

Report of Final Codification Changes Recodification Project

Submitted with Final Publication — October 2019

This report is based on the Editorial and Code Analysis completed by the City Officials in April 2019 and the City's Final Draft responses from September 2019. It reflects decisions regarding substantive revisions authorized by the City Officials, which are indicated with *italics* after **Decision** throughout this document.

City of Smithville, Missouri

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Printed in the United States of America

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INTRODUCTION

Report

This report is based on the Editorial and Code Analysis completed by City Officials and returned to General Code in April 2019, as well as the City's responses to the Final Draft questions returned in September 2019. It has been updated with decisions by the City Officials, which are indicated with *italics* after **Decision** throughout this document.

Legal Advice

Please note that it is not the intent of General Code to give legal advice or opinions by way of the Editorial and Code Analysis, but rather to provide as much information as possible to enable City Officials to make necessary decisions. Any questions as to validity or legal sufficiency of legislation, or as to interpretation of cases and statutes, will properly remain the responsibility of your Municipal Attorney.

We have reviewed the City's provisions taking into account the provisions of Section 71.010, RSMo., which states: "Any municipal corporation in this State, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, **shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject.**"

Last Legislation in Code

The last legislation received for the Draft of the Code was Ord. No. 3048-19, adopted October 15, 2019.

Process/Next Steps

Deliverables under the terms of the contract are five (5) Code volumes with an Index and Title tabs.

This Report of Final Codification Changes should be kept with the Code Adoption Ordinance supplied by General Code.

After adoption, the Code will be put on the web in eCode360[®] format.

GENERAL DECISIONS

Reserved Chapters and Renumbering

The City's 1991 Code has several Chapters that are "Reserved." Because the new Code will be adopted at the end of the project, these Reserved Chapters could be removed, and subsequent Chapters in each Title renumbered.

- The Derivation Table will account for removed and renumbered chapters.
- Older versions of the Code can always be accessed via the **Archives** tab of eCode360, at <http://ecode360.com/archives/SM3433>.

We would note that renumbering chapters can affect tickets and signs, so that should be considered. However, we have made numerous suggestions for moving and renumbering Chapters throughout this Editorial and Code Analysis. For example, see "[Organization of Title I](#)" below.

In any case, the "Editor's Notes" attached to the Reserved Chapters will be removed, as they pertain to revisions in the 1991 Code, which will be repealed and replaced when the new Code is adopted.

Decision:

Retain these Reserved Chapters in the new Code as is, but remove the Editor's Notes regarding provisions of the 1991 Code.

TITLE I, GOVERNMENT CODE

Organization of Title I

The City may wish to consider reorganizing this Title. Normally we try to keep Chapters in this Title in the order of importance as follows:

- Ch. 100: General Provisions (*since this applies to the entire code*)
- Ch. 105: Elections (*there is no Mayor or Board without an election*)
- Ch. 110: Mayor and Board of Aldermen (*first elections are for the Mayor and Board*)
- Ch. 115: City Officials (*then the Mayor and/or Board appoints/elects certain officials*)
- Ch. 117: Code of Ethics
- Ch. 120: Open Meetings and Records Policy
- Ch. 125: Municipal Court
- Ch. 130: Finance and Taxation
- Ch. 135: Purchasing Policy
- Ch. 140: Boards, Commissions and Committees

If the City decides to reorganize this Title note that we will provide the City with a Derivation Table which maps each Code Section as it currently exists to where it is placed in the new Code. This will assist the City in locating any material previously contained in the Code.

Decision:

No revision desired, except as noted below in each Chapter.

Chapter 100, General Provisions

- A. See the **Samples** tab of the Codification Portfolio. We are including a sample “General Provisions” Chapter 100C which contains statutory and non-statutory provisions. If the City chooses to include this sample Chapter, we will retain the Sections in Chapter 100 of the 1991 Code and place them appropriately in the newly proposed Code.

Decision:

Include the sample “General Provisions” Chapter 100C in the new Code and integrate Sections from the 1991 Code.

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- B. Section 100.020 regarding reimbursement of expenses for Mayor and Aldermen may be better placed within Chapter 130 of the City's 1991 Code. Also, please confirm that the amount of the monthly reimbursement is still current.

Decision: #1

Move this Section into the Chapter regarding Mayor and Board of Aldermen (see now Section 130.060).

Decision: #2

The monthly reimbursement amount is correct as written.

- C. Section ~~100.030~~ 100.220 contains general penalty provisions which appear to derive from Section 79.470, RSMo. Note that Senate Bills 5 and 572 adopted in 2015 and 2016 have set out different penalties in certain circumstances, which the City may want to review. The City's Attorney should assist the City in making a decision regarding these provisions and how to include them in the Code.

479.350. DEFINITIONS.

For purposes of sections 479.350 to 479.372, the following terms mean:

- (1) "Annual general operating revenue," revenue that can be used to pay any bill or obligation of a county, city, town, or village, including general sales tax; general use tax; general property tax; fees from licenses and permits; unrestricted user fees; fines, court costs, bond forfeitures, and penalties. Annual general operating revenue does not include designated sales or use taxes; restricted user fees; grant funds; funds expended by a political subdivision for technological assistance in collecting, storing, and disseminating criminal history record information and facilitating criminal identification activities for the purpose of sharing criminal justice-related information among political subdivisions; or other revenue designated for a specific purpose;*
- (2) "Court costs," costs, fees, or surcharges which are retained by a county, city, town, or village upon a finding of guilty or plea of guilty, and shall exclude any costs, fees, or surcharges disbursed to the state or other entities by a county, city, town, or village **and any certified costs, not including fines added to the annual real estate tax bill or a special tax bill under section 67.398, 67.402, or 67.451;***
- (3) "Minor traffic violation," a municipal or county **traffic** ordinance violation prosecuted that does not involve an accident or injury, that does not involve the operation of a commercial motor vehicle, and for which **no points are assessed by the department of revenue or the department of revenue is authorized to assess [no more than] one to four** points to a person's driving record upon conviction. **Minor traffic violation shall include amended charges for any minor traffic violation.** Minor traffic violation shall exclude a violation for exceeding the speed limit by more than nineteen miles per hour or a violation occurring within a construction zone or school zone;*
- (4) "Municipal ordinance violation," a municipal or county ordinance violation prosecuted for which penalties are authorized by statute under sections 64.160, 64.200, 64.295, 64.487, 64.690, 64.895, 67.398, 71.285, 89.120, and 89.490. Municipal ordinance violation shall include amended charges for municipal ordinance violations.*

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479.353. CONDITIONS. — *Notwithstanding any provisions to the contrary, the following conditions shall apply to minor traffic violations and municipal ordinance violations:*

(1) The court shall not assess a fine, if combined with the amount of court costs, totaling in excess of [three]:

(a) Two hundred twenty-five dollars for minor traffic violations; and

(b) For municipal ordinance violations committed within a twelve month period beginning with the first violation: two hundred dollars for the first municipal ordinance violation, two hundred seventy-five dollars for the second municipal ordinance violation, three hundred fifty dollars for the third municipal ordinance violation, and four hundred fifty dollars for the fourth and any subsequent municipal ordinance violations;

*(2) The court shall not sentence a person to confinement, except the court may sentence a person to confinement for [violations] **any violation** involving alcohol or controlled substances, violations endangering the health or welfare of others, [and] **or** eluding or giving false information to a law enforcement officer;*

*(3) A person shall not be placed in confinement for failure to pay a fine unless such nonpayment violates terms of probation **or unless the due process procedures mandated by Missouri Supreme Court Rule 37.65 or its successor rule are strictly followed by the court;***

(4) Court costs that apply shall be assessed against the defendant unless the court finds that the defendant is indigent based on standards set forth in determining such by the presiding judge of the circuit. Such standards shall reflect model rules and requirements to be developed by the supreme court; and

*(5) No court costs shall be assessed if **the defendant is found to be indigent under subdivision (4) of this section or if the case is dismissed.***

Decision:

Use City Code Section 100.030 (now Section 100.220) in place of the Sample penalty Section. Revise Subsection (A)(1) to read in part as follows: "...provided that in any case wherein the penalty for an offense is fixed by any Statute of the State, the statutory penalty or an amount not to exceed the statutory maximum, and no other, shall be imposed for ~~the punishment of~~ such offense..."

- D. Section 100.040, regarding the service charge for credit or debit card payments, may be better placed in Chapter 150, the Purchasing Policy, as this appears to be a decision made by the purchasing agent.

Decision:

Place this in Chapter 150, Purchasing Policy. See now Section 150.090.

- E. Section 100.050, regarding retirement benefits, may be better placed in Chapter 105, City Officials, as it appears to be related to City employees.

Decision:

Retain in the General Provisions Chapter 100.

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Chapter 105, City Officials

See the **Samples** tab of the Codification Portfolio. Generally, the City may want to review the sample Chapter 115C “City Officials” we have provided. It includes statutory provisions regarding appointment and removal of City Officials as well as other statutory provisions related to certain additional officials. If the City decides to use all or some of this sample Chapter, we will combine the City’s provisions as set out in this Chapter 105 with said sample Chapter.

Decision:

Exclude the sample “City Officials” Chapter.

Article I, City Administrator

- A. Note that Section 105.030(A)(5) refers to the Administrator working in conjunction with the City Treasurer, however we do not see a Treasurer listed in this Chapter. Is this still correct?

Decision:

Remove the reference to City Treasurer.

- B. Is the bond amount of \$10,000.00 in Section 105.040 still current?

Decision:

No revision desired.

Article II, City Prosecutor and City Attorney

Does this Article continue to reflect current practice?

Decision:

No revision desired.

Article III, Public Health Officer

Does this Article continue to reflect current practice?

Decision:

No revision desired.

Article IV, City Clerk

Does this Article continue to reflect current practice?

Decision:

Change “elected” to “appointed” in Section 105.090. Delete Section 105.100(A)(3) and renumber subsequent Subsections.

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Chapter 110, Municipal Court

See the **Samples** tab of the Codification Portfolio. We have included a sample Chapter 125 “Municipal Court” for the City to review against the 1991 Code Chapter and any notes made below. If the sample is used we will adjust it to reflect any additional provisions the City has in its current Chapter.

Decision:

Do not use the Sample Chapter.

Add a new Section 110.005 to read as follows: “Notwithstanding the terms of this Chapter 110, the City has elected to have all violations of municipal ordinances of the City heard and determined by an Associate Circuit Judge or Judges of the Circuit Court of Clay County, Missouri. All provisions of this Chapter 110 inconsistent therewith are hereby deemed superseded. All authorities granted by this Chapter remain in effect in addition to all inherent authority in the Associate Circuit or Circuit Judge handling Municipal cases on behalf of the City.”

Add a footnote off of Section 110.250 to read as follows: “Editor's Note: In accordance with Section 110.005, the Clerk of the Circuit Court shall be appointed by the Associate Circuit Judge.”

Article I, General Provisions

- A. Section 110.020 should be reviewed against the statutory provisions of Section 479.010, RSMo., set out below (and included in the sample Chapter as well).

479.010. Violation of municipal ordinances, jurisdiction.

Violations of municipal ordinances shall be heard and determined only before divisions of the circuit court as hereinafter provided in this chapter. “Heard and determined,” for purposes of this chapter, shall mean any process under which the court in question retains the final authority to make factual determinations pertaining to allegations of a municipal ordinance violation, including, but not limited to, the use of a system of administrative adjudication as provided in section 479.011, preliminary to a determination by appeal to the court in question. (L. 1978 H.B. 1634, A.L. 2007 H.B. 795 merged with S.B. 22)

Decision:

Revise this Section to add “in accordance with Section 479.010, RSMo.” to the end of the sentence.

- B. As regards Section 110.060, the City may want to review the similar statutory provisions of Section 479.020.9, RSMo., which was amended in 2016 to include the following qualification:

9. No municipal judge shall serve as a municipal judge in more than five municipalities at one time.

Decision:

No revision desired.

- C. There is reference in Section 110.140 to Section 517.520(2), RSMo. Since this Section no longer exists the City may want to remove this reference.

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Decision:

Delete this reference.

- D. As regards Section 110.170, note that the similar statutory provisions of Section 479.170, RSMo., were amended in 2010 to add some provisions as set out below.

479.170. Municipal judge without jurisdiction, when, procedure.

- 1. If, in the progress of any trial before a municipal judge, it shall appear to the judge that the accused ought to be put upon trial for an offense against the criminal laws of the state and not cognizable before him as municipal judge, he shall immediately stop all further proceedings before him as municipal judge and cause the complaint to be made before some associate circuit judge within the county.*
- 2. For purposes of this section, any offense involving the operation of a motor vehicle in an intoxicated condition as defined in section 577.001 shall not be cognizable in municipal court, if the defendant has been convicted, found guilty, or pled guilty to two or more previous intoxication-related traffic offenses as defined in section 577.023, or has had two or more previous alcohol-related enforcement contacts as defined in section 302.525. (L. 1978 H.B. 1634, A.L. 2010 H.B. 1695, et al.)*

Decision:

Insert the statutory provisions set out above to replace Section 110.170.

- E. Section 110.190 does not contain the entirety of the similar statutory provisions of Section 479.190, RSMo. The City may want to review and determine if any additional material should be included.

479.190. Parole or probation, when granted--certificate--conditions of probation--modification of conditions.

- 1. Any judge hearing violations of municipal ordinances may, when in his judgment it may seem advisable, grant a parole or probation to any person who shall plead guilty or who shall be convicted after a trial before such judge. When a person is placed on probation he shall be given a certificate explicitly stating the conditions on which he is being released.*
- 2. In addition to such other authority as exists to order conditions of probation, the court may order conditions which the court believes will serve to compensate the victim of the crime, any dependent of the victim, or society in general. Such conditions may include, but need not be limited to:*
 - (1) Restitution to the victim or any dependent of the victim, in an amount to be determined by the judge; and*
 - (2) The performance of a designated amount of free work for a public or charitable purpose, or purposes, as determined by the judge.*
- 3. A person may refuse probation conditioned on the performance of free work. If he does so, the court shall decide the extent or duration of sentence or other disposition to be imposed and render judgment accordingly. Any county, city, person, organization, or agency, or employee of a county, city, organization or agency charged with the supervision of such free work or who benefits from its performance shall be immune from any suit by the person placed on parole or probation or any person deriving a cause of action from him if such cause of action arises from such supervision of performance, except for intentional torts or gross negligence. The services performed by the*

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probationer or parolee shall not be deemed employment within the meaning of the provisions of chapter 288.

4. The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term.(L. 1978 H.B. 1634, A.L. 1990 S.B. 497)

Decision:

Insert the statutory provisions set out above to replace Section 110.190.

- F. Section 110.240 does not appear to agree with the statutory provisions of Section 479.230, RSMo., as set out below. The City should review this and determine if any revisions should be made.

479.230. Absence of judge, procedure.

1. If a municipal judge be absent, sick or disqualified from acting pursuant to the general administrative authority of the presiding judge of the circuit court over the municipal divisions within the circuit contained in section 478.240:

(1) In municipal court divisions having more than one judge, the presiding judge of the municipal division, if any, or if there is not a designated presiding judge of the municipal division, any other municipal judge in said municipal division may request the presiding judge of the circuit court to designate a special municipal judge as provided in subsection 2 of this section until such absence or disqualification shall cease, subject to subdivision (4) of this subsection;

(2) The presiding judge of the municipal division may, by written directive, designate a written procedure delegating authority by which the municipal court administrator, if any, or the municipal court clerk, is authorized to notify and request the presiding judge of the circuit court to designate a special municipal judge as provided in subsection 2 of this section;

(3) In the absence of multiple judges in a municipal division, and in the absence of a written directive and policy authorizing the procedure, the mayor or chairman of the board of trustees may request the presiding judge of the circuit court to designate a special municipal judge as provided in subsection 2 of this section or in cases of circumstances making it impossible to reach the presiding judge of the circuit court in a timely manner, the mayor or chairman of the board of trustees may designate some competent, eligible person to act as municipal judge until the presiding judge of the circuit court can designate a special municipal judge as provided for under subsection 2 of this section;

(4) Notwithstanding the provisions of subdivisions (1) to (3) of this subsection, should a vacancy occur in the office of an elected municipal judge more than six months before a general municipal election, then a special election shall be held to fill such vacancy; and in case of vacancy in the office of an elected municipal judge within less than six months of a general municipal election, the office may be filled by a competent, eligible person under the procedures set forth in subdivisions (1), (2), and (3) of this subsection.

2. The presiding judge of the circuit court may appoint any other municipal judge within the circuit to act as a special interim municipal judge for a municipal judge of the circuit who is absent, sick or disqualified from acting. The presiding judge shall act upon the request of those with authority to make such request under subsection 1 of this section.

3. The governing body of the municipality shall provide by ordinance for the compensation of any person designated to act as municipal judge under the provisions of this section.(L. 1978 H.B. 1634, A.L. 1993 S.B. 88, A.L. 2005 H.B. 353)

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Decision With Final Draft:

No revision desired; see Section 110.005.

- G. Section 110.260(A)(6) does not appear to apply to municipal ordinance violations. Review the statutory provisions set out below and determine if any revisions are necessary.

