



**City Council Meeting
Council Chamber**

**June 15, 2023
7:00 P.M.**

Zoom Link – Internet Audio/Video:

<https://us02web.zoom.us/j/82512363295?pwd=NUp4T0VjU0hBMHVuZkwzRndzcTE4dz09>

Dial-in Number: 312 626 6799

Meeting ID: 825 1236 3295

Passcode: 531355

Public Hearing

- A. Board of Adjustment Procedures & Standards (Zoning Ordinance Text Amendment)
- B. Tree Preservation (Zoning Ordinance Text Amendment)

AGENDA

- 1. Pledge of Allegiance and Opening Prayer
- 2. Roll Call
- 3. Business from the Floor
- 4. Consent Agenda
 - A. Regular Council Meeting Minutes from **June 1, 2023.**
 - B. Payroll Warrant **#T00450 in the Amount of \$338,440.12.**
 - C. General Warrant **#5836 in the Amount of \$1,510,549.14.**

5. Ordinances:

- A. **Bill #2857** An Ordinance of the City Council of the City of Arnold, Missouri Amending Chapter 405 of the Arnold Code of Ordinances. (Board of Adjustments)
- B. **Bill #2858** An Ordinance of the City Council of the City of Arnold, Missouri, Amending Chapter 405 (Zoning) of the Arnold Code of Ordinances. (Tree Preservation).

6. Resolutions:

- A. **Resolution #23-18** A Resolution Ratifying a Quote from Rush Truck Center for the Repair of an International Dump Truck.
- B. **Resolution #23-19** A Resolution Approving a Municipal Materials Management Agreement with Republic Services for the Collection of Solid Waste.

7. Motions:

- A. A Motion to Approve Liquor License Applications

8. Reports from Mayor and Council

9. Administrative Reports

10. Adjournment

Upon request, reasonable accommodations will be provided. Contact Tammi Casey, City Clerk, Arnold City Hall, 2101 Jeffco Boulevard, Arnold, Missouri 63010. Phone: 636-296-2100.

Mayor Ron Counts called the meeting to order at 7:00 p.m.

The council meeting was also presented live via Zoom Video Conferencing.

The pledge of allegiance was recited. Councilman Rodney Mullins offered the prayer.

ROLL CALL

Those present per roll call taken by City Clerk Tammi Casey: Mayor Ron Counts, Fleischmann, Mullins, Cooley, Hood, Plunk, McArthur, Moritz, Fulbright (arrived via Zoom 7:02), Richison, Bookless, Lehmann, Sweeney, Crutchley, Wagner, Kroupa and Chief Carroll.

BUSINESS FROM THE FLOOR

Vickie Vitale, 639 Berry Drive – Spoke to council regarding her concerns with the dilapidated conditions at Bridgeview Mobile Home Park.

Debbie Tolcou, 3535 Tenbrook Road – Also voiced her concerns regarding Bridgeview Mobile Home Park.

CONSENT AGENDA

- A. REGULAR COUNCIL MEETING MINUTES FROM MAY 18, 2023**
- B. PAYROLL WARRANT #T00445 IN THE AMOUNT OF \$345,293.20**
- C. GENERAL WARRANT #5835 IN THE AMOUNT OF \$785,649.19**

Butch Cooley made a motion and so moved to approve the consent agenda. Seconded by EJ Fleischmann. Roll call vote: Fleischmann, yes; Mullins, yes; Cooley, yes; Hood, yes; Plunk, yes; McArthur, yes; Moritz, yes; Fulbright, yes; 8 Yeas: **Motion carried.**

ORDINANCES

BILL NO 2856 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AMENDING CHAPTER 605 OF THE ARNOLD CODE OF ORDINANCES WITH REGARD TO DEFINITIONS AND REGULATIONS FOR GENERAL OPERATION AND LICENSING OF LODGING ESTABLISHMENTS was read twice by City Clerk Tammi Casey. Roll call vote: Fleischmann, yes; Mullins, yes; Cooley, yes; Hood, yes; Plunk, yes; McArthur, yes; Moritz, yes; Fulbright, yes; 8 Yeas: **Ordinance passed.**

RESOLUTIONS**RESOLUTION NO 23-17 – A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A ONE-YEAR AGREEMENT WITH SKYSCRAPER MARINE LLC, DBA AS TUBBS AND SON CONSTRUCTION, TO PROVIDE ON-CALL RESIDENTIAL BUILDING AND STRUCTURE DEMOLITION SERVICES FOR THE CITY OF ARNOLD**

Brian McArthur made a motion and so moved to approve Resolution No 23-17. Seconded by Rodney Mullins. Roll call vote: Fleischmann, yes; Mullins, yes; Cooley, yes; Hood, yes; Plunk, yes; McArthur, yes; Moritz, yes; Fulbright, yes; 8 Yeas: Resolution passed.

MOTIONS**A. A MOTION TO APPROVE LIQUOR LICENSE APPLICATIONS**

Tammi Casey informed council that the Liquor Committee met earlier this evening to review all annual liquor license renewals that were received between May 18, 2023 and today. The committee is forwarding a recommendation of approval for each renewal received.

Rodney Mullins made a motion and so moved to approve all annual liquor license renewals received between May 18, 2023 and today. Seconded by Mark Hood. Roll call vote: Fleischmann, yes; Mullins, yes; Cooley, yes; Hood, yes; Plunk, yes; McArthur, yes; Moritz, yes; Fulbright, yes; 8 Yeas: Motion carried.

B. A MOTION TO HOLD A CLOSED SESSION IMMEDIATELY FOLLOWING THE CITY COUNCIL MEETING FOR THE PURPOSE OF DISCUSSING REAL ESTATE PURSUANT TO RSMo 610.021 (2)

Gary Plunk made a motion and so moved to hold a Closed Session immediately following the council meeting. Seconded by EJ Fleischmann. Roll call vote: Fleischmann, yes; Mullins, yes; Cooley, yes; Hood, yes; Plunk, yes; McArthur, yes; Moritz, yes; Fulbright, yes; 8 Yeas: Motion carried.

REPORTS FROM MAYOR AND COUNCIL

Mayor Counts thanked the council members who assisted with the job fair this year. Over 40 vendors participated in the fair, which drew over 150 job seekers. Also, last week's Farmers Market had over 2,000 people in attendance.

EJ Fleischmann, Ward 1 – Stated that residents have told him how much they enjoy the flags that are placed on the bridge and around City Hall for Memorial Day.

Gary Plunk, Ward 4 – Informed council he was invited to speak at the last Rotary meeting regarding the future Veterans Memorial.

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Regular Meeting
June 1, 2023

Rodney Mullins, Ward 3 – Stated he has heard positive feedback from the community regarding their interest in the future Veterans Memorial.

Dan Kroupa – Feels the passing of Proposition Public Safety was wonderful and the City’s current staff is the best we have had in years.

Bill Moritz, Ward 2 – Asked staff when information will be placed on the website regarding the City’s decision to no longer allow anonymous complaints and the reasons why this new policy is being put into place.

Brian McArthur, Ward 2 – Informed council he has asked Chief Carroll to find pricing for a new speed trailer that will record both times and speeds. Our current trailer is very old and outdated.

ADMINISTRATIVE REPORTS

Bryan Richison – Stated he went to the Farmers Market last week and it was very well attended, as it is each and every week.

Chief Carroll - informed council that Officers Mike Prusinowski and Joshua Crites have been chosen as the two new school resource officers as the result of the passing of Proposition Public Safety. They will join Officer Kevin Wilson at all Fox School campuses.

Dave Crutchley – Informed council that the roof replacement at the Rec Center has been completed. Also the City recently partnered with Arsenal Credit Union to host an E-Recycle event and over 11, 721 pounds of electronics were brought in to recycle. The event was a great success.

David Bookless – Informed council that the online and paper surveys for the Comprehensive Plan Update have been completed. The next step will be to hold public workshops at the Rec Center, which will take place on June 26th and June 28th.


Mayor Counts announced a five-minute recess before going into Closed Session.

Closed Session ended at 8:33 p.m.

A motion to adjourn the meeting was made by Butch Cooley. Seconded by Mark Hood.

Voice vote: All Yeas.

Meeting adjourned at 8:33 p.m.



City Clerk Tammi Casey, CMC/MRCC-S

CITY OF ARNOLD, MISSOURI

ROLL CALL

MEETING: COUNCIL MEETING

DATE: 6/1/2023

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BILL NO - RESOLUTION - MOTION

		ROLL CALL	CONSENT AGENDA	BILL NO 2856	RESOLUTION NO 23-17	MOTION TO APPROVE LIQUOR LICENSE RENEWALS	MOTION TO HOLD CLOSED SESSION	
COUNCIL MEMBERS:								
MAYOR	<u>RON COUNTS</u>	PRESENT						
COUNCIL:	<u>EJ FLEISCHMANN</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>RODNEY MULLINS</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>BUTCH COOLEY</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>MARK HOOD</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>GARY PLUNK</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>BRIAN MCARTHUR</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>BILL MORITZ</u>	PRESENT	YES	YES	YES	YES	YES	
COUNCIL:	<u>JASON FULBRIGHT</u>	ARRIVED VIA ZOOM 7:02	YES	YES	YES	YES	YES	
CITY ADMINISTRATOR	BRYAN RICHISON	PRESENT	PARKS DIR:		DAVE CRUTCHLEY		PRESENT	
CITY CLERK	TAMMI CASEY	PRESENT	PUBLIC WORKS:		JUDY WAGNER		PRESENT	
COM DEV	DAVID BOOKLESS	PRESENT	TREASURER:		DAN KROUPA		PRESENT	
FINANCE DIRECTOR	BILL LEHMANN	PRESENT	POLICE DEPT.		CHIEF CARROLL		PRESENT	
CITY ATTORNEY	BOB SWEENEY	PRESENT						



CITY COUNCIL AGENDA ITEM STAFF REPORT

MEETING DATE:	June 15, 2023
TITLE:	Board of Adjustment Procedures & Standards (Zoning Ordinance Text Amendment)
DEPARTMENT:	Community Development
PROJECT MANAGER:	David B. Bookless, AICP Community Development Director
REQUESTED ACTION:	Approval
ATTACHMENTS:	(1) Draft Ordinance (2) Planning Commission Staff Memorandum (3) Draft May 23, 2023 Planning Commission Meeting Minutes

EXECUTIVE SUMMARY:

The Zoning Ordinance generally designates the Board of Adjustment as the body to consider variations from requirements of the Chapter. While the procedures the Board follows, and the standards by which it makes its determinations are generally spelled out in the Code, there are additional procedures, considerations, and standards that have been established by the courts, Board precedent, and convention. The purpose of the proposed amendments contained in this draft is to clarify and formalize the followed procedures and standards, as well as to provide for some streamlining of the process for the citizenry. The draft ordinance contains the entirety of the Code section being amended, but the changes are delineated. However, a “redline” version of the ordinance, showing the specific deletions and additions, is contained within the attached Planning Commission Staff Report.

REVIEW & ANALYSIS:

At its April 25, 2023 meeting, the Planning Commission held a public hearing for the Zoning Ordinance Text Amendment. At the meeting, Staff presented its report and responded to Commission questions. Commissioner Lurk asked about how other communities handled public notification. Bookless stated that it varied, but that the proposed changes are not unusual. There were no additional questions from the Commission, and there was no public comment.

RECOMMENDATION:

On May 23, 2023, the Planning Commission, by a unanimous vote of 7 to 0, voted to recommend approval of the Zoning Ordinance Text Amendment as presented by Staff.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI,
AMENDING CHAPTER 405 OF THE ARNOLD CODE OF ORDINANCES
(BOARD OF ADJUSTMENT)**

WHEREAS, the City Council of the City of Arnold desires to amend Chapter 405 of the Arnold Code of Ordinances for purposes of improving and clarifying the procedures and review criteria of the Board of Adjustment; and

WHEREAS, the proper public hearings have been held, pursuant to City Ordinance and the laws of the state of Missouri; and

WHEREAS, the Planning Commission has submitted its report and recommendation to the City Council on the proposed amendments to Chapter 405 of the Arnold Code of Ordinances; and

WHEREAS, the City Council voted to amend Chapter 405 of the Arnold Code of Ordinances.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:

SECTION 1. Section 405.240, Board of Adjustment, of the Arnold Code of Ordinances is hereby amended by its deletion and replacement, as follows:

“Section 405.240 Board of Adjustment.

- A. **Appointment And Membership.** A Board of Adjustment is hereby established. The word "Board," when used in this Section, shall mean the Board of Adjustment. The Board of Adjustment shall consist of five (5) members, who shall be residents of the City, appointed by the Mayor and approved by Council. The term of office of the members of the Board shall be for five (5) years, except that the five (5) members first (1st) appointed shall serve respectively for the terms of one (1) year, two (2) years, three (3) years, four (4) years, and five (5) years each. Three (3) alternate members to the Board shall be appointed by the Mayor and approved by Council to serve in the absence or disqualification of any of the regular members. The term of office of the alternate members shall be for three (3) years, except that the first three (3) alternate members shall be for one (1) year, two (2) years, three (3) years respectively. Vacancies shall be filled for the unexpired term of any member or alternate whose term becomes vacant. All members and alternates shall be removable for cause by the Mayor and Council for non-performance of duty, misconduct in office, or other cause upon written charges and after public hearing.
- B. **Board Shall Elect Officers.** The Board shall elect its Chairman and Secretary from among the regular members. The term of the Chairman and Secretary shall be for one (1) year with eligibility for re-election.

- C. Board Shall Adopt Rules And Regulations. The Board shall adopt from time to time such rules and regulations as may be necessary to carry into effect the provisions of this Chapter.
- D. Meetings. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his/her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. Unless compelling public necessity requires a lesser amount of time, fifteen (15) days' notice of all hearings shall be provided as follows:
1. Published in at least one (1) newspaper having general circulation within the City; and
 2. Delivered in written form to the owners of properties bordering the property being considered for relief; and
 3. Conspicuously posted upon the property being considered for relief per the requirements contained in subparagraph (Q) of this Section.
- E. Alternates To Serve. Alternates shall serve as provided herein.
1. Alternates shall serve at the call of the Chairman or Acting Chairman in the absence or disqualification of the regular members of the Board of Adjustment.
 2. Alternates shall, whenever possible, rotate substitution duties.
 3. Alternates shall have all the duties and powers of a regular member during the hearing for which he/she is substituting.
 4. If an alternate has begun to hear a case, he/she shall remain as a member of that Board quorum until a decision has been rendered on that particular case.
 5. Alternates may serve on any appeal case, regardless of applicant preference.
- F. Records. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions. All such records shall be immediately filed in the office of the Board and shall be public record. All testimony shall be taken down by a reporter employed by the Board for that purpose. It shall be the duty of the Secretary to see that all records are kept in accordance with this Section.
- G. Appeals. Appeals to the Board may be taken by any person aggrieved, any neighborhood organization as defined in Section 32.105, RSMo., representing such person, or by any office, department, board, or bureau of the City of Arnold affected by any decision of the Zoning Enforcement Officer. Such

appeal shall be taken within reasonable time as prescribed by the Board by general rule, by filing with the Zoning Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof.

- H. Appeals shall be submitted upon forms provided for that purpose and shall show the minimum information as prescribed on the forms. It shall be the responsibility of the appellant to furnish such maps, data, and information as may be prescribed for that purpose by the Board so as to assure fullest practical presentation of facts for the permanent record.
- I. The Zoning Enforcement Officer shall forthwith transmit to the Board all the papers constituting the record upon which the appeal is taken.
- J. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board, after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate would, in his/her opinion, cause eminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown. In such cases of peril to life or property, fifteen (15) days' notice in the newspaper shall not be required but due notice to parties in interest shall be given.
- K. Jurisdiction Of Board. The Board of Adjustment shall have the following duties:
 - 1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of this Chapter.
 - 2. To hear and decide all matters referred to the Board or upon which it is required to review by ordinance.
 - 3. To permit the reconstruction of a non-conforming building which has been destroyed or partially destroyed by fire or other act of God where the Board shall find compelling public necessity requiring a continuance of the non-conforming use.
 - 4. To authorize, as a special exception, the change of a non-conforming use to another non-conforming use, either by general rule or by making findings in the specific case, to a proposed use equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting any such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Chapter.
 - 5. To authorize a variance where practical difficulties or extraordinary hardships would result from strict compliance with these regulations and

amount to a practical confiscation of such property as distinguished from a mere inconvenience. The Board may grant a variance so that substantial justice may be done and the public interest secured, provided such variance shall not have the effect of nullifying the intent or purposes of these regulations and, further, provided, the Board shall not grant variances unless it shall make findings based upon the evidence presented to it in each specific case that all review criteria contained in this section are satisfied:

- a. The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - i. In addition to the general requirement to ensure that the variance will not be detrimental to the public safety health or welfare the determining the foregoing, the Board shall consider whether, and to what extent, the proposed variation will impair an adequate supply of light and air to adjacent property, or increase the danger of fire, or diminish or impair property values within the neighborhood.
 - b. The conditions upon which the request for a variance is based are unique to the property to which the variance is sought, and are not applicable generally to other property.
 - c. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the letter of these regulations is carried out.
 - d. The inability to obviate the difficulty or hardship by some method, feasible for the applicants to pursue, other than the variance.
 - e. The variance requested is the minimum necessary to overcome the difficulty or hardship which was the basis for the requested variance.
 - f. That the alleged difficulty or hardship has not been created by any person having an interest in the property at any time.
 - g. The variance can be granted without substantial impairment to the intent, purpose and integrity of the comprehensive plan or any master plan, neighborhood plan, or transportation plan affecting the subject property.
- L. Conditions. In granting variances, the Board of Adjustment may require conditions as it will, in its judgment, secure substantially the objectives or requirements of these regulations.
- M. In exercising the above-mentioned powers, the Board may reverse or affirm,

wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

N. The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse or modify any order, requirement, decision, or determination of the Zoning Enforcement Officer, or to decide on any matter which it is required to pass under this Chapter, or to affect any variance in this Chapter.

O. In the event that any application is denied by the Board of Adjustment, a reapplication concerning the same property or site shall not be accepted until six (6) months following the date of final action on the original application has elapsed, unless it can be shown to the satisfaction of the Zoning Enforcement Officer or his designated representative that:

1. A significantly different plan is proposed; or
2. New facts or other pertinent information have been discovered that were not previously presented and were not reasonably capable of discovery by the applicant prior to the previous application.

P. Appeals of Board Decisions.

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment or of any officer, department, commission, board or bureau of the City of Arnold may present to the Circuit Court having jurisdiction in Jefferson County, a petition, duly verified, stating that such decision is illegal, in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Such petition shall be presented to the court within thirty (30) days after receipt of notice of the decision of the Board or such officer, department, commission, board or bureau.
2. Costs shall not be allowed against the Board in any such action unless it shall appear to the court that it acted with gross negligence or in bad faith, or with malice in making the decision appealed from.

Q. Notice of Hearings - Signs

1. Sign Content. All signs required by this section shall be entitled "PUBLIC NOTICE" and shall state the time and place of the hearing, the subject matter of the hearing, and any other relevant information determined to be instructive to the public, as directed by the Community Development Department.

2. Sign Dimensions.

- a. For matters concerning a single residential lot, the sign shall be at

least one and one-half (1.5) feet by two (2.0) feet;

- b. For all other matters the sign shall be at least two (2.0) feet by three (3.0) feet.”

SECTION 2. If any part of this Ordinance is found to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or effectiveness of the remaining provisions of this Ordinance or any part thereof and said Ordinance shall be read as if said invalid provision was struck therefrom and the context thereof changed accordingly with the remainder of the Ordinance to be and remain in full force and effect.

SECTION 3. All ordinances, resolutions or orders, or parts thereof, which conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after its passage and approval.

READ TWO TIMES, PASSED AND APPROVED ON THIS _____ DAY OF _____ 2023.

Presiding Officer of the Council

Mayor Ron Counts

ATTEST:

City Clerk Tammi Casey

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

City Attorney Robert Sweeney



SUMMARY TO PLANNING COMMISSION

CITY OF ARNOLD

APPLICATION #: PC-2023-15

APPLICATION NAME: Application to Amend Municipal Code Chapter 405 (Zoning) - Board of Adjustment Procedures & Standards

APPLICANT: City of Arnold

REQUEST: A City-initiated request to amend Chapter 405, Zoning, of the Arnold Code of Ordinances related to the procedures and standards of the Board of Adjustment.

MEETING DATE: May 23, 2023

REPORT DATE: May 16, 2023

CASE MANAGER: David B. Bookless, AICP

RECOMMENDATION: APPROVAL



SUMMARY TO PLANNING COMMISSION

CITY OF ARNOLD

BACKGROUND

The Board of Adjustment is the City of Arnold's authorized body of citizens that (i) decides on appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer; (ii) grants variances from strict compliance with zoning regulations; grants relief to allow the reconstruction of a non-conforming building where destroyed by "fire or other act of God"; (iii) may authorize the change of a non-conforming use to another non-conforming use; (iv) that hears and decides on all other matters referred to the Board or as otherwise required by ordinance. The Board meets relatively infrequently as City Code is intended to be fully complied with except in the most extraordinary circumstances as allowed of by the Code.

The issue at hand is that while the procedures the Board follows and the standards by which it makes its determinations are, generally, spelled out in the Code, there are likewise followed procedures and standards that have been established by precedent and convention. The purpose of the proposed amendments contained in this draft is to clarify and formalize such procedures and standards, as well as to provide for some streamlining of the process for the citizenry.

DISCUSSION/ANALYSIS

The analysis by Staff that follows is intended to allow the Planning Commission to reach the most informed decision possible and to facilitate discussion. Such discussion is important to identify and consider any potential unintended consequences of the proposed amendment.

Under current code, public notice of a petition to the Board of Adjustment is published in the newspaper 15 days prior to the hearing, and such notice is mailed to the owner of all properties with 185 feet of the subject property. However, properties within 185 feet might not be directly impacted by the requested change, whereas the abutting properties very well might be. Additionally, such mailed notices often go unread in the current era where much of what we receive is "junk mail". A more impactful way of notifying neighbors who might be impacted is to have a sign posted in the yard, *at a size scaled to the character of the neighborhood*, alerting them to there being a hearing. If interested, the neighbors can then contact the City for more information. Limiting mailings to abutting neighbors only might be helpful in ensuring those who might be most impacted are notified in multiple formats.

The existing code includes review criteria to be considered, but is unclear as to whether all criteria must be satisfied. In practice, all criteria must be considered and satisfied in order for an affirmative finding to be reached, and the draft codifies that practice.

While the Board generally considers the impact of what an approval might have on neighboring properties, the draft provides specific guidance on what should be considered, including, but not limited to the impact on the supply of light to neighbors, on fire safety, and on property values. Further, the draft codifies the practice of granting the Board the authority to impose conditions of approval to prevent injurious effects on neighboring properties. Further, the draft provides clarification reflecting the practice of the Board in determining

SUMMARY TO PLANNING COMMISSION

CITY OF ARNOLD



DISCUSSION/ANALYSIS, CONT.

whether an approval is warranted by requiring applicants to demonstrate that the hardship on which the request is based was not self-imposed, that there isn't a feasible method to overcome the difficulty or hardship other than a variance, that the request is the minimum necessary to overcome the difficulty or hardship, and that the variance doesn't substantially impair the intent, purpose, or integrity of the City's Comprehensive Plan, or any neighborhood plan, transportation plan, etc.

The draft also includes a new limitation on re-applying after a denial that is consistent with limitations the Council has adopted for other requests, such as rezonings, conditional use permits, etc. Further, the draft restates a denied applicant's right to appeal a Board decision to the Circuit Court of Jefferson County with some limitations.

SUMMARY OF PROPOSED REVISIONS (SEE ATTACHMENTS FOR DRAFT ORDINANCE LANGUAGE)

- ***Public Notice***

- ◆ Add a *new* requirement that a yard sign advertising the hearing must be posted on the subject property, and that such sign shall be dimensioned as follows:
 - * Min. 1½ ft. x 2 ft.' on single-family residential properties
 - * Min. 2 ft. x 3 ft. on all others properties
- ◆ Reduce the mailing requirement from all properties within 185 feet to only properties bordering the subject property.

- ***Clarification & Formalization***

- ◆ Each of the review criteria must be satisfied.
- ◆ In addition to all other review criteria, the impact on the supply of light to neighbors, on fire safety, and on property values in the neighborhood must be considered.
- ◆ Must be demonstrated that:
 - * the hardship was not self-imposed; and
 - * there isn't a feasible method to overcome the difficulty or hardship other than a variance; and
 - * the request is the minimum necessary to overcome the difficulty or hardship; and
 - * the variance doesn't substantially impair the intent, purpose, or integrity of the City's Comprehensive Plan, or any neighborhood plan, transportation plan, etc.

- ***Other Changes***

- ◆ If a variance is denied, re-application within 6 months is only permitted if:
 - * A significantly different plan is proposed; or



SUMMARY TO PLANNING COMMISSION

CITY OF ARNOLD

DISCUSSION/ANALYSIS, CONT.

- * New facts or other pertinent information have been discovered that were not previously presented and were not reasonably capable of discovery by the applicant prior to the previous application.
- ◆ Clarifies that Board decisions can only be appealed to the Circuit Court of Jefferson County:
 - * When such decisions are believed to be illegal; and
 - * Should the court find in the applicants favor, costs shall not be permitted unless the Court finds the Board acted with gross negligence, in bad faith, or with malice.

FINDINGS AND RECOMMENDATION

SUCH AMENDMENT IS REQUIRED BY PUBLIC NECESSITY AND CONVENIENCE AND GENERAL WELFARE

Staff finds that the proposed text amendments are warranted by the public necessity and convenience to provide reasonable and fair regulations in the Zoning Ordinance that is not substantially more burdensome than that in other nearby communities.

Staff finds that the proposed text amendments are warranted by the need to promote and protect the general welfare by protecting the economic and tax base of the City, preserving and enhancing the values of property owners and users, promoting the orderly and harmonious development and redevelopment of the City, preserving and promoting the character and stability of the City and its various residential and commercial neighborhoods, improving the appearance of the City, and promoting the best use and development of commercial land in accordance with the Comprehensive Plan.

RECOMMENDATION

Staff finds that the proposed text amendments meet or exceed review criteria and further advances the intent of Chapter 405. Based on this finding, Staff requests favorable consideration of the application.

A handwritten signature in black ink that reads "David B. Bookless".

David B. Bookless, AICP
Community Development Director



ATTACHMENTS

Section 405.240 Board of Adjustment.

- A. Appointment And Membership. A Board of Adjustment is hereby established. The word "Board," when used in this Section, shall mean the Board of Adjustment. The Board of Adjustment shall consist of five (5) members, who shall be residents of the City, appointed by the Mayor and approved by Council. The term of office of the members of the Board shall be for five (5) years, except that the five (5) members first (1st) appointed shall serve respectively for the terms of one (1) year, two (2) years, three (3) years, four (4) years, and five (5) years each. Three (3) alternate members to the Board shall be appointed by the Mayor and approved by Council to serve in the absence or disqualification of any of the regular members. The term of office of the alternate members shall be for three (3) years, except that the first three (3) alternate members shall be for one (1) year, two (2) years, three (3) years respectively. Vacancies shall be filled for the unexpired term of any member or alternate whose term becomes vacant. All members and alternates shall be removable for cause by the Mayor and Council for non-performance of duty, misconduct in office, or other cause upon written charges and after public hearing.
- B. Board Shall Elect Officers. The Board shall elect its Chairman and Secretary from among the regular members. The term of the Chairman and Secretary shall be for one (1) year with eligibility for re-election.
- C. Board Shall Adopt Rules And Regulations. The Board shall adopt from time to time such rules and regulations as may be necessary to carry into effect the provisions of this Chapter.
- D. Meetings. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his/her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. ~~Fifteen (15) days' notice of all hearings shall be published in at least one (1) newspaper having general circulation within the City unless compelling public necessity requires a lesser amount of time, and notification to all adjoining property owners within one hundred eighty five (185) feet from the property being considered for relief shall be provided prior to the date of the public hearing. Unless compelling public necessity requires a lesser amount of time, fifteen (15) days' notice of all hearings shall be provided as follows:~~
1. Published in at least one (1) newspaper having general circulation within the City; and
 2. Delivered in written form to the owners of properties bordering the property being considered for relief; and
 3. Conspicuously posted upon the property being considered for relief per the requirements contained in subparagraph (Q) of this Section.
- E. Alternates To Serve. Alternates shall serve as provided herein.
1. Alternates shall serve at the call of the Chairman or Acting Chairman in the absence or disqualification of the regular members of the Board of Adjustment.

2. Alternates shall, whenever possible, rotate substitution duties.
 3. Alternates shall have all the duties and powers of a regular member during the hearing for which he/she is substituting.
 4. If an alternate has begun to hear a case, he/she shall remain as a member of that Board quorum until a decision has been rendered on that particular case.
 5. Alternates may serve on any appeal case, regardless of applicant preference.
- F. Records. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions. All such records shall be immediately filed in the office of the Board and shall be public record. All testimony shall be taken down by a reporter employed by the Board for that purpose. It shall be the duty of the Secretary to see that all records are kept in accordance with this Section.
- G. Appeals. Appeals to the Board may be taken by any person aggrieved, any neighborhood organization as defined in Section 32.105, RSMo., representing such person, or by any office, department, board, or bureau of the City of Arnold affected by any decision of the Zoning Enforcement Officer. Such appeal shall be taken within reasonable time as prescribed by the Board by general rule, by filing with the Zoning Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof.
- H. Appeals shall be submitted upon forms provided for that purpose and shall show the minimum information as prescribed on the forms. It shall be the responsibility of the appellant to furnish such maps, data, and information as may be prescribed for that purpose by the Board so as to assure fullest practical presentation of facts for the permanent record.
- I. The Zoning Enforcement Officer shall forthwith transmit to the Board all the papers constituting the record upon which the appeal is taken.
- J. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board, after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate would, in his/her opinion, cause eminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown. In such cases of peril to life or property, fifteen (15) days' notice in the newspaper shall not be required but due notice to parties in interest shall be given.
- K. Jurisdiction Of Board. The Board of Adjustment shall have the following duties:
1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of

this Chapter.

2. To hear and decide all matters referred to the Board or upon which it is required to review by ordinance.
3. To permit the reconstruction of a non-conforming building which has been destroyed or partially destroyed by fire or other act of God where the Board shall find compelling public necessity requiring a continuance of the non-conforming use.
4. To authorize, as a special exception, the change of a non-conforming use to another non-conforming use, either by general rule or by making findings in the specific case, to a proposed use equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting any such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Chapter.
5. To authorize a variance where practical difficulties or extraordinary hardships would result from strict compliance with these regulations and amount to a practical confiscation of such property as distinguished from a mere inconvenience. The Board may grant a variance so that substantial justice may be done and the public interest secured, provided such variance shall not have the effect of nullifying the intent or purposes of these regulations and, further, provided, the Board shall not grant variances unless it shall make findings based upon the evidence presented to it in each specific case that all review criteria contained in this section are satisfied:
 - a. The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - i. In addition to the general requirement to ensure that the variance will not be detrimental to the public safety health or welfare the determining the foregoing, the Board shall consider whether, and to what extent, the proposed variation will impair an adequate supply of light and air to adjacent property, or increase the danger of fire, or diminish or impair property values within the neighborhood.
 - b. The conditions upon which the request for a variance is based are unique to the property to which the variance is sought, and are not applicable generally to other property.
 - c. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the letter of these regulations ~~are~~is carried out.
 - d. The inability to obviate the difficulty or hardship by some method, feasible for the applicants to pursue, other than the variance.

- e. The variance requested is the minimum necessary to overcome the difficulty or hardship which was the basis for the requested variance.
- f. That the alleged difficulty or hardship has not been created by any person having an interest in the property at any time.
- g. The variance can be granted without substantial impairment to the intent, purpose and integrity of the comprehensive plan or any master plan, neighborhood plan, or transportation plan affecting the subject property.

L. Conditions. In granting variances, the Board of Adjustment may require conditions as it will, in its judgment, secure substantially the objectives or requirements of these regulations.

M. In exercising the ~~above-mentioned~~ above-mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

N. The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse or modify any order, requirement, decision, or determination of the Zoning Enforcement Officer, or to decide on any matter which it is required to pass under this Chapter, or to ~~effect~~ affect any variance in this Chapter.

O. In the event that any application is denied by the Board of Adjustment, a reapplication concerning the same property or site shall not be accepted until six (6) months following the date of final action on the original application has elapsed, unless it can be shown to the satisfaction of the Zoning Enforcement Officer or his designated representative that:

1. A significantly different plan is proposed; or
2. New facts or other pertinent information have been discovered that were not previously presented and were not reasonably capable of discovery by the applicant prior to the previous application.

P. Appeals of Board Decisions.

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment or of any officer, department, commission, board or bureau of the City of Arnold may present to the Circuit Court having jurisdiction in Jefferson County, a petition, duly verified, stating that such decision is illegal, in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Such petition shall be presented to the court within thirty (30) days after receipt of notice of the decision of the Board or such officer, department, commission, board or bureau.
2. Costs shall not be allowed against the Board in any such action unless it shall appear to the court that it acted with gross negligence or in bad faith, or with malice in making the

decision appealed from.

Q. Notice of Hearings - Signs

1. Sign Content. All signs required by this section shall be entitled "PUBLIC NOTICE" and shall state the time and place of the hearing, the subject matter of the hearing, and any other relevant information determined to be instructive to the public, as directed by the Community Development Department.

2. Sign Dimensions.

a. For matters concerning a single residential lot, the sign shall be at least one and one-half (1.5) feet by two (2.0) feet;

b. For all other matters the sign shall be at least two (2.0) feet by three (3.0) feet.



**PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, CITY HALL, 2101 JEFFCO BLVD.
May 23, 2023**

MINUTES

REGULAR SESSION

1. **CALL TO ORDER:** The regular meeting of the Arnold Planning Commission was called to order by Chairman Andrew Sutton at 7:00 p.m.
2. **ROLL CALL OF COMMISSIONERS:** Andrew Sutton, Alan Bess, Brian McArthur, Del Williams, Frank Kutilek (Excused), Steve Buss (Excused), Justin Lurk, Phil Hogan, Tim Seidenstricker. **STAFF PRESENT:** David Bookless (Community Development Director), Robert Sweeney (City Attorney), Christie Hull-Bettale (Engineer/Planner), Sarah Turner (Senior Planner) (Excused).
3. **PLEDGE OF ALLEGIANCE:** The Commission and Staff stood and spoke the Pledge of Allegiance.
4. **APPROVAL OF MINUTES:** Motion by Hogan to approve the minutes from the April 25th, 2023 meeting. Second by Bess. *Voice vote:* Approved 7-0.
5. **PUBLIC COMMENT:** There was no comment from members of the public present or on Zoom.
6. **PUBLIC HEARINGS:**
 - a. **PC-2023-15 Board of Adjustment Regulations (Zoning Text Amendment):** Mr. Sutton requested a motion to open the public hearing. Motion by Seidenstricker. Second by Buss. *Voice vote:* Approved 7-0. Mr. Bookless presented the Staff Report, recommending favorable consideration of the text amendment to the City Council. Lurk asked about how other communities handled public notification. Bookless stated that it varied, but that the proposed changes are not unusual. There were no further comments or questions from the Commission. There were no public comments. Mr. Sutton requested a motion to close the hearing. Motion by Hogan. Second by Bess. *Voice vote:* Approved 7-0.
 - b. **PC-2023-16 Tree Preservation Regulations (Zoning Text Amendment):** Mr. Sutton requested a motion to open the public hearing. Motion by Seidenstricker. Second by Lurk. *Voice vote:* Approved 7-0. Ms. Hull-Bettale presented the Staff Report, recommending favorable consideration of the text amendment to the City Council. McArthur commented in favor of the amendment. There were no comments from the Commission. Mr. Sutton requested a motion to close the hearing. Motion by Bess. Second by Lurk. *Voice vote:* Approved 7-0.
7. **OTHER BUSINESS:**
 - a. **Comprehensive Plan Update:** Mr. Bookless updated the Commission about the next steps in the process, including upcoming community engagement workshops with the public.
8. **ADJOURNMENT OF REGULAR SESSION:** Motion by Hogan to close regular session and move into executive session. Second by Lurk. *Voice vote:* Approved 7-0. Session adjourned at 7:18 p.m.

EXCECUTIVE SESSION

9. **OLD BUSINESS:** *None*
10. **NEW BUSINESS:**
 - a. **PC-2023-15 Board of Adjustment Regulations (Zoning Text Amendment):** Motion by Seidenstricker to recommend approval of the proposed amendment to the Zoning Ordinance to the City Council as recommended by Staff. Second by Lurk. The Commission had no further discussion. *Roll call vote.* Andrew Sutton, yes; Alan Bess, yes; Brian McArthur, yes; Del Williams, yes; Justin Lurk, yes; Phil Hogan, yes; Tim Seidenstricker, yes. Approved 7-0.

b. **PC-2023-16 Tree Preservation Regulations (Zoning Text Amendment):** Motion by Lurk to recommend approval of the proposed amendment to the Zoning Ordinance to the City Council as recommended by Staff. Second by Williams. The Commission had no further discussion. *Roll call vote.* Andrew Sutton, yes; Alan Bess, yes; Brian McArthur, yes; Del Williams, yes; Justin Lurk, yes; Phil Hogan, yes; Tim Seidenstricker, yes. Approved 7-0.

11. **DIRECTOR'S REPORT:** Mr. Bookless announced that the next scheduled of the Commission scheduled for June 13th will be held. Mr. Bookless discussed the need for an update of the Sign Code and that it will be the subject of a future meeting. Mr. Sweeney concurred with Mr. Bookless's comments.

12. **COUNCIL LIAISON'S REPORT:** Councilman McArthur had no report.

13. **ANNOUNCEMENTS:** Councilman Sutton thanked Mr. McArthur and Mr. Seidenstricker for their efforts to get much needed street maintenance done at the Strawberry Ridge subdivision. Mr. Hogan announced that he will not be at the June 13th meeting of the Commission as he will be attending a conference. There were no more announcements.

14. **ADJOURNMENT:** Motion by Lurk to adjourn. Second by Bess. *Voice vote:* Approved 9-0. Meeting adjourned at 7:25 p.m.

Respectfully Submitted,

Steven Buss
 Planning Commission Secretary

VOTE RECORD

	Roll Call	Min.	PC-2023-15 PH Open	PC-2023-15 PH Close	PC-2023-16 PH Open	PC-2023-16 PH Close	Close Reg. Open Exec.	Vote PC-2023-15	Vote PC-2023-16	Adjourn
Andrew Sutton	P	Y	Y	Y	Y	Y	Y	Y	Y	Y
Alan Bess	P	2 nd - Y	2 nd - Y	2 nd - Y	Y	1 st - Y	Y	Y	Y	2 nd - Y
Brian McArthur	P	Y	Y	Y	Y	Y	Y	Y	Y	Y
Del Williams	P	Y	Y	Y	Y	Y	Y	Y	2 nd - Y	1 st - Y
Frank Kutilek	E	-	-	-	-	-	-	-	-	-
Steve Buss	E	-	-	-	-	-	-	-	-	-
Justin Lurk	P	Y	Y	Y	2 nd - Y	2 nd - Y	2 nd - Y	2 nd - Y	1 st - Y	2 nd - Y
Phil Hogan	P	1 st - Y	Y	1 st - Y	Y	Y	1 st - Y	Y	Y	Y
Tim Seidenstricker	P	Y	1 st - Y	Y	1 st - Y	Y	Y	1 st - Y	Y	Y
David Bookless	P									
Robert Sweeney	P									
Christie Hull-Bettale	P									
Sarah Turner	E									

CALL TO ORDER:	7:00 pm
ADJOURN REGULAR:	7:18 pm
ADJOURN EXECUTIVE:	7:25 pm



CITY COUNCIL AGENDA ITEM STAFF REPORT

MEETING DATE:	June 15, 2023
TITLE:	Tree Preservation (Zoning Ordinance Text Amendment)
DEPARTMENT:	Community Development
PROJECT MANAGER:	Christie Hull-Bettale, Community Development Engineer
REQUESTED ACTION:	Approval
ATTACHMENTS:	(1) Draft Ordinance (2) Planning Commission Staff Memorandum (<i>See Board of Adjustment packet item for draft minutes</i>)

EXECUTIVE SUMMARY:

The Zoning Ordinance generally designates the Board of Adjustment as the body to consider variations from requirements of the Chapter. By a quirk of word choice, allowable deviations from Tree Preservation standards are referred to as “variances” with the Planning Commission being the designated body to consider such requests. These requests often are justified by a lack of trees on the site, topographic considerations, etc., and as Tree Preservation Plans are reviewed as part of the Planning Commission’s Site Plan approval process, there is logic to the Commission continuing to be the review body. However, for clarity, such relief may be better described as “waivers” and “deviations” as opposed to variances. Therefore, the proposed amendment revises language to that end. Additionally, the amendment makes a new distinction between requests for deviations from specific technical requirements and requests for waivers from the general requirement to submit a survey or obtain a permit.

REVIEW & ANALYSIS:

At its May, 2023 meeting, the Planning Commission held a public hearing for the Zoning Ordinance Text Amendment. At the meeting, Staff presented its report, there were no questions from the Commission, and there was no public comment.

RECOMMENDATION:

On May 23, 2023, the Planning Commission, by a unanimous vote of 7 to 0, voted to recommend approval of the Zoning Ordinance Text Amendment as presented by Staff.

