BILL NO. 04-169 RESOLUTION NO. 1989

A RESOLUTION AMENDING THE CITY'S POLICY TO CONFORM WITH THE MISSOURI OPEN MEETINGS AND RECORDS LAW

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE GIRARDEAU, MISSOURI, AS FOLLOWS:

WHEREAS, the Missouri General Assembly enacted the Missouri Open Meetings and Records Law,

WHEREAS, Section 610.028(2) of the Open Meetings and Records law requires each political subdivision to provide a reasonable written policy in compliance with Sections 610.010 to 610.030 RSMo.,

NOW THEREFORE, BE IT RESOLVED THAT the City Council of the City of Cape Girardeau, Missouri, hereby adopts the following policy to apply to all governmental bodies and committees of this municipality.

ARTICLE 1. All meetings, records and votes are open to the public, except the governmental body may close any meeting, record or vote relating to the following:

1. Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any vote relating to litigation involving a public governmental body shall be made public upon final disposition of the matter voted upon; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record.

2. Lease, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any vote or public record approving a contract relating to the lease, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate.

3. Hiring, firing, disciplining or promoting an employee of a public governmental body. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental

body must be made available to the public with a record of how each member voted within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice before such decision is made available to the public.

4. Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological or alcoholism or drug dependency diagnosis or treatment.

5. Testing and examination materials, before the test or examination is given or if it is to be given again before so given again.

6. Welfare cases if identifiable individuals.

7. Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups.

8. Software codes for electronic data processing and documentation thereof.

9. Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid.

10. Sealed bids and related documents, until the earlier of either when the bids are opened, or all bids are accepted or all bids are rejected.

11. Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

12. Records that are protected from disclosure by law.

13. Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest.

14. Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to State law.

15. Operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Nothing in this exception shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. When seeking to close information pursuant to this exception, the agency shall affirmatively state in writing that disclosure would impair its ability to protect the safety or health of persons, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records. This exception shall sunset on December 31, 2008.

16. Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a non-public entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety.

Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open.

When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security of safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records.

Records that are voluntarily submitted by a nonpublic entity shall be reviewed within ninety days of submission to determine if retention of the document is necessary in furtherance of a security interest. If retention is not

necessary, the documents shall be returned to the nonpublic governmental body or destroyed.

17. Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open.

18. Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body.

ARTICLE 2. All records that may be closed hereby are deemed closed records unless the governmental body votes to make them public. Before closing a meeting to the public, a majority of a quorum of the governmental body must vote to do so in a public vote. The vote of each member of the governmental body on the question of closing the meeting or vote and the reason for closing the meeting by reference to a specific exception shall be announced at a public meeting and entered into the minutes.

ARTICLE 3. The governmental body shall give notice of the time, date and place of a closed meeting and the reason for holding it by reference to a specific exception. The notice shall be the same as in (4) below. No other business may be discussed in a closed meeting that does not directly relate to the specific reason announced to close the meeting to the public. Public governmental bodies holding a closed meeting must close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session,

allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.

ARTICLE 4. The governmental body shall give notice of the time, date, place and tentative agenda of each meeting. The notice shall be placed on the appropriate bulletin board at city hall at least 24 hours, exclusive of weekends and holidays, prior to the meeting. If an emergency makes it impossible to give 24 hours notice, the reason must be reflected in the minutes. Notice also shall be given to any representative of the new media who requests notice of a particular meeting.

ARTICLE 5. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. When it is necessary to hold a meeting on less than twenty-four hours notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

ARTICLE 6. A formally constituted subunit of a parent governmental body may conduct a meeting without notice during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

ARTICLE 7. A public body shall allow for the recording by audiotape, videotape, or other electronic means of any open meeting. A public body may establish guidelines regarding the manner in which such recording is conducted so as to minimize disruption to the meeting. No audio recording of any meeting, record, or vote closed pursuant to the provisions of section 610.021 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

ARTICLE 8. Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format. The provisions of this section shall only

apply to messages sent to two or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exceptions above.

ARTICLE 9. The City Clerk shall be the custodian of records and will be responsible for maintenance and control of all records. The custodian shall provide a response and/or public access to all public records as soon as possible but no later than the third business day following the date the request is received by the custodian. If additional delay is necessary, the custodian shall give an explanation for the delay and the date the record will be available for inspection.

If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date the request for the statement is received.

The custodian shall charge duplication costs of ten cents ($.10) per page for up to 9 by 14 paper, an hourly fee for duplicating time not to exceed the average hourly rate for clerical staff, and the actual cost of research time. The custodian may require payment prior to duplicating copies.

Fees for providing access to public records maintained on computer facilities, recording, tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or visual items or devices, and for paper copies larger than nine by fourteen inches shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request for records or information, the fees for compliance may include the actual costs of such programming.

The custodian may designate deputy custodians in the following departments: administrative services, development

services, parks and recreation, public safety and public works.

PASSED AND ADOPTED this 16th day of August, 2004.

Jay B. Knudtson, Mayor

ATTEST:

Gayle L. Conrad, City Clerk