



**CITY COMMISSION MEETING
AGENDA FOR DECEMBER 11, 2018
5:30 PM
CITY HALL COMMISSION CHAMBERS
300 SOUTH FIFTH STREET**

*Any member of the public who wishes to make comments to the Board of Commissioners is asked to fill out a Public Comment Sheet and place it in the box located at the end of the Commissioner's desk on the left side of the Commission Chambers. The Mayor will call on you to speak during the **Public Comments** section of the Agenda.*

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

ADDITIONS/DELETIONS

PRESENTATION Christmas Parade Awards

Items on the Consent Agenda are considered to be routine by the Board of Commissioners and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Board member so requests, in which event the item will be removed from the Consent Agenda and considered separately. The City Clerk will read the items recommended for approval.

	I. <u>CONSENT AGENDA</u>
	A. Approve Minutes for November 27, 2018
	B. R & F Documents
	C. Convention and Visitors Bureau - reappointment of Jay Page, Beverly McKinley, and Vic Patel
	D. Brooks Stadium Commission - Reappointment of Commissioner Richard Abraham
	E. Personnel Actions
	F. Municipal Order to Extend the Fuel Contract with Midwest Terminal - R MURPHY
	G. Professional Services Agreement with Thomas P. Miller & Associates, LLC for development of the Paducah Opportunity Zones Marketing Strategy - T TRACY
	II. <u>ORDINANCE(S) - ADOPTION</u>
	A. Repeal Paducah Code of Ordinances Section 66-93- L PARISH
	III. <u>COMMENTS</u>
	A. Comments from the City Manager

		B. Comments from the Board of Commissioners
		C. Comments from the Audience
	IV.	<u>EXECUTIVE SESSION</u>

November 27, 2018

At a Regular Meeting of the Board of Commissioners, held on Tuesday, November 27, 2018, at 5:30 p.m., in the Commission Chambers of City Hall located at 300 South 5th Street, Mayor Harless presided, and upon call of the roll by the City Clerk, the following answered to their names: Commissioners Abraham, Holland, Rhodes, Wilson and Mayor Harless (5).

INVOCATION

Commissioner Holland gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Harless led the pledge.

PRESENTATION(S)

DUCHESS OF PADUCAH

Mayor Harless presented a Duchess award to Andrea Orr for her work with the Wall that Heals.

PADUCAH CIVIC BEAUTIFICATION BOARD ANNUAL BUSINESS AWARDS

Mary Hammond presented the 2018 Business Awards to local business owners. The winners are as follows:

Downtown

- Craving the Curls Rolled Ice Cream, 113 Market House Square
- McClaran Manor Fashion Boutique, 111 Market House Square
- Must Stitch Emporium, 109 Market House Square
- Citizens Gym, 226 Broadway
- Highwater Social Bar, 224 Broadway
- Sirk & Company Real Estate, 821 Broadway

Midtown

- Edward Jones, Heath Browling, 1249 Broadway
- Treasure Tree Boutique & Tree Climbers Children's Boutique, 1428 Broadway
- Ritz Midtown, 2201 Broadway
- Uniform Headquarters, 455 S. 31st St.

West End

- The Dirt Road, 541 N. 32nd St.
- Fresh Foodies Gourmet Catering & Healthy Meal Prep
- Midtown Wine & Spirits, 512 N. 32nd St.

Lone Oak Rd.

- McAuley Village Apartments, 631 McAuley Dr.

Southside

- Mott Electric, 632 S. 3rd Street
- Rose's Gas, 800 S. 6th St.
- MW Hair Studio, 933 S. 3rd St.

November 27, 2018

Lower Town

- Ephemera Paducah, 333 N. 9th St.
- Integrative Medicine of Kentucky, 233 N. 7th St.

Mall Area

- Cunningham Dental, 4570 Pecan Dr.
- Barre Co. Paducah, 2725 James Sanders Blvd.
- IMAC Regeneration Center, 2725 James Sanders Blvd.

CONSENT AGENDA

Mayor Harless asked if the Board wanted any items on the Consent Agenda removed. No one asked for any items to be removed. The Mayor asked the City Clerk to read the items on the Consent Agenda.

I(A)	Minutes for the November 13, 2018, City Commission Meeting
I(B)	Appointment of Samuel Brooks Goode to the Brooks Stadium Commission to replace Lenore Brooks Goode whose term has expired. This term shall expire December 5, 2022.
I(C)	Personnel Actions
I(D)	A MUNICIPAL ORDER AUTHORIZING THE PLANNING DEPARTMENT TO APPLY FOR AN ONLINE GRANT THROUGH THE FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION GRANT PORTAL TO REQUEST \$15,000 FOR THE FIRE DEPARTMENT TO PURCHASE PUBLIC EDUCATION AND ENGAGEMENT EQUIPMENT (M.O. # 2184; BK 10)
I(E)	A MUNICIPAL ORDER ACCEPTING GRANT FUNDS THROUGH THE KENTUCKY OFFICE OF HOMELAND SECURITY (KOHS) FOR A FY18 STATE HOMELAND SECURITY GRANT IN THE AMOUNT OF \$63,500 FOR THE PURCHASE OF BOMB SUITS FOR THE PADUCAH POLICE DEPARTMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE GRANT AGREEMENT AND ALL DOCUMENTS RELATED TO SAME (M.O. # 2185; BK 10)
I(F)	A MUNICIPAL ORDER AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF A 2018 AREA DEVELOPMENT FUND AWARD THROUGH THE KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT FOR REIMBURSEMENT FOR COMPUTER EQUIPMENT FOR THE INFORMATION TECHNOLOGY DEPARTMENT AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATED TO SAME (M.O. # 2186; BK 10)
I(G)	A MUNICIPAL ORDER APPROVING CHANGE ORDER NO. 1 WITH HUFFMAN CONSTRUCTION, LLC, FOR A CONTRACT REDUCTION IN THE AMOUNT OF \$25,000 FOR THE FLOODWALL PUMP STATION #2 REHABILITATION PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE THE CHANGE ORDER (M.O. # 2187; BK 10)
I(H)	A MUNICIPAL ORDER ADOPTING AN AMENDMENT TO THE CITY OF PADUCAH, KENTUCKY, ADMINISTRATIVE PLAN FOR 2018 HOUSING

November 27, 2018

	CHOICE VOUCHER PROGRAM (M.O. # 2188; BK 10)
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Mayor Harless offered motion, seconded by Commissioner Holland, that the items on the consent agenda be adopted as presented.

Adopted on call of the roll, yeas, Commissioners Abraham, Holland, Rhodes, Wilson and Mayor Harless (5).

