

Ordinance Drafting: Best Practices

Missouri Municipal Attorneys Association – 2023 Summer Seminar

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Local Government: Authority & Limitations

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Sources of City Authority



Dillon's Rule v. Charter City



State Statute



Local Ordinances



State Courts

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The Mayor's Duties

- The Mayor, or the Acting President in the Mayor's absence, runs all Board meetings
- The Mayor shall sit in the Board, preside over the Board, and vote only in the case of a tie
- The Mayor shall exercise general supervision over all the officers and affairs of the City
- The Mayor is to communicate with the Board "from time to time" on how to improve the finances, police, health, security, ornament, comfort, and general prosperity of the City
- The Mayor also signs all commissions and appointments and approves all official bonds unless an ordinance otherwise prescribes
- Mayor generally signs off on ordinances and resolutions

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Village Chair

- 80.060 RSMo.
- Every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman of their number, and some other person as clerk.
- The chairman may vote on any proposition before the board.
- 80.120 RSMo. – chairman pro tempore can be voted upon at a meeting in absence of the chair

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Acting President/ President Pro Tem

- Fourth Class -- "**acting president** of the board of aldermen" 79.090 RSMo.
- Third Class "**president pro tem**" 77.070 RSMo.
- The Acting President's term is one year.
- The Acting President shall perform all duties of the Mayor when any vacancy of the Mayor shall happen.
 - Can Acting President or President Pro Tem vote both as a member and as the acting president to break the tie? *City of St. Robert, Mo. v. Clark*, 471 S.W.3d 321 (Mo. App. S.D. 2015); *see also* Mo. Op. Att'y Gen. No. 38-88 (Jan. 21, 1988). BUT SEE *Hardesty v. City of Buffalo*, 155 S.W.3d 69, 75 (Mo. App. S.D. 2004); *State ex rel. Ciaramitaro v. City of Charlack*, 679 S.W.2d 405 (Mo. App. E.D. 1984) *Villages - Krug v. Vill. of Mary Ridge*, 271 S.W.2d 867, 872 (Mo. App. E.D. 1954)

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Passing Legislation

- Two primary actions of a Governing Body:
 - Adopt resolutions, policies, or directives; and
 - Adopt laws (ordinances)
- All require a motion to adopt, a second to the motion, discussion, call the question and then vote

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ORDINANCES

How a Local Government Does Business

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The Form of an Ordinance

- The form is required by law
 - A bill does not become an ordinance until the mandatory charter or statutory provisions governing the adoption of **municipal ordinances are complied with.** *Steiger v. City of Ste. Genevieve*, 235 Mo.App. 579, 141 S.W.2d 233, 236 (1940); *Hatfield v. Meers*, 402 S.W.2d 35, 43-45 (Mo.App.1966). *State ex rel. Clark v. Gray*, 931 S.W.2d 484, 487 (Mo.App. E.D. 1996) Villages - italicized requirement is mandatory, *Village of Beverly Hills v. Schuller*, *Krug v. Vill. of Mary Ridge*, 271 S.W.2d 867, 871 (Mo. App. 1954)

Nunc pro tunc order can be used to cure any deficiencies. *City of Independence v. Hare*, 359 S.W.2d 33, 37 (Mo.App.1962); *Steiger v. City of Ste. Genevieve*, 235 Mo.App. 579, 141 S.W.2d 233, 236 (1940). *Cimasi v. City of Fenton*, 659 S.W.2d 532, 535 (Mo.App. E.D. 1983)

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#1 In Writing

- *3rd Class* -- must be introduced to council **in writing and be read by title or in full 2 times prior to passage, 77.080 RSMo.**
- *4th Class* -- shall be introduced to board of aldermen **in writing and be read by title or in full 2 times prior to passage, 79.130 RSMo.**
- *Villages* -- must be introduced to the board of trustees **in writing and shall be read by title or in full 2 times prior to passage, 80.110 RSMo.**

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Bill No. ____

Ordinance No. ____

Title etc. ...

