

MINUTES OF MEETING HELD DECEMBER 12, 2011

The Common Council of the City of Somerset, Kentucky met in a regular session on Monday, December 12, 2011 at 7:00 p.m. with the following present: Mayor Eddie Girdler. Council Members: Tom Eastham, Linda Stringer, Jerry Wheeldon, Mark Beasley, Jerry Girdler, Mike New, Donna Hunley, John Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett. City Attorney Carrie Wiese and City Clerk David Godsey. Absent: Council Member Jim Rutherford.

Mr. Wheeldon moved to approve the minutes of the regular meeting held on November 28, 2011 along with the reports as mailed. Mr. Beasley seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

Mr. Mitchell moved to approve the following Resolution regarding the Armstrong Hardwood Flooring Company Bonds. Mr. Eastham seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

|   |   |
|---|---|
| <p>NOTICE OF ADOPTION<br/>AND SUMMARY OF RESOLUTION</p> <p>I. TITLE</p> <p>A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOMERSET, KENTUCKY, AUTHORIZING AND APPROVING AMENDMENTS TO THE LOAN AGREEMENT BETWEEN THE CITY OF SOMERSET, KENTUCKY AND ARMSTRONG HARDWOOD FLOORING COMPANY, A TENNESSEE CORPORATION (THE "COMPANY") AND THE TRUST INDENTURE BETWEEN U.S. BANK NATIONAL ASSOCIATION AND THE CITY OF SOMERSET, KENTUCKY AND ANY AND ALL OTHER RELATED DOCUMENTS NECESSARY THERETO REGARDING THE \$10,000,000 PRINCIPAL AMOUNT OF CITY OF SOMERSET, KENTUCKY VARIABLE RATE DEMAND INDUSTRIAL BUILDING REVENUE REFUNDING BONDS (ARMSTRONG HARDWOOD FLOORING COMPANY PROJECT), SERIES 2009 (THE "BONDS") ISSUED REGARDING THE MANUFACTURING FACILITY LOCATED AT 630 INDUSTRY ROAD, SOMERSET, PULASKI COUNTY, KENTUCKY, 42501, AND APPROVING, AUTHORIZING AND ACKNOWLEDGING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE LOAN AGREEMENT BETWEEN THE CITY OF SOMERSET, KENTUCKY AND THE COMPANY; A SUPPLEMENT TO THE INDENTURE BETWEEN U.S. BANK NATIONAL ASSOCIATION AND THE CITY OF SOMERSET, KENTUCKY; AND ANY AND ALL OTHER RELATED DOCUMENTS NECESSARY THERETO; AND AUTHORIZING THE DISTRIBUTION OF A SECOND SUPPLEMENT TO OFFERING MEMORANDUM IN CONNECTION WITH THE REMARKETING OF THE BONDS.</p> <p>II. SUMMARY</p> <p>Notice is hereby given that a Resolution, the title of which is the foregoing, was adopted at a meeting of the City Council of the City of Somerset, Kentucky (the "City"), at City Council Chambers, Somerset City Hall, 400 E. Mt. Vernon Street, Somerset, Kentucky, 42501, on December 12, 2011, at 7:00 p.m. local time.</p> <p>5906291 6</p> | <p>A summary of said Resolution is as follows:</p> <p>A. The Resolution authorizes and approves the execution of an agreement containing amendments to the Loan Agreement and Trust Indenture necessary in connection with the issuance of an alternate letter of credit by The Bank of Nova Scotia to secure the \$10,000,000 City of Somerset, Kentucky Variable Rate Demand Industrial Building Revenue Refunding Bonds (Armstrong Hardwood Flooring Company Project), Series 2009 (the "Bonds"), which were issued on July 22, 2009, for the purpose of refinancing the costs of acquiring, constructing and equipping a hardwood flooring manufacturing facility located at 630 Industry Road, Somerset, Pulaski County, Kentucky, 42501.</p> <p>B. The Resolution further authorizes and approves the distribution of a Second Supplement to Offering Memorandum necessary to remarket the Bonds upon the issuance of the alternate letter of credit securing the Bonds, and any and all other related documents necessary thereto.</p> <p>C. The Resolution authorizes the Mayor and other City officials to execute any and all documents and to take any other necessary actions to effect the issuance of the alternate letter of credit and the remarketing of the Bonds.</p> <p>The full text of the Resolution is on file in the office of the undersigned City Clerk of the City at the Somerset City Hall, 400 E. Mt. Vernon Street, Somerset, Kentucky, 42501, where it is available for public inspection between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.</p> <p><i>David B. Malone</i><br/>City Clerk<br/>City of Somerset, Kentucky</p> <p>I, David B. Malone, hereby certify that I am an attorney-at-law in the Commonwealth of Kentucky and that this is a true and accurate summary of the above-described Resolution.</p> <p><u>/s/David B. Malone</u><br/>Bond Counsel</p> <p>5906291 7</p> |
|---|---|

\*a complete copy of Resolution # 11-02 is on file in the City Clerk’s Office or online at cityofsomerset.com.