ORDINANCE(S) – ADOPTION

TRANSFER RIVERFRONT PROPERTY PURSUANT TO CURRENT SURVEY

Commissioner Abraham offered motion, seconded by Commissioner Holland, that the Board of Commissioners adopt an Ordinance entitled, “AN ORDINANCE OF THE CITY OF PADUCAH, KENTUCKY, APPROVING CORRECTIVE TRANSFERS OF REAL PROPERTY AND INTERESTS IN REAL PROPERTY AMONG THE CITY OF PADUCAH, THE PADUCAH MCCracken COUNTY CONVENTION CENTER CORPORATION, JIM SMITH CONTRACTING COMPANY, LLC, PADUCAH RIVERFRONT HOTEL, LP, AND INDEPENDENCE BANK WITH RESPECT TO THE DEVELOPMENT OF THE PADUCAH RIVERFRONT, A PUBLIC PROJECT; AND AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS TO EFFECTUATE SAME.” This Ordinance is summarized as follows: The City of Paducah and the Paducah-McCracken County Convention Center Corporation, together own the “Paducah Riverfront Property,” which real property is generally situated north of the Paducah floodwall between Madison and Campbell Streets, a public project. It is the intention of City and the Convention Center Corporation for the Convention Center Corporation to own that portion of the Paducah Riverfront Property upon which the Convention and Expo Center is situated and that the City would own the remainder, which remainder the City leases in part to the Paducah Riverfront Hotel, LP. A recent survey of the Paducah Riverfront Property uncovered certain mistakes in previous conveyances among the parties. This Ordinance approves and authorizes the Mayor to execute and deliver various corrective transfers and documents to cure these errors.

Adopted on call of the roll, yeas, Commissioners Abraham, Holland, Rhodes, Wilson and Mayor Harless (5). (ORD # 2018-11-8556; BK 35)

CLOSURE OF ALLEY BETWEEN BROWN STREET AND MURRAY AVENUE

Commissioner Holland offered motion, seconded by Commissioner Abraham, that the Board of Commissioners adopt an ordinance entitled, “AN ORDINANCE PROVIDING FOR THE CLOSING OF AN ALLEY RUNNING PARALLEL BETWEEN MURRAY AVENUE AND BROWN STREET, EAST OF D.A.V. DRIVE, AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATING TO SAME.” This ordinance is summarized as follows: The City of Paducah does hereby authorize the closure of a 15 foot wide alley between Murray Avenue and Brown Street and authorizes, empowers and directs the Mayor to execute a quitclaim deed from the City to the property owners in or abutting the public ways to be closed.

Adopted on call of the roll, yeas, Commissioners Abraham, Holland, Rhodes, Wilson and Mayor Harless (5). (ORD # 2018-11-8557; BK 35)

ORDINANCE(S) – INTRODUCTION

REPEAL PADUCAH CODE OF ORDINANCES SECTION 66-93

Commissioner Rhodes offered motion, seconded by Commissioner Wilson, that the Board of Commissioners introduce an ordinance entitled, “AN ORDINANCE REPEALING CHAPTER 66,

November 27, 2018

SECTION 66-93, OFFENSIVE, PROFANE OR INDECENT LANGUAGE, OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH, KENTUCKY.” This ordinance is summarized as follows: The City of Paducah hereby repeals in its entirety Section 66-93 of the Paducah Code of Ordinances entitled Offensive, Profane or Indecent Language.

COMMENTS

CITY MANAGER COMMENTS

City Manager Arndt let the Commission know that city departments and committees are tasked with bringing budget proposals to the City Manager’s office in the next few weeks.

The City Manager and staff are moving forward with Police Chief selection process. The City Manager is planning to bring a recommended applicant to the Commission at the first meeting in December.

Progress is being made on developing the City’s Core Values and Mission Statement. The City Manager will be using the Middle Management Team as a focus group for the Mission Statement and Core Values and also will be taking the statement and values to community partners.

The Strategic Plan update will be going out to the Commission by December 10th.

Staff is taking a closer look at the Stormwater Utility Rate to make sure that the range presented is successful. The Commission can expect to see more about the rate in December or January.

BOARD OF COMMISSIONERS COMMENTS

Commissioner Abraham commented on offsetting expenses by utilizing internal staff.

Mayor Harless commented that the Office of Entrepreneurship through the Cabinet for Economic Development had announced a regional innovation network award. Part of this award will be used by Sprocket to help with entrepreneurship work in Paducah.

Commissioner Holland commended City staff on their work with Dickens of a Christmas.

PUBLIC COMMENTS

John Suttles, Michael Swinford and Randy Beeler commented on the Veterans Day Parade.

ADJOURN

Mayor Harless offered motion, seconded by Commissioner Rhodes, to adjourn the meeting. All in favor.

Meeting ended at approximately 6:12 p.m.

ADOPTED: December 11, 2018

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Minute File:

Certificate of Liability Insurance – MP Lawson Construction, LLC

Certificate of Liability Insurance – West Kentucky Industrial Contracting LLC

Deed File:

Quitclaim Deed – COP – James and Sandra Faulkner – 222 Ashbrook Avenue (MO #2153)

Contract File:

1. Huffman Construction- Flood Pump Station #2 Rehabilitation – Change Order #1 (MO#2187)
2. Evrard Company – Paducah Health Park – Phase 2 Project (ORD 2018-10-8554)
3. Housing Authority of Paducah – Housing Choice Voucher Program Management Agreement (MO #2183)
4. Amendment to Section 8 Administrative Plan for 2018 Housing Choice Voucher Program (MO #2183)
5. Tyler Technologies – Change Request Form – Delete Switch Installation (MO #2180)
6. Tyler Technologies – Change Request Form – Delete Third Party Software (MO #2180)
7. Equature – Change Order (MO #2181)
8. Letter of Understanding – Contractual Off Duty Employment – Police (MO #2182)
9. Bacon, Farmer, Workman – Peck Memorial Park Site Design – (ORD 2018-11-8555)

Financials File:

1. Luther F. Carson Four Rivers Center – year ended June 30, 2018
2. Market House Theatre of Paducah – Form 990 – year ending June 30, 2018
3. Transit Authority of Paducah – year ended June 30, 2018
4. Barkley Regional Airport Authority – Year Ended June 30, 2018

**CITY OF PADUCAH
PERSONNEL ACTIONS
December 11, 2018**

NEW HIRES - PART-TIME (P/T)/TEMPORARY/SEASONAL

<u>POLICE ADMINISTRATION</u>	<u>POSITION</u>	<u>RATE</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
Zidar, Michael S.	Crime Analyst II	\$65.00/Hr.	NCS	Non-Ex	December 1, 2018
<u>PARKS SERVICES</u>					
Newberry, Peyton K.	Recreation Leader - Athletics	\$11.00/Hr.	NCS	Non-Ex	December 6, 2018