304.027. Spinal cord injury fund created, uses--surcharge imposed, when.

1. There is hereby created in the state treasury for use by the board of curators of the University of Missouri a fund to be known as the "Spinal Cord Injury Fund." All judgments collected pursuant to this section, appropriations of the general assembly, federal grants, private donations and any other moneys designated for the spinal cord injury fund established pursuant to this section, shall be deposited in the fund. Moneys deposited in the fund shall, upon appropriation by the general assembly to the board of curators, be received and expended by the board for the purpose of funding research projects that promote an advancement of knowledge in the area of spinal cord injury. Notwithstanding the provisions of section 33.080 to the contrary, any unexpended balance in the spinal cord injury fund at the end of any biennium shall not be transferred to the general revenue fund.

2. In all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of this state, including an infraction, there shall be assessed as costs a surcharge in the amount of two dollars. No such surcharge shall be collected in any proceeding involving a violation of an ordinance or state law when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. Such surcharge shall be collected and disbursed by the clerk of the court as provided by sections 488.010 to 488.020. The surcharge collected pursuant to this section shall be paid into the state treasury to the credit of the spinal cord injury fund created in this section.(L. 2001 H.B. 302 & 38, A.L. 2002 H.B. 1270 and H.B. 2032 merged with S.B. 1048)

Decision:

No revision desired.

- H. As regards Section 110.350, the City may want to review the statutory provisions set out in the note to Section ~~100.030~~ 100.220, which appears to put certain limits on the fines being imposed.

Decision:

No revision desired.

Chapter 115, Elections

See the **Samples** tab of the Codification Portfolio. We are including a sample Chapter 105C for "Elections" which sets out the notice requirements. Please review and determine if any revisions should be made.

Decision:

No revision desired.

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Chapter 120, Meetings and Records

- A. See the **Samples** tab of the Codification Portfolio. We are including a sample Chapter 120 on “Open Meetings and Records Policy,” which the City may want to review for possible inclusion herein. If this sample Chapter is used we will include any additional material contained in the City’s current Chapter.

Decision:

No revisions desired, except as noted below.

- B. Note that the provisions in Sections 120.030 and 120.040 regarding the Board meeting times and rules of order may be better placed in Chapter 130 of the City’s 1991 Code.

Decision:

No revision desired.

Chapter 125, Emergency Management Agency

- A. See the **Samples** tab of the Codification Portfolio. We have included a sample Chapter 225 on this subject which contains additional provisions related to “mutual aid agreements” and “accepting services for emergency management purposes. Additionally, we normally place this Chapter in Title II of the Code, “Public Health, Safety and Welfare.” This could also remain where it is in Title I, “Government Code.” The City should determine which is more appropriate.

Decision:

Use Sample Chapter 225 in place of this Chapter 125. Insert “City Administrator” in the blanks in Sections 125.040(A) (two blanks), 125.040(B), 125.070, and 125.090.

- B. Due to the age of the enabling ordinance herein, the City may want to review these provisions to confirm the requirements herein are all current policy.

Decision:

N/A; City will use the sample Chapter.

Chapter 130, Mayor and Board of Aldermen

- A. **Generally.** The City has an Editor’s Note at the beginning of this Chapter which indicates the Personnel Handbook is adopted by Resolution and is on file in the City offices. Possibly we could put this note in a brief Chapter named “Personnel Policy” so that this information is easier to find.

Decision:

No revision desired.

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- B. See the **Samples** tab of the Codification Portfolio. We are including a sample Chapter 110C on Mayor and Board of Aldermen, which the City may want to review for possible replacement of most or all of this Chapter 130.

Decision:

Retain this Chapter with no revisions, except as noted below.

- C. Section 130.010 mirrors Section 79.070, RSMo.; however, said statutory Section was amended in 2013 to change the age qualification for Board members to 18 years of age.

Decision:

No revision desired.

Chapter 135, Code of Ethics

- A. See Section 135.210(A) and (A)(3). The similar statutory Section 105.485.4(1), RSMo., appears to require these disclosures be in writing.

Decision:

Insert "in writing" after disclose in each of these Subsections.

- B. See Section 135.220. Since there is no attached document as stated therein, possibly this should be changed to read: "The reports, on file in the City offices, shall be filed...."

Decision:

Change as noted above.

Chapter 140, Finance and Taxation

See the **Samples** tab of the Codification Portfolio. We have included a sample Chapter 130C on "Finance and Taxation" which the City may want to review for possible inclusion herein. We would retain any additional Sections which are not contained in the sample Chapter.

Decision:

Include the sample Chapter. In Section 140.030(A), revise "designated by the Board of Aldermen of the City" to read "the City Administrator."

Decision With Final Draft:

In Section 140.010, insert November 1 as beginning of the City's fiscal year.

In Section 140.110, change the reference to "Subsection (4) of Section 94.510, RSMo.," to "Subsection (3) of Section 94.510, RSMo."

In Sections 140.110, 140.120 and 140.140, update the reference to Section 144.510, RSMo., to read "Section 144.527."

In Section 140.130, change "Section 144.763, RSMo." to "Section 144.761, RSMo."

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Article II, Annual Tax Levy - Generally

- A. Is this Article still current? Many of our communities are using the County for their tax collection; if that is the case in Smithville, we can add language regarding the contract with the County.

Decision:

Add a footnote off of Article III stating that the City contracts with Clay and Platte Counties for the collection of taxes.

- B. See Section ~~140.040~~ 140.100. Section 140.100, RSMo., appears to allow for 2% per month and 18% annually for delinquent taxes.

140.100. Penalty against delinquent lands.

1. Each tract of land in the back tax book, in addition to the amount of tax delinquent, shall be charged with a penalty of eighteen percent of each year's delinquency except that the penalty on lands redeemed prior to sale shall not exceed two percent per month or fractional part thereof.

2. For making and recording the delinquent land lists, the collector and the clerk shall receive ten cents per tract or lot and the clerk shall receive five cents per tract or lot for comparing and authenticating such list.

(RSMo 1939 §§ 11117, 11124, A.L. 1945 p. 1910, A. 1949 S.B. 1024, A.L. 1982 H.B. 1351, et al., A.L. 1999 S.B. 76, A.L. 2010 H.B. 1316)

Decision With Final Draft:

Change Section 140.100 to read as set out in the Code.

Chapter 155, Boards, Commissions, Committees

Does the City have any additional Boards, Commissions or Committees that should be added to this Chapter?

Decision:

No revision desired.

TITLE II, PUBLIC HEALTH, SAFETY AND WELFARE

Chapter 200, Police Department

Article I, Generally

- A. See Section 200.020. Is the Chief of Public Safety the same as the **Chief of Police**? Both terms are used throughout the Code, but seem to be referring to the same official. If this is the case, we can do a global search and change these to use the same term instead of using two different terms.

Decision:

Change "Chief of Public Safety" to "Chief of Police" throughout the Code.

- B. See Section 200.050. Note that the similar statutory provisions of Section 70.820, RSMo., appear to set out some additional provisions which the City may want to review and possibly include.

70.820. Authority of peace officers to respond to emergencies outside jurisdiction--definitions--authority of certain peace officers--authority of federal law enforcement officers.

1. Any law enforcement officer as defined by section 556.061, full-time peace officer as defined by section 590.100, of a county or a full-time peace officer of any political subdivision who is certified pursuant to chapter 590, or a chief executive officer as defined by section 590.100, of a county or any political subdivision, certified pursuant to chapter 590 shall have the authority to respond to an emergency situation outside the boundaries of the political subdivision from which such peace officer's authority is derived. This section does not apply to any peace officer certified pursuant to subsection 6 of section 590.105.

2. Before a peace officer shall have the authority to respond to an emergency situation outside the boundaries of the political subdivision from which the officer's authority is derived pursuant to subsection 1 of this section, the authority shall be first authorized by ordinance, order, or other ruling by the governing body of the political subdivision from which the officer derives such officer's authority and by the governing body of the political subdivision in which the emergency situation is alleged to be occurring and by the board of police established by section 84.020 or by the board of police commissioners established by section 84.350 if the officer derives his authority from either board or if the emergency situation is alleged to be occurring within the jurisdiction of either board.

3. As used in this section, "emergency situation" means any situation in which the law enforcement officer has a reasonable belief that a crime is about to be committed, is being committed, or has been committed involving injury or threat of injury to any person, property, or governmental interest and such officer's response is reasonably necessary to prevent or end such emergency situation or mitigate the likelihood of injury involved in such emergency situation. The determination of the existence of any emergency situation shall be in the discretion of the officer making the response or in the discretion of an officer or governmental officer of the political subdivision in which the emergency situation is alleged to be occurring.

4. As used in this section, "response" shall mean to take any and all action which the officer may lawfully take as if exercising his powers within his own jurisdiction.

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5. *In addition to the emergency response powers prescribed in subsection 1 of this section, any peace officer of a county of the first classification with a charter form of government, or any peace officer of any political subdivision within any county of the first classification with a charter form of government, or any peace officer of any city not within a county, who has completed the basic peace training program pursuant to chapter 590 may arrest persons who violate any provision of state law within the boundaries of any county of the first classification or of any city not within a county.*

6. *In addition to the powers prescribed in subsections 1 and 5 of this section, section 544.216, and any other arrest powers, a law enforcement officer or federal law enforcement officer as defined in subsection 8 of this section, may arrest on view, and without a warrant, at any place within this state, any person the officer sees asserting physical force or using forcible compulsion for the purpose of causing or creating a substantial risk of death or serious physical injury to any person or any person the officer sees committing a dangerous felony as defined in section 556.061. Any such action shall be deemed to be within the scope of the officer's employment.*

7. *To provide assistance to law enforcement officers, a federal law enforcement officer shall have the same authority as a law enforcement officer where:*

(1) The federal law enforcement officer is rendering assistance at the request of any law enforcement officer of this state; or

(2) The federal law enforcement officer is effecting an arrest or providing assistance as part of a bona fide task force or joint investigation in which law enforcement officers of this state are participating.

8. *A federal law enforcement officer is a person employed by the United States government who is empowered to effect an arrest with or without a warrant for violation of the United States Code and who is authorized to carry a firearm in the performance of the person's official duties as a federal law enforcement officer and includes a law enforcement officer as defined in section 556.061.(L. 1986 S.B. 450 § 19, A.L. 1987 S.B. 372, A.L. 1994 S.B. 475, A.L. 1997 H.B. 69 & 179 & H.B. 669)*

Decision:

Delete Subsection (E) and insert the above underlined statutory provisions as new Subsections (B) and (C).

Chapter 202, Alarm Systems

See Section 202.090. The City may want to refer to the General Penalty in Chapter 100 of this Code rather than setting out a separate penalty, particularly in light of the requirements in SB5 and SB572.

Decision:

Change this to read: “.....shall be punished by a fine and/or imprisonment as set out in Section 100.220.”

Chapter 205, Offenses

General Notes To Chapter 205

Since preparation of the Offenses Chapter that was adopted by the City on December 20, 2016, by Ord. No. 2959-16 we have made a few revisions to our Model Offenses Code set out in Chapter 205.

- We added Section 205.420, based on Section 575.145, RSMo., to the end of Article III, said Section is set out below. If the City wants this included we will do so.

Section 205.420. Signal or Direction of Law Enforcement Officer or Firefighter, Duty To Stop, Motor Vehicle Operators and Riders of Animals — Violation, Penalty.

A. It shall be the duty of the operator or driver of any vehicle or any other conveyance regardless of means of propulsion, or the rider of any animal traveling on the highways of this {MuniType} to stop on signal of any Law Enforcement Officer or Firefighter and to obey any other reasonable signal or direction of such Law Enforcement Officer or Firefighter given in directing the movement of traffic on the highways or enforcing any offense or infraction.

B. The offense of willfully failing or refusing to obey such signals or directions or willfully resisting or opposing a Law Enforcement Officer or a Firefighter in the proper discharge of his or her duties is an ordinance violation. (RSMo. §575.145, 2002, 2014 effective 1-1-2017)

Decision:

Include the above Section.

- We replaced the wording of Section 205.840 to comply with revisions by SB 656 of 2016, which had been vetoed but was overridden in September of 2016. See additional notes below under Article VI to assist the City in making any decisions required in this Section.

NO DECISION REQUIRED HERE; see note at Article VI

- The following additional changes were made based on the 2017 and 2018 statutory updates:

Section/Subsection of the Code	Description of the Revision Based on State Law Change	Pursuant to RSMo. Section
205.010	Hospital personnel have been added to the definition of "SPECIAL VICTIM."	565.002
205.150	A note has been added to the section stating: "Under certain circumstances this offense can be a felony under state law."	565.091

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Section/Subsection of the Code	Description of the Revision Based on State Law Change	Pursuant to RSMo. Section
205.1210	Throughout this Section, “metal” and “scrap metal” have been amended to read “material” where referring generally to items regulated by this Section. In addition, “motor vehicle, heavy equipment, or tractor battery” has been added to the list of items covered under this Section.	407.300
205.1360	A new paragraph has been added to this Section, which reads as follows: <i>“In addition to the affirmative defense provided in Subsection 2 of Section 566.223, RSMo., it shall be an affirmative defense to prosecution pursuant to this Section that the defendant was under the age of eighteen (18) and was acting under the coercion, as defined in Section 566.200, RSMo., of an agent at the time of the offense charged.”</i>	567.020

Article II, Offenses Against The Person

See Section 205.135. Note that the similar statutory provisions of Section 455.085, RSMo., have some additional language which the City may want to include herein.

455.085. Beginning January 1, 2017--Arrest for violation of order--penalties--good faith immunity for law enforcement officials.

1. When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to domestic violence, as defined in section 455.010, against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting officer. When the officer declines to make arrest pursuant to this subsection, the officer shall make a written report of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made and any other pertinent information. Any law enforcement officer subsequently called to the same address within a twelve-hour period, who shall find probable cause to believe the same offender has again committed a violation as stated in this subsection against the same or any other family or household member, shall arrest the offending party for this subsequent offense. The primary report of nonarrest in the preceding twelve-hour period may be considered as evidence of the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

...

(L. 1980 S.B. 524 § 16, A.L. 1986 S.B. 450, A.L. 1989 S.B. 420, A.L. 1993 H.B. 476 & 194, A.L. 2000 H.B. 1677, et al., A.L. 2011 S.B. 320, A.L. 2013 H.B. 215, A.L. 2014 S.B. 491, A.L. 2015 S.B. 321 merged with S.B. 341)Effective 1-01-17

Decision:

Add the underlined language as appropriate in Subsection (A).

Article V, Offenses Concerning Public Peace

- A. Section 205.720 is not based on a statutory Section. This was from the City's prior Code; the City should review and determine if any revisions are needed.

Decision:

Retain this Section without revision.

- B. Section 205.750, which does not derive from the statutes, may be adequately addressed by Sections 205.010 or 205.700.

Decision:

Retain this Section without revision.

Article VI, Offenses Concerning Weapons And Firearms

- A. Section 205.840 derives from Section 571.030, RSMo., which is authorized and affected by Section 21.750, RSMo. Note that Section 571.030, RSMo., was further updated in 2016 after the City adopted the new Offenses Chapter.

- (1) See the **Samples** tab of the Codification Portfolio. We have included the revised MODEL Section 210.840 (based on amended Section 571.030, RSMo., for comparison with Section 205.840 as in the 1991 Code. We are now recommending the revised wording.

Decision:

Replace Section 205.840 with the revised provisions of Model Section 210.840 from the Samples tab.

- (2) We have set out Section 21.750, RSMo., below, as the City may want to FURTHER revise Section 205.840 of the Code – either the current wording OR the new Model wording – based on some of the authority allowed therein. We have underlined the additional authorities for any political subdivisions in this State, which appear to include regulations concerning open carrying of firearms readily capable of lethal use or discharge of firearms within a jurisdiction. The City should review all of this information with its Attorney and determine if any additional revisions are desired to Section 205.840.

21.750. Firearms legislation preemption by general assembly, exceptions--limitation on civil recovery against firearms or ammunitions manufacturers, when, exception.

1. The general assembly hereby occupies and preempts the entire field of legislation touching in any way firearms, components, ammunition and supplies to the complete exclusion of any order, ordinance or regulation by any political subdivision of this state. Any existing or future orders, ordinances or regulations in this field are hereby and shall be null and void except as provided in subsection 3 of this Section.

2. No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance or regulation concerning in any way the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permit, registration, taxation other than sales and compensating use taxes or other

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controls on firearms, components, ammunition, and supplies except as provided in subsection 3 of this Section.

3. (1) Except as provided in subdivision (2) of this subsection, nothing contained in this Section shall prohibit any ordinance of any political subdivision which conforms exactly with any of the provisions of sections 571.010 to 571.070, with appropriate penalty provisions, or which regulates the open carrying of firearms readily capable of lethal use or the discharge of firearms within a jurisdiction, provided such ordinance complies with the provisions of section 252.243. No ordinance shall be construed to preclude the use of a firearm in the defense of person or property, subject to the provisions of chapter 563.

(2) In any jurisdiction in which the open carrying of firearms is prohibited by ordinance, the open carrying of firearms shall not be prohibited in accordance with the following:

(a) Any person with a valid concealed carry endorsement or permit who is open carrying a firearm shall be required to have a valid concealed carry endorsement or permit from this state, or a permit from another state that is recognized by this state, in his or her possession at all times;

(b) Any person open carrying a firearm in such jurisdiction shall display his or her concealed carry endorsement or permit upon demand of a law enforcement officer;

(c) In the absence of any reasonable and articulable suspicion of criminal activity, no person carrying a concealed or unconcealed firearm shall be disarmed or physically restrained by a law enforcement officer unless under arrest; and

(d) Any person who violates this subdivision shall be subject to the penalty provided in section 571.121.

4. The lawful design, marketing, manufacture, distribution, or sale of firearms or ammunition to the public is not an abnormally dangerous activity and does not constitute a public or private nuisance.

5. No county, city, town, village or any other political subdivision nor the state shall bring suit or have any right to recover against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, distribution, or sale of firearms or ammunition to the public. This subsection shall apply to any suit pending as of October 12, 2003, as well as any suit which may be brought in the future. Provided, however, that nothing in this Section shall restrict the rights of individual citizens to recover for injury or death caused by the negligent or defective design or manufacture of firearms or ammunition.

6. Nothing in this Section shall prevent the state, a county, city, town, village or any other political subdivision from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the state or such political subdivision. (L. 1984 H.B. 928 § 1, A.L. 2003 S.B. 13, A.L. 2007 S.B. 225, A.L. 2014 S.B. 656)*Effective 10-10-14, see § 21.250. S.B. 656 was vetoed July 14, 2014. The veto was overridden on September 10, 2014.

Decision:

No revision desired.

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- B. Sections 205.920 through 205.950 are not based exactly on statutory Sections. The City should review these Sections and determine if they need revision.

Decision:

Retain these Sections without revision.

- C. Section 205.920 will be amended by Ordinance No. 2957-16 prior to final publication.

NO DECISION REQUIRED

- D. Section 205.940 may be adequately addressed in Section 205.900. Please review and advise.

Decision:

Retain this Section.

Article IX, Sexual Offenses And Morals

- A. Section 205.1560 is not a statutory provision. The City should review this Section and determine if it should be retained.

Decision:

Retain this Section without revision.

- B. Section 205.1570 appears to set out some regulations regarding gambling, which may be preempted by State Law in Section 572.100, RSMo., as set out below.

572.100. Preemption--exclusions.

The general assembly by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, or the subject of a criminal or civil penalty or sanction of any kind. The term "gambling," as used in this chapter, does not include licensed activities under sections 313.800 to 313.840.(L. 1977 S.B. 60, A.L. 1991 H.B. 149 Adopted by Referendum, Proposition A, November 3, 1992)Effective 11-3-92

Decision:

Delete Section 205.1570(A)(3) through (5).

Article XI, Offenses Concerning Drugs And Alcohol

- A. See Section 205.1870 which may at least in part be addressed by Section 205.1800. Review these two Sections and confirm whether one or the other should be removed.

Decision:

No revision desired; retain both Sections.

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- B. Section 205.1900 may be better placed in Chapter 600, "Alcoholic Beverages." No matter where it is placed it appears to mirror Section 311.082, RSMo., which contains some additional wording as set out below.

311.082. Labeling of kegs sold at retail for off-premise consumption, procedures.

1. As used in this section, the following terms shall mean:

(1) "Keg," any container capable of holding four gallons or more of beer, wine, or intoxicating liquor and which is designed to dispense beer, wine, or intoxicating liquor directly from the container for purposes of consumption. Any nonreturnable container with a capacity of less than six gallons shall not be considered a keg under this section;

(2) "Supervisor of alcohol and tobacco control," the person appointed pursuant to section 311.610.

2. Each keg sold at retail for off-premise consumption shall be labeled with a numbered identification tag. The division of alcohol and tobacco control may prescribe the numbered identification tags to be used for this purpose. The recyclable numbered identification tag shall be affixed to the handle on the top chime of the keg. The recyclable numbered identification tag shall be supplied by the division of alcohol and tobacco control without fee and securely affixed to the keg by the licensee making the sale.

3. Each retail licensee shall require each keg purchaser to present valid identification and a minimum deposit of fifty dollars per keg at the time of purchase. On the identification form provided by the division of alcohol and tobacco control the licensee shall record for each keg sale the date of sale, the size of keg, keg tag identification number, the amount of container deposit, the name, address, and date of birth of the purchaser, and the form of identification presented by such purchaser. The purchaser shall sign a statement at the time of purchase attesting to the accuracy of the purchaser's name and address and acknowledging that misuse of the keg or its contents may result in civil liability, criminal prosecution, or both. The licensee shall retain the identification form for a minimum of three months following the sale of the keg.

4. The licensee shall not refund a deposit for a keg that is returned without the numbered identification tag intact and legible. The licensee shall record the date of return of the keg and the condition of the numbered identification tag on the identification form required pursuant to subsection 3 of this section. The licensee may retain any deposit not refunded for this reason. Upon the return of a properly tagged keg from a consumer, the licensee shall remove the tag from the keg and retain such tag with the identification form as required pursuant to subsection 3 of this section.

5. The supervisor shall promulgate rules and regulations for the administration of this section and shall design all necessary forms. No rule, regulation, or portion of a rule or regulation promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536.

6. The provisions of this section shall become effective on July 1, 2004.

7. This section shall fully preempt and supersede any ordinances, rules, or regulations made by any city, county, or other political subdivision of the state of Missouri which regulate the selling, labeling, or registering of kegs. This section shall not impose any new or additional civil or criminal liability upon the retail licensee.(L. 2003 S.B. 298 § 1, A.L. 2005 S.B. 262)

Decision:

Insert the statutory language underlined above and move this Section to Chapter 600 of this Code.

Article XII, Offenses Concerning Minors

The City should review this Article (Sections 205.1970 through 205.1990) in its entirety, since it is non-statutory and pertains to Curfew, to determine if it is necessary. If it is retained, do the timing and regulations meet the City's needs?

Decision:

No revision desired.

Article XIV, Fireworks Regulations

Section 205.2210 will be updated with Ordinance No. 2963-17 prior to publication.

NO DECISION REQUIRED

Article XV, Noise Disturbance Regulations

See Section 205.2280. Note that the City may want to refer to the General Penalty in Chapter 100 of the Code to be consistent throughout the Code. The statutory limits for imprisonment set out in Section 79.470, RSMo., appear to be 90 days.

Decision:

Change this to read: ".....shall be deemed guilty of an ordinance violation and upon conviction thereof may be punished as set out in Section 100.220."

Chapter 208, Body Piercing or Tattooing on Minors — Regulations

- A. As regards Section 208.010 and 208.020, note that the statutory definitions found in Section 324.520, RSMo., differ from some of the definitions set out in Section 208.020. Also note that Section 324.520, RSMo., also contains additional requirements regarding the parental consent required in Section 208.010.

324.520. Definitions--tattooing, branding, body piercing, prohibited, when, penalty.

1. As used in sections 324.520 to 324.524, the following terms mean:

- (1) "Body piercing," the perforation of human tissue other than an ear for a nonmedical purpose;*
- (2) "Branding," a permanent mark made on human tissue by burning with a hot iron or other instrument;*
- (3) "Controlled substance," any substance defined in section 195.010;*
- (4) "Minor," a person under the age of eighteen;*
- (5) "Tattoo," one or more of the following:*
 - (a) An indelible mark made on the body of another person by the insertion of a pigment under the skin; or*
 - (b) An indelible design made on the body of another person by production of scars other than by branding.*

2. No person shall knowingly tattoo, brand or perform body piercing on a minor unless such person obtains the prior written informed consent of the minor's parent or legal guardian. The

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minor's parent or legal guardian shall execute the written informed consent required pursuant to this subsection in the presence of the person performing the tattooing, branding or body piercing on the minor, or in the presence of an employee or agent of such person. Any person who fraudulently misrepresents himself or herself as a parent is guilty of a class B misdemeanor.

3. *A person shall not tattoo, brand or perform body piercing on another person if the other person is under the influence of intoxicating liquor or a controlled substance.*

4. *A person who violates any provisions of sections 324.520 to 324.526 is guilty of a misdemeanor and shall be fined not more than five hundred dollars. If there is a subsequent violation within one year of the initial violation, such person shall be fined not less than five hundred dollars or more than one thousand dollars.*

5. *No person under the age of eighteen shall tattoo, brand or perform body piercing on another person.*(L. 1998 H.B. 1601, et al. § 24, A.L. 1999 H.B. 343, A.L. 2007 H.B. 780)

Decision: #1

Insert the statutory definitions underlined above to replace the appropriate definitions in Section 208.020.

Decision: #2

Insert the bolded language to replace the language in Section 208.010. Change "class B misdemeanor" to "ordinance violation."

B. See Section 208.050. Note that the City may want to refer to the General Penalty in Chapter 100 of the Code to be consistent throughout the Code.

Decision:

Change this to read: "...shall upon conviction be punished as set out in Section 100.220."

Chapter 210, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 215, Nuisances

Article I, Generally

See the **Samples** tab of the Codification Portfolio. We have included a sample Nuisance Chapter 215 which contains some statutory and some non-statutory provisions. The City may want to review this for possible inclusion in the new Code.

Decision:

No revision desired.

Article II, Abandoned Property

See the **Samples** tab of the Codification Portfolio. We are including two sample Chapters on “(217) Abandoned Property” and “(385) Abandoned Vehicles.” One chapter is usually contained in Title II, Public Health, Safety and Welfare, while the other is usually contained in Title III, Traffic Code. This Article appears to be similar to these Chapters and may actually be an earlier sample. Our newer sample Chapters have been updated through statutory changes effective 1-1-2017 and would replace this Article. Please review and determine if this updated sample will work to replace this Article for the City. If both sample Chapters are not retained then adjustments will need to be made to the retained Chapter.

Decision:

Retain both sample Chapters to replace this Article (see now Chapters 217 and 390). Delete Section 217.030.

Chapter 220, Fair Housing

See the **Samples** tab of the Codification Portfolio. We have provided a sample Chapter 220 “Human Rights” on discriminatory practices (which used to be called “Fair Housing”). It is based on the statutory provisions set out in Chapter 213, RSMo. The entire Chapter may not be needed, but this is updated with current statutory language, an example being the term “disability” is now used instead of “handicap.” Review and advise if this sample Chapter can replace this Code Chapter 220.

Decision:

Retain this Chapter but change the term “handicap” to “disability.”

Chapter 225, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 230, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 235, Dog and Cat Regulations

- A. As regards Section 235.070, note that the statutory provisions which deal with “abuse and neglect” use different language in said statutes set out below. Review the statutory provisions below and determine if any revisions are needed.

578.009. Beginning January 1, 2017--Animal neglect--penalties.

- 1. A person commits the offense of animal neglect if he or she:
 - (1) Has custody or ownership of an animal and fails to provide adequate care; or*
 - (2) Knowingly abandons an animal in any place without making provisions for its adequate care.**
 - 2. The offense of animal neglect is a class C misdemeanor unless the person has previously been found guilty of an offense under this section, or an offense in another jurisdiction which would constitute an offense under this section, in which case it is a class B misdemeanor.*
 - 3. All fines and penalties for a first finding of guilt under this section may be waived by the court if the person found guilty of animal neglect shows that adequate, permanent remedies for the neglect have been made. Reasonable costs incurred for the care and maintenance of neglected animals may not be waived. This section shall not apply to the provisions of section 578.007 or chapter 272.*
 - 4. In addition to any other penalty imposed by this section, the court may order a person found guilty of animal neglect to pay all reasonable costs and expenses necessary for:
 - (1) The care and maintenance of neglected animals within the person's custody or ownership;*
 - (2) The disposal of any dead or diseased animals within the person's custody or ownership;*
 - (3) The reduction of resulting organic debris affecting the immediate area of the neglect; and*
 - (4) The avoidance or minimization of any public health risks created by the neglect of the animals.**
- (L. 1983 S.B. 211 § 3, A.L. 1994 S.B. 545, A.L. 1998 S.B. 596, A.L. 2013 S.B. 9, A.L. 2014 S.B. 491)*
Effective 1-01-17

578.011. Animal trespass, penalty.

- 1. A person is guilty of animal trespass if a person having ownership or custody of an animal knowingly fails to provide adequate control for a period equal to or exceeding twelve hours.*
- 2. Animal trespass is an infraction upon first conviction and for each offense punishable by a fine not to exceed two hundred dollars, and a class C misdemeanor punishable by imprisonment or a fine not to exceed five hundred dollars, or both, upon the second and all subsequent convictions. All fines for a first conviction of animal trespass may be waived by the court provided that the person found guilty of animal trespass shows that adequate, permanent remedies for trespass have been made. Reasonable costs incurred for the care and maintenance of trespassing animals may not be waived. This section shall not apply to the provisions of section 578.007 or sections 272.010 to 272.370.(L. 2013 S.B. 9)*Effective 10-11-13, see § 21.250. S.B. 9 was vetoed July 2, 2013. The veto was overridden on September 11, 2013*

578.012. Beginning January 1, 2017--Animal abuse--penalties.

- 1. A person commits the offense of animal abuse if he or she:
 - (1) Intentionally or purposely kills an animal in any manner not allowed by or expressly exempted from the provisions of sections 578.005 to 578.023 and 273.030;**

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- (2) *Purposely or intentionally causes injury or suffering to an animal; or*
- (3) *Having ownership or custody of an animal knowingly fails to provide adequate care which results in substantial harm to the animal.*
2. *Animal abuse is a class A misdemeanor, unless the defendant has previously been found guilty of animal abuse or the suffering involved in subdivision (2) of subsection 1 of this section is the result of torture or mutilation consciously inflicted while the animal was alive, in which case it is a class E felony.*(L. 1983 S.B. 211 § 4, A.L. 1994 S.B. 545, A.L. 1996 S.B. 491, A.L. 2001 S.B. 462, A.L. 2013 S.B. 9, A.L. 2014 S.B. 491)Effective 1-01-17

Decision:

No revision desired.

- B. Section 235.150(C) states a holding period of five days, however the statutory provisions of Section 273.100, RSMo., appears to allow for a week.

273.100. Impounding of dogs--redemption--fees--penalty.

1. *Every city or town marshal of every incorporated city or town in this state, within their jurisdiction, shall take up and impound in a suitable place, the location of which place shall be given by a notice posted in some conspicuous place in his office, all dogs found running at large in their respective cities or towns without collars around their necks, marked as herein provided, and they shall keep such dogs for a period of one week, and at the expiration of such period shall put such dogs to death by humane methods.*
2. *The owner of any such impounded dogs, upon the payment of the tax herein provided, and a redemption fee of five dollars, may redeem such impounded dog and the city or town marshal shall be permitted to retain the sum of two dollars out of each redemption fee so paid, and shall pay over the balance of the fee on the first day of each month to the treasurer of the county in which the city or town marshal has jurisdiction, to be accounted for by the treasurers in the same manner as they are required by sections 273.040 to 273.180, to account for licenses taxes.*
3. *Any marshal who shall fail or refuse to take up and impound any such dog shall be guilty of a misdemeanor and on conviction thereof fined not less than five dollars nor more than twenty-five dollars. (RSMo 1939 § 14554, A. 1949 S.B. 1097)Prior revision: 1929 § 12877*

Decision:

Change five days to read “one week.”

- C. Review Section 235.170 to confirm the penalty is correct as set out therein. The City may want to refer to the General Penalty in Chapter 100 of the Code.

Decision:

Change Subsection (A) to read: “...and upon conviction shall be punished as set out in Section 100.220.”

Chapter 240, Animal Regulations

A. Possibly this Chapter and Chapter 235 could be combined making each Chapter a separate Article.

Decision:

Retain as separate Chapters.

Decision With Final Draft:

In Section 240.010(D), change "Section 205.685 et seq." to "Section 205.2260 et seq."

B. In Section 240.020 Subsection (A) refers to "misdemeanor" and Subsection (B) sets out the penalty. The City may want to refer to the General Penalty in Chapter 100 of the Code.

Decision:

Change Subsection (A) to refer to "ordinance violation" and Subsection (B) to read: "Any person violating any provisions of this Chapter shall upon conviction be punished as set out in Section 100.220; provided, however, that each day such offense occurs shall be deemed a separate offense."

Chapter 245, Solid Waste Management

A. The City may want to review Section 245.010 against Section 260.200, RSMo. Some amendments have been made to this statutory Section and various definitions within said Section. We have not included all the definitions below.

260.200. Definitions.

1. The following words and phrases when used in sections 260.200 to 260.345 shall mean:

(1) "Alkaline-manganese battery" or "alkaline battery," a battery having a manganese dioxide positive electrode, a zinc negative electrode, an alkaline electrolyte, including alkaline-manganese button cell batteries intended for use in watches, calculators, and other electronic products, and larger-sized alkaline-manganese batteries in general household use;

(2) "Applicant," a person or persons seeking or holding a facility permit;

(3) "Bioreactor," a municipal solid waste disposal area or portion of a municipal solid waste disposal area where the controlled addition of liquid waste or water accelerates both the decomposition of waste and landfill gas generation;

(4) "Button cell battery" or "button cell," any small alkaline-manganese or mercuric-oxide battery having the size and shape of a button;

(5) "City," any incorporated city, town, or village;

(6) "Clean fill," uncontaminated soil, rock, sand, gravel, concrete, asphaltic concrete, cinderblocks, brick, minimal amounts of wood and metal, and inert solids as approved by rule or policy of the department for fill, reclamation or other beneficial use;

(7) "Closure," the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volumes specified in the permit and preparing the area for long-term care;

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(8) "Closure plan," plans, designs and relevant data which specify the methods and schedule by which the operator will complete or cease disposal operations, prepare the area for long-term care, and make the area suitable for other uses, to achieve the purposes of sections 260.200 to 260.345 and the regulations promulgated thereunder;

(9) "Conference, conciliation and persuasion," a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(10) "Construction and demolition waste," waste materials from the construction and demolition of residential, industrial, or commercial structures, but shall not include materials defined as clean fill under this section;

(11) ...

(24) "Major appliance," clothes washers and dryers, water heaters, trash compactors, dishwashers, conventional ovens, ranges, stoves, woodstoves, air conditioners, refrigerators and freezers;

(25) ".....

(31) "Person," any individual, partnership, limited liability company, corporation, association, trust, institution, city, county, other political subdivision, authority, state agency or institution, or federal agency or institution, or any other legal entity;

(32) ".....

(46) "Solid waste," garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in sections 260.360 to 260.432, recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting;

(47) "Solid waste disposal area," any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing, recreational, or governmental operations;

(48) "Solid waste fee," a fee imposed pursuant to sections 260.200 to 260.345 and may be:

(a) A solid waste collection fee imposed at the point of waste collection; or

(b) A solid waste disposal fee imposed at the disposal site;

(49) "Solid waste management area," a solid waste disposal area which also includes one or more of the functions contained in the definitions of recycling, resource recovery facility, waste tire collection center, waste tire processing facility, waste tire site or solid waste processing facility, excluding incineration;

(50) "Solid waste management project," a targeted project that meets statewide waste reduction and recycling priorities, and for which no solid waste management district grant applicant has applied to perform, and for which no qualified applicants have applied to perform such project by a competitive bid issued by the solid waste management district for the completion of such project;

(51) "Solid waste management system," the entire process of managing solid waste in a manner which minimizes the generation and subsequent disposal of solid waste, including waste reduction,

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source separation, collection, storage, transportation, recycling, resource recovery, volume minimization, processing, market development, and disposal of solid wastes;

(52)

(57) "Yard waste," leaves, grass clippings, yard and garden vegetation and Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

2. For the purposes of this section and sections 260.270 to 260.279 and any rules in place as of August 28, 2005, or promulgated under said sections, the term "scrap" shall be used synonymously with and in place of waste, as it applies only to scrap tires. (L. 1972 S.B. 387 § 1, A.L. 1975 S.B. 98, A.L. 1986 S.B. 475, A.L. 1988 H.B. 1207, A.L. 1990 S.B. 530, A.L. 1993 S.B. 80, et al., A.L. 1995 H.B. 81 merged with S.B. 60 & 112, A.L. 2002 S.B. 984 & 985, A.L. 2005 S.B. 225, A.L. 2007 S.B. 54, A.L. 2013 H.B. 28 merged with H.B. 650, A.L. 2015 H.B. 92 merged with S.B. 445)

Decision:

Replace the appropriate definitions with statutory definitions underlined above.

B. Are the fees in Section 245.060(D) still current?

Decision:

No revision desired.

C. As regards Section 245.100, note that the City may want to simply refer to the General Penalty in Chapter 100 in Subsections (A) and (C) hereof.

Decision:

Change both Subsections to read: "...upon conviction shall be punished as set out in Section 100.220" and change "misdemeanor" to read "ordinance violation."

Chapter 250, Economic Development Committee

Would the City prefer that the Economic Development Committee be placed in Title I in Chapter 155, "Boards, Commissions and Committees"? This would seem a more appropriate place for these provisions. Also note that Section 250.010 will be updated with Ordinance No. 2961-17, adopted March 7, 2017.

Decision:

This Chapter was repealed by Ord. No. 2991-18; see now Ch. 155, Art. II.

Chapter 255, Park Board

Would the City prefer that the Park Board be placed in Title I in Chapter 155, "Boards, Commissions and Committees"? This would seem a more appropriate place for these provisions.

Decision:

No revision desired.

Chapter 260, Public Tree Regulations

Do these regulations from 2004 continue to reflect the City's practices?

Decision:

Move the provisions in this Chapter to Chapter 520 as a new Article IV.

TITLE III, TRAFFIC CODE

Notes

- A. We will remove the Editor's Note at the beginning of this Title and in each associated Chapter when the final publication is printed.

NO DECISION REQUIRED

- B. See the **Samples** tab of the Codification Portfolio. We are including a sample statutory Traffic Code, which has been updated through the 2016 legislative session, which the City may wish to use as a replacement for the City's current provisions.

- The sample Traffic Code is based on statutory material as noted at the bottom of each Section and follows the City's Code fairly closely.
- We would of course add any additional Chapters/Sections from the City's Code which are not addressed in the sample Traffic Code.
- We have noted some variations from the City's Code in the notes below.
- If the City chooses to include the sample Traffic Code, note that we will be providing a Derivation Table which maps where the City Code provisions are covered in the new proposed Traffic Code.

Decision:

The City will not adopt the Sample Traffic Code, except as otherwise noted below.

- C. If there are no railroad tracks in the City, we can delete the provisions pertaining to railroads in the sample Traffic Code.

Decision:

No revision desired.

- D. REVIEWING TIPS:

- **Only Chapters about which we have questions have been included in this Editorial and Code Analysis;** however, that does not preclude the City from making additional revisions to this Title.

Decision:

No additional revisions desired.

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Chapter 300, General Provisions

Questions pertaining to the sample Traffic Code:

- A. In Section 300.005, the sample Traffic Code has been adjusted in the following manner: We have removed the Sections noted in Section 300.005 from the Model Traffic Ordinance. We have changed “Traffic Division” to “Police Department.” We also deleted all reference to street cars.

Decision:

N/A; the City will not use Sample Traffic Ch. 300.

- B. If the City wants to exclude any other provisions of the Model Traffic Ordinance from adoption, please designate which Sections should be so deleted and disregard any questions below which relate to said excluded provisions. (NOTE: This question may be better addressed after the City reviews all the Title III questions.)

Decision:

N/A; the City will not use Sample Traffic Ch. 300.

- C. Please note that Section 300.005 will be deleted before printing of the Final Draft. It is included for information purposes only as a convenience to the City in the process of codification.

Decision:

N/A; the City will not use Sample Traffic Ch. 300.

Chapter 305, Municipal Parking Lots

This would be an example of material to be retained from the City’s Code which is not contained in the sample Traffic Code.

NO DECISION REQUIRED**Additional Decision:**

Revise Section 305.030(A)(2) in part as follows: “...the provisions of ~~Section 215.020 et seq.~~ Chapter 217, Abandoned Property, and Chapter 390, Abandoned Vehicles, shall then be applied as to impoundment of said vehicle.” (Chapter 215, Article II, was replaced by Chapters 217 and 390.)

City of Smithville, Missouri**Chapter 320, Speed Regulations**

We would retain the provisions of Sections 320.030 to 320.050 in the sample Traffic Code.

Decision:

N/A; the City will not use the Sample Traffic Code.

Chapter 325, Turning Movements

We would retain Section 325.060 in the sample Traffic Code.

Decision:

N/A; the City will not use the Sample Traffic Code.

Chapter 335, Stop And Yield Intersections, Railroad Crossings, Etc.

We would retain the provisions of Sections 325.100 to 325.120 in the sample Traffic Code.

Decision:

N/A; the City will not use the Sample Traffic Code.

Chapter 340, Miscellaneous Driving Rules

A. As regards Sections 340.030 to 340.050 of the 1991 Code, note that the provisions in the sample Traffic Code which derive from Sections 194.500 to 194.512, RSMo., have been included in lieu of these provisions. Review these and confirm which should be retained.

Decision:

No revision desired; City will not be using the sample Traffic Code.

B. Since the City repealed Section 340.060, “Permits Required for Parades and Processions” that was previously contained in the City’s Code, we would remove those provisions as well in the sample Traffic Code unless otherwise directed.

Decision:

No revision desired; City will not be using the sample Traffic Code.

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- C. The City should review Section 340.070 (2004) against sample Traffic Code Section 340.060, which was updated in 2005.

Decision:

City will retain the current Traffic Code; however, replace Section 340.070 with sample Traffic Code Section 340.060.

- D. We would retain the provisions of Section 340.115 from the 1991 Code in the sample Traffic Code.

Decision:

N/A; the City will not use the Sample Traffic Code.

- E. The City should review Sections 340.110 through 340.120 in the sample Traffic Code if it will be used to determine which provisions should be retained and any desired revisions.

Decision:

No revision desired; City will not be using the sample Traffic Code.

- F. We would retain the provisions of Section 340.125 from the 1991 Code in the sample Traffic Code.

Decision:

N/A; the City will not use the Sample Traffic Code.

Decision With Final Draft:

Change Section 340.170 to read as set out in the Code.

- G. We would retain the provisions of Section 340.170 from the 1991 Code in the sample Traffic Code. However, note that the similar statutory provisions of Sections 304.580 to 304.585, RSMo., have been amended more recently than passage of this Section. The City may want to review these Sections as set out below for possible revision to this Section. Also see Section 340.240 of the sample Traffic Code which derives from Sections 304.890 to 304.894, RSMo.

304.580. Definitions.

As used in sections 304.582 and 304.585, the term "construction zone" or "work zone" means any area upon or around any highway as defined in section 302.010 which is visibly marked by the department of transportation or a contractor or subcontractor performing work for the department of transportation as an area where construction, maintenance, incident removal, or other work is temporarily occurring. The term "work zone" or "construction zone" also includes the lanes of highway leading up to the area upon which an activity described in this subsection is being performed, beginning at the point where appropriate signs or traffic control devices are posted or placed. The terms "worker" or "highway worker" as used in sections 304.582 and 304.585 shall mean any person that is working in a construction zone or work zone, or any employee of the department of transportation that is performing duties under the department's motorist assist program on a state highway or the right-of-way of a state highway.(L. 1994 H.B. 1430 § 1, A.L. 2001 S.B. 244, A.L. 2006 S.B. 872, et al.)

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304.582. Fines for moving violations--fines for violations in work or construction zones--signs required for assessing fines--penalty for passing in work or construction zones--not applicable to court costs.

1. Upon the first conviction or plea of guilty by any person for a moving violation as defined in section 302.010, or any offense listed in section 302.302, the court shall assess a fine of thirty-five dollars in addition to any other fine authorized to be imposed by law, if the offense occurred within a construction zone or a work zone. Upon a second or subsequent such conviction or plea of guilty, the court shall assess a fine of seventy-five dollars in addition to any other fine authorized to be imposed by law.

2. Upon the first conviction or plea of guilty by any person for a speeding violation under either section 304.009 or 304.010, or a passing violation under subsection 4 of this section, the court shall assess a fine of two hundred fifty dollars in addition to any other fine authorized by law if the offense occurred within a construction zone or a work zone and at the time the speeding or passing violation occurred there was any highway worker in such zone. Upon a second or subsequent such conviction or plea of guilty, the court shall assess a fine of three hundred dollars in addition to any other fine authorized by law. However, no person assessed an additional fine under this subsection shall also be assessed an additional fine under subsection 1 of this section, and no person shall be assessed an additional fine under this subsection if no signs have been posted under subsection 3 of this section.

3. The penalty authorized by subsection 2 of this section shall only be assessed by the court if the department of transportation or a contractor or subcontractor performing work for the department of transportation has erected signs upon or around a construction zone or work zone which are clearly visible from the highway and which state substantially the following message: "Warning: Minimum \$250 fine for speeding or passing in this work zone when workers are present.."

4. The driver of a motor vehicle may not overtake or pass another motor vehicle within a work zone or construction zone as provided in this subsection. Violation of this subsection is a class C misdemeanor.

(1) This subsection applies to a construction zone or work zone located upon a highway divided into two or more marked lanes for traffic moving in the same direction and for which motor vehicles are instructed to merge from one lane into another lane and not pass by appropriate signs or traffic control devices erected by the department of transportation or a contractor or subcontractor performing work for the department of transportation.

(2) This subsection also prohibits the operator of a motor vehicle from passing or attempting to pass another motor vehicle in a work zone or construction zone located upon a two-lane highway when highway workers or equipment are working and when appropriate signs or traffic control devices have been erected by the department of transportation or a contractor or subcontractor performing work for the department of transportation.

5. The additional fines imposed by this section shall not be construed to enhance the assessment of court costs or the assessment of points under section 302.302.(L. 2006 S.B. 872, et al.)

304.585 Endangerment of a highway worker defined--fine, points assessed--aggravated endangerment of a highway worker, fine, points assessed--offense not applicable in absence of workers in zone--no citation or conviction, when.

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1. A person shall be deemed to commit the offense of "endangerment of a highway worker" upon conviction for any of the following when the offense occurs within a construction zone or work zone, as defined in section 304.580:

- (1) Exceeding the posted speed limit by fifteen miles per hour or more;
- (2) Passing in violation of subsection 4 of section 304.582;
- (3) Failure to stop for a work zone flagman or failure to obey traffic control devices erected in the construction zone or work zone for purposes of controlling the flow of motor vehicles through the zone;
- (4) Driving through or around a work zone by any lane not clearly designated to motorists for the flow of traffic through or around the work zone;
- (5) Physically assaulting, or attempting to assault, or threatening to assault a highway worker in a construction zone or work zone, with a motor vehicle or other instrument;
- (6) Intentionally striking, moving, or altering barrels, barriers, signs, or other devices erected to control the flow of traffic to protect workers and motorists in the work zone for a reason other than avoidance of an obstacle, an emergency, or to protect the health and safety of an occupant of the motor vehicle or of another person; or
- (7) Committing any of the following offenses for which points may be assessed under section 302.302:
 - (a) Leaving the scene of an accident in violation of section 577.060;
 - (b) Careless and imprudent driving in violation of subsection 4 of section 304.016;
 - (c) Operating without a valid license in violation of subdivision (1) or (2) of subsection 1 of section 302.020;
 - (d) Operating with a suspended or revoked license;
 - (e) Driving while in an intoxicated condition or under the influence of controlled substances or drugs or driving with an excessive blood alcohol content;
 - (f) Any felony involving the use of a motor vehicle.

2. Upon conviction or a plea of guilty for committing the offense of endangerment of a highway worker under subsection 1 of this section if no injury or death to a highway worker resulted from the offense, in addition to any other penalty authorized by law, the person shall be subject to a fine of not more than one thousand dollars and shall have four points assessed to his or her driver's license under section 302.302.

3. A person shall be deemed to commit the offense of "aggravated endangerment of a highway worker" upon conviction or a plea of guilty for any offense under subsection 1 of this section when such offense occurs in a construction zone or work zone as defined in section 304.580 and results in the injury or death of a highway worker. Upon conviction or a plea of guilty for committing the offense of aggravated endangerment of a highway worker, in addition to any other penalty authorized by law, the person shall be subject to a fine of not more than five thousand dollars if the offense resulted in injury to a highway worker and ten thousand dollars if the offense resulted in death to a highway worker. In addition, such person shall have twelve points assessed to their driver's license under section 302.302 and shall be subject to the provisions of section 302.304 regarding the revocation of the person's license and driving privileges.

4. Except for the offense established under subdivision (6) of subsection 1 of this section, no person shall be deemed to commit the offense of endangerment of a highway worker except when the act or

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omission constituting the offense occurred when one or more highway workers were in the construction zone or work zone.

5. No person shall be cited or convicted for endangerment of a highway worker or aggravated endangerment of a highway worker, for any act or omission otherwise constituting an offense under subsection 1 of this section, if such act or omission resulted in whole or in part from mechanical failure of the person's vehicle or from the negligence of another person or a highway worker. (L. 2006 S.B. 872, et al.)

Decision:

Add Sample Traffic Code Section 340.240 to this Chapter as Section 340.175.

H. We would retain the provisions of Section 340.180 from the 1991 Code in the sample Traffic Code if it is used.

Decision:

N/A; the City will not use the Sample Traffic Code.

Chapter 345, Pedestrians' Rights And Duties

There is a new Section that has been added to this area of the Missouri Traffic Ordinance numbered as Section 300.411, RSMo. It can be found in the sample Traffic Code at Section 345.100. Please review this newly added material and determine if the City wants it included.

Decision:

City will use the current Traffic Code; add Section 345.100 of the Sample Code to this Chapter.

Chapter 355, Stopping, Standing Or Parking Prohibited In Specified Places

We would retain the provisions of Sections 355.100 to 355.110 from the 1991 Code in the sample Traffic Code if it is used.

Decision:

N/A; the City will not use the Sample Traffic Code.

Chapter 365, Stopping, Standing Or Parking Restricted Or Prohibited On Certain Streets

We would retain the provisions of Section 365.080 from the 1991 Code in the sample Traffic Code if it is used.

Decision:

N/A; the City will not use the Sample Traffic Code.

City of Smithville, Missouri**Decision With Final Draft:**

In Section 365.080, delete “in Schedule V” from the end of the sentence and replace it with “on said sign.”

Chapter 370, Traffic Violations Bureau

- A. This entire Chapter would be retained if the sample Traffic Code is used. We would, however, suggest placing it as an Article of Chapter 110, “Municipal Court,” of the new Code.

Decision:

Keep this Chapter in Title III, Traffic Code.

- B. We note that Supreme Court Rule 37.49 now refers to simply “Violations Bureau.” If the City wants this changed we will search throughout the Code.

Decision:

No revision desired.

Chapter 375, Procedures On Arrest

Even though these provisions are contained in Chapter 300, RSMo., and are statutorily correct, the City may want to keep these with the Standard Operating Procedures for the Police Department rather than as a codified Chapter of the Code.

Decision:

Retain this Chapter.

Chapter 380, Vehicle Equipment

Article I, Light Regulations

- A. We would retain the provisions of Sections 380.010 and 380.030 from the 1991 Code in the sample Traffic Code if it is used. Also see the notes below to some portions which are not statutorily up to date.

Decision:

N/A; the City will not use the Sample Traffic Code.

