The Odd Couple:
Interplay Between Homeowners Associations and Municipal Governments
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by K. Andrew “Drew” Weber
In daily life, individuals are more likely to have contact with a municipal government or a homeowners association (HOA) than with the state or federal government because municipalities and HOAs are well suited to address issues of local concern. But individuals may have difficulty in determining whether an issue of local concern should be referred to the municipal government, the HOA, or both.

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The Missouri Municipal League actively lobbies and advocates for cities’ interests throughout the year. Of course, the greatest concentration of resources and effort are expended beginning with the early bill-filing date each December and continuing through the end of the legislative session in May.

The MML advocacy team effort is led by MML Deputy Director, Richard Sheets. Other team members include Shanon Hawk, a fifteen-year veteran municipal contract lobbyist, along with attorney and expert witness services as needed. Of course, we are blessed to have municipal officials willing to come to Jefferson City to testify by telling their first-hand story of the impact of existing or proposed legislation. In the current legislative session, we are monitoring and tracking the status of more than two-hundred bills that impact or have the potential to impact municipalities. This is far more than other groups must be prepared to address.

If there is a theme this year, it is preemption. Preemption comes in the form of unfunded mandates; removing municipal regulatory authority; limiting municipal courts authority and tools to deter unlawful behavior; diminishing local control over business use of public assets; special sales tax exemptions; and numerous proposals to further erode municipal revenue sources.

Advocacy also means intervening in court cases in Missouri and filings before regulatory agencies to combat preemption attempts at the federal level. Annually in mid-March, MML leads a group of 12-14 municipal officials in Washington, D.C. to speak with Senators Roy Blunt and Claire McCaskill to voice municipal priorities.

When the legislature is not in session the League works on relationships with key legislators to educate them on the challenