

Municipal Court Appeals & Trials



LAUBER MUNICIPAL LAW, LLC

Todd T. Smith, J.D., LL.M.

Serving those who serve the public

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Who is Todd Smith?



- ▣ I'm an attorney in Lauber's Jefferson City office.
- ▣ I focus on public safety and constitutional law issues.
- ▣ Earned 2nd law degree in Law and Government.
- ▣ Served as an assistant county prosecutor and in the MO Attorney General criminal division.
- ▣ Tried several jury trials and hundreds of bench trials
- ▣ Currently assistant municipal prosecutor for the City of Sedalia, try 10 or so case per month, got within 24 hours of a jury trial on a building code case, another on the horizon.

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What's the plan?

- ▣ Certified ordinances
- ▣ Discovery
- ▣ Prosecution of legal entities
- ▣ Municipal Jury Trials
- ▣ Appeals



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What's the point here?

- ▣ The aim with this presentation is to bring attention to those little surprisingly details of municipal prosecution that materially differ from normal/state trials that most practitioners and judges are familiar with.
- ▣ It is tempting to disregard these details, after all, the vast majority of municipal trials involve unrepresented defendants futilely attempting to attack overwhelming facts in the span of a few minutes.
- ▣ But the devil is in these details...

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Thou shalt put the certified ordinance into evidence.



- ▣ As a matter of law in Missouri, the Court cannot take judicial notice of an ordinance.
- ▣ The prosecution must offer into evidence a certified copy of the ordinance in question, NO EXCEPTIONS! *See State v. Furne*, 642 S.W.2d 614, 616 (Mo. banc 1982) (conviction reversed for failure to admit ordinance, double jeopardy applied barring second attempt).
- ▣ Keep in mind some cities have an underlying catch-all “it is illegal to break the law” ordinance or general penalty clause that may need to be provided as well as the actual ordinance.

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Ordinance Certification Form

CERTIFICATION OF ORDINANCE

STATE OF MISSOURI)
COUNTY OF PETTIS) ss

I, _____, Clerk for the City of Sedalia, Missouri, do hereby certify that the attached copy of Ordinance No. _____ constitutes a full, true and complete copy of such ordinance which was duly passed on the _____ day of _____, _____ by the Board of Alderman of the City of Sedalia, Missouri.

Certified this _____ day of _____, 20____.

City Clerk City of Sedalia, Missouri

(seal)

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Complete Code Book

- ☐ You can keep a complete “code” book handy at the courthouse.
- ☐ Be aware it needs to be updated periodically, most code companies provide updates quarterly or yearly.
- ☐ The city clerk can certify the whole thing.
- ☐ If it is a code enforcement case, you may also need to submit the adopted building/fire/safety code as well.



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Un-Automatic Discovery

- ☐ Rule 37.54 states that “Discovery shall be permitted solely in the judge's discretion as justice requires.”
- ☐ This seems to be contrary to the Brady rule, whereby the prosecution is required to disclose information to the defendant; in practice, Defendant gets a copy of the file, which in municipal court, is often nothing more than the citation.



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Prosecution of Legal Entities

- ☐ As a matter of law in Missouri, legal entities can only appear in court by licensed attorneys. *See Naylor Senior Citizens Hous., LP v. Sides Constr. Co.*, 423 S.W.3d 238 (Mo. banc 2014)(partnership’s suit for damages by non-attorney owner was unlicensed practice of law).
- ☐ This means a code enforcement ticket written against, for example, an LLC cannot be prosecuted or pleaded out until a lawyer enters on behalf of the entity.
- ☐ The cost of an attorney often exceeds the amount of the fine.

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Municipal Jury Trial

- ▣ §479.130. RSMo. defendant in municipal court of a fourth- or third-class city has a right to a jury trial. *See Maplenwood v. Marti*, 891 S.W.2d 500 (Mo. App. E.D. 1994) (no statutory right to jury trial in charter city but right may be conferred by ordinance).
- ▣ Rule 37.61(d) defendant can request a jury trial, but must do so at least 10 days before the start of the scheduled bench trial, case goes to the presiding judge for assignment, can be send back to the same municipal judge.
- ▣ Rule 37.61(e) trial is conducted like a misdemeanor trial on the record.

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Appeals in Municipal Court

- ▣ Rule 37.64(c), after the bench trial, judge must notify the defendant of a right to have a trial de novo.
- ▣ §479.200.2, RSMo, Defendant must file for trial de novo within 10 days of the judgment.
- ▣ Rule 37.71(a), no extensions of time are allowed.
- ▣ Rule 37.74, de novo trial is handled like a misdemeanor trial, on the record, with full rule of evidence.
- ▣ Appeal from there goes up to the District Court like normal

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Missouri's Sunshine Law

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