BILL NO. 2858

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI,
AMENDING CHAPTER 405 (ZONING) OF THE ARNOLD CODE OF ORDINANCES
(TREE PRESERVATION)**

WHEREAS, the City Council of the City of Arnold desires to amend Chapter 405 of the Arnold Code of Ordinances for purposes of improving and clarifying Tree Preservation standards and allowable deviations from their strict application; and

WHEREAS, the proper public hearings have been held, pursuant to City Ordinance and the laws of the state of Missouri; and

WHEREAS, the Planning Commission has submitted its report and recommendation to the City Council on the proposed amendment to Chapter 405 of the Arnold Code of Ordinances; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:

SECTION 1. Section 405.200 Tree Preservation, paragraph “L” is hereby amended by its deletion and replacement as follows:

“L. **Waivers and Deviations.** The City may grant requests for waivers and deviations from this Section when such requests are in harmony with the general purposes and intent of the ordinance and substantially consistent with the comprehensive plan.

1. *Waivers.*

- a. When the person or entity responsible for tree removal under this Section has filed a petition for waiver of the tree survey and/or tree permit, setting forth specific reasons related to the nature of the property and/or the location of the trees on it that make it impractical or otherwise unnecessary to conduct a tree survey or obtain a permit, the Planning Commission may waive the survey and permit requirements under this Section, but only upon a finding that such conditions warranting a waiver exist, when considering the purposes of this Section.

Grounds for such a waiver include, but are not limited to, cases where there are an unusually small number of trees on the parcel (e.g., ten trees on a 15-acre lot) or where the applicant seeks to alter the parcel pursuant to any local, state, or federal regulatory requirements. Additionally, the Planning Commission may waive the tree survey requirement when the person or entity responsible for tree removal under this Section has received certification from a licensed engineer, licensed landscape

architect or certified arborist (or other professional acceptable to the Planning Commission) that the proposed development will not encroach upon existing tree masses or that the proposed tree removal will not exceed the applicable percentages as delineated in this Section.

2. Deviations.

a. Requests for deviations from the strict requirements of this Section must be made in writing to the Planning Commission outlining the justification for request that addresses the following criteria:

(1) The granting of the deviation will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which is located.

(2) The conditions upon which the request for the deviation is based are unique to the property to which the deviation is sought, and are not generally applicable to other property.

(3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the letter of these regulations are carried out.”

SECTION 2. Section 405.200 Tree Preservation, paragraph “M” is hereby amended by its deletion and replacement as follows:

“M. Appeals. Any party dissatisfied upon the denial of a Waiver or Deviation from the strict requirements of this Section by the Planning Commission may file an appeal with the Council requesting a determination from that body. A notice of appeal shall be filed within seven (7) days after the Planning Commission's action. Notice of appeal to the Council shall be in writing and shall be filed with the City Clerk.”

SECTION 3. If any part of this Ordinance is found to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or effectiveness of the remaining provisions of this Ordinance or any part thereof and said Ordinance shall be read as if said invalid provision was struck therefrom and the context thereof changed accordingly with the remainder of the Ordinance to be and remain in full force and effect.

SECTION 4. All ordinances, resolutions or orders, or parts thereof, which conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

SECTION 5. This ordinance shall be in full force and effect from and after its passage and approval.

READ TWO TIMES, PASSED AND APPROVED ON THIS ____ DAY OF _____, 2023.

Presiding Officer of the Council

Mayor Ron Counts

ATTEST:

City Clerk Tammi Casey

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

City Attorney Robert Sweeney



PLANNING COMMISSION STAFF MEMORANDUM

MEETING DATE:	May 23, 2023
TITLE:	PC-2023-16 Tree Preservation Regulations (Zoning Text Amendment)
DEPARTMENT:	Community Development
PROJECT MANAGER:	Christie R Hull Bettale, EIT Community Development Engineer
ATTACHMENTS:	(1) Draft Text Amendment

BACKGROUND & ANALYSIS:

This City-initiated request is to amend Chapter 405, Zoning, of the Arnold Code of Ordinances as it relates to the Tree Preservation standards and allowable deviations from their strict application.

As it is written, allowable deviations from those standards are referred to as “variances” with the Planning Commission being the designated body to consider such requests. However, the Zoning Ordinance generally designates the Board of Adjustment as the body to consider “variances”.

Staff acknowledges that these requests ought to be heard by the Planning Commission, but may be better described as “waivers” and “deviations” as opposed to variances. Therefore, the proposed amendment revises language to that end. Additionally, the amendment makes a new distinction between requests for deviations from specific technical requirements and requests for waivers from the general requirement to submit a survey or obtain a permit. A “redline” version of the proposed changes are attached to this memorandum.

REQUESTED ACTION:

Staff recommends that the Planning Commission recommend approval of the proposed changes to City Council.

Section 405.200 Tree Preservation.

L. Waivers and Deviations. The City may grant requests for waivers and deviations from this Section when such requests are in harmony with the general purposes and intent of the ordinance and substantially consistent with the comprehensive plan.

~~L. Variances.~~

1. Waivers.

- a. When the person or entity responsible for tree removal under this Section has filed a petition for waiver of the tree survey and/or tree permit, setting forth specific reasons related to the nature of the property and/or the location of the trees on it that make it impractical or otherwise unnecessary to conduct a tree survey or obtain a permit, the Planning Commission may waive the survey and permit requirements under this Section, but only upon a finding that such conditions warranting a waiver exist, when considering the purposes of this Section.

Grounds for such a waiver include, but are not limited to, cases where there are an unusually small number of trees on the parcel (e.g., ten trees on a 15-acre lot) or where the applicant seeks to alter the parcel pursuant to any local, state, or federal regulatory requirements. Additionally, the Planning Commission may waive the tree survey requirement when the person or entity responsible for tree removal under this Section has received certification from a licensed engineer, licensed landscape architect or certified arborist (or other professional acceptable to the Planning Commission) that the proposed development will not encroach upon existing tree masses or that the proposed tree removal will not exceed the applicable percentages as delineated in this Section.

2. Deviations.

- a. Requests for deviations from the strict requirements of this Section must be made in writing to the Planning Commission outlining the justification for request that addresses the following criteria:

- (1) The granting of the deviation will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which is located.
- (2) The conditions upon which the request for the deviation is based are unique to the property to which the deviation is sought, and are not generally applicable to other property.
- (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the letter of these regulations are carried out.

~~1. Variances from the strict requirements of this Section must be made in writing to the Planning Commission outlining the justification for variance that addresses the following criteria:~~

~~a. The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which is located.~~

~~b. The conditions upon which the request for a variance is based are unique to the property to which the variance is sought, and are not applicable generally to other property.~~

~~c. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the letter of these regulations are carried out.~~

M. Penalties And Appeals. Any party dissatisfied upon the denial of a Waiver or Deviation ~~Variance~~ from the strict requirements of this Section by the Planning Commission may file an appeal with the Council requesting a determination from that body. A notice of appeal shall be filed within seven (7) days after the Planning Commission's action. Notice of appeal to the Council shall be in writing and shall be filed with the City Clerk.

RESOLUTION NO: 23-18

**A RESOLUTION RATIFYING A QUOTE FROM RUSH TRUCK
CENTER FOR THE REPAIR OF AN INTERNATIONAL DUMP TRUCK.**

BE IT RESOLVED. By the Council of the City of Arnold, Missouri that the City Administrator's approval of the attached quote from Rush Truck Center for the repair of an International dump truck is hereby ratified.

Presiding Officer of the City Council

Mayor Ron Counts

ATTEST:

City Clerk Tammi Casey

Date: _____

RUSH TRK CTR OF MO

3701 CHOUTEAU AVE. - SAINT LOUIS, MO 631102545

Phone: (1) 314-4497200 - Fax: (1) 314-4497298

Estimate Number: 4045680 - RO Number: 39885905

Service Writer: Abraham Montes - Date: 5/30/2023 11:06 AM (C)



Currency: USD

Unit No: 348

City of Arnold

VIN: 1HTWCAAR1DJ337672
 Model: 7400 SBA 4X2
 Engine: MAXXFORCE DT 270HP/2400 GOV
 Make: International
 Delivered: 3/22/2013
 In Service: 10 Years 2 Months
 Mileage: 23812 Eng Hrs: 2224

Recall/AFC: No

Contact Name: Charlie Allen
 Position: primary
 Phone: (636) 282-2386
 E-Mail:
 PO Number:

Operation Section A	Labor Cost	Parts Cost	Core Charge	Total Cost
General Diagnostics	\$360.00	\$0.00	\$0.00	\$360.00
Computer Hook Up - Fixed Cost	\$0.00	\$0.00	\$0.00	\$55.00

Complaint:	<i>Squealing noise, increases with RPM</i>
Cause:	<i>Brought unit up to the shop and recreated the squeal noise. Found the EGR crossover pipe is leaking at the back of the intake manifold. Need to replace the crossover and the gaskets and also the intake is pitted looking and most likely will not reseal around a new seal. Would recommend replacing the intake also. Ran a air management test and ran the snapshot through the CPA tool and it does not indicate a plugged EGR cooler. Ran a relative compression test and all cylinders are in spec. Noticed oil in the CAC while checking for the squealing noise and the unit has a closed breather. Unit is eligible for the open breather conversion kit so quoting an open breather kit. We will also need to clean the turbos and the CAC. The turbo outlet pipe to the CAC is rusted bad and the hoses are not in the best shape so quoting the tube, hoses, and all new clamps. When starting the unit the starter is grinding so also quoting a new starter.</i>
Correction:	<i>Perform repairs as necessary</i>

Operation Section B	Labor Cost	Parts Cost	Core Charge	Total Cost
Air Intake Manifold, Replace	\$2,160.00	\$1,024.80	\$0.00	\$3,184.80
(1) MANIFOLD, AIR INTAKE (1) GASKET, INTAKE MANIFOLD (1) GASKET, IRREGULAR MOLDED (1) SENSOR ASSY, AIR PRESSURE, INTAKE MANIFOLD (1) SENSOR, ASSEMBLY INTK MANIFOLD AIR TEMPERATURE				

Complaint:	<i>Not Available</i>
Cause:	<i>Not Available</i>
Correction:	<i>Not Available</i>

Operation Section C	Labor Cost	Parts Cost	Core Charge	Total Cost
Egr Crossover Duct, Replace	\$540.00	\$990.00	\$0.00	\$1,530.00
(1) DUCT, EGR CROSSOVER, W/ SEAL KIT				

Complaint:	<i>Not Available</i>
Cause:	<i>Not Available</i>
Correction:	<i>Not Available</i>