- B. The definition of WHEN LIGHTED LAMPS ARE REQUIRED in Section 380.010 does not agree with the provisions of Section 307.020, RSMo., which were amended later in 2004 to read as set out in the sample Traffic Code Section 370.010.

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City will retain the current Traffic Code; revise this definition to match the one in sample Traffic Code Section 370.010.

Decision With Final Draft:

In Section 380.010, delete “Sections 380.020 to 380.200” and insert “this Chapter” in the introductory sentence.

Article II, Other Vehicle Equipment

We would retain the provisions of Sections 380.155, 380.180 and 380.210 from the 1991 Code in the sample Traffic Code if it is used.

Decision:

N/A; the City will not use the Sample Traffic Code.

Chapter 385, Licenses

Article I, Driver's Licenses

A. We would retain the provisions of Sections 385.020 and 385.025 from the 1991 Code in the sample Traffic Code if it is used. However, please review the notes below regarding both Sections.

Decision:

N/A; the City will not use the Sample Traffic Code.

B. Section 385.020 appears to already be addressed in Section 385.040(A)(7), which Subsection is also contained in the sample Traffic Code. Should both provisions be retained?

Decision:

Keep both provisions.

C. As regards Section 385.025, note that Subsection (E) uses the term “Director of the Department of Public Safety” which in the similar statutory provisions of Section 302.178, RSMo., now reads “the State Highways and Transportation Commission.”

Decision:

Change this term to read as noted above.

Article II, Motor Vehicle License Plates

A. If the City decides to retain its current Traffic Code, Section 385.080 should be amended to include the numerous statutory revisions to Section 301.130.5, RSMo., set out below. Note that the most revised version is contained in the sample Traffic Code at Section 380.060.

301.130. License plates, required slogan and information--special plates--plates, how displayed--tabs to be used--rulemaking authority, procedure.

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1.

5. No motor vehicle or trailer shall be operated on any highway of this state unless it shall have displayed thereon the license plate or set of license plates issued by the director of revenue or the state highways and transportation commission and authorized by section 301.140*. Each such plate shall be securely fastened to the motor vehicle or trailer in a manner so that all parts thereof shall be plainly visible and reasonably clean so that the reflective qualities thereof are not impaired. Each such plate may be encased in a transparent cover so long as the plate is plainly visible and its reflective qualities are not impaired. License plates shall be fastened to all motor vehicles except trucks, tractors, truck tractors or truck-tractors licensed in excess of twelve thousand pounds on the front and rear of such vehicles not less than eight nor more than forty-eight inches above the ground, with the letters and numbers thereon right side up. The license plates on trailers, motorcycles, motortricycles and motorscooters shall be displayed on the rear of such vehicles either horizontally or vertically, with the letters and numbers plainly visible. The license plate on buses, other than school buses, and on trucks, tractors, truck tractors or truck-tractors licensed in excess of twelve thousand pounds shall be displayed on the front of such vehicles not less than eight nor more than forty-eight inches above the ground, with the letters and numbers thereon right side up or if two plates are issued for the vehicle pursuant to subsection 3 of this section 301.130, RSMo., displayed in the same manner on the front and rear of such vehicles. The license plate or plates authorized by section 301.140*, when properly attached, shall be prima facie evidence that the required fees have been paid.

6.(RSMo 1939 § 8377, A.L. 1947 V. I p. 380, A. 1949 S.B. 1110, A.L. 1951 p. 695, A.L. 1969 S.B. 242, A.L. 1977 H.B. 367, et al., A.L. 1981 S.B. 200 merged with H.B. 511, A.L. 1983 H.B. 149, et al., A.L. 1986 H.B. 1067 & 1299, A.L. 1987 H.B. 605, A.L. 1993 S.B. 105, A.L. 1995 S.B. 3 merged with S.B. 156, S.B. 70, A.L. 2001 S.B. 520, A.L. 2003 H.B. 491, A.L. 2004 S.B. 1233, et al., A.L. 2005 H.B. 487, A.L. 2007 S.B. 82 merged with S.B. 384, A.L. 2008 S.B. 930 & 947, A.L. 2013 H.B. 349, A.L. 2015 S.B. 254)

Prior revisions: 1929 § 7770; 1919 §§ 7564, 7565; 1909 § 8505

*section 301.140 was repealed by S.B. 148, 2013.

Decision:

City will retain the current Traffic Code. Replace this Section with sample Traffic Code Section 380.060.

- B. If the City decides to retain its current Traffic Code, Section 385.110 should be amended to include the amendments of the similar statutory provisions of Section 301.190.7, RSMo., set out below. The most revised version is contained in the sample Traffic Code at Section 380.100.

301.190. Certificate of registration--application, contents--special requirements, certain vehicles--fees--failure to obtain within time limit, delinquency penalty--duration of certificate--unlawful to operate without certificate--certain vehicles brought into state in a wrecked or damaged condition or after being towed, inspection--certain vehicles previously registered in other states, designation--reconstructed motor vehicles, procedure.

1.

7. It is unlawful for any person to operate in this state a motor vehicle or trailer required to be registered under the provisions of the law unless a certificate of ownership has been applied for as provided in this section.

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.....
(RSMo 1939 § 8382, A.L. 1947 V. I p. 380, A.L. 1965 p. 470, A.L. 1981 H.B. 511, A.L. 1983 H.B. 149, et al., A.L. 1984 H.B. 1045, A.L. 1985 H.B. 280, et al., A.L. 1986 H.B. 1367 & 1573, A.L. 1986 H.B. 1153, A.L. 1987 H.B. 605, A.L. 1988 H.B. 1581, A.L. 1989 H.B. 211, A.L. 1990 H.B. 1279, A.L. 1992 H.B. 884, A.L. 1997 S.B. 361, A.L. 1999 S.B. 19, A.L. 2003 H.B. 600, A.L. 2004 S.B. 1233, et al., A.L. 2005 H.B. 487 merged with S.B. 488, A.L. 2006 S.B. 583, A.L. 2007 S.B. 82, A.L. 2009 H.B. 269, A.L. 2012 H.B. 1150 merged with S.B. 568, A.L. 2015 S.B. 456)

Decision:

City will retain the current Traffic Code. Replace this Section with sample Traffic Code Section 380.100.

- C. If the City decides to retain its current Traffic Code, Sections 385.130 and 385.140 should be amended to include the amendments of the similar statutory provisions of Sections 301.140.1 and 301.140.4, RSMo., set out below. The most revised version is contained in the sample Traffic Code Sections 380.110 and 380.120.

301.140. Plates removed on transfer or sale of vehicles--use by purchaser--reregistration--use of dealer plates--temporary permits, fees--credit, when--expiration date, certain subsections--additional temporary license plate may be purchased, when--salvage vehicles, temporary permits--rulemaking authority.

(385.130)1. Upon the transfer of ownership of any motor vehicle or trailer, the certificate of registration and the right to use the number plates shall expire and the number plates shall be removed by the owner at the time of the transfer of possession, and it shall be unlawful for any person other than the person to whom such number plates were originally issued to have the same in his or her possession whether in use or not, unless such possession is solely for charitable purposes; except that the buyer of a motor vehicle or trailer who trades in a motor vehicle or trailer may attach the license plates from the traded-in motor vehicle or trailer to the newly purchased motor vehicle or trailer. The operation of a motor vehicle with such transferred plates shall be lawful for no more than thirty days, or no more than ninety days if the dealer is selling the motor vehicle under the provisions of section 301.213. As used in this subsection, the term "trade-in motor vehicle or trailer" shall include any single motor vehicle or trailer sold by the buyer of the newly purchased vehicle or trailer, as long as the license plates for the trade-in motor vehicle or trailer are still valid.

.....
**4. The director of the department of revenue shall have authority to produce or allow others to produce a weather resistant, nontearing temporary permit authorizing the operation of a motor vehicle or trailer by a buyer for not more than thirty days, or no more than ninety days if issued by a dealer selling the motor vehicle under the provisions of section 301.213, from the date of purchase. The temporary permit authorized under this section may be purchased by the purchaser of a motor vehicle or trailer from the central office of the department of revenue or from an authorized agent of the department of revenue upon proof of purchase of a motor vehicle or trailer for which the buyer has no registration plate available for transfer and upon proof of financial responsibility, or from a motor vehicle dealer upon purchase of a motor vehicle or trailer for which the buyer has no registration plate available for transfer, or from a motor vehicle dealer upon purchase of a motor vehicle or trailer for which the buyer has registered and is awaiting receipt of registration plates. The director of the department of revenue or a producer authorized by the director of the department of revenue may make temporary permits available to registered dealers in this state, authorized*

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agents of the department of revenue or the department of revenue. The price paid by a motor vehicle dealer, an authorized agent of the department of revenue or the department of revenue for a temporary permit shall not exceed five dollars for each permit. The director of the department of revenue shall direct motor vehicle dealers and authorized agents to obtain temporary permits from an authorized producer. Amounts received by the director of the department of revenue for temporary permits shall constitute state revenue; however, amounts received by an authorized producer other than the director of the department of revenue shall not constitute state revenue and any amounts received by motor vehicle dealers or authorized agents for temporary permits purchased from a producer other than the director of the department of revenue shall not constitute state revenue. In no event shall revenues from the general revenue fund or any other state fund be utilized to compensate motor vehicle dealers or other producers for their role in producing temporary permits as authorized under this section. Amounts that do not constitute state revenue under this section shall also not constitute fees for registration or certificates of title to be collected by the director of the department of revenue under section 301.190. No motor vehicle dealer, authorized agent or the department of revenue shall charge more than five dollars for each permit issued. The permit shall be valid for a period of thirty days, or no more than ninety days if issued by a dealer selling the motor vehicle under the provisions of section 301.213, from the date of purchase of a motor vehicle or trailer, or from the date of sale of the motor vehicle or trailer by a motor vehicle dealer for which the purchaser obtains a permit as set out above. No permit shall be issued for a vehicle under this section unless the buyer shows proof of financial responsibility. Each temporary permit issued shall be securely fastened to the back or rear of the motor vehicle in a manner and place on the motor vehicle consistent with registration plates so that all parts and qualities of the temporary permit thereof shall be plainly and clearly visible, reasonably clean and are not impaired in any way.

*5. The permit shall be issued on a form prescribed by the director of the department of revenue and issued only for the applicant's temporary operation of the motor vehicle or trailer purchased to enable the applicant to temporarily operate the motor vehicle while proper title and registration plates are being obtained, or while awaiting receipt of registration plates, and shall be displayed on no other motor vehicle. Temporary permits issued pursuant to this section shall not be transferable or renewable and shall not be valid upon issuance of proper registration plates for the motor vehicle or trailer. The director of the department of revenue shall determine the size, material, design, numbering configuration, construction, and color of the permit. The director of the department of revenue, at his or her discretion, shall have the authority to reissue, and thereby extend the use of, a temporary permit previously and legally issued for a motor vehicle or trailer while proper title and registration are being obtained.

*6.

(RSMo 1939 § 8382, A.L. 1947 V. 1 p. 380, A.L. 1951 p. 695, A.L. 1978 H.B. 1275, A.L. 1979 H.B. 90, A.L. 1986 H.B. 1153, A.L. 1987 H.B. 605, A.L. 1996 H.B. 991 merged with S.B. 560, A.L. 1997 H.B. 207, A.L. 1998 H.B. 1300, A.L. 1999 S.B. 19, A.L. 2007 S.B. 82, A.L. 2009 H.B. 683, A.L. 2012 H.B. 1402 merged with S.B. 470 § 301.140 and § C merged with S.B. 568 § 301.140 and § D merged with S.B. 611 § 301.140 and § B, A.L. 2013 S.B. 148, A.L. 2015 S.B. 456) Prior revisions: 1929 § 7774; 1919 § 7561 *Subsections 4, 5, and 6 expire 7-1-19. **The effective date was 7-01-13, the Revisor did not receive notification prior to this date.

Decision:

City will retain the current Traffic Code. Replace these Sections with sample Traffic Code Sections 380.110 and 380.120.

Chapter 390, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Note: Sample Traffic Code Chapter 385 was added to the Code as Chapter 390.

Chapter 395, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Traffic Schedules

A. The City should review its lists of specific traffic regulations set forth in the following schedules and note any required revisions.

- Schedule I, One-Way Streets And Alleys
- Schedule II, Through Streets
- Schedule III, Parking Prohibited At All Times
- Schedule IV, Parking, Stopping or Standing Prohibited During Certain Hours
- Schedule V, Parking Time Limited on Certain Streets
- Schedule VI, Stop Lights
- Schedule VII, Stop Signs
- Schedule VIII, Boulevards Designated
- Schedule IX, Speed Limits
- Schedule X, Weight Restrictions

Decision:

No revision desired.

TITLE IV, LAND USE

Chapter 400, Zoning Regulations

Article I, General Provisions

As regards the definition of DWELLING, SINGLE-FAMILY in Section 400.075, note that the provisions of Section 89.020, RSMo., appear to require different elements to this definition.

89.020. Powers of municipal legislative body--group homes, classification, standards, restrictions--enforcement of zoning beyond lake shorelines, when, how--foster homes, classifications of--certain municipalities may adopt county zoning regulations.

1. *For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all cities, towns, and villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.*

2. *For the purpose of any zoning law, ordinance or code, the classification single family dwelling or single family residence shall include any home in which eight or fewer unrelated mentally or physically handicapped persons reside, and may include two additional persons acting as houseparents or guardians who need not be related to each other or to any of the mentally or physically handicapped persons residing in the home. In the case of any such residential home for mentally or physically handicapped persons, the local zoning authority may require that the exterior appearance of the home and property be in reasonable conformance with the general neighborhood standards. Further, the local zoning authority may establish reasonable standards regarding the density of such individual homes in any specific single family dwelling neighborhood.*

3. *No person or entity shall contract or enter into a contract which would restrict group homes or their location as described in this section from and after September 28, 1985.*

4. *Any county, city, town or village which has a population of at least five hundred and whose boundaries are partially contiguous with a portion of a lake with a shoreline of at least one hundred fifty miles shall have the authority to enforce its zoning laws, ordinances or codes for one hundred yards beyond the shoreline which is adjacent to its boundaries. In the event that a lake is not large enough to allow any county, city, town or village to enforce its zoning laws, ordinances or codes for one hundred yards beyond the shoreline without encroaching on the enforcement powers granted another county, city, town or village under this subsection, the counties, cities, towns and villages whose boundaries are partially contiguous to such lake shall enforce their zoning laws, ordinances or orders under this subsection pursuant to an agreement entered into by such counties, cities, towns and villages.*

5. *Should a single family dwelling or single family residence as defined in subsection 2 of this section cease to operate for the purpose as set forth in subsection 2 of this section, any other use of such home, other than allowed by local zoning restrictions, must be approved by the local zoning authority.*

6. *For purposes of any zoning law, ordinance or code the classification of single family dwelling or single family residence shall include any private residence licensed by the children's division or*

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department of mental health to provide foster care to one or more but less than seven children who are unrelated to either foster parent by blood, marriage or adoption. Nothing in this subsection shall be construed to relieve the children's division, the department of mental health or any other person, firm or corporation occupying or utilizing any single family dwelling or single family residence for the purposes specified in this subsection from compliance with any ordinance or regulation relating to occupancy permits except as to number and relationship of occupants or from compliance with any building or safety code applicable to actual use of such single family dwelling or single family residence.

7. Any city, town, or village that is granted zoning powers under this section and is located within a county that has adopted zoning regulations under chapter 64 may enact an ordinance to adopt by reference the zoning regulations of such county in lieu of adopting its own zoning regulations. (RSMo 1939 § 7412, A.L. 1957 p. 274, A.L. 1959 H.B. 493, A.L. 1985 H.B. 552, A.L. 1989 S.B. 11, A.L. 2006 S.B. 809, A.L. 2014 H.B. 1299 Revision)

Decision:

Insert the provisions of Section 89.020.2, RSMo., underlined above as an addition to the definition of DWELLING, SINGLE-FAMILY.

Decision With Final Draft:

In Section 400.130(F)(4), revise the reference to read "Section 425.270."

Article II, District Regulations

- A. See note above regarding Group Homes. Should this use be placed as a permitted use in all the districts which permit "single-family dwelling"?

Decision:

No revision desired; it is covered by the statutory language added to the definition of DWELLING, SINGLE-FAMILY noted above.

- B. Section 400.270 provides a penalty for violations of Article II, Division 3, Floodplain Overlay District Regulations, as a misdemeanor. However, because the City has included the Floodplain Regulations as part of the Zoning Regulations, you may want to review Section 89.120, RSMo., which appears to set out different penalty provisions for anything enacted under the authority of Chapter 89, RSMo.

89.120. Violations--penalties.

1. In case any building or structure is erected, constructed, reconstructed, altered, converted, or maintained, or any building, structure, or land is used in violation of sections 89.010 to 89.140 or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. Such regulations shall be enforced by an officer empowered to cause any building, structure, place, or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of the regulations made under authority of sections 89.010 to 89.140.

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2. The owner or general agent of a building or premises where a violation of any provision of said regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee, or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation, or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable as follows:

(1) In any city with more than three hundred thousand inhabitants, by a fine of not less than ten dollars and not more than five hundred dollars for each and every day that such violation continues, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court. Notwithstanding the provisions of section 82.300, however, for the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than two hundred and fifty dollars or more than one thousand dollars for each and every day that such violation shall continue, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court;

(2) In all other municipalities, by a fine of not less than ten dollars and not more than two hundred fifty dollars for each and every day that such violation continues, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court. Notwithstanding the provisions of section 82.300, for the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than one hundred dollars or more than five hundred dollars for each and every day that such violation shall continue, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court.

