING, DIRECTOR OF PARKS & RECREATION
DATE: APRIL 9, 2024
SUBJECT: ORDINANCE – A CONTRACT FOR THE #1 OAK KNOLL PARK ROOF REPLACEMENT PROJECT

The City of Clayton entered into a lease agreement with Clayton Early Childhood Center for the property at #1 Oak Knoll Park effective January 1, 2023, for a term of 10 years, plus an option period for an additional ten years. That lease agreement specified that the City is required to replace the roof at #1 Oak Knoll Park prior to January 1, 2025. To that end, bid documents for the #1 Oak Knoll Park Roof Replacement Project were issued on December 1, 2023. The scope of work includes removal and replacement of current roofing system with the same slate tiles, removal and replacement of current copper flashing, gutters and downspouts with the same materials, as well as the repair of defective underlayment as necessary.

The City received three responsive bids for this work on January 25, 2024, and the lowest bid was from Vince Graye Slate and Tile Roofing Co., Inc. in the amount of \$653,494. After some clarifying questions, the City received an amended bid from Vince Graye Slate and Tile Roofing Co. in the amount of \$609,847. At that time, it was noted that, should the Board wish to move forward with the amended bid from Vince Graye Slate and Tile Roofing Co., Inc., materials will need to be ordered by March 11, 2024 to ensure the project can be completed by December 31, 2024 (as stipulated in the City's lease agreement with the Clayton Early Childhood Center).

As the low bid received was over the City's budgeted amount of \$500,000 for the project, staff was instructed to re-bid the project with multiple bid alternates. Bid alternates for the roof material included Faux Synthetic Slate Tiles and Slate-Like Architectural Shingles, as well as to replace the flashing, gutters and downspouts with a material other than copper. Re-bid documents for the #1 Oak Knoll Park Roof Replacement Project were issued on March 1, 2024. Three responsive bids were received for this project on March 26, 2024. The following is a summary of the original amended bid from Vince Graye Slate and Tile Roofing Co., Inc., along with the re-bid alternates.

	Roady Exteriors	Lakeside Roofing	Vince Graye
Slate Roof with Copper FSG	did not bid	\$ 702,946	\$ 609,847
Slate Roof Alternate Material FSG	did not bid	not included	not included
Faux Synthetic Slate Tiles with Copper FSG	\$ 336,367	\$ 664,225	\$ 447,259
Faux Synthetic Slate Tiles with Alternate Material FSG	\$ 302,969	\$ 641,875	\$ 418,285
Slate-Look Architectural Shingle with Copper FSG	\$ 260,449	\$ 463,973	\$ 346,390
<i>FSG = Flashing/ Gutters/ Downspouts</i>			

The products submitted by all three bidders each have a 50-year limited warranty for both the faux slate synthetic tiles and the slate look architectural asphalt shingles. This type of warranty generally means that the materials will be prorated depending on how many years of life the owner got out of the tiles/shingles.

Materials for both the synthetic faux slate tile and the architectural asphalt shingles are more readily available and the project could be scheduled for completion prior to December 31, 2024. Staff will begin executing a contract based on the Board's decision on materials.

BILL NO. 7017

ORDINANCE NO. _____

AN ORDINANCE APPROVING A CONTRACT FOR THE #1 OAK KNOLL PARK ROOF REPLACEMENT PROJECT

WHEREAS, the proposed Roof Replacement Project at #1 Oak Knoll Park will preserve a significant structure in the history of Clayton and have a positive impact on the preservation of a facility owned by the City of Clayton: and

WHEREAS, the City has advertised for and invited bids for the Roof Replacement Project and several responsive bids were received for different types of materials, and the Board of Aldermen have determined that the bid hereinafter approved will best serve to protect and preserve the City's valuable building at a cost which the City can afford;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI AS FOLLOWS:

Section 1. The City Manager of the City of Clayton, Missouri is hereby authorized to enter into a contract with _____ for the #1 Oak Knoll Park Roof Replacement Project in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, and change orders approved by the Director of Parks & Recreation in a cumulative amount not to exceed \$65,000, together with such document changes as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient, or prudent in order to carry out the intent of this legislation.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Adopted the 9th day of April 2024.

Mayor

ATTEST:

City Clerk

CITY-CONTRACTOR AGREEMENT

This Agreement is made and entered into the ____ day of April, 2024 by and between the City of Clayton, Missouri (hereinafter the "City") and _____ (hereafter the "Contractor"). The project shall be identified as Project 2024.PK.64.101 – #1 Oak Knoll Roof Replacement Project.