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS

	<u>PREVIOUS POSITION AND BASE RATE OF PAY</u>	<u>CURRENT POSITION AND BASE RATE OF PAY</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
<u>POLICE ADMINISTRATION</u>					
Newberry, Robin L.	Executive Assistant II \$23.87/Hr.	Executive Assistant II \$24.47/Hr.	NCS	Non-Ex	December 6, 2018
Morrison, Lourdes P.	Records Clerk I \$14.60/Hr.	Records Clerk I \$14.97/Hr.	NCS	Non-Ex	December 6, 2018
Miller, Vicki L.	Records Clerk I \$14.60/Hr.	Records Clerk I \$14.97/Hr.	NCS	Non-Ex	December 6, 2018
Newlon, Kimberly G.	Records Clerk III \$16.67/Hr.	Records Clerk III \$17.09/Hr.	NCS	Non-Ex	December 6, 2018
Kinser, Amanda J.	Evidence Tech II \$16.04/Hr.	Evidence Tech II \$16.45/Hr.	NCS	Non-Ex	December 6, 2018
Barkley, Meridith L.	Evidence Tech I \$14.75/Hr.	Evidence Tech I \$15.12/Hr.	NCS	Non-Ex	December 6, 2018
<u>GENERAL - GOVERNMENT</u>					
Arndt, James W.	City Manager \$66.10/Hr.	City Manager \$67.55/Hr.	NCS	Exempt	December 21, 2018

TERMINATIONS - FULL-TIME (FT)

<u>EMERGENCY COMMUNICATION SRVCS</u>	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
Larimer, Anna-Rebecca	Telecommunicator	Declined employment offer	November 26, 2018

Agenda Action Form

Paducah City Commission

Meeting Date: December 11, 2018

Short Title: Municipal Order to Extend the Fuel Contract with Midwest Terminal - **R MURPHY**

Category: Municipal Order

Staff Work By: Randy Crouch, Dena Alexander

Presentation By: Rick Murphy

Background Information:

On November 24, 2015 written bids were received for the City of Paducah's requirement of Fuel for the 2016 and 2017 calendar years with two additional one-year renewal options if agreed by both parties. On November 1, 2018 JSC Terminal, LLC dba Mid West Terminal acknowledged they are agreeable to renewing the contract for the second one year option as previously amended.

Does this Agenda Action Item align with a Strategic Plan Action Step? No

If yes, please list the Action Step Item Codes(s):

Funds Available: Account Name:
Account Number:

Staff Recommendation:

To proceed with a Municipal Order authorizing the Mayor to enter into the second one (1) year renewal contract as previously amended.

Attachments:

1. Municipal Order
2. Agreement

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE SECOND
RENEWAL OF THE 2016-2017 FUEL SUPPLY AGREEMENT WITH JSC
TERMINAL, LLC AS AMENDED FOR THE 2019 CALENDAR YEAR, AND
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME

WHEREAS, on December 17, 2015, the City of Paducah and JSC Terminal, LLC d/b/a Midwest Terminal entered into a certain 2016-2017 fuel supply agreement, whereby the Vendor agreed to furnish all fuel for the City at an agreed upon rate for the applicable term of years; and

WHEREAS, the 2016-2017 fuel supply agreement stipulates that the initial would be for a two year period, ending on December 31, 2017, with an option to renew for two additional one-year terms upon the mutual agreement of both parties; and

WHEREAS, both parties desire and mutually agreed to renew the Agreement for the first one-year renewal term, which commenced January 1, 2018 and will conclude on December 31, 2018; and

WHEREAS, by Municipal Order 2039, the agreement was amended to provide for the supply of marine fuel at the City of Paducah's new transient boat dock (the "Dock"); and

WHEREAS, both parties now desire and mutually agree to renew the Agreement for the second one-year renewal term as amended to include the Dock, which shall commence January 1, 2019 and will conclude on December 31, 2019;

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF
COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY, AS FOLLOWS:

SECTION 1. Recitals and Authorization. The City hereby approves the Second Extension and Amendment to Fuel Supply Agreement between the City and JSC Terminal, LLC d/b/a Midwest Terminal in substantially the form attached hereto as Exhibit A and made part hereof. It is further determined that it is necessary and desirable and in the best interest of the City to enter into this agreement for the purposes therein specified, and the execution and delivery of this Amendment is hereby authorized and approved. The Mayor is hereby authorized to execute this agreement with such changes

not inconsistent with this Order and not substantially adverse to the City as may be approved by the official executing the same on behalf of the City. The approval of such changes by said official, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of this agreement.

SECTION 2. Effective Date. This Order shall be in full force and effect on and after the date as approved by the Board of Commissioners of the City of Paducah, Kentucky.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, December 11, 2018

Recorded by Lindsay Parish, City Clerk, December 11, 2018

\mo\agree-fuel extension – 2019

EXHIBIT A

SECOND EXTENSION AND AMENDMENT TO FUEL SUPPLY AGREEMENT

THIS SECOND EXTENSION AND AMENDMENT (this “Amendment”) is made this ____ day of _____, 2018 by and between the **CITY OF PADUCAH, KENTUCKY**, hereinafter called the “Owner,” and **JSC TERMINAL, LLC D/B/A MID WEST TERMINAL**, a Kentucky limited liability company, hereinafter called the “Vendor.”

W I T N E S S E T H:

WHEREAS, on December 17, 2015, the parties hereto entered into a certain agreement for the City of Paducah’s fuel supply 2016-2017 (the “Agreement”); and

WHEREAS, the Agreement stipulated that the initial term was for a two (2) year period, ending December 31, 2017, with an option to renew for two (2) additional one-year terms upon the mutual agreement of both parties; and

WHEREAS, further, both parties amended this Agreement to provide for the supply of recreational fuel at the Vendor’s terminal for use in the Owner’s small engines and to supply marine fuel at the City of Paducah’s new transient boat dock (the “Dock”);

WHEREAS, at this time, both parties desire and mutually agree to renew the Agreement for the second one-year renewal term, which shall commence January 1, 2019 and conclude on December 31, 2019; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the legal adequacy and sufficiency of which is hereby acknowledged by the parties hereto, the parties do hereby covenant and agree as follows:

1. Owner and Vendor do mutually agree to renew the Agreement, which renewal shall commence on January 1, 2019 and conclude on December 31, 2019. The renewal term shall be subject to all covenants, terms, conditions and obligations set forth and contained in the Agreement including without limitation the fuel rates to be paid by Owner as provided in Article 3 of the Agreement, except as otherwise amended herein.