Second reading was given the following Ordinance # 11-18:

|   |  |
|---|--|
| <div><p>ORDINANCE NO. <del>11-18</del></p><p>AN ORDINANCE TO THE CITY OF SOMERSET <b>AMENDING</b> ORDINANCE 91-27, KNOWN AS THE CITY'S "SEWER USE ORDINANCE", AND ORDINANCE 09-04 WHICH IS THE MOST RECENT ORDINANCE SETTING "LOCAL LIMITS" FOR PRETREATMENT MODIFICATIONS;</p><p>WHEREAS, CURRENT EPA/DIVISION OF WATER PRETREATMENT COMPLIANCE REQUIREMENTS HAVE CHANGED AND THE CITY'S ORDINANCES THEREFORE NEED UPDATED AND AMENDED PER THE AUDIT OF THE CITY ISSUED ON OR ABOUT THE 3<sup>RD</sup> DAY OF OCTOBER, 2011 BY THE DIVISION OF WATER; AND</p><p>WHEREAS, THE KENTUCKY DIVISION OF WATER REQUIRES SUCH CHANGES TO BE MADE BEFORE IT WILL CONSIDER THE CITY'S PRETREATMENT PROGRAM TO BE UPDATED AND COMPLETE AND READY FOR PUBLIC NOTICE; AND</p><p>WHEREAS, TITLE 40 OF THE CODE OF FEDERAL REGULATIONS (40 CFR 403) HAS BEEN AMENDED ADOPTING BOTH REQUIRED, AND OPTIONAL CHANGES; AND THE CITY'S ORDINANCES REGARDING SUCH MUST BE AMENDED AS WELL TO MEET SAID CHANGES;</p><p>NOW THEREFORE, PURSUANT TO KRS 83A AND KRS 424, BY AND THROUGH ORDINANCE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOMERSET, KENTUCKY:</p><p>(I) That the following modifications considered to be required, and not optional, to the City's pretreatment program as set forth in Ordinances #91-27 (Sewer Use Ordinance) and #09-04 (Local Limits Ordinance), is herein approved and adopted by the City of Somerset by and through the Common Council as set forth below.</p><p>(II) The modifications shall be as follows:</p><p>A. The City hereby adopts all applicable "required" changes made to the National Pretreatment Program Streamlining Rules as set forth in 40 CFR 403, specifically the following:</p><ol style="list-style-type: none"><li>Slug Control Requirements per 403.8(f)(1)(iii)(B)(6): The City hereby incorporates slug control requirements into the Sewer Use Ordinance control mechanisms and shall hereafter have the ability to modify those control mechanisms as necessary to meet DOW/EPA requirements and/or changes in the future.</li><li>Evaluation for a Plan or Action to Control Slug Discharges per 403.8(f)(2)(vi): The City shall conduct evaluations of</li></ol></div> <div><p>1</p></div> | <div><p>all Sewer Industrial Users for the need for a slug control plan or other actions at least one time and such shall be documented and kept of record by the City. Modifications to the control plan are to be made as necessary according to the evaluation. If an industrial user has already been evaluated for slug control by the City, then no new evaluation is needed so long as such is documented by the City and no changes occur.</p><ol style="list-style-type: none"><li>Sewer Industrial Users must notify of any changes per 403.8(f)(2)(vi): The City shall ensure that Sewer Industrial Users notify the City immediately of changes that occur at the facility affecting the potential for a slug discharge so that the City can re-evaluate the need for a slug control plan or other actions for that user to prevent such discharge.</li><li>Significant Noncompliance definition change/expansion per 403.8(f)(20)(viii)(A-C): The City herein adopts the changes and expansions regarding the type of "Standards and Requirements" that are to be considered when determining whether a Sewer Industrial User's violation(s) constitutes "Significant Noncompliance". Specifically, the definitions for "chronic violations" as set forth in (403.8(f)(2)(viii)(A)), "technical review criteria violations" set forth in (403.8(f)(2)(viii)(B)), and "other" violations set forth in (403.8(f)(20)(viii)(C)).</li><li>Sewer Industrial User Reports must include Best Management Practices (BMPs) compliance information per 403.12(b), (e), and (h): The City shall require Sewer Industrial Users to report on compliance with BMP-based categorical Pretreatment Standards, or the City's Local Limits as set forth in the City's Sewer Use Ordinance and any amendments thereafter regarding said Local Limits. The City shall have authority to enforce said requirements per the City's Sewer Use Ordinance where users fail to submit the required information.</li><li>Sewer Industrial Users control mechanisms must contain BMPs as required by the City, or other competent authority per 403.8 (f)(1)(iii)(B)(3): The City shall require Sewer Industrial Users to include BMPs in the control mechanisms when appropriate, particularly in regards to the Local Limits set by the City in Ordinance 09-04.</li></ol></div> <div><p>2</p></div> |
| <div><ol style="list-style-type: none"><li>Documentation Requirements of compliance with BMPs per 403.12(o): The City shall require Sewer Industrial Users to maintain records of BMP compliance in the same manner as other records are maintained as part of 403.12(o). Further, the City shall require that Sewer Industrial User permits clearly require such documentation be maintained by the User.</li><li>Control Authorities must perform sampling and analysis within a time period of becoming aware of a violation per 403.12(g)(2): The City shall, if it is considered the "Control Authority", to perform sampling for a Sewer Industrial User, and to repeat a sampling and analysis within 30 days of becoming aware of an exceedance of the City's Local Limits, unless the City, or other designated Control Authority, requires that the Industrial User perform the repeat analysis themselves. In any case, the City shall have the ability to sample any time it is determined appropriate by the City regardless of who is serving as the "Control Authority".</li><li>Periodic Compliance Reports per 403.12(g)(3), (4), and (6): The City shall require periodic compliance reports with sampling requirements, and require other Control Authorities to specify the number of grab samples necessary in periodic and non-categorical Sewer Industrial Users reports, and also require non-categorical Sewer Industrial Users to report all monitoring results to the City.</li><li>Non-Categorical Sewer Industrial Users to provide samples in periodic reporting per 403.12(g)(3): The City shall require all non-categorical Sewer Industrial Users to provide representative samples in their periodic monitoring reports so that such samples are representative of conditions present during the reporting period.</li><li>How and When the City can designate a "duly authorized employee" to sign POTW reports per 403.12(m): The City shall comply with all state regulations currently in place, and adopted in the future, regarding the procedure of designation of a "duly authorized employee" so that designated person(s) shall be able to sign and submit POTW reports.</li></ol></div> <div><p>3</p></div>  | <div><p>(III) If any part of this ordinance amending Ordinances 91-27 and 09-04 is deemed by a court of competent jurisdiction to be unenforceable or unconstitutional, the remaining provisions of this amending ordinance shall continue in full force and effect.</p><p>(IV) Any Ordinance in conflict with this Amending Ordinance, or any policies in conflict with the ones enacted herein, are hereby repealed and replaced with the Amendments contained herein in so far as the same are in conflict herewith.</p><p>(V) This ordinance shall be in full force and effect upon passage, approval, and publication according to law, upon the expiration of the public notice period provided that the Division of Water, nor the City of Somerset, receive comments from the public, and finally, upon the Division of Water's approval of the Amendments contained herein.</p><p>FIRST READING <u>November 28, 2011</u></p><p>SECOND READING _____</p><p>Approved: _____</p><p>ATTEST: _____ Mayor, Eddie Girdler</p><p>City Clerk, David Godsey</p><p>APPROVED BY: _____</p><p>KENTUCKY DIVISION OF WATER</p></div> <div><p>4</p></div>   |

