Missouri Municipal Attorneys Association

Summer Seminar

July 14-16, 2023

Missouri Municipal Attorneys Association

Summer Seminar

Administrative Search Warrants

Presented by:
Todd Smith
Attorney
Lauber Municipal Law, LLC

notes

notes

Missouri Municipal Attorneys Association

Summer Seminar

Best Practices for Municipal Prosecutors

Presented by:
MMAA Municipal Prosecutors Committee

notes

notes

Missouri Municipal Attorneys Association

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Municipal Court Appeals and Trials

Presented by:
Todd Smith
Attorney
Lauber Municipal Law, LLC

notes

notes

MISSOURI MUNICIPAL ATTORNEYS ASSOCIATION

Summer Seminar

Capitol Avenue:

The Intersection of Dangerous Buildings, Historic Preservation,

Eminent Domain and Economic Development

Presented by:
Ryan Moehlman
City Attorney
Jefferson City

Capitol Avenue

THE INTERSECTION OF DANGEROUS BUILDINGS, HISTORIC PRESERVATION, EMINENT DOMAIN AND ECONOMIC DEVELOPMENT

PRESENTED BY RYAN MOEHLMAN, CITY ATTORNEY, JEFFERSON CITY, MISSOURI

1

Once Upon A Time….

- In heart of the neighborhood:

2

Building an Empire

- Map of all properties owned by Barbara Buescher at start of 2016 LCRA Project
- 32 Properties in a 4 Block area

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LCRA Blight Clearance Project

- Blight Removal Guarantee Agreement 2017
- LCRA would acquire property using their own funds, voluntarily or eminent domain
  - In Cole County, LCRA is the Housing Authority
- LCRA would then dispose.
- City would make up $ difference between acquisition price and sale price.
- GOAL: Get properties in hands of Redevelopers looking to restore historic buildings

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LCRA Blight Clearance Project

- PROs:
  - LCRA had access to cashflow which could be used to fund these types of acquisitions
- CONs:
  - LCRA was in control of pace of acquisitions
  - LCRA was in control of redevelopment solicitation and selection

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LCRA Blight Clearance Project

- Phase 1 Acquisitions 2017 - Condemnation Action on Four Properties

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LCRA Blight Clearance Project

- Phase 1 Acquisitions
- Problem:
  - HIGH Acquisition Price (Commissioner's Award)
  - LOW Sale Prices
    - REMEMBER: City had to make up the difference

Solution:

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Solution to High Commissioner's Awards

- Property Owner did not participate in Condemnation Lawsuit
  - Commissioners could not access interiors of Buildings
    - Likely lead to assumptions about condition of interiors by Condemnation Commissioners or rote application of per square foot values
- In Phase 2 acquisitions, LCRA presented Dave Helmick Property and Housing Inspector and City Nuisances Records (photos) as evidence in Commissioner's property viewing
  - Result: Much Lower Condemnation Awards!

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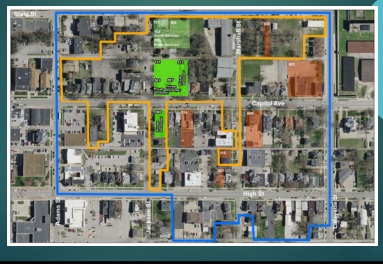
LCRA Blight Clearance Project

- Phase 2 Acquisitions (2018) - Condemnation Action on Five Properties



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LCRA Blight Clearance Project

- Phase 3 Acquisitions (2022) - Condemnation Action on Five Properties

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In the Meantime….

- Structures are deteriorating to the point of no return:
  - Example: 519 E. Capitol
  - Tree fell through building rear
  - City forced to demolish
  - Demo cost of $90,000+

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In the Meantime….

- The Masses are Getting Anxious!
- Complaints about LCRA process:
  - Too slow
  - Too expensive
  - Lack of control/input from City

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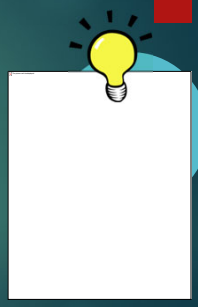
In the Meantime….

- EUREKA!
- $90,000 Demolition Cost = $90,000 Tax Lien
  - §67.410.5 RSMo.
- In condemnation, Court will distribute Taxes/Tax Liens to County prior to distributing to Property owner.
- Cost to acquire Phase III = $0.00 + soft costs
- Allowed City to get 2-for-1
  - Same taxpayer dollar was used twice; Once to demolish a dangerous building and once to acquire a blighted property.
  - Third Use? – Acquired property can be sold/incentivized to create economic development opportunities



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A Plan is Born

- THE CONCEPT IS SCALABLE!

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A Plan is Born….

Next steps:

- Use current abatement tax liens to build up "credit" to be used to acquire properties.
- Increase pace of work on dangerous building hearings and demolitions to further build up more "credits" for acquisition.
  - Most properties had already been through dangerous building process and were just waiting on funding to be demolished.
- Secure funding to demolish dangerous buildings.
- Acquire Phase III properties (5 parcels) from Housing Authority.

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A Plan is Born….

What:

- 5 Capitol Avenue properties to acquire from LCRA
  - § 99.450(3)(c) allows for direct conveyance from LCRA to City for "public purposes"
- 17 Capitol Avenue Properties in area to acquire from Buescher
  - 14 Dangerous Buildings (i.e., Potential Demolitions)
  - 2 previously demolished (vacant) lots
  - 1 parking lot
- 3 more Buescher properties outside Capitol Avenue to be acquired
- City Council approves $575,000 for demolition and acquisition costs
  - Demo, acquire, and then issue redevelopment RFP

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Time for Action

19 Properties have been declared dangerous buildings under City Code/§67.410 RSMo.

- Most properties have been vacant for 5-15 years
- Extreme problem with squatting
- Police and Code Enforcement presence at vacant, dangerous buildings on weekly and eventually daily basis.

Staff brings ordinance to Council to approve demolition of 19 buildings

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Time for Action

Staff brings ordinance to Council to approve demolition of 19 buildings

Result:

HERE COME THE HISTORIC PRESERVATIONISTS!

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Council and Community Climate

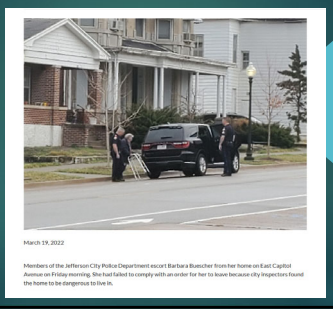
Demo Them All!
- Process has taken long enough
- Assemble land and offer as package to allow for large scale redevelopment

Save What Can Be
- Provide opportunities for buildings to be saved where possible.
- City should not tolerate inaction on Dangerous Buildings (can't wait forever to find investors to save buildings)

Save Them All!
- Each building can and should be saved
- City should repair buildings to stop deterioration

19

In the Meantime…



March 19, 2022

Members of the Jefferson City Police Department escort Barbara Buescher from her home on East Capitol Avenue on Friday morning. She had failed to comply with an order for her to leave because city inspectors found the home to be dangerous to live in.

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Concerns of Historic Preservationists

1. Staff is too over-enthusiastic and quick to declare a building dangerous and to demolish
   - City Code includes prohibition that City cannot repair a dangerous building if cost of repair exceeds 50% of value of building
2. "Someone" can save these buildings!

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Concerns of Historic Preservationists

1. Claim: Staff is too over-enthusiastic and quick to declare a building dangerous and to demolish; staff also over-estimated cost of repair

- Solution: City hired forensic structural engineer to conduct structural analysis and provide estimate of cost repair to occupiable status
  - Result: All studied structures were dangerous and needed to be immediately repaired or demolished.
  - Estimated repair costs between $300,000 and $1.1MM, per building
  - Paid for with Historic Preservation Fund Grant (NPS/SHPO)

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Concerns of Historic Preservationists

2. "Someone" can save these buildings!
   - But who???
     - Disposition of LCRA-acquired buildings was very slow and tepid in response; low sale prices and slow project progress.
   - Solution: Call for Interested Parties

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Call for Interested Parties

City would open up "Call" for eight weeks

- Parties interested in saving building had to:
  1. Put greater of $5,000 or 1% of reno cost into escrow with City
  2. Sign "Proposal Guarantee Agreement"
     - Guarantees that if City does not demo applicable building and acquires (via eminent domain or otherwise), Party will submit a redevelopment proposal for the property
     - If Party fails to submit proposal, escrow is forfeited
     - If Party submits proposal and is not selected, escrow is returned
     - If Party submits successful proposal, escrow is applied to purchase

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Call for Interested Parties

- If no Interested Parties submit escrow and execute agreement, City would demo building
- Strictly to discover potential interest in redeveloping individual buildings
- Did not give "Interested Parties" advantage in RFP process
  - Would still have to compete in open RFP process.

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In the Meantime…

Remember This?

March 19, 2022

Members of the Jefferson City Police Department escort Barbara Buescher from her home on East Capitol Avenue on Friday morning. She had failed to comply with an order for her to leave because city inspectors found the home to be dangerous to live in.

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In the Meantime…

Demolition begins on historic Jefferson City home

by Anna Watson | October 11, 2022 at 4:04 a.m.

Anna Watson/News Tribune photo: A purgent smell remains. The back side of 407 E. Capitol Ave. in Jefferson City sustained severe damage from a structure fire.

Mrs. Buescher's residence caught fire and was destroyed on October 2022.

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Call for Interested Parties

Result:

- Three properties garnered Interested Parties
- Nine properties to be demolished by City
- Two LCRA properties sold to redeveloper under RFP process
- Structural Engineer and Call for Interested Party allowed those residents who were attached to the historic nature of Capitol Ave. to have a "funeral process"

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Sale of LCRA Properties

- Phase III condemned Properties conveyed to City from LCRA
- Original plan was hold off on offering in RFP until rest of properties were acquired
- Council decided that saving buildings was priority over creating opportunity for large-scale land assemblage and redevelopment

Demo'd

Interested Party

Sold at RFP

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Chapter 353

- City Council Approved Chapter Blight Study and Redevelopment Plan submitted by Jefferson Redevelopment Corporation (Ch. 353) – December 2022
- Board of Directors of Jefferson Redevelopment Corporation:
  - Mayor
  - City Administrator
  - City Finance Director
- Provides statutory authority to condemn blighted properties
- Provide potential opportunity to incentivize redevelopment through tax abatement

30

Bit of a Sidetrack…. New Legislation

City and City's lobbyist worked with local legislative delegation to enact new language to §523.061 RSMo.

- "Notwithstanding any other provision of law in sections 523.001 to 523 to the contrary, a circuit judge who determines that heritage value is payable as provided in this section shall not increase the commissioners' award or jury verdict to provide for the additional compensation due where heritage value applies if the plaintiff is a city, town, or village that is incorporated in accordance with the laws of this state and the plaintiff moves for exclusion of the heritage value and shows after an evidentiary hearing by a preponderance of the evidence that the property taken has been:

(1) Abandoned;

(2) Declared a nuisance and been ordered to be vacated;

(3) Demolished or repaired after notice and hearing; or

(4) Materially and negatively contributed to a blighted area as that term is defined in section 99.805."

Part of HB 1606 (2022) (homelessness bill), being challenged in *Byrd v. St. of Mo.* (SC100045)

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Demos Complete - Spring 2023

- As of May 2023, Barbara Buescher owed the City ***$497,768.53*** in nuisance abatement costs, dangerous building demolition costs, and abandoned building registry fees, plus interest.
- Eminent Domain Case Filed February 21, 2023
  - 20 properties
  - Currently Pending

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Next Steps after Condemnation

- RFP for Redevelopment
- City will make available 21 Properties available for private redevelopment
  - 16 vacant properties
  - 5 residential buildings

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11- Private Redevelopment
21- Future RFP
1 - Held by LCRA
Marshall St
Capitol Ave
High St

Missouri Municipal Attorneys Association

Summer Seminar

Conditional Use Permits and the Creve Coeur QuikTrip Case

Presented by:
Carl Lumley
Attorney
Curtis, Heinz, Garrett & O'Keefe, P.C.

Discretion is the better part of … your CUP ordinance

BG Olive & Graeser LLC v. City of Creve Coeur, 658 SW3d 44 (Mo banc 2021) aka Creve Coeur QT decision

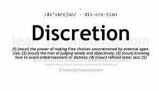
July 2023

Carl J. Lumley

1

Key Holding

Mo Supreme Court reversed without remand, holding that in judicial review of noncontested case pursuant to 536.150 RSMo, **"the circuit court should have reviewed the City's determination based on the evidence rather than making its own independent decision regarding issuance of the CUP."**



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No Surprise?

Should not be a surprising result, given that the statute says:

"the court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, **such discretion lawfully exercised shall not be disturbed**."

3

And Yet …

While prior court opinions recited the statutory text, the resulting decisions often seemed contradictory

Plaintiffs argued City had no discretion because there was evidence which would support issuance of the CUP

And trial court proceeded to make its own decision as if it were the city council, and mandated issuance of CUP

And Court of Appeals affirmed

4

Background – the application

Proposal to replace an aging strip center with a large, modern 24-hour Quik Trip – 16-pump gas station, convenience store, with fast- food restaurant offerings

5

Background – City process

- Thorough staff review – dozens of plan modifications, 20 conditions of approval accepted by applicant, resulting in **staff recommendation of approval**
- Three PZ meetings/public hearing – hours of public comment
- Two council meetings/readings – lots more public comment
- Largely remote proceedings due to COVID
- PZ majority recommended denial (one dissent)
- Council motion to approve the CUP ordinance failed **unanimously**

6

Background – the trial

First in-courtroom trial for judge after return from COVID

Plaintiff witnesses/evidence
- Property owner – well regarded, good corporate citizen
- Quik Trip rep – did not downplay QT business model
- Zoning expert – hired by cities frequently (and currently by Creve Coeur)
- Traffic engineer – hired by Creve Coeur often
- Appraiser – thorough work, no opposing opinion available

City witnesses/evidence
- City Dept Head who had recommended approval, but at trial explained City comprehensive plan, how it was developed, and how decision was up to City Council under the ordinance, not him (plaintiff put plan and ordinances into evidence)
- Most active Resident
- Exhibits - traffic detail showing impact on the neighborhood, council & PZ minutes

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Background – City Comp Plan

"The Vision for East Olive is to create a **walkable corridor** of destination retail boutiques, **neighborhood service businesses**, small-scale restaurants, attached townhomes, and low-density multi-family homes and single family homes. Development of the East Olive corridor should encourage pedestrian access from adjacent neighborhoods and prioritize walkability between neighboring lots while accommodating car access and easy parking."

Developed by extensive process, with high citizen engagement and involvement (and recorded with County)

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Background – the Ordinance

- "The City Council may authorize by ordinance, under prescribed conditions, the construction or undertaking of any conditional use that is expressly permitted as a conditional use in a particular zoning district; **however, the City reserves full authority to deny any request for a conditional use …"**
- **The City Council shall not approve a conditional use unless it finds that the application and evidence presented clearly indicate that the proposed conditional use:**
- **will meet six criterion, including "**the applicable provisions of the City's Comprehensive Plan"

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Just for fun, more challenging facts

Two service stations nearby, both there for decades (however at a busier intersection)

One of them recently completely redone and upgraded with City approval – flashy new Mobil on the Run with large car wash

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Takeaway No. 1

- If you don't have a current (recorded) comp plan, you have a problem
- But it is hard to impress on judges the significance of the plan when you do have one (nonetheless, don't give up)

11

Takeaway No. Two

- It is better to draft a "bulletproof" proposed judgment than a totally one-sided "scorched earth" version

- Would have been more difficult appeal if the judgment did not clearly indicate trial court was remaking the decision rather than reviewing it

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Takeaway No. C

- Very important to expressly retain full Council/Board discretion in your CUP ordinance in the noncontested context
- Some city attorneys prefer the contested case approach at the local level, but consider the burden of a full trial on your elected officials (and the prospect of cross-examination of residents)

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Takeaway Fourth

- While the Supreme Court referred to evidence of resident opposition, it ultimately spoke of the council discretion regarding issuance of the CUP
- IMHO, the case does not stand for proposition that bare resident opposition is sufficient basis for denial
- But your residents will likely assert otherwise (be prepared)

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Takeaway Number 5

- Consider enacting a "record of decision" process to apply when the vote on a CUP ordinance fails
- At trial, used detailed council and PZ minutes as evidence decision was not arbitrary
- But would have been helpful to have a clear written rationale approved by council majority rather than just the negative vote on the ordinance and individual comments in the minutes

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Takeaway Last But Not Least

- Doesn't hurt to retain former Missouri solicitor general Jim Layton to argue the case in Supreme Court

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Thank you

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SUPREME COURT OF MISSOURI
en banc

BG OLIVE & GRAESER, LLC, and FORSYTH INVESTMENTS, LLC, Respondents, v. CITY OF CREVE COEUR, MISSOURI, Appellant.	)	***Opinion issued December 20, 2022*** No. SC99619

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
The Honorable Nancy Watkins McLaughlin, Judge

The City of Creve Coeur, Missouri (hereinafter, "the City"), appeals from a judgment and an order in mandamus, requiring the City to issue a conditional use permit (hereinafter, "CUP"). The City asserts the circuit court improperly overrode the City's discretion to issue a CUP and failed to apply proper standards when reviewing its decision. The circuit court's judgment is reversed, and its order in mandamus is quashed.[1]

[1] This Court has jurisdiction pursuant to article V, section 10 of the Missouri Constitution because it granted transfer after opinion by the Missouri Court of Appeals, Eastern District.

Factual and Procedural Background

BG Olive & Graeser, LLC and Forsyth Investments, LLC (hereinafter, and collectively, "Property Owners") own adjacent parcels of property in the City. Property Owners entered into a contingent agreement to sell their property to QuikTrip. This sale was contingent upon the City issuing a CUP, which would allow QuikTrip to construct a new convenience store and service station.

QuikTrip applied for a CUP from the City. Section 405.1070[2] of the City's Code of Ordinances governs CUPs. QuikTrip's application stated it sought to develop a new gas station and convenience store. QuikTrip noted the location was in a well-travelled area and would serve those driving in this area. The City's staff notified QuikTrip its application was incomplete and provided a list of items it needed to supplement. QuikTrip worked with the City's staff, ensuring its application was compliant and conformed to the City's criteria. The City's Director of Community Development recommended the City issue the CUP to QuikTrip.

The bill seeking approval of QuikTrip's CUP was introduced before the City Council (hereinafter, "the "Council"). After the presentation in support of the CUP and hearing from residents who opposed the CUP, the Council unanimously denied QuikTrip's application.

Property Owners filed an application for judicial review. Pursuant to section 536.150,[3] the circuit court conducted a trial *de novo*. After the trial, the circuit

[2] All references to section 405.1070 refer to the City's Code of Ordinances.
[3] All statutory references are to RSMo 2016.

court entered its judgment and an order in mandamus, finding the City's ordinances required the City to issue the CUP. The circuit court found, because there was evidence supporting the six standards in the City's zoning code, section 405.1070(E), the City's refusal to issue the CUP was unlawful, unreasonable, arbitrary, capricious, and constituted an abuse of discretion.

The City appeals, arguing the circuit court failed to apply the proper standard for reviewing a noncontested case. The City asserts the circuit court properly created the factual record at the trial *de novo* but then substituted its discretion determination for that of the City's. Additionally, the City avers the circuit court erred in issuing the writ of mandamus because the circuit court exceeded its authority and went beyond the scope of relief in that the City's ordinances preserve its discretionary authority in issuing a CUP. The City also believes the circuit court's judgment is against the weight of the evidence because QuikTrip is not a neighborhood business.

Standard of Review

This Court reviews a circuit court's grant of relief, pursuant to section 536.150, from an agency decision consistent with any other court-tried case. *State ex rel. Swoboda v. Mo. Comm'n on Hum. Rights*, 651 S.W.3d 800, 803-04 (Mo. banc 2022). "An appellate court must sustain the decree or judgment of the [circuit] court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Furlong Cos. v. City of Kan. City*, 189 S.W.3d 157, 168 (Mo. banc 2006). "Questions of law,

including matters of statutory interpretation, are reviewed *de novo*." *Swoboda*, 651 S.W.3d at 804.

Noncontested Case Review

Whether an administrative proceeding was contested or noncontested is a matter of law. *Lampley v. Mo. Comm'n on Hum. Rights*, 570 S.W.3d 16, 20 (Mo. banc 2019). "Contested cases provide the parties with an opportunity for a formal hearing with the presentation of evidence, including sworn testimony of witnesses and cross-examination of witnesses, and require written findings of fact and conclusions of law." *Furlong*, 189 S.W.3d at 165. In contrast, noncontested cases "do not require formal proceedings or hearings before the administrative body[,]" and there is no agency record to review. *Id*. Here, there was not a formal hearing before the Council when it considered QuikTrip's application for a CUP. Accordingly, this is a noncontested case.

Appellate review of a noncontested case is governed by section 536.150. Section 536.150.1 states:

> When any administrative officer or body existing under the constitution or by statute or by municipal charter or ordinance shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person, including the denial or revocation of a license, and there is no other provision for judicial inquiry into or review of such decision, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action, and in any such review proceeding the court may determine the facts relevant to the question whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege, and may hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion; and the court shall render judgment accordingly, and may order the administrative officer or body to take such

> further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

Mandamus

Mandamus is a discretionary writ, and there is no right to have the writ issued. *State ex rel. Vacation Mgmt. Sols., LLC v. Moriarty*, 610 S.W.3d 700, 701 (Mo. banc 2020); *Curtis v. Mo. Democratic Party*, 548 S.W.3d 909, 914 (Mo. banc 2018). "For a court to issue a writ of mandamus, there must be an existing, clear, unconditional, legal right in relator, and a corresponding present, imperative, unconditional duty upon the part of respondent, and a default by respondent therein." *State ex rel. Healea v. Tucker*, 545 S.W.3d 348, 353 (Mo. banc 2018) (internal emphasis and quotations omitted). "The purpose of the extraordinary writ of mandamus is to compel the performance of a ministerial duty that one charged with the duty has refused to perform." *Furlong*, 189 S.W.3d at 165. Mandamus should not be used to control or direct the exercise of discretionary powers. *State ex rel. Universal Credit Acceptance, Inc. v. Reno*, 601 S.W.3d 546, 548 (Mo. banc 2020).

Analysis

The dispositive issue in this case is whether the circuit court conducted a proper review of the Council's decision to not issue a CUP. Section 536.150 allows the circuit court to conduct a trial *de novo* to develop its own record and determine facts. The circuit court then is tasked with determining whether the agency decision, "in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or

capricious or involves an abuse of discretion[.]" *Id*. However, the circuit court is prohibited from "substitut[ing] its discretion for discretion legally vested in such administrative officer or body[.]" *Id*.

The City's zoning code codifies its standards and procedures to procure a CUP. Section 405.1070. Section 405.1070(A)(1) authorizes the City to determine the appropriateness of a CUP in areas where the proposed use is not authorized as a matter of law. In every determination as to whether to grant a CUP, "the *City reserves full authority* to deny any request for a conditional use[.]" Section 405.1070(A)(2) (emphasis added). The Council "shall not approve" a CUP unless it finds the evidence and application clearly:

> 1. Complies with all other applicable provisions of this Chapter[.]
>
> 2. Will contribute to and promote the community welfare and convenience at the specific location.
>
> 3. Will not cause substantial injury to the value of the neighboring property.
>
> 4. Meets the applicable provisions of the City's Comprehensive Plan[.]
>
> 5. Will provide, if applicable, erosion control and on-site stormwater detention in accordance with the standards contained in this Chapter.
>
> 6. Will be compatible with the surrounding area and thus will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services.

Section 405.1070(E).

In this case, the circuit court properly heard evidence in the trial *de novo*. Some of this evidence included facts, which it determined would meet section 405.1070(E)'s factors supporting issuing the CUP. The circuit court also heard evidence there was

opposition to the CUP from the City's residents. The circuit court found that, because there was evidence presented supporting a finding each of section 405.1070(E)'s six factors were met, the City's refusal to issue the CUP was unlawful, unreasonable, arbitrary, capricious, and constituted an abuse of discretion The circuit court cited *450 N. Lindbergh Legal Fund, LLC v. City of Creve Coeur, Missouri*, 477 S.W.3d 49, 54 (Mo. App. E.D. 2015), which considered the same City ordinance, in support of its decision.

Yet, *450 N. Lindbergh Legal Fund* directed a CUP would issue *only if* the City's code criteria were met; there was no limitation that a CUP must issue as a matter of law when there was some evidence supporting only a single subsection of the City's code. *Id.* at 54. Hence, the circuit court's analysis—which omitted relevant language from *450 N. Lindbergh Legal Fund* and considered the isolated factors listed in section 405.1070(E)—failed to look at section 405.1070 in its entirety to determine whether the City's decision was unlawful, unreasonable, arbitrary, capricious, or constituted an abuse of discretion.

The circuit court should have examined the entirety of the City's code and then determined whether, based upon evidence presented, the City's decision refusing to issue the CUP was unlawful, unreasonable, arbitrary, capricious, or constituted an abuse of discretion. *See* section 536.150.1. The circuit court should have reviewed the City's determination based upon the evidence rather than making its own independent decision regarding issuance of the CUP. In reaching its decision to issue the CUP, the circuit court had to ignore part of the same City ordinance it relied upon. Section 405.1070(A)(2) states, "the *City reserves full authority* to deny any request for a conditional use[.]" (Emphasis added). Even if there were evidence supporting the six

factors in section 405.1070(E), the City still retained the discretion to deny the CUP pursuant to section 405.1070(A)(2). Accordingly, the circuit court erroneously applied the law and improperly overrode the City's discretion in violation of section 536.150.1.

Conclusion

The circuit court's judgment is reversed, and its writ of mandamus is quashed.

_____
GEORGE W. DRAPER III, Judge

All concur.

FILED
JUL 14 2021
JOAN M. GILMER
CIRCUIT CLERK, ST LOUIS COUNTY

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

BG OLIVE & GRAESER LLC, et al.,	)	
	)	
Plaintiffs,	)	Cause No. 20SL-CC04674
	)	
v.	)	Division 21
	)	
CITY OF CREVE COEUR, MISSOURI,	)	
	)	
Defendant.	)	

ORDER AND JUDGMENT

This Cause comes before the Court on Plaintiffs' Petition for Judicial Review. Plaintiffs BG Olive & Graeser LLC and Forsyth Investments LLC seek de novo review, pursuant to § 536.150[1], of Defendant City of Creve Coeur, Missouri's refusal to issue a conditional use permit ("CUP") for a QuikTrip convenience store and service station at the corner of Olive Boulevard and Graeser Road. Specifically, the proposed use is a 24-hour Quik Trip gas station with 16 fueling stations and a 5,000 square foot convenience store which includes fast food restaurant services. The proposal includes consolidation of six lots of record into two, with the Quik Trip replacing one retail strip center on the eastern/corner lot and another strip center to remain and be upgraded on the western lot. Under Creve Coeur's ordinances, the proposed site is zoned General Commercial (GC) and may by right be developed for many permitted uses. However, the proposed Quik Trip requires issuance of a CUP under the City's Code of Ordinances.

The parties appeared by counsel and evidence was presented on June 15 and 16, 2021. Pursuant to Section 536.150 the Court conducted a trial de novo to determine whether Plaintiffs are entitled to the issuance of the CUP. The court has thoughtfully and carefully considered the

[1] All statutory references are to RSMo (2016) unless otherwise provided.

FILED
JUL 19 2021
JOAN M. GILMER
CIRCUIT CLERK, ST LOUIS COUNTY

claims of the parties and hereby makes the following findings of fact and conclusions of law and enters judgement in accordance therewith.

I. STANDARD OF REVIEW

The parties agree that Creve Coeur's CUP application process is a noncontested proceeding governed by § 536.150. See *450 N. Lindbergh Legal Fund, LLC v. City of Creve Coeur, Missouri*, 477 S.W.3d 49 (Mo. App. 2015). When reviewing a noncontested case, "[t]he trial court does not review the agency record for competent and substantial evidence, but instead conducts a de novo review in which it hears evidence on the merits, makes a record, determines the facts, and decides whether the agency's decision is unconstitutional, unlawful, unreasonable, arbitrary, capricious, or otherwise involves an abuse of discretion." *Id. at 53; Phipps v. Sch. Dist. of Kansas City*, 645 S.W.2d 91, 95 (Mo. App. 1982) ("[T]he circuit court under § 536.150 ... does not review evidence but determines evidence, and on the facts as found adjudges the validity of the agency decision."). Pursuant to the de novo standard of review, this Court must now make its own determination of the salient facts and look to whether, in its own view of those facts, the agency's ministerial action was proper. *Id at 100.*

In this case, that ultimate ministerial action is the City's granting of QuikTrip's CUP. *State ex rel. Kugler v. City of Maryland Heights*, 817 S.W.2d 931, 933 (Mo. App. 1991) ("The issuing of a permit is a ministerial act, not a discretionary act, which may not be refused if the requirements of the applicable ordinance have been met."). Section 405.1070(E) of Creve Coeur's Zoning Ordinance delineates six standards that the City must consider when determining whether to issue a CUP. Under the ordinance, the City Council must look to whether the proposed use:

1. Complies with all other applicable provisions of this Chapter including environmental performance standards presented in Section 405.550, the criteria in Section 405.470 and the standards of this Chapter in regard to yard and setback, parking and loading areas, screening and buffering, refuse, storage and service areas and signs;

2. Will contribute to and promote the community welfare and convenience at the specific location;

3. Will not cause substantial injury to the value of neighboring property;

4. Meets the applicable provisions of the City's Comprehensive Plan and any applicable neighborhood or sector plans and complies with other applicable zoning district regulations and provisions of this Chapter, unless good cause exists for deviation there from;

5. Will provide, if applicable, erosion control and on-site stormwater detention in accordance with the standards contained in this Chapter; and

6. Will be compatible with the surrounding area and thus will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services.

See Creve Coeur City Ordinances Section 405.1070(E).

In a decision involving the same Creve Coeur ordinance, the Court of Appeals stated that the City of Creve Coeur "**shall** approve a conditional use" if it finds that the enumerated standards have been met. *450 N. Lindbergh Legal Fund*, 477 S.W.3d at 54 (emphasis added). The City itself established those standards. Accordingly, if the enumerated criteria in the ordinance are satisfied, the City lacks the discretion to reject the proposed conditional use. Any such rejection would inherently be "unlawful, unreasonable, arbitrary, capricious, or otherwise involve[] an abuse of discretion" warranting reversal under the statute.

II. THE EVIDENCE PRESENTED AT TRIAL ESTABLISHES THAT EACH OF THE SIX STANDARDS HAS BEEN SATISFIED

The City of Creve Coeur has conceded in this proceeding that Standards 1 and 5 have been satisfied and the parties filed a joint stipulation to that effect. Accordingly, only Standards 2, 3, 4, and 6 still are at issue. The evidence adduced at trial establishes that each of the standards has been satisfied.

A. Standard 2: The use "[w]ill contribute to and promote the community welfare and convenience at the specific location."

Plaintiffs adduced testimony and evidence at trial from four expert witnesses and one lay witness. These witnesses testified that the proposed use contributes to and promotes the community welfare and convenience at the specific location because it will: (1) drastically improve the appearance of the area, (2) replace a physically and economically obsolete building, (3) provide for increased tax revenues to the City, (4) improve the sidewalks and pedestrian access, (5) increase the buffering from residential properties, (6) improve the onsite landscaping and streetscape appearance, (7) provide convenient products and services to the community, (8) support an underserved South side of Olive Boulevard, (9) provide numerous ancillary philanthropic services to the community, and (10) will not have any significant impact on traffic operations.

The Court finds the testimony of each of these witnesses to be credible. The Court further finds the proposed use will contribute to and promote the community welfare and convenience at the specific location. The Court therefore finds that Standard 2 has been satisfied.

B. Standard 3: The use "[w]ill not cause substantial injury to the value of neighboring property."

Plaintiffs adduced expert testimony from Linda Atkinson, an appraiser and real estate consultant. Ms. Atkinson testified that she performed two different studies to determine any impact the proposed QuikTrip development would have on surrounding property values. Based on her findings and analysis, Ms. Atkinson concluded that the proposed development would not cause any injury – let alone substantial injury – to surrounding property values. Plaintiffs also presented expert testimony from John Brancaglione, a city planner, who testified that, based on his knowledge and expertise, the kind of development at issue will not cause any injury to surrounding property values.

The Court finds the testimony of these witnesses to be credible. The Court further finds the proposed QuikTrip development will not cause substantial injury to surrounding property values. Accordingly, the Court finds that Standard 3 has been satisfied.

C. Standard 4: The use "[m]eets the applicable provisions of the City's Comprehensive Plan and any applicable neighborhood or sector plans and complies with other applicable zoning district regulations and provisions of this Chapter, unless good cause exists for deviation there from."

Mr. Brancaglione testified that he has drafted numerous comprehensive plans for municipalities over his five decades of city planning experience. Mr. Brancaglione testified that the proposed QuikTrip development is consistent with the Comprehensive Plan and vision for the East Olive Corridor because it: (1) achieves the plan's goal of redeveloping older, underutilized properties, (2) promotes the plan's vision for the East Olive Corridor of developing medium to low density commercial, retail, and neighborhood service businesses, (3) promotes the plan's goal of encouraging pedestrian access and walkability while accommodating car access, (4) meets or exceeds the zoning requirements and development factors for the corridor, and (5) is supported by current retail development trends. The Court finds this testimony to be credible.

Additionally, the City's Director of Community Development and Corporate Representative, Jason Jaggi, testified. He stated the Properties could benefit from redevelopment and that the proposed QuikTrip development is consistent with the Comprehensive Plan.

The evidence presented at trial establishes that the proposed QuikTrip development "[m]eets the applicable provisions of the City's Comprehensive Plan and any applicable neighborhood or sector plans and complies with other applicable zoning district regulations and provisions...." The Court therefore finds that Standard 4 has been satisfied.

D. Standard 6: The use "[w]ill be compatible with the surrounding area and thus will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services."

In support of their position that Standard 6 has been satisfied, Plaintiffs adduced testimony at trial from four expert witnesses and one lay witness. These witnesses testified that the proposed use will be compatible with the surrounding area and not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services because (1) the area is already zoned commercial, (2) the use is compatible with other preexisting uses on Olive Boulevard, (3) the data – including a memorandum from the police department – shows the use will not have an impact on crime or police services, (4) the development eradicates outdated and obsolete buildings from the area, (6) the use improves streetscape and buffering which renders the site better for pedestrians and nearby residential properties, and (7) that the project does not present any material concerns with respect to traffic. The Court finds this testimony to be credible.

Evidence was also presented as to the numerous concessions QuikTrip agreed to incorporate at the City's behest in order to ensure that the development would be compatible with the surrounding area.[2] In fact, there was testimony that QuikTrip made every single concession that the City asked of it in order to ensure the site was compatible with the surrounding area. The Court again finds this testimony to be credible.

The testimony presented at trial clearly establishes that the proposed QuikTrip "[w]ill be compatible with the surrounding area and thus will not impose an excessive burden or have a

[2] These concessions included, among numerous others, (1) using unique Sonoma Stone on the store building and canopy, (2) removing the distinctive red band – QuikTrip's signature branding mark – from the canopy, (3) financing the reorientation of portions of Olive Boulevard and Graeser Road, (4) adding additional landscaping and fencing in the rear of the site, (5) and resurfacing all existing surface parking areas for a consistent appearance.

substantial negative impact on surrounding or adjacent users or on community facilities or services." The Court therefore finds that Standard 6 has been satisfied.

Based on the evidence adduced at trial, this Court finds that each of the six standards has been satisfied and that the City's refusal to issue the CUP was therefore unlawful, unreasonable, arbitrary, capricious, and constitutes an abuse of discretion. The City of Creve Coeur is hereby instructed to issue the CUP, subject to the conditions set forth in the proposed ordinance attached as Exhibit 1, within 30 days of the date hereof.

ORDER AND JUDGMENT

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that each of the standards appearing in Section 405.1070(E) has been satisfied, and the Creve Coeur City Clerk is therefore ORDERED to issue a CUP to QuikTrip with the same conditions and terms as set forth in the proposed Bill No. 5831, attached as Exhibit 1 to the contemporaneously issued Writ of Mandamus. It is further ORDERED that Plaintiffs recover their costs in this action.