2. Vendor hereby agrees to furnish all the necessary labor, materials, equipment, tools and services necessary for the procurement of all recreational fuel for use in the Owner’s small engines and for the Dock in accordance with all covenants, terms, conditions and obligations set forth and contained in the Agreement and at the following fuel rates:

- a) \$0.09 above Paducah, Kentucky OPIS Gross Clear Unbranded Low Rack pricing for 90 Octane Unleaded Non-Ethanol Gasoline and

- b) \$0.09 above Paducah, Kentucky OPIS Gross Ultra Low Sulfur Red Dye Distillate Unbranded Low Rack for Dyed Diesel.

Vendor further agrees to furnish ValvTect Marine Gasoline Additive and ValvTect Premium Diesel Additive with Bioguard Microbiocide as directed by Owner at the following rate:

- a) \$0.04 per gallon

3. Vendor is the only regional ValvTect Certified Dealer. Vendor agrees to maintain its ValvTect Tank Certification at no additional cost to Owner, which shall include conducting the following activities:

- i. Independent laboratory testing to ensure there is no water in gasoline storage tank;
- ii. Independent laboratory testing to ensure diesel bottom samples are free of microbiological contamination; and
- iii. Listing of Paducah Transient Boat Dock as a ValvTect certified location under the heading "Where to Buy" on ValvTect's website, valvtect.com.

4. Vendor shall monitor tank levels at the Dock at no additional cost to Owner. Vendor shall also manage inventory levels at the Dock as directed by Owner.

5. Except for the modifications set forth in this Amendment, all other terms and provisions of the Agreement entered into between the parties are expressly acknowledged, reaffirmed, and ratified by all parties hereto, and shall apply to this Amendment. All parties hereby agree to perform in strict accordance with the terms and provisions as set forth under the Agreement as extended and amended.

6. This Amendment shall be fully binding upon the parties hereto and their successors, and assigns as of the Effective Date, which is the date this Amendment is executed and delivered by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed Amendment as of the day and year first above written.

VENDOR:
JSC TERMINAL, LLC d/b/a
MID WEST TERMINAL

OWNER:
CITY OF PADUCAH

By: _____

By: _____
Cheryl Baugus, President & CEO
725 N 5th Street, Paducah, KY 42001
Title: _____

SECOND EXTENSION AND AMENDMENT TO FUEL SUPPLY AGREEMENT

THIS SECOND EXTENSION AND AMENDMENT (this "Amendment") is made this _____ day of _____, 2018 by and between the **CITY OF PADUCAH, KENTUCKY**, hereinafter called the "Owner," and **JSC TERMINAL, LLC D/B/A MID WEST TERMINAL**, a Kentucky limited liability company, hereinafter called the "Vendor."

W I T N E S S E T H:

WHEREAS, on December 17, 2015, the parties hereto entered into a certain agreement for the City of Paducah's fuel supply 2016-2017 (the "Agreement"); and

WHEREAS, the Agreement stipulated that the initial term was for a two (2) year period, ending December 31, 2017, with an option to renew for two (2) additional one-year terms upon the mutual agreement of both parties; and

WHEREAS, further, both parties amended this Agreement to provide for the supply of recreational fuel at the Vendor's terminal for use in the Owner's small engines and to supply marine fuel at the City of Paducah's new transient boat dock (the "Dock");

WHEREAS, at this time, both parties desire and mutually agree to renew the Agreement for the second one-year renewal term, which shall commence January 1, 2019 and conclude on December 31, 2019; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the legal adequacy and sufficiency of which is hereby acknowledged by the parties hereto, the parties do hereby covenant and agree as follows:

1. Owner and Vendor do mutually agree to renew the Agreement, which renewal shall commence on January 1, 2019 and conclude on December 31, 2019. The renewal term shall be subject to all covenants, terms, conditions and obligations set forth and contained in the Agreement including without limitation the fuel rates to be paid by Owner as provided in Article 3 of the Agreement, except as otherwise amended herein.

2. Vendor hereby agrees to furnish all the necessary labor, materials, equipment, tools and services necessary for the procurement of all recreational fuel for use in the Owner's small engines and for the Dock in accordance with all covenants, terms, conditions and obligations set forth and contained in the Agreement and at the following fuel rates:

- a) \$0.09 above Paducah, Kentucky OPIS Gross Clear Unbranded Low Rack pricing for 90 Octane Unleaded Non-Ethanol Gasoline and
- b) \$0.09 above Paducah, Kentucky OPIS Gross Ultra Low Sulfur Red Dye Distillate Unbranded Low Rack for Dyed Diesel.

Vendor further agrees to furnish ValvTect Marine Gasoline Additive and ValvTect Premium Diesel Additive with Bioguard Microbiocide as directed by Owner at the following rate:

a) \$0.04 per gallon

3. Vendor is the only regional ValvTect Certified Dealer. Vendor agrees to maintain its ValvTect Tank Certification at no additional cost to Owner, which shall include conducting the following activities:

- i. Independent laboratory testing to ensure there is no water in gasoline storage tank;
- ii. Independent laboratory testing to ensure diesel bottom samples are free of microbiological contamination; and
- iii. Listing of Paducah Transient Boat Dock as a ValvTect certified location under the heading "Where to Buy" on ValvTect's website, valvtect.com.

4. Vendor shall monitor tank levels at the Dock at no additional cost to Owner. Vendor shall also manage inventory levels at the Dock as directed by Owner.

5. Except for the modifications set forth in this Amendment, all other terms and provisions of the Agreement entered into between the parties are expressly acknowledged, reaffirmed, and ratified by all parties hereto, and shall apply to this Amendment. All parties hereby agree to perform in strict accordance with the terms and provisions as set forth under the Agreement as extended and amended.

6. This Amendment shall be fully binding upon the parties hereto and their successors, and assigns as of the Effective Date, which is the date this Amendment is executed and delivered by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed Amendment as of the day and year first above written.

VENDOR:
JSC TERMINAL, LLC d/b/a
MID WEST TERMINAL

OWNER:
CITY OF PADUCAH

By: _____
Cheryl Baugus, President & CEO
725 N 5th Street, Paducah, KY 42001

By: _____
Title: _____

Agenda Action Form

Paducah City Commission

Meeting Date: December 11, 2018

Short Title: Professional Services Agreement with Thomas P. Miller & Associates, LLC for development of the Paducah Opportunity Zones Marketing Strategy - **T TRACY**

Category: Municipal Order

Staff Work By: Sheryl Chino

Presentation By: Tammara Tracy

Background Information: Opportunity Zones were added to the tax code by the Tax Cuts and Jobs Act on December 22, 2017. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service. To qualify as an Opportunity Zone, a census tract must have a poverty rate of at least 20%.