Mr. Beasley moved to approve the above Ordinance # 11-18 on its second reading regarding the sewer use amendment. Mr. Wheeldon seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

Mr. Beasley moved to approve the request to trade in Mayor Girdler’s vehicle. Mr. New seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

Mr. Bourne moved to refund the following amounts paid on 2010 City taxes to Donny and Nancy Goff in the amount of \$58.82. Mr. Mitchell seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

First reading was giving the following Ordinance # 11-19:

|   |
|---|
| <p style="text-align: center;">ORDINANCE NO. 11-19</p> <p>AN ORDINANCE PURSUANT TO KRS 81A.420, STATING THE CITY OF SOMERSET’S INTENT TO ANNEX TERRITORY BELONGING TO THE KENTUCKY DEPARTMENT OF TRANSPORTATION (KYDOT), TO THE CITY OF SOMERSET, KENTUCKY, AND HEREIN DECLARES SAID TERRITORY AS DESIRABLE TO ANNEX BY THE CITY;</p> |
|---|

Mr. Wheeldon moved to go into executive session for possible firefighter lawsuit. Mr. Eastham seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

Mr. Bourne moved to have the City wait on the decision of the Administrative Law Judge with the Labor Cabinet and to pay the fire department overtime and related benefits following said decision without any additional legal action. Mrs. Stringer seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. Eastham, Mrs. Stringer, Mr. Wheeldon, Mr. Beasley, Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Jim Mitchell, Pat Bourne, and Jerry Burnett.

There being no further business the meeting adjourned.

**APPROVED:** \_\_\_\_\_  
**MAYOR**

**ATTEST:** \_\_\_\_\_  
**CITY CLERK**