Date: 7/14/2021

Nancy Watkins McLaughlin

Hon. Nancy Watkins McLaughlin
Division 21

Missouri Municipal Attorneys Association

Summer Seminar

Homelessness Services

Presented by:
Joe Lauber
Managing Member
Lauber Municipal Law, LLC

Legal and Practical Issues Related to Zoning for the Provision of Homeless Services

LAUBER MUNICIPAL LAW, LLC

Missouri Municipal Attorneys Association
2023 Annual Conference
July 14-16, 2023

Serving those who serve the public

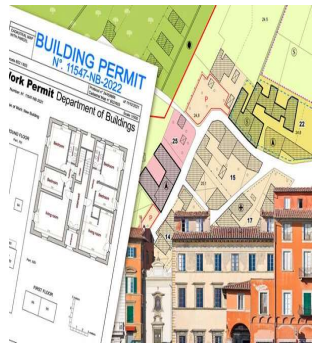
1

Overview

- Permits issued in error
- Permissive and Cumulative Zoning
- Community input
- Legal opposition
- The final ordinance and supporting documents

2

Introduction - Background



- September 2021 application for "commercial" building permit submitted.
- Application was approved and the permit was issued.
- Later, it was discovered that the primary use of the building would be to provide "transitional services". These include showers, kitchens, and rooms for sleeping. As well as social services and professional resources.
- City determined the building plans were inconsistent with the zoning code.
- The building permit was then revoked.

3

Unauthorized permit/Permits issued in error

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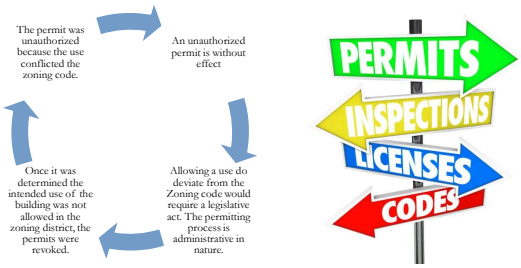

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Permissive and Prohibitive Zoning

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Permissive and Prohibitive Zoning

Lauber Municipal Law, LLC

Permissive Zoning:

- Assumes that no uses are allowed unless they are expressly listed
- Generally, if a city's ordinance lists uses that are permitted, then those not listed are not permitted
- This is based over 80 years of Missouri case law, beginning with *Kaegel v. Holekamp* in 1941 and includes several cases like *Frison v. City of Pagedale* in 1995.

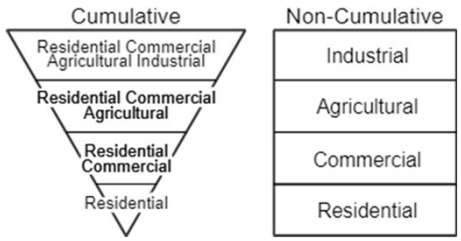
Prohibitive Zoning:

- Prohibitive ordinances assume that all uses are allowed
- Then list each use that is not allowed.
- "It's allowed, unless it's on the list"

6

Compounding effects of Cumulative Zoning

Lauber Municipal Law, LLC



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Compounding effects of Cumulative Zoning

Lauber Municipal Law, LLC

- Permits less intense uses in more intense zoning districts. But does not allow high intensity uses in less intense districts.
- E.g. R-2 district will allow all uses permitted in R-1,
  - R-3 may do the same, so that all uses allowed in R-1 and R-2 are now allowed in R-3 as well.
- In our case, the building was intended to be built in M-1 (light industrial). It was determined that the building may be classified as "transient housing." Which, while undefined, was cut off from cumulative uses at C-2 –commercial "the C-2 district permits "any use permitted in district C-1, except transient dwelling houses."

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Amending the Zoning Ordinance

Lauber Municipal Law, LLC

- The City recognized its position was untenable. The City knew the zoning code would have to be amended to allow the provision of transitional services in the community.
- Changes are typically "text amendments" or "rezoning"
  - Text amendments change what the regulations say;
  - Rezonings change which regulations apply to which properties.
- The City chose to make a text amendment.
  - This allows more properties to be put to more uses for transitional services.

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Getting the Community involved

Lauber Municipal Law, LLC

10

Getting the Community involved

Lauber Municipal Law, LLC

- The City directed the Mayor and City Staff to create a "Transitional Services Committee."
- The committee focused on:
  - Identifying issues related to homelessness to be addressed throughout the zoning ordinance
  - Establish definitions specific to transitional services for use in the ordinance
  - Establishing and defining new land uses to expand the scope of uses permitted by the ordinance
  - Created regulations for special use permits
  - Created minimum standards for shelters and housing.
  - Create provisions for emergency shelters

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Legal Challenges and opposition

Lauber Municipal Law, LLC

As early drafts of the ordinance were circulated, local and national law firms voiced their objections and threatened litigation. They claimed the ordinance was vague and overbroad, and that it violated the equal protection clause of the US Constitution.

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Legal Challenges and opposition

Lauber Municipal Law, LLC

- **Vague and Overbroad**
  - An ordinance will be found invalid if it is so vague that citizens cannot understand what the law regulates or when they are violating it.
  - An ordinance will be found invalid if it regulates more than its intended purpose.
  - Vague and overbroad were challenges leveled at earlier drafts of the ordinance. Opponents claimed words were too general. Claimed provisions of the ordinance and minimum standards regulate beyond safety by requiring certain training and record-keeping of shelter personnel.
  - The City took these challenges seriously and took the opportunity to fine tune any areas that could be considered unclear.

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Legal Challenges and opposition

Lauber Municipal Law, LLC

- **Equal Protection**
  - The equal protection analysis first looks to see if there is any burden to a fundamental(constitutional) right, or if the law results in an unequal impact on any protected class. These include:
    - Age
    - Race
    - Religion
    - National Origin
    - Religious Beliefs
    - Gender/pregnancy
    - Veteran status
    - Disability

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Legal Challenges and opposition

Lauber Municipal Law, LLC

- **Equal Protection**
  - If there is no fundamental right or protected class implicated, the court will presume the ordinance is valid. The burden is then on the challenger to show that the law has no rational relation to a legitimate government purpose.
  - This is a very high hurdle for a challenger to clear.
  - In our case, the City was clear to focus on increases in traffic, crime and any threats to safety these may cause.

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Legal Challenges and opposition

Lauber Municipal Law, LLC

- **Arbitrary and Capricious**
  - Similar to the equal protection challenge,
  - an argument most often directed at administrative agencies.
  - A decision is arbitrary if it comes about seemingly at random or by chance or as a capricious and unreasonable act of will. It is capricious if it is the product of a sudden, impulsive and seemingly unmotivated notion or action."
  - often, an administrative decision will be found arbitrary or capricious if it appears to be based on animus or some other personal reason.

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Legal Challenges and opposition

Lauber Municipal Law, LLC

- Build the Record to support the ordinance:
  - Data to support City's Decisions
  - Case studies from other Cities
  - Journal articles
  - Local and regional data and statistics.

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Conclusion

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- The City's decision to revoke the permit resulted in the decision to amend the City's permissive zoning code to allow more uses in more districts.
- After months of contentions discussion, 17 defined uses and concepts were added to the code. These include:

Day Shelter	Emergency Shelter	Temporary warming/cooling Shelter
Emergency Housing	Transitional Housing	Permanent Supportive Housing

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Conclusion

- Ultimately the ordinance was passed with little excitement early this year.
- There have been no further challenges to the ordinance.

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LAUBER MUNICIPAL LAW, LLC

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LAUBER MUNICIPAL LAW, LLC

Serving those who serve the public

About the Firm

Lauber Municipal Law, LLC, was established for the purpose of serving local governmental entities of all types and sizes. We can serve your community as its general counsel (City Attorney) or as special counsel for technical issues like economic development incentive approvals, annexation, elections, impeachments, and appellate work..

Our goal through Lauber Municipal Law, LLC, is to meld our previous experience together to provide a high-quality, "big firm" work product, while providing the flexibility, personal responsiveness, and cost effectiveness of a small firm. We completely understand public entities' needs to obtain the most effective representation possible while considering the fact that these services are compensated from a budget made up of public funds. As the motto for Lauber Municipal Law, LLC, states: We are proud to serve those who serve others. Our sincere desire is to make that job easier and less stressful for the elected officials and administrative staffs of these entities.

The choice of a lawyer is an important decision and should not be based solely on advertisements. This disclosure is required by rule of the Missouri Supreme Court.

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Missouri Municipal Attorneys Association

Summer Seminar

Ordinance Drafting

Presented by:
Lyndee Rodamaker Fritz
Attorney
Cunningham, Vogel & Rost, P.C.

Kevin O'Keefe
Attorney
Curtis, Heinz, Garrett & O'Keefe, P.C.

Ordinance Drafting: Best Practices

Missouri Municipal Attorneys Association – 2023 Summer Seminar
Lyndee Rodamaker Fritz | Cunningham, Vogel & Rost P.C.
Kevin O'Keefe | Curtis, Heinz, Garrett & O'Keefe

1

Local Government: Authority & Limitations

2

Sources of City Authority

- Dillon's Rule v. Charter City
- State Statute
- Local Ordinances
- State Courts

3

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

4

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

5

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)

6

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

7

ORDINANCES

How a Local Government Does Business

8

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. Schulter*, *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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10

Bill No. ___ Ordinance No. ___

Title etc. ...

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

_____ _____

Presiding officer Attest

11

#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.

15

15

"Recitals"

Why & When?

16

#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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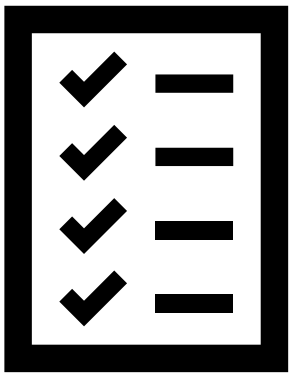

Resolution v. Ordinance?

- 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!

24

- "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

26

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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27

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.

28

28

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.

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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

Additional sample ordinances

- Vendor Debarment
- Policy Funeral Ordinance Repeal

31

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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Bill NO. _____ Ordinance NO. _____

AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR OPERATION OF A BROTHEL ON PROPERTY LOCATED AT 123 MAIN STREET IN THE CITY OF CAMELOT

WHEREAS, Mary Smith, owner of *The Best Little Academy for Women in Missouri,* applied for a conditional use permit to operate a brothel at 123 Main Street ("Subject Property"); and

WHEREAS, in accordance with the applicable ordinances of the City of Camelot the application was submitted to the Planning and Zoning Commission for its investigation and report, and further that the Planning and Zoning Commission has returned its final report and has recommended that the conditional use permit be approved subject to certain conditions; and

WHEREAS, a notice was duly published as required by law notifying the public of the holding of a public hearing on the proposed conditional use permit; and,

WHEREAS, such hearing was duly held by the Board of Aldermen on the 12th day of Never, 2023, in the Aldermanic Chambers at Camelot City Hall in Camelot, Missouri, in conformity with such public notice, at which public hearing the parties in interest and the public were given an opportunity to be heard and were heard; and,

Commented [KO1]: Use prefatory clauses to document that all procedural requirements for the action to be taken have been satisfied.

WHEREAS, the Board of Aldermen hereby finds and determines that the conditional use permit contemplated will not:

a) Substantially increase traffic hazards or congestion;
b) Substantially increase fire hazards;
c) Adversely affect the character of the neighborhood;
d) Adversely affect the general welfare of the community;
e) Overtax public utilities; and

WHEREAS, the Board of Aldermen further finds and determines that the conditional use permit contemplated:

f) Complies with all other applicable provisions of the zoning code including performance standards in regard to yard and setbacks, parking and loading areas, screening and buffering, refuse storage and service areas;
g) Will contribute and promote the community welfare and convenience at the specific location;
h) Will not cause substantial injury to the value of the neighboring property;
i) Complies with the Camelot Comprehensive Plan or plans for any applicable zoning district regulations and provisions of the zoning chapter;
j) Will provide, if applicable, erosion control and on-site storm water detention in accordance with the standards contained in this ordinance;
k) Will be compatible with the surrounding area and thus will not impose an excess burden or have a substantial negative impact on surrounding or adjacent use or on community facilities or services.

Commented [KO2]: The language for these kinds of "findings" clauses should come straight out of the approval criteria/standards in the governing code provision. Specifying that these requirements have been satisfied may help insulate the legislature's decision from successful judicial challenge.

Bill NO. _____ Ordinance NO. _____

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.
8) This Conditional Use Permit shall not be assigned, sold, conveyed, or operated by another without prior approval in accordance with the Camelot City Code. No Occupancy Permit shall be issued to any assignee or successor until transfer approval is secured.
9) This Conditional Use Permit shall lapse and become void unless the Permittee commences full operation of the conditionally permitted use on the Subject Property within one (1) year of the effective date of this Ordinance.
10) This Conditional Use Permit shall be null and void if for any reason the Permittee ceases operation for a period of six (6) months or more.
11) This Conditional Use Permit shall be subject to suspension, termination or other discipline in accord with the provisions of the Camelot City Code in the event the conditionally permitted use is conducted in a manner which constitutes a violation of any state or federal laws or any ordinances of the City of Camelot or Lowe County, or if the conditionally permitted use or the Subject Property is allowed to become a public nuisance.
12) The Permittee shall, within ten (10) days of the adoption of this legislation, notify the City Clerk in writing that the conditional use permit provided for in this legislation is accepted and that the conditions set forth herein are understood and will be complied with.

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.

Commented [KO3]: Be creative. Think of as many of the things that could be problematic if not handled properly and address them now, before it is too late.

Commented [KO4]: The purpose here is to see to it that successors are aware of and agreeable to the conditions of approval.

Commented [KO5]: Consider adding automatic lapsing clauses to guard against applicants "banking" land use approvals for use at a later time. These approvals are based on the circumstances at the time of approval. They can change rapidly.

Commented [KO6]: The legislative body has the prerogative to NOT make legislation severable. In approving CUP's, permits, licenses, etc. consider making the approval legislation - especially of it contains conditions the applicant will have to abide by in the future - non-severable so the applicant loses the benefit of the legislation if they challenge any of the conditions imposed by the city.

Bill NO. _____ Ordinance NO. ____

SECTION 3: 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.

PASSED BY THE BOARD OF ALDERMEN THIS ____ DAY OF _____ 2023.

_____
Presiding Officer

ATTEST:

_____
City Clerk

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.

_____
Arthur D. Lancelot, Mayor

ATTEST:

_____
City Clerk

BILL NO. XXXX

ORDINANCE NO. XXXX

AN ORDINANCE AMENDING CHAPTER 100 OF THE CAMELOT CITY CODE RELATING TO SUSPENSION AND DEBARMENT OF VENDORS.

WHEREAS, the City of Camelot expends great effort to be sure that public money is expended efficiently and in a manner which reflects the ideals and standards fitting of our residents; and

WHEREAS, the Board of Aldermen finds and declares that the requirements, procedures and remedies hereinafter enacted will promote the safety and welfare of the community and assure Camelot citizens that those with whom the City does business are capable and responsible;

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

Section 1. Chapter 100 of the Code of Ordinances of the City of Camelot, Missouri, is hereby amended by the addition of one new Section, initially to be designated as Section 100.013, to read as follows:

Chapter 100. General Provisions.

Section 100.013 Debarment

A. *Policy*. It is the City of Camelot intent to give the public assurance that public money is expended efficiently and in a manner which is consistent with highest ideals and standards in the conduct of public business, and the Board of Aldermen enacts these regulations for the purpose of promoting the safety and welfare of the community and assuring the public that those with whom the City does business are capable and responsible. In order to protect the public interest, it is the policy of the City to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with this Section, are appropriate means to implement this policy. Debarment and suspension are serious actions which shall be used only in the public interest and for the City's protection and not for purposes of punishment.

B. *Definitions*. For the purposes of this Section, unless the context requires otherwise, the following terms shall mean:

AFFILIATE means persons related to one another in such a manner that directly

Commented [KO1]: Prefatory clauses of an ordinance are a good place to set out the legislative purpose and provide context and "legislative intent" for the benefit of future judicial review. But if the ordinance is one which enacts a city code provision there is a risk that the prefatory language of the enacting ordinance may be forgotten or overlook when everyone is just working with the city code. Codifying that contextual material in the city code assures it will be accessible when administrators and courts are called upon to address the code provision.

Commented [KO2]: The definition section of an ordinance is worth spending considerable effort. Include what you want to reach and exclude what you cannot or should not touch upon. By drafting good definitions and articulating them up front the regulatory and operational portions of the ordinance become easier to draft since nuances articulated in the definitions need not be expressed again when the defined terms are used.
On another note, the definition section is NOT the place to "legislate." Define the term here and later lay out the language that says doing this or allowing that result is illegal. Among other things, separating definition from regulation simplifies charging a violation by just citing to the regulatory provision.

or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension, debarment or voluntary exclusion of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, or voluntarily excluded person.

DEBARMENT means an action taken by the City in accordance with these regulations to exclude a person from participating in transactions with the City. A person so excluded is "debarred".

PARTICIPANT means any person who submits a proposal or bid for, or enters into, or reasonably may be expected to enter into, a transaction with the City. This term also includes any person who acts on behalf of or is authorized to commit a participant in a transaction as an agent or representative of another participant.

PERSON means any individual, corporation, partnership, association, unit of government or legal entity, however organized and.

PRINCIPAL means an officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence or substantive control over a covered transaction, whether or not employed by the participant.

PROPOSAL means a solicited or unsolicited bid, application, request, offer, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a transaction.

SUSPENSION means an action taken in accordance with this article that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

TRANSACTION means any transaction between the City and a person for procurement of goods and/or services, or public works contracts and any contract for goods or services between a participant and a person, whose goods or services are to be employed in a transaction with the City.

VOLUNTARY EXCLUSION or VOLUNTARILY EXCLUDED means a status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

C. *Grounds for Debarment*. A person may be debarred from consideration for award of contracts for any of the following reasons:

(1) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of integrity or honesty which currently, seriously and directly affects responsibility as a city contractor or vendor.

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(4) Failure without good cause to perform in accordance with contract specifications or within the time limit provided in the contract.

(5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor or vendor shall not be considered a basis for debarment.

(6) The person is in arrears on any debt owed the city or has a history of being chronically in arrears on debts owed the city or attempting to obtain excessive or unwarranted payment or preference from the City.

(7) Any other cause so serious and compelling as to affect responsibility as a city contractor or vendor, including debarment by another governmental entity.

D. *Procedure*.

(1) Debarment shall be initiated by serving written notice of the debarment to the person intended to be debarred. The notice shall set forth the specific grounds for the debarment and advise the person of the right to appeal. The notice shall be served by registered or certified mail or by delivering a copy of the notice to the person subject to debarment or the person's agent or employee. The debarment shall take effect ten (10) days after service of the notice unless an appeal is taken to the city administrator. If an appeal is taken, the debarment shall not take effect until a final order upholding the debarment is entered by the city administrator or until the appeal is dismissed by the appellant.

Commented [KO3]: When the legislative body delegates administrative discretion the criteria and standards to be used in the exercise of that discretion must be specified.

(2) Within ten (10) days after service of a written notice of debarment, the person affected by the notice may file a written request for a hearing before the city administrator contesting the debarment.

(3) The city administrator shall give the appellant at least ten (10) day notice of a hearing. At the hearing, the City and the appellant shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses and impeach any witness. Oral evidence shall be taken on oath or affirmation. All evidence shall be suitably recorded and preserved. The technical rules of evidence shall not apply, but the city administrator may exclude evidence which is irrelevant or repetitious. The City and appellant shall be entitled to present oral arguments or written briefs at or after the hearing.

(4) The city administrator shall make written findings of fact and conclusions of law and issue a final order. Findings of fact shall be based upon competent and substantial evidence found in the record as a whole. A copy of the city administrator's order, findings of fact and conclusions of law, shall be delivered or mailed to the appellant.

(5) An appellant aggrieved by the decision of the city administrator may, within five (5) 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 city administrator under this Section. The written request must set forth in a concise manner the decision being appealed and 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 five (5) days of the date of the city administrator's decision. A copy of the request and any supporting documents or materials filed by the appellant must be served by the appellant party on the city administrator within three (3) days of filing with the City Clerk. The Board of Aldermen may consider the appeal on the record of the prior decision by the city administrator or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.

(6) Any appellant aggrieved by the final determination of the City may file a petition for review pursuant to Chapter 536, RSMo., as amended, in the Circuit Court of Lowe County. Such petition shall be filed within ten (10) days after the final determination.

E. *Effect of Debarment.* Except to the extent prohibited by law, persons who are debarred or suspended by the City or by the State of Missouri and their affiliates shall be excluded from transactions with the City as either participants or principals for the period of their debarment or suspension. Accordingly, the City shall not enter into transactions with or involving such debarred or

Commented [KO4]: I am a big proponent of giving those whose interests m\ay be impacted by an administrative action all the due process they can handle. By being procedurally expansive now, and making the other side play their hand and "make their case", you increase the chance of avoiding - or shortening - more expensive litigation later.

Also, by giving the other side full due process hearing rights, the administrative proceeding will be subject to review as a contested case. The parties are then bound by the record and facts in evidence before the city, a more favorable standard of review than for non-contested cases.

Commented [KO5]: Making additional administrative remedies available at the city level opens a failure-to-exhaust argument for the city if litigation is filed. And short time frames for exercising those remedies can be beneficial (e.g. 10 days to request a hearing before the city administrator in (3), above, and 5 days for appeal here).

suspended persons or their affiliates during such period.

F. *Length of Debarment*. Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Debarment generally should not exceed three years; however, where circumstances warrant, a longer period of debarment may be imposed.

G. V*oluntary exclusion*. The City may, at any time, settle a debarment or suspension action when it determines that such settlement is in the best interest of the City. Persons who accept voluntary exclusion are excluded in accordance with the terms of their settlements.

Section 2. It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

Commented [KO6]: Declaring a legislative intent for severability as a matter of routine may help you preserve the bulk of a regulatory scheme even if some element is found problematic later.

Section 3. The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

Section 4. 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.

PASSED BY THE BOARD OF ALDERMEN THIS _____ DAY OF _____ 2023.

_____
Presiding Officer

ATTEST:

_____

City Clerk

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.

Arthur D. Lancelot, Mayor

ATTEST:

City Clerk

Commented [KO7]: In cities where the mayor has veto authority it is best to have separate signature blocks for attestation to passage by the legislative body and approval by the executive, even if the mayor is the presiding officer and both signatures are the same.

Bill NO. _____ Ordinance NO. ____

AN ORDINANCE REPEALING SECTION 123.456 OF THE CAMELOT, MISSOURI, CITY CODE.

WHEREAS, every human society has developed funereal traditions intended to accommodate grief and give comfort; and as these cultural traditions evolve through the course of history they tend to increase in sensitivity as cultures mature and become more civil and compassionate; and

WHEREAS, every one of these cultural traditions shares at least two common features: respect for the deceased, and care for those who survive - emotions so universal and reflexive as to seem to be innately human; and

WHEREAS, it is also true that society must at times suffer those who seek self-aggrandizement by flaunting convention and shocking the sensibilities of others; and

WHEREAS, the Missouri General Assembly enacted Section 578.501, RSMO, and the City of Camelot enacted parallel legislation as Section 123.456 of the City Code, legislation which springs from the most noble and compassionate part of the human spirit and seeks to respect the privacy of mourners and protect against disruptions to the public peace; and

WHEREAS, certain individuals or organizations, for reasons of their own, chose to challenge the constitutionality of the state law cited above and have succeeded in obtaining a preliminary injunction against its enforcement; and

WHEREAS, these complainants have now threatened to sue the City of Camelot with respect to its similar ordinance; and

WHEREAS, the Board of Aldermen does not wish to afford these publicity-seekers a platform to further their self-promotion, nor run the risk of funding their activities should they be awarded judgment against the City; and

WHEREAS, the public policy of the United States and the generous protections of our Constitution highly value freedom of speech, even that speech which is almost universally reviled, is founded in bitterness, hate or a shocking disregard for the privacy and compassion to which mourners are humanely entitled, or other selfish and provocative forms of expression which sorely test the bounds of the privilege and protection we afford; and

WHEREAS, the Board of Aldermen also has great confidence in the good sense and tolerance of Camelot's residents, and their capacity to ignore provocateurs and deny them the notoriety they so desperately seek;

Commented [KO1]: Sometimes prefatory clauses can be used to give legislators support for making hard choices and/or providing political and public relations "cover" for the actions they have to take.
This is an extreme example of such an approach.

Bill NO. _____ Ordinance NO. ____

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

Section One.

Section 123.456 of Article V of Chapter 123 of the Code of Ordinances of the City of Camelot, Missouri, is hereby repealed and held for naught.

Section Two.

This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

PASSED BY THE BOARD OF ALDERMEN FOR THE CITY OF CAMELOT, MISSOURI, THIS _____ DAY OF _____, 2023.

_____
Presiding Officer

Attest:

_____
City Clerk

APPROVED THIS _____ DAY OF _____, 2023.

_____
Arthur D. Lancelot, Mayor

Attest:

_____
City Clerk

THE LAWS OF LAWS

Lyndee Fritz & Kevin M. O'Keefe
MMAA July 14, 2023

1. **THE HIGHEST PRIORITY IN DRAFTING LEGISLATION IS CERTAINTY OF APPLICATION.** The goal is to write so that the desired objective of the legislation is achieved in the face of unknown facts and circumstances.

2. **THE HIGHEST PRIORITY IN DRAFTING LEGISLATION IS CLARITY.**[1] Use defined terms and words that express the intent of the legislation without ambiguity or a need for a reader to interpret the meaning.

3. **BREVITY IS NOT A VIRTUE IN DRAFTING LEGISLATION.** The goal is to be thorough and accurate, and to give a reader context to enhance understanding. There's nothing inherently wrong with a short ordinance, but saving paper is not a consideration.

4. **DO NOT TRY TO REINVENT THE WHEEL.** If you are implementing a state or federal law use the same language and structure as the statute you are relying upon. Take advantage of the established case law for construction of statutory terms and procedures.

5. **LAWS ARE NOT COPYRIGHTABLE and PLAGIARISM IS NOT A CRIME.** If someone has drafted an ordinance on a subject that covers the subject well and meets your standards, STEAL IT! If you want to send the original author a thank you note or compliment, that would be nice.

6. **FOLLOW THE LEADER.** The Missouri General Assembly has been passing legislation for almost 200 years. There is a large body of case law by Missouri courts about those procedures (e.g. "repeal and replace") and there is a broad audience oriented to reading legislation that looks like that. Reproduce the entire Section being revised, show inserted and deleted text by clear markings, etc. just like Bills in the General Assembly. (Though I would add chapter, article, division, etc. headings to give readers greater context.)

7. **INCLUDE STANDARDS WHEN DELEGATING DISCRETION TO ADMINISTRATORS.** "The general rule is that a statute or ordinance which vests discretion in administrative officials must include standards for their guidance in order to be constitutional." *City of St. Louis v. Kiely*, 652 S.W.2d 694, 701 (Mo.App. E.D. 1983).

8. **REVIEW, REFRESH AND EXPAND CRITERIA FOR DELEGATED DISCRETION.** Learn from hard facts and go back and reconsider the criteria for CUPs or permits issuance, etc. Update them to be more comprehensive and take more circumstances into account. Revise them to make them more favorable to the city.

9. **BUILD IN ADMINISTRATIVE REMEDIES.** Affording opponents a way to seek appeal or reconsideration at the city is both a sword and a shield. Giving opponents the opportunity to challenge what you've done is a lot quicker and cheaper in the city than going to court. Make them show their hand. And if they blow it and fail to exhaust those remedies, you can put them out of court.

10. **MINIMIZE THE USE OF PRONOUNS.** Not to be politically correct, but to be precise and unambiguous. Try using the noun instead of too many pronouns. If the ordinance is says the city manager is responsible for something use language that makes that clear: "If the city manager finds the applicant is stupid the city manager (not "he/she") shall … ."

[1] Yes, I realize I listed two separate items as superlatives in contravention of good grammar and clear writing. When you write your own list you can be a stickler about such things.

STRUCTURE LEGISLATION TO LIMIT THE NUMBER OF PEOPLE WHO HAVE STANDING TO CHALLENGE THE CITY'S DECISION.

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.

Commented [KO1]: Since Sec. 89.060, RSMo. affords property owners within 185 feet of property subject to a zoning change standing to protest enactment of zoning amendments or changes, I generally use 200 feet (185 feet rounded up to simplify administration) as the proximity limit for zoning matters like mailing notices and determining standing.

"It is a general rule that a party seeking relief under the zoning laws must first pursue and exhaust the administrative remedy available before bringing an action or proceeding for judicial relief." (*§ 25:375. Necessity of resort to administrative remedies, 8A McQuillin Mun. Corp. § 25:375 (3d ed.)*)

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.

Commented [KO2]: CUPs are administrative decisions to which the exhaustion of remedies principle is especially applicable

Commented [KO3]: If you really want to be aggressive this could be shortened.

Commented [KO4]: Make your opponent show their hand now.
It may also be possible to preclude litigation on grounds not raised before the city in this manner.

Commented [KO5]: Planned districts are generally site-specific rezonings and, therefore, legislative decisions. But given some of the broad statements in some Missouri zoning case law, the exhaustion principle may still have some applicability.

Commented [KO6]: This gives the city the ability to dispose of an frivolous appeal in summary fashion.
It also gives a chance to correct a mistake if the appellant demonstrates a strong case,
Finally, when the governing body makes written findings and conclusions in the case it gives the city a chance to frame the facts and governing law before litigation even starts.

BILL NO. XXXX

ORDINANCE NO. XXXX

AN RESOLUTION APPROVING A CONTRACT WITH MERRY MONTH MAYPOLE COMPANY LLC. FOR A NEW MAYPOLE AND ACTIONS RELATED THERETO.

WHEREAS, the residents of Camelot have rightly come to expect that the city's parks and recreation department will usher in the Spring season with a robust program of traditional Merry Month of May festivities, including, but not limited to, a suitable pole upon which colorful interlacing cloth streamers may be manipulated by those maidens eligible to participate in the ceremony; and

WHEREAS, the pole previously use for such purposes was damaged in the unfortunate events and fire that broke out last year when some young revelers were disqualified for allegedly failing to meet the maidenhood qualification; and

WHEREAS, the city prepared and advertised specifications for a new, fire resistant, modern pole and the bid submitted by Merry Month Maypole Company, LLC was found to be the lowest and best bid that satisfied the required specifications;

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.

Commented [KO1]: As pointed out elsewhere in this presentation, only certain types of contracts are *required* to be approved by contract. But there is no prohibition against using ordinances to approve all contracts.
However, many cities approve other routine contracts by resolution in order to expedite and simplify approval (such as by a consent agenda that approves multiple "housekeeping" matters with a single vote).
While there is statutory authority for mayors of 3rd class cities to veto certain resolutions (involving "expenditures of revenues of the city" (Sec. 77.280, RSMo.), attorneys for charter cities with mayoral veto authority and 4th class cities may wish to consider adopting city code provisions establishing mayoral veto and legislative override procedures in order to put contract approval ordinances and resolutions on an equal footing vis-a-vis mayoral prerogatives.

Commented [KO2]: This language avoids going back to the legislative body if there are non-substantive language changes as the parties, insurers, bonding agencies, lenders, etc. finalize execution documents.

Commented [KO3]: This is limiting language defining the limits of the administrative discretion delegated by the highlighted phrase, above and assures the legislative body that the administrative officials will not go overboard

Commented [KO4]: This sort of language is intended to also approve ancillary documents related to the contract such as, for instance, bonding documents, prevailing wage materials, subordination agreements, insurance agreements, etc.

PASSED BY THE BOARD OF ALDERMEN THIS ____ DAY OF _____ 2023.

_____
Presiding Officer

ATTEST:

_____
City Clerk

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.

_____
Arthur D. Lancelot, Mayor

ATTEST:

_____
City Clerk

Missouri Municipal Attorneys Association

Summer Seminar

Marijuana

Presented by:
Greg Young
City Attorney
Cape Girardeau

ARTICLE XIV
MEDICAL CANNABIS

SECTION
1. Right to access medical marijuana.
2. Marijuana legalization, regulation, and taxation.

Section 1. Right to access medical marijuana.—1. Purposes.

This section is intended to permit state-licensed physicians and nurse practitioners to recommend marijuana for medical purposes to patients with serious illnesses and medical conditions. The section allows patients with qualifying medical conditions the right to discuss freely with their physicians and nurse practitioners the possible benefits of medical marijuana use, the right of their physicians and nurse practitioners to provide professional advice concerning the same, and the right to use medical marijuana for treatment under the supervision of a physician or nurse practitioner.

This section is intended to make only those changes to Missouri laws that are necessary to protect patients, their primary caregivers, and their physicians and nurse practitioners from civil and criminal penalties, and to allow for the limited legal production, distribution, sale and purchase of marijuana for medical use. This section is not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. The section does not allow for the public use of marijuana and driving under the influence of marijuana.

2. Definitions.

(1) "Administer" means the direct application of marijuana to a qualifying patient by way of any of the following methods:

(a) Ingestion of capsules, teas, oils, and other marijuana-infused products;

(b) Vaporization or smoking of dried flowers, buds, plant material, extracts, oils, and other marijuana-infused products;

(c) Application of ointments or balms;

(d) Transdermal patches and suppositories;

(e) Consuming marijuana-infused food products; or

(f) Any other method recommended by a qualifying patient's physician or nurse practitioner.

(2) "Church" means a permanent building primarily and regularly used as a place of religious worship.

(3) "Daycare" means a child-care facility, as defined by section 210.201, RSMo, or successor provisions, that is licensed by the state of Missouri.

(4) "Department" means the department of health and senior services, or its successor agency.

(5) "Entity" means a natural person, corporation, professional corporation, nonprofit corporation, cooperative corporation, unincorporated association, business trust, limited liability company, general or limited partnership, limited liability partnership, joint venture, or any other legal entity.

(6) "Flowering plant" means a marijuana plant from the time it exhibits the first signs of sexual maturity through harvest.

(7) "Infused preroll" means a consumable or smokable marijuana product, generally consisting of: (1) a wrap or paper, (2) dried flower, buds, and/or plant material, and (3) a concentrate, oil or other type of marijuana extract, either within or on the surface of the product. Infused prerolls may or may not include a filter or crutch at the base of the product.

(8) "Marijuana" or "marihuana" means *Cannabis indica*, *Cannabis sativa*, and *Cannabis ruderalis*, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as resin extracted from the marijuana plant and marijuana-infused products. "Marijuana" or "marihuana" do not include industrial hemp, as defined by Missouri statute, or commodities or products manufactured from industrial hemp.

(9) "Marijuana-infused products" means products that are infused, dipped, coated, sprayed, or mixed with marijuana or an extract thereof, including, but not limited to, products that are able to be vaporized or smoked, edible products, ingestible products, topical products, suppositories, and infused prerolls.

(10) "Medical facility" means any medical marijuana cultivation facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility, as defined in this section.

(11) "Medical marijuana cultivation facility" means a facility licensed by the department to acquire, cultivate, process, package, store on site or off site, transport to or from, and sell marijuana, marijuana seeds, and marijuana vegetative cuttings (also known as clones) to a medical marijuana dispensary facility, medical marijuana testing facility, medical marijuana cultivation facility, or to a medical marijuana-infused products manufacturing facility. A medical marijuana cultivation facility's authority to process marijuana shall include the production and sale of prerolls, but shall not include the manufacture of marijuana-infused products.

(12) "Medical marijuana dispensary facility" means a facility licensed by the department to acquire, process, package, store on site or off site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient, a primary caregiver, anywhere on the licensed property or to any address as directed by the patient or primary caregiver, so long as the address is a location allowing for the legal possession of marijuana, another medical marijuana dispensary facility, a marijuana testing facility, a medical marijuana cultivation facility, or a medical marijuana-infused products manufacturing facility. Dispensary facilities may receive transaction orders at the dispensary in person, by phone, or via the internet, including from a third party. A medical marijuana dispensary facility's authority to process marijuana shall include the production and sale of prerolls, but shall not include the manufacture of marijuana-infused products.

(13) "Medical marijuana-infused products manufacturing facility" means a facility licensed by the department to acquire, process, package, store on site or off site, manufacture, transport to or from, and sell marijuana-infused products to a medical marijuana dispensary facility, a marijuana testing facility, a medical marijuana cultivation facility, or to another medical marijuana-infused products manufacturing facility.

(14) "Marijuana testing facility" means a facility certified by the department to acquire, test, certify, and transport marijuana, including those originally licensed as a medical marijuana testing facility.

(15) "Medical use" means the production, possession, delivery, distribution, transportation, or administration of marijuana or a marijuana-infused product, or drug paraphernalia used to administer marijuana or a marijuana-infused product, for the benefit of a qualifying patient to mitigate the symptoms or effects of the patient's qualifying medical condition.

(16) "Nurse practitioner" means an individual who is licensed and in good standing as an advanced practice registered nurse, or successor designation, under Missouri law.

(17) "Owner" means an individual who has a financial (other than security interest, lien, or encumbrance) or voting interest in ten percent or greater of a marijuana facility.

(18) "Physician" means an individual who is licensed and in good standing to practice medicine or osteopathy under Missouri law.

(19) "Physician or nurse practitioner certification" means a document, whether handwritten, electronic or in another commonly used format, signed by a physician or a nurse practitioner and stating that, in the physician's or nurse practitioner's professional opinion, the patient suffers from a qualifying medical condition.

(20) "Preroll" means a consumable or smokable marijuana product, generally consisting of: (1) a wrap or paper and (2) dried flower, buds, and/or plant material. Prerolls may or may not include a filter or crutch at the base of the product.

(21) "Primary caregiver" means an individual twenty-one years of age or older who has significant responsibility for managing the well-being of a qualifying patient and who is designated as such on the primary caregiver's application for an identification card under this section or in other written notification to the department.

(22) "Qualifying medical condition" means the condition of, symptoms related to, or side-effects from the treatment of:

(a) Cancer;

(b) Epilepsy;

(c) Glaucoma;

(d) Intractable migraines unresponsive to other treatment;

(e) A chronic medical condition that causes severe, persistent pain or persistent muscle spasms, including but not limited to those associated with multiple sclerosis, seizures, Parkinson's disease, and Tourette's syndrome;

(f) Debilitating psychiatric disorders, including, but not limited to, posttraumatic stress disorder, if diagnosed by a state licensed psychiatrist;

(g) Human immunodeficiency virus or acquired immune deficiency syndrome;

(h) A chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence, when a physician or nurse practitioner determines that medical use of marijuana could be effective in treating that condition and would serve as a safer alternative to the prescription medication;

(i) Any terminal illness; or

(j) In the professional judgment of a physician or nurse practitioner, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia, and wasting syndrome.

(23) "Qualifying patient" means an individual diagnosed with at least one qualifying medical condition.

(24) "Unduly burdensome" (when referring to a facility licensee or certificate holder) means the measures necessary to comply with the rules or ordinances adopted pursuant to this section subject the party to such a high investment or expense of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the facility; and (when referring to qualifying patients, primary caregivers, physicians, nurse practitioners, or other party) "unduly burdensome" means the measures necessary to comply with the rules or ordinances adopted pursuant to this section undermine the purpose of this section.

3. Creating Patient Access to Medical Marijuana.

(1) In carrying out the implementation of this section, the department shall have the authority to:

(a) Grant or refuse state licenses and certifications for the cultivation, manufacture, dispensing, sale, testing, tracking, and transportation of marijuana and marijuana-infused products for medical use, as provided by this section and general law; suspend, impose an authorized fine, restrict, or revoke such licenses and certifications upon a violation of this section, general law, or a rule promulgated pursuant to this section; and impose any administrative penalty authorized by this section or any general law enacted or rule promulgated pursuant to this section, so long as any procedure related to a suspension or revocation includes a reasonable cure period, not less than thirty days, prior to the suspension or revocation, except in instances where there is a credible and imminent threat to public health or public safety.

(b) Promulgate rules and emergency rules necessary for the proper regulation and control of the cultivation, manufacture, dispensing, and sale of marijuana for medical use and for the enforcement of this section so long as patient access is not restricted unreasonably and such rules are reasonably necessary for patient safety or to restrict access to only licensees and qualifying patients.

(c) Develop such forms, certificates, licenses, identification cards, and applications as are necessary for, or reasonably related to, the administration of this section or any of the rules promulgated under this section.

(d) Require a seed-to-sale tracking system that tracks medical marijuana from either the seed or immature plant stage until the medical marijuana or medical marijuana-infused product is sold to a qualifying patient or primary caregiver to ensure that no medical marijuana grown by a medical marijuana cultivation facility or manufactured by a medical marijuana-infused products manufacturing facility is sold or otherwise transferred except by a medical marijuana dispensary facility. The department shall certify, if possible, at least two commercially available systems to licensees as compliant with its tracking standards and issue standards for the creation or use of other systems by licensees.

(e) Issue standards for the secure transportation of marijuana and marijuana-infused products. The department shall certify entities which demonstrate compliance with its transportation standards to transport marijuana and marijuana-infused products to or from a medical marijuana cultivation facility, a medical marijuana-infused products manufacturing facility, a medical marijuana dispensary facility, a marijuana testing facility, or another entity with a transportation certification. The department shall develop or adopt from any other governmental agency such safety and security standards as are reasonably necessary for the transportation of marijuana and marijuana-infused products. Any entity licensed or certified pursuant to this section shall be allowed to transport and store marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones) and marijuana-infused products for purposes related to transportation in compliance with department regulations on storage of marijuana and marijuana-infused products.

(f) The department may charge a fee not to exceed $5,000 for any certification issued pursuant to this section.

(g) Prepare and transmit annually a publicly available report accounting to the governor for the efficient discharge of all responsibilities assigned to the department under this section.

(h) Establish a lottery selection process to select medical marijuana licensee and certificate applicants, only in cases where more applicants apply than the minimum number of licenses or certificates as calculated by this section. To be eligible for the medical marijuana license lottery process, an applicant cannot have an owner who has pleaded or been found guilty of a disqualifying felony. A "disqualifying felony

offense" is a violation of, and conviction or guilty plea to, state or federal law that is, or would have been, a felony under Missouri law, regardless of the sentence imposed, unless the department determines that:

a. The person's conviction was for a marijuana offense, other than provision of marijuana to a minor; or

b. The person's conviction was for a non-violent crime for which he or she was not incarcerated and that is more than five years old; or

c. More than five years have passed since the person was released from parole or probation, and he or she has not been convicted of any subsequent felony criminal offenses.

The department may consult with and rely on the records, advice, and recommendations of the attorney general and the department of public safety, or their successor entities, in carrying out the provisions of this subdivision.

In establishing a lottery selection process to select medical marijuana licensee and certificate applicants and awarding licenses and certificates, the department may consult or contract with other public agencies with relevant expertise. The department shall lift or ease any limit on the number of licensees or certificate holders in order to meet the demand for marijuana for medical use by qualifying patients.

(2) The department shall issue any rules or emergency rules necessary for the implementation and enforcement of this section and to ensure the right to, availability, and safe use of marijuana for medical use by qualifying patients. In developing such rules or emergency rules, the department may consult with other public agencies. In addition to any other rules or emergency rules necessary to carry out the mandates of this section, the department may issue rules or emergency rules relating to the following subjects:

(a) Compliance with, enforcement of, or violation of any provision of this section or any rule issued pursuant to this section, including procedures and grounds for denying, suspending, imposing an authorized fine, and restricting, or revoking a state license or certification issued pursuant to this section, so long as any procedure related to a suspension or revocation includes a reasonable cure period, not less than thirty days, prior to the suspension or revocation, except in instances where there is a credible and imminent threat to public health or public safety;

(b) Specifications of duties of officers and employees of the department;

(c) Instructions or guidance for local authorities and law enforcement officers;

(d) Requirements for inspections, investigations, searches, seizures, and such additional enforcement activities as may become necessary from time to time;

(e) As otherwise authorized by this section or general law, administrative penalties and policies for use by the department;

(f) Prohibition of misrepresentation and unfair practices;

(g) Control of informational and product displays on licensed premises provided that the rules may not prevent or unreasonably restrict appropriate signs on the property of the medical marijuana dispensary facility, product display and examination by the qualifying patient and/or primary caregiver, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not for profit charity or advocacy events. While the department shall have the general power to regulate the advertising and promotion of marijuana sales, under all circumstances, any such regulation shall be no more stringent than comparable state regulations on the advertising and promotion of alcohol sales;

(h) Development of individual identification cards for owners, officers, managers, contractors, employees, and other support staff of entities licensed or certified pursuant

to this section, including a fingerprint-based federal and state criminal record check in accordance with U.S. Public Law 92-544, or its successor provisions, as may be required by the department prior to issuing a card and procedures to ensure that cards for new applicants are issued within fourteen days. Applicants licensed pursuant to this section shall submit fingerprints to the Missouri state highway patrol for the purpose of conducting a state and federal fingerprint-based criminal background check. The Missouri state highway patrol, if necessary, shall forward the fingerprints to the Federal Bureau of Investigation (FBI) for the purpose of conducting a fingerprint-based criminal background check. Fingerprints shall be submitted pursuant to section 43.543, RSMo, or its successor provisions, and fees shall be paid pursuant to section 43.530, RSMo, or its successor provisions. Unless otherwise required by law, no individual shall be required to submit fingerprints more than once;

(i) Security requirements for any premises licensed or certified pursuant to this section, including, at a minimum, lighting, physical security, video, alarm requirements, and other minimum procedures for internal control as deemed necessary by the department to properly administer and enforce the provisions of this section, including reporting requirements for changes, alterations, or modifications to the premises;

(j) Regulation of the storage of, warehouses for, and transportation of marijuana for medical use;

(k) Sanitary requirements for, including, but not limited to, the preparation of medical marijuana-infused products;

(l) The specification of acceptable forms of picture identification that a medical marijuana dispensary facility may accept when verifying a sale;

(m) Labeling and packaging standards;

(n) Records to be kept by licensees and the required availability of the records;

(o) State licensing procedures, including procedures for renewals, reinstatements, initial licenses, and the payment of licensing fees;

(p) The reporting and transmittal of tax payments;

(q) Authorization for the department of revenue to have access to licensing information to ensure tax payment and the effective administration of this section; and

(r) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this section.

(3) The department shall issue rules or emergency rules for a medical marijuana and medical marijuana-infused products independent testing and certification program for medical marijuana licensees and requiring licensees to test medical marijuana using one or more impartial, independent laboratories to ensure, at a minimum, that products sold for human consumption do not contain contaminants that are injurious to health, to ensure correct labeling and measure potency. The department shall not require any medical marijuana or medical marijuana-infused products to be tested more than once prior to sale.

(4) The department shall issue rules or emergency rules to provide for the certification of and standards for marijuana testing facilities, including the requirements for equipment and qualifications for personnel, but shall not require certificate holders to have any federal agency licensing or have any relationship with a federally licensed testing facility. The department shall certify, if possible, at least two entities as marijuana testing facilities. No marijuana testing facility shall be owned by an entity or entities under substantially common control, ownership, or management as a medical marijuana cultivation facility, medical marijuana-infused product manufacturing facility, or medical marijuana dispensary facility.

(5) Any information released by the department related to patients may only be for a purpose authorized by federal law and this section, including verifying that a person who presented a patient identification card to a state or local law enforcement official is lawfully in possession of such card. Beginning December 8, 2022, all public records produced or retained pursuant to this section are subject to the general provisions of the Missouri Sunshine Law, chapter 610, RSMo, or its successor provisions. Notwithstanding the foregoing, records containing proprietary business information obtained from an applicant or licensee shall be closed. For documents submitted on or after December 8, 2022, the applicant or licensee shall label business information it believes to be proprietary prior to submitting it to the department. For documents submitted prior to December 8, 2022, the applicant or licensee may advise the department, through a department approved process, of any records previously submitted by the applicant or licensee it believes contain proprietary business information. Proprietary business information shall include sales information, financial records, tax returns, credit reports, license applications, cultivation information unrelated to product safety, testing results unrelated to product safety, site security information and plans, and individualized consumer information. The presence of proprietary business information shall not justify the closure of public records:

(a) Identifying the applicant or licensee;

(b) Relating to any citation, notice of violation, tax delinquency, or other enforcement action;

(c) Relating to any public official's support or opposition relative to any applicant, licensee, or their proposed or actual operations;

(d) Where disclosure is reasonably necessary for the protection of public health or safety; or

(e) That are otherwise subject to public inspection under other applicable law.

(6) Within one hundred eighty days of December 6, 2018, the department shall make available to the public license application forms and application instructions for medical marijuana cultivation facilities, marijuana testing facilities, medical marijuana dispensary facilities, and medical marijuana-infused products manufacturing facilities.

(7) Within one hundred eighty days of December 6, 2018, the department shall make available to the public application forms and application instructions for qualifying patient, qualifying patient cultivation, and primary caregiver identification cards. Within two hundred ten days of December 6, 2018, the department shall begin accepting applications for such identification cards.

(8) An entity may apply to the department for and obtain one or more licenses to grow marijuana as a medical marijuana cultivation facility. Each facility in operation shall require a separate license, but multiple licenses may be utilized in a single facility. Each indoor facility utilizing artificial lighting may be limited by the department to thirty thousand square feet of flowering plant canopy space. Each outdoor facility utilizing natural lighting may be limited by the department to two thousand eight hundred flowering plants. Each greenhouse facility using a combination of natural and artificial lighting may be limited by the department, at the election of the licensee, to two thousand eight hundred flowering plants or thirty thousand square feet of flowering plant canopy. The license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge each applicant a nonrefundable fee of ten thousand dollars per license application or renewal for all applicants filing an application within three years of December 6, 2018, and shall charge each applicant a nonrefundable fee of five thousand dollars per license application or renewal thereafter. Once granted, the department shall charge each licensee an

annual fee of twenty-five thousand dollars per facility license. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity or entities under substantially common control, ownership, or management may not be an owner of more than ten percent of the total marijuana cultivation facility licenses outstanding under both sections 1 and 2 of this Article at any given time, rounded down to the nearest whole number.

(9) An entity may apply to the department for and obtain one or more licenses to operate a medical marijuana dispensary facility. Each facility in operation shall require a separate license. A license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge each applicant a nonrefundable fee of six thousand dollars per license application or renewal for each applicant filing an application within three years of December 6, 2018, and shall charge each applicant a nonrefundable fee of three thousand dollars per license application or renewal thereafter. Once granted, the department shall charge each licensee an annual fee of ten thousand dollars per facility license. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity or entities under substantially common control, ownership, or management may not be an owner of more than ten percent of the total marijuana dispensary facility licenses outstanding under both sections 1 and 2 of this Article at any given time, rounded down to the nearest whole number.

(10) An entity may apply to the department for and obtain one or more licenses to operate a medical marijuana-infused products manufacturing facility. Each facility in operation shall require a separate license. A license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge each applicant a nonrefundable fee of six thousand dollars per license application or renewal for each applicant filing an application within three years of December 6, 2018, and shall charge each applicant a nonrefundable fee of three thousand dollars per license application or renewal thereafter. Once granted, the department shall charge each licensee an annual fee of ten thousand dollars per facility license. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity or entities under substantially common control, ownership, or management may not be an owner of more than ten percent of the total marijuana-infused products manufacturing facility licenses outstanding under both sections 1 and 2 of this Article at any given time, rounded down to the nearest whole number.

(11) Any applicant for a license authorized by this section may prefile their application fee with the department beginning 30 days after December 6, 2018.

(12) Except for good cause, a qualifying patient or his or her primary caregiver may obtain an identification card from the department to cultivate up to six flowering marijuana plants, six nonflowering marijuana plants (over fourteen inches tall), and six clones (plants under fourteen inches tall) for the exclusive use of that qualifying patient. The card shall be valid for three years from its date of issuance and shall be renewable with the submittal of a new or updated physician or nurse practitioner certification. The department shall charge a fee for the card of fifty dollars, with such rate to be increased or decreased each year by the percentage of increase or decrease from

the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency.

(13) The department may set a limit on the amount of marijuana that may be purchased by or on behalf of a single qualifying patient in a thirty-day period, provided that limit is not less than six ounces of dried, unprocessed marijuana, or its equivalent. Any such limit shall not apply to a qualifying patient with written certification from a physician or nurse practitioner that there are compelling reasons why the qualifying patient needs a greater amount than the limit established by the department.

(14) The department may set a limit on the amount of marijuana that may be possessed by or on behalf of each qualifying patient, provided that limit is not less than a sixty-day supply of dried, unprocessed marijuana, or its equivalent. A primary caregiver may possess a separate legal limit for each qualifying patient under their care and a separate legal limit for themselves if they are a qualifying patient. Qualifying patients cultivating marijuana for medical use may possess up to a ninety-day supply, so long as the supply remains on property under their control. Any such limit shall not apply to a qualifying patient with written certification from an independent physician or nurse practitioner that there are compelling reasons for additional amounts. Possession of between the legal limit and up to twice the legal limit shall subject the possessor to department sanctions, including an administrative penalty of up to two hundred dollars and loss of their patient identification card for up to a year. Purposefully possessing amounts in excess of twice the legal limit shall be punishable as an infraction under applicable law.

(15) The department may restrict the aggregate number of licenses granted for medical marijuana cultivation facilities and comprehensive marijuana cultivation facilities authorized by section 2 combined, provided, however, that the number may not be limited to fewer than one license per every one hundred thousand inhabitants, or any portion thereof, of the state of Missouri, according to the most recent census of the United States. A decrease in the number of inhabitants in the state of Missouri shall have no impact.

(16) The department may restrict the aggregate number of licenses granted for medical marijuana-infused products manufacturing facilities and comprehensive marijuana-infused products manufacturing facilities authorized by section 2 combined, provided, however, that the number may not be limited to fewer than one license per every seventy thousand inhabitants, or any portion thereof, of the state of Missouri, according to the most recent census of the United States. A decrease in the number of inhabitants in the state of Missouri shall have no impact.

(17) The department may restrict the aggregate number of licenses granted for medical marijuana dispensary facilities and comprehensive marijuana dispensary facilities authorized by section 2 combined, provided, however, that the number may not be limited to fewer than twenty-four licenses in each United States congressional district in the state of Missouri pursuant to the map of each of the eight congressional districts as drawn and effective on December 6, 2018. Future changes to the boundaries of or the number of congressional districts shall have no impact.

(18) The department shall begin accepting license and certification applications for medical marijuana dispensary facilities, marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana-infused products manufacturing facilities, seed-to-sale tracking systems, and for transportation of marijuana no later than two hundred forty days after December 6, 2018. Applications for licenses and certifications under this section shall be approved or denied by the department no later than one hundred fifty days after their submission. If the department fails to carry out its

nondiscretionary duty to approve or deny an application within one hundred fifty days of submission, an applicant may immediately seek a court order compelling the department to approve or deny the application.

(19) Qualifying patients under this section shall obtain an identification card or cards from the department. The department shall charge a fee of twenty-five dollars per card. Such fee may be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor or its successor agency. Cards shall be valid for three years and may be renewed with a new physician or nurse practitioner certification. Upon receiving an application for a qualifying patient identification card or qualifying patient cultivation identification card, the department shall, within thirty days, either issue the card or provide a written explanation for its denial. If the department fails to deny and fails to issue a card to an eligible qualifying patient within thirty days, then their physician or nurse practitioner certification shall serve as their qualifying patient identification card or qualifying patient cultivation identification card for up to one year from the date of physician or nurse practitioner certification. All initial applications for or renewals of a qualifying patient identification card or qualifying patient cultivation identification card shall be accompanied by a physician or nurse practitioner certification that is less than thirty days old.

(20) Primary caregivers under this section shall obtain an identification card from the department. Cards shall be valid for three years. The department shall charge a fee of twenty-five dollars per card. Such fee may be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. Upon receiving an application for a primary caregiver identification card, the department shall, within thirty days, either issue the card or provide a written explanation for its denial.

(21) Except as otherwise provided in this Article, all marijuana for medical use sold in Missouri shall be cultivated in a licensed medical marijuana cultivation facility located in Missouri.

(22) Except as otherwise provided in this Article, all marijuana-infused products for medical use sold in the state of Missouri shall be manufactured in a medical marijuana-infused products manufacturing facility.

(23) The denial of a license, license renewal, or identification card by the department shall be appealable to the administrative hearing commission, or its successor entity. Following the exhaustion of administrative review, denial of a license, license renewal, or identification card by the department shall be subject to judicial review as provided by law.

(24) No elected official shall interfere directly or indirectly with the department's obligations and activities under this section.

(25) The department shall not have the authority to apply or enforce any unduly burdensome rule or regulation or administrative penalty upon any one or more licensees or certificate holders, any qualifying patients, or their primary caregivers, or act to undermine the purposes of this section.

4. Taxation and Reporting.

(1) A tax is levied upon the retail sale of marijuana for medical use sold at medical marijuana dispensary facilities within the state. The tax shall be at a rate of four percent of the retail price. The tax shall be collected by each licensed medical marijuana dispensary facility and paid to the department of revenue. After retaining no more than two percent for its actual collection costs, amounts generated by the medical marijuana

tangible personal property retail sales tax levied in this section shall be deposited by the department of revenue into the Missouri veterans' health and care fund. Licensed entities making retail sales within the state shall be allowed approved credit for returns provided the tax was paid on the returned item and the purchaser was given the refund or credit.

(2) There is hereby created in the state treasury the "Missouri Veterans' Health and Care Fund", which shall consist of taxes and fees collected under this section. The state treasurer shall be custodian of the fund, and he or she shall invest monies in the fund in the same manner as other funds are invested. Any interest and monies earned on such investments shall be credited to the fund. Notwithstanding any other provision of law, any monies remaining in the fund at the end of a biennium shall not revert to the credit of the general revenue fund. The commissioner of administration is authorized to make cash operating transfers to the fund for purposes of meeting the cash requirements of the department in advance of it receiving annual application, licensing, and tax revenue, with any such transfers to be repaid as provided by law. The fund shall be a dedicated fund and shall stand appropriated without further legislative action as follows:

(a) First, to the department, an amount necessary for the department to carry out this section, including repayment of any cash operating transfers, payments made through contract or agreement with other state and public agencies necessary to carry out this section, and a reserve fund to maintain a reasonable working cash balance for the purpose of carrying out this section;

(b) Next, the remainder of such funds shall be transferred to the Missouri veterans commission for health and care services for military veterans, including the following purposes: operations, maintenance and capital improvements of the Missouri veterans homes, the Missouri service officer's program, and other services for veterans approved by the commission, including, but not limited to, health care services, mental health services, drug rehabilitation services, housing assistance, job training, tuition assistance, and housing assistance to prevent homelessness. The Missouri veterans commission shall contract with other public agencies for the delivery of services beyond its expertise.

(c) All monies from the taxes authorized under this subsection shall provide additional dedicated funding for the purposes enumerated above and shall not replace existing dedicated funding.

(3) For all retail sales of marijuana for medical use, a record shall be kept by the seller which identifies, by secure and encrypted patient number issued by the seller to the qualifying patient involved in the sale, all amounts and types of marijuana involved in the sale and the total amount of money involved in the sale, including itemizations, taxes collected and grand total sale amounts. All such records shall be kept on the premises in a readily available format and be made available for review by the department and the department of revenue upon request. Such records shall be retained for five years from the date of the sale.

(4) The tax levied pursuant to this subsection is separate from, and in addition to, any general state and local sales and use taxes that apply to retail sales, which shall continue to be collected and distributed as provided by general law.

(5) Except as authorized in this subsection, no additional taxes shall be imposed on the sale of marijuana for medical use.

(6) The fees and taxes provided for in this Article XIV, Section 1 shall be fully enforceable notwithstanding any other provision in this Constitution purportedly prohibiting or restricting the taxes and fees provided for herein.

(7) The unexpended balance existing in the fund shall be exempt from the provisions of section 33.080, RSMo, or its successor provisions, relating to the transfer of unexpended balances to the general revenue fund.

(8) For taxpayers authorized to do business pursuant to this Article, the amount that would have been deducted in the computation of federal taxable income pursuant to 26 U.S.C. Section 280E of the Internal Revenue Code as in effect on January 1, 2021, or successor provisions, but is disallowed because cannabis is a controlled substance under federal law, shall be subtracted from the taxpayer's federal adjusted gross income, in determining the taxpayer's Missouri adjusted gross income.

5. Additional Patient, Physician, Nurse Practitioner, Caregiver and Provider Protections.

(1) Except as provided in this section, the possession of marijuana in quantities less than the limits of this section, or established by the department, and transportation of marijuana by the qualifying patient or primary caregiver shall not subject the possessor to arrest, criminal or civil liability, or sanctions under Missouri law, provided that the possessor produces on demand to the appropriate authority a valid qualifying patient identification card; a valid qualifying patient cultivation identification card; a valid physician or nurse practitioner certification while making application for an identification card; or a valid primary caregiver identification card. Production of the respective substantially equivalent identification card or authorization issued by another state or political subdivision of another state shall also meet the requirements of this subdivision and shall allow for the purchase of medical marijuana for use by a non-resident patient from a medical marijuana dispensary facility as permitted by this section and in compliance with department regulations.

(2) No patient shall be denied access to or priority for an organ transplant or other medical care because they hold a qualifying patient identification card or use marijuana for medical use.

(3) A physician or nurse practitioner shall not be subject to criminal or civil liability or sanctions under Missouri law or discipline by the Missouri state board of registration for the healing arts, the Missouri state board of nursing, or their respective successor agencies, for owning, operating, investing in, being employed by, or contracting with any entity licensed or certified pursuant to this section or issuing a physician or nurse practitioner certification to a patient diagnosed with a qualifying medical condition in a manner consistent with this section and legal standards of professional conduct.

(4) A health care provider shall not be subject to civil or criminal prosecution under Missouri law, denial of any right or privilege, civil or administrative penalty or sanction, or disciplinary action by any accreditation or licensing board or commission for owning, operating, investing in, being employed by, or contracting with any entity licensed or certified pursuant to this section or providing health care services that involve the medical use of marijuana consistent with this section and legal standards of professional conduct.

(5) A marijuana testing facility shall not be subject to civil or criminal prosecution under Missouri law, denial of any right or privilege, civil or administrative penalty or sanction, or disciplinary action by any accreditation or licensing board or commission for providing laboratory testing services that relate to the medical use of marijuana consistent with this section and otherwise meeting legal standards of professional conduct.

(6) A health care provider shall not be subject to mandatory reporting requirements for the medical use of marijuana by nonemancipated qualifying patients under eighteen

years of age in a manner consistent with this section and with consent of a parent or guardian.

(7) A primary caregiver shall not be subject to criminal or civil liability or sanctions under Missouri law for purchasing, transporting, or administering marijuana for medical use to a qualifying patient or participating in the patient cultivation of up to six flowering marijuana plants, six nonflowering marijuana plants (over fourteen inches tall), and six clones (plants under fourteen inches tall) per patient and no more than twenty-four flowering plants for more than one qualifying patient in a manner consistent with this section and generally established legal standards of personal or professional conduct.

(8) Notwithstanding any provision of Article V to the contrary, an attorney shall not be subject to disciplinary action by the Supreme Court of Missouri, the office of chief disciplinary counsel, the state bar association, any state agency, or any professional licensing body for any of the following:

(a) Owning, operating, investing in, being employed by, or contracting with prospective or licensed marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana dispensary facilities, medical marijuana-infused products manufacturing facilities, or transportation certificate holders;

(b) Counseling, advising, and/or assisting a client in conduct permitted by Missouri law that may violate or conflict with federal or other law, as long as the attorney advises the client about that federal or other law and its potential consequences;

(c) Counseling, advising, and/or assisting a client in connection with applying for, owning, operating, or otherwise having any legal, equitable, or beneficial interest in marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana dispensary facilities, medical marijuana-infused products manufacturing facilities, or transportation certificates; or

(d) Counseling, advising or assisting a qualifying patient, primary caregiver, physician, nurse practitioner, health care provider or other client related to activity that is no longer subject to criminal penalties under Missouri law pursuant to this Article.

(9) Actions and conduct by qualifying patients, primary caregivers, marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana-infused products manufacturing facilities, or medical marijuana dispensary facilities licensed or registered with the department, or their employees or agents, as permitted by this section and in compliance with department regulations and other standards of legal conduct, shall not be subject to criminal or civil liability or sanctions under Missouri law, except as provided for by this section.

(10) Nothing in this section shall provide immunity for negligence, either common law or statutorily created, nor criminal immunities for operating a vehicle, aircraft, dangerous device, or navigating a boat under the influence of marijuana.

(11) It is the public policy of the state of Missouri that contracts related to marijuana for medical use that are entered into by qualifying patients, primary caregivers, marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana-infused products manufacturing facilities, or medical marijuana dispensary facilities and those who allow property to be used by those entities, should be enforceable. It is the public policy of the state of Missouri that no contract entered into by qualifying patients, primary caregivers, marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana-infused products manufacturing facilities, or medical marijuana dispensary facilities, or by a person who allows property to be used for activities that are exempt from state criminal penalties by this section, shall be unenforceable on the basis that activities related to medical marijuana may be prohibited by federal law.

(12) In the process of requesting a search or arrest warrant relating to the production, possession, transportation or storage of marijuana, a state or local law enforcement official shall verify with the department whether the targeted person is a qualifying patient or primary caregiver holding an identification card allowing for cultivation of marijuana plants under subdivision (12) of subsection 3 of this section, and shall inform the issuing authority accordingly when making the warrant request. Evidence of marijuana alone, without specific evidence indicating that the marijuana is outside of what is lawful for medical or adult use, cannot be the basis for a search of a patient or non-patient, including their home, vehicle or other property. Lawful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release. State and local law enforcement shall only have access to such department information as is necessary to confirm whether the targeted person holds registration card.

(13) Registered qualifying patients on bond for pre-trial release, on probation, or other form of supervised release shall not be prohibited from legally using a lawful marijuana product as a term or condition of release, probation, or parole. An alternative sentencing drug court program may not prohibit individuals under its jurisdiction from using a lawful marijuana product as long as the individual is a registered qualifying patient.

(14) A family court participant or party who requires treatment for a qualified medical condition in accordance with this section shall not be required to refrain from using medical marijuana as a term or condition of successful completion of the family court program. The status and conduct of a qualified patient who acts in accordance with this section shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of a family court under chapter 487, RSMo, including domestic matters under chapter 452, RSMo, or a juvenile court under chapter 211, RSMo, or successor provisions.

(15) A person shall not be denied adoption, custody, or visitation rights relative to a minor solely for conduct that is permitted by this section.

(16) No person shall be denied their rights under Article 1, Section 23 of the Missouri Constitution, or successor provisions, solely for conduct that is permitted by this section.

6. Legislation.

Nothing in this section shall limit the general assembly from enacting laws consistent with this section, or otherwise effectuating the patient rights of this section. The legislature shall not enact laws that hinder the right of qualifying patients to access marijuana for medical use as granted by this section.

7. Additional Provisions.

(1) Nothing in this section permits a person to:

(a) Consume marijuana for medical use in a jail or correctional facility;

(b) Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice; or

(c) Operate, navigate, or be in actual physical control of any dangerous device or motor vehicle, aircraft or motorboat while under the influence of marijuana. Notwithstanding the foregoing, an arrest or a conviction of a person who has a valid qualifying patient identification card for any applicable offenses shall require evidence that the person was in fact under the influence of marijuana at the time the person was in actual physical control of the dangerous device or motor vehicle, aircraft or motorboat and not solely on the presence of tetrahydrocannabinol (THC) or THC metabolites, or a combination thereof, in the person's system; or

(d) Bring a claim against any employer, former employer, or prospective employer for wrongful discharge, discrimination, or any similar cause of action or remedy, based on the employer, former employer, or prospective employer prohibiting the employee, former employee, or prospective employee from being under the influence of marijuana while at work or disciplining the employee or former employee, up to and including termination from employment, for working or attempting to work while under the influence of marijuana.

(2) No medical marijuana cultivation facility, marijuana testing facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility, or entity with a transportation certification shall be owned, in whole or in part, or have as an officer, director, board member, manager, or employee, any individual with a disqualifying felony offense. A "disqualifying felony offense" is a violation of, and conviction or guilty plea to, state or federal law that is, or would have been, a felony under Missouri law, regardless of the sentence imposed, unless the department determines that:

(a) The person's conviction was for the medical use of marijuana or assisting in the medical use of marijuana; or

(b) The person's conviction was for a nonviolent crime for which he or she was not incarcerated and that is more than five years old; or

(c) More than five years have passed since the person was released from parole or probation, and he or she has not been convicted of any subsequent criminal offenses.

The department may consult with and rely on the records, advice and recommendations of the attorney general and the department of public safety, or their successor entities, in applying this subdivision.

(3) No medical marijuana cultivation facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility shall manufacture, package or label marijuana or marijuana-infused products in a false or misleading manner. No person shall sell any product in a manner designed to cause confusion between a marijuana or marijuana-infused product and any product not containing marijuana. A violation of this subdivision shall be punishable by an appropriate and proportional department sanction, up to and including an administrative penalty of five thousand dollars and loss of license.

(4) All edible marijuana-infused products shall be sold in individual, child-resistant containers that are labeled with dosage amounts, instructions for use, and estimated length of effectiveness. All marijuana and marijuana-infused products shall be sold in containers clearly and conspicuously labeled as mandated by the department as containing "Marijuana", or a "Marijuana-Infused Product". Violation of this prohibition shall subject the violator to department sanctions, including an administrative penalty of five thousand dollars.

(5) No individual shall serve as the primary caregiver for more than six qualifying patients. No primary caregiver cultivating marijuana for more than one qualifying patient may exceed a total of twenty-four flowering plants.

(6) A person who smokes medical marijuana in a public place, other than in an area licensed for such activity by the department or by local authorities having jurisdiction over the licensing or permitting of said activity, is subject to a civil penalty not exceeding one hundred dollars.

(7) No person shall extract resins from marijuana using dangerous materials or combustible gases without a medical marijuana-infused products manufacturing facility license. Violation of this prohibition shall subject the violator to department sanctions, including an administrative penalty of one thousand dollars for a patient or primary

caregiver and ten thousand dollars for a facility licensee and, if applicable, loss of their identification card, certificate, or license for up to one year.

(8) All qualifying patient cultivation shall take place in an enclosed, locked facility that is equipped with security devices that permit access only by the qualifying patient or by such patient's primary caregiver. Two qualifying patients, who both hold valid qualifying patient cultivation identification cards, may share one enclosed, locked facility. Primary caregivers cultivating marijuana for more than one qualifying patient may cultivate each respective qualifying patient's flowering plants in a single, enclosed locked facility subject to the limits of subsection 3, paragraph 12.

(9) No medical marijuana cultivation facility, medical marijuana dispensary facility, medical marijuana-infused products manufacturing facility, marijuana testing facility, or entity with a transportation certification shall assign, sell, give, lease, sublicense, or otherwise transfer its license or certificate to any other entity without the express consent of the department, not to be unreasonably withheld.

(10) (a) Unless allowed by the local government, no new medical marijuana cultivation facility, marijuana testing facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility shall be initially sited within one thousand feet of any then-existing elementary or secondary school, child day-care center, or church. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot. No local government shall prohibit medical marijuana cultivation facilities, marijuana testing facilities, medical marijuana-infused products manufacturing facilities, or medical marijuana dispensary facilities, or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of a medical marijuana cultivation facility, marijuana testing facility, medical marijuana-infused products manufacturing facility, medical marijuana dispensary facility, or entity holding a transportation certification that may operate in such locality.

(b) The only local government ordinances or regulations that are binding on a medical facility are those of the local government where the medical facility is physically located.

(11) Unless superseded by federal law or an amendment to this Constitution, a physician or nurse practitioner shall not certify a qualifying condition for a patient by

any means other than providing a physician or nurse practitioner certification for the patient, whether handwritten, electronic, or in another commonly used format.