In February 2018, the Governor's office asked communities to submit their request for Opportunity Zones designations. The City of Paducah requested seven designations and received two for Census tracts 303 and 304.

Recently, the Internal Revenue Service published the draft guidelines for administration of investments into Opportunity Zones through the creation of Opportunity Funds. In an effort to attract private investment into Paducah's Opportunity Zones, the Planning Department is proposing to contract with Thomas P. Miller & Associates, LLC to prepare a marketing and engagement strategy.

The proposal is for \$50,000 and will be completed within 5 months.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): E-1: Continue developing the riverfront from the Carson Center to the Convention Center.

N-1: Promote, empower, and encourage neighborhood enhancement projects throughout the community.

N-2: Assist with the creation and development of neighborhood boundary, asset map, vision map, and a plan for redeveloping vacant property.

Funds Available: Account Name: TIF Application

Account Number: DT0044

Staff Recommendation: Authorize the Mayor to execute an agreement with Thomas P. Miller & Associates, LLC.

Attachments:

1. Municipal Order
2. Agreement
3. Designated OZs

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THOMAS P. MILLER & ASSOCIATES, LLC, IN AN AMOUNT OF \$50,000 FOR DEVELOPMENT OF THE PADUCAH OPPORTUNITY ZONES MARKETING STRATEGY, AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME

BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY, AS FOLLOWS:

SECTION 1. The City hereby approves the Professional Services Agreement (“Agreement”) between the City and Thomas P. Miller & Associates, LLC, (“Vendor”) in substantially the form attached hereto as Exhibit A and made part hereof. It is further determined that it is necessary and desirable and in the best interest of the City to enter into this Agreement for the purposes therein specified.

SECTION 2. The Mayor is hereby authorized to execute the Agreement, authorized in section 1 above. This contract shall expire May 31, 2019.

SECTION 3. This expenditure will be charged TIF Application Project No. DT0044. .

SECTION 4. This Order shall be in full force and effect on and after the date as approved by the Board of Commissioners of the City of Paducah, Kentucky.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, December 11, 2018
Recorded by Lindsay Parish, City Clerk, December 11, 2018
\\mo\agree-Thomas P Miller Opportunity Zones Marketing 2018

EXHIBIT A



THOMAS P. MILLER & ASSOCIATES

November 29, 2018

Thomas P. Miller & Associates, LLC Professional Services Agreement

This Agreement, entered into by and between The City of Paducah ("Client") located at 300 South 5th Street, Paducah, Kentucky 42002, and Thomas P. Miller & Associates, LLC ("Contractor"), located at 1630 N. Meridian St., Suite 430, Indianapolis, Indiana 46202.

WITNESSETH THAT:

WHEREAS, Client has the need and desire to obtain the services of a contractor; and

WHEREAS, Contractor desires to perform said services detailed in the attached 'Scope of Work' for Client and is able to do so in a professional manner; and

WHEREAS, Client has selected Contractor to perform these services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **TERM.** The term of this Agreement shall be January 1, 2019 to May 31, 2019.
2. **SERVICES TO BE RENDERED:** Scope of Work as outlined in Attachment A: General Scope of Services.
3. **COMPENSATION.** Client shall pay Contractor \$50,000 (inclusive of expenses) during the term of this Agreement for the satisfactory completion of the services to be rendered.
4. **PAYMENT TERMS.** Invoices will be submitted to Client:

January 31, 2019	\$10,000
February 28, 2019:	\$10,000
March 31, 2019:	\$10,000
April 30, 2019:	\$10,000
May 31, 2019:	\$10,000
5. **CLIENT'S OBLIGATIONS.** Client shall provide Contractor, at no charge, all existing information, data, and documents, available and necessary for the carrying out of services under this agreement. Client shall cooperate with Contractor in every way possible in carrying out the scope of this agreement.

6. **TERMINATION.** In the event that the services of Contractor are unsatisfactory or that support rendered by Client is inadequate, either party shall have seven (7) business days after delivery of written notice of such unsatisfactory or inadequate services to rectify or correct the problem. If either party fails to correct the problem, either may terminate this Agreement with 30 days notice in writing, delivered to the business address of the other party. Contractor shall be compensated for services provided to the date such termination becomes effective.

7. **INDEMNIFICATION.** Both parties shall indemnify and hold harmless each other, their respective officers, employees, and agents from any and all loss, liability, claims, judgments, and liens, including costs and expenses, arising out of any negligent act or omission of Client or Contractor or any of their officers, agents, employees, or subcontractors in the performance of this Agreement.

8. **CONFIDENTIALITY.** Both Client and Contractor understand that information provided during the performance of this Agreement is confidential and may not be disclosed to any person not connected with this project without prior approval.

9. **NOTICE.** Any notice, invoice, order or other correspondence required to be sent under this Agreement shall be sent to the addresses outlined in the first paragraph of this Agreement.

10. **APPLICABLE LAWS.** This Agreement shall be governed by the laws of State of Indiana, as the same shall be in force and effect upon the date this Agreement is executed.

11. **NON-DISCRIMINATION.** Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to firing, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, religion, color, sex, age, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall constitute a material breach of this Agreement.

12. **NECESSARY DOCUMENTATION.** Contractor certifies that it will furnish Client, if requested, any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of units of local, state, and federal government. Contractor further certifies that it is now in and will maintain its good standing with governmental agencies and will maintain its license, permit, registration, authorization, or certification in force during the term of this Agreement. Failure of Contractor to comply with this paragraph constitutes a material breach of this Agreement.

13. **WAIVER.** A contractor's delay or inaction in pursuing its remedies as set forth in this Agreement, or available by law, shall not operate as a waiver of any of a contractor's rights or remedies contained herein or available by law.

14. **PERSONAL LIABILITY.** Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, agency, or employee of Client or any public body, which may be a party to this Agreement.

15. **SEVERABILITY.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement, which can operate independently of such stricken provision, shall continue in full force and effect.

16. **CONFLICT OF INTEREST.** Contractor certifies and warrants to Client that neither it nor any of its agents, representatives, or employees who will participate in performance of any services required by this Agreement have or will have any conflict of interest, directly or indirectly with Client.

17. **AMENDMENTS.** This Agreement may be amended, modified, renewed, or supplemented only by a written instrument signed by each of the parties hereto, and any such amendment may pertain to one or more of the provisions of this Agreement without affecting the other provisions of this Agreement.

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19. **TAXES.** Contractor agrees that it is an independent contractor as that term is commonly used and is not an employee of Client. As such, the Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to the Contractor. The Contractor acknowledges that it is not insured by Client in any manner for any loss of any kind whatsoever. The Contractor has no authority, express or implied, to bind or obligate Client in any way.