3. Any such person who, having been served with an order to remove any such violation, shall fail to comply with such order within ten days after such service or shall continue to violate any provision of the regulations made under authority of sections 89.010 to 89.140 in the respect named in such order shall also be subject to a civil penalty of two hundred and fifty dollars. (RSMo 1939 § 7419, A.L. 1989 H.B. 498, A.L. 1998 H.B. 977 & 1608 and H.B. 1352, A.L. 2008 H.B. 1849 merged with S.B. 1002)

Prior revision: 1929 § 7266

Decision:

Revise this Section to refer to the penalty Section for the Zoning Chapter, as follows:

~~Violation of the provisions of this Division or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor.~~ Any person who violates this Division or fails to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall, upon conviction thereof, be ~~fin~~ed ~~not more than five hundred dollars (\$500.00) and, in addition, shall pay all costs and expenses involved in the case~~ punished as set forth in Section 400.610 of this Chapter. Each day such violation continues...

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Article III, Site Development Regulations

As regards the signs penalty in Section 400.485(C)(4), refer to the previous note to Section 400.270 and determine if any revisions are needed herein.

Decision:

Revise this Section to refer to the penalty Section for the Zoning Chapter, as follows:

Unless a different penalty provision is otherwise provided for herein, a violation of any of the provisions of this Division shall, upon conviction, be ~~fin~~~~ed not more than one hundred dollars (\$100.00) for the first (1st) day of any such violation and, for each day following specific notice, in writing, that a particular sign or action is in violation of this code, a the fine shall be five hundred dollars (\$500.00) per day for each day thereafter, punishable as set forth in Section 400.610 of this Chapter until full compliance with the requirements of this code are met. Each day following specific notice, in writing, of violation, shall constitute a separate offense.~~

Article IV Amendments, Appeals and Variances

- A. Regarding Section 400.565(B), we note that the similar statutory provisions of Section 89.060, RSMo., adds a reminder regarding public hearings.

89.060. Change in regulations, restrictions and boundaries--procedure.

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change duly signed and acknowledged by the owners of thirty percent or more, either of the areas of the land (exclusive of streets and alleys) included in such proposed change or within an area determined by lines drawn parallel to and one hundred and eighty-five feet distant from the boundaries of the district proposed to be changed, such amendment shall not become effective except by the favorable vote of two-thirds of all the members of the legislative body of such municipality. The provisions of section 89.050 relative to public hearing and official notice shall apply equally to all changes or amendments. (RSMo 1939 § 7416, A.L. 1988 H.B. 923)Prior revision: 1929 § 7263

Decision:

Add the above underlined language to Subsection (B).

- B. Note in Subsection 400.570(D)(6)(d)(9) there is reference to the “Director of Public Works.” We find no reference to this official elsewhere in the Code, except in Chapter 703. Is this still the correct official in this Section? Also, two paragraphs down from this the “Community Development Director” is mentioned, and we question whether both of these officials are still current?

Decision:

Change “Director of Public Works” to “Development Director.”

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- C. See Section 400.570(D)(6)(g), regarding penalties for telecommunications facilities, and the note above to Article III, Section 400.270, regarding the penalty and determine if any changes should be made herein.

Decision:

Revise this Section to refer to the penalty Section for the Zoning Chapter, as follows:

This Subsection shall be in full force and effect upon its enactment and approval and any person found to be in violation of any of the provisions of this Subsection shall be ~~subject to a fine of up to five hundred dollars (\$500.00) for each day of violation.~~ punishable as set forth in Section 400.610 of this Chapter for each day of violation.

Article V Administration, Boards and Commissions

- A. As regards the penalty in Section 400.610, see the similar statutory provisions of Section 89.120, RSMo., and the differences set out below.

89.120. Violations--penalties.

1. In case any building or structure is erected, constructed, reconstructed, altered, converted, or maintained, or any building, structure, or land is used in violation of sections 89.010 to 89.140 or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. Such regulations shall be enforced by an officer empowered to cause any building, structure, place, or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of the regulations made under authority of sections 89.010 to 89.140.

2. The owner or general agent of a building or premises where a violation of any provision of said regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee, or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation, or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable as follows:

(1) In any city with more than three hundred thousand inhabitants, by a fine of not less than ten dollars and not more than five hundred dollars for each and every day that such violation continues, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court. Notwithstanding the provisions of section 82.300, however, for the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than two hundred and fifty dollars or more than one thousand dollars for each and every day that such violation shall continue, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court;

(2) In all other municipalities, by a fine of not less than ten dollars and not more than two hundred fifty dollars for each and every day that such violation continues, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court. Notwithstanding the provisions of section 82.300, for the second and

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subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than one hundred dollars or more than five hundred dollars for each and every day that such violation shall continue, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court.

3. Any such person who, having been served with an order to remove any such violation, shall fail to comply with such order within ten days after such service or shall continue to violate any provision of the regulations made under authority of sections 89.010 to 89.140 in the respect named in such order shall also be subject to a civil penalty of two hundred and fifty dollars. (RSMo 1939 § 7419, A.L. 1989 H.B. 498, A.L. 1998 H.B. 977 & 1608 and H.B. 1352, A.L. 2008 H.B. 1849 merged with S.B. 1002) Prior revision: 1929 § 7266

Decision:

Insert the above underlined language set forth above.

- B. Section 400.625(G)(1) and (4) should be compared to the similar statutory provisions of Section 89.110, RSMo., for possible revisions.

89.110. Board of adjustment--decisions subject to review--procedure.

Any person or persons jointly or severally aggrieved by any decision of the board of adjustment, any neighborhood organization as defined in section 32.105 representing such person or persons or any officer, department, board or bureau of the municipality, may present to the circuit court of the county or city in which the property affected is located a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceedings under sections 89.080 to 89.110 shall have preference over all other civil actions and proceedings.(RSMo 1939 § 7418, A.L. 1997 S.B. 112) Prior revision: 1929 § 7265

Decision:

Include the underlined language noted above.

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- C. Section 400.630(A) and (C) should be compared to the similar statutory provisions of Section 89.100, RSMo., for possible revisions.

89.100. Board of adjustment--appeals, procedure.

Appeals to the board of adjustment may be taken by any person aggrieved, by any neighborhood organization as defined in section 32.105 representing such person, or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause immediate peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.(RSMo 1939 § 7418, A.L. 1997 S.B. 112) Prior revision: 1929 § 7265

Decision:

Include the underlined language noted above.

- D. In Section 400.650 the Commission is referred to as the “Planning Commission”; however, the “Planning and Zoning Commission” is used in many other areas of the Code. The City may want to choose one term or the other and use it throughout the Code. We note that the City’s website refers to “Planning Commission.”

Decision:

Use “Planning and Zoning Commission” consistently throughout the Code.

Chapter 405, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 410, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 415, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 420, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 425, Subdivision Regulations

Article I General Provisions

See Section 425.080(A). Note that the similar statutory provisions of Section 89.450, RSMo., should be reviewed for some exception language which may need to be included herein.

89.450. Use of unapproved plat in sale of land--penalty--vacation or injunction of transfer.

No owner, or agent of the owner, of any land located within the platting jurisdiction of any municipality, knowingly or with intent to defraud, may transfer, sell, agree to sell, or negotiate to sell that land by reference to or by other use of a plat of any purported subdivision of the land before the plat has been approved by the council or planning commission and recorded in the office of the appropriate county recorder unless the owner or agent shall disclose in writing that such plat has not been approved by such council or planning commission and the sale is contingent upon the approval of such plat by such council or planning commission. Any person violating the provisions of this section shall forfeit and pay to the municipality a penalty not to exceed three hundred dollars for each lot transferred or sold or agreed or negotiated to be sold; and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from this penalty. A municipality may enjoin or vacate the transfer or sale or agreement by legal action, and may recover the penalty in such action. (L. 1963 p. 146 § 16, A.L. 2005 S.B. 210)

Decision:

Insert the above statutory language to replace Subsection (A) of Section 425.080.

Article II Definitions

In Section 425.100 we note that the definition of SUBDIVISION is different than the provisions set out in Section 89.300, RSMo. Does the City want any revisions made?

89.300. Definitions.

For the purpose of sections 89.300 to 89.480 the following terms mean or include:

- (1) "Council," the chief legislative body of the municipality;*
- (2) "Streets," any public ways;*

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(3) "Subdivision," the division of a parcel of land into two or more lots, or other divisions of land; it includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. (L. 1963 p. 146 § 1)

Decision:

Insert the definition of SUBDIVISION as set out in the statutes above.

Article III Minimum Design Standards

In Section 425.190, the City refers to the "City of Smithville Erosion and Sediment Control Manual." Since this does not appear to be contained in the Code itself, possibly reference to it being on file in the City offices would be a good idea. Alternatively, the City may want to post this to the website in "Pubdocs" and make it accessible internally and to the public. This would involve an upgrade to the eCode version the City is currently using. Mike Perry can demonstrate this to the City. It is only an additional \$200.00 per year and gives the City the ability to post any public documents (Comprehensive Plan, license applications and many more) and have them searchable along with the Code.

Decision:

Refer to the "City of Smithville Erosion and Sediment Control Manual" as "on file in the City offices." The City will make a decision later whether to upgrade its eCode version.

TITLE V, BUILDING AND CONSTRUCTION

Chapter 500, Building Code

Is the Editor's Note still necessary at the beginning of this Chapter?

Decision:

Okay to delete this Editor's Note.

Article I Building Code Adoption

See Section 500.020. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes as set out below.

67.280. Communities may incorporate by reference certain technical codes--penalty provisions, requirements--definitions.

1. As used in this section, the following terms mean:

- (1) "Code," any published compilation of rules prepared by various technical trade associations, federal agencies, this state or any agency thereof, but shall be limited to: regulations concerning the construction of buildings and continued occupancy thereof; mechanical, plumbing, and electrical construction; and fire prevention;*
- (2) "Community," any county, fire protection district or municipality;*
- (3) "County," any county in the state;*
- (4) "Fire protection district," any fire protection district in the state;*
- (5) "Municipality," any incorporated city, town or village.*

2. Any community, if the community otherwise has the power under the law to adopt such an ordinance, may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of such code in full. At least one copy of such code, portion or amendment which is incorporated or adopted by reference, shall be filed in the office of the clerk of the community and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be deemed to be complied with unless the required copies of such codes, portion, or amendment or public record are filed with the clerk of such community for a period of ninety days prior to the adoption of the ordinance which incorporates such code, portion, or amendment by reference.

3. Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating such code, portion, or amendment, or any provisions thereof separately, and no part of any such penalty shall be incorporated by reference. (L. 1983 H.B. 92 §§ 1, 2, 3, A.L. 1995 H.B. 452, et al., A.L. 2009 H.B. 859)

Decision:

Change it to "one (1) copy" and add the separate penalty provisions, mirroring the General Penalty.

City of Smithville, Missouri**Article II Residential Code Adoption**

See Section 500.030. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy” and add the separate penalty provisions, mirroring the General Penalty.

Article III Mechanical Code Adoption

See Section 500.040. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy” and add the separate penalty provisions, mirroring the General Penalty.

Article IV Plumbing Code Adoption

A. See Section 500.050. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy” and add the separate penalty provisions, mirroring the General Penalty.

B. It appears that the reference to “2003 Edition” in the last sentence of Section 500.050 should read “2012 Edition.”

Decision:

Make the correction as noted.

Article V Electrical Code Adoption

See Section 500.060. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy” and add the separate penalty provisions, mirroring the General Penalty.

Article VI Fuel Gas Code Adoption

See Section 500.070. It appears that the first reference to “International Fuel Gas Code” should include “, 2006 Edition.” Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy,” insert “, 2012 Edition” in the first sentence, and add the separate penalty provisions, mirroring the General Penalty. Change “2006” to “2012” at the end of Subsection (A).

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Article VII Energy Efficiency Code

See Section 500.080. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy” and add the separate penalty provisions, mirroring the General Penalty.

Article VIII Property Maintenance Code

See Section 500.090. Note that the City does not appear to have set out all of the requirements stated in Section 67.280, RSMo., for adoption of technical Codes. See also the note to Article I of this Chapter.

Decision:

Change it to “one (1) copy” and add the separate penalty provisions, mirroring the General Penalty.

Article IX Permit Fees And Penalties

- A. Are the fees in Section 500.100 still current? It appears they have not been formally amended since their adoption in 2009.

Decision:

This Section was amended by Ord. No. 3016-18.

- B. Is the penalty in Section 500.110 intended to meet the requirements of Section 67.280, RSMo., as set out in Article I above? If so, what does the reference to the Building Code and Property Maintenance Code mean in this context.

Decision:

See the notes above to each Article regarding penalty for each Code and retain this Section, but delete the references to the Building and Property Maintenance Codes.

Article X Multi-Jurisdictional Natural Hazard Mitigation Plan

Is this Natural Hazard Mitigation Plan from 2004 still in force?

Decision:

No revision desired.

Chapter 505, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 510, Rights-of-Way Management

These 2014 provisions appear to be up-to-date.

Decision:

No revision desired.

Chapter 515, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 520, Streets, Sidewalks And Miscellaneous Public Places And Other Infrastructure

Article I Infrastructure Design and Construction Standards

These 2014 provisions appear to be up-to-date.

Decision:

No revision desired.

Article II Miscellaneous Street Regulations

In Section 520.060 the definition of APPROACH appears to be worded awkwardly at the end of the definition. Review and advise if any changes are necessary.

Decision:

No revision desired.

Chapter 525, Miscellaneous Construction Regulations

- A. Due to the age of the provisions of Section 525.010, the City may want to review them against the Zoning Regulations and Section 400.570 to confirm whether this Section is still needed.

Decision:

Delete Section 525.010, as this is now addressed in the Zoning Regulations.

- B. Section 525.040 may be adequately addressed by Section 400.350 in the Zoning Regulations. The City may want to combine these provisions or eliminate one or the other to ensure no conflicts exist in this area.

Decision:

No revision desired; both Sections are needed.

Chapter 530, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

TITLE VI, BUSINESS AND OCCUPATION

Chapter 600, Alcoholic Beverages

- A. See the **Samples** tab of the Codification Portfolio. We are providing a sample Chapter 600 which has been updated with new provisions through the 2016 legislative session. The provisions set forth in this Chapter are intended to cover a multitude of possibilities for the sale of intoxicating liquor in the City and is very similar in setup to the City's 1991 Code Chapter. The City may want to review this sample Chapter along with the notes below and determine if the City wants to use the updated sample Chapter with additions from the City's provisions; or retain the City's Chapter and make changes as noted below.

Decision:

This Chapter was repealed and replaced by Ord. No. 3039-19, which is based on Sample Ch. 600.

- B. See Section 600.010 of the 1991 Code. Note that these definitions no longer are accurate based on current statutes: refer to Section 600.010 of the sample Chapter and the statutes below. The three terms "Amusement Place," "Non-Intoxicating Beer" and "Restaurant Bar" as well as all accompanying regulations have all been repealed from the Statutes since this Section was last amended.

311.020. Definition of intoxicating liquor.

The term "intoxicating liquor" as used in this chapter shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of one-half of one percent by volume. All beverages having an alcoholic content of less than one-half of one percent by volume shall be exempt from the provisions of this chapter, but subject to inspection as provided by sections 196.365 to 196.445. (RSMo 1939 § 4894, A.L. 1990 H.B. 1180, A.L. 2009 H.B. 132)*

**sections 196.365 to 196.445 were repealed in 2003 by H.B. 600 merged with S.B. 175.*

As regards the definition of ORIGINAL PACKAGE, the term "non-intoxicating beer" was removed and the below underlined sentence was added to this definition in our sample Chapter to replace the sentence in the 1991 Code Section.

311.200. Licenses--retail liquor dealers--fees--applications.

.....

2. *For a permit authorizing the sale of malt liquor not in excess of five percent by weight by grocers and other merchants and dealers in the original package direct to consumers but not for resale, a fee of fifty dollars per year payable to the director of the department of revenue shall be required. The phrase "original package" shall be construed and held to refer to any package*

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containing one or more standard bottles, cans, or pouches of beer. Notwithstanding the provisions of section 311.290, any person licensed pursuant to this subsection may also sell malt liquor at retail between the hours of 9:00 a.m. and midnight on Sunday.

Decision:

N/A; see above.

- C. The City may want to review Section 600.020 from the sample Chapter, which states the newer language for this Section. The differences noted are as follows: “Non-intoxicating beer” has been removed throughout the Section. In Subsection B, note that Subsections 2 and 6 have been removed since they deal with non-intoxicating beer. Also Subsections (B)(1) and (5) in the 1991 Code have been amended to include revised language regarding Sunday sales as set out in the sample Chapter Subsections (B)(1) and (4) of Section 600.020. Also note that Subsection 600.020(C) has been changed to read as set out in Section 600.020(C) in the sample Chapter when restaurant bar and amusement places were repealed. Lastly note that Tasting Permits, set out in the 1991 Code at Section 600.020(C)(5)(b) were changed to include additional regulations; see sample Chapter Section 600.020(D)(2) and (3).

Decision:

N/A; see above.

- D. See Section 600.030. Note that Subsection (A) has “a convenience store, a liquor store, a tavern,” listed in addition to the listing in Section 311.200.1, RSMo., Subsection (B) was repealed with Restaurant bars and Amusement places. Subsection (C)(1) was amended recently by the City and still includes “non-intoxicating beer” which should be removed. Subsection (D)(1) should be reviewed against the provisions of Section 600.030(C)(1) of the sample Chapter which is based on Section 311.290, RSMo.