WITNESSETH:

The Contractor and the City for the consideration set forth herein agree as follows:

ARTICLE I**The Contract Documents**

The Contract Documents consist of the Invitation for Bids and Bid Specifications previously issued by the City for the work and Contractor's submission in response thereto, the General Conditions of City-Contractor Agreement, Non-Collusion Affidavit, Performance and Payment Bonds, Drawings, Specifications, the Construction Schedule, Drawings and all Addenda and all Modifications issued after execution of this Contract, which together with this Agreement form the Contract, and are all as fully made a part of the Contract as if attached to this Agreement or repeated herein. All definitions set forth in the General Conditions of City-Contractor Agreement are applicable to this contract. This Contract cannot be modified except by duly authorized and executed written amendment.

ARTICLE II**Scope of Work**

The Contractor, acting as an independent contractor, shall do everything required by the Contract Documents. Contractor represents and warrants that Contractor has special skills which qualify Contractor to perform the Work in accordance with the Contract and that Contractor is free to perform all such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work. The Scope of Work includes those items referenced in ARTICLE XII and further detailed in the Job Special Provisions and Project Drawings.

ARTICLE III**Time of Completion**

The Work to be performed under this Contract shall be completed in accordance with the time limits set forth in the schedule as established in cooperation with the selected contractor as well as the Director of Parks & Recreation. This contract will be valid for up to two years from date of execution.

ARTICLE IV**The Contract Sum and Payments**

Based upon Applications for Payment and an Invoice duly delivered by the Contractor to the City by the twentieth day of the month for work performed, in accordance with the Contract, the City shall pay the Contractor for the performance of the Work, the sum of _____ as follows:

(a) On or about the tenth day of each following month, ninety-five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety-five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site to be incorporated into the Work, through the period ending up to the twentieth of the preceding month, less the aggregate of all previous progress payments;

b) Within thirty (30) days of substantial completion of the Work, a sum sufficient to increase the total payments to ninety percent (95%) of the Contract Sum; and

(c) Final payment within thirty (30) days after the Work is certified by the City as fully completed and accepted by the City including any required documentation.

(d) The foregoing schedule shall not apply if contrary to federal funding requirements or unless funds from a state grant are not timely received.

(e) Estimates of work performed and materials delivered shall be finally determined by the City.

(f) The foregoing retainage amounts are agreed to be required to ensure performance of the Contract.

(g) Payment shall be deemed made when mailed or personally delivered, whichever is earlier.

ARTICLE V**Performance of the Work**

(a) Within fourteen (14) calendar days after being awarded the Agreement, the Consultant shall submit for the City's approval a Construction Schedule in a bar chart format which shall indicate the dates for starting and completing the various stages of work.

(b) Services as defined in the Scope of Work shall govern the frequency and standards for performance of the work.

(c) After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the City as such intervals as the City may reasonably direct, the actual progress of the work compared to the Schedule. If the Contractor falls behind the Schedule for services for any reason for which the Contractor is responsible, the Contractor shall promptly take such action as is necessary to remedy the delay. Any increase in cost incurred in remedying a delay which is not excusable under Article VI hereof shall be borne by the Contractor.

(d) Completion of the Work in accordance with the time limits set forth in the Construction Schedule is an essential condition of this Contract. If the Contractor fails to complete the Work in accordance with the Construction Schedule, unless the delay is excusable under the provisions of Article VI hereof, the Contractor shall pay the City as liquidated damages and not as a penalty, the sum of **\$ 1,000.00** for each calendar day the Contractor fails to comply with the Construction Schedule. The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to Contractor from City.

(e) Contractor will comply and satisfy the requirements of Sec. 285.530.2, RSMo. Supp. 2008, which requires as a condition for the award of any contract or grant in excess of five thousand dollars by any political subdivision of the State of Missouri to a business entity, that the

business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted service, and requires every such business entity to also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

ARTICLE VI

Delays Beyond Contractor's Control

(a) If the Contractor fails to complete the Work in accordance with the Construction Schedule solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Contractor's control, the Contractor shall not be required to pay liquidated damages to the City pursuant to paragraph (b) of Article V hereof, provided the Contractor uses his best efforts to remedy the delay in the manner specified in paragraph (c) of Article V hereof. If, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work in accordance with the Construction Schedule is so great that it cannot be remedied in the aforesaid manner, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the City does not authorize, then the time of completion and the Construction Schedule shall be extended pursuant to a Change Order for the minimum period of delay occasioned by such cause. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time or other relief shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefore is made in writing by the Contractor to the City, and no extension of time shall be granted

if the Contractor could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

(c) Weather shall constitute a cause for granting an extension of time.