IN WITNESS WHEREOF, Client and Contractor, by their respective officers hereunto duly authorized, have executed this Agreement on the dates shown below.

Thomas P. Miller & Associates, LLC

By: 
Thomas P. Miller
President & CEO

Date: 11-29-18

The City of Paducah

By: _____
Brandi Harless
Mayor

Date: _____

**ATTACHMENT A
GENERAL SCOPE OF SERVICES**

**PROPOSAL FOR:
OPPORTUNITY ZONE INVESTMENT
PREPAREDNESS STRATEGY**

Deadline: 11/12/18

SUBMITTED TO:
**THE CITY OF
PADUCAH, KY**

SUBMITTED BY:  **THOMAS P. MILLER & ASSOCIATES**

STATEMENT OF QUALIFICATIONS

Thomas P. Miller & Associates (TPMA) envisions a world that thinks strategically, works collaboratively, and acts sustainably. In keeping with that vision, we empower organizations and communities through strategic partnerships and informed solutions that create positive, sustainable change. Through over 29 years of business, we have worked with numerous nonprofits, economic and workforce development organizations, chambers of commerce, colleges and universities, and private businesses in more than 40 states.

Our emphasis is not just on strategic ideas, but strategic leadership and innovative, action-oriented goals – helping leaders to identify data-driven opportunities and mobilize resources for implementation. We take a collaborative approach to planning, recognizing that the greatest impact is through transparency and the aligned goals of multiple stakeholders. We excel at translating completed research, analysis, and planning efforts into implementation activities tailored to the assets and opportunities of each client, and we will utilize this strength to maximize this project's value for Paducah, KY.

PADUCAH OPPORTUNITY ZONE CONTEXT

Opportunity Zones are economic development tools promoting investment in distressed communities through legislation enacted by the Federal Tax Cuts and Jobs Act of 2017. Communities have had selected distressed census tracts designated as Opportunity Zones by the U.S. Department of Treasury, incentivizing investments to better address local needs in areas such as business growth, real estate investment, and area improvements.

Kentucky has a total of 144 Opportunity zones in 84 counties. While each Opportunity Zone offers investors the same federal capital gains tax advantages, all Zones are not created equal. It is estimated that there is over 2.3 trillion dollars in eligible capital gains eligible for investment – although only a percentage will actually be invested in Opportunity Zones. All Opportunity Zones will compete for investment but some Zones will stand out immediately due to clear pro-investment market conditions. However, most Zones, given their designation as "distressed" will have to strategically position themselves to appeal to investors.

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For these reasons, Paducah should consider developing a plan or prospectus to tell the City's story with a narrative that demonstrates the community's pro-investment opportunities, with the goal of attracting investors and new development. This prospectus will be developed through the approach described in the remainder of this proposal.

APPROACH

TPMA proposes the following 2-Phase approach to developing an Opportunity Zone Investment Preparedness Strategy for Paducah, KY. This approach will focus on data collection, land-use planning, workshops, identification of aligned Opportunity Funds, and creation of a marketing prospectus and a local leadership and business outreach strategy.

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Paducah has two OZs each with differing compositions of industrial, commercial, and residential property. Paducah's Northwestern OZ is predominantly residential development with some industrial in the northern part of the zone. The Southeastern zone includes parts of downtown Paducah which is characterized by commercial and residential development. The downtown area has been positioned for future investment given local planning and improvement efforts. The existing conditions survey will detail the make-up of each OZ in a way that demonstrates key land-use patterns and how they can be reinforced and/or modified to support future investment. After completing the assessment, an asset map will be prepared that graphically describes each Zone.

Deliverables: Existing Conditions and Asset Map

Task Three: Land-use Planning, Project Alignment & Outreach

Following the completion of Tasks 1 and 2, TPMA will work with the City to align its current land-use planning in and adjacent to the Opportunity Zones to determine potential infrastructure, community development, business, residential, and commercial real estate investment opportunities to market to prospective investors. This assessment will take into account that the Opportunity Zone program has time constraints that require investments to be either short-term opportunities or capable of being expedited in order to align with investor requirements.

The project team will factor the city's zoning as well as findings and observations from the existing conditions and asset map to form OZ land-use recommendations. Draft recommendations will be established which will identify a variety of project investments that will support the City's economic and community development objectives. Potential projects likely will include mixed income housing development, commercial retail development, industrial facilities and infrastructure improvements. The projects will be reviewed and prioritized by community leadership.

Deliverable: Opportunity Zone Land-use Overview and Draft OZ Project List

Task Four – An OZ “Opportunity Assessment Workshop”

Following the completions of tasks 1-3 a 2-4-hour workshop will be facilitated by the project team with local leadership. The workshop will identify and prioritize the business and project opportunities that have emanated from the Assessment Phase. Strategies will be discussed on the key steps needed to realize the desired investments. Potential local and non-local partners that may be able to contribute to the strategies will also be identified. The workshop will discuss possible roles for the State of Kentucky to play in helping to activate the Opportunity Zone Investment Strategies.

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Task Five: Opportunity Zone Business Messaging Program

Once the initial OZ assessment has been performed and the workshop has identified and prioritized investment opportunities, a messaging program will be established. The project team will provide a PowerPoint presentation that City and Economic Development leadership can use to explain the benefits associated with the Opportunity Zone Program for local businesses and investors. The presentation will detail key elements of the Opportunity Zone Legislation such as the capital gains incentives, mechanisms of opportunity funds, eligible investments, and how the incentive can be specifically leveraged by local business owners to invest their own gains for improvement and expansion projects. The project team will attend up to three presentations with local leadership assisting with the presentation to the business and investor groups.

The project team will also work with City Leadership to engage property owners and determine the availability of property for future land-use development as identified in the land-use overview from Task Three. Initial outreach will also focus on engaging property owners who may be willing to have their properties available to promote development that aligns with the land-use overview. Property acquisition strategies will be outlined if appropriate. It is important that the City works where needed with property owners to demonstrate some form of site-control where possible to enhance project readiness and increase the Opportunity Zones’ competitiveness to attract investment.

The messaging program will include meetings with targeted businesses to encourage utilization of the OZ Tool. The project team will use research from Phase I combined with local leadership’s knowledge to identify businesses that are likely to expand or upgrade their operations. The project team will work to ensure that identified local businesses in expansion mode will receive the necessary information to process and take advantage of the Opportunity Zone program. The project team will attend up to a half dozen meetings with individual businesses as part of this process.

