

October 15, 2007

City Council of Crystal City
City Hall
130 Mississippi Avenue
Crystal City, MO 63019
via facsimile (original by mail)

*Re: Ordinances Numbers 1458 and 1459;
Illegal Sales Contract; Illegal Lease*

Dear Mayor Schilly and Members of the City Council:

On behalf of the Concerned Citizens of Crystal City, I am writing you to request you to repeal Ordinances 1458 and 1459, adopted by the City Council on Monday, September 10, 2007. In addition, I am requesting you to void the resulting lease and contract.

The Ordinances, Contract and Lease violate Missouri law in several ways.

1. *Ordinances 1458 and 1459 Violate RSMo Section 77.080*

The ordinances are invalid in that copies were not made available for public inspection prior to the time that bills numbered 1556 and 1557 were under consideration. RSMo 77.080 states that "Every proposed ordinance shall be introduced to the council in writing and shall be read by title or in full two times prior to passage, both readings may occur at a single meeting of the council. **If the proposed ordinance is read by title only, copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration by the council.**" The minutes from the meeting of September 10 reflect that both bills were read by title only, but copies were not made available for public inspection prior to passage, in violation of the state statute.

2. *Ordinances 1458 and 1459 Violate RSMo Section 78.190*

The ordinances are invalid in that they violate RSMo Section 78.190 which states that "**Every ordinance** or resolution appropriating money or ordering any street improvement or sewer, or making or **authorizing the making of any contract** or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose shall be complete in the form in which it is finally passed and *shall remain on file with the city clerk for public inspection at least one week* before the final passage or adoption thereof."

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Ordinances 1458 and 1459 were NEVER on file with the city clerk for public inspection, thus violating RSMo § 78.190.

3. *The City Council's Approval of the Lease and Contract Violates RSMo Section 100.059*

RSMo § 100.059 provides that:

“1. The governing body of any municipality proposing a project for industrial development which involves issuance of revenue bonds or involves conveyance of a fee interest in property to a municipality shall, ***not less than twenty days before approving the plan for a project as required by section 100.050, provide notice of the proposed project*** to the county in which the municipality is located and any school district that is a school district, junior college district, county, or city; however, in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, if the plan for the project is approved after May 15, 2005, such notice shall be provided to all affected taxing entities in the county. ***Such notice shall include the information required in section 100.050, shall state the date on which the governing body of the municipality will first consider approval of the plan, and shall invite such school districts, junior college districts, counties, or cities to submit comments to the governing body and the comments shall be fairly and duly considered*** [emphasis added].

The contract states that the City will purchase land from PPG for consideration. Therefore, this project will involve “conveyance of a fee interest in a property to a municipality,” and RSMo § 100.059 applies. In this instance, the council never gave such notice; the council did not inform the relevant parties before it started to consider approval of the plan and did not give the parties the information required in § 100.050.

4. *The City Council's Approval of the Lease and Contract Violates RSMo Section 100.050*

Section 100.050 provides:

“100.050. 1. Any municipality proposing to carry out a project for industrial development ***shall first, by majority vote of the governing body of the municipality, approve the plan for the project.*** The plan shall include the following information pertaining to the proposed project:

- (1) A description of the project;
- (2) An estimate of the cost of the project;
- (3) A statement of the source of funds to be expended for the project;
- (4) A statement of the terms upon which the facilities to be provided by the project are to be leased or otherwise disposed of by the municipality; and

(5) Such other information necessary to meet the requirements of sections 100.010 to 100.200.

2. If the plan for the project is approved after August 28, 2003, and the project plan involves issuance of revenue bonds or involves conveyance of a fee interest in property to a municipality, the project plan shall additionally include the following information:

(1) A statement identifying each school district, junior college district, county, or city affected by such project except property assessed by the state tax commission pursuant to chapters 151 and 153, RSMo....[emphasis added].”