Operation Section D	Labor Cost	Parts Cost	Core Charge	Total Cost
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Open Breather Conversion	\$1,170.00	\$1,190.00	\$0.00	\$2,360.00
(1) BREATHER ASSY, CRANKCASE VENTILATION, OPEN CONVERSION KIT, TURBINE HOUSING W/ VALVE COVER				

Complaint:	Not Available
Cause:	Not Available
Correction:	Not Available

Operation Section E	Labor Cost	Parts Cost	Core Charge	Total Cost
Turbocharger, Cleaning	\$810.00	\$290.00	\$0.00	\$1,100.00
(1) CLEANING KIT, TURBO COMPRESSOR				
Turbocharger Assembly (ELECTRONICALLY CONTROLLED), Replace	\$1,080.00	\$3,965.45	\$0.00	\$5,045.45
(1) TURBOCHARGER (1) SHIELD, HEAT, TURBO (3) BOLT, HIGH TEMP, M8 X 12 (1) BOLT, HEX FLANGE HEAD, M8 X 27 (1) TUBE, TURBO OIL SUPPLY (1) SEALS KIT, TURBO (1) BOLT, M12 X 1.75 X 50MM HEX FLANGE				

Complaint:	Not Available
Cause:	Not Available
Correction:	Not Available

Operation Section F	Labor Cost	Parts Cost	Core Charge	Total Cost
Cac Cleaning, Perform	\$540.00	\$1,374.40	\$0.00	\$1,914.40
(1) CLEANER, ENGINE (1) PIPE, CAC, HOT SIDE (2) HOSE, AIR INTAKE, CAC (CAC), FLEXIBLE, 3.0 IN. DI (3) CLAMP, HOSE (1) CLAMP, HEAT EXCHANGER				

Complaint:	Not Available
Cause:	Not Available
Correction:	Not Available

Operation Section G	Labor Cost	Parts Cost	Core Charge	Total Cost
Starter Motor, Replace	\$540.00	\$505.00	\$0.00	\$1,045.00
(1) STARTER, MOTOR, 39MT, 12V, W/OCP/IMS 12T				

Complaint:	Not Available
Cause:	Not Available
Correction:	Not Available

Operation Section H	Labor Cost	Parts Cost	Core Charge	Total Cost
Road Test / Test Drive - Fixed Cost	\$0.00	\$0.00	\$0.00	\$125.00

Complaint:	Not Available
Cause:	Not Available
Correction:	Not Available

Notes: [5/30/2023 11:06 AM] - Dealer: Squealing noise, increases with RPM

Summary	
Parts:	\$9,339.65
Core:	\$0.00
Labor:	\$7,200.00
Other Items:	\$180.00
Shop:	\$500.00
Tax:	\$0.00
Haz. Waste:	\$4.00
TOTAL:	\$17,223.65

This estimate is subject to teardown and inspection and is valid for 30 days from date above. I, the undersigned, authorize you to perform the repairs and furnish the necessary materials. I understand any costs verbally quoted are an estimate only and not binding. Your employees may operate vehicle for inspecting, testing and delivery at my risk. You will not be responsible for loss or damage to vehicle or articles left in it. AUTHORIZED BY: _____
DATE: / /

RESOLUTION NO: 23-19

**A RESOLUTION APPROVING A MUNICIPAL MATERIALS
MANAGEMENT AGREEMENT WITH REPUBLIC SERVICES FOR THE
COLLECTION OF SOLID WASTE.**

BE IT RESOLVED, by the Council of the City of Arnold, Missouri that the attached Municipal Materials Management Agreement with Republic Services is hereby approved.

Presiding Officer of the City Council

Mayor Ron Counts

ATTEST:

City Clerk Tammi Casey

Date: _____

MUNICIPAL MATERIALS MANAGEMENT AGREEMENT

This Municipal Materials Management Agreement (the “**Agreement**”) is made and entered into this ___ day of _____, 2023 (“**Effective Date**”), by and between the City of Arnold, Missouri (“**City**”), and Allied Services, LLC dba Republic Services of Bridgeton, a Delaware limited liability company qualified to do and actually doing business in the State of Missouri (“**Company**”).

RECITALS

WHEREAS, City desires that Company provide Services as defined herein for the Location Types as set forth in this Agreement and Company desires to do so, all in accordance with the terms of this Agreement.

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

TERMS AND CONDITIONS

1. **Sole and Exclusive Franchise.** Company is hereby granted the sole and exclusive franchise, license, and privilege to provide for the collection and disposal or recycling, if applicable, of all conforming Waste Material (as defined in Exhibit A) for the following types of locations (“**Location Types**”) within the territorial jurisdiction of the City (the “**Services**”):

Location Types

- | | |
|--|---|
| <input checked="" type="checkbox"/> Residential Units | <input type="checkbox"/> Large Commercial Units |
| <input type="checkbox"/> Small Commercial Units | <input type="checkbox"/> Industrial Permanent Units |
| <input checked="" type="checkbox"/> Municipal Facilities | <input type="checkbox"/> Industrial Temporary Units |

2. **Newly Developed Areas.** If the City develops new areas (of the same Location Types as designated above) within the City’s territorial jurisdiction during the Term of this Agreement, such areas shall automatically be subject to this Agreement. The City shall provide Company with written notification of such newly developed areas, and within thirty (30) days after receipt of such notification, Company shall provide the Services as set forth in this Agreement in such newly developed area(s). If the City annexes any new areas that it wishes for Company to provide the Services, the Parties shall negotiate a mutually acceptable amendment to this Agreement adding such annexed areas to the scope of the Services and setting forth the rates that will apply for the Services in such area(s).
3. **Scope of Services.** Company shall furnish all equipment, trucks, personnel, labor, and all other items necessary to perform the Services. The Services shall not include the collection, disposal, or recycling of any Excluded Waste or Waste Material located at any Location Type not designated above, or any Waste Material/Service Types not designated in any exhibit attached hereto.
4. **Out of Scope Services May Be Contracted for Directly with Customers.** Company may provide collection and disposal or recycling service within the territorial jurisdiction of the City for any Waste Material and/or Location Types that are outside the scope of this Agreement pursuant such terms and conditions as may be mutually agreed upon by Company and such Customers. Such services and agreements are outside the scope of this Agreement, and this Agreement does not require such Customers to use Company for such services, but they may do so at their discretion. The City agrees

that Company may use any information received from the City in marketing all of its available services to the Customers located within the City, whether included in the scope of this Agreement or not.

5. Exhibits. All Exhibits attached this Agreement are an integral part of the Agreement and are incorporated herein.

Exhibit A Specifications for Municipal Solid Waste Services

Exhibit A-1 Municipal Solid Waste Pricing

Exhibit B Specifications \ for Recycling Services

6. Term. This Agreement begins on the Effective Date and expires five (5) years thereafter but shall automatically renew for successive five-year periods (the “Term”) unless either party provides written notice of non-renewal at least sixty (60) days prior to the expiration of the then current Term, or unless otherwise terminated in accordance with the terms of this Agreement.

7. Rates for Services; Rate Adjustments; Additional Fees and Costs.

7.1 Rates for Services. The rates for all Services shall be as shown on Exhibit A-1.

7.2 Annual Rate Adjustments. Company shall increase the rates for all Services effective on each anniversary of the Effective Date of this Agreement by 4.5%, as outlined on Exhibit A-1.

7.3 Change in Law Adjustments. Company may increase the rates for Services as a result of increases in costs incurred by Company due to (a) any third party or municipal hauling company or disposal or recycling facility being used; (b) changes in local, state, federal or international rules, ordinances or regulations; (c) changes in taxes, fees or other governmental charges (other than income or real property taxes); (d) uncontrollable prolonged operational changes (i.e., a major bridge closure); (e) increased fuel costs; and (f) changes in costs due to a Force Majeure Event. Any of the foregoing cost adjustments shall be retroactive to the effective date of such increase or change in cost.

8. Invoicing; Payment; Service Suspension; Audits.

8.1 Invoicing the Customer. Company shall invoice each individual Customer for all Services rendered to such Customer under this Agreement on a quarterly basis, and the Customer shall pay Company’s invoices.

8.2 Payment. The City or Customer, as applicable, shall pay each of Company’s invoices without offset within twenty (20) days of receipt Company’s invoice. Payments may be made by check or ACH only; no purchasing cards or credit cards will be accepted. If Company is invoicing the City, City shall pay Company’s invoices in full irrespective of whether or not the City collects from the Customers for such Service. Payments not made on or before their due date may be subject to late fees of one and one-half percent (1.5%) per month (or the maximum allowed by law, if less). If the City or Customer, as applicable, withholds payment of a portion or entire invoice and it is later determined that a portion or all of such withheld amount is owed to Company, such amount shall be subject to the late fees provided herein from the original due date until paid.

8.3 Service Suspension.

- 8.3.1 Unpaid Invoices. If any amount due to Company from an individual Customer is not paid within sixty (60) days after the date of Company's invoice, Company may suspend that Customer's Services until the Customer has paid its outstanding balance in full. If Company suspends Service, the Customer shall pay a service interruption fee in an amount determined by Company in its discretion up to the maximum amount allowed by Applicable Law.
- 8.3.2 Suspension at Direction of City. If the City wishes to suspend or discontinue Services to a Customer for any reason, the City shall send Company a written notice (email is acceptable as long as its receipt is acknowledged by Company) identifying the Customer's address and the date the Services should be suspended or discontinued. In the event of Service suspension, the City shall provide additional email notification to Company if/when it wishes to reactivate the suspended Services. Upon receipt of a notice of reactivation, Company shall resume the Services on the next regularly scheduled collection day. The City shall indemnify, defend, and hold Company harmless from any claims, suits, damages, liabilities or expenses (including but not limited to expenses of investigation and attorneys' fees) resulting from the suspension of discontinuation of any Services at the direction of the City.
- 8.4 Audit of Company Records. The City may request and be provided with an opportunity to audit any relevant and non-confidential records of Company that support the calculations of charges invoiced to the City under this Agreement within the ninety (90) day period before the audit request. Such audits shall be paid for by the City and shall be conducted under mutually acceptable terms at Company's premises in a manner that minimizes any interruption in the daily activities at such premises.
9. Termination. If either party breaches any material provision of this Agreement and such breach is not substantially cured within thirty (30) days after receipt of written notice from the non-breaching party specifying such breach in reasonable detail, the non-breaching party may terminate this Agreement by giving thirty (30) days' written notice of termination to the breaching party. However, if the breach cannot be substantially cured within thirty (30) days, the Agreement may not be terminated if a cure is commenced within the cure period and for as long thereafter as a cure is diligently pursued. Upon termination, the City shall pay Company only such charges and fees for the Services performed on or before the termination effective date and Company shall collect its equipment, and Company shall have no further obligation to perform any Services under this Agreement.
10. Compliance with Laws. Company warrants that the Services will be performed in a good, safe and workmanlike manner, and in compliance with all applicable federal, state, provincial and local laws, rules, regulations, and permit conditions relating to the Services, including without limitation any applicable requirements relating to protection of human health, safety, or the environment ("**Applicable Law**"). In the event any provision of this Agreement conflicts with an existing ordinance of the City, this Agreement shall control and Company shall not be fined, punished, or otherwise sanctioned under such ordinance. Company reserves the right to decline to perform Services, which, in its judgment, it cannot perform in a lawful manner or without risk of harm to human health, safety or the environment.
11. Title. Title to Waste Material shall pass to Company when loaded into Company's collection vehicle or otherwise received by Company. Title to and liability for any Excluded Waste shall at no time pass to Company.
12. Excluded Waste. If Excluded Waste is discovered before it is collected by Company, Company may refuse to collect the entire waste container that contains the Excluded Waste. In such situations, Company shall contact the City and the City shall promptly undertake appropriate action to ensure that such Excluded Waste is removed and properly disposed of by the depositor or generator of the Excluded