(d) In the event a delay is caused by the City, the Contractor's sole remedy shall consist of his rights under this Article VI.

ARTICLE VII

Changes in the Work

(a) The City may make changes within the general scope of the Agreement by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such changes in the Work shall be executed under the General Conditions of the Contract. No extra work or change shall be made except pursuant to a Change Order from the

(b) If the requested change would result in a delay in the Schedule, the provisions of paragraph (c) of Article V and of Article VI hereof shall apply. If the requested change would result in a decrease in the time required to perform the Work, the completion date and the Schedule shall be adjusted by agreement between the parties to reflect such decrease.

(c) Any adjustment in the Contract Sum for duly authorized extra work or change in the Work shall be determined based on the unit prices previously specified; to the extent such unit prices are applicable. To the extent such unit prices are not applicable, the adjustment in the Contract Sum shall, at the option of the City, be determined by an acceptable sum properly itemized and supported by sufficient substantiating data to permit evaluation, or by an acceptable cost plus percentage or fixed fee.

d) Contractor will comply and satisfy the requirements of Sec. 285.530.2, RSMo. Supp. 2008, which requires as a condition for the award of any contract or grant in excess of five thousand dollars by any political subdivision of the State of Missouri to a business entity, that the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted service, and requires every such business entity to also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

ARTICLE VIII

Termination

(a) If the Contractor is adjudged insolvent or bankrupt, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor fails, except in cases for which extension of time is provided, to make progress in accordance with the Schedule, or if the Contractor persistently disregards laws, ordinances or the instructions of the City, or otherwise breaches any provision of the Contract, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor, terminate the Contract.

(b) Performance of the Work hereunder may be terminated by the City by giving three (3) days prior written notice to the Contractor. In the event of termination, under this paragraph (b) the Contract Sum shall be reduced by the percentage of work not completed on the date of termination.

ARTICLE IX**Indemnities**

(a) **Liability:** To the greatest extent permitted by Statute, Contractor indemnifies, defends, and holds the City harmless for all third-party claims or suits for libel, slander, property damage, and bodily injury, including death, because of the Contractor's negligence, or anyone directly or indirectly employed by the Contractor. These obligations include all judgments or awards recovered from the claims or suits, including court costs and attorney fees.

(b) **Professional Liability:** To the greatest extent permitted by Statute, Contractor indemnifies and holds the City harmless for all third-party claims or suits for damages, including consequential or economic damages, to the extent caused by the negligent acts, errors or omissions of the Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in performing professional services under this Agreement. These obligations include all judgments or awards recovered from the claims or suits, including court costs and attorney fees.

(c) **Other Indemnities:** To the greatest extent permitted by Statute, Contractor indemnifies, defends, and holds the City harmless for all third-party claims or suits for fines, penalties, liquidated damages or any other damages of whatsoever nature to the extent caused by the negligence or wrongdoing of the Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. These obligations include all judgments or awards recovered from the claims or suits, including courts costs and attorney fees.

(d) Contractor agrees that its indemnity obligations set forth in this Article will not be affected in any way by any limitation on the amount or type of damages, compensation, or benefits

payable by or for the City, the Contractor, or any of the subcontractors under workers' compensation acts, employer's liability insurance, or other employee benefit acts.

ARTICLE X

Insurance

(a) Except to the extent set forth in Section (b) of this Article, the Contractor will purchase and maintain the following insurance to cover its operations under this Agreement without limiting the liability of the Contractor under this Agreement. This insurance will be provided by insurance companies acceptable to the City and licensed to do business in each jurisdiction where the Work is performed.

1. Workers' Compensation Insurance in full compliance with workers' compensation laws of the State of Missouri together with Employer's Liability Coverage with minimum limits of liability in the amount of \$3,000,000.00 for each accident and each disease.

2. Commercial Automobile Liability Insurance under Form CA 00 01, covering all owned hired, and non-owned vehicles, with minimum combined single limits of liability of \$3,000,000 for each accident.

3. Commercial General Liability Insurance, and, if necessary, excess liability insurance on a "true following-form" basis, all of which is written on an occurrence basis, with the following minimum limits of liability:

General Aggregate	\$3,000,000.00
Products/completed operations aggregate	\$3,000,000.00
Each occurrence	\$3,000,000.00

Fire damage legal liability	\$3,000,000.00
Medical expenses	\$ 5,000.00

4. Professional Liability Insurance with minimum limits of liability of \$3,000,000.00 each claim, \$3,000,000.00 aggregate.

5. Owner's and Contractor's Protective Liability Policy, including Death \$3,000,000.00 each occurrence; Property Damage \$3,000,000.00 each occurrence, \$3,000,000.00 aggregate.