(12) A physician or nurse practitioner shall not issue a certification for the medical use of marijuana for a nonemancipated qualifying patient under the age of eighteen without the written consent of the qualifying patient's parent or legal guardian. The department shall not issue a qualifying patient identification card on behalf of a nonemancipated qualifying patient under the age of eighteen without the written consent of the qualifying patient's parent or legal guardian. Such card shall be issued to one of the parents or guardians and not directly to the patient. Only a parent or guardian may serve as a primary caregiver for a nonemancipated qualifying patient under the age of eighteen. Only the qualifying patient's parent or guardian shall purchase or possess medical marijuana for a nonemancipated qualifying patient under the age of eighteen. A parent or guardian shall supervise the administration of medical marijuana to a nonemancipated qualifying patient under the age of eighteen.

(13) Nothing in this section shall be construed as mandating health insurance coverage of medical marijuana for qualifying patient use.

(14) Real and personal property used in the cultivation, manufacture, transport, testing, distribution, sale, and administration of marijuana for medical use or for activities otherwise in compliance with this section shall not be subject to asset forfeiture solely because of that use.

(15) Unless a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law, an employer may not discriminate against a person in hiring, termination or any term or condition of employment or otherwise penalize a person, if the discrimination is based upon either of the following:

(a) The person's status as a qualifying patient or primary caregiver who has a valid identification card, including the person's legal use of a lawful marijuana product off the employer's premises during nonworking hours, unless the person was under the influence of medical marijuana on the premises of the place of employment or during the hours of employment; or

(b) A positive drug test for marijuana components or metabolites of a person who has a valid qualifying patient identification card, unless the person used, possessed, or was under the influence of medical marijuana on the premises of the place of employment or during the hours of employment.

Nothing in this subdivision shall apply to an employee in a position in which legal use of a lawful marijuana product affects in any manner a person's ability to perform job-related employment responsibilities or the safety of others, or conflicts with a bona fide occupational qualification that is reasonably related to the person's employment.

(16) The enactment of section 2 of this Article and concurrent amendments to section 1 of this Article shall have no effect upon any valid contract, claim, or cause of action instituted prior to the effective date of this section.

8. Federal Legalization.

If federal law, rules, or regulations are amended to allow the interstate commerce of marijuana or marijuana-infused products or the importation or exportation of marijuana or marijuana-infused products into or out of the state of Missouri, the provisions and intent of this section shall, to the extent possible, remain in full effect, unless explicitly preempted by such federal law, rule, or regulation. If federal law, rules, or regulations are amended as provided above, any marijuana or marijuana-infused products imported into this state shall be subject to the same testing standards and seed to sale tracking system required under this section for marijuana and marijuana-infused products produced within the state. Unless federal law, rules, or regulations

explicitly require otherwise, no entity shall sell, transport, produce, distribute, deliver, or cultivate marijuana or marijuana-infused products without an applicable license or certificate as required under this section. In addition, any raw biomass of marijuana or marijuana flower imported from out-of-state shall be received only by a licensed cultivation facility, while all batch oil, infused marijuana products and any marijuana product in any other form shall be received only by a licensed manufacturing facility.

9. Severability.

The provisions of this section are severable, and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction, the other provisions shall continue to be in effect to the fullest extent possible.

(Adopted November 6, 2018) (Amended November 8, 2022)

Section 2. Marijuana legalization, regulation, and taxation.—1. Purpose.

The purpose of this section is to make marijuana legal under state and local law for adults twenty-one years of age or older, and to control the commercial production and distribution of marijuana under a system that licenses, regulates, and taxes the businesses involved while protecting public health. The intent is to prevent arrest and penalty for personal possession and cultivation of limited amounts of marijuana by adults twenty-one years of age or older; remove the commercial production and distribution of marijuana from the illicit market; prevent revenue generated from commerce in marijuana from going to criminal enterprises; prevent the distribution of marijuana to persons under twenty-one years of age; prevent the diversion of marijuana to illicit markets; protect public health by ensuring the safety of marijuana and products containing marijuana; and ensure the security of marijuana facilities. To the fullest extent possible, this section shall be interpreted in accordance with the purpose and intent set forth in this section.

This section is not intended to allow for the public use of marijuana, driving while under the influence of marijuana, the use of marijuana in the workplace, or the use of marijuana by persons under twenty-one years of age.

2. Definitions.

(1) "Church" means a permanent building primarily and regularly used as a place of religious worship.

(2) "Comprehensive facility" means a comprehensive marijuana cultivation facility, comprehensive marijuana dispensary facility, or a comprehensive marijuana-infused products manufacturing facility.

(3) "Comprehensive marijuana cultivation facility" means a facility licensed by the department to acquire, cultivate, process, package, store on site or off site, transport to or from, and sell marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones) to a medical facility, comprehensive facility, or marijuana testing facility. A comprehensive marijuana cultivation facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana. A comprehensive marijuana cultivation facility's authority to process marijuana shall include the creation of prerolls, but shall not include the manufacture of marijuana-infused products.

(4) "Comprehensive marijuana dispensary facility" means a facility licensed by the department to acquire, process, package, store on site or off site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient or primary

caregiver, as those terms are defined in section 1 of this Article, or to a consumer, anywhere on the licensed property or to any address as directed by the patient, primary caregiver, or consumer and consistent with the limitations of this Article and as otherwise allowed by law, to a comprehensive facility, a marijuana testing facility, or a medical facility. Comprehensive dispensary facilities may receive transaction orders at the dispensary directly from the consumer in person, by phone, or via the internet, including from a third party. A comprehensive marijuana dispensary facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana, but shall collect all appropriate tangible personal property sales tax for each sale, as set forth in this Article and provided for by general or local law. A comprehensive marijuana dispensary facility's authority to process marijuana shall include the creation of prerolls.

(5) "Comprehensive marijuana-infused products manufacturing facility" means a facility licensed by the department to acquire, process, package, store, manufacture, transport to or from a medical facility, comprehensive facility, or marijuana testing facility, and sell marijuana-infused products, prerolls, and infused prerolls to a marijuana dispensary facility, a marijuana testing facility, or another marijuana-infused products manufacturing facility. A comprehensive marijuana-infused products manufacturing facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana.

(6) "Consumer" means a person who is at least twenty-one years of age.

(7) "Daycare" means a child-care facility, as defined by section 210.201, RSMo, or successor provisions, that is licensed by the state of Missouri.

(8) "Department" means the department of health and senior services, or its successor agency.

(9) "Entity" means a natural person, corporation, professional corporation, nonprofit corporation, cooperative corporation, unincorporated association, business trust, limited liability company, general or limited partnership, limited liability partnership, joint venture, or any other legal entity.

(10) "Flowering plant" means a marijuana plant from the time it exhibits the first signs of sexual maturity through harvest.

(11) "Infused preroll" means a consumable or smokable marijuana product, generally consisting of: (1) a wrap or paper, (2) dried flower, buds, and/or plant material, and (3) a concentrate, oil or other type of marijuana extract, either within or on the surface of the product. Infused prerolls may or may not include a filter or crutch at the base of the product.

(12) "Local government" means, in the case of an incorporated area, a village, town, or city and, in the case of an unincorporated area, a county.

(13) "Marijuana" or "marihuana" means *Cannabis indica*, *Cannabis sativa*, and *Cannabis ruderalis*, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as resin extracted from the marijuana plant and marijuana-infused products. "Marijuana" or "marihuana" do not include industrial hemp, as defined by Missouri statute, or commodities or products manufactured from industrial hemp.

(14) "Marijuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

(15) "Marijuana facility" means a comprehensive marijuana cultivation facility, comprehensive marijuana dispensary facility, marijuana testing facility, comprehensive marijuana-infused products manufacturing facility, microbusiness wholesale facility, microbusiness dispensary facility, or any other type of marijuana-related facility or business licensed or certified by the department pursuant to this section, but shall not include a medical facility licensed under section l of this Article.

(16) "Marijuana-infused products" means products that are infused, dipped, coated, sprayed, or mixed with marijuana or an extract thereof, including, but not limited to, products that are able to be vaporized or smoked, edible products, ingestible products, topical products, suppositories, and infused prerolls.

(17) "Marijuana microbusiness facility" means a facility licensed by the department as a microbusiness dispensary facility or microbusiness wholesale facility, as defined in this section.

(18) "Microbusiness dispensary facility" means a facility licensed by the department to acquire, process, package, store on site or off site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a consumer, qualifying patient, as that term is defined in section 1 of this Article, or primary caregiver, as that term is defined in section l of this Article, anywhere on the licensed property or to any address as directed by the consumer, qualifying patient, or primary caregiver and, consistent with the limitations of this Article and as otherwise allowed by law, a microbusiness wholesale facility, or a marijuana testing facility. Microbusiness dispensary facilities may receive transaction orders at the dispensary directly from the consumer in person, by phone, or via the internet, including from a third party. A microbusiness dispensary facility's authority to process marijuana shall include the creation of prerolls.

(19) "Microbusiness wholesale facility" means a facility licensed by the department to acquire, cultivate, process, package, store on site or off site, manufacture, transport to or from, deliver, and sell marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), and marijuana-infused products to a microbusiness dispensary facility, other microbusiness wholesale facility, or marijuana testing facility. A microbusiness wholesale facility may cultivate up to 250 flowering marijuana plants at any given time. A microbusiness wholesale facility's authority to process marijuana shall include the creation of prerolls and infused prerolls.

(20) "Marijuana testing facility" means a facility certified by the department to acquire, test, certify, and transport marijuana, including those originally certified as a medical marijuana testing facility.

(21) "Owner" means an individual who has a financial (other than a security interest, lien, or encumbrance) or voting interest in ten percent or greater of a marijuana facility.

(22) "Preroll" means a consumable or smokable marijuana product, generally consisting of: (l) a wrap or paper and (2) dried flower, buds, and/or plant material. Prerolls may or may not include a filter or crutch at the base of the product.

(23) "Unduly burdensome" means that the measures necessary to comply with the rules or ordinances adopted pursuant to this section subject licensees or potential licensees to such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marijuana facility.

3. Limitations.

(1) Except as otherwise provided in this Article, this section does not preclude, limit, or affect laws that assign liability relative to, prohibit, or otherwise regulate:

(a) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;

(b) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;

(c) Consumption of marijuana by a person younger than twenty-one years of age;

(d) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana. Notwithstanding the foregoing, a conviction of a person who is at least twenty-one years of age for any applicable offenses shall require evidence that the person was in fact under the influence of marijuana at the time the person was in physical control of the motorized form of transport and not solely on the presence of tetrahydrocannabinol (THC) or THC metabolites, or a combination thereof, in the person's system;

(e) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;

(f) Smoking marijuana within a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;

(g) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary or secondary school, institution of higher education, in a school bus, or on the grounds of any correctional facility;

(h) Smoking marijuana in a location where smoking tobacco is prohibited;

(i) Consumption of marijuana in a public place, other than in an area licensed by the authorities having jurisdiction over the licensing and/or permitting of said activity, as set forth in subsection 5 of this section;

(j) Conduct that endangers others;

(k) Undertaking any task while under the influence of marijuana, if doing so would constitute negligence, recklessness, or professional malpractice; or

(l) Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food-grade ethanol, unless licensed for this activity by the department.

(2) This section does not limit any privileges, rights, immunities, or defenses of a person or entity as provided in section l of this Article, or any other law of this state allowing for or regulating marijuana for medical use.

(3) This section does not require an employer to permit or accommodate conduct otherwise allowed by this section in any workplace or on the employer's property. This section does not prohibit an employer from disciplining an employee for working while under the influence of marijuana. This section does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because that person was working while under the influence of marijuana.

(4) This section allows an entity to prohibit or otherwise limit the consumption, cultivation, distribution, processing, sale, or display of marijuana, marijuana-infused products, and marijuana accessories on private property the entity owns, leases, occupies, or manages, except that a lease agreement executed after the effective date of this section may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking.

(5) The enactment of this section and all concurrent amendments to section 1 of this Article shall have no effect upon any valid contract, claim, or cause of action instituted prior to the effective date of this section.

4. Regulation of Marijuana.

(1) In carrying out the implementation of this section and as conditioned herein, the department shall have the authority to:

(a) Grant or refuse state licenses for the cultivation, manufacture, dispensing, and sale of marijuana; suspend, restrict, or revoke such licenses upon a violation of this section or a rule promulgated pursuant to this section; and impose any reasonable administrative penalty authorized by this section or any general law enacted or rule promulgated pursuant to this section, so long as any procedure related to a suspension or revocation includes a reasonable cure period, not less than thirty days, prior to the suspension or revocation, except in instances where there is a credible and imminent threat to public health or public safety;

(b) Promulgate rules and emergency rules necessary for the proper regulation and control of the cultivation, manufacture, dispensing, and sale of marijuana and for the enforcement of this section so long as such rules are reasonable and not unduly burdensome;

(c) Develop such forms, certificates, licenses, identification cards, and applications as are necessary for, or reasonably related to, the administration of this section or any of the rules promulgated under this section;

(d) Require a seed-to-sale tracking system that tracks marijuana from either the seed or immature plant stage until the marijuana or marijuana-infused product is sold to a qualified patient, primary caregiver, or consumer to ensure that no marijuana grown by a medical marijuana cultivation facility, comprehensive marijuana cultivation facility, or microbusiness wholesale facility, or manufactured by a medical marijuana-infused products manufacturing facility, a comprehensive marijuana-infused products manufacturing facility, or a microbusiness wholesale facility is sold or otherwise transferred to a consumer, qualified patient, or primary caregiver except by a medical marijuana dispensary facility, a comprehensive dispensary facility, or a microbusiness dispensary facility. The department shall certify all commercially available tracking systems that are compliant with its tracking standards and issue standards for the creation or use of other systems by licensees;

(e) Issue standards for the secure transportation of marijuana and marijuana-infused products. The department shall certify entities that demonstrate compliance with its transportation standards to transport marijuana and marijuana-infused products to or from a comprehensive facility, medical facility, microbusiness facility, another entity with a transportation certification, or any entity licensed pursuant to paragraph (g) of this subdivision. The department shall develop or adopt from any other governmental agency such safety and security standards as are reasonably necessary for the transportation and temporary storage of marijuana and marijuana-infused products. Any entity licensed or certified pursuant to this section shall be allowed to transport its own inventory and products in compliance with department transportation rules and store marijuana and marijuana-infused products for the purposes related to transportation in compliance with department regulations on secure storage of marijuana and marijuana-infused products;

(f) Promulgate rules and emergency rules specific to the licensing, regulation, and oversight of marijuana microbusiness facilities;

(g) Provide for the issuance of additional types or classes of licenses to operate marijuana-related businesses that:

a. Allow for only transportation, delivery, or storage of marijuana; or

b. Are intended to facilitate scientific research or education.

(h) Prepare and transmit annually a publicly available report accounting to the governor, the general assembly, and the public for the efficient discharge of all responsibilities assigned to the department under this section. The report shall provide aggregate data for each type of license (medical, comprehensive, and microbusiness) and facility (dispensary, cultivation, manufacturers, wholesalers). Only non-identifying information shall be provided regarding any marijuana facility owners;

(i) Establish a lottery selection process to select comprehensive facility licenses, certificate holders, marijuana microbusiness licensees, but not medical facility licensees that are converting to comprehensive licenses pursuant to this subsection. To become eligible for any license lottery selection process, an owner cannot have pleaded guilty or been found guilty of a disqualifying felony, as that term is defined in subsection 9 of this section.

(j) In developing a lottery selection process to award licenses and certificates, the department may consult or contract with other public agencies with relevant expertise.

(k) While not required as a prerequisite to participation in a comprehensive license lottery, every comprehensive license applicant shall submit to the department a voluntary plan to promote and encourage participation in the regulated marijuana industry by people from communities that have been disproportionately impacted by marijuana prohibition. The plan may include strategies to address geographical defined communities that have been disproportionately impacted by marijuana prohibition; provide for ownership opportunities for disproportionately impacted communities; and provide for employment, supplier, and vendor opportunities for individuals and businesses in communities that have been disproportionately impacted by marijuana prohibition. If licensed, any voluntary applicant plan shall be enforceable by the department.

(l) Notwithstanding other grants of authority herein, neither the department nor any governmental body may restrict the production or use of marijuana and marijuana-infused products based solely upon THC content.

(m) Set a limit on the amount of marijuana that may be purchased in a single transaction provided that limit is not less than three ounces of dried, unprocessed marijuana, or its equivalent.

(n) Regulate the advertising and promotion of marijuana sales, but any such regulation shall be no more stringent than comparable state regulations on the advertising and promotion of alcohol sales.

(2) The department shall issue, at a minimum, the same number of comprehensive marijuana cultivation facility licenses as were authorized or issued for medical marijuana cultivation facilities under section 1 of this Article as of December 7, 2022, the same number of comprehensive marijuana-infused products manufacturing facility licenses as were authorized or issued for medical marijuana-infused products manufacturing facilities under section 1 of this Article as of December 7, 2022, the same number of comprehensive marijuana dispensary facility licenses with the same congressional distribution requirements as were authorized or issued for medical marijuana dispensary facilities under section l of this Article as of December 7, 2022, in addition to the minimum number of marijuana microbusiness licenses as are required under this section. The department may lift or ease any limit on the number of licensees or certificate holders in order to meet the demand for marijuana in the state and to ensure a competitive market while also preventing an over-concentration of marijuana facilities within the boundaries of any particular local government.

(3) If comprehensive facility licenses become available because the number of total issued licenses in any respective category falls below the minimum required under this section or the department determines more comprehensive facility licenses are neces-

sary to meet the requirements of subdivision (2) of this subsection, the department shall award by lottery at least fifty percent of any new licenses available to satisfy the minimum requirement to applicants who are owners of a marijuana microbusiness facility that has been in operation for at least one year and is in good standing with the department and is otherwise qualified for the license.

(4) The department may issue any rules or emergency rules necessary for the implementation and enforcement of this section and to ensure the right to, availability, and safe use of marijuana by consumers. In developing such rules or emergency rules, the department may consult or contract with other public agencies. In addition to any other rules or emergency rules necessary to carry out the mandates of this section, the department shall issue rules or emergency rules relating to the following subjects:

(a) Procedures for issuing a license and for renewing, suspending, and revoking a license, so long as any procedure related to a suspension or revocation includes a reasonable cure period, not less than thirty days, prior to the suspension or revocation, except in instances where there is a credible and imminent threat to public health or public safety;

(b) Requirements and standards for safe cultivation, processing, and distribution of marijuana and marijuana-infused products by marijuana facilities, including health standards to ensure the safe preparation of marijuana-infused products;

(c) Testing, packaging, and labeling standards, procedures, and requirements for marijuana and marijuana-infused products and a requirement that a representative sample of marijuana be tested by a marijuana testing facility to ensure public health;

(d) Labeling standards that protect public health by requiring the listing of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package, and quantity limits per sale to comply with the allowable possession amount;

(e) Requirements that packaging and labels shall not be made to be attractive to children, required warning labels, and that marijuana and marijuana-infused products be sold in resealable, child-resistant packaging to protect public health;

(f) Security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marijuana between marijuana facilities;

(g) Record keeping requirements for marijuana facilities and monitoring requirements to track the transfer of marijuana by licensees;

(h) A plan to promote and encourage ownership and employment in the marijuana industry by people from political subdivisions and districts that are economically distressed and to positively impact those political subdivisions and districts;

(i) Administrative penalties as authorized by this section for failure to comply with any rule promulgated pursuant to this section or for any violation of rules and regulations adopted pursuant to this section by a licensee, including authorized administrative fines and suspension, revocation, or restriction of a license. The licensee may choose to challenge any penalties imposed by the department through the administrative hearing commission, or its successor entity. Pursuant to section 536. l00, RSMo, or its successor provisions, any licensee who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case is entitled to judicial review;

(j) Reporting and transmittal of tax payments required under this section;

(k) Authorization for the department of revenue to have access to licensing information to ensure tax payment and the effective administration of this section; and

(l) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this section.

(5) The department shall issue rules or emergency rules for a marijuana and marijuana-¬infused products independent testing and certification program for marijuana facility licensees and requiring licensees to test marijuana using one or more impartial, independent laboratory or laboratories to ensure, at a minimum, correct labeling, potency measurement, and that products sold for human consumption do not contain contaminants that are potentially injurious to public health.

(6) The department shall issue rules or emergency rules to provide for the certification of and standards for marijuana testing facilities, including the requirements for equipment and qualifications for personnel, but shall not require certificate holders to have any federal agency licensing or have any relationship with a federally licensed testing facility. No marijuana testing facility shall be owned by an entity or entities under substantially common control, ownership, or management as a marijuana cultivation facility, marijuana-infused products manufacturing facility, marijuana microbusiness facility, or marijuana dispensary facility.

(7) All public records produced or retained pursuant to this section are subject to the general provisions of the Missouri Sunshine Law, chapter 610, RSMo, or its successor provisions. Notwithstanding the foregoing, public records containing proprietary business information obtained from an applicant or licensee shall be closed. The applicant or licensee shall label business information it believes to be proprietary prior to submitting it to the department. Proprietary business information shall include sales information, financial records, tax returns, credit reports, license applications, cultivation information unrelated to product safety, testing results unrelated to product safety, site security information and plans, and individualized consumer information. The presence of proprietary business information shall not justify the closure of public records:

(a) Identifying the applicant or licensee;

(b) Relating to any citation, notice of violation, tax delinquency, or other enforcement action;

(c) Relating to any public official's support or opposition relative to any applicant, licensee, or their proposed or actual operations;

(d) Where disclosure is reasonably necessary for the protection of public health or safety; or

(e) That are otherwise subject to public inspection under applicable law.

(8) Within one hundred and eighty days of the effective date of this section, the department shall make available to the public license application forms and application instructions for marijuana microbusiness facilities. Within two hundred and seventy days of the effective date of this section, the department shall start accepting such applications from applicants.

(9) An entity may apply to the department for and obtain one or more licenses to grow marijuana as a comprehensive marijuana cultivation facility. Each facility in operation shall require a separate license, but multiple licenses may be utilized in a single facility. Each indoor facility utilizing artificial lighting may be limited by the department to thirty thousand square feet of flowering plant canopy space. Each outdoor facility utilizing natural lighting may be limited by the department to two thousand eight hundred flowering plants. Each greenhouse facility using a combination of natural and artificial lighting may be limited by the department, at the election of the licensee, to two thousand eight hundred flowering plants or thirty thousand square feet of flowering plant canopy. The license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge

each applicant a non-refundable fee of twelve thousand dollars per license application or renewal for all applicants filing an application within three years of the effective date of this section and shall charge each applicant a non-refundable fee of five thousand dollars per license application or renewal thereafter. Once granted, the department shall charge each licensee an annual fee of twenty-five thousand dollars per facility license. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity may not be an owner of more than ten percent of the total marijuana cultivation facility licenses outstanding under both sections 1 and 2 of this Article at any given time, rounded down to the nearest whole number.

(10) An entity may apply to the department for and obtain one or more licenses to operate a comprehensive marijuana dispensary facility. Each facility in operation shall require a separate license. A license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge each applicant a non-refundable fee of seven thousand dollars per license application or renewal for each applicant filing an application within three years of the effective date of this section and shall charge each applicant a non-refundable fee of three thousand dollars per license application or renewal thereafter. Once granted, the department shall charge each licensee an annual fee of ten thousand dollars per facility license. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity may not be an owner of more than ten percent of the total marijuana dispensary facility licenses outstanding under both sections l and 2 of this Article at any given time, rounded down to the nearest whole number.

(11) An entity may apply to the department for and obtain one or more licenses to operate a comprehensive marijuana-infused products manufacturing facility. Each facility in operation shall require a separate license. A license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge each applicant a non-refundable fee of seven thousand dollars per license application or renewal for each applicant filing an application within three years of the effective date of this section and shall charge each applicant a non-refundable fee of three thousand dollars per license application or renewal thereafter. Once granted, the department shall charge each licensee an annual fee of ten thousand dollars per facility license. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity may not be an owner of more than ten percent of the total marijuana-infused products manufacturing facility licenses outstanding under both sections l and 2 of this Article at any given time, rounded down to the nearest whole number.

(12) An entity may apply to the department for and obtain only one license to operate a marijuana microbusiness facility, which may be either a microbusiness dispensary facility or a microbusiness wholesale facility. A marijuana microbusiness facility licensee may engage in all of the activities allowed under the license or it may apply for and engage in a subset of the activities allowed if the applicant or license holder so chooses. A microbusiness wholesale facility may cultivate, process, manufacture, transport, and sell marijuana and marijuana-infused products to any other marijuana microbusiness facility. A microbusiness dispensary facility licensee may acquire from

any other microbusiness facility, process, package, deliver, and sell marijuana and marijuana-infused products to any other marijuana microbusiness facility, or directly to qualified patients, their primary caregiver, or consumers. A marijuana microbusiness license shall be valid for three years from its date of issuance and shall be renewable, except for good cause. The department shall charge each applicant a fee of one thousand five hundred dollars per license application and for each subsequent license renewal application thereafter. Any applicant that meets the criteria to apply for a marijuana microbusiness facility license but is not chosen by the lottery system may have their application fee refunded. Once granted, the department shall charge each licensee an annual fee of one thousand five hundred dollars per facility license, but there shall be no annual fee assessed for the first year of licensure. Application and license fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency. An entity may not be an owner of more than one marijuana microbusiness facility license. An owner of a marijuana microbusiness facility may not also be an owner of another licensed marijuana facility or medical facility regulated under this Article. However, the owner of a marijuana microbusiness facility may apply for a license or licenses for other marijuana or medical marijuana facilities under this Article. If granted one or more of these licenses, the marijuana microbusiness facility owner shall transition to other licensed operations on a reasonably practical timetable established by the department, and surrender its marijuana microbusiness facility license to the department for issuance to an applicant for a marijuana microbusiness facility. In addition to other requirements established by this section, an applicant for a marijuana microbusiness license shall be majority owned by individuals who each meet at least one of the following qualifications:

(a) Have a net worth of less than $250,000 and have had an income below two hundred and fifty percent of the federal poverty level, or successor level, as set forth in the applicable calendar year's federal poverty income guidelines published by the U.S. Department of Health and Human Services or its successor agency, for at least three of the ten calendar years prior to applying for a marijuana microbusiness facility license; or

(b) Have a valid service-connected disability card issued by the United States Department of Veterans Affairs, or successor agency; or

(c) Be a person who has been, or a person whose parent, guardian or spouse has been arrested for, prosecuted for, or convicted of a non-violent marijuana offense, except for a conviction involving provision of marijuana to a minor, or a conviction of driving under the influence of marijuana. The arrest, charge, or conviction must have occurred at least one year prior to the effective date of this section; or

(d) Reside in a ZIP code or census track area where:

a. Thirty percent or more of the population lives below the federal poverty level; or

b. The rate of unemployment is fifty percent higher than the state average rate of unemployment; or

c. The historic rate of incarceration for marijuana-related offenses is fifty percent higher than the rate for the entire state; or

(e) Graduated from a school district that was unaccredited, or had a similar successor designation, at the time of graduation, or has lived in a zip code containing an unaccredited school district, or similar successor designation, for three of the past five years.

(13) The department may restrict the aggregate number of licenses granted for marijuana microbusiness facilities, provided, however, that the number may not be limited to fewer than the following number of licenses in each United States congressional district in the state of Missouri pursuant to the map of each of the eight congressional districts as drawn and effective on December 6, 2018:

(a) Six, once the department begins issuing licenses for marijuana microbusiness facilities under this subsection, at least two of which shall be a microbusiness dispensary facility, and at least four of which will be a microbusiness wholesale facility. The department shall issue the first group of microbusiness licenses no later than three hundred days after the effective date of this section;

(b) An additional six following the first two hundred and seventy days after the department begins issuing licenses for marijuana microbusiness facilities under this subsection, at least two of which shall be a microbusiness dispensary facility, and at least four of which will be a microbusiness wholesale facility, but only after the chief equity officer, or his or her designee, conducts a review and certifies that previous microbusiness licenses were awarded to and are being operated by eligible applicants in good standing; and

(c) An additional six after the first five hundred and forty-eight days after the department begins issuing licenses for marijuana microbusiness facilities under this subsection, at least two of which shall be a microbusiness dispensary facility, and at least four of which will be a microbusiness wholesale facility, but only after the chief equity officer, or his or her designee, conducts a review and certifies that previous microbusiness licenses were awarded to and are being operated in good standing by eligible applicants.

Future changes to the boundaries or the number of congressional districts shall have no impact on microbusiness license numbers or distribution. The eligibility review set forth in this subdivision shall be conducted by the chief equity officer within sixty days of issuance of the licenses. The chief equity officer shall publish in a manner available to the public the results of the review that contains only aggregate information on licensee eligibility criteria.

(14) Within 60 days after the effective date of this section, the department shall appoint a chief equity officer. The chief equity officer shall assist with the development and implementation of programs to inform the public of the opportunities available to those people who meet the criteria set forth in paragraph (12) of this subsection. The chief equity officer shall establish public education programming and targeted technical assistance programming dedicated to providing communities that have been impacted by marijuana prohibition with information detailing the licensing process and informing individuals of the support and resources that the office can provide to individuals and entities interested in participating in activity licensed under this Article. The chief equity officer shall provide a report to the department, no later than January l, 2024, and annually thereafter, of their and the department's activities in ensuring compliance with the applicant criteria set forth in paragraph (12) of this subsection, and the department shall provide such report to the legislature. The chief equity officer may only be removed for cause and the department shall not interfere with the officer's lawful official activities under this section.

(15) Any medical marijuana cultivation facility, medical marijuana dispensary facility, and medical marijuana-infused products manufacturing facility, holding an active facility license under section 1 of this Article shall have the right to convert their license to a comprehensive marijuana license, and any entity certified by the department to conduct medical marijuana testing, transportation or seed-to-sale tracking, as

of the effective date of this section shall be deemed certified to conduct those activities with respect to all marijuana;

(16) Upon the effective date of this section, any existing medical facility licensee may request its medical facility license convert to that of a comprehensive facility license. Conversion requests not processed within sixty days of department receipt shall be deemed approved.

(17) With the exception of microbusiness licenses, and consistent with any limitations set forth in this section, for the first five hundred and forty-eight days after the department begins issuing licenses for marijuana facilities under this section, the department may only issue a license:

(a) For a comprehensive marijuana cultivation facility to an entity holding a medical marijuana cultivation facility license issued pursuant to section l of this Article seeking to convert its licensure to that of a comprehensive marijuana cultivation facility at the same location;

(b) For a comprehensive marijuana dispensary facility to an entity holding a medical marijuana dispensary facility license issued pursuant to section 1 of this Article seeking to convert its licensure to that of a comprehensive marijuana dispensary facility at the same location; and

(c) For a comprehensive marijuana-infused products manufacturing facility to an entity holding a medical marijuana-infused products manufacturing facility license issued pursuant to section l of this Article seeking to convert its licensure to that of a comprehensive marijuana¬infused products manufacturing facility at the same location.

(18) The department shall issue a license to each request for a conversion to a comprehensive marijuana facility license pursuant to subdivision (15) of this subsection if the applicant is in good standing with the department.

(19) Notwithstanding the provisions of section 1 of this Article, if an existing medical marijuana dispensary facility is located in a jurisdiction that prohibits non-medical retail marijuana facilities under this section, or is otherwise prevented from operating a comprehensive marijuana dispensary facility at the same location as the existing medical marijuana dispensary facility, the medical marijuana dispensary facility may apply to the department for a comprehensive marijuana dispensary license pursuant to subdivision (15) of this subsection in a new location within the same congressional district, and such application shall be granted so long as the new location meets all the requirements of this section and department regulations.

(20) In addition to the foregoing, if the department has reason to believe that the conversion of a medical facility into a comprehensive facility might limit or restrict access to an adequate supply of marijuana and marijuana-infused products at a reasonable cost to qualifying patients, as defined in section l of this Article, the department may request a plan from the medical facility licensee which explains how the applicant would serve both the medical and adult-use markets, while maintaining adequate supply at a reasonable cost to qualifying patients.

(21) Comprehensive marijuana facilities licensed to distribute marijuana, marijuana--infused products, and marijuana accessories directly to consumers pursuant to this section may also distribute marijuana, marijuana-infused products, and marijuana accessories to qualifying patients and primary caregivers consistent with section 1 of this Article and department regulation.

(22) The department may charge a fee not to exceed two thousand five hundred dollars for any certification issued pursuant to this section. This fee limitation shall be increased or decreased each year by the percentage of increase or decrease from the

end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency.

(23) Within thirty days of December 8, 2022, the department shall make available to the public application forms and application instructions for personal cultivation registration cards. Within sixty days of December 8, 2022, the department shall begin accepting applications for such registration cards.

(24) Except for good cause, a person at least twenty-one years of age may obtain a registration card from the department to cultivate up to six flowering marijuana plants, six nonflowering marijuana plants (over fourteen inches tall), and six clones (plants under fourteen inches tall) for non-commercial use, provided:

(a) The plants and any marijuana produced by the plants in excess of three ounces are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place; and

(b) Not more than twelve flowering marijuana plants are kept in or on the grounds of a private residence at one time.

The card shall be valid for twelve months from its date of issuance and shall be renewable. The department shall charge an annual fee for the card of one hundred dollars, with such rate to be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency.

(25) All marijuana sold in Missouri pursuant to this section shall be cultivated in Missouri.

(26) All marijuana-infused products sold in Missouri pursuant to this section shall be manufactured in Missouri.

(27) The denial of a license or license renewal by the department shall be appealable. The applicant may choose to challenge any denial by the department through the administrative hearing commission, or successor entity. Pursuant to section 536.l00, RSMo, or its successor provisions, any licensee who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case is entitled to judicial review.

(28) No elected official shall interfere directly or indirectly with the department's obligations and activities under this section.

(29) To minimize the potential for undue political influence in awarding licenses, the department shall review license applications using reasonable safeguards that ensure the identity of the applicant and its principal owners, officers, and managers are not identified to the application reviewer.

(30) To ensure the consistent protection of public health and public safety, the department shall have the sole authority within the state of Missouri to issue licenses for marijuana facilities and certifications pursuant to this section.

(31) The department shall not have the authority to promulgate, apply, or enforce any rule or regulation that is unduly burdensome or act to undermine the purposes of this section.

5. Local Control.

(1) (a) Except as provided in this subsection, a local government may prohibit the operation of all microbusiness dispensary facilities or comprehensive marijuana dispensary facilities regulated under this section from being located within its jurisdiction either through referral of a ballot question to the voters by the governing body or through citizen petition, provided that citizen petitions are otherwise generally authorized by the laws of the local government. Such a ballot question shall be voted on only during the regularly scheduled general election held on the first Tuesday after

the first Monday in November of a presidential election year, starting in 2024, thereby minimizing additional local governmental cost or expense. A citizen petition to put before the voters a ballot question prohibiting microbusiness dispensary facilities or comprehensive marijuana dispensary facilities shall be signed by at least five percent of the qualified voters in the area proposed to be subject to the prohibition, determined on the basis of the number of votes cast for governor in such locale at the last gubernatorial election held prior to the filing of the petition. The local government shall count the petition signatures and give legal notice of the election as provided by applicable law. Denial of ballot access shall be subject to judicial review.

(b) Whether submitted by the governing body or by citizen's petition, the question shall be submitted in the following form: "Shall (insert name of local government) ban all non-¬medical microbusiness dispensary facilities and comprehensive marijuana dispensary facilities from being located within (insert name of local government and, where applicable, its "unincorporated areas") and forgo any additional related local tax revenue? ( ) Yes ( ) No." If at least sixty percent of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ban shall go into effect as provided by law. If a question receives less than the required sixty percent, then the jurisdiction shall have no power to ban non-medical microbusiness dispensary facilities or comprehensive marijuana facilities regulated under this section, unless voters at a subsequent general election on the first Tuesday after the first Monday in November of a presidential election year approve a ban on non-medical retail marijuana facilities submitted to them by the governing body or by citizen petition.