Additionally, some of this Section would be retained if the City decides to use the sample Chapter, since there are portions which set out City procedures which are not regulated by the Statutes. We would suggest retaining Subsections 600.030(E) and (F); noting however that if these are retained we would remove all reference to “non-intoxicating beer,” “restaurant bars” and “amusement places.”

Lastly, as regards Subsection (G), note that the similar statutory provisions of Section 311.470, RSMo., were repealed in 2010.

Decision:

N/A; see above.

- E. Regarding Section 600.040, note that in the sample Chapter Section 600.040 there are additional licenses and of course no reference to non-intoxicating beer licenses. If the City retains the sample Chapter, please review and confirm the licenses being issued are all included herein.

Decision:

N/A; see above.

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- F. Section 600.060 should be compared to the sample Chapter Section 600.060 to consider whether these newer provisions should be used.

Decision:

N/A; see above.

- G. Section 600.070 should be compared to the sample Section number 600.070 to consider whether any revisions should be made herein. Since this Section has been very recently amended the City may want to retain its current Section.

Decision:

N/A; see above.

- H. We only noted changes or comparisons which did not agree with Statutory provisions in this Chapter. Note also however that the sample chapter provided includes a number of additional Sections. Please review Sections 600.045, 600.047, 600.050, 600.053, 600.065, 600.075, 600.080 and 600.085 of the sample Chapter to determine if any of these provisions are needed.

Decision:

N/A; see above.

Chapter 605, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 610, Business Licenses

- A. In Section 610.020, as regards the penalty for late payment, the City may want to review Section 71.625, RSMo., which has fairly recently set out new provisions for collection of delinquent license fees. The City should determine with your Attorney's assistance how this should be handled.

71.625. License tax, payment, when deemed timely--municipal corporations, interest and penalties on delinquencies to apply.

1. The timely payment of a license tax due to any municipal corporation in this state, or any county pursuant to section 66.300, which is delivered by United States mail to the municipality or county office designated by such municipality or county office to receive such payments, shall be deemed paid as of the postmark date stamped on the envelope or other cover in which such payment is mailed. In the event any payment of tax due is sent by registered or certified mail, the date of the registration or certification shall be deemed the postmark date. No additional tax, penalty or interest shall be imposed by any municipality or county on any taxpayer whose payment is delivered by United States mail, if the postmark date stamped on the envelope or other cover containing such payment falls within the prescribed period on or before the prescribed date, including any extension granted, for making the payment. When the last day for making any license tax payment, including extensions, falls on a Saturday, a Sunday, or a legal holiday in this state, the payment shall be

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considered timely if the payment is made on the next succeeding day which is not a Saturday, Sunday or legal holiday.

2. Except as otherwise provided by law, the interest provisions of section 144.170 and penalty provisions of section 144.250 relating to delinquent sales taxes shall apply to delinquent taxes due as a result of the imposition of a license tax by any municipal corporation. The limitation for bringing suit for the collection of the delinquent tax and penalty shall be the same as that provided in sections 144.010 to 144.510. (L. 1998 H.B. 1301, A.L. 2012 H.B. 1504)

Decision:

No revision desired.

- B. See Section 610.130. It appears that Section 71.620, RSMo., restricts the licensing of certain businesses under certain circumstances. The City should review the listing below and determine if any of these businesses are being licensed inappropriately. Possibly the phrase “if that person maintained a business office in the City” should be added after some of the professionals listed herein.

71.620. Imposition of tax or license fee on certain professions prohibited--imposition of tax or fee prohibited unless business office maintained--limitation on business license tax amount in certain villages.--

1. Hereafter no person following for a livelihood the profession or calling of minister of the gospel, duly accredited Christian Science practitioner, teacher, professor in a college, priest, lawyer, certified public accountant, dentist, chiropractor, optometrist, chiropodist, physician or surgeon in this state shall be taxed or made liable to pay any municipal or other corporation tax or license fee of any description whatever for the privilege of following or carrying on such profession or calling, and, after December 31, 2003, no investment funds service corporation, as defined in section 143.451, may be required to pay, or shall be taxed or made liable to pay any municipal or other corporation tax or license fee of any description whatever for the privilege of following or carrying on its business or occupation, in excess of or in an aggregate amount exceeding twenty-five thousand dollars annually, any law, ordinance or charter to the contrary notwithstanding.

2. No person following for a livelihood the profession of insurance agent or broker, veterinarian, architect, professional engineer, land surveyor, auctioneer, or real estate broker or salesman in this state shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of following or carrying on his or her profession by a municipality unless that person maintains a business office within that municipality.

3. Notwithstanding any other provision of law to the contrary, after September 1, 2004, no village with less than one thousand three hundred inhabitants shall impose a business license tax in excess of fifteen thousand dollars per license. (RSMo 1939 § 6220, A.L. 1963 p. 124, A.L. 1976 H.B. 1373, A.L. 1998 H.B. 1468, A.L. 2003 H.B. 289 merged with H.B. 600, A.L. 2004 S.B. 1155)

Prior revisions: 1929 § 6098; 1919 § 7618; 1909 § 8532

Decision:

Add a new Subsection (B) to read as follows: “The fees referenced herein may be limited pursuant to Section 71.620, RSMo.”

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- C. Should Section 610.140 simply refer to the General Penalty in Chapter 100 of this Code, especially in light of the fact that Section 79.470, RSMo., allows for a maximum penalty of \$500.00 for Fourth Class cities?

Decision:

Change this to read "...shall be subject to a fine as set out in Section 100.220."

Chapter 615, Cable TV

The City should review this Chapter for current applicability due to the age of its provisions. There have been a few amendments to this Chapter; however, the majority of this Chapter dates back to 1995 over 20 years ago and in some instances looks very much like franchise language. Additionally note that in lieu of this Chapter, we more frequently see the "Video Service Providers" Ordinance today. See the **Samples** tab of the Codification Portfolio. We are including some sample provisions from other communities on this subject for the City to review.

Decision:

No revision desired at this time; City will address outside this issue separate from the codification project.

Chapter 620, Distributing Hand Bills

Due to the age of these provisions, the City may want to determine if any revisions are needed. Additionally, this may be better placed in Title II, Public Health, Safety and Welfare, possibly as an Article in the Offenses Chapter.

Decision:

Retain this Chapter without change, but move it to an Article in the Offenses Chapter.

Chapter 625, Miscellaneous Business Regulations

- A. It seems that these provisions could be moved to Chapter 610, Business Regulations, as an added Article and would be more appropriately placed therein. Also note that these provisions are quite dated and should be reviewed for current applicability.

Decision:

Retain this Chapter as it is, but move it to Chapter 610 as an added Article.

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- B. Is the penalty in Section 625.010(D) adequate, or should it be revised to simply refer to the General Penalty in Chapter 100 of this Code?

Decision:

Change the first sentence to read: “Any person violating any of the provisions of this Section shall be deemed guilty of ~~a misdemeanor~~ an ordinance violation and upon conviction thereof shall be ~~fin~~ed in an amount not exceeding one hundred dollars (\$100.00) subject to a fine as set out in Section 100.220.”

Chapter 630, Resort License — Liquor by the Drink

This Chapter appears to be adequately addressed in Chapter 600 of City’s Code. Please review and advise if any of this is to be retained.

Decision:

Delete this Chapter.

Chapter 635, Sight-Seeing Vehicles

The City may want to review this Chapter for current applicability due to the fact that this Chapter has not been amended (except in one instance) since 1984.

Decision:

Delete this Chapter.

Chapter 645, City Sales Tax

- A. We often see these taxes placed in the Finance and Taxation Chapter in Title I of the Code. If the City prefers we can place them there.

Decision:

Move these provisions into the Finance and Taxation Chapter in Title I.

- B. Additionally the City should review these taxes and confirm that there are no additional taxes that need to be added herein.

Decision:

Ord. No. 3000-18, regarding capital improvement sales taxes, was added to Ch. 140, Art. IV.

Chapter 650, Food Service Establishment

Is this Chapter still accurate from 1981?

Decision:

No revision desired, except update Section 650.020 to refer to “ordinance violation” and the General Penalty in Section 100.220.

Chapter 655, ~~Farmer’s Market~~ Indoor Firing Ranges

Ordinance No. 2956-16 has repealed the provisions of Chapter 655, Farmer’s Market (based on a 2004 ordinance), and replaced it with new Chapter 655, Indoor Firing Ranges. This change will be reflected in the new Code.

NO DECISION REQUIRED

Decision With Final Draft:

Revise Section 655.030(A)(2) to change “Section 205.690 (Noise Disturbance Prohibited Acts)” to “Chapter 205, Article XV, Noise Disturbance Regulations.”

Chapter 660, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering above](#)

Chapter 670, Adult Businesses

- A. This Chapter is almost 25 years old – with the exception of certain portions of Sections 670.070, 670.080, 670.140 and 670.150 – so it may need further review by the City as to the procedures of licensing, etc., and the officials. Please review this Chapter in full to confirm the procedures are current.

Decision With Final Draft:

Revise as follows: See new Ord. No. 3048-19.

- B. Note that some of the definitions that are set out in Section 670.020 have been updated in the similar statutes as recently as 2014, effective 1-1-2017. Most of these definitions are contained in two different Sections in the Statutes: see Sections 573.010 and 67.2540, RSMo., which we have set out below. Some of them are duplicated and do not necessarily agree with each other. The City should review these definitions and determine if any revisions are needed. We have underlined the statutory definitions which differ from the definition contained in the City’s 1991 Code.

67.2540. Definitions.

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As used in sections 67.2540 to 67.2556, the following terms mean:

(1) "Adult cabaret," a nightclub, bar, restaurant, or similar establishment in which persons regularly appear in a state of nudity, as defined in section 573.500, or seminudity in the performance of their duties;

(2) "Employee," a person who is at least twenty-one years of age and who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. The term employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises;

(3) "Nudity" or a "state of nudity," the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or anal cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state;

(4) "Nuisance," any place in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued, or exists, or any place, in or upon which lewd, indecent, lascivious, or obscene films, or films designed to be projected for exhibition, are photographed, manufactured, developed, screened, exhibited, or otherwise prepared or shown, and the personal property and contents used in conducting and maintaining any such place for any such purpose. The provisions of this section shall not affect any newspaper, magazine, or other publication entered as second class matter by the post office department;

(5) "Person," an individual, proprietorship, partnership, corporation, association, or other legal entity;

(6) "Seminude" or in a "seminude condition," a state of dress in which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point. Seminudity shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by wearing apparel provided the areola is not exposed in whole or part;

(7) "Sexually oriented business," an adult cabaret or any business which offers its patrons goods of which a substantial or significant portion are sexually oriented material. It shall be presumed that a business that derives thirty percent or less of its revenue from sexually oriented materials is presumed not to be a sexually oriented business. No building, premises, structure, or other facility that contains any sexually oriented business shall contain any other kind of sexually oriented business;

(8) "Sexually oriented materials," any pictorial or three-dimensional material, or film, motion picture, DVD, video cassette, or similar photographic reproduction, that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined in section 573.010;

(9) "Specified criminal activity" includes the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling prohibited under Missouri law; or distribution of a controlled substance; or any similar offenses described in this subdivision under the criminal or penal code of other states or countries;

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(b) For which:

a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period;

(c) The fact that a conviction is being appealed shall not prevent a sexually oriented business from being considered a nuisance and closed under section 67.2546;

(10) "Specified sexual activities" includes the following acts:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;
or

(c) Excretory functions as part of or in connection with any of the activities set forth in this subdivision.(L. 2005 H.B. 972) (2006) Addition of sections 67.2540 to 67.2552 regulating adult entertainment to bill relating to alcohol-related traffic offenses violated Article III, section 21 prohibition against amending a bill to change its original purpose. Missouri Association of Club Executives, Inc. v. State, 208 S.W.3d 885 (Mo.banc).

573.010. Beginning January 1, 2017--Definitions.

As used in this chapter the following terms shall mean:

(1) "Adult cabaret," a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude;

(2) "Characterized by," describing the essential character or dominant theme of an item;

(3) "Child," any person under the age of fourteen;

(4) "Child pornography":

(a) Any obscene material or performance depicting sexual conduct, sexual contact as defined in section 566.010, or a sexual performance and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor; or

(b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct; or

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c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct. "Identifiable minor" means a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The term "identifiable minor" shall not be construed to require proof of the actual identity of the identifiable minor;

(5) "Employ," "employee," or "employment," any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises;

(6) "Explicit sexual material," any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

(7) "Furnish," to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

(8) "Material," anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

(9) "Minor," any person less than eighteen years of age;

(10) "Nudity" or "state of nudity," the showing of the human genitals, pubic area, vulva, anus, anal cleft, or the female breast with less than a fully opaque covering of any part of the nipple or areola;

(11) "Obscene," any material or performance if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

(12) "Operator," any person on the premises of a sexually oriented business who causes the business to function, puts or keeps the business in operation, or is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not such person is an owner, part owner, or licensee of the business;

(13) "Performance," any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

(14) "Pornographic for minors," any material or performance if the following apply:

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(a) *The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and*

(b) *The material or performance depicts or describes nudity, sexual conduct, the condition of human genitals when in a state of sexual stimulation or arousal, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and*

(c) *The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;*

(15) *"Premises," the real property upon which a sexually oriented business is located, and all appurtenances thereto and buildings thereon, including but not limited to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages or both;*

(16) *"Promote," to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;*

(17) *"Regularly," the consistent and repeated doing of the act so described;*

(18) *"Sadomasochistic abuse," flagellation or torture by or upon a person as an act of sexual stimulation or gratification;*

(19) *"Semi-nude" or "state of semi-nudity," the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at such point, or the showing of the male or female buttocks. Such definition includes the lower portion of the human female breast, but shall not include any portion of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part;*

(20) *"Sexual conduct," actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;*

(21) *"Sexually explicit conduct," actual or simulated:*

(a) *Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;*

(b) *Bestiality;*

(c) *Masturbation;*

(d) *Sadistic or masochistic abuse; or*

(e) *Lascivious exhibition of the genitals or pubic area of any person;*

(22) *"Sexually oriented business" includes:*

(a) *An adult bookstore or adult video store. "Adult bookstore" or "adult video store" means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon*

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the display of specified sexual activities or specified anatomical areas. A principal business activity exists where the commercial establishment:

- a. Has a substantial portion of its displayed merchandise which consists of such items; or
- b. Has a substantial portion of the wholesale value of its displayed merchandise which consists of such items; or
- c. Has a substantial portion of the retail value of its displayed merchandise which consists of such items; or
- d. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration, of such items; or
- e. Maintains a substantial section of its interior business space for the sale or rental of such items; or
- f. Maintains an adult arcade. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas;

(b) An adult cabaret;

(c) An adult motion picture theater. "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions, which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration;

(d) A semi-nude model studio. "Semi-nude model studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. Such definition shall not apply to any place where persons appearing in a state of semi-nudity do so in a modeling class operated;

a. By a college, junior college, or university supported entirely or partly by taxation;

b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

c. In a structure:

(i) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(ii) Where, in order to participate in a class, a student must enroll at least three days in advance of the class;

(e) A sexual encounter center. "Sexual encounter center" means a business or commercial enterprise that, as one of its principal purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between two or more persons when one or more of the persons is semi-nude;

(23) "Sexual performance," any performance, or part thereof, which includes sexual conduct by a child who is less than seventeen years of age;

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(24) "Specified anatomical areas" include:

(a) Less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(25) "Specified sexual activity," includes any of the following:

(a) Intercourse, oral copulation, masturbation, or sodomy; or

(b) Excretory functions as a part of or in connection with any of the activities described in paragraph (a) of this subdivision;

(26) "Substantial," at least thirty percent of the item or items so modified;

(27) "Visual depiction," includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.(L. 1977 S.B. 60, A.L. 1985 H.B. 366, et al., A.L. 1987 H.B. 113, et al., A.L. 1989 H.B. 225, A.L. 2000 S.B. 757 & 602, A.L. 2006 H.B. 1698, et al., A.L. 2014 S.B. 491)Effective 1-01-17

Decision With Final Draft:

Revise as follows: See new Ord. No. 3048-19.

C. Are the fees set out in Section 670.050 still current?

Decision With Final Draft:

Revise as follows: See new Ord. No. 3048-19.

D. The City may want to review Sections 670.060 and 670.110 against the statutory provisions of Section 573.531, RSMo., recently amended and effective 1-1-2017.

573.531. Beginning January 1, 2017--Establishment of business, prohibited where--nudity in establishment prohibited--display of sexual activities, requirements--state requirements--hours of operation--minors and alcohol prohibited--definitions.

1. No person shall establish a sexually oriented business within one thousand feet of any preexisting primary or secondary school, house of worship, state-licensed day care facility, public library, public park, residence, or other sexually oriented business. This subsection shall not apply to any sexually oriented business lawfully established prior to August 28, 2010. For purposes of this subsection, measurements shall be made in a straight line, without regard to intervening structures or objects, from the closest portion of the parcel containing the sexually oriented business to the closest portion of the parcel containing the preexisting primary or secondary school, house of worship, state-licensed day care facility, public library, public park, residence, or other sexually oriented business.