(b) The Commercial General Liability and the Commercial Automobile Liability Insurance coverages and their respective limits set forth in Section (a) of this Article are being explicitly required and obtained to insure the indemnity obligations set forth in Section (a) of Article X to meet the requirements of 434.100.2(8) R.S.Mo. The parties further acknowledge that the cost of these insurance coverages is included in the Contract Price and that the limits and coverages afforded by them is the Contractor's total aggregate liability under the indemnity obligations set forth in Section (a) of Article X.

(c) Contractor's Commercial Automobile Liability, Commercial General Liability, and Professional Liability policies – and any excess policies necessary to meet the required limits – will include contractual liability coverage. The City will be named as an additional insured on the Contractor's Commercial General Liability policy by using ISO Additional Insured Endorsement (Form B), CG 20 10 11 85. The Commercial General Liability, Commercial Automobile Liability and required excess policies will include a severability or cross-liability clause and such insurance will be endorsed to make such insurance primary with respect to any applicable insurance maintained by the City. The Contractor's Workers' Compensation and Employer's Liability policy will include the Owner as an alternate employer by using ISO Alternate Employer WC 00 03 01A.

(d) Contractor waives any rights of subrogation under its Professional Liability Insurance policy for the City's benefit and is doing so before commencing any of the Work.

(e) Contractor will furnish an insurance certificate to City evidencing that it has met the insurance requirements of this Article, including attaching the requisite additional insured, primary and alternate employer endorsements. These documents must be provided before beginning the Work and upon each renewal of the coverage during the performance of the Work. The certificate will provide that thirty-day written notice will be given to City before any policy is canceled. Contractor will give written notice to City as soon as it receives written notice of cancellation from any of its insurance carriers. The certificate of insurance must clearly designate the name of the Project.

ARTICLE XI

The Work

- A. The Scope of Work for this Contract includes furnishing all labor, materials and equipment necessary to remove and replace the existing roof system, gutters, and downspouts on the #1 Oak Knoll Park Building with materials as chosen.

ARTICLE XII

Notices

Any notice hereunder shall be personally delivered or mailed, postage prepaid, by certified mail, return receipt requested addressed to:

City of Clayton Department of Parks & Recreation

50 Gay Avenue

Clayton, Missouri 63105

Attention: Toni Siering, Director of Parks and Recreation

or to Contractor at:

*In making out this form the proper name and title should be used. For example, if the Contractor is a corporation and this form is to be executed by its president, the words President should be used under Title. Attestation should be done by the Secretary of the Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF CLAYTON

By: _____
City Manager

(SEAL)

Attest:

City Clerk

DATE: _____

By: _____
Contractor

Title

(SEAL)

Attest:

DATE: _____

FORM OF CONTRACT PERFORMANCE - PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal of _____, State of _____ and _____ a corporation organized and existing under and by virtue of the laws of the State of _____, and regularly authorized to do business in the State of Missouri, as Surety, are held and firmly bound unto the City of Clayton, Missouri, hereinafter called the "City," in the penal sum of _____ Dollars (\$_____) lawful money of the United States, well and truly to be paid unto the said City for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated _____, entered into a Contract with the City for the construction of the Work designated as _____ located at _____ in the State of Missouri, in accordance with the Contract, which Contract is by this reference made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall faithfully perform the Contract on its part, and satisfy all claims and demands incurred by the Principal in the performance of the Contract, and shall fully indemnify and save harmless the City from all cost and damage which the City may suffer by reason of the failure of the Principal to do so, and shall fully reimburse and repay to the City all costs, damages, and expenses which the City may incur in making good any default by the Principal including, but not limited to, any default based upon the failure of the Principal to fulfill its obligation to furnish maintenance, repairs or replacements for any period of time after the Work is completed as provided for in the Contract, and shall for use in the prosecution of the Work required by the Contract whether by Subcontract or otherwise, and shall pay all valid claims and demands whatsoever, and shall defend, indemnify and hold harmless the City and its agents against loss or expense from bodily injury, including death, or damage or destruction of property, including loss of use resulting there from, arising out of or resulting from the performance of the work, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The City may sue on this Bond, and any person furnishing material or performing labor, either as an individual or as a Subcontractor shall have the right to sue on this Bond in the name of the City for his use and benefit, all in accordance with the provisions of MO. Rev. Stat SS 522.300, and any amendments thereto.

Whenever Principal shall be in default under the Contract, the Surety shall promptly remedy the default, or shall promptly, (1) complete the Contract in accordance with its terms and conditions, or (2) obtain bids for completing the Contract in accordance with its terms and conditions, and upon determination by the City of the lowest responsible bidder, arrange for a Contract between the City and such bidder, and made available as the Work progresses sufficient funds to pay the costs of completion, not exceeding the amount of this Bond.