(2) (a) A local government may repeal an existing ban by its own ordinance or by a vote of the people, either through referral of a ballot question to the voters by the governing body or through citizen petition, provided that citizen petitions are otherwise generally authorized by the laws of the local government. In the case of a referral of a ballot question by the governing body or citizen petition to repeal an existing ban, the question shall be voted on only during the regularly scheduled general election held on the first Tuesday after the first Monday in November of a presidential election year. A citizen petition to put before the voters a ballot question repealing an existing ban shall be signed by at least five percent of the qualified voters in the area subject to the ban, determined on the basis of the number of votes cast for governor in such locale at the last gubernatorial election held prior to the filing of the petition. The local government shall count the petition signatures and give legal notice of the election as provided by applicable law. Denial of ballot access shall be subject to judicial review.

(b) Whether submitted by the governing body or by citizen's petition, the question shall be submitted in the following form: "Shall (insert name of local government) allow non-medical microbusiness dispensary facilities and comprehensive marijuana dispensary facilities to be located within (insert name of local government and where applicable, its "unincorporated areas") as regulated by state law? ( ) Yes ( ) No." If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ban shall be repealed.

(3) The only local government ordinances and regulations that are binding on a marijuana facility are those of the local government where the marijuana facility is located.

(4) Unless allowed by the local government, no new marijuana facility shall be initially sited within one thousand feet of any then-existing elementary or secondary school, child day-care center, or church. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church.

If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.

(5) Except as otherwise provided in this subsection, no local government shall prohibit marijuana facilities or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of a marijuana facility or entity holding a transportation certification that may operate in such locality.

(6) Local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing:

(a) The time and place where marijuana may be smoked in public areas within the locality; and

(b) The consumption of marijuana-infused products within designated areas, including the preparation of culinary dishes or beverages by local restaurants for on-site consumption on the same day it is prepared.

6. Taxation and Reporting.

(1) A tax shall be levied upon the retail sale of non-medical marijuana sold to consumers at marijuana facilities licensed pursuant to this section within the state. The tax shall be at a rate of six percent of the retail price. The tax shall be collected by each licensed retail marijuana facility and paid to the department of revenue. After retaining no more than two percent of the total tax collected or its actual collection costs, whichever is less, amounts generated by the marijuana tangible personal property retail sales tax levied in this section shall be deposited by the department of revenue into the veterans, health, and community reinvestment fund created under this subsection. Licensed entities making non-medical retail sales within the state shall be allowed approved credit for returns provided the tax was paid on the returned item and the purchaser was given the refund or credit. This tax shall not apply to medical marijuana dispensed to a registered qualifying patient or caregiver.

(2) There is hereby created in the state treasury the "Veterans, Health, and Community Reinvestment Fund" which shall consist of taxes and fees collected under this section. The state treasurer shall be custodian of the fund, and he or she shall invest monies in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund. Notwithstanding any other provision of law, any monies remaining in the fund at the end of a biennium shall not revert to the credit of the general revenue fund. The commissioner of administration is authorized to make cash operating transfers to the fund for purposes of meeting the cash requirements of the department in advance of it receiving application, licens-

ing, and tax revenue, with any such transfers to be repaid as provided by law. The fund shall be a dedicated fund and shall be distributed as follows:

(a) First, as determined by appropriation, to the department an amount necessary for the department to carry out its responsibilities under this section, including repayment of any cash operating transfers, payments made through contract or agreement with other state and public agencies necessary to carry out this section, and a reserve fund to maintain a reasonable working cash balance for the purpose of carrying out this section;

(b) Second, as determined by appropriation, to governmental entities in amounts necessary for carrying out responsibilities in the expungement of criminal history records under this section;

(c) Next, the remaining fund balance shall be distributed in thirds as follows:

a. One-third of the remainder of the fund balance shall be transferred to the Missouri veterans commission and allied state agencies, as determined by appropriation, exclusively for health care and other services for military veterans and their dependent families;

b. One-third of the remainder of the fund balance to the department to provide grants to agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment, prioritizing medically proven treatment and overdose prevention and reversal methods and public or private treatment options with an emphasis on reintegrating recipients into their local communities, to support overdose prevention education, and to support job placement, housing, and counseling for those with substance use disorders. Agencies and organizations serving populations with the highest rates of drug-related overdose shall be prioritized to receive the grants; and

c. One-third of the remainder of the fund balance to the Missouri public defender system. Any moneys credited to the Missouri public defender system shall be used only for legal assistance for low-income Missourians, shall not be diverted to any other purpose.

(d) All monies from the taxes and fees authorized hereunder shall provide new and additional funding for the purposes enumerated above and shall not replace existing funding.

(e) The unexpended balance existing in the fund shall be exempt from the provisions of section 33.080, RSMo, or its successor provisions, relating to the transfer of unexpended balances to the general revenue fund.

(3) For all retail sales of marijuana, a record shall be kept by the seller of all amounts and types of marijuana involved in the sale and the total amount of money involved in the sale, including itemizations, taxes collected, and grand total sale amounts. All such records shall be kept on the premises in a readily available format and be made available for review by the department and the department of revenue upon request. Such records shall be retained for five years from the date of the sale.

(4) The tax levied pursuant to this subsection is separate from and in addition to any general state and local sales and use taxes that apply to retail sales, which shall continue to be collected and distributed as provided by general law.

(5) Pursuant to Article III, Section 49 of this Constitution, the governing body of any local government is authorized to impose, by ordinance or order, an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold in such political subdivision. The tax authorized by this paragraph shall be in addition to any and all other tangible personal property retail sales taxes allowed by law, except that no ordinance or order imposing a tangible

personal property retail sales tax under the provisions of this paragraph shall be effective unless the governing body of the political subdivision submits to the voters of the political subdivision, at a municipal, county or state general, primary or special election, a proposal to authorize the governing body of the political subdivision to impose a tax. Any additional local retail sales tax shall be collected pursuant to general laws for the collection of local sales taxes.

(6) Except as authorized in this Article, no additional taxes shall be imposed on the sale of marijuana.

(7) The fees and taxes provided for in this section shall be fully enforceable notwithstanding any other provision in this Constitution purportedly prohibiting or restricting the taxes and fees provided for herein.

(8) For taxpayers authorized to do business pursuant to this Article, the amount that would have been deducted in the computation of federal taxable income pursuant to 26 U.S.C. Section 280E of the Internal Revenue Code as in effect on January 1, 2021, or successor provisions, but is disallowed because cannabis is a controlled substance under federal law, shall be subtracted from the taxpayer's federal adjusted gross income, in determining the taxpayer's Missouri adjusted gross income.

7. Additional Protections.

(1) A marijuana testing facility shall not be subject to civil or criminal prosecution under Missouri law, denial of any right or privilege, civil or administrative penalty or sanction, or disciplinary action by any accreditation or licensing board or commission for providing laboratory testing services that relate to marijuana consistent with this section and otherwise meeting legal standards of professional conduct.

(2) Notwithstanding any provision of Article V to the contrary, an attorney shall not be subject to disciplinary action by the Supreme Court of Missouri, the office of chief disciplinary counsel, the state bar association, any state agency or any professional licensing body for any of the following:

(a) Owning, operating, investing in, being employed by, or contracting with prospective or licensed marijuana testing facilities, marijuana cultivation facilities, marijuana dispensary facilities, marijuana-infused products manufacturing facilities, marijuana microbusiness facilities, or transportation certificate holders;

(b) Counseling, advising, and/or assisting a client in conduct permitted by Missouri law that may violate or conflict with federal or other law, as long as the attorney advises the client about that federal or other law and its potential consequences;

(c) Counseling, advising, and/or assisting a client in connection with applying for, owning, operating, or otherwise having any legal, equitable, or beneficial interest in marijuana testing facilities, marijuana cultivation facilities, marijuana dispensary facilities, marijuana-¬infused products manufacturing facilities, marijuana microbusiness facilities, or transportation certificates; or

(d) Counseling, advising or assisting a qualifying patient, primary caregiver, physician, nurse practitioner, health care provider, consumer, or other client related to activity that is no longer subject to criminal penalties under Missouri law pursuant to this Article.

(3) Actions and conduct by marijuana facilities licensed or otherwise certified by the department, or their employees or agents, as permitted by this section and in compliance with department regulations and other standards of legal conduct, shall not be subject to criminal or civil liability or sanctions under Missouri law, except as provided for by this section.

(4) The department may not promulgate a rule that requires a consumer to provide a marijuana facility with identifying information other than identification to determine the consumer's age.

(5) It is the public policy of the state of Missouri that contracts related to marijuana that are entered into by marijuana facilities and those who allow property to be used by those entities should be enforceable. It is the public policy of the state of Missouri that no contract entered into by marijuana facilities, or by a person who allows property to be used for activities that are exempt from state criminal penalties by this section, shall be unenforceable on the basis that activities related to marijuana may be prohibited by federal law.

(6) Prior to requesting a search or arrest warrant relating to cultivation of marijuana plants, a state or local law enforcement official shall verify with the department whether the targeted person holds a registration card allowing for cultivation of flowering marijuana plants under this section, and shall inform the issuing authority when making the warrant request. Evidence of marijuana alone, without specific evidence indicating that the marijuana is outside of what is lawful for medical or adult use, cannot be the basis for a search of a patient or non-patient, including their home, vehicle or other property. Lawful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release. State and local law enforcement shall have access to such department information as is necessary to confirm whether the targeted person holds a registration card. Each time a state or local law enforcement officer executes a search warrant authorizing entry upon premises for an alleged marijuana offense, the officer must first knock or announce their presence or purpose prior to entering the premises.

(7) (a) After executing a search warrant for an alleged marijuana offense, or conducting a warrantless search for an alleged marijuana offense, the officer shall report the following information to the agency that employs the officer:

a. The reasons for the warrant or, in the case of a warrantless search, a detailed account of either the probable cause or exigent circumstances, if any, which lead to the warrantless search;

b. Whether any marijuana was discovered during the course of the search;

c. Whether any marijuana was seized during the search, and if so, the amount seized;

d. Whether any other contraband was discovered or seized in the course of the search, and if seized, a description of the contraband;

e. A description of the tactics used by law enforcement to enter the property;

f. Whether an arrest was made as a result of the search; and

g. If an arrest was made, the crime suspected.

(b) Each law enforcement agency shall compile the data described in paragraph (a) of this subdivision for the calendar year into a report and shall submit the report to the attorney general no later than March first of the following calendar year. The attorney general shall determine the format that all law enforcement agencies shall use to submit the report.

(c) The attorney general shall submit a summary of the annual reports of law enforcement agencies to the governor, the general assembly, and each law enforcement agency no later than June first of each year. The summary shall include the total number of such warrants executed by each agency in the previous calendar year for alleged marijuana offenses, and a compilation of the information reported by law enforcement agencies pursuant to paragraph (b) of this subdivision.

8. Legislation.

Nothing in this section shall limit the general assembly from enacting laws consistent with the purposes and provisions of this section.

9. Additional Provisions.

(1) No owner of a marijuana facility or entity with a transportation certification shall be an individual with a disqualifying felony offense. A "disqualifying felony offense" is a violation of, and conviction or guilty plea to, state or federal law that is, or would have been, a felony under Missouri law, regardless of the sentence imposed, unless the department determines that:

(a) The person's conviction was for a marijuana offense that has been expunged or is currently eligible for expungement under this section; or

(b) The person's conviction was for a non-violent crime for which he or she was not incarcerated and that is more than five years old; or

(c) More than five years have passed since the person was released from parole or probation, and he or she has not been convicted of any subsequent felony criminal offenses.

The department may consult with and rely on the records, advice, and recommendations of the attorney general and the department of public safety, or their successor entities, in carrying out the provisions of this subdivision.

(2) Owners licensed pursuant to this section shall submit fingerprints to the Missouri state highway patrol for the purpose of conducting a state and federal fingerprint-based criminal record check in accordance with U.S. Public Law 92-544, or its successor provisions. The Missouri state highway patrol, if necessary, shall forward the fingerprints to the Federal Bureau of Investigation (FBI) for the purpose of conducting a fingerprint-based criminal background check. Fingerprints shall be submitted pursuant to section 43.543, RSMo, or its successor provisions, and fees shall be paid pursuant to section 43.530, RSMo, or its successor provisions. Unless otherwise required by law, no individual shall be required to submit fingerprints more than once.

(3) No marijuana facility shall manufacture, package, or label marijuana or marijuana-¬infused products in a false or misleading manner. No person shall sell any product in a manner designed to cause confusion between marijuana or a marijuana-infused product and any product not containing marijuana. A violation of this subdivision shall be punishable by an appropriate and proportional department sanction, up to and including an administrative penalty of five thousand dollars and loss of license.

(4) No marijuana facility may sell edible marijuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marijuana. A violation of this subdivision shall be punishable by an appropriate and proportional department sanction, up to and including an administrative penalty of five thousand dollars and loss of license.

(5) All marijuana and marijuana-infused products shall be sold in individual, child--resistant containers that are labeled with serving amounts, instructions for use, and estimated length of effectiveness. All marijuana and marijuana-infused products shall be sold in containers clearly and conspicuously labeled, as mandated by the department, as containing "Marijuana" or a "Marijuana-Infused Product". Violation of this subdivision shall subject the violator to department sanctions, including an administrative penalty of five thousand dollars.

(6) A marijuana facility may not allow cultivation, manufacturing, sale, or display of marijuana, marijuana-infused products, or marijuana accessories to be visible from a public place outside of the marijuana facility without the use of binoculars, aircraft, or other optical aids.

(7) A marijuana facility may not cultivate, manufacture, test, sell, or store marijuana at any location other than a physical address approved by the department and within an enclosed area that is secured in a manner that prevents access by persons not permitted by the marijuana facility to access the area.

(8) A marijuana facility shall secure every entrance to the facility so that access to areas containing marijuana is restricted to employees and other persons permitted by the marijuana facility to access the area and to agents of the department or state and local law enforcement officers and emergency personnel and shall secure its inventory and equipment during and after operating hours to deter and prevent theft of marijuana, marijuana-infused products, and marijuana accessories.

(9) No marijuana facility may refuse representatives of the department the right to inspect the licensed premises or to audit the books and records of the marijuana facility. A facility that holds licenses issued under sections 1 and 2 of this Article shall comply with inspection regulations and standards issued pursuant to both sections.

(10) No marijuana facility, or entity with a certification, shall assign, sell, give, lease, sublicense, or otherwise transfer its license or certificate to any other entity without the express consent of the department, not to be unreasonably withheld.

(11) Real and personal property used in the cultivation, manufacture, transport, testing, distribution, sale, and administration of marijuana for activities otherwise in compliance with this section shall not be subject to asset forfeiture solely because of that use.

(12) No person shall extract resins from marijuana using dangerous materials or combustible gases without a medical marijuana-infused products manufacturing facility license, marijuana-infused products manufacturing facility license, or a marijuana microbusiness wholesale facility license. Violation of this prohibition shall subject the violator to department sanctions, including an administrative penalty of one thousand dollars for an individual and ten thousand dollars for a facility licensee and, if applicable, loss of certificate or license for up to one year.

10. Personal Use of Marijuana.

(1) Subject to the limitations in subsection 3 of this section, the following acts by a person at least twenty-one years of age are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain, search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government:

(a) Purchasing, possessing, consuming, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration three ounces or less of dried, unprocessed marijuana, or its equivalent;

(b) Possessing, transporting, planting, cultivating, harvesting, drying, processing, or manufacturing up to six flowering marijuana plants, six nonflowering marijuana plants (over fourteen inches tall), and six clones (plants under fourteen inches tall) provided the person is registered with the department for cultivation of marijuana plants under this section, provided:

a. The plants and any marijuana produced by the plants in excess of three ounces are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place; and

b. Not more than twice the number of allowable plants under paragraph (b) of this subdivision are kept in or on the grounds of a private residence at one time.

(c) Assisting another person who is at least twenty-one years of age in, or allowing property to be used for, any of the acts permitted by this section; and

(d) Purchasing, possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

(2) A person who, pursuant to this section, cultivates marijuana plants that are visible by normal, unaided vision from a public place is subject to a civil penalty not exceeding two hundred and fifty dollars and forfeiture of the marijuana.

(3) A person who, pursuant to this section, cultivates marijuana plants that are not kept in a locked space is subject to a civil penalty not exceeding two hundred and fifty dollars and forfeiture of the marijuana.

(4) A person who smokes marijuana in a public place, other than in an area licensed for such activity by the authorities having jurisdiction over the licensing and/or permitting of said activity, is subject to a civil penalty not exceeding one hundred dollars.

(5) A person who is under twenty-one years of age who possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration three ounces or less of marijuana, or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil penalty not to exceed one hundred dollars and forfeiture of the marijuana. Any such person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.

(6) Subject to the limitations of this section, a person who possesses not more than twice the amount of marijuana allowed pursuant to this subsection, produces not more than twice the amount of marijuana allowed pursuant to this subsection, delivers without receiving any consideration or remuneration to a person who is at least twenty-one years of age not more than twice the amount of marijuana allowed by this subsection, or possesses with intent to deliver not more than twice the amount of marijuana allowed by this subsection:

(a) For a first violation, is subject to a civil infraction punishable by a civil penalty not exceeding two hundred and fifty dollars and forfeiture of the marijuana;

(b) For a second violation, is subject to a civil infraction punishable by a civil penalty not exceeding five hundred dollars and forfeiture of the marijuana;

(c) For a third or subsequent violation, is subject to a misdemeanor punishable by a fine not exceeding one-thousand dollars and forfeiture of the marijuana;

(d) A person under twenty-one years of age is subject to a civil penalty not to exceed two hundred and fifty dollars. Any such person shall be provided the option of attending up to eight hours of drug education or counseling in lieu of the fine; and

(e) In lieu of payment, penalties under this subsection may be satisfied by the performance of community service. The rate of pay-down associated with said service option will be the greater of $15 or the minimum wage in effect at the time of judgment.

(7) (a) Any person currently incarcerated in a prison, jail or halfway house, whether by trial or open or negotiated plea:

a. Who would not have been guilty of an adult or juvenile offense, had sections 1 and 2 of this Article been in effect at the time of the offense; or

b. Who would have been guilty of a lesser adult or juvenile offense had sections 1 and 2 of this Article been in effect at the time of the offense; or

c. Who is serving a sentence for a marijuana offense which is a misdemeanor, a class E felony, or a class D felony, or successor designations, involving possession of three pounds or less of marijuana, excluding offenses involving distribution or delivery to a minor, any offenses involving violence, or any offense of operating a motor vehicle while under the influence of marijuana;

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LEGAL REFERENCES GUIDE

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LEGAL REFERENCES GUIDE

I. LEGAL PRINCIPLES OF EMINENT DOMAIN

A. DEFINITIONS

1. **Eminent Domain** – The power of a governmental entity to take privately owned property, the power is an inherent element of sovereignty. *State ex rel. Jackson v. Dolan*, 398 S.W.3d 472, 475 (Mo. 2013).

2. **Condemnation** – The judicial procedure for invoking the power of Eminent Domain and determining Just Compensation.
   - Condemnation is the proceeding by which a governmental entity takes private property. *Metropolitan St. Louis Sewer District v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 915 (Mo. 2016). (internal citation omitted).

3. **Taking –** The government's actual or effective acquisition of private property either by ousting the owner or by destroying the property or severely impairing its utility. Black's Law Dictionary (10th ed. 2014).

4. **Just Compensation** – A payment by the government for property it has taken under Eminent Domain – usually the property's fair market value, so the owner is theoretically no worse off after the taking. Black's Law Dictionary (10th ed. 2014).
   - United States Supreme Court and the Missouri Supreme Court have interpreted "just compensation" to mean "the 'fair market value' of the property at the time of the taking." *Olson v. United States,* 292 U.S. 246, 255 (1934); *City of St. Louis v. Union Quarry,* 394 S.W.2d 300, 305 (Mo. 1965).
     - "The fair market value of land is what a reasonable buyer would give who was willing but did not have to purchase, and what a seller would take who was willing but did not have to sell." *Union Quarry,* 394 S.W.2d at 305.

5. **Police Power** – The inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice. It is a fundamental power essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government. Black's Law Dictionary (10th ed. 2014).

6. **Property** – Refers to real property, as well as tangible and intangible personal property.

B. THE TAKINGS CLAUSE OF THE UNITED STATES CONSTITUTION

1. "[N]or shall private property be **taken** for public use, without just compensation." U.S. CONST. amend. V. (emphasis added).

a. The Fifth Amendment Takings Clause of the United States Constitution applies to the states through the Fourteenth Amendment. *Kelo v. City of New London*, Connecticut, 545 U.S. 469, 472 n.1 (2005).

b. The touchstone of the Takings Clause is to prevent government "from forcing some people to alone bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

c. The Takings Clause of the Fifth Amendment "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 314 (1987).

- The term "property" refers to the rights inhering in the person's relationship to some thing, such as the right to possess, use and dispose. *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1003 (1984). Almost all interests in land are recognized as "property" under the Takings Clause – such as fee simples, leaseholds, easements, liens, restrictive covenants and some future interests.

    - The Takings Clause covers both tangible and intangible personal property. With regard to intangible property, in the absence of statutory language precluding a property interest, one looks to "whether… the alleged property had the hallmark rights of transferability and excludability." *Peanut Quota Holders Ass'n, Inc. v. U.S.*, 421 F.3d 1323, 1330 (2005).

    - Indicators that an interest will be recognized as property include the ability to sell, assign, transfer, or exclude. *McGuire v. U.S.*, 707 F.3d 1351, 1362 (Fed. Cir. 2013). An interest having value does not, of itself, confer property status. *Reichelderfer v. Quinn*, 287 U.S. 315, 319 (1932).

C. THE TAKINGS CLAUSE OF THE MISSOURI CONSTITUTION

1. "[P]rivate property shall not be taken or damaged for public use without just compensation." Mo. CONST. art. I. § 26.

a. An important distinction between the U. S. Constitution's Takings Clause and the Missouri Constitution's Takings Clause is the "damaging" language, which was added in 1875 to make it clear that something less than an actual, physical invasion of property could give rise to the right to receive Just Compensation. *Hamer v. State Highway Commission*, 304 S.W.2d 869, 874 (Mo. 1957).

- Under the Missouri Constitution's Taking Clause, the payment of Just Compensation due for damage to the land need not be paid until the

damage is inflicted. *Guaranty Savings & Loan Ass'n v. City of Springfield*, 139 S.W.2d 955, 957, 346 Mo. 79, 85 (Mo.1940).

- "A property owner who voluntarily makes changes on his property in anticipation that a proposed public improvement will be constructed thereon or nearby does so at the risk of losing his investment if the public agency exercises its unquestioned right to abandon the project or move it to a different location." *Hamer*, 304 S.W.2d at 874.

- With the exception of the damages provision in the Missouri Takings Clause, the clause is interpreted to match the "nearly identical" federal Takings Clause. *See State ex rel. Jackson v. Dolan*, 398 S.W.3d 472, 478 (Mo. 2013).

D. THE PUBLIC USE REQUIREMENT

1. A Taking of private property must be for a "public use." U.S. CONST. amends. V.; MO. CONST. art. I. §§ 26 and 28. For much of our nation's history the public use requirement meant use of private property by the public. *Rindge Co. V. Los Angeles*, 262 U.S. 700, 706 (1923).

2. There are three modern, important United States Supreme Court decisions dealing with the public use requirement – *Berman v. Parker*, a 1954 decision, *Hawaii Housing Authority v. Midkiff*, decided in 1984, and *Kelo v. City of New London*, decided in 2005. The precedents established in *Berman* and *Midkiff*, were heavily relied on by the Court in *Kelo* to determine if the public purpose of economic development fulfills the public use requirement.

a. In analyzing the public use requirement, the *Berman* decision blurred the distinction between the terms public use, Police Power, public purpose, public interest, and public welfare. *Berman v. Parker*, 348 U.S. 26, 32-33 (1954). The Court's ambiguous language made the exercise of Eminent Domain easier by expanding the public use requirement from requiring property to be used by the public to simply requiring that property be used in furtherance of some public purpose, or that the use generally promotes the public welfare. The decision also emphasized that a high degree of judicial deference should be given to the legislative determination of what constitutes as a public use. *Id.* at 32.

b. Thirty years later, in *Midkiff*, the Court again expanded the public use requirement when it determined the term "public use" is the equivalent of public purpose. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241 (1984).

Further, the Court concluded, it is enough that the Taking be "rationally related to a conceivable public purpose." *Id.*

c. In *Kelo v. City of New London*, the Court's decision affirmed that a "public purpose" is any purpose within the government's Police Power. *Kelo v. City of New London*, 545 U.S. 469 (2005). Therefore, the public use requirement is met if a Taking is for a public purpose, which is any purpose within the government's Police Power. Thus, if a government appropriates private property to promote the public health, safety, and welfare of a community, the public use requirement has been met. This expansive interpretation of the public use requirement led the Court to hold that even Condemnation of unblighted private property for conveyance to private developers can be a public use, given a proper economic development purpose. The Court's decision in *Kelo* failed to provide any standard for defining public use or distinguishing between public and private uses.

- "To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to wash out any distinction between private and public use of property—and thereby effectively to delete the words "for public use" from the Takings Clause of the Fifth Amendment." *Id*. at 494 (O'Connor, J., dissenting).

3. Mo. CONST. art. VI. § 21 authorizes the use of Eminent Domain for redevelopment purposes. In 2006, Missouri reformed its Eminent Domain laws in response to *Kelo's* expansive definition of public use.

- For example, in Section 523.261 RSMo., the Missouri legislature provided that in actions to condemn blighted, substandard, or insanitary areas under the Missouri Constitution, "any legislative determination that an area is **blighted**, substandard, or unsanitary shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence." This codified the substantial evidence requirement. *Centene Plaza Redev. Corp. v. Mint Properties*, 225 S.W.3d 431, 436 n.2 (Mo. 2007) (addition of the substantial evidence requirement was "merely a codification of existing case law stating that a legislative determination will be found arbitrary if it is not supported by substantial evidence").

- Also in 2006, in Section 523.271.1 RSMo., the Missouri legislature expressly limited the scope of the Eminent Domain power: "No condemning authority shall acquire private property through the process of eminent domain for <u>solely economic development purposes</u>." See *State ex rel. Jackson v. Dolan*, 398 S.W.3d

472, 482-83 (Mo. 2013) ("Economic development 'unquestionably serves a public purpose.' (citing *Kelo,* 545 U.S. at 484). Under § 523.271, however, the Missouri General Assembly has determined as a matter of this State's public policy that economic development may not be the *sole* purpose of a taking. The Port Authority failed to demonstrate a purpose that was in addition to economic development.").

- Blight is not defined in the Missouri statutes and various statutes that authorize "blighting" determinations use differing standards. Blight is not easily definable because a determination of blight is not based on the condition of the property alone but on the existence of a negative externality stemming from the condition of the property. Generally, blight is found where the condition of the property causes an economic or social liability in the area where the property is located. See Sections 353.020 and 99.320 RSMo.

- Although the elimination of blight is a public purpose for purposes of Eminent Domain law, a non-charter municipality may not rely on general statutes referencing Condemnation for "public purposes" if the statutes predate Mo. CONST. art. VI, § 21. *City of North Kansas City v. K.C. Beaton Holding Co., LLC*, 417 S.W.3d 825 (Mo. App. 2014) (rejecting use of Section 88.497 RSMo. regarding Condemnation for streets, parks, etc., as basis for use of Eminent Domain for redevelopment purposes).

E. THE POWER OF EMINENT DOMAIN; DELEGATION

1. **"**The principal that private property may be taken for public uses can be traced back to English common law where it was presumed that the king held title to all the land." Nichols §7.01[3]. Eminent Domain is recognized as a necessary power of the state essential to the growth and welfare of the community. The United States Supreme Court first established the existence of the power of Eminent Domain in 1875 in *Kohl v. United States*. The Court called the authority of the federal government to appropriate property for public use "essential to its independent existence and perpetuity." *Kohl v. United States*, 91 U.S. 367, 371 (1875).

2. "The Fifth Amendment to the Constitution says 'nor shall private property be taken for public use, without just compensation.' This is a tacit recognition of a **preexisting power** to take private property for public use, rather than a grant of new power." *U.S. v. Carmack*, 329 U.S. 230, 242 (U.S. 1946). (emphasis added).

a. Shortly after *Kohl*, the United States Supreme Court declared that "[t]he right of Eminent Domain…appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty." *Boom Co. v. Patterson*, 98 U.S. 403, 406, (1878).

- The Missouri Supreme Court recognized the power of Eminent Domain in 1894, affirming "[t]he power of the state to appropriate private property to a public use is an **inherent element of sovereignty**." *St. Louis, H. & K.C. Ry. Co. v. Hannibal Union Depot Co.*, 28 S.W. 483, 485 (Mo. 1894). (emphasis added).

3. As sovereigns, the federal government and state governments possess the inherent power of Eminent Domain. "The right of Eminent Domain rests with state and does not naturally inhere in counties, municipalities or public service corporations." *State ex rel. Missouri Cities Water Co. v. Hodge*, 878 S.W.2d 819, 820 (Mo. 1994). "The right [for various entities] to condemn," therefore, "can be exercised only upon delegation from the state." *Id.*

a. Thus, in Missouri, the General Assembly delegates the power of Eminent Domain to various public and private entities, subject to limitations found in the United States and Missouri Constitutions, as well as other Missouri statutes. U.S. CONST. amends. V. and IV.; Mo. CONST. art. I. §§ 26 and 28;. *Hodge*, 878 S.W.2d 819.

- Once delegated, "unless restricted by the constitution, the power [of Eminent Domain] is unlimited and practically absolute." *City of Arnold v. Tourkakis,* 249 S.W.3d 202, 204 (Mo. 2008) (internal citation omitted).

- "A municipality derives its governmental powers from the state and exercises generally only such governmental functions as are expressly or impliedly granted it by the state." *Century 21-Mabel O. Pettus, Inc. v. City of Jennings*, 700 S.W.2d 809, 811 (Mo. 1985).

  - In Missouri, "Dillon's Rule" governs basic questions of local governmental authority. It limits local authority to "(1) those [powers] granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation–not simply convenient, but indispensable." *State ex rel. City of Blue Springs v. McWilliams*, 335 Mo. 816 (Mo. 1934), (citing 1 Dillon on Municipal Corporations § 89 (3d ed.) Thus, a municipality must have statutory authority to adopt local land use controls. Moreover, statutory grants of power to municipalities will be strictly construed and any reasonable doubts as to whether the power has been so delegated will be resolved against the municipality. *City of Kirkwood v. City of Sunset Hills*, 589 S.W.2d 31, 35-36 (Mo. App. 1979).

- Missouri municipalities are either statutory cities, home rule charter cities, or special charter cities. Statutory cities only have those powers specifically granted to them under the Missouri Statutes. *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 212 (Mo. 1986). Home rule charter cities can act without specific grants of power as long as the authority can be found in the local charter and is not in conflict with state or federal law. *State ex inf. Hannah v. City of St. Charles*, 676 S.W.2d 508, 512 (Mo. 1984). Special charter cities must look to their charters or state law to find a grant of authority before they may enact a regulation.

F. THE POLICE POWER

1. The Police Power is the power to adopt regulations to promote the public health, safety, and welfare of a community. The Police Power of a state is an inherent power that existed prior to the creation of the United States. *United States v. Lopez*, 514 U.S. 549, 567 (1995).

- The Police Power is one of the most essential and least limitable of government's powers. *Hadacheck v. Sebastian*, 239 U.S. 394, 410 (1915). It may extend to any conceivable public purpose. *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984).

- The extent and limits of the Police Power is universally conceded to include everything essential to the public safety, health, morals and general welfare. *Lawton v. Steele*, 152 U.S. 133, 136 (1894).

- Generally, a regulation will be upheld as a valid exercise of Police Power if it bears a "substantial relation to the public health, morality, safety or welfare." *City of Independence v. Richards*, 666 S.W.2d 1 (Mo. App. 1983).

2. The power of Eminent Domain involves the Taking of property for public use and requires Just Compensation to the landowner, whereas the Police Power involves the use of private property, without compensation, in the interest of protecting the health, welfare, or safety of the community. *Id.* The exercise of either power may impair the fair market value of private property. When the value of private property is impaired due to the exercise of the Police Power, such as with zoning regulations, courts traditionally find the loss is not subject to the Just Compensation requirements of the United States and Missouri Constitutions. The powers are distinct but, over time, the course of law has been to merge the powers.

- In the 1887 decision of *Mugler v. Kansas*, the United States Supreme Court rejected the idea that an improper or excessive use of the Police Power became

a Taking. In *Mugler*, a state alcohol prohibition law rendered a brewery practically worthless. The view of the *Mugler* Court was that regulations under the Police Power were not burdened by a requirement of compensation.

- The Court's view, however, has evolved to address the intersection of the Police Power and the power of Eminent Domain. The powers intersect when the Police Power regulation completely impairs all beneficial use of a property. Such situations are characterized as regulatory Takings and require the payment of Just Compensation. The Courts expansion of the Takings Clause to include regulations is generally viewed as having arisen in the 1922 decision, *Pennsylvania Coal, v. Mahon*. Justice Holmes delivered the opinion of the Court, which held that "while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking…[as]…a strong public desire by a public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415-416 (U.S. 1922).

    - Today, excessive Police Power regulatory measures affecting property rights are actionable under the Takings Clauses of the United States and Missouri Constitutions.

II. <u>THE MISSOURI CONDEMNATION PROCESS</u>

A. TWO-STEP PROCEDURE DESCRIBED AND SET FORTH IN CHAPTER 523, RSMO., AND RULE 86.

- The Missouri Supreme Court has explained that a two-step procedure in condemnation cases "guarantees to the public early commencement of the project while preserving to the individual landowners the right at a later date to extensively and thoroughly litigate all issues relating to damages for the taking." *State ex rel. Missouri Highway and Transp. Com'n v. Anderson*, 735 S.W.2d 350 (Mo. 1987). This procedure consists of the following stages.

    - The first stage is a hearing on the petition to adjudicate the right of the condemner to condemn the property in question—in other words, to determine if the condemnation has been properly authorized by law.

    - The second stage establishes the landowner's damages from the Taking. The court appoints commissioners to assess the landowner's damages and, upon payment of the commissioners' award, the condemning authority acquires the property and may proceed to utilize it as prayed in its petition for Condemnation.

        - Either party may request a jury trial to establish the landowner's damages.

B. STEP-BY-STEP GUIDE THROUGH THE CONDEMNATION PROCESS (Part 1) – WHEN NO FEDERAL FUNDS ARE USED

1. *Determine what interests are being sought and how this will serve a public use.*

- Not solely for economic development purposes

2. *Obtain legal description and title report.*

3. *Contact Property Owner(s) to discuss project and request donation*. With donation, obtain a waiver of compensation signed and dated by Property Owner.

- Depends on type and quantity of property interests sought

- Is the owner a public entity or being used for a public use? As a general rule, property already devoted to a public use cannot be taken for another public use which will totally destroy or materially impair or interfere with the former use, unless the intention of the legislature that it should be so taken has been manifested in express terms or by necessary implication, mere general authority to exercise the power of Eminent Domain being in each case insufficient; *State ex rel. Missouri Cities Water Co. v. Hodge*, 878 S.W.2d 819 (Mo 1994).

4. *Get an appraisal or valuation of the land and interest sought*.

- Best practice = State licensed appraiser
- City should determine issues to be addressed in appraisal (consult with attorney).

5. *Provide the owner of record notice of the intent to acquire an interest in the real property at least sixty days before filing of a Condemnation petition*. Pursuant to Section 523.250 RSMo., such notice must include:

- Identity of property interest to be acquired and legal description;
- The purpose(s) for which the property is to be acquired;
- Notify the Property Owner they have the right to:
  - Seek legal counsel at their own expense;
  - Make a counteroffer and engage in further negotiations;
  - Obtain their own appraisal of Just Compensation;
  - Have Just Compensation determined by court-appointed commissioners and, ultimately, a jury;
  - Seek assistance from office of ombudsman;
  - Contest the right to condemn in the Condemnation proceeding; and
  - Exercise the right to request vacation of an easement.

An owner may waive the above requirements in writing. Pursuant to Section 523.250.2 RSMo., written notice **must** be sent by certified or registered mail,

postage prepaid, addressed to the owner of record as listed in the office of the assessor in the county in which the property is located.

6. *Provide relocation eligibility notice, if applicable***.** Pursuant to Section 523.205 RSMo., if the land being acquired results in displaced persons, the municipality must provide a relocation eligibility notice as provided for in the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 USC §4601 *et seq*. and 49 CFR §24).