Waste. In the event Excluded Waste is present but not discovered until after it has been collected by Company, Company may, in its sole discretion, remove, transport, and dispose of such Excluded Waste at a facility authorized to accept such Excluded Waste in accordance with Applicable Law and, in Company's sole discretion, charge the City, depositor or generator of such Excluded Waste for all direct and indirect costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of such Excluded Waste. The City shall provide all reasonable assistance to Company to conduct an investigation to determine the identity of the depositor or generator of the Excluded Waste and to collect the costs incurred by Company in connection with such Excluded Waste. Subject to the City's providing all such reasonable assistance to Company, Company shall release City from any liability for any such costs incurred by Company in connection with such Excluded Waste, except to the extent that such Excluded Waste is determined to be attributed to the City.

13. **Equipment; Access.** Any equipment that Company furnishes or uses to perform the Services under this Agreement shall remain Company's property. The City shall be liable for all loss or damage to such equipment, except for normal wear and tear, or loss or damage resulting from Company's handling of the equipment. City and Customers shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move, or alter the equipment. The City shall fully reimburse Company for any and all claims resulting from personal injuries or death, or the loss of or damage to property (including the equipment) arising out of the use, operation, or possession of the equipment by the City or the Customers. If the equipment and/or Waste Material is not accessible so that the regularly scheduled pick-up cannot be made, such Waste Material will not be collected until the next regularly scheduled pick-up, unless the Customer calls Company and requests an extra pick-up, in which case an extra service charge will apply. Company shall not be responsible for any damages to any property or equipment located adjacent to the collection receptacles, nor to any pavement, curbing, or other driving surfaces resulting from Company's providing the Services under this Agreement.
14. **Risk Allocation.** Except as otherwise specifically set forth herein, each party shall be responsible for any and all claims for personal injuries or death, or the loss of or damage to property, only to the extent caused by that party's negligence or acts of willful misconduct or those of its employees, contractors, subcontractors, or agents.
15. **Insurance.** During the Term of this Agreement, Company shall maintain in force, at its expense, insurance coverage with minimum limits as follows:

Workers' Compensation

Coverage A	Statutory
Coverage B - Employers Liability	\$1,000,000 each Bodily Injury by Accident
	\$1,000,000 policy limit Bodily Injury by Disease
	\$1,000,000 each occurrence Bodily Injury by Disease

Automobile Liability

Bodily Injury/Property Damage Combined – Single Limit	\$3,000,000 Coverage is to apply to all owned, non-owned, hired and leased vehicles (including trailers).
Pollution Liability Endorsement	MCS-90 endorsement for pollution liability coverage

Commercial General Liability

Bodily Injury/Property Damage Combined – Single Limit	\$2,500,000 each occurrence \$5,000,000 general aggregate
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All such insurance policies will be primary without the right of contribution from any other insurance coverage maintained by City. All policies required herein shall be written by insurance carriers with a rating of A.M. Bests of at least "A-" and a financial size category of at least VII. Upon City's request, Company shall furnish City with a certificate of insurance evidencing that such coverage is in effect. Such certificate will also provide for thirty (30) days prior written notice of cancellation to the City, show the City as an additional insured under the Automobile and General Liability policies, and contain waivers of subrogation in favor of the City (excluding Worker's Compensation policy) except with respect to the sole negligence or willful misconduct of City.

16. Force Majeure. Except for City's obligation to pay amounts due to Company, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, terrorist acts, epidemic or pandemic, compliance with Applicable Laws or governmental orders, fires, bad weather and acts of God, shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance at the current pricing levels under this Agreement during the term of such event and for a reasonable time thereafter. The collection or disposal of any increased volume resulting from a flood, hurricane or similar or different Act of God over which Company has no control, shall not be included as part of Company's service under this Agreement. In the event of increased volume due to a Force Majeure event, Company and the City shall negotiate the additional payment to be made to Company. Further, the City shall grant Company variances in routes and schedules as deemed necessary by Company to accommodate collection of the increased volume of Waste Materials.
17. Non-Discrimination. Company shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin in its performance of Services under this Agreement.
18. Licenses and Taxes. Company shall obtain all licenses and permits (other than the license and permit granted by this Agreement) and promptly pay all taxes required by the City and by the State.
19. No Guarantees or Liquidated Damages. Unless specifically provided herein, Company provides no guarantees or warranties with respect to the Services. No liquidated damages or penalties may be assessed against Company by City.
20. Miscellaneous. (a) This Agreement represents the entire agreement between the Parties and supersedes all prior agreements, whether written or verbal, that may exist for the same Services. (b) Company shall have no confidentiality obligation with respect to any Waste Materials. (c) Neither party shall assign this Agreement in its entirety without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Company may assign this Agreement without the City's consent to its parent company or any of its subsidiaries, to any person or entity that purchases any operations from Company or as a collateral assignment to any lender to Company. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their permitted successors and assigns. (d) Company may provide any of the Services covered by this Agreement through any of its affiliates or subcontractors, provided that Company shall remain responsible for the performance of all such services and obligations in accordance with this Agreement. (e) No intellectual property rights in any of Company's IP are granted to City under this Agreement. (f) All provisions of the Agreement shall be strictly complied with and conformed to by the Parties, and this Agreement shall not be modified or amended except by written agreement duly executed by the undersigned parties. (g) If any provision of this Agreement is declared invalid or unenforceable, it shall be modified so as to be valid and enforceable but so as most nearly to retain the intent of the Parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case, the validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. (h) Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. (i) If any litigation is commenced under this

Agreement, the successful party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation or proceeding. (j) This Agreement shall be interpreted and governed by the laws of the State where the Services are performed. (k) Customer and Company agree that electronic signatures are valid and effective, and that an electronically stored copy of this Agreement constitutes proof of the signature and contents of this Agreement, as though it were an original.

IN WITNESS HEREOF, the parties have entered into this Agreement as of the date first written above.

[INSERT FULL NAME OF THE MUNICIPALITY
AND THE NAME OF THE STATE]

[INSERT LEGAL ENTITY AND DBA OF
SERVICING DIVISION]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SPECIFICATIONS FOR MUNICIPAL SOLID WASTE SERVICES

1. Waste Material. The following Waste Material shall be considered in scope during the Term of this Agreement:

Municipal Solid Waste (MSW) Bulky Waste

Yard Waste Recycling

2. Definitions.

2.1 Bulky Waste – Stoves, refrigerators (with all CFC and other refrigerants removed), water tanks, washing machines, furniture and other similar items with weights and/or volumes greater than those allowed for the waste container supplied.

2.2 Bundle – Tree, shrub and brush trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding four (4) feet in length or thirty-five (35) lbs. in weight.

2.3 Construction Debris – Excess building materials resulting from construction, remodeling, repair or demolition operations.

2.4 Customer – An occupant or operator of any type of premise within the City that is covered by this Agreement and who generates Municipal Solid Waste and/or Recyclable Material, if applicable.

2.5 Disposal Site – A Waste Material depository including, but not limited to, sanitary landfills, transfer stations, incinerators, recycling facilities and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive for processing or final disposal of Waste Material.

2.6 Excluded Waste – Excluded Waste consists of Special Waste, Hazardous Waste, and any other material not expressly included within the scope of this Agreement including, but not limited to, any material that is hazardous, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or listed or characteristic hazardous waste as defined by Applicable Law or any otherwise regulated waste.

2.7 Hazardous Waste – Any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, and including future amendments thereto, and any other Applicable Law.

2.8 Industrial Permanent Unit – An industrial premise requiring use of a large container for the collection of its MSW for a continuous term.

2.9 Industrial Temporary Unit – An industrial premise requiring use of a large container for the collection of its Solid Waste on only a temporary basis. Solid Waste collection is generally limited to a specific event or a short-term project.

2.10 Large Commercial Unit – A commercial premise that is not classified as a Residential Unit or Municipal Facility that requires a waste container that is two (2) yards or larger per collection day for the collection of its Solid Waste.

2.11 Municipal Facilities – Those specific municipal premises as set forth on Exhibit A-1 of this Agreement, if any.

2.12 Municipal Solid Waste (or “MSW”) – Useless, unwanted or discarded nonhazardous materials (trash or garbage) with insufficient liquid content to be free-flowing that result from residential, commercial, governmental and community operations. Municipal Solid Waste does not include any Excluded Waste.

2.13 Residential Unit – A dwelling where a person or group of people live. For purposes of this Agreement, each unit in a multi-family dwelling (condominium, apartment or other grouped housing structure) shall be treated as a separate Residential Unit and a Residential Unit shall be deemed occupied when either water or power services are being supplied thereto.

2.14 Small Commercial Unit – A commercial premise that is not classified as a Residential Unit or Municipal Facility that requires no more than three (3) thirty-two (32) gallon containers per collection day for the collection of its Solid Waste. Examples of Small Commercial Units include offices, stores, service stations, restaurants, amusement centers, schools, and churches.