Passed this ____ day of _____ after being **read twice** either
by title or in full.

Presiding officer

Attest

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#1.5 MINUTES – Ayes + Nays

- “...no bill shall become an ordinance unless ... the ayes and nays shall be entered on the journal.” **77.080 RSMo.; 79.130 RSMo.; 80.110 RSMo.**
- Where the minutes did not contain an entry showing the yeas and nays in the passage of an ordinance, **the ordinance did not exist.**

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Minutes – Best Practices



- Minutes are designed to be a record of what happened
 - Record motions/votes
 - General actions/discussion topics
 - Policies
 - Minutes do not have to be a transcript of the meeting

Courts – ordinance not validly passed for failure to record the vote, i.e., the ayes and nays on final passage in the minutes! *Briggs v. Baker*, 631 S.W.2d 948, 954 (Mo.App. W.D. 1982)

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Examples of defective or insufficient minutes:

“passed unanimously by all of the trustees present”

“unanimously adopted”

“declared passed by the Mayor”

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#2 Read 2 times

- Both readings may occur at the same meeting
- If 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...**
 - 3rd Class Cities - 77.080 RSMo.
 - 4th Class Cities - 79.130 RSMo.
 - Villages - 80.110 RSMo.

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“Recitals”

Why & When?

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#4 Signed & Dated

Third Class Cities - 77.080 RSMo.

- No bill shall become an ordinance until it shall have been **signed by the officer presiding** at the meeting of the council at which it shall have been passed. When so signed, it shall be delivered to the **mayor** for his approval and signature, or his veto.”

Fourth Class Cities - 79.130 RSMo.

- No bill shall become an ordinance until it shall have been **signed by the mayor or person exercising the duties of the mayor's office**, or shall have been passed over the mayor's veto, as herein provided.

Village – 80.110 RSMo.

- All ordinances shall be in full force and effect from and after their passage after being **duly signed by the chairman of the board of trustees and attested by the village clerk.**

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Bill No. ____

Ordinance No. ____

Section 2: This ordinance shall be in full force and effect after its passage by the Board/Council and after its execution and approval by the Mayor/Chairman.

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The Law

- Must have “Be it ordained” clause
- Must be in writing
- Must be read by title or in full 2x
- Effective date and signature

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Bill No. 102

Ordinance 111

AN ORDINANCE AUTHORIZING...

Whereas, ... [OPTIONAL]

[Now, therefore,] Be it ordained by the ... of the City/Village of Mayberry as follows:

Section 1+: Action taken or authorized to be taken ...

Section __: This ordinance shall be in full force and effect after its passage by the Board/Council and after its execution and approval by the Mayor/Chairman.

Passed this ___ day of _____ after being **read twice** either by title or in full.

Attest

Presiding officer*[third class]

City Clerk

Mayor

City Clerk

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Mayor's Veto Authority

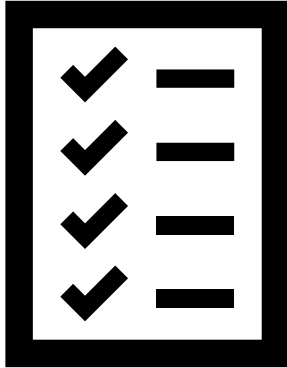
- Every bill presented to the Mayor but returned at the next regular meeting of the Board with the Mayor's objections thereto shall stand for reconsideration.
- The Board/Council shall cause the objections of the mayor to be entered into the minutes and Board/ Council shall then consider the question: "Shall the bill pass, the objections of the Mayor notwithstanding?"
- The Board/Council can override a veto by a 2/3 majority vote of the members-elect
- Extra authority for third class Mayor: "approve all or any portion of the general appropriation bill, or to veto any item or all of the same" AND "Mayor shall have the power to veto any resolution or order of the council which calls for or contemplates the expenditure of revenues of the city." Requires ¾ vote to overrule

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Ordinance Good Practices

- ✓ Establish liability and payment limit in authorizing ordinance and contract
- ✓ *Authorize signing*
 - Don't direct ... unless you mean it
- ✓ Authorize "in substantially the form as" to provide some minimal flexibility

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Resolution v. Ordinance?