7. *Authorize the use of Eminent Domain to acquire specific interest(s) in the real property prior to delivery of the offer letter*. Legislative approval (i.e., an ordinance) is required for the offer letter. Generally, the ordinance authorizing the use of Eminent Domain should contain:

- A description of the project and improvements;
- The types of interests in real property sought;
- The legal descriptions of real property for each interest sought;
- The legislative findings regarding public purpose and necessity; and
- Authority to make an offer and, if negotiations fail, to file condemnation proceedings.

8. *Provide a written offer to the owner(s).* Pursuant to Section 523.253 RSMo., the written offer must:

- Be made **at least 30 days before filing Condemnation petition** and shall be held open for 30 days unless agreement is reached earlier.
- Be sent by certified or registered mail to the owner(s) of record.
- Include (1) the City's appraisal or (2) an explanation with supporting financial data.
    - Appraisal must be made by state-licensed or state-certified appraiser.

9. *Address the owner's proposed alternative locations, if applicable* (only for partial Takings).

- Pursuant to Section 523.265 RSMo., within 30 days of receiving written notice, the landowner may propose to the City in writing an alternative location for the property to be condemned, which must be on the same parcel of property.
- The City must consider all alternative locations and produce a written statement why such alternative locations were rejected or accepted. See Section 523.265 RSMo.

10. *File petition for Condemnation.* In general, petition should contain the following:

- The name(s) of the owner(s) or interested parties of the property to be condemned;
- Description of the property;
- Description of the interest sought to be taken in the property;
- Authority to bring a Condemnation action;
- Nature of the improvement or use associated with the Taking;

- That good faith negotiations occurred but were unsuccessful or that an owner is incapable of contracting, is unknown, cannot be found or is a non-resident of the state (use language from statute);
- Copy of the construction plans required by Section 227.050 RSMo. shall be filed in the circuit clerk's office and incorporated by reference; and
- Prayer for the appointment of three disinterested commissioners to assess the damages which such owners may sustain because of the Condemnation.
- If heritage value is being claimed, counsel should make sure that the court, when appointing commissioners, orders the commissioners to determine whether the property was in the landowner's family for 50 years or more.

11. *Serve notice to the Defendants*. See Mo. Sup. Ct. R. 86.05 & 86.051
- Service can be made by:
  - Personal service;
  - Service by certified mail if out of state; or
  - Service by publication if parties name or their location is unknown or if parties are out of state.

12. *Condemnation Hearing* (a/k/a the "Necessity hearing"). Evidentiary hearing conducted by the circuit court to determine whether the Condemnation sought in the petition is authorized by law. Condemnor **must** establish the following:
- Due notice has been given to the necessary parties. Section 523.040 RSMo.;
- The condemnor has the authority to acquire the property by Eminent Domain, *State ex rel. Gove v. Tate*, 442 S.W.2d 541 (Mo. 1969).;
- Constitutional and statutory prerequisites to Condemnation have been complied with, *State ex rel. Devanssay v. McGurire,* 622 S.W.2d 323 (Mo. App. 1981).;
- The Taking is for public use; and
  - It is not necessary that the whole community or any large part of the community be benefited by Condemnation and it is sufficient for constitutional requirement of public purpose if there is **benefit** to any considerable number. *City of Kansas City v. Kindle*, 446 S.W.2d 807 (Mo. 1969).
- The Taking is necessary.
  - A legislative determination of necessity is not the subject of judicial inquiry, absent fraud, bad faith or the arbitrary exercise of legislative discretion. *Id.*

13. *Commissioner's Appointment.*
- Pursuant to Section 523.040.1 RSMo., three disinterested commissioners shall be appointed by the court to assess damages.

14. *Notice of Property Viewing/Hearing.*
- Pursuant to Section 523.040.2 RSMo., a commissioner shall notify all parties named in the Condemnation petition NO LESS THAN 10 DAYS before the commissioners' viewing of the property, notifying the parties of their right to accompany the commissioners and present information.

15. *Commissioners' Viewing/Hearing.*

- Pursuant to Section 523.040.3 RSMo., the commissioners shall view property, hear arguments and review other relevant information.

16. *Commissioners' Report.*

- Pursuant to Section 523.040.1 RSMo., the commissioners shall file their report with the court within **45 days** after their appointment, unless extended by good cause.
  - Pursuant to S. Ct. R. 86.08, immediately after the filing of the report, the clerk of the court shall notify the parties in the manner provided by Rule 43.02, **or** by posting the notice in the office of the clerk of court.

17. *After the Commissioners File their Report with the Court.*

- Pursuant to Section 523.061 RSMo., the Circuit Court shall determine whether a homestead or heritage value should be assessed and shall increase the commissioners' award if so.
- The condemning authority has 30 days to either pay awards or file exceptions to the commissioners report, **or both.**
- Pursuant to Section 523.050.1 RSMo., the commissioners' award becomes binding unless either party seeks a jury determination of the issue of damages by timely filing exceptions to the award within 30 days after service of the notice of the filing of the commissioners' report.
  - If no exceptions to the commissioners' report are timely filed, the report of the commissioners has the effect of a jury verdict. *City of St. Louis v. Pope*, 121 S.W.2d 861 (Mo. 1938).

18. *Possession.*

- The date of the Taking is the date upon which the condemnor pays the commissioners' award into court. Once the commissioners' award is paid, the condemnor has a right to possession and control of the subject property. *State ex rel. Broadway-Washington Associates, Ltd. v. Manners*, 186 S.W.3d 272, 275 (Mo. 2006).
- Pursuant to Section 523.055 RSMo., within ten days after receipt of notice of the payment of the commissioners' award, the landowner must deliver possession of the property to the condemnor. Otherwise, the condemnor is entitled to apply for a writ of possession directing the sheriff to deliver possession of the property to the condemnor.
  - Landowner may obtain extension of time, not to exceed 90 days, to deliver possession. If the property owner is being displaced from the owner's primary residence as a result of the Condemnation, owner is entitled to extension of time of **100 days** from the date of the commissioners' award.

C. GENERAL GUIDE THROUGH THE CONDEMNATION PROCESS (Part 2) – WHEN UTILIZING FEDERAL FUNDS (MoDOT LAND ACQUISITION PROCEDURES)

1. *Obtain Environmental Approval/Clearance.*

- ROW may not be acquired until Federal Highway Administration (FHWA) has approved the environment document and Section 106 has been completed. City is responsible for submitting evidence that environmental and cultural requirements have been approved.

2. *Apply for Notice to Proceed for Projects with Federal Funds in Construction (not in acquisition).*

- If no federal funds are used in ROW acquisition (even though they may be used in construction), City should submit one set of completed ROW plans to MoDOT with a Request to Proceed with ROW Acquisition.
- MoDOT will notify City in writing to proceed with ROW acquisition after review.

3. *Apply for Acquisition Authority (A-Date) for Projects with Federal Funds in ROW acquisition.*

- If federal funds are being used in ROW acquisition process, City must apply for MoDOT certifying approval of plans and environmental classifications, request for federal funds participation, estimate ROW acquisition cost, etc.

4. *Receive Acquisition Authority approval from District Office of MoDOT.*

- MoDOT will obtain an A-Date from FHWA and notify City in writing of approval of ROW plans and that it may proceed with ROW activities

5. *Contract with consultants for acquisition activities.*

- City must inform MoDOT before commencing ROW activities if it is necessary to contract for acquisition services.
  - Appraiser – must be state-license or state-certified appraiser (§ 523.253 RSMo.) and perform appraisal in conformance with MoDOT standards
  - Review Appraiser – must also be reviewed by second appraiser, also in conformance with MoDOT standards
  - Negotiator – negotiations must be conducted by someone other than appraiser or reviewing appraiser unless the payment estimate is less than $10,000.00. Pursuant to MO Real Estate Commission requirements, negotiator for acquisition of property should be a licensed real estate agent.
  - Negotiator duties include:
    - Obtaining title report (consult with attorney to determine appropriate form)
    - Obtaining legal description
    - Determining whether appraisal v. evaluation is needed (consult with attorney)
    - If appraisal is needed, determining issues to be addressed in appraisal (consult with attorney)

6. *Donations require the owner to be fully informed of the right to payment of Just Compensation as determined by an appraisal.*

- Owner can waive right of an appraisal. See 49 CFR 24.102
- Use of Waiver Valuation is allowed when:
  - The acquisition is $10,000 or less
  - Land value is easily determined
  - Only nominal structural improvements are acquired
  - Only nominal access rights are acquired
  - There are no apparent damages to the remainder – other than simple easements and creation of nominal uneconomic remnants

7. *Notice to Owners (may include written offer if available).*

- At least **60 days before filing Condemnation petition,** City must provide written notice to property owner including:
  - Identity of property interest to be acquired and legal description;
  - The purpose(s) for which the property is to be acquired;
  - Notifying the property owner they have the right to:
    - Seek legal counsel at their own expense;
    - Make a counteroffer and engage in further negotiations;
    - Obtain their own appraisal of Just Compensation;
    - Have Just Compensation determined by court-appointed commissioners and, ultimately, a jury;
    - Seek assistance from office of ombudsman;
    - Contest the right to condemn in the Condemnation proceeding; and
    - Exercise the right to request vacation of an easement.
- An owner may waive the requirements in writing.
  - Written notice must be sent by certified or registered mail, postage prepaid, addressed to the owner of record as listed in the office of the assessor in the county in which the property is located (§ 523.250 RSMo).

8. *Relocation Eligibility Notice, if applicable (§ 523.205 RSMo.).*

- If using federal funds, must provide a relocation eligibility notice as provided for in the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 USC §4601 *et seq*. and 49 CFR §24).

9. *Authorize the use of Eminent Domain to acquire specific interest(s) in the real property prior to delivery of the offer letter.* Legislative approval is also required for each subsequent offer letter. Generally, the ordinance authorizing the use of Eminent Domain should contain:

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- Include (1) the City's appraisal or (2) an explanation with supporting financial data.
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- Description of the property;
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- Authority to bring a Condemnation action;
- Nature of the improvement or use associated with the Taking;
- That good faith negotiations occurred but were unsuccessful or that an owner is incapable of contracting, is unknown, cannot be found or is a non-resident of the state (use language from statute);
- Copy of the construction plans required by Section 227.050 RSMo. shall be filed in the circuit clerk's office and incorporated by reference; and
- Prayer for the appointment of three disinterested commissioners to assess the damages which such owners may sustain because of the Condemnation.
    - If heritage value is being claimed, counsel should make sure that the court, when appointing commissioners, orders the commissioners to determine whether the property was in the landowner's family for 50 years or more.

13. *Serve notice to the Defendants*. See Mo. Sup. Ct. R. 86.05 & 86.051

- Service can be made by:
    - Personal service;
    - Service by certified mail if out of state; or
    - Service by publication if parties name or their location is unknown or if parties are out of state.

14. *Condemnation Hearing.* Evidentiary hearing conducted by the circuit court to determine whether the Condemnation sought in the petition is authorized by law. Condemnor must establish the following:

- Due notice has been given to the necessary parties. Section 523.040 RSMo.;
- The condemnor has the authority to acquire the property by Eminent Domain, *State ex rel. Gove v. Tate*, 442 S.W.2d 541 (Mo. 1969).;
- Constitutional and statutory pre-requisites to Condemnation have been complied with, *State ex rel. Devanssay v. McGurire,* 622 S.W.2d 323 (Mo. App. 1981).;
- The Taking is for public use; and
    - It is not necessary that the whole community or any large part of the community be benefited by Condemnation and it is sufficient for constitutional requirement of public purpose if there is benefit to any considerable number. *City of Kansas City v. Kindle*, 446 S.W.2d 807 (Mo. 1969).
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- Pursuant to Section 523.040.3 RSMo., the commissioners shall view property, hear arguments and review other relevant information.

18. *Commissioners' Report.*

- Pursuant to Section 523.040.1 RSMo., the commissioners shall file their report with the court within 45 days after their appointment, unless extended by good cause.
    - Pursuant to S. Ct. R. 86.08, immediately after the filing of the report, the clerk of the court shall notify the parties in the manner provided by Rule 43.02, or by posting the notice in the office of the clerk of court.

19. *After the Commissioners File their Report with the Court.*

- Pursuant to Section 523.061 RSMo., the Circuit Court shall determine whether a homestead or heritage value should be assessed and shall increase the commissioners' award if so.
- The condemning authority has 30 days to either pay awards or file exceptions to the commissioners' report, or both.

- Pursuant to Section 523.050.1 RSMo., the commissioners' award becomes binding unless either party seeks a jury determination of the issue of damages by timely filing exceptions to the award within 30 days after service of the notice of the filing of the commissioners' report.
    - If no exceptions to the commissioners' report are timely filed, the report of the commissioners has the effect of a jury verdict. *City of St. Louis v. Pope*, 121 S.W.2d 861 (Mo. 1938).

20. *Possession.*

- The date of the Taking is the date upon which the condemnor pays the commissioners' award into court. Once the commissioners' award is paid, the condemnor has a right to possession and control of the subject property. *State ex rel. Broadway-Washington Associates, Ltd. v. Manners*, 186 S.W.3d 272, 275 (Mo. 2006).
- Pursuant to Section 523.055 RSMo., within ten days after receipt of notice of the payment of the commissioners' award, the landowner must deliver possession of the property to the condemnor. Otherwise, the condemnor is entitled to apply for a writ of possession directing the sheriff to deliver possession of the property to the condemnor.
    - Landowner may obtain extension of time, not to exceed 90 days, to deliver possession. If the property owner is being displaced from the owner's primary residence as a result of the Condemnation, owner is entitled to extension of time of 100 days from the date of the commissioners' award.

21. *ROW Clearance Certification*.

- Before authorization to advertise the physical construction for bids, City must submit a ROW Clearance Certification Statement to MoDOT after all ROW has been acquired and legal and physical possession of all parcels has been obtained and relocation assistance has been made available.
- This can include obtaining case reports from counsel about the final disposition of condemnation cases, whether concluded by settlement or trial.

III. PRACTICE TIPS

A. In General

1. Take only the rights that are actually needed for the project.
    - Maximum Injury Rule: Landowners will argue that a jury should presume the condemnor will make the "most injurious use of its rights." *MHTC v. Cowger*, 838 S.W.2d 144, 146 (Mo.App. 1992) (discussed maximum injury rule), citing *Shell Pipe Line Corp. v. Woolfolk*, 53 S.W.2d 917, 918 (Mo. 1932). BUT, take note that deviations from plans during construction of the project can result in exposure to inverse condemnation claims, so easement terms/limits should not be unreasonably restrictive.

B. Selected Valuation Issues

1. General Damages and Inconvenience
   - Any general damages—those applicable to all properties within useable range of the project—are not compensable. *State ex rel. Missouri Highway & Transp. Comm'n v. Mertz*, 778 S.W.2d 366, 368 (Mo.App. 1989).
   - These noncompensable damages include:
     - Increased traffic
     - Noise
     - Unsightliness of construction project
   - But general damages and inconvenience may, along with other factors, affect future use and, therefore, market value.
   - Appraisers for landowners often look for ways to discuss them indirectly. Excluding them entirely from evidence at trial can be difficult, but jurors can be instructed to disregard them.
     - Missouri Approved Jury Instruction (Civil) 9.05 (modified to include general detriments, as provided for in the Notes on Use): "In determining the value of defendant's remaining property, you must not consider any general benefit or general detriment that is conferred upon all property within usable range of [the project]."

2. Business Losses
   - Business losses are not compensable in condemnation cases. *State ex rel. Missouri Highway & Transp. Comm'n v. Wallach*, 826 S.W.2d 901, 903 (Mo.App. 1992).
   - Commissioners and juries will still know the site is a business, however, so this may still affect their deliberations indirectly.

3. Speculative Fears
   - Only acts to be performed during the construction work that are lawful, proper, and reasonably foreseeable—not speculative—may come into evidence. *Kamo Elec. Co-op. v. Baker*, 287 S.W.2d 858, 862 (Mo. 1956).
   - Evidence about tortious acts by contractors, such as trespassing beyond the ROW and easements acquired, should be excluded.
   - This same principle, that speculative claims must not be considered, can be used to oppose other speculative arguments, such as "drivers will speed and crash more often on a new street."

4. Heritage and Homestead Values

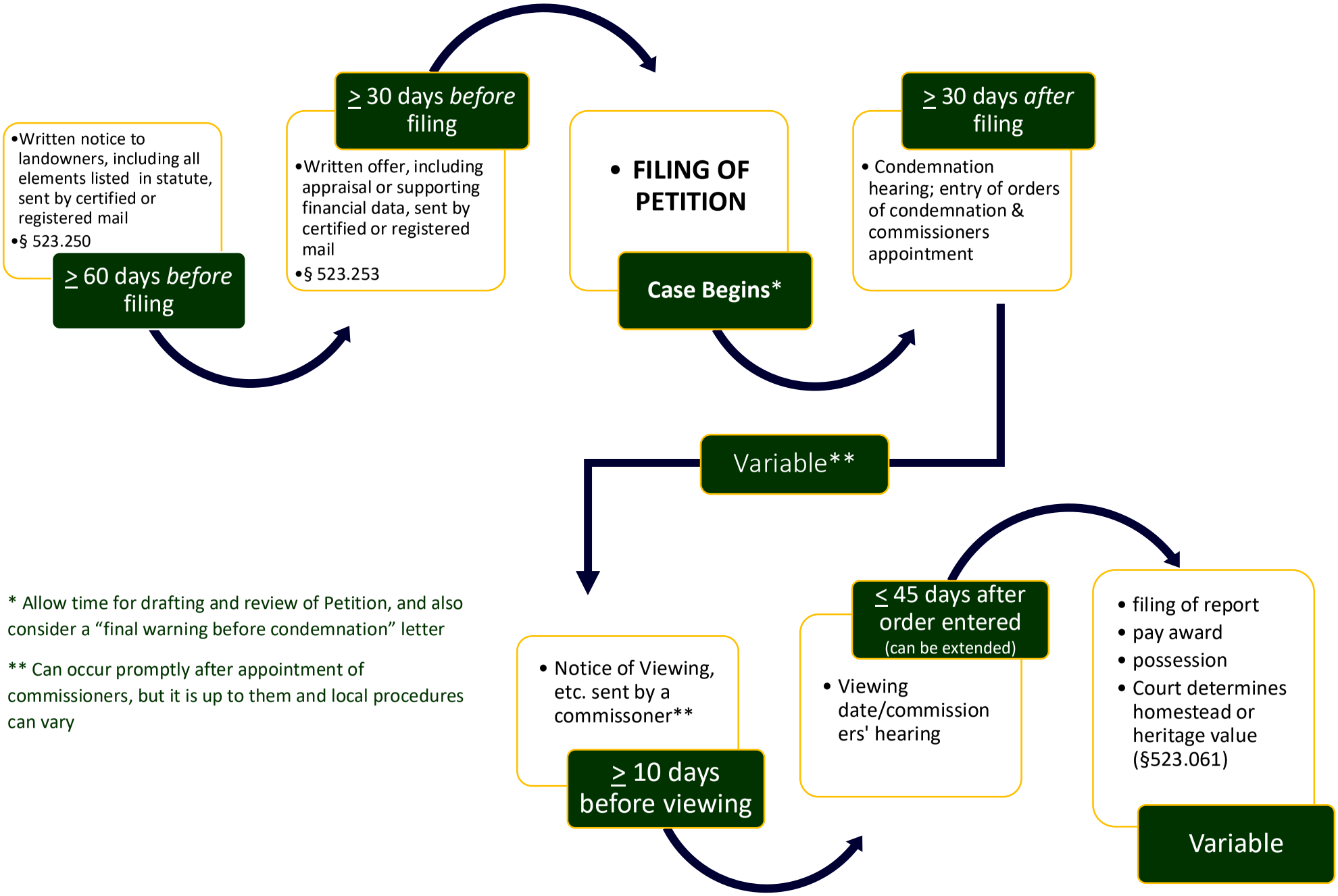
   a. § 523.039 RSMo, as amended in 2006, states: For all condemnation proceedings filed after December 31, 2006, just compensation for condemned property shall be determined under one of the three following subdivisions, whichever yields the highest compensation, as applicable to the particular type of property and taking:

i. An amount equivalent to the fair market value of such property;
ii. For condemnations that result in a homestead taking, an amount equivalent to the fair market value of such property multiplied by one hundred twenty-five percent; or
iii. For condemnations of property that result in any taking that prevents the owner from utilizing property in substantially the same manner as it was currently being utilized on the day of the taking and involving property owned within the same family for fifty or more years, an amount equivalent to the sum of the fair market value and heritage value.

b. § 523.001 RSMo contains the following definitions:
   i. "Heritage value" – fifty percent of fair market value
   ii. "Homestead taking" -- any taking of a dwelling owned by the property owner and functioning as the owner's primary place of residence or any taking of the owner's property within three hundred feet of the owner's primary place of residence that prevents the owner from utilizing the property in substantially the same manner as it is currently being utilized.

c. "Substantially the same manner" argument
   - From 2006 until 2019, some landowners/attorneys tried to argue that ***any*** partial taking satisfied the criteria for heritage or homestead takings, simply because the part taken could not continue to be used in same manner as before.
   - This argument was specifically rejected in *City of Cape Girardeau v. Elmwood Farms, L.P.*, 575 S.W.3d 280 (Mo.App. 2019).
   - The correct test is whether the taking prevents the owner from utilizing the ***whole property*** in substantially the same manner as it was being utilized on the day of the taking.
   - This means the courts must perform a fact-dependent inquiry in each case, but often there are good arguments to be made against broad application to all takings.

Optimal Condemnation Timeline



* Allow time for drafting and review of Petition, and also consider a "final warning before condemnation" letter

** Can occur promptly after appointment of commissioners, but it is up to them and local procedures can vary

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Municipal Law Essentials Program, Missouri Municipal Attorneys Association, 2023

General Condemnation Timeline* - Checklist

* No federal funds are used

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For Starters

- [ ] What interests are being sought?
- [ ] How will this serve a public use?

Contact Property Owner

- [ ] Have you contacted property owner to discuss project?
- [ ] Have you requested donation?
- [ ] If donation received, did you obtain waiver of compensation?

Get Appraisal/Valuation

- [ ] Have you consulted with an attorney to determine issues to be addressed in appraisal?
- [ ] Have you contacted a state-licensed appraiser?

Written Notice to Property Owners

- [ ] Is it 60 days in advance?
- [ ] Does it identify property you are interested in acquiring and state the legal description?
- [ ] Does it state purposes for which the property is to be acquired?
- [ ] Does it notify property owner(s) of their rights?
- [ ] Did you send it by certified/registered mail, with postage prepaid, to the owner of record?
- [ ] Will acquisition result in displaced persons? If so, have you given relocation assistance?

Authorization by Ordinance

- [ ] Was authorization granted prior to offer letter?
- [ ] Does ordinance contain description of project and improvements?
- [ ] Does ordinance contain types of interests in real property sought?
- [ ] Does ordinance contain legal descriptions of real property for each interest sought?

Written Offer to Owners

- [ ] Is it **at least 30 days** before you plan on filing condemnation petition?
- [ ] Was it sent by certified or registered mail to the owners of record?
- [ ] Does it provide City's appraisal or an explanation with supporting financial data?
- [ ] Is the offer for at least the amount reflected in the appraisal or supporting financial data?

Written Response to Alternative Locations

- [ ] Did owner(s) propose alternative locations within 30 days of receiving notice?
- [ ] If so, have you considered all alternative locations?
- [ ] Have you produced a written statement why alternative locations accepted/rejected?

Filing the Petition

- [ ] Does petition contain names of property owners or interested parties?
- [ ] Does petiton contain legal description of the property?
- [ ] Does petiton state authority to bring condemnation action?
- [ ] Does petiton state nature of improvement or use associated with the taking?
- [ ] Does petition state good faith negotiations occurred but were unsuccessful?
- [ ] Does petition contain copy of construction plans?

Serve Defendants: Choose One

- [ ] Personal Service
- [ ] Certified mail (if out of state)
- [ ] Publication (if parties name or location unknown)

Condemnation Hearing: Must Establish

- [ ] Has due notice been given to parties?
- [ ] Have constitutional and statutory prerequisites been complied with?
- [ ] Is the taking necessary and for public use?

Commissioners' Appointment

- [ ] Have 3 disinterested commissioners been appointed to assess damages?

Notice of Property Viewing

- [ ] Commissioners will notify parties **ten days** before the scheduled viewing of the property.

Property Viewing

- [ ] Commissioners will view property, hear arguments, and review other relevant information

Commissioners' Report

- [ ] Commissioners' report is due **45 days after their appointment** (but can be extended)

Determination of Homestead/Heritage Takings

- [ ] Circuit Court will determine whether homestead or heritage value should be assessed and will increase commissioners' award accordingly.

Notice of Payment

- [ ] After condemnor has paid award into Court, circuit clerk will give notice of payment within 5 day

Possession

- [ ] Owners must deliver possession **within 10 days after** receipt of notice of payment
- [ ] If not, court MAY extend deadline up to 90 days (if reasonable).
- [ ] **If persons being displaced, possession delivered within 100 days of date of commissioners' award**

General Condemnation Timeline When Using Federal Funds (MoDOT Land Acquisition Procedures) - Checklist

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For Starters

- [ ] Have you obtained environmental approval/clearance?

Apply for Notice to Proceed/Acquisition Authority

- [ ] Will federal funds be used in ROW acquisition?
- [ ] If not, submit completed ROW plans to MoDOT with Request to Proceed with ROW Acq.
- [ ] If YES, apply to MoDOT for Notice to Proceed and Acquisition Authority.
- [ ] Have you received Acqusition Authority from MoDOT?

Contract with Consultants for Acquisition Activities

- [ ] Have you informed MoDOT prior to ROW activities commencing?
- [ ] Have you contacted a state-licensed appraiser?
- [ ] Have you contacted a review appraiser?
- [ ] Have you contacted a negotiator, who is a licensed real estate agent, to conduct negotiations?

Written Notice to Property Owners

- [ ] Is it 60 days in advance?
- [ ] Does it identify property you are interested in acquiring and state the legal description?
- [ ] Does it state purposes for which the property is to be acquired?
- [ ] Does it notify property owner(s) of their rights?
- [ ] Did you send the notice by certified/registered mail, with postage prepaid, to the owner of record?
- [ ] Will acquisition result in displaced persons? If so, have you given relocation assistance?
- [ ] Does it contain a relocation eligibility notice?

Written Offer to Owners

- [ ] Is it **at least 30 days** before you plan on filing condemnation petition?
- [ ] Was it sent by certified or registered mail to the owners of record?
- [ ] Does it provide City's appraisal or an explanation with supporting financial data?
- [ ] Does each letter have **legislative approval giving you the authority to condemn?**
- [ ] Is the offer for at least the amount reflected in the appraisal or payment estimate?

Written Response to Alternative Locations

- [ ] Did owner(s) propose alternative locations within 30 days of receiving notice?
- [ ] If so, have you considered all alternative locations?
- [ ] Have you produced a written statement why alternative locations have been accepted/rejected?

Board Ordinance Authorizing Condemnation Petition

- [ ] Has Board approved ordinance?

Filing the Petition

- [ ] Does petition contain names of property owners or interested parties?
- [ ] Does petiton contain legal description of the property?
- [ ] Does petiton state authority to bring condemnation action?
- [ ] Does petiton state nature of improvement or use associated with the taking?
- [ ] Does petition state good faith negotiations occurred but were unsuccessful?
- [ ] Does petition contain copy of construction plans?

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- [ ] **If persons being displaced, possession delivered within 100 days of date of commissioners' award**

ROW Clearance Certification

- [ ] Has all ROW been acquired?
- [ ] Has all legal/physical possession of all parcels been obtained?
- [ ] Has relocation assistance been made available?
- [ ] **THEN,** City must submit ROW Clearance Certification Statement to MoDOT

Missouri Municipal Attorneys Association

Summer Seminar

Constitutional Limits to Municipal Authority

Presented by:
Paul Rost
Attorney
Cunningham, Vogel & Rost, P.C.

Municipal Law Essentials

Constitutional Limits to Municipal Authority

Selected Sources of Significant Constitutional Authority

July 15, 2023

PREPARED AND PRESENTED BY:

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ARTICLE II: *Bill of Rights*

Section 5. Religious freedom—liberty of conscience and belief—limitations— right to pray—academic religious freedoms and prayer. That all men and women have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his or her religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his or her person or estate; that to secure a citizen's right to acknowledge Almighty God according to the dictates of his or her own conscience, neither the state nor any of its political subdivisions shall establish any official religion, nor shall a citizen's right to pray or express his or her religious beliefs be infringed; that the state shall not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly; that citizens as well as elected officials and employees of the state of Missouri and its political subdivisions shall have the right to pray on government premises and public property so long as such prayers abide within the same parameters placed upon any other free speech under similar circumstances; that the General Assembly and the governing bodies of political subdivisions may extend to ministers, clergypersons, and other individuals the privilege to offer invocations or other prayers at meetings or sessions of the General Assembly or governing bodies; that students may express their beliefs about religion in written and oral assignments free from discrimination based on the religious content of their work; that no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs; that the state shall ensure public school students their right to free exercise of religious expression without interference, as long as such prayer or other expression is private and voluntary, whether individually or corporately, and in a manner that is not disruptive and as long as such prayers or expressions abide within the same parameters placed upon any other free speech under similar circumstances; and, to emphasize the right to free exercise of religious expression, that all free public schools receiving state appropriations shall display, in a conspicuous and legible manner, the text of the Bill of Rights of the Constitution of the United States; but this section shall not be construed to expand the rights of prisoners in state or local custody beyond those afforded by the laws of the United States, excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others. Source: Const. of 1875, Art. II, § 5. (Amended August 7, 2012)

Section 6. Practice and support of religion not compulsory—contracts therefor enforceable.—That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same. Source: Const. of 1875, Art. II, Sec. 6.

Section 7. Public aid for religious purposes—preferences and discriminations on religious grounds.—That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship. Source: Const. of 1875, Art. II, Sec. 7.

Section 8. Freedom of speech—evidence of truth in defamation actions—province of jury.—That no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty; and that in all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and in suits and prosecutions for libel the jury, under the direction of the court, shall determine the law and the facts. Source: Const. of 1875, Art. II, Sec. 14.

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Section 9. Rights of peaceable assembly and petition.—That the people have the right peaceably to assemble for their common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance. Source: Const. of 1875, Art. II, Sec. 29.

Section 10. Due process of law.—That no person shall be deprived of life, liberty or property without due process of law.

ARTICLE III: LEGISLATIVE DEPARTMENT

Section 38(c). Neighborhood improvement districts, cities and counties may be authorized to establish, powers and duties—limitation on indebtedness.—1. The general assembly may authorize cities and counties to create neighborhood improvement districts and incur indebtedness and issue general obligation bonds to pay for all or part of the cost of public improvements with in such districts. The cost of all indebtedness so incurred shall be levied and assessed by the governing body of the city or county on the property benefited by such improvements. The city or county shall collect the special assessments so levied and use the same to reimburse the city or county for the amount paid or to be paid by it on the general obligation bonds issued for such improvements.

2. Neighborhood improvement districts may be created by a city or county only when approved by the vote of a percentage of electors voting thereon within such district, or by a petition signed by the owners of record of a percentage of real property located within such district, that is equal to the percentage of voter approval required for the issuance of general obligation bonds under article VI, section 26.

3. The total amount of city or county indebtedness for all such districts shall not exceed ten percent of the assessed valuation of all taxable tangible property, as shown by the last completed property assessment for state or local purposes, within the city or county.

Section 39. Limitation of power of general assembly.—The general assembly shall not have power:

(1) To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation;

(2) To pledge the credit of the state for the payment of the liabilities, present or prospective, of any individual, association, municipal or other corporation;

(3) To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part;

(4) To pay or to authorize the payment of any claim against the state or any county or municipal corporation of the state under any agreement or contract made without express authority of law;

(5) To release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due this state or any county or municipal corporation;

(6) To make any appropriation of money for the payment, or on account of or in recognition of any claims audited or that may hereafter be audited by virtue of an act entitled “An Act to Audit and Adjust the War Debts of the State,” approved March 19, 1874, or any act of a similar nature, until the claim so audited shall have been presented to and paid by the government of the United States to this state;

(7) To act, when convened in extra session by the governor, upon subjects other than those specially designated in the proclamation calling said session or recommended by special message to the general assembly after the convening of an extra session;

(8) To remove the seat of government from the City of Jefferson;

(9) Except as otherwise provided in section 39(b), section 39(c), section 39(e) or section 39(f) of this article, to authorize lotteries or gift enterprises for any purpose, and shall enact laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; except that, nothing in this section shall be so construed as to prevent or prohibit citizens of this state from participating in games or contests of skill or chance where no consideration is required to be given for the privilege or opportunity of participating or for receiving the award or prize and the term “lottery or gift enterprise” shall mean only those games or contests whereby money or something of value is ex changed directly for the ticket or chance to participate in the game or contest. The general assembly may, by law, provide standards and conditions to regulate or guarantee the awarding of prizes provided for in such games or contests under the provision of this subdivision;

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(10) To impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision.

Section 40. Limitations on passage of local and special laws.—The general assembly shall not pass any local or special law:

(1) authorizing the creation, extension or impairment of liens;

(2) granting divorces;

(3) changing the venue in civil or criminal cases;

(4) regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

(5) summoning or empaneling grand or petit juries;

(6) for limitation of civil actions;

(7) remitting fines, penalties and forfeitures or refunding money legally paid into the treasury;

(8) extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of their duties, or their securities from liability;

(9) changing the law of descent or succession;

(10) giving effect to informal or invalid wills or deeds;

(11) affecting the estates of minors or persons under disability;

(12) authorizing the adoption or legitimation of children;

(13) declaring any named person of age;

(14) changing the names of persons or places;

(15) vacating town plats, roads, streets or alleys;

(16) relating to cemeteries, graveyards or public grounds not of the state;

(17) authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys;

(18) for opening and conducting elections, or fixing or changing the place of voting;

(19) locating or changing county seats;

(20) creating new townships or changing the boundaries of townships or school districts;

(21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts;

(22) incorporating cities, towns, or villages or changing their charters;

(23) regulating the fees or extending the powers of aldermen, magistrates or constables;

(24) regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes;

(25) legalizing the unauthorized or invalid acts of any officer or agent of the state or of any county or municipality;

(26) fixing the rate of interest;

(27) regulating labor, trade, mining or manufacturing;

(28) granting to any corporation, association or individual any special or exclusive right, privilege or immunity, or to any corporation, association or individual the right to lay down a railroad track;

(29) relating to ferries or bridges, except for the erection of bridges crossing streams which form the boundary between this and any other state;

(30) where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject.

ARTICLE IV: EXECUTIVE DEPARTMENT

Section 31. State highways in municipalities.—Any state highway authorized herein to be located in any municipality may be constructed without limitations concerning the distance between houses or other buildings abutting such highway or concerning the width or type of construction. The commission may enter into contracts

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with cities, counties or other political subdivisions for and concerning the maintenance of, and regulation of traffic on any state highway within such cities, counties or subdivision.

ARTICLE VI: LOCAL GOVERNMENT

Section 10. Terms of city and county offices.—The terms of city or county offices shall not exceed four years.

Section 15. Classification of cities and towns—uniform laws—change from special to general law.—The general assembly shall provide by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the powers of each class shall be defined by general laws so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The general assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations.

Section 16. Cooperation by local governments with other governmental units.—Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law.

Section 17. Consolidation and separation as between municipalities and other political subdivisions.—The government of any city, town or village not in a county framing, adopting and amending a charter for its own government, may be consolidated or separated, in whole or in part, with or from that of the county or other political subdivision in which such city, town or village is situated, as provided by law.