2.15 Special Waste – Any nonhazardous solid waste which, because of its physical characteristics, chemical make-up, or biological nature requires either special handling, disposal procedures including liquids for solidification at the landfill, documentation, and/or regulatory authorization, or poses an unusual threat to human health, equipment, property, or the environment. Special Waste includes, but is not limited to (a) waste generated by an industrial process or a pollution control process; (b) waste which may contain residue and debris from the cleanup of spilled petroleum, chemical or commercial products or wastes, or contaminated residuals; (c) waste which is nonhazardous as a result of proper treatment pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (“RCRA”); (d) waste from the cleanup of a facility which generates, stores, treats, recycles or disposes of chemical substances, commercial products or wastes; (e) waste which may contain free liquids and requires liquid waste solidification; (f) containers that once contained hazardous substances, chemicals, or insecticides so long as such containers are “empty” as defined by RCRA; (g) asbestos containing or asbestos bearing material that has been properly secured under existing Applicable Law; (h) waste containing regulated polychlorinated biphenyls (PCBs) as defined in the Toxic Substances Control Act (TSCA); (i) waste containing naturally occurring radioactive material (NORM) and/or technologically-enhanced NORM (TENORM); and (j) Municipal Solid Waste that may have come into contact with any of the foregoing.

2.16 Waste Material – All nonhazardous Municipal Solid Waste and, as applicable, Recyclable Material, Yard Waste, Bulky Waste and Construction Debris generated at the Location Types covered by this Agreement. Waste Material does not include any Excluded Waste.

2.17 Yard Waste – Grass, leaves, flowers, stalks, stems, tree trimmings, branches, and tree trunks. For yard waste collection services, grass, pine needles, leaves, flowers, stalks, stems, and small tree trimmings (less than two (2) feet in length and less than two (2) inches in diameter) shall be in a container, bag or box the weight of which shall not exceed thirty-five (35) pounds. Larger tree trimmings shall be laid neatly in piles at curbside. The maximum weight of any item placed out for yard waste collection shall be thirty-five (35) pounds. Branches in excess of two (2) feet in length are not required to be in a container, bag or box.

3. Collection Operations.

3.1 Location of Containers, Bags and Bundles for Collection. Each container, bag and bundle containing Waste Material shall be placed at curbside for collection. Curbside refers to that portion of right-of-way adjacent to paved or traveled City roadways. Containers, bags and bundles shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians.

When construction work is being performed in the right-of-way, containers, bags and bundles shall be placed as close as practicable to an access point for the collection vehicle. Company may decline to collect any container, bag or bundle not so placed or any Waste Material not in a container, bag or bundle.

3.2 Hours of Collection Operations. Collection of Waste Material shall not start before 6:00 A.M. or continue after 8:00 P.M. Exceptions to collection hours shall be affected only upon the mutual agreement of the City and Company, or when Company reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances.

3.3 Routes of Collection. Collection routes shall be established by the Company. Company shall submit the Residential Unit and Municipal Facility collection routes to the City at least two (2) weeks in advance of the commencement date for such route collection activity. The Company may from time to time make changes in routes or days of collection affecting Residential Units or Municipal Facilities, provided such changes in routes or days of collection are submitted to the City at least two (2) weeks in advance of the commencement date for such changes. City shall promptly give written or published notice to the affected Residential Units.

3.4 Residential Collection. Company shall be obligated to collect no more than two containers (carts) per week from each Residential Unit. Any collections needed by a Residential Unit in excess of such amount must be individually contracted by the Residential Unit Customer with Company under terms, prices and documents acceptable to both the Residential Unit Customer and Company.

3.5 Holidays. The following shall be holidays for purposes of this Agreement: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Company may suspend collection service on any of these holidays, but such decision in no manner relieves Company of its obligation to provide collection service at least once per week.

3.6 Complaints. All service-related complaints must be made directly to the Company and shall be given prompt and courteous attention. In the case of alleged missed scheduled collections, the Company shall investigate and, if such allegations are verified, shall arrange for the collection of Waste Material not collected within one business day after the complaint is received.

3.7 Collection Equipment. The Company shall provide an adequate number of vehicles meeting standards and inspection requirements as set forth by the laws of the State for regular municipal waste collection services. For Waste Material collection, all vehicles and other equipment shall be kept in good repair and appearance at all times. Each vehicle shall have clearly visible on each side the identity of the Company.

3.8 Disposal. All Waste Material, other than processed Recyclable Material that is marketable, collected within the City under this Agreement shall be deposited at a Disposal Site selected by Company and properly permitted by the State.

3.9 Customer Education. The City shall notify all Customers at Residential Units about set-up, service-related inquiries, complaint procedures, rates, regulations, and day(s) for scheduled Waste Material collections.

3.10 Litter or Spillage. The Company shall not litter premises in the process of making collections, but Company shall not be required to collect any Waste Material that has not been placed in approved containers. During hauling, all Waste Material shall be contained, tied or enclosed so that leaking, spillage or blowing is minimized. In the event of spillage by the Company, the Company shall be required to clean up the litter caused by the spillage.

EXHIBIT A-1

SOLID WASTE PRICING

Monthly rates listed below; residents will be billed directly by Republic Services on a quarterly basis

Year 1 July 1, 2023 – June 30, 2024

Trash/Recycling/Bulk = \$21.12/month

Optional Yard Waste = \$16.57/month

Year 2 July 1, 2024 – June 30, 2025

Trash/Recycling/Bulk = \$22.07/month

Optional Yard Waste = \$17.32/month

Year 3 July 1, 2025 – June 30, 2026

Trash/Recycling/Bulk = \$23.06/month

Optional Yard Waste = \$18.09/month

Year 4 July 1, 2026 – June 30, 2027

Trash/Recycling/Bulk = \$24.10/month

Optional Yard Waste = \$18.91/month

Year 5 July 1, 2027 – June 30, 2028

Trash/Recycling/Bulk = \$25.19/month

Optional Yard Waste = \$19.76/month

- Trash service 1x/week, with a 65-gal or 95-gal cart; cart contents only – provided by hauler
- Recycling service 1x/week, with a 65-gal or 95-gal cart; cart contents only – provided by hauler
- Bulk service weekly, two items per week at no additional charge
 - Note: Appliances and Electronic Waste are not included in free bulk; customer must contact Customer Service for a quote and to schedule a pickup.
- Yard Waste service is optional and is serviced weekly January through December; there is a 3-month minimum commitment for service. There is a 12-bag/container set out limit.
- If a resident needs an additional trash or recycle cart, there will be a (one-time) \$15.00 delivery fee and a \$5.00/month charge. A \$15.00 removal fee will be charged if same customer requests removal.

MUNICIPAL PROPERTIES SERVICED AT NO ADDITIONAL CHARGE:

- Arnold City Park
 - (1) 2-yd container for trash, serviced 1x/week (1 Bradley Beach)
 - (3) 8-yd containers for trash, serviced 2x/week (Jeffco Blvd & Bradley Beach)

- City Hall – (1) 8 yd container for each:
 - Trash – serviced 1x/week
 - Recycling – serviced 1x/month

- Public Works/Maintenance buildings
 - (1) 3-yd container serviced 1x/week
 - (1) 20-yd rolloff serviced on call/average 2 hauls/month

EXHIBIT B

SPECIFICATIONS FOR RECYCLING SERVICES

1. Recycling Services Definitions.

1.1 “**Recyclable Materials**” are used and/or discarded materials that are capable of successful processing and sale on the commodity market.

1.2 “**Acceptable Material**” means the materials listed in Section 8 below.

1.3 “**Unacceptable Material**” means the materials listed in Section 9 below. All Recyclable Materials collected for delivery and sale by Company shall be hauled to a processing facility selected by Company for processing (“Recycling Services”).

2. City’s Duty. City shall make a commercially reasonable effort to educate its Customers regarding Acceptable and Unacceptable Materials and to encourage its Customers to place only Acceptable Materials in their recycling containers.

3. Right to Inspect/Audit. Company may visually inspect the collected Recyclable Materials to ensure loads are at or below the Unacceptable Material Threshold. If Company’s visual inspector determines that loads of Recyclable Material are consistently above the Unacceptable Material Threshold, Company will notify City of the issue and the parties agree to promptly negotiate in good faith (a) an agreed upon procedure to audit a representative sample of City’s Recyclable Material to determine its actual composition of Unacceptable Material; and (b) an updated Collection and Processing rate commensurate with the composition of Unacceptable Material.

4. Changes in Market Conditions. If market conditions develop that limit or inhibit Company from selling some or all of the Acceptable Material, Company may at its option and upon notice to Supplier (i) redefine Acceptable and Unacceptable Materials, (ii) update the processing facility’s Average Commodity Mix; (iii) suspend or discontinue any or all Services, or (iv) dispose of the Acceptable Material (as currently defined) in a landfill and update the pricing to City accordingly. Any such actions, if taken, may be reversed or further changed as market conditions dictate.

5. Acceptable Material. All material must be empty, clean and dry. Company may modify the following list of Acceptable Materials in its sole and absolute discretion but will provide City with at least thirty (30) days’ prior written notice of any such modifications.

- Aluminum food and beverage containers - aluminum soda and beer cans, cat food cans, etc.
- Ferrous Cans - soup, coffee cans, etc.
- P.E.T. plastic containers with the symbol #1 - no microwave trays
- H.D.P.E. natural plastic containers with the symbol #2 - milk jugs and water jugs containers only (narrow neck containers)
- H.D.P.E. pigmented plastic containers with the symbol #2 - detergent, shampoo, bleach bottles without caps (narrow neck containers); butter and margarine tubs
- Polypropylene plastic food and beverage containers symbol #5 - yogurt containers
- Mixed Paper (54), as defined in the most recent ISRI Scrap Specifications Circular
- Sorted Residential Paper and News (56), as defined in the most recent ISRI Scrap Specifications Circular

- Kraft Paper Bags
- Old Corrugated Containers (OCC) - no wax coated
- Magazines (OMG) - Coated magazines, catalogues and similar printed materials, junk mail, and soft cover books
- Aseptic Cartons - Juice boxes, gable top milk and juice containers, soy milk and soup cartons
- Glass food and beverage containers - Flint (clear), Amber (brown), Emerald (green)

6. Unacceptable Material. Company may modify the following list of Unacceptable Materials in its sole and absolute discretion but will provide City with at least thirty (30) days' prior written notice of any such modifications.

- Yard Waste
- Styrofoam
- Pizza Boxes, unless free of *any* food or grease residue
- Food
- Any liquids
- Diapers
- Clothing/textiles
- Plastic Bags or bagged material (newsprint may be placed in a Kraft bag)
- Plastic containers with #3, #4, #6, or #7 on them or no # at all
- Mirrors, window or auto glass, light bulbs, ceramics
- Oil or antifreeze containers
- Coat hangers
- Paint cans
- Medical Waste/Sharps
- Any Acceptable Material that is no longer acceptable due to its coming into contact with or being contaminated by Unacceptable Material.