BILL NO. 24-84 RESOLUTION NO. 3620

A RESOLUTION AMENDING AND ADOPTING 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 supersedes Resolution No. 2908 and 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 minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interest or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of an moneys paid by, or on behalf of, the public governmental body shall be disclosed; 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 minutes, 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 of particular employees of a public governmental body when personal information about the employee is discussed or recorded. 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 shall be made available 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 of such decision during the seventy-two hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees.

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 of 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 bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals 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. Records relating to municipal hotlines established for the reporting of abuse and wrongdoing.

15. 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.

16. Operational guidelines, policies and specific response plans 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. Financial records related to the procurement of or expenditures relating to operational guidelines, policies or plans 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 or 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.

17. 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.

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

b) 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 or 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.

c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency 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.

18. The portion of a record that identifies security systems or access codes or authorization codes for security systems of real property.

19. 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.

20. 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.

21. Individually identifiable customer usage and billing records for customers of a municipally owned utility, unless the records are requested by the customer or authorized for release by the customer, except that a municipally owned utility shall make available to the public the customer's name, billing address, location of service, and dates of service provided for any commercial service account.

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 public meeting or vote and the reason for closing the meeting or vote by reference to a specific exception shall be announced at a public meeting and entered into the minutes.

ARTICLE 3. Except as provided in ARTICLE 1 above, rules authorized pursuant to Article III of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and if a roll call is taken, as to attribute each "yea" and "nay" vote, or abstinence if not voting, to the name of the individual member of the public governmental body. Any votes taken during a closed meeting shall be taken by roll call. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. All votes taken by roll call in meetings of a public governmental body consisting of members who are all elected, except for any committee established by a public governmental body, shall be cast by members of the public governmental body who are physically present and in attendance at the meeting or who are participating via videoconferencing. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes

taken shall be regarded as if all members were physically present and in attendance at the meeting.

ARTICLE 4. In the event any member of the public governmental body makes a motion to close a meeting, or a record, or a vote from the public and any other member believes that such motion, if passed, would cause a meeting, record or vote to be closed from the public in violation of any provision of this ordinance, such latter member shall state his or her objection to the motion at or before the time the vote is taken on the motion. The public governmental body shall enter in the minutes of the public governmental body any objection made pursuant to this subsection. Any member making such an objection shall be allowed to fully participate in any meeting, record or vote that is closed from the public over the member's objection. In the event the objecting member also voted in opposition to the motion to close the meeting, record or vote at issue, the objection and vote of the member as entered in the minutes shall be absolutely defense to any claim filed against the objecting member pursuant to this ordinance.

ARTLICE 5. 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 ARTICLES 4 and 5 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 6. The governmental body shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered, and if the meeting will be conducted by telephone or other electronic means, the notice of the meeting shall identify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, Internet message board, or other computer link, it shall post a notice of the meeting on its website in addition to on the appropriate bulletin board at City Hall, and shall notify the public how to access that meeting. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public

governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on the appropriate bulletin board at City Hall which is easily accessible to the public and clearly designated for that purpose.

ARTICLE 7. Notice conforming with all of the requirements of ARTICLE 6 above shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

a) When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably convenient 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.

b) If another provision of law requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

c) A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including, but not limited to, a record of any votes taken at such meeting. The minutes shall include the date, time, place, members present, members absent and a record of any votes taken. When a roll call vote is taken, the minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the individual member of the public governmental body.

ARTICLE 8. 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 9. 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 ARTICLE 1 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

ARTICLE 10. 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 11. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian. 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 end of the third business day following the date the request is received by the custodian. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If additional delay is necessary, the custodian shall give an explanation for the delay and the earliest date the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

a) 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.

b) 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 of the public governmental body, and the actual costs of research time. The custodian may require payment prior to duplicating copies. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. Documents may be furnished without charge or at a reduced charge when the City Manager determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the request. Payment of such copying fees may be requested prior to the making of copies.

c) 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.

d) The custodian may designate deputy custodians in the following departments: administrative services, development services, parks and recreation, public safety and public works.

ARTICLE 12. If a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the

exempt and nonexempt material and make the nonexempt material available for examination and copying. When designing a public record, a public governmental body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public governmental body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

PASSED AND ADOPTED THIS 19th DAY OF August, 2024.

Stacy Kinder Mayor

ATTEST:

Gayle L. Conrad, City Clerk