Section 19. Certain cities may adopt charter form of government—procedure to frame and adopt—notice required—effect of.—Any city having more than five thousand inhabitants or any other incorporated city as may be provided by law may frame and adopt a charter for its own government. The legislative body of the city may, by ordinance, submit to the voters the question: "Shall a commission be chosen to frame a charter?" If the ordinance takes effect more than sixty days before the next election, the question shall be submitted at such election and if not, then at the next general election thereafter, except as herein otherwise provided. The question shall also be submitted on a petition signed by ten percent of the qualified electors of the city, filed with the body or official in charge of the city elections. If the petition prays for a special election and is signed by twenty percent of the qualified electors, a special election shall be held not less than sixty nor more than ninety days after the filing of the petition. The number of electors required to sign any petition shall be based upon the total number of electors voting at the last preceding general city election. The election body or official shall forthwith finally determine the sufficiency of the petition. The question, and the names or the groups of names of the electors of the city who are candidates for the commission, shall be printed on the same ballot without party designation. Candidates for the commission shall be nominated by petition signed by not less than two percent of the qualified electors voting at the next preceding city election, and filed with the election body or official at least thirty days prior to the election; provided that the signatures of one thousand electors shall be sufficient to nominate a candidate. If a majority of the electors voting on the question vote in the affirmative, the thirteen candidates receiving the highest number of votes shall constitute the commission. On the death, resignation or inability of any member to serve, the remaining members of the commission shall select the successor. All necessary expenses of the commission shall be paid by the city. The charter so framed shall be submitted to the electors of the city at an election held at the time fixed by the commission, but not less than thirty days subsequent to the completion of the charter nor more than one year from the date of the election of the commission. The commission may submit for separate vote any parts of the charter, or any alternative sections or articles, and the alternative sections or articles receiving the larger affirmative vote shall prevail if a charter is adopted. If the charter be approved by the voters it shall become the charter of such city at the time fixed therein and shall supersede any existing charter and amendments thereof. Duplicate certificates shall be made, setting forth the charter adopted and its ratification, signed by the chief magistrate of the city, and authenticated by its corporate seal. One of such certified copies shall be deposited in the office of the secretary of state and the other, after being recorded in the records of the city, shall be deposited among the archives of the city and all courts shall take judicial notice thereof. The notice of the election shall be published at least once a week on the same day of the week for at least three weeks in some daily or weekly newspaper of general circulation in the city or county, admitted to the post office as second class matter, regularly and consecutively published for at least three years, and having a list of bona fide

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subscribers who have voluntarily paid or agreed to pay a stated price for a subscription for a definite period of time, the last publication to be within two weeks of the election.

Section 19(a). Power of charter cities, how limited.—Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.

Section 20. Amendment to city charters—procedure to submit and adopt.—Amendments of any city charter adopted under the foregoing provisions may be submitted to the electors by a commission as provided for a complete charter. Amendments may also be proposed by the legislative body of the city or by petition of not less than ten percent of the registered qualified electors of the city, filed with the body or official having charge of the city elections, setting forth the proposed amendment. The legislative body shall at once provide, by ordinance, that any amendment so proposed shall be submitted to the electors at the next election held in the city not less than sixty days after its passage, or at a special election held as provided for a charter. Any amendment approved by a majority of the qualified electors voting thereon, shall become a part of the charter at the time and under the conditions fixed in the amendment; and sections or articles may be submitted separately or in the alternative and determined as provided for a complete charter.

Section 21. Reclamation of blighted, substandard or insanitary areas.—Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest.

Section 22. Laws affecting charter cities—officers and employees.—No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents.

Section 23. Limitation on ownership of corporate stock, use of credit and grants of public funds by local governments.—No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this constitution.

Section 23(a). Cities may acquire and furnish industrial plants—indebtedness for.—By vote of two-thirds of the qualified electors thereof voting thereon, any county, city or incorporated town or village in this state may become indebted for and may purchase, construct, extend or improve plants to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery; and the indebtedness incurred hereunder shall not be subject to the provisions of sections 26(a), 26(b), 26(c), 26(d) and 26(e) of Article VI of this Constitution; but any indebtedness incurred hereunder for this purpose shall not exceed ten percent of the value of taxable tangible property in the county, city, or incorporated town or village as shown by the last completed assessment for state and county purposes.

Section 24. Annual budgets and reports of local government and municipally owned utilities—audits.—As prescribed by law all counties, cities, other legal subdivisions of the state, and public utilities owned and operated by such subdivisions shall have an annual budget, file annual reports of their financial transactions, and be audited.

Section 25. Limitation on use of credit and grant of public funds by local governments—pensions and retirement plans for employees of certain cities and counties.—No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation except as provided in Article VI, Section 23(a) and except that the general assembly may authorize any county, city or other political corporation or subdivision to provide for the retirement or pensioning of its officers and employees and the surviving spouses and children of deceased officers and employees and may also authorize payments from any public funds into a fund or funds for paying benefits

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upon retirement, disability or death to persons employed and paid out of any public fund for educational services and to their beneficiaries or estates; and except, also, that any county of the first class is authorized to provide for the creation and establishment of death benefits, pension and retirement plans for all its salaried employees, and the surviving spouses and minor children of such deceased employees; and except also, any county, city or political corporation or subdivision may provide for the payment of periodic cost of living increases in pension and retirement benefits paid under this section to its retired officers and employees and spouses of deceased officers and employees, provided such pension and retirement systems will remain actuarially sound.

Section 26(a). Limitation on indebtedness of local governments without popular vote.—No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution.

Section 26(b). Limitation on indebtedness of local government authorized by popular vote.—Any county, city, incorporated town or village or other political corporation or subdivision of the state, by vote of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five percent of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes, except that a school district by a vote of the qualified electors voting thereon may become indebted in an amount not to exceed fifteen percent of the value of such taxable tangible property. For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

Section 26(c). Additional indebtedness of counties and cities when authorized by popular vote.—Any county or city, by a vote of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five percent of the taxable tangible property shown as provided in section 26(b). For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

Section 26(d). Additional indebtedness of cities for public improvements—benefit districts—special assessments.—Any city, by vote of the qualified electors thereof voting thereon, may become indebted not exceeding in the aggregate an additional ten percent of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of acquiring rights-of-way, constructing, extending and improving the streets and avenues and acquiring rights-of-way, constructing, extending and improving sanitary or storm sewer systems. The governing body of the city may provide that any portion or all of the cost of any such improvement be levied and assessed by the governing body on property benefited by such improvement, and the city shall collect any special assessments so levied and shall use the same to reimburse the city for the amount paid or to be paid by it on the bonds of the city issued for such improvement. For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

Section 26(e). Additional indebtedness of cities for municipally owned water and light plants—limitations.—Any city, by vote of the qualified electors thereof voting thereon, may incur an indebtedness in an amount not to exceed an additional ten percent of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of paying all or any part of the cost of purchasing or constructing waterworks, electric or other light plants to be owned exclusively by the city, provided the total general obligation indebtedness of the city shall not exceed twenty percent of the assessed valuation. For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

Section 26(f). Annual tax to pay and retire obligations within twenty years.—Before incurring any indebtedness every county, city, incorporated town or village, school district, or other political corporation or subdivision of the state shall provide for the collection of an annual tax on all taxable tangible property therein sufficient to pay the interest and principal of the indebtedness as they fall due, and to retire the same within twenty years from the date contracted.

Section 27. Political subdivision revenue bonds for utility, industrial and airport purposes—restrictions.—Any city or incorporated town or village in this state, by vote of a majority of the qualified electors thereof voting thereon, and any joint board or commission, established by a joint contract between municipalities or political subdivisions in this state, by compliance with then applicable requirements of law, may issue and sell

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its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, construction, extending or improving any of the following projects:

(1) Revenue producing water, sewer, gas or electric light works, heating or power plants;

(2) Plants to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing and industrial development purposes, including the real estate, buildings, fixtures and machinery; or

(3) Airports.

The project shall be owned by the municipality or by the cooperating municipalities or political subdivisions or the joint board or commission, either exclusively or jointly or by participation with cooperatives or municipally owned or public utilities, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the municipality or by the cooperating municipalities or political subdivisions or the joint board or commission from the operation of the utility or the lease or operation of the project. The bonds shall not constitute an indebtedness of the state, or of any political subdivision thereof, and neither the full faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of or the interest on such bonds. Nothing in this section shall affect the ability of the public service commission to regulate investor-owned utilities.

Section 27(a). Political subdivision revenue bonds issued for utilities and airports, restrictions.—Any county, city or incorporated town or village in this state, by vote of a majority of the qualified electors thereof voting thereon, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any of the following: (1) revenue producing water, gas or electric light works, heating or power plants; or (2) airports; to be owned exclusively by the county, city or incorporated town or village, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the county, city or incorporated town or village from the operation of the utility or airport.

Section 27(b). Political subdivision revenue bonds issued for industrial development, restriction.—Any county, city or incorporated town or village in this state, by a majority vote of the governing body thereof, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery. The cost of operation and maintenance and the principal and interest of the bonds shall be payable solely from the revenues derived by the county, city, or incorporated town or village from the lease or other disposal of the facility.

Section 27(c). Revenue bonds defined.—As used in article VI, sections 27(a) and 27(b), the term "revenue bonds" means bonds neither the interest nor the principal of which is an indebtedness or obligation of the issuing county, city or incorporated town or village.

Section 28. Refunding bonds.—For the purpose of refunding, extending, and unifying the whole or any part of its valid bonded indebtedness any county, city, school district, or other political corporation or subdivision of the state, under terms and conditions prescribed by law may issue refunding bonds not exceeding in amount the principal of the outstanding indebtedness to be refunded and the accrued interest to the date of such refunding bonds. The governing authority shall provide for the payment of interest at not to exceed the same rate, and the principal of such refunding bonds, in the same manner as was provided for the payment of interest and principal of the bonds refunded.

Section 29. Application of funds derived from public debts.—The moneys arising from any loan, debt, or liability contracted by the state, or any county, city, or other political subdivision, shall be applied to the purposes for which they were obtained, or to the repayment of such debt or liability, and not otherwise.

ARTICLE VII: PUBLIC OFFICERS

Section 6. Penalty for nepotism.—Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

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Section 7. Appointment of officers.—Except as provided in this constitution, the appointment of all officers shall be made as prescribed by law.

Section 12. Tenure of office.—Except as provided in this constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified.

Section 13. Limitation on increase of compensation and extension of terms of office.—The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended.

ARTICLE IX: EDUCATION

Section 8. Prohibition of public aid for religious purposes and institutions.—Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

ARTICLE X: TAXATION

Section 1. Taxing power—exercise by state and local governments.—The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes.

Section 2. Inalienability of power to tax.—The power to tax shall not be surrendered, suspended or contracted away, except as authorized by this constitution.

Section 3. Limitation of taxation to public purposes—uniformity—general laws—time for payment of taxes—valuation.—Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law.

Section 5. Taxation of railroads.—All railroad corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

Section 6. Property exempt from taxation.—1. All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state who is a former prisoner of war, as defined by law, and who has a total service-connected disability, shall be exempt from taxation; all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and horticultural societies, or for veterans' organizations may be exempted from taxation by general law. In addition to the above, household goods, furniture, wearing apparel and articles of personal use and adornment owned and used by a person in his home or dwelling place may be exempt from taxation by general law but any such law may provide for approximate restitution to the respective political subdivisions of revenues lost by reason of the exemption. All laws exempting from taxation property other than the property enumerated in this article, shall be void. The provisions of this section exempting certain personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments from taxation shall become effective, unless otherwise provided by law, in each county on January 1 of the year in which that county completes its first general reassessment as defined by law.

2. All revenues lost because of the exemption of certain personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments shall be replaced to each taxing authority within

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a county from a countywide tax hereby imposed on all property in subclass 3 of class 1 in each county. For the year in which the exemption becomes effective, the county clerk shall calculate the total revenue lost by all taxing authorities in the county and extend upon all property in subclass 3 of class 1 within the county, a tax at the rate necessary to produce that amount. The rate of tax levied in each county according to this subsection shall not be increased above the rate first imposed and will stand levied at that rate unless later reduced according to the provisions of subsection 3. The county collector shall disburse the proceeds according to the revenue lost by each taxing authority because of the exemption of such property in that county. Restitution of the revenues lost by any taxing district contained in more than one county shall be from the several counties according to the revenue lost because of the exemption of property in each county. Each year after the first year the replacement tax is imposed, the amount distributed to each taxing authority in a county shall be increased or decreased by an amount equal to the amount resulting from the change in that district's total assessed value of property in subclass 3 of class 1 at the countywide replacement tax rate. In order to implement the provisions of this subsection, the limits set in section 11(b) of this article may be exceeded, without voter approval, if necessary to allow each county listed in section 11(b) to comply with this subsection.

3. Any increase in the tax rate imposed pursuant to subsection 2 of this section shall be decreased if such decrease is approved by a majority of the voters of the county voting on such decrease. A decrease in the increased tax rate imposed under subsection 2 of this section may be submitted to the voters of a county by the governing body thereof upon its own order, ordinance, or resolution and shall be submitted upon the petition of at least eight percent of the qualified voters who voted in the immediately preceding gubernatorial election.

4. As used in this section, the terms "revenues lost" and "lost revenues" shall mean that revenue which each taxing authority received from the imposition of a tangible personal property tax on all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments in the last full tax year immediately preceding the effective date of the exemption from taxation granted for such property under subsection 1 of this section, and which was no longer received after such exemption became effective.

Section 9. Immunity of private property from sale for municipal debts.—Private property shall not be taken or sold for the payment of the corporate debt of a municipal corporation.

Section 11(a). Taxing jurisdiction of local governments—limitation on assessed valuation.—Taxes may be levied by counties and other political subdivisions on all property subject to their taxing power, but the assessed valuation therefor in such other political subdivisions shall not exceed the assessed valuation of the same property for state and county purposes.

Section 11(b). Limitations on local tax rates.—Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

For municipalities—one dollar on the hundred dollars assessed valuation;

For counties—thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million dollars, or more, assessed valuation and having by operation of law attained the classification of a county of the first class; and fifty cents on the hundred dollars assessed valuation in all other counties;

For school districts formed of cities and towns, including the school district of the city of St. Louis—two dollars and seventy-five cents on the hundred dollars assessed valuation;

For all other school districts—sixty-five cents on the hundred dollars assessed valuation.

Section 11(c). Increase of tax rate by popular vote—further limitation by law—exceptions to limitation.—In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed six dollars on the hundred dollars assessed valuation, except as herein provided, when the rate and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided, that in any school district where the board of education is not proposing a higher tax rate for school purposes, the last tax rate approved shall continue and the tax rate need not be submitted to the voters; provided, that in school districts where the qualified voters have voted against a proposed higher tax rate for school purposes, then the rate shall remain at the rate approved in the last previous school election except that the board of education shall be free to resubmit any higher tax rate at any time; provided that any board of education may levy a lower tax rate

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than approved by the voters as authorized by any provision of this section; and provided, that the rates herein fixed, and the amounts by which they may be increased may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes.

Section 11(e). Exclusion of bonded debt from limitations on tax rates.—The foregoing limitations on rates shall not apply to taxes levied for the purpose of paying any bonded debt.

Section 11(f). Authorization of local taxes other than ad valorem taxes.—Nothing in this constitution shall prevent the enactment of any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes.

Section 13. Tax sales—limitations—contents of notices.—No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book, and all other information required by law.

Section 15. Definition of "other political subdivision".—The term "other political subdivision," as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.

Section 16. Taxes and state spending to be limited—state to support certain local activities—emergency spending and bond payments to be authorized.—Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in sections 17 through 24, inclusive, of this article.

Section 21. State support to local governments not to be reduced, additional activities and services not to be imposed without full state funding.—The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Section 22. Political subdivisions to receive voter approval for increases in taxes and fees—rollbacks may be required—limitation not applicable to taxes for bonds.—(a) Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

(b) The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this section.

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Section 23. Taxpayers may bring actions for interpretations of limitations.—Notwithstanding other provisions of this constitution or other law, any taxpayer of the state, county, or other political subdivision shall have standing to bring suit in a circuit court of proper venue and additionally, when the state is involved, in the Missouri supreme court, to enforce the provisions of sections 16 through 22, inclusive, of this article and, if the suit is sustained, shall receive from the applicable unit of government his costs, including reasonable attorneys' fees incurred in maintaining such suit.

Section 24. Voter approval requirements not exclusive—self-enforceability.—(a) The provisions for voter approval contained in sections 16 through 23, inclusive, of this article do not abrogate and are in addition to other provisions of the constitution requiring voter approval to incur bonded indebtedness and to authorize certain taxes.

(b) The provisions contained in sections 16 through 23, inclusive, of this article are self-enforcing; provided, however, that the general assembly may enact laws implementing such provisions which are not inconsistent with the purposes of said sections.

Section 25. Sale or transfer of homes or other real estate, prohibition on imposition of any new taxes, when.—After the effective date of this section, the state, counties, and other political subdivisions are hereby prevented from imposing any new tax, including a sales tax, on the sale or transfer of homes or any other real estate.

ARTICLE XI: CORPORATIONS

Section 11. Local consent for street railroads.—No law shall grant the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway, and the franchises so granted shall not be transferred without similar assent first obtained.

ARTICLE XIII: PUBLIC EMPLOYEES

Section 2. Medical benefits may be authorized for political subdivision officers, employees and their dependents.—Other provisions of this constitution to the contrary notwithstanding, the general assembly may authorize any county, city or other political corporation or subdivision to provide or contract for health insurance benefits, including but not limited to hospital, chiropractic, surgical, medical, optical, and dental benefits, for officers and employees and their dependents.

ARTICLE XIV: RIGHT TO ACCESS MEDICAL MARIJUANA

§ 1. Right to Access Medical Marijuana

7. Additional provisions.—

(10) (a) Unless allowed by the local government, no new medical marijuana cultivation facility, marijuana testing facility, medical marijuana dispensary facility, or medical marijuana-infused products manufacturing facility shall be initially sited within one thousand feet of any then-existing elementary or secondary school, child day-care center, or church. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot. No local government shall prohibit medical marijuana cultivation facilities, marijuana testing facilities, medical marijuana-infused products manufacturing facilities, or medical marijuana dispensary facilities, or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an

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ordinance or regulations governing the time, place, and manner of operation of a medical marijuana cultivation facility, marijuana testing facility, medical marijuana-infused products manufacturing facility, medical marijuana dispensary facility, or entity holding a transportation certification that may operate in such locality.

§ 2. Marijuana legalization, regulation, and taxation

5. Local Control.
(1) (a) Except as provided in this subsection, a local government may prohibit the operation of all microbusiness dispensary facilities or comprehensive marijuana dispensary facilities regulated under this section from being located within its jurisdiction either through referral of a ballot question to the voters by the governing body or through citizen petition, provided that citizen petitions are otherwise generally authorized by the laws of the local government. Such a ballot question shall be voted on only during the regularly scheduled general election held on the first Tuesday after the first Monday in November of a presidential election year, starting in 2024, thereby minimizing additional local governmental cost or expense. A citizen petition to put before the voters a ballot question prohibiting microbusiness dispensary facilities or comprehensive marijuana dispensary facilities shall be signed by at least five percent of the qualified voters in the area proposed to be subject to the prohibition, determined on the basis of the number of votes cast for governor in such locale at the last gubernatorial election held prior to the filing of the petition. The local government shall count the petition signatures and give legal notice of the election as provided by applicable law. Denial of ballot access shall be subject to judicial review.

(b) Whether submitted by the governing body or by citizen's petition, the question shall be submitted in the following form: "Shall (insert name of local government) ban all non--medical microbusiness dispensary facilities and comprehensive marijuana dispensary facilities from being located within (insert name of local government and, where applicable, its "unincorporated areas") and forgo any additional related local tax revenue? ( ) Yes ( ) No." If at least sixty percent of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ban shall go into effect as provided by law. If a question receives less than the required sixty percent, then the jurisdiction shall have no power to ban non-medical microbusiness dispensary facilities or comprehensive marijuana facilities regulated under this section, unless voters at a subsequent general election on the first Tuesday after the first Monday in November of a presidential election year approve a ban on non-medical retail marijuana facilities submitted to them by the governing body or by citizen petition.

(2) (a) A local government may repeal an existing ban by its own ordinance or by a vote of the people, either through referral of a ballot question to the voters by the governing body or through citizen petition, provided that citizen petitions are otherwise generally authorized by the laws of the local government. In the case of a referral of a ballot question by the governing body or citizen petition to repeal an existing ban, the question shall be voted on only during the regularly scheduled general election held on the first Tuesday after the first Monday in November of a presidential election year. A citizen petition to put before the voters a ballot question repealing an existing ban shall be signed by at least five percent of the qualified voters in the area subject to the ban, determined on the basis of the number of votes cast for governor in such locale at the last gubernatorial election held prior to the filing of the petition. The local government shall count the petition signatures and give legal notice of the election as provided by applicable law. Denial of ballot access shall be subject to judicial review.

(b) Whether submitted by the governing body or by citizen's petition, the question shall be submitted in the following form: "Shall (insert name of local government) allow non-medical microbusiness dispensary facilities and comprehensive marijuana dispensary facilities to be located within (insert name of local government and where applicable, its "unincorporated areas") as regulated by state law? ( ) Yes ( ) No." If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ban shall be repealed.

(3) The only local government ordinances and regulations that are binding on a marijuana facility are those of the local government where the marijuana facility is located.

(4) Unless allowed by the local government, no new marijuana facility shall be initially sited within one thousand feet of any then-existing elementary or secondary school, child day-care center, or church. In the case of a freestanding facility, the distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school,

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daycare, or church closest in proximity to the facility. In the case of a facility that is part of a larger structure, such as an office building or strip mall, the distance between the facility and the school, daycare, or church shall be measured from the property line of the school, daycare, or church to the facility's entrance or exit closest in proximity to the school, daycare, or church. If the school, daycare, or church is part of a larger structure, such as an office building or strip mall, the distance shall be measured to the entrance or exit of the school, daycare, or church closest in proximity to the facility. Measurements shall be made along the shortest path between the demarcation points that can be lawfully traveled by foot.

(5) Except as otherwise provided in this subsection, no local government shall prohibit marijuana facilities or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of a marijuana facility or entity holding a transportation certification that may operate in such locality.

(6) Local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing:

(a) The time and place where marijuana may be smoked in public areas within the locality; and

(b) The consumption of marijuana-infused products within designated areas, including the preparation of culinary dishes or beverages by local restaurants for on-site consumption on the same day it is prepared.

NOTICE & DISCLAIMER

These seminar materials and the related presentation are intended for discussion purposes and to provide those attending the seminar with useful ideas and guidance on the topics and issues covered. Although we have made every effort to ensure the accuracy of these materials and the presentation, neither the attorney presenting this seminar nor Cunningham, Vogel & Rost, P.C. assumes any responsibility for any individual's reliance on the written or oral information presented.

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Missouri Municipal Attorneys Association

Summer Seminar

Case Law Update

Presented by:
Edward Rucker
Chief Counsel
Lee's Summit

notes

notes

Missouri Municipal Attorneys Association

Summer Seminar

Legislative Update

Presented by:
Richard Sheets
Executive Director
Missouri Municipal League

Legislation that Passed First Session of the 102nd General Assembly the Affects Municipalities

SB 24 - First responders expanded to 911 operators; establishes a first responder cancer & PDST workers compensation pool.

SB 28 – Strengthens statutory language protecting personal information.

SB 63 – Allows state and municipalities to share licensing information with banks.

SB 94 – Tax credits for film and entertainment industry.

SB 103 - Adds two municipal court employees to the Court Automation Committee.

SB 109 – Flood Resiliency along the Missouri and Mississippi rivers and their tributaries and improving statewide flood forecasting and monitoring ability. The state of Missouri may participate with a political subdivision in the development, construction, or renovation of a flood resiliency project, as defined in the act, if the political subdivision has a plan for such project which has been submitted to and approved by the Director of the Department of Natural Resources. Alternatively, the state may promote such a project or initiate its own plan for such project.

SB 186 –

- Adds "telecommunicator first responder" to the definition of "first responder" in various provisions of law. Political subdivisions may elect to cover telecommunicator first responders as public safety personnel. Repeals St. Louis City residency requires for law enforcement and public safety employees.
- Establishes post-traumatic stress disorder (PTSD), as a compensable occupational disease under workers' compensation when diagnosed in first responders.
- All police chiefs appointed after August 28, 2023, shall complete a 40-hour POST course within six months of appointment as police chief, unless exempt as provided in the act. Any law enforcement agency who has a police chief who fails to complete the course, shall not receive any POST commission training funding or other state or federal funding until the police chief completes the training course.
- Adds additional disciplinary grounds for the Missouri Director of the Department of Public Safety to discipline peace officers.
- Provides that information on security measures, data provided to a tip line, or information in a suspicious activity report provided to certain public entities shall be closed records.

SS SB 190 - Authorizes a county to grant a property tax credit to eligible taxpayers residing in such county, provided such county has adopted an ordinance authorizing such credit, or a petition in support of such credit is delivered to the governing body of the county and is subsequently submitted to and approved by the voters, as described in the act.

Eligible taxpayers are defined as residents who: 1) are eligible for Social Security retirement benefits; 2) are the owner of record of or have a legal or equitable interest in a homestead; and 3) are liable for the payment of real property taxes on such homestead.

SB 398 - Prohibits a number of uses of electronic communication devices while operating motor vehicles.

SJR 26 - If approved by the voters, exempts from property tax all real and personal property used primarily for the care of a child outside of his or her home.

HB 202 - Flood Resiliency along the Missouri and Mississippi rivers and their tributaries and improving statewide flood forecasting and monitoring ability. The state of Missouri may participate with a political subdivision in the development, construction, or renovation of a flood resiliency project, as defined in the act, if the political subdivision has a plan for such project which has been submitted to and approved by the Director of the Department of Natural Resources. Alternatively, the state may promote such a project or initiate its own plan for such project.

Missouri Municipal Attorneys Association

Summer Seminar

Sunshine Law

Presented by:
Tara Kelly
Asst. City Attorney
Kansas City

notes

notes

MISSOURI MUNICIPAL ATTORNEYS ASSOCIATION

Summer Seminar

The 'Top 10' List:

Things Your City's Finance Director Wishes the City Attorney Knew

Presented by:
Sam Miller
Asst. City Attorney
Kansas City

Sam Miller
Assistant City Attorney
Kansas City, Missouri

The 'Top 10' List:

Things Your City's Finance Director Wishes the City Attorney Knew

1

Tammy Queen, Director of Finance

- 28 Years of City Finance
  - Finance Director since 2019
- Lecturer for the Government Finance Officers Association (GFOA)
  - Prev. chair of the National Committee on Treasury Investment Management

2

#10 – Develop (Maintain) Institutional Knowledge

- The City Attorney will inevitably be asked "can we do this?"
  - More likely than not, the problem has been solved before
- Keep a written, organized record of prior legal guidance
- Examples:
  - "Can we use Tax A to Fund Project B"
  - "Can we increase Tax C? If so, by how much?"
  - "Does Tax D apply to Corporation E?"

3

#9 – Know the Hancock Amendment

- May not increase rate of tax or tax base without a vote of the people
- Taxes vs. user fees, a five factor analysis:
  1) What service does the City provide in exchange for the fee?
  2) Who pays the fee—owners or users?
  3) When is it paid—regularly or after use?
  4) How much to pay—fixed amount or based on usage?
  5) Is the service historically and exclusively governmental?
- Resources:
  - Mo. Const. Art. X, Sec. 22.
  - *Leggett v. Missouri State Life Ins. Co.*, 342 S.W.2d 833 (Mo. banc. 1960)
  - *Keller v. Marion County Ambulance Dist.*, 820 S.W.2d 301 (Mo. banc. 1991)
  - *Zweig v. Metropolitan St. Louis Sewer Dist.*, 412 S.W.3d 223 (Mo. banc. 2013)

4

#8 – Bonds: Authorizations and Ballot Requirements

Election Date (1st Tuesday after the 1st Monday)	Voter Approval Requirements for General Obligation Bonds
February	2/3-majority in all years
April	4/7-majority in all years
June	2/3-majority in all years
August	4/7-majority in even-numbered years 2/3-majority in odd-numbered years
November	4/7-majority in even-numbered years 2/3-majority in odd-numbered years

- 115.123 RSMo.
- Graphic per Gilmore & Bell, PC, *Missouri Municipal Finance Guide* (April 2012)

Hire bond counsel!

- General Obligation bonds
  - Mo. Const. Art. VI, Sec. 26
    - GO debt cannot exceed 10% of City's assessed valuation (Secs. 26(b)–(c))
    - Additional 10% allowed for water, electric, and street, sewer purposes (Secs. 26 (d)–(e))
      - Total GO debt cannot exceed 20%
    - Repaid in 20 years (Sec. 26(f))
- Revenue bonds
  - Mo. Const. Art. VI, Sec. 27
  - Ch. 91; 250 RSMo. – waterworks and sewer
  - Ch. 94 – capital improvements and transport

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#7 – Economic Incentives

- Tax Increment Financing ("TIF") Agreements
  - 99.800–99.865 RSMo.
  - Use tax revenue to reimburse development of blighted areas or economic development areas
  - 'Capture' 100% of local incremental property tax and 50% of utility taxes (EATs)
- Tax Abatement - Ch. 353 and Ch. 100, RSMo.
- Improvement Districts: CIDs, TDDs, NIDs, and SBDs
  - Special assessments
  - Localized property taxes; sales taxes

6

#6 – Understand Property Tax Levies

- Know how property tax assessment works (Ch. 137, RSMo.)
  1. Assessor determines market value
  2. Calculate percentage of value to be taxed; *i.e.* assessed value
     - Real property = 19%
     - Personal property = 33.3% (some exceptions)
  3. Apply tax levy to the assessed value
- Interaction with the Hancock Amendment
  - When assessed values change, a city may not receive a revenue windfall or a shortfall
    - Ex: if property values decrease, assessment rates may decrease
    - However, if values decrease, rates may increase up to a certain max

7

#5 – Make a Finance Calendar!

- Bonds:
  - Must be repaid within 20 years
  - Your bond may succeed or fail depending on when it is placed on the ballot
- TIFs: Tax redirection can freeze rates for up to 23 years
- Sales Taxes:
  - Duration of ballot authorization
  - Approval required to renew

8

#4 – Tax Authorizations

Type of Sales Tax Authorized	Statutory Authority (RSMo)
Capital Improvements (Any municipality except those located in St. Louis County)	Section 94.577
Capital Improvements (Any municipality located in St. Louis County)	Section 94.890
Capital Improvements (Springfield)	Section 94.578
Community Center	Section 94.585
Community Services for Children (St. Louis City)	Section 67.1775
Convention and Tourism (Kansas City)	Section 92.325
Economic Development (Jefferson City)	Section 94.1010
Economic Development (Kirksville)	Section 94.1008
Economic Development, Local Option	Section 67.1305
Economic Development (Municipalities within many, but not all counties – see statute)	Section 67.1300
Economic Development, Local (St. Joseph, Springfield, Joplin and cities within the counties of Jasper and Butler)	Section 67.1303
Fire Protection	Section 321.242
General Purpose	Section 94.510
General Purpose (Any municipality in St. Louis County)	Section 94.850
Hotel and Motels (St. Louis City Regional Convention and Visitors Commission)	Section 67.619
Hotels and Motels – Transient Guest	Section 67.1000.1
Hotels and Motels – Transient Guest	Section 67.1003
Hotels and Motels – Transient Guest (Jefferson City)	Section 67.1000.4
Hotels and Motels – Transient Guest (Marshall)	Section 67.1015

- State law restricts sales taxes for specific purposes
  - Ex: Capital Improvements Sales Tax (94.575 et seq., RSMo.)
  - 94.575(2) RSMo. "Capital Improvements" – any capital or fixed asset having an estimated economic useful life of at least two years
- *Maintaining institutional knowledge!*

Graphic per Gilmore & Bell, PC, *Missouri Municipal Finance Guide* (April 2012)

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#3 – Finance is Your Partner
• All departments should maintain a good relationship with Finance
• Docket Memos
• Fiscal Notes
• Budget Analysis
• Finance can help make your project happen
• Budget management
• Funding sources

10


#2 – Tammy Says:
Finance is the Center of the Universe
• Every project, large or small, should go through Finance
• Ordinances
• Docket Memos
• Fiscal Notes
• Budget Analysis
• Q: What parts of your City need Finance?
• A: All of them
• Public works – water, electric, trash, infrastructure
• Public Transportation
• Convention and Tourism

11


#1 – Everything is Financial
(even if it doesn't seem like it)
• Every development, every event, every ordinance
• The earlier Finance becomes involved, the more likely you are to succeed
• On time, on budget
• Finance can help identify foreseeable obstacles and offer solutions
• When in doubt, ask your Finance Director!

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Missouri Municipal Attorneys Association

Summer Seminar

Real Estate Issues

Presented by:
Drew Weber
Attorney
Hamilton Weber, LLC

REAL [ESTATE] LOVE: COMMON REAL ESTATE ISSUES ENCOUNTERED BY LOCAL GOVERNMENTS

JULY 15, 2023

Drew Weber
Brad Pryor
HAMILTON WEBER LLC
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St. Charles, Missouri 63301
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HAMILTON WEBER LLC

1

Overview

- Fee Ownership vs Easements vs Right-of-Way
- Dedicatory Language
- Effect of Vacating Right-of-Way
- Title Issues—Practical Considerations
- Grantee's Acceptance of Transfers under Section 49.292, RSMo.
- Notarial Acknowledgements for Real Estate Transactions

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2

A Primer on Fee Simple, Easements, and Rights-of-Way

- What is fee simple ownership?
  - Fee simple ownership is real property held without limit of time.
- What is an Easement?
  - An Easement is an interest in land—a non-possessory interest in the land of another.
- What is Right-of-Way?
  - Right-of-Way might be an easement or it might be fee simple ownership.
    - It depends on how the Right-of-Way was conveyed/dedicated to the City.

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Fee Simple

- When does a City acquire Fee Simple interest in property?
  - Conveyance without limitation as to time.
  - Typically accomplished via Deed.
    - Warranty Deed vs. Quit Claim Deed
      - A Warranty Deed provides certain "warrants" as to the state of title.
      - A Quit Claim Deed is a mere transfer of whatever ownership interest, if any, the Grantor has the right to transfer.

4

Easements 101

- What is included in an Easement's purpose?
  - Road Easement
    - Authorizes vehicular traffic
    - What about pedestrian traffic?
    - Placement of utilities?
  - Temporary Construction Easement
    - Authorizes the holder of the Easement to access a specified area for construction purposes.
    - Might not include authorization for future maintenance.
  - Utility Easement
    - Likely includes electric, sanitary sewer, water, and gas.
    - What about fiber?

5

Acquiring Right-of-Way

- Means of acquiring right-of-way:
  - City can acquire the fee simple interest in right-of-way.
  - City can acquire right-of-way as an easement.
  - Right-of-way can be condemned or dedicated.

6

Dedication

- Dedication can be accomplished in two ways:
  - Statutory dedication
  - Common law dedication
- If a dedication of property for public use is by a private party for a specific or defined purpose, neither the legislature nor a municipality has any power to authorize the use of the property for any purpose other than the one designated. *Kirkwood v. City of St. Louis*, 351 S.W.2d 781, 784 (Mo.1961).

7

Dedication of Land vs Dedication of Improvements

- To establish a statutory dedication by plat, Section 445.070.2, RSMo., provides that:
  - "Such maps or **plats of such cities**, towns, villages and additions made, acknowledged, certified and recorded, **shall be a sufficient conveyance to vest the fee of such parcels of land as are therein named, described or intended for public uses in such city**, town or village, when incorporated, in trust and for the uses therein named, expressed or intended, and for no other use or purpose." (emphasis added).
- While that section speaks in terms of "the fee of such parcels of land," the governmental entity **does not obtain a fee simple title**, but rather, a dedication, and its acceptance amounts to a conveyance in trust for the uses named. *Sally v. City of Rolla*, 884 S.W.2d 380, 381-382 (Mo. App. S.D. 1994).

8

Dedication of Land vs Dedication of Improvements

- What happens if private easements or roads already exist and the users of the easements want to dedicate the easements?
  - Easements can be dedicated to the City by a Deed of Dedication.
  - The Deed of Dedication describes the easements being dedicated to the City.
- "[T]he fee [simple title]… remains in those who owned the land at the time of its dedication to public use, and in their successors in title; and if ever the [property] were vacated and their public use abandoned, the original owners, or their grantees, will thereafter hold the same freed from the burden of the former use." *Willy v. Lieurance*, 619 S.W.2d 866, 871 (Mo. App. S.D. 1981).