2. No person shall establish a sexually oriented business if a person with an influential interest in the sexually oriented business has been found guilty of any of the following specified offenses for which less than eight years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is later:

- (1) Rape and sexual assault offenses;*
- (2) Sexual offenses involving minors;*
- (3) Offenses involving prostitution;*
- (4) Obscenity offenses;*

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- (5) Offenses involving money laundering;*
- (6) Offenses involving tax evasion;*
- (7) Any attempt, solicitation, or conspiracy to commit one of the offenses listed in subdivisions (1) to (6) of this subsection; or*
- (8) Any offense committed in another jurisdiction which if committed in this state would have constituted an offense listed in subdivisions (1) to (7) of this subsection.*
- 3. No person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity.*
- 4. No employee shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the employee, while semi-nude, shall be and remain on a fixed stage at least six feet from all patrons and at least eighteen inches from the floor in a room of at least six hundred square feet.*
- 5. No employee, who appears in a semi-nude condition in a sexually oriented business, shall knowingly or intentionally touch a patron or the clothing of a patron in a sexually oriented business.*
- 6. A sexually oriented business, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction, characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:*
 - (1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose;*
 - (2) An operator's station shall not exceed thirty-two square feet of floor area;*
 - (3) If the premises has two or more operator's stations designated, the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations;*
 - (4) The view required under this subsection shall be by direct line of sight from the operator's station;*
 - (5) It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by such operator station; and*
 - (6) It shall be the duty of the operator and of any employees present on the premises to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks, or other materials or enclosures at all times that any patron is present on the premises.*
- 7. Sexually oriented businesses that do not have stages or interior configurations which meet at least the minimum requirements of sections 573.525 to 573.537 shall be given one hundred eighty days after August 28, 2010, to comply with the stage and building requirements of sections 573.525 to 573.537. During such one hundred eighty-day period, any employee who appears within view of any patron in a semi-nude condition shall remain, while semi-nude, at least six feet from all patrons.*
- 8. No operator shall allow or permit a sexually oriented business to be or remain open between the hours of 12:00 midnight and 6:00 a.m. on any day.*
- 9. No person shall knowingly or intentionally sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.*

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10. No person shall knowingly allow a person under the age of eighteen years on the premises of a sexually oriented business.

11. As used in this section, the following terms mean:

(1) "Establish" or "establishment," includes any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

(c) The addition of any sexually oriented business to any other existing sexually oriented business;

(2) "Influential interest," includes any of the following:

(a) The actual power to operate a sexually oriented business or control the operation, management, or policies of a sexually oriented business or legal entity which operates a sexually oriented business;

(b) Ownership of a financial interest of thirty percent or more of a business or of any class of voting securities of a business; or

(c) Holding an office, such as president, vice president, secretary, treasurer, managing member, or managing director, in a legal entity which operates a sexually oriented business;

(3) "Viewing room," the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video cassette, digital video disc, or other video reproduction. (L. 2010 S.B. 586 & 617, A.L. 2014 S.B. 491) Effective 1-01-17

Decision With Final Draft:

Revise as follows: See new Ord. No. 3048-19.

- E. Also note that the provisions of Section 573.540, RSMo., appear to give cities certain authority concerning adult-oriented businesses as noted below. The City may want to review and determine if any revisions are required.

573.540. No state preemption on regulation--consistency with state law required for local law.

1. Nothing in sections 573.525 to 573.537 shall be construed as preempting or preventing any political subdivision of this state from maintaining, enacting, or enforcing any local ordinance, rule, regulation, resolution, or similar law concerning the regulation of sexually oriented businesses or similar adult oriented businesses which is stricter than but not inconsistent with the provisions of sections 573.525 to 573.537.

2. Political subdivisions of this state are specifically authorized to maintain, enact, and enforce local ordinances, rules, regulations, resolutions, or other similar laws concerning the regulation of sexually oriented businesses or similar adult-oriented businesses which are the same as or stricter than but not inconsistent with the provisions of sections 573.525 to 573.537. (L. 2010 S.B. 586 & 617)

Decision With Final Draft:

Revise as follows: See new Ord. No. 3048-19.

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Chapter 675, Pawn Shops

- A. This Chapter is almost 20 years old – with the exception of certain portions of Sections 675.020, 675.030, 675.050 and 675.090 – so it may need further review by the City as to the procedures of licensing, etc., and the officials contained herein. Please review this Chapter in full to confirm the procedures are current.

Decision:

No revision desired, except as noted below.

- B. Are both the license fee of \$200.00 in Section 675.020(C) and the transfer fee of \$100.00 in Section 675.020(D) still current?

Decision:

No revision desired.

- C. In Section 675.030(A)(7), see the reference to Sections 367.012 to 367.060, RSMo., which appears to be incorrect. There is no Section 367.012; possibly either 367.011 or 367.021 is the intended reference?

Decision:

Change 367.012 to 367.011.

- D. As regards Section 675.060, note that the provisions of Section 367.031, RSMo., appear to require additional information regarding the pledged property.

367.031. Beginning January 1, 2017--Receipt for pledged property--contents--definitions--third-party charge for database--access to database information, limitations--error in data, procedure--loss of pawn ticket, effect.

1. At the time of making any secured personal credit loan, the lender shall execute and deliver to the borrower a receipt for and describing the tangible personal property subjected to the security interest to secure the payment of the loan. The receipt shall contain the following:

- (1) The name and address of the pawnshop;***
- (2) The name and address of the pledgor, the pledgor's description, and the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the pledgor;***
- (3) The date of the transaction;***
- (4) An identification and description of the pledged goods, including serial numbers if reasonably available;***
- (5) The amount of cash advanced or credit extended to the pledgor;***
- (6) The amount of the pawn service charge;***
- (7) The total amount which must be paid to redeem the pledged goods on the maturity date;***
- (8) The maturity date of the pawn transaction; and***
- (9) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.***

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2. *The pawnbroker may be required, in accordance with local ordinances, to furnish appropriate law enforcement authorities with copies of information contained in subdivisions (1) to (4) of subsection 1 of this section and information contained in subdivision (6) of subsection 4 of section 367.040. The pawnbroker may satisfy such requirements by transmitting such information electronically to a database in accordance with this section, except that paper copies shall be made available for an on-site inspection upon request of any appropriate law enforcement authority.*

3. *As used in this section, the following terms mean:*

(1) *"Database," a computer database established and maintained by a third party engaged in the business of establishing and maintaining one or more databases;*

(2) *"Permitted user," persons authorized by law enforcement personnel to access the database;*

(3) *"Reportable data," the information required to be recorded by pawnbrokers for pawn transactions pursuant to subdivisions (1) to (4) of subsection 1 of this section and the information required to be recorded by pawnbrokers for purchase transactions pursuant to subdivision (6) of subsection 4 of section 367.040;*

(4) *"Reporting pawnbroker," a pawnbroker who chooses to transmit reportable data electronically to the database;*

(5) *"Search," the accessing of a single database record.*

4. *The database shall provide appropriate law enforcement officials with the information contained in subdivisions (1) to (4) of subsection 1 of this section and other useful information to facilitate the investigation of alleged property crimes while protecting the privacy rights of pawnbrokers and pawnshop customers with regard to their transactions.*

5. *The database shall contain the pawn and purchase transaction information recorded by reporting pawnbrokers pursuant to this section and section 367.040 and shall be updated as requested. The database shall also contain such security features and protections as may be necessary to ensure that the reportable data maintained in the database can only be accessed by permitted users in accordance with the provisions of this section.*

6. *The third party's charge for the database shall be based on the number of permitted users. Law enforcement agencies shall be charged directly for access to the database, and the charge shall be reasonable in relation to the costs of the third party in establishing and maintaining the database. No reporting pawnbroker or customer of a reporting pawnbroker shall be charged any costs for the creation or utilization of the database.*

7. (1) *The information in the database shall only be accessible through the internet to permitted users who have provided a secure identification or access code to the database but shall allow such permitted users to access database information from any jurisdiction transmitting such information to that database. Such permitted users shall provide the database with an identifier number of a criminal action for which the identity of the pawn or purchase transaction customer is needed and a representation that the information is connected to an inquiry or to the investigation of a complaint or alleged crime involving goods delivered by that customer in that transaction. The database shall record, for each search, the identity of the permitted user, the pawn or purchase transaction involved in the search, and the identity of any customer accessed through the search. Each search record shall be made available to other permitted users regardless of their jurisdiction. The database shall enable reporting pawnbrokers to transmit to the database through the internet reportable data for each pawn and purchase transaction.*

(2) *Any person who gains access to information in the database through fraud or false pretenses shall be guilty of a class D felony.*

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8. Any pawnbroker licensed under section 367.043 shall meet the following requirements:

(1) Provide all reportable data to appropriate users by transmitting it through the internet to the database;

(2) Transmit all reportable data for one business day to the database prior to the end of the following business day;

(3) Make available for on-site inspection to any appropriate law enforcement official, upon request, paper copies of any pawn or purchase transaction documents.

9. If a reporting pawnbroker or permitted user discovers any error in the reportable data, notice of such error shall be given to the database, which shall have a period of thirty days in which to correct the error. Any reporting pawnbroker experiencing a computer malfunction preventing the transmission of reportable data or receipt of search requests shall be allowed a period of at least thirty but no more than sixty days to repair such malfunction, and during such period such pawnbroker shall not be deemed to be in violation of this section if good faith efforts are made to correct the malfunction. During the periods specified in this subsection, the reporting pawnbroker and permitted user shall arrange an alternative method or methods by which the reportable data shall be made available.

10. No reporting pawnbroker shall be obligated to incur any cost, other than internet service costs, in preparing, converting, or delivering its reportable data to the database.

11. If the pawn ticket is lost, destroyed, or stolen, the pledgor may so notify the pawnbroker in writing, and receipt of such notice shall invalidate such pawn ticket, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make a written affidavit of the loss, destruction or theft of the ticket. The pawnbroker shall record on the written statement the identifying information required, the date the statement is given, and the number of the pawn ticket lost, destroyed, or stolen. The affidavit shall be signed by a notary public appointed by the secretary of state pursuant to section 486.205 to perform notarial acts in this state. (L. 1951 p. 281 § 3, A.L. 1965 p. 114, A.L. 1990 H.B. 1125, A.L. 2002 H.B. 1888, A.L. 2005 H.B. 353, A.L. 2014 S.B. 491) Effective 1-01-17

Decision:

Replace this Section with the statutory Section above.

E. It appears that the statutory provisions of Section 367.043, RSMo., requires only TWO years as opposed to the three years required in Section 675.080 of this Chapter.

367.043. License required--qualifications--oath--bond--accounting--location within one-half mile of excursion gambling boat or facility, prohibited, when.

1. No person shall operate a pawnshop unless such person obtains a municipal pawnshop license issued pursuant to this section. Each municipality or county may issue a pawnshop license to any person who meets the qualifications of this section. To be eligible for a pawnshop license, an applicant shall:

(1) Be of good moral character;

(2) Have net assets of at least fifty thousand dollars readily available for use in conducting business as a pawnshop for each licensed pawnshop; and

(3) Show that the pawnshop will be operated lawfully and fairly within the purposes of sections 367.011 to 367.060. In addition to the qualifications specified in subdivisions (1) to (3) of this subsection, a municipality or county may also refuse to issue a pawnshop license to any applicant

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who has a felony or misdemeanor conviction which directly relates to the duties and responsibilities of the occupation of pawnbroker or otherwise makes the applicant presently unfit for a pawnshop license.

2. If the municipality or county is unable to verify that the applicant meets the net assets requirement for a licensed pawnshop, the municipality or county may require a finding, including the presentation of a current balance sheet, by an independent certified public accountant that the accountant has reviewed the books and records of the applicant and that the applicant meets the net assets requirement of this section.

3. An application for a new pawnshop license, the transfer of an existing pawnshop license or the approval of a change in the ownership of a licensed pawnshop shall be under oath and shall state the full name and place of residence of the applicant, the place where the business is to be conducted, and other relevant information required by the municipality or county. If the applicant is a partnership, the municipality or county may require that the application state the full name and address of each member. If the applicant is a corporation, the application shall state the full name and address of each officer, shareholder, and director. The application shall be accompanied by:

(1) An investigation fee of five hundred dollars if the applicant is unlicensed at the time of applying for the pawnshop license or two hundred fifty dollars if the application involves a second or additional license to an applicant previously licensed for a separate location or involves substantially identical principals and owners of a licensed pawnshop at a separate location; and

(2) Proof of general liability if required by the municipality or county, and an annual fee of five hundred dollars.

4. Each applicant for a pawnshop license at the time of filing application shall file with the municipality or county, if the municipality or county so requires, a bond satisfactory to him and in an amount not to exceed five thousand dollars for each license with a surety company qualified to do business in this state. The aggregate liability of such surety shall not exceed the amount stated in the bond. The bond shall run to the state for the use of the state and of any person or persons who may have a cause of action against the obligor of such bond under the provisions of sections 367.011 to 367.060. Such bond shall be conditioned that the obligor will comply with the provisions of sections 367.011 to 367.060 and of all rules and regulations lawfully made by the municipality or county, and will pay to the state and to any such person or persons any and all amounts of money that may become due or owing to the state or to such person or persons from such obligor under and by virtue of the provisions of sections 367.011 to 367.060 during the time such bond is in effect.

5. Each licensee shall keep, consistent with accepted accounting practices, adequate books and records relating to the licensee's pawn transactions, which books and records shall be preserved for a period of at least two years from the date of the last transaction recorded therein.

6. No person who is lawfully operating a pawnshop on August 28, 1990, shall be required to obtain a license under this section in order to continue operating such pawnshop, so long as such person does not violate any other provision of sections 367.011 to 367.060, except that, if such person is required by the municipality or county to have an occupational license, such person shall be required to pay the five-hundred-dollar annual fee prescribed in subdivision (2) of subsection 3 of this section in lieu of any municipal or county occupational license fee.

7. In addition to the other requirements of this section for licensure, no license shall be issued under this section on or after May 20, 1994, for the initial operation of a pawnshop if such pawnshop is to be located within one-half mile of a site where an excursion gambling boat dock or facility is located or within one-half mile of a site where an application for such an excursion gambling boat dock or

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facility is on file with the gaming commission prior to the date the application for the pawnshop license is filed. The provisions of this subsection shall not prohibit a pawnshop from being located within one-half mile of a dock or facility or proposed dock or facility described in this subsection if the license for such pawnshop has been issued prior to May 20, 1994. (L. 1990 H.B. 1125, A.L. 1993 S.B. 18, A.L. 1994 S.B. 740) Effective 5-20-94

Decision:

Change three years to two years.

TITLE VII, PUBLIC UTILITIES

Chapter 700, Public and Private Sewers

These 2013 provisions appear to be up-to-date. Please confirm that the sewer impact fees in Section 700.040 are current.

Decision:

No revision desired.

Chapter 703, Commercial and Industrial Waste

A. Due to the age of the requirements in this Chapter, the City may want to review this Chapter in its entirety for current applicability. It appears that this Chapter has not been amended since 1995.

Decision:

No revision desired, except as noted below.

B. Section 703.020 notes the Director of the Public Works Department is the main official in this Chapter. The only other reference to the Director of Public Works is in Section 400.570 as noted above. Also note that the Department of Public Works does not occur anywhere else in the Code either.

Decision:

No revision desired.

C. Note that Sections 703.480 and 703.490 both appear to exceed the maximum penalties allowed for Fourth Class cities in Section 79.470, RSMo.

Decision:

Change \$1,000 to \$500 maximum in both Sections. In Section 703.490, change six months to 90 days imprisonment.

Chapter 705, Combined Waterworks and Sewerage System

Section 705.200 seems to allow for a lower maximum penalty and imprisonment than that set out in Section ~~100.030~~ 100.220 of the 1991 Code and also allowed by Section 79.470, RSMo. Would the City prefer to simply refer to Section ~~100.030~~ 100.220 as the penalty for this Chapter?

Decision:

Change this to read: "...be subject to a fine and/or imprisonment as set out in Section 100.220 of this Code."

Chapter 710, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

Chapter 715, Construction of Water Mains

- A. Due to the age of the requirements in this Chapter, the City may want to review this Chapter in its entirety for current applicability. It appears that this Chapter has not been amended since 1976, with the exception of Sections 715.030 and 715.035 which were amended in 1998.

Decision:

No revision desired.

- B. Is the permit fee in Section 715.020 still current?

Decision:

No revision desired.

- C. Are the fees in Section 715.060 still current?

Decision:

No revision desired.

Chapter 720, Cross Connections

Due to the age of the requirements in this Chapter, the City may want to review this Chapter in its entirety for current applicability. It appears that this Chapter has not been amended since 1997.

Decision With Final Draft:

No revision desired, except revise Section 720.080(C)(8) to read as set out in the Code.

Chapter 725, (Reserved)

NO DECISION REQUIRED HERE; see [Reserved Chapters and Renumbering](#) above

City of Smithville, Missouri**Chapter 730, Telephone Service**

Chapter 730 and 735 could be combined since they both appear to deal with Gross Receipts Taxes. We would set this up as two Articles under a Chapter heading named “Gross Receipts Taxes.”

Decision:

No revision desired.

Chapter 735, Natural Gas

See note above to Chapter 730 regarding combination of these two Chapters.

NO DECISION REQUIRED HERE; see Ch. 730

Chapter 740, City Sales Tax

Since this appears to be the application of the City Sales Tax in Chapter 645, see the note above to that Chapter. Possibly this Sales Tax provision should be contained therein. The City should review and advise.

Decision With Final Draft:

Move this Chapter to Ch. 140, Art. IV.