It is hereby stipulated and agreed that any suit based upon any default of the Principal in fulfilling his obligation to furnish maintenance, repairs or replacements for any period of time after the Work is completed as provided for in the Contract, may be brought at any time up to one year

after the expiration of the time specified in the Contract during which the Contractor has agreed to furnish such maintenance or make such repairs or replacements.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

Signed and sealed this ____ day of _____, 2024.

In the presence of: _____ (SEAL)

By: _____

_____ (SEAL)

By: _____



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
DATE: APRIL 9, 2024
SUBJECT: ORDINANCE – FAILURE TO APPEAR IN MUNICIPAL COURT

The Clayton Community Equity Commission (CEC) had a subcommittee that discussed law enforcement and municipal court operations. One area of particular focus was the City's code provision related to the charge of failure to appear in Municipal Court. On March 14, 2024, the CEC unanimously recommended approval of the attached ordinance that modifies the failure to appear offense within the Municipal Code. The changes clarify that failure to appear is not a chargeable offense when the original charge was a minor traffic violation or municipal code violation. The revisions are consistent with state law and Missouri Supreme Court rules. The proposed ordinance revisions do not impact the ability of the Municipal Judge to issue a bench warrant for a failure to appear.

Staff recommends that the Board of Aldermen approve the proposed ordinance revisions.

AMENDING SECTION 130.190 FAILURE TO APPEAR IN MUNICIPAL COURT

WHEREAS, the City of Clayton Community Equity Commission has reviewed the Municipal Code provisions related to Offenses; and

WHEREAS, the City of Clayton Community Equity Commission has recommended revisions to Section 130.190 Failure to Appear in Municipal Court to ensure compliance and consistency with Missouri State Law and Missouri Supreme Court rules; and

WHEREAS, the City of Clayton seeks to comply with Missouri Law and the Missouri Supreme Court, and not apply additional charges to those already charged with minor traffic or municipal ordinance violations who may fail to appear in Municipal Court;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI AS FOLLOWS:

Section 1. Section 130.190 of the Code of Ordinances of the City of Clayton, Missouri, is hereby amended to read as follows:

Section 130.190 Failure To Appear in Municipal Court

A. A person commits the offense of failure to appear in Municipal Court if:

1. He/she has been issued a summons for a violation of any ordinance of the City of Clayton and fails to appear before the Judge of the Municipal Court at the time and on the date on which he/she was summoned, or at the time or on the date to which the case was continued;
2. He/she has been released upon recognition of bond and fails to appear before the Judge of the Municipal Court at the time and on the date on which he/she was summoned, or at the time or on the date to which the case was continued;
3. He/she has been placed on Court supervised probation and fails to appear before the Judge of the Municipal Court at the time specified by said Judge as a condition of the probation.

B. This section does not apply to violations classified as "Minor Traffic Violations" or "Municipal Ordinance Violations" as defined in the Revised Statutes of Missouri §479.350.

1. For the purposes of this section, "Minor Traffic Violations" are:
 - a. A traffic ordinance violation that does not involve an accident or injury; or
 - b. A traffic ordinance violation that does not involve the operation of a commercial motor vehicle; or
 - c. A traffic ordinance violation for which no points are assessed by the Department of Revenue; or
 - d. A traffic ordinance violation for which the department of revenue is authorized to assess one to four points to a person's driving record upon conviction; or

- e. A traffic ordinance violation for exceeding the speed limit by less than twenty miles per hour; or
- f. A traffic ordinance violation occurring within a construction zone or school zone.

2. For the purposes of this section, the following charges are classified as “Municipal Ordinance Violations”:

- a. Any ordinance violation prosecuted for which penalties are authorized by statute under Revised Statutes of Missouri sections 64.160, 64.200, 64.295, 64.487, 64.690, 64.895, 67.398, 71.285, 89.120, and 89.490.
- b. More specifically, planning and zoning violations, dumping violations, property violations regarding debris and abatement, violations pertaining to weeds or trash and related abatement and/or building permit cases.

C. Under this section, “Minor Traffic Violations” shall include amended charges for any “Minor Traffic Violations” and “Ordinance Violations” shall include amended charges for any “Ordinance Violations” as previously defined.

D. Nothing in this Section shall prevent the exercise of the Municipal Court from exercising its power to issue warrants pursuant to Supreme Court Rule 37.

Section 3. The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City’s Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

Section 4. This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed by the Board of Aldermen this 9th day of April 2024.

Mayor

Attest:

City Clerk