Deliverables: Opportunity Zone Business and Project Inventory & Opportunity Zone Presentation

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The project team will create a marketing prospectus designed to construct a compelling investment story about Paducah’s Opportunity Zones to potential investors. The prospectus will provide clear and concise evidence that Paducah has a well-conceived plan for its Opportunity Zones, designed to optimize

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BUDGET & TIMELINE

It is anticipated that this project will have a 150-day timeline with a total cost of \$50,000. Phase I will be completed in approximately 60 days and Phase II will span an additional 90 days. A 150 day timeline is critical to this project because the majority of Opportunity Zone Investment will occur before December 31st, 2019 as investors cannot realize the full benefits of the program on investments made after 2019.



**Thomas P. Miller & Associates, LLC
Professional Services Agreement**

This Agreement, entered into by and between The City of Paducah ("Client") located at 300 South 5th Street, Paducah, Kentucky 42002, and Thomas P. Miller & Associates, LLC ("Contractor"), located at 1630 N. Meridian St., Suite 430, Indianapolis, Indiana 46202.

WITNESSETH THAT:

WHEREAS, Client has the need and desire to obtain the services of a contractor; and

WHEREAS, Contractor desires to perform said services detailed in the attached 'Scope of Work' for Client and is able to do so in a professional manner; and

WHEREAS, Client has selected Contractor to perform these services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

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By: 
Thomas P. Miller
President & CEO

Date: 11-29-18

The City of Paducah

By: _____
Brandi Harless
Mayor

Date: _____

**ATTACHMENT A
GENERAL SCOPE OF SERVICES**

**PROPOSAL FOR:
OPPORTUNITY ZONE INVESTMENT
PREPAREDNESS STRATEGY**

Deadline: 11/12/18

SUBMITTED TO:
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SUBMITTED BY:



THOMAS P. MILLER & ASSOCIATES

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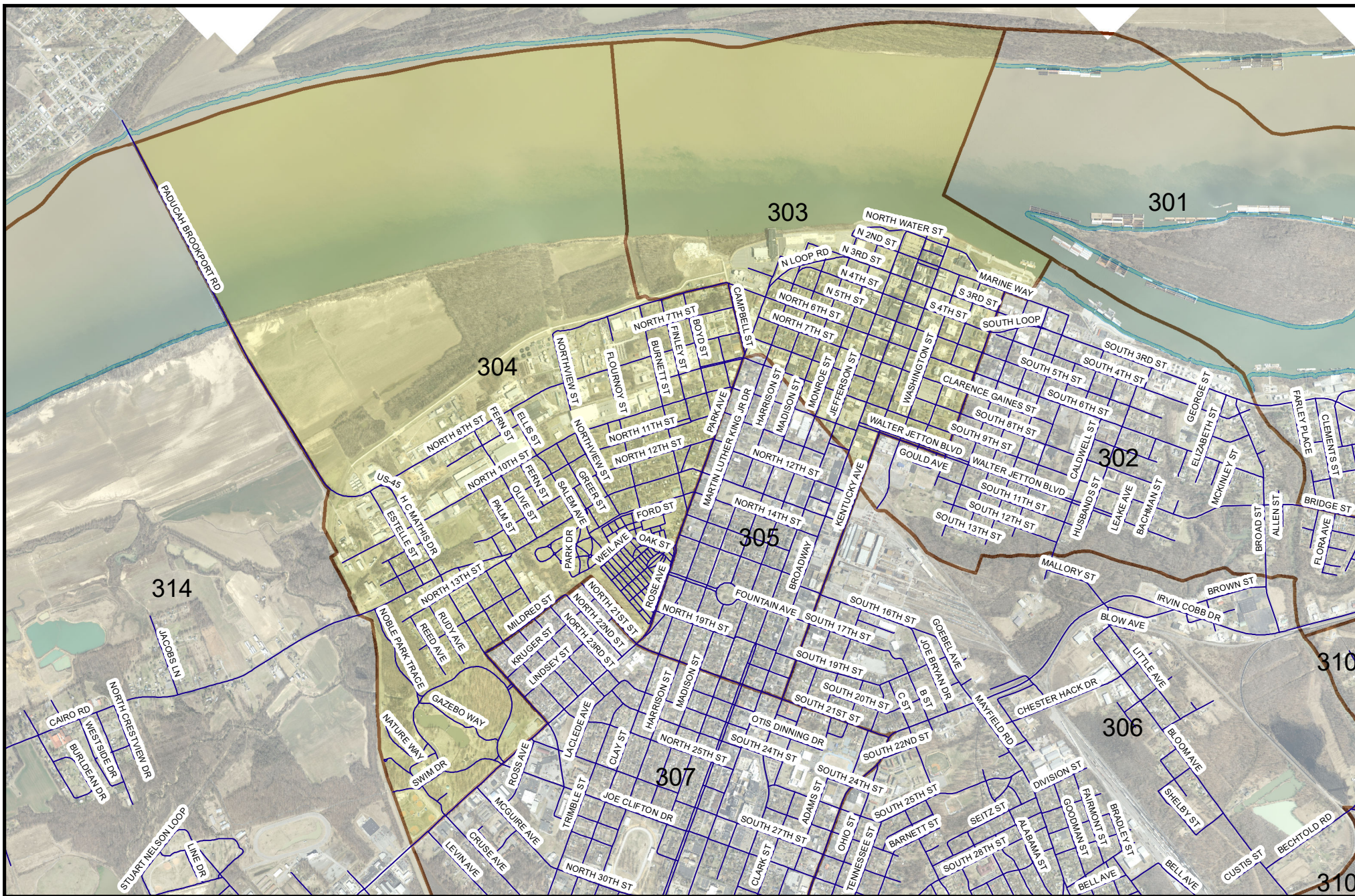
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Paducah, KY



0 0.45 0.9 Miles

Designated Opportunity Zones

Agenda Action Form

Paducah City Commission

Meeting Date: December 11, 2018

Short Title: Repeal Paducah Code of Ordinances Section 66-93- **L PARISH**

Category: Ordinance

Staff Work By: Lindsay Parish, Brandon Barnhill, Stacey Blankenship
Presentation By: Lindsay Parish

Background Information: Section 66-93 of the Paducah Code of Ordinances regarding profane, offensive or indecent language was enacted in 1967. On February 16, 2017, the Supreme Court of Kentucky addressed an issue relating to ordinances regulating speech. This opinion from the Kentucky Supreme Court has led the City of Paducah to request an attorney opinion on the constitutionality of Section 66-93 of the Paducah Code of Ordinances.

Attorney opinion is that Code Section 66-93 is a content-based restriction in regard to speech and as such is invalid. In an effort to keep current municipal codes relevant, valid and enforceable, the best course of action is to repeal Code Section 66-93 in its entirety.

Does this Agenda Action Item align with a Strategic Plan Action Step? No

If yes, please list the Action Step Item Codes(s):

Funds Available: Account Name:
Account Number:

Staff Recommendation: Repeal Section 66-93 of the Paducah Code of Ordinances in its entirety.