- Partial list of laws requiring an ordinance:
 - **Approval of intergovernmental agreement** (§§ 70.220; 70.230 RSMo.)
 - **Approval of agreement between city and elected or appointed official of another city** (§§ 70.220; 70.230 RSMo.)
 - **Approval of plat** (§ 445.030 RSMo.)
 - **Compensation, appointment, and duties of 3rd and 4th class city employees generally** (§§ 79.230, 79.270 79.290, 77.042 & 77.044, 77.480 RSMo.)
 - For villages, **setting the time and place of meetings** (80.060 RSMo.)
 - **City code/charter requirements?**

City of Salisbury v. Nagel, 420 S.W.2d 37, 43 (Mo. App. 1967) (recognizing resolution less formal, does not require specific format, but that every ordinance necessarily includes all essential elements of a resolution).

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Contracts

§ 432.070 requires that:

- No county, city, town, village . . . or other municipal corporation shall make any contract, ***unless***
 - it is within the scope of its powers or expressly authorized by law,
 - it is made upon a promise to perform AFTER making of the contract,
 - includes the price term (\$\$\$\$\$),
 - is **in writing**,
 - dated when made,
 - signed by the parties thereto (or their agents authorized by law and duly appointed), and
 - **authorized in writing** *Shadowood Development Co., Ltd. v. City of Lake St. Louis*, 668 S.W.2d 647 (Mo.App. 1984) (motion by board accepting agreement did not establish enforceable contract where board didn't specifically authorize Mayor to contract with companies for sewer construction)

Best practice – authorize contract via ordinance or resolution!

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- “Substantial conformity” keeps you from having to go back to legislative body to finalize
- Limiting language of above discretion to ensure administrative officials won’t overdo it
- Allows approval of any ancillary documents necessary

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CAMELOT, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen approves on behalf of the City an agreement with Merry Month Maypole Company, LLC. for acquisition and installation in Camelot Park of a pole suitable for eligible maidens to interlace colorful cloth streamers as specified in the related specifications and bid in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2. This Ordinance shall be in full force and effect from and after the date of its passage by the Board of Aldermen and approval according to law.

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Zoning Ordinances/CUPs



Add findings required by code into the body of the ordinance..



State that all requirements for hearings and notices were complied with – for all zoning ordinances requiring hearings



CUPS – add reasonable conditions into the body of the ordinance!



Draft your code in a way that limits the number of people who have standing to challenge the city’s decision

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CUPS

- Use recitals to document procedural requirements met and necessary findings in code met
- Add reasonable conditions, be creative and think of things that may be problematic and how you can address them

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF ALDERMEN OF THE CITY OF CAMELOT, MISSOURI, AS FOLLOWS:

SECTION 1: Mary Smith, Permittee, is hereby granted a conditional use permit to operate a brothel at 123 Main Street, subject to the conditions contained in this section:

- 1) The conditional use permit is only to authorize the *The Best Little Academy for Women in Missouri* at 123 Main Street and no other enterprise, business or use of the premises.
- 2) The maximum hours of operation are 4 PM to 4 AM Monday through Friday, and 8 AM Saturday to 4 AM on Sunday. Additional business hours may be permitted with the Zoning Administrator's approval including, but not limited to, special events.
- 3) An opaque fence shall be erected around the outdoor patio sufficient to screen the patio from the adjacent childcare center.
- 4) All signs shall conform to Chapter 410 of the Camelot City Code regarding *Signs and Advertising Devices*, except that no red exterior lighting will be allowed.
- 5) The Subject Property shall be kept free of litter and debris at all times.
- 6) The landscaping shown on the approved site plan shall be maintained in a healthy condition at all times. Dead or dying vegetation shall be replaced in a timely manner.
- 7) No outdoor service or business activities shall be permitted on the premises.