The City Council never made public such a plan before holding a vote and it is unclear whether the Council ever held this vote. If the Council chooses to claim it did hold such a vote in closed meeting, this vote violates the Sunshine Law in that it does not fall within the “real estate” exception to the Sunshine Law because that exception contemplates ONLY discussion of terms of the lease, i.e., fair consideration, meaning price. The items required by this section are required to be made public BEFORE the vote takes place so that the people whom council members are supposed to represent can be informed.

5. *The City Council’s Approval of the Lease and Contract Violates RSMo Section 77.260*

RSMO § 77.260 provides that, “The mayor and council of each city governed by this chapter shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and *such as they shall deem expedient for* the good government of the city, the *preservation of peace and good order*, the benefit of trade and commerce, and *the health of the inhabitants thereof,...*” The mayor and city council ignore the reality that the thousands of tons of carbon dioxide the proposed plant will emit annually will contribute significantly to **global warming**. This reality cannot be glossed over by the sight of \$2 million. It is arbitrary and capricious of the city council to enter into the lease and contract knowing this.

6. *Ordinances 1458 and 1459 are illegal in that they direct the Mayor to take an illegal action in violation of RSMo Section 77.350 in that the Lease and Contract Violate the Existing City Ordinances*

RSMo § 77.350 provides that, “**the mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city....**”

The lease and contract violate the Crystal City Municipal Ordinances that exist today and as they existed on the day that the mayor signed the lease and contract. **Appendix B Zoning**, attached to Crystal City’s Ordinances, provides in **Section 4(A)(8)** that “(8) *M-2 General Industrial District*: Permissive uses: Any use except [emphasis added] the following conditional uses:...Conditional uses: (n) **Smelting** of tin, copper, zinc or **iron ores....**”

Some of the land needed for the proposed project is zoned M-2 and therefore cannot legally be used for a smelter. The ordinances instructed the mayor to sign a lease and contract which would result in a smelter being placed on M-2 land in violation of the existing ordinances. Therefore, ordinances 1458 and 1459 are illegal.

The lease and contract also violate the existing Ordinance found in the same **Appendix B Zoning**, which provides in Section 4(A) "*District regulations*. In the following established districts, a building or premises shall be used only for the following purposes. (1) *RC Conservation District*:

Permissive uses:

- (a) Agricultural activity with farm residence and farm accessory buildings.
- (b) Parks, parkways, scenic areas, wildlife refuges.
- (c) Golf course, public and private noncommercial picnic grounds and boat docks.
- (d) Cemetery."

Part of the property is zoned RC Conservation District. Iron ore smelters and their accompanying sludge piles, pipelines, rail stations, etc., are NOT permitted in RC Conservation Districts. Thus, the mayor failed to enforce this existing ordinance when he signed the lease and contract. The ordinances instructing the mayor to sign the illegal lease and contract are therefore invalid.

7. *The City Council Violated Chapter 610, the Missouri Sunshine Law when It Engaged in Closed Meetings for the Past Year that Led to the Signing of the Lease and Contract*

At the public meeting on September 5, 2007, the Mayor attempted to explain the City's closed meetings by stating that they fell within the "real estate" exception to the Sunshine Law. Missouri courts have interpreted this exception narrowly: ONLY the terms of the lease can be discussed and the closed meetings are *supposed* be about the CONSIDERATION, i.e., the PRICE. However, it is obvious that many more items were discussed during all of the closed meetings. For example, the air and water pollution were discussed. In fact, the Department of Natural Resources was consulted and for some inexplicable reason also engaged in secrecy. In addition, an alternative offer of some \$5 million for a project that would result in much less air pollution was discussed in secrecy and rejected, again for an inexplicable reason. The City turned down \$3 million dollars and a cleaner project--this goes far beyond what is contemplated by the "real estate" exception.

For the foregoing reasons, we request the City Council to repeal the ordinances and void the lease and contract.

Sincerely,



Kathleen G. Henry