9

Dedicatory Language on a Plat

- Dedicatory language on the Plat
  - Use actual conveyance language for dedicating the streets to the City.
  - Dedicate utility easements for the construction, operation, and maintenance of sanitary sewers, gas lines, water lines, storm sewers, electric power lines, cable television lines, telecommunication lines, and equipment related thereto, and for drainage purposes.
  - List the City and ALL utility companies and their successors and assigns.

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Dedicatory Language on the Plat

Owner's Certification

The undersigned owner of land described on this plat and in the Surveyor's Certification set forth hereon (sometimes referred to herein collectively as "Grantor"), has caused said tract of land to be subdivided as shown on this plat, which subdivision shall hereafter be known as: "_____"

and Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration paid by the City of _____, Missouri (sometimes referred to herein as "Grantee"), the receipt and sufficiency of which are hereby acknowledged, do by these presents, as their interests may appear, BARGAIN AND SELL, CONVEY AND CONFIRM unto Grantee, [insert names of streets] (the "Streets and Roadways").

TO HAVE AND TO HOLD the Streets and Roadways, together with all rights, easements and appurtenances to the same belonging unto the Grantee, and to Grantee's successors and assigns forever. Grantor hereby covenants that Grantor and Grantor's successors and assigns shall and will WARRANT AND DEFEND the title to the Streets and Roadways unto Grantee and to Grantee's successors and assigns forever, against the lawful claims of all persons claiming by, through, or under the Grantor, but none other, excepting, however: (i) all general taxes and assessments, including sewer assessments (if any) for the calendar year 202__ and thereafter, (ii) special taxes and assessments (if any) due and payable after the date hereof, (iii) any zoning law or ordinances affecting the Streets and Roadways, and (iv) all building lines, easements, covenants and restrictions, rights of way, and use and occupancy restrictions of record, if any, and all matters that would be disclosed by an accurate survey and inspection of the Streets and Roadways, including, but not limited to, boundary line disputes, overlaps and encroachments.

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Dedicatory Language on the Plat ctd.

The undersigned do hereby dedicate the easements shown as drainage, sewer, and/or utility easements on this plat for the purpose of permitting the construction, operation, and maintenance of sanitary sewers, gas lines, water lines, storm sewers, electric power lines, cable television lines, telecommunication lines, and equipment related thereto, and for drainage purposes. Said easements are hereby dedicated to the City of _____, Missouri, its successors and assigns, Union Electric Company, d/b/a AMERENUE, AT&T Corp., Falcon Telecable, a California Limited Partnership, d/b/a Charter Communications, and Spire Inc., and their successors and assigns, for the purpose of installing, operating, and maintaining such utilities and related equipment.

The City of _____, Missouri, Union Electric Company, d/b/a AMERENUE, AT&T Corp., Falcon Telecable, a California Limited Partnership, d/b/a Charter Communications, and Spire Inc. are hereby further granted the right to survey, stake, construct, reconstruct, place, keep, operate, maintain, inspect, control, add to and relocate at will, at any time, and from time to time, in, on, upon, along, over, through and across, the herein described easements, sanitary sewers, gas lines, water lines, storm sewers, electric power lines, cable television lines, and telecommunication lines, including any and all equipment and other appurtenances normally associated therewith.

This conveyance and dedication shall take effect upon its execution by Grantor and its approval and acceptance by the Board of Aldermen of the City of _____, Missouri.

All provisions of the dedication, including the benefits and burdens, are deemed to be covenants running with the land and are binding upon and inure to the benefit of the parties named herein, and their respective successors and assigns.

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Expanded Use of Easements

- Section 523.283.1, RSMo.—"Easements or right-of-way interests acquired after August 28, 2006, by a private utility company, public utility, rural electric cooperative, **municipally owned utility**, pipeline, or railroad, by either formal condemnation proceedings or by negotiations in lieu of condemnation proceedings, **are fixed and determined by the particular use for which the property was acquired as described in either the instrument of conveyance or in the condemnation petition**. **Expanded use of the property** beyond that which is described in the instrument of conveyance or the condemnation petition **shall require either an additional condemnation proceeding in order to acquire the additional rights or by new negotiations for the expanded use of the property** and appropriate consideration and damages to the current owner of the property for the expanded use."
- "Expanded use" includes "a different type of use or a use presenting an unreasonably burdensome impact on the property, the landowner, or the activities being conducted on the property by the landowner."

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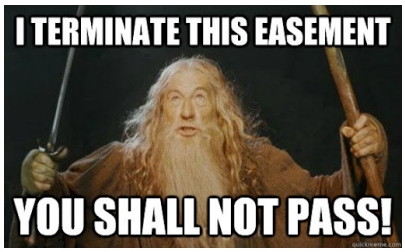
Vacating Right-of-Way



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Vacating Right-of-Way

- Pursuant to Sections 88.637 and 88.673, RSMo., the City Council in a 3rd Class City, and the Board of Aldermen in a 4th Class City, have the power to vacate the public use of a public street. This should be done by ordinance.
- However, under Section 89.380, RSMo., a street cannot be vacated until the Planning & Zoning Commission approves the street vacation.
  - Section 89.380, RSMo. "The acceptance, widening, **removal**, extension, relocation, narrowing, **vacation**, abandonment, change of use, acquisition of land for, sale or lease **of any street or other public facility** is subject to [approval by the Planning & Zoning Commission], and the failure to approve may be [overruled by the governing body]. The failure of the commission to act within sixty days after the date of official submission to it shall be deemed approval."

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Vacating Right-of-Way

- "It is a well recognized rule in the State of Missouri that when streets and alleys are vacated by the public authority the title and interest in the streets and alleys revert to adjoining property owners." *Marks v. Bettendorf's, Inc.*, 337 S.W.2d 585, 593 (Mo. App. 1960)
- "The conveyance of the property owner's lot abutting upon a street or alley will carry the fee simple title in the street and alley subject to the public uses contained in the instrument of dedication. On vacation of the street or alley the title reverts to the abutting owners free of the public easement." *Marks v. Bettendorf's, Inc.*, 337 S.W.2d 585, 593–94 (Mo. App. 1960)

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Vacating Right-of-Way

- Vacating Right-of-Way **is not** the same as conveying property.
- In a vacation, the City is not granting any property interest.
- Instead, the City is merely abandoning and releasing its property interest(s).
- If a resident asks for conveyance of vacated Right-of-Way, the answer is "no", **UNLESS** the City acquired the Right-of-Way in fee.
  - In that circumstance, the City can vacate its Right-of-Way interest **AND** convey its fee simple ownership.

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Title Issues—Practical and Legal Considerations Businesses

- Confirming property ownership
  - Good: Type the address into the County Assessor's Database.
    - Unfortunately, this is not always accurate, especially if there are fractional ownership interests.
  - **Best**: Obtain a letter report from a title company.
    - The title company will review the public records and confirm who owns the property.

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Title Issues—Practical and Legal Considerations Businesses

- Should a City get title insurance?
- What are the "standard exceptions" to title insurance?
- How does a City resolve exceptions to title insurance shown on Schedule B-II?
- Should a City ask for title insurance endorsements?

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Title Issues—Practical and Legal Considerations Businesses

- **Common Title Insurance Endorsements**
- ALTA 9 Series - Restrictions, Encroachments, Minerals - "Comprehensive"
  - Coverage for Encroachments
  - Violations of Covenants, Conditions & Restrictions
  - Damages for mineral production
- ALTA 25 - Survey coverage
  - "Same as Survey"
  - The property being purchased is the same property shown on the survey
- ALTA 19 – Contiguity
  - If two are more parcels are being insured, this endorsement provides insurance against a claim that there are gaps in the property being conveyed.

20

Grantee's Acceptance of Real Estate Donation

- What happens if property is conveyed to the City without its knowledge?

21

Grantee's Acceptance of Real Estate Donation

➢**Section 49.292, RSMo.**

➢1. Notwithstanding any other law to the contrary, the county commission of any county may reject the transfer of title of real property to the county by donation or dedication if the commission determines that such rejection is in the public interest of the county.

➢2. **No transfer of title of real property to** the county commission or **any other political subdivision** by donation or dedication authorized to be recorded in the office of the recorder of deeds **shall be valid unless it has been proved or acknowledged**. **The preparer of the document relating to subsection 1** of this section **shall not submit a document to the recorder of deeds for recording unless the acceptance thereof of the grantee named in the document has been proved or acknowledged**. No water or sewer line easement shall be construed as a transfer of title of real property under this subsection.

22

Proper Use of Notary Acknowledgements

➢In 2020, the Missouri General Assembly revised the standard notarial signature blocks.

➢Since 2020, the formerly approved notarial signature blocks are still widely used.

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Proper Use of Notary Acknowledgements

➢Section 442.210, RSMo., contains notarial acknowledgements which "**may be used** in the case of conveyances or other written instruments affecting real estate." There are forms for:

- ➢Natural persons acting in their own right;
- ➢Natural persons acting by attorney; and
- ➢Corporations or joint stock associations

➢"We quickly recognize that the language of **Section 442.210** (including the forms of acknowledgment which 'may be used in written instruments affecting real estate') **is permissive and not mandatory**, and we heartily endorse the salutary principle, which has found application in a variety of circumstances, that **substantial compliance with statutory provisions pertaining to acknowledgments will suffice**. But, although the law requires nothing more than such substantial compliance, it is satisfied with nothing less." *Hatcher v. Hall*, 292 S.W.2d 619, 622 (Mo. App. 1956).

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Proper Use of Notary Acknowledgements

- Section 486.750, RSMo.—Passed in 2020
  - Used for the "signature or mark of any person acknowledging on his or her own behalf or as a partner, corporate officer, attorney in fact, or in any other representative capacity."
  - On this ..... day of ....., 20..., before me, the undersigned notary, personally appeared ..... (name of document signer), (personally known to me)(proved to me through identification documents, which were .....,) (proved to me on the oath or affirmation of ....., who is personally known to me and stated to me that (he)(she) personally knows the document signer and is unaffected by the document,) (proved to me on the oath or affirmation of ..... and ....., whose identities have been proven to me through identification documents and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose(.)
    (as partner for ....., a partnership.)
    (as ..... for ....., a corporation.)
    (as attorney in fact for ....., the principal.)
    (as .....for ....., (a)(the).....)

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Questions

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THANK YOU!!

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Missouri Municipal Attorneys Association

Summer Seminar

Ethics

Presented by:
Tara Kelly
Asst. City Attorney
Kansas City

Model Rule 1.13 and the Municipal Organization as the Client

City of Kansas City, Missouri
Law Department
In-House CLE
December 2, 2022

Charlotte Ferns & Matt Gigliotti[1]

City Attorney's Office
City of Kansas City, Mo.
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[1] We would like to express our gratitude to our mentor, colleague, and friend Bill Geary, retired City Attorney for the City of Kansas City, Missouri; IMLA Fellow; and James H. Epps III Award winner. This work is derivative of Bill's efforts during his career to further municipal lawyers' understanding of their ethical and professional responsibilities.

WHO'S THE CLIENT?

One observer noted that:

> [g]overnment lawyers must navigate across a sea of conflicting loyalties, ambiguous objectives, and ethical pressures. But as they do so, they include themselves among the ranks of many of the noblest public servants this nation has ever known.[2]

But as any person who has worked as an in-house city attorney[3] knows, many elected officials and government employees have a different view. When the issues are personal, when the issues are critical to a program's implementation or even success, it is often time to "get a real lawyer." No advice is better than the advice of a consultant or better yet a lawyer friend of an elected official (although the names are never given and the "research" is never shared). Lawyers may have themselves to blame.

> Having said all that, there is often some kernel of truth at the core of a stereotype. The image of lawyers as backward-looking, ass-covering, wordsmithing, risk-averse, non-value generating, fine-distinction-drawing deal killers, who spend most of their time trying to separate the pepper from the fly poop, and the rest of the time saying "no you can't do that" to their clients, probably has some empirical basis.[4]

Of course, the truthiness[5] or falseness of this stereotype sometimes depends upon who is making the observation. More directly – is it a client? But who's the client?

City attorneys practice in an environment regulated by many sources of law including legislation, administrative regulations, common law and judicial regulation, rules of procedure and evidence, local laws and procedures, and rules governing their own professional conduct and ethical standards. They "…must navigate across a sea of conflicting loyalties, ambiguous objectives, and ethical pressures."[6] "Dealing with such issues is particularly challenging when the ethics rules leave lawyers in limbo by not prescribing a clear course of conduct."[7] On any given day, a city attorney may be asked to represent and advise an entity or multiple entities, their officers and employees on a variety of issues; draft legislation; exercise discretion to file suit, decide settlements, seek or appeal judgments on behalf of the city; and always remain cognizant of legal requirements and the public interest the entity is organized to serve.

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[2] Randy Lee, Symposium: *Legal Ethics for Government Lawyers: Straight Talk for Tough Times*, 9 Widener J. Pub. L. 199 (2000).
[3] For the sake of brevity, "city attorney" includes the assistants serving in law departments.
[4] Jeff Lipshaw, *More on Lawyers as Leaders*, Legal Profession Blog (Jan. 10, 2007) available at http://lawprofessors. typepad.com/legal_profession/2007/01/lipshaw_on_hein.html.
[5] See Stephen Colbert, The Colbert Report (October 17, 2005) available at https://www.cc.com/video/63ite2/the-colbert-report-the-word-truthiness.
[6] Randy Lee, Symposium: *Legal Ethics for Government Lawyers: Straight Talk for Tough Times*, Widener J. Pub. L. 199, 200 (2000).
[7] Susan Saab Fortney, *Ethical Quagmires for Government Lawyers: Lessons for Legal Education*, 69 Wash. U. J.L. & Pol'y 17, 21 (2022).

The foundational question of "WHO'S THE CLIENT" is something every city attorney must answer. A city attorney should look to the source of its representational authority, ethical rules and court opinions for guidance on how to resolve client identification issues and conflicts of interest.[8] Unfortunately, these often fall short of providing an answer.

Identification of the Client

A lawyer cannot preserve confidences, avoid conflicts or protect interests without first knowing who the client is. "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."[9] A critical determination for the municipal lawyer is who is a duly authorized constituent? There are many possibilities: Mayor, City Council, City Manager, Appointed Officials, Boards and Commissions, Department Directors, Municipal Corporation.

"An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents."[10] Comment 9 to Model Rule 1.13 notes that precisely defining the identity of the client and prescribing the resulting obligations may be more difficult in the government context and is a matter beyond the scope of the Model Rules.[11]

"No universal definition of the client of a governmental lawyer is possible."[12] The Restatement (Third) of Law Governing Lawyers acknowledges that a government lawyer ultimately represents the public (or the public interest). Such a definition is less than helpful. The Restatement proposes as the "preferable approach" to regard the respective governmental agency as the client—the lawyers subject to the direction of those officers authorized to act in the matter involved in the representation.[13] But even when the city attorney can identify the duly authorized constituent, the duty remains to the organization.[14]

Duty to the Organization

What is the duty to the organization? Every attorney owes a duty to the client which includes the general requirements of competence, diligence, timeliness, communication and the like. Generally, "[w]hen constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province."[15]

In some circumstances, however, a city attorney's duty to the organization may require a lawyer to respond to specific acts or omissions by an organization's constituent related to the representation. "If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter

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[8] Adam Edris, *Issues of Client Identification for Municipal Attorneys: An Agency and Public Interest Approach*, 24 Geo. J. Legal Ethics 517 (2011).
[9] 1.13 Organization as Client, Ann. Mod. Rules Prof. Cond. § 1.13.
[10] *Id.* at Comment 1.
[11] *Id.* at Comment 9.
[12] Restatement (Third) of the Law Governing Lawyers § 97 (2000).
[13] *Id.*
[14] 1.13 Organization as Client, Ann. Mod. Rules Prof. Cond. § 1.13 annotations.
[15] *Id.* at Comment 3.

related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law."[16]

Knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.[17] "… [A] lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations."[18] In an attempt to clarify this responsibility, annotations indicate that "a city attorney must also seek an appropriate balance between maintaining confidentiality and assuring a potential wrongful act by any constituent is prevented or rectified, since the organization is conducting public business."[19]

As a city attorney, you might routinely encounter this obligation in a variety of circumstances. Common examples include a constituent who refuses to do or avoid doing something unlawful, recklessly disregards the potential for risk and liability, refusal to make needed decisions, and making decisions that are beyond the authority of the constituent.

City Attorney Advice	**Constituent Response**
That's illegal.	It's done that way.
Your division is going to violate the law.	It's his call.
If your department does this the city is on the hook for big dollars.	You'll have to defend us.
To the boss: Make 'em stop!	You're talking to me about this because…?

In these instances, it is important for the city attorney to consider whether the advice is legal advice related to the representation (as opposed to business advice or personal advice). A city attorney also has to consider who can make the decision about the underlying matter. Is it the constituent, the supervisor, another department, official, employee?

> SCENARIO: Who directs settlement of a claim? A department director might say "I pay your salary. I pay the claims. I'll tell you when to settle and when not to settle." Not so quick. What department budget picks up the tab for an attorney is not determinative of who makes the decision. What is the lawyer's role? The question is, what does the client (organization) want from the lawyer, not what does the representative of the client want from the lawyer.

To answer the question, who directs settlement of a claim, a structural analysis is necessary. How is the law department established? What are its duties? What type of decisions does the law

[16] *Id.* at § 1.13(b).
[17] *Id.* at Comment 3; 1.0 Terminology, Ann. Mod. Rules Prof. Cond. § 1.
[18] 1.13 Organization as Client, Ann. Mod. Rules Prof. Cond. § 1.13 Comment 4.
[19] 1.13 Organization as Client, Ann. Mod. Rules Prof. Cond. § 1.13 Annotations.

delegate to the City Attorney? What's the relationship of the law department to other departments? The question: Who's the client, can't be answered with an easy analysis. It depend upon the circumstances.[20]

Again, Model Rule 1.13 gives us guidance. It is applicable to representing governmental organizations, and in comment notes that the attorney-client relationship in the government context has the added consideration of preventing or rectifying wrongful official conduct.

So back to the issue using Kansas City, Missouri as the setting: "I pay your salary. I pay the claims. I'll tell you when to settle and when not to settle." What does a structural analysis tell us? The City's Code of Ordinance provides that the city attorney may settle claims in favor of or against the city up to $25,000.00 without further approval. The risk management committee can approve settlement up to $50,000.00. Claim payments in excess of $50,000.00 are subject to approval by the city council upon the recommendation of the risk management committee and the city attorney.[21] That means an ordinance must be passed, and the city's legislative body must authorize the settlement. Nowhere is the department director given the right to dictate the settlement of cases –even those cases arising from the director's department.

Surely this is a mistake. No. The City Council has given department directors the authority to enter into non-construction contracts up to $400,000 and construction contracts up to $1,000,000.[22] It retains the authority, however, to make decisions on all but the most minor claims. The structure of Kansas City government defines the client. It's not the director.

Kansas City is a charter city. The answer may be less clear for a non-charter city. Missouri statutes provide that "[i]t shall be the duty of the city attorney to prosecute and defend all actions originating or pending in any court in this state to which the city is a part, or in which the interests of the city are involved, and shall, generally, perform all legal services required in behalf of the city."[23] The statue does not specifically address settlement authority.

> SCENARIO: Was the attorney-client privilege invoked by plaintiff's counsel during depositions of two defendants and two non-defendant employees? An employee files suit against an organization ("Organization"). While discovery was proceeding, events transpired which caused the Organization to consider whether to terminate the plaintiff's employment. The organization's attorney was brought into the discussion to give related legal advice. Two non-party witness employees who investigated the "events" were part of the discussion with the attorney. During later depositions, the non-party witnesses were instructed not to answer questions if the only basis for the answers is to recall a conversation about the events in the presence of the attorney. The court found that "[w]hen the client is an organization, such as a corporation or, as in this case, a township, questions arise as to which employees of the organization are considered "clients" for purposes of the privilege. The answer to that question is that it depends upon the circumstances." Noting that attorneys must ascertain legally relevant facts in order to give sound and

[20] *See Dzierbicki v. Township of Oscoda*, 2009 WL 1491116, (E.D. Mich. May 26, 2009).
[21] §2-302, Code of Ordinances, Kansas City, Mo.
[22] §3-41, Code of Ordinances, Kansas City, Mo. These figures are current at the time of this writing in August 2022.
[23] Mo. Ann. Stat. § 98.330.

> informed advice to the client, and that the privilege exists to protect both decision makers who can act on the advice and those who can provide relevant facts. The court found that since the non-defendants were involved in the discussion with the attorney for the purpose of helping the attorney ascertain relevant facts, the attorney-client privilege extended to their conversation. The privilege, however, extends only to the communications and not to the underlying facts which a witness may still have to disclose in any other context.

Application in Reality

Discussed above in the context of client identification, Comment 9 to Model Rule 1.13 goes on to provide a sobering warning of the importance of client identification in the government sphere:

> "Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved."[24]

EXAMPLE: *In re Schuessler,* 578 S.W.3d 762 (Mo. 2019).[25]

- The attorney *knew* of a criminal act and potential civil rights violation.
- The attorney *knew* the suspect was falsely charged to cover up the assault.
- The attorney failed to report the misconduct and protect the client.

Katherine Dierdorf became licensed to practice law in Missouri in 2011. In February 2014, Ms. Dierdorf accepted a position as an assistant circuit attorney in the office of the circuit attorney of the city of St. Louis (OCA). Ms. Dierdorf was assigned to the misdemeanor division. Ms. Dierdorf was good friends with Ambry Schuessler and Bliss Worrell, who were all also assistant circuit attorneys in the misdemeanor division.

On Tuesday, July 22, 2014, Ms. Dierdorf and Ms. Worrell, went to a St. Louis Cardinals baseball game. While there, Ms. Worrell received a telephone call from a detective (and friend) with the St. Louis police department—Det. Tom Carroll. Two important facts:

1. Det. Carroll's daughter's vehicle had been broken into and her credit card stolen.
2. A suspect was apprehended with the daughter's credit card.

On Wednesday, Ms. Dierdorf was in her office when Ms. Worrell entered the office and stated, "Tom beat up that guy" who stole his daughter's credit card. Ms. Worrell left Ms. Dierdorf's office soon thereafter. Ms. Dierdorf did not report to her supervisors Det. Carroll's assault of the suspect immediately following Ms. Worrell's disclosure of it. That afternoon, Ms. Worrell went to the warrant office and issued charges against the suspect Det. Carroll assaulted, including a felony.

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[24] 1.13 Organization as Client, Ann. Mod. Rules Prof. Cond. § 1.13 Comment 9.

[25] This is a case that has a nightmare list of ethical disasters, resulting in an FBI probe and jail time for some of the characters. For Model Rule 1.13 purposes, we focus on Ms. Katherine Dierdorf, but this case could serve as a case study in what not to do under multiple rules of professional conduct.

On Thursday, Ms. Dierdorf was, again, in her office when Ms. Worrell entered the office and told them she had issued the case against the suspect Det. Carroll beat up for stealing his daughter's credit card. They also discussed some details of the assault. Ms. Dierdorf then went to Ms. Schuessler's office where she stated the suspect was falsely charged with fleeing custody to explain why the suspect was injured.

Ms. Schuessler: "We could get in trouble just for knowing this."

Ms. Dierdorf: "How would they find out. I'm not going to say anything."

As these things go, everyone found out, including St. Louis Police Internal Affairs and the FBI. Det. Carroll and Ms. Worrell were subsequently indicted on federal criminal charges and plead guilty. Ms. Worrell was disbarred. Ms. Dierdorf testified at the grand jury proceedings and then had to face her own disciplinary proceeding—it did not go well. The court saw it the following way:

> Ms. Dierdorf – a lawyer for OCA – knew another assistant circuit attorney – Ms. Worrell – had violated the law by filing false charges against a suspect to cover up a police officer's brutal assault of the suspect. The failure to report such conduct was a violation of Ms. Dierdorf's legal obligation to the circuit attorney's organization and could have resulted in a civil rights violation or lawsuit against OCA. Accordingly, it was reasonably necessary in the best interest of OCA that Ms. Dierdorf report Ms. Worrell's conduct…. The record, therefore, reflects, by a preponderance of the evidence, that Ms. Dierdorf violated Rule 4-1.13 when she failed to report Ms. Worrell's misconduct.[26]

Troubled by Ms. Dierdorf's repeated dishonesty and finding that government attorneys are held to a higher standard given the nature of their work to protect the public, it was not a surprise when the court disciplined her with an indefinite suspension with no leave to file for 3 years.

EXAMPLE: *Crandon v. State*, 897 P.2d 92 (Kan. 1995), cert. denied sub nom. *Crandon v. Dunnick*, 516 U.S. 1113 (1996).

- Potential wrongdoing within a government agency.
- Role of lawyer as part of the team.
- Role of lawyer is to advise, not to prosecute, the government client and its representatives.

Joyce Crandon served as general counsel of the Kansas Office of the State Bank Commissioner. In that capacity she was informed by someone believed to be credible that the Deputy Commissioner was engaging in improper banking behavior. Ms. Crandon was told that the Deputy Commissioner had done business with at least two banks chartered by the State of Kansas. Ms. Crandon faced a conundrum. Did she confront the Deputy Commissioner, inform the Commissioner, or did she report the possible violations to the Federal Deposit Insurance Corporation?

[26] *In re Schuessler*, 578 S.W.3d 762, 771-772 (Mo. 2019).

Ms. Crandon told the FDIC. The FDIC told the Commissioner. There were no violations involving the Deputy Commissioner. Ms. Crandon was fired.

Ms. Crandon's First Amendment, pre-*Garcetti*,[27] gave her no claim to damages claimed as a result of her termination. As an attorney, Ms. Crandon had an obligation to her client, the Office of the State Bank Commissioner. By taking her investigation outside her office she failed in her obligations.

The Kansas Supreme Court succinctly observed: "The attorney's duty is to advise and counsel, not prosecute her client." The attorneys working for government have a different relationship than other employees. Because of that difference an attorney's conduct is measured by a different standard.[28] It is not so much that the standard is "higher" but that it is different.

EXAMPLE: *In re Harding*, 223 P.3d 303 (Kan. 2010). Background:

- Small town politics
- Bar complaints and aftermath
- Personal destruction

WaKeeney, Kansas is the county seat of Trego County, located midpoint between Kansas City and Denver in western Kansas along Interstate 70. The entire county has about 2,800 people; over 60% of the residents of Trego County live in WaKeeney. For people in WaKeeney, politics is a contact sport.

David Harding was WaKeeney City Attorney in 2006, having served in that position since 1978. He was also the Trego County Attorney. Since 1978 Mr. Harding had been a member of KPERS, the Kansas Public Employees Retirement System, even though he was a part-time employee of WaKeeney.

Mr. Harding was paid a monthly retainer that covered basic work for the City. He billed the City hourly for additional work. In 2006 he asked the City Council to run his monthly bills through the City's payroll to treat him as a City employee – and increase his KPERS contributions – and thus increase his retirement benefits. The Council's response may not have been what Mr. Harding expected.

Councilwoman Neish responded by suggesting Mr. Harding shouldn't be a member of KPERS in the first place. No decision was made on the request by Mr. Harding, but Ms. Neish volunteered to call KPERS.

[27] *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) ["We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."].
[28] *Crandon v. State*, 897 P.2d 92 (Kan. 1995), *cert. denied sub nom. Crandon v. Dunnick*, 516 U.S. 1113 (1996).

The people at KPERS explained that a person had to have 1,000 hours of service per year to qualify for benefits for that year. KPERS then disqualified Mr. Harding for six years, 21.5% of his time as WaKeeney City Attorney.

Mr. Harding began hearing things. Possibly Councilwoman Neish and the Mayor and the Police Chief were up to no good. With a suspicion of criminal acts afoot Mr. Harding talked to the Ellis County Attorney. Ellis County is directly east of Trego County. Mr. Harding had to talk to someone; he was the Trego County Attorney, too.

The Ellis County Attorney gave this advice: "Call the Disciplinary Administrator." Good advice. The Kansas Disciplinary Administrator's Office told Mr. Harding he needed to talk to the people at the City about the situations. This, of course, is the lesson of Joyce Crandon. Mr. Harding set up a meeting.

He then accused them of unlawful behavior and threatened investigations. The Disciplinary Administrator's advice was correct, to the point. Mr. Harding's implementation of the advice was horrible. The meeting didn't go well.

As Trego County Attorney Mr. Harding asked Ellis County Attorney Tom Drees to serve as special prosecutor to investigate three allegations of wrongdoing:

- Did Mayor Deutscher and Councilwoman Neish commit a crime by using their city cell phones for private calls and running over on their minutes?
- Did Police Chief Eberle commit a crime by buying rock from the City at the City's price, $60 - total?
- Did Mayor Deutscher commit a crime by buying a meal for utility crews, including his son, during storm repairs?

On the assumption that the best defense is a good offense, Mayor Deutscher filed a complaint with the Disciplinary Administrator over Mr. Harding's behavior. Councilwoman Neish then filed a complaint. As did Chief Eberle. The City Council then fired Mr. Harding. He chose not to run for re-election as Trego County Attorney.

In addition to the breach of confidentiality – the information given to the special prosecutor included City records obtained by Mr. Harding as its City Attorney – the failure to recognize who was his client caused the Kansas Supreme Court to reject the Disciplinary Administrator's recommendation of a public censure, which was also recommended by the committee, in favor of a 90-day suspension. The Supreme Court wrote:

> We are concerned about the harm done, the respondent's disclosure of confidential information, and the damage caused to the reputations of some of the city officials. We may not ignore respondent's angry and selfish response. A minority of the court would impose a greater discipline.[29]

[29] *In re Harding*, 223 P.3d 303 (Kan. 2010). After almost 3 years the special prosecutor decided to not bring charges based on the failure to get rollover minutes on the City's plan; based on the spreading of gravel on the alley between the WaKeeney Methodist Church and the Chief of Police's house, or based on charges that the City paid for a meal

GREAT. SO…WHO'S THE CLIENT?

Ms. Dierdorff, Ms. Crandon and Mr. Harding all failed to consider the question: Who is my client? There are many possibilities, but even those possibilities have problems.

The People

If you work in public service, surely the public must be high on the list of potential clients. But which public do you serve? Is it racial? Of course not. Is it based on politics? Of course not. Is it those who make campaign contributions? Or those who engage in community volunteerism? Of course not. "The people" is simply too vague to be of any assistance.

Unless you're elected. Then it can be even more complicated. Although not common nationally, some city attorneys are elected. They seem to express a freedom not necessarily appropriate for appointed officials. Who's the client? Is it someone who chooses you and who can fire you? Elected officials are turned out of office by the people. But it is still necessary to engage in a structural analysis of the office and the government.

We can clearly see this process in California, where elected city attorneys are common, and where politics and the law get muddled. The Los Angeles City Charter makes this clear statement:

> The civil client of the City Attorney is the municipal corporation, the City of Los Angeles. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor, the Council, or boards of commissioners in accordance with this section.[30]

Likewise, the San Diego City Charter provides:

> The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney.[31]

But that didn't keep City Attorney Mike Aguirre from investigating and suing – more than once – the City of San Diego during his only term in office. He promptly dismissed the City as his client and held out the "people" as his client. Paraphrasing a political foe discussing the situation; it is a

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for utility crews working to repair utility service to WaKeeney after a winter storm. The day after Mr. Harding's suspension took effect KPERS reinstated his previously disqualified six years.

[30] § 272, City Charter of Los Angeles, California (1999).

[31] §40, City Charter of San Diego, California (1931).

fundamental principle that an attorney may investigate and pursue an entity or represent an entity, but not both. Though elected officials represent the people, this does not impart them with any special powers to act outside the law. The elected city attorney, claiming to represent the people, initiated major investigations of *his own client* in direct contravention of the law.[32]

Mayor and Council

Elected officials might be a client. This raises a multitude of problems. Foremost is the basic issue: Which one? Is it the Mayor? Is it the sponsor of legislation? Is it the committee chair? Is it the one who supports the Law Department's budget the strongest? Is it the group that has the most votes?

The latter question helps us identify how the client makes decisions, but it doesn't help us identify the client. A little math may show the problem.

In Kansas City, Missouri there are 13 members of the City Council, which includes the Mayor. To adopt most ordinances seven votes are required. How many groups of seven Council members can you make out of 13 members of the City Council? The answer: 1,716 different theoretical combinations of elected officials. That doesn't work.

Department Directors / Agency Heads

Most local elected officials are part-time public servants. Daily contact with the city attorney is not always ensured. The people doing the work of the city implementing the policies put into place by the elected officials – the department directors, division heads, section leaders, and crew chiefs may be more frequent consumers of law department services. But they may have inconsistent goals:

- I want to get all the grass in all the parks cut before the week of July 4.
- I want to have money in the budget left so I can cut the grass in most of the parks before Labor Day, too.

There is more to the client than just giving directions. Department directors are, generally, representatives of the client. They are not the client.

The Public Interest

We earlier saw former San Diego City Attorney Mike Aguirre take the approach that he, and apparently he alone, would determine what was best for the people of San Diego and would act on those beliefs. The fact that the City Attorney stood for election did not give the position greater policy making powers than the Mayor or City Council. The election was a means of selecting the client's attorney.

The Municipal Corporation

The textbook answer, of course, defining the client of a local government lawyer is the government – the municipal corporation. How do you take direction from a corporation? The answer may be, trough the majority.[33] This is most often expressed through ordinances or resolutions.

[32] Dan Coffey, *City attorney is unfit for office*, San Diego Union-Tribune (Apr. 24, 2005).

[33] There are always exceptions. For example, the U.S. Senate apparently can only act, short of challenging the very foundation of our republic, through a 3/5 super-majority. However, that type of issue is not great for local

The Mayor and City Council, the City Manager or City Administrator or Mayor's Chief of Staff in some cities all may be from time to time constituents of the client. The structural analysis of the City's governing laws will provide a means to identify the decision maker. A most succinct description of the "client problem" was described recently this way:

> The client problem is that a city attorney works for all of the city's elected officials but represents none of them.[34]

WHY DOES IT MATTER?

The ramifications of not identifying the client can be devastating to a city, its elected officials, appointed bureaucrats and employees. A handful of situations will disclose the problem.

What information is confidential? If there is an attorney – client privilege between the city attorney and the city, the representative of the client must be identified. There can't be an attorney – client privilege without a client! Also, only the client can waive the privilege; it does not belong to the attorney. Open records laws, such as the Missouri Sunshine Law or the Kansas Open Records Act, may provide exceptions to disclosure of government document based on attorney-client privilege and the attorney work product doctrine.[35] For the work product doctrine to apply the litigation must be against your client. All of these issues of confidentiality necessitate the question (and answer): Who's the client?

Conflicts of interest must be navigated but cannot be done successfully until the client and the client's interests are identified. Likewise, who has control of litigation is critical. Consider this scenario:

> The Mayor and City are sued. The City Council wants to settle. The Mayor does not want to settle. The City Attorney is representing the City. The City Council authorized the Mayor to obtain a private attorney, to be paid for by the City. The City Council doesn't want to spend any more money on the defense of the Mayor. The Mayor wants to keep fighting.[36]

It has been suggested that since "Who's the boss?" is a different question from "Who's the client?" that the determination can follow, again, a structural analysis of the government and the issue being confronted.[37] The practical ramifications are navigated every day. Who wants to explain to an elected official that yes, she is your boss, but no, she is not your client. But knowing the client determines the entire character of the City Attorney's work.

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governments. People expect their local governments to actually accomplish things and they must be able to make decisions and move on to the next problem.

[34] Brigham Smith, *Who's the Boss: Deciding Who Your Client Is When You're A City Attorney*, 11 T.M. Cooley J. Prac. & Clinical L. 1, 2 (2009).

[35] Chapter 610, RSMo.; K.S.A. §45-215, *et seq*.

[36] All characters appearing in this example are fictitious. Any resemblance to real persons, living or dead, is purely coincidental.

[37] Brigham Smith, *Who's the Boss: Deciding Who Your Client Is When You're a City Attorney*, 11 T.M. Cooley J. Prac. & Clinical L. 1, 16 (2009).

Missouri Municipal Attorneys Association

Summer Seminar

Illegal Gaming Machines

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