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Consider making the CUP non-severable so the applicant loses the benefit of the legislation if they challenge any conditions imposed.

SECTION 2: **The provisions of this Ordinance shall not be severable.** In the event a court of competent jurisdiction rules that any part of this Ordinance is unenforceable, the entire Ordinance shall be rendered null and void.

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Zoning Legislation

- Clearly define who has standing to challenge any action

Zoning Regulations Definitions

A. In General.

1. Unless a contrary intention clearly applies, the following words and phrases shall have the meanings given in the following definitions for the purposes of this Chapter. Words and phrases which are not defined shall be given their usual meaning except where the context clearly indicates a different or specific meaning.

B. *Definitions.* As used in this Chapter, unless the context otherwise indicates, the following terms mean:

AGGRIEVED PARTY

For the purpose of standing to file permitted appeals from decisions made in the course of administration of the City's land use regulations, an "aggrieved party" is either:

1. The applicant, or
2. One who:
 - a. is the owner or occupant of property within two hundred (200) feet of the subject property as measured from the nearest boundary of the subject property; and
 - b. suffers a demonstrable and material adverse effect from the decision at issue.

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Zoning Regulations Conditional Use Permit Appeals

An **aggrieved party** may, within fifteen (15) days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decisions of the Board of Aldermen under this Article. The written request must set forth in a concise manner (a) the factual basis upon which the appellant qualifies as an "aggrieved party;" and (b) the decision being appealed; and (c) all grounds known to the appellant as to wherein and why the decision is allegedly in error. The request for reconsideration and appeal must be filed with the City Clerk within the time specified above. A copy of the request and any supporting documents or materials filed by the aggrieved party must be served by the aggrieved party on the applicant (if different than the aggrieved party) by certified U.S. mail, return receipt requested, within three (3) days of filing with the City Clerk. Proof of service on the applicant must be filed with the City Clerk within six (6) days of filing of the request. The Board of Aldermen may consider the appeal on the record of the prior decision or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.

Chapter 405. Zoning Regulations Article X. Planned Unit Development District Section 405.1450. Appeals.

An **aggrieved party** may, within fifteen (15) days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decisions of the Board of Aldermen under this Article. The written request must set forth in a concise manner (a) the factual basis upon which the appellant qualifies as an "aggrieved party;" and (b) the decision being appealed; and (c) all grounds known to the appellant as to wherein and why the decision is allegedly in error. The request for reconsideration and appeal must be filed with the City Clerk within the time specified above. A copy of the request and any supporting documents or materials filed by the aggrieved party must be served by the aggrieved party on the applicant (if different than the aggrieved party) by certified U.S. mail, return receipt requested, within three (3) days of filing with the City Clerk. Proof of service on the applicant must be filed with the City Clerk within six (6) days of filing of the request. The Board of Aldermen may consider the appeal on the record of the prior decision or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.

Zoning Legislation

- Make your opponent show their hand now, may preclude litigation
- Gives city ability to dispose of a frivolous appeal, chance to correct mistakes, and chance to frame facts and governing law before litigation

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Additional sample ordinances

- Vendor Debarment
- Policy Funeral Ordinance Repeal

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Laws of Law!

1. The highest priority in drafting legislation is certainty of application.
2. The highest priority in drafting legislation is clarity.
3. Brevity is not a virtue in drafting legislation.
4. Do not try to reinvent the wheel.
5. Laws are not copyrightable and plagiarism is not a crime.
6. Follow the leader.
7. Include standards when delegating discretion to administrators.
8. Review, refresh and expand criteria for delegated discretion
9. Build in administrative remedies.
10. Minimize the use of pronouns.

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