Attachments:

1. Ordinance
2. Attorney Memo

ORDINANCE NO. 2018--__ -__

**AN ORDINANCE REPEALING CHAPTER 66, SECTION 66-93,
OFFENSIVE, PROFANE OR INDECENT LANGUAGE, OF THE CODE OF
ORDINANCES OF THE CITY OF PADUCAH, KENTUCKY**

WHEREAS, this Ordinance repeals Chapter 66, Section 66-93, Offensive, Profane or Indecent Language, of the *Code of Ordinances of the City of Paducah, Kentucky*; and

WHEREAS, this Ordinance is being enacted to repeal Code Section 66-93 in its entirety.

NOW THEREFORE, be it ordained by the City Commission of the City of Paducah as follows:

SECTION 1. That Section 66-93, Offensive, Profane or Indecent Language, of Chapter 66, Offenses And Miscellaneous Provisions, of the Code of Ordinances of the City of Paducah, Kentucky, is hereby repealed in its entirety:

~~“Sec. 66-93. -- Offensive, profane or indecent language. It shall be unlawful for any person to utter, in a loud or boisterous manner, any offensive, profane or indecent words or epithets in any public street or other public place, public conveyance, or place to which the public is invited, which offensive, profane or indecent words or epithets shall include, but are not limited to:~~

- ~~(1) Use of the Lord's name in vain.~~
- ~~(2) Use of common words denoting or relating to the questionable parentage of another.~~
- ~~(3) Use of any derogatory words relating to the privates of a male, female or hermaphrodite.~~
- ~~(4) Use of any derogatory words relating to the reproductive method of males and females, whether or not used in connection with profane language.~~
- ~~(5) Use of any derogatory words relating to the method of sexual intercourse with relatives or strangers.”~~

SECTION 2. SEVERABILITY. That if any section, paragraph or provision of this Ordinance shall be found to be inoperative, ineffective or invalid for any cause, the deficiency or invalidity of such section, paragraph or provision shall not effect any other section, paragraph or provision hereof, it being the purpose and intent of this Ordinance to make each and every section, paragraph, and provision, hereof separable from all other sections, paragraphs and provisions.

SECTION 3. COMPLIANCE WITH OPEN MEETINGS LAWS. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 4. CONFLICTS. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor Brandi Harless

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, November 27, 2018

Adopted by the Board of Commissioners, _____

Recorded by Lindsay Parish, City Clerk, _____

Published by The Paducah Sun, _____

\ord\66 – Repeal Profane, Offensive or Indecent Language



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MEMORANDUM

THIS MEMORANDUM WAS CREATED BY LEGAL COUNSEL FOR THE CITY OF PADUCAH AND CONTAINS ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED AND CONFIDENTIAL INFORMATION.

TO: James Arndt and Lindsay Parish
FROM: Stacey A. Blankenship
DATE: November 19, 2018
RE: Ordinance regarding offensive language

On February 16, 2017, the Supreme Court of Kentucky addressed an issue relating to ordinances regulating speech. Our review of the Court's opinion leads us to believe that the City's current ordinance for offensive language is unconstitutional. Please allow this memo to serve as a summary of this opinion, our review of the City's ordinance in light thereof, and our recommendation.

Dennis Champion v. Commonwealth of Kentucky.

Dennis Champion v. Commonwealth of Kentucky, 2015-SC-000570-DG (Ky. February 16, 2017) is an appeal from a Lexington man's criminal charges for panhandling. Mr. Champion had been arrested at a prominent intersection in Lexington for holding up a handmade sign begging for financial assistance. In 2007, the Lexington-Fayette Urban County Government enacted an ordinance prohibiting "begging and solicitation of alms," and assigning criminal sanctions for violation thereof. Specifically, the ordinance stated:

- (1) No person shall beg or solicit upon the public streets or at the intersection of said public streets within the urban county area.
- (2) Any person who violates any provision of this section shall be imprisoned not less than ten (10) days nor more than thirty (30) days or both for each offense.

ATTORNEY-CLIENT PRIVILEGED
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Following his arrest, Champion entered a conditional guilty plea, and later appealed the judgment. On appeal, Champion challenged the constitutionality of the ordinance, stating in part that the ordinance was an abridgement of his freedom of speech. After a series of reviews the Supreme Court elected to review the matter.

The Supreme Court ultimately held that the ordinance was an unconstitutional regulation of speech. In its analysis, the high court explained that, under the Free Speech Clause, “government is powerless to restrict an expression because of its message, its ideas, its subject matter, or its content.” More specifically, content-based laws – those that target particular speech based on its communicative content – are “presumptively unconstitutional [under the First Amendment] and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”

The Supreme Court determined that panhandling is a protected form of speech, similar to soliciting to charitable organizations, and applied strict scrutiny to determine if the ordinance would nevertheless be permissible for “further[ing] a compelling interest [of the government] and [being] narrowly tailored to that end.”

The Court examined Lexington’s proffered reason for the ordinance – the city’s desire to ensure public safety and to ensure the free flow of traffic, particularly regulating interactions between pedestrians and people driving vehicles. However, the Court was unconvinced that the panhandling ordinance furthered the governmental interest in this respect, calling it “disingenuous at best.” Essentially, the Court could not see the difference between an individual holding up a sign that says, “Jesus Saves,” or “Not my president,” versus, “Please help – homeless and hungry.” Because only those related to panhandling or begging were prohibited, the ordinance was held to restrict speech based on content. Ultimately, the ordinance was held to be unconstitutional, and the case was remanded back to the Fayette District Court with instructions to dismiss Champion’s criminal charges.

Upon review, we have determined that the City’s offensive language ordinance is likely unconstitutional. Sec. 66-93 provides:

It shall be unlawful for any person to utter, in a loud or boisterous manner, any offensive, profane or indecent words or epithets in any public street or other public place, public conveyance, or place to which the public is invited, which offensive, profane or indecent words or epithets shall include, but are not limited to:

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- (1) Use of the Lord's name in vain.
- (2) Use of common words denoting or relating to the questionable parentage of another.
- (3) Use of any derogatory words relating to the privates of a male, female or hermaphrodite.
- (4) Use of any derogatory words relating to the reproductive method of males and females, whether or not used in connection with profane language.
- (5) Use of any derogatory words relating to the method of sexual intercourse with relatives or strangers.

This is clearly a "content-based" law and is presumptively invalid. It appears this ordinance was originally enacted in 1967, and so we understand the City's likely intent in enactment at that stage. However, it appears that, even if valid in 1967, it is no longer good law. Repealing this ordinance is most likely the best resolution of this issue. Please let me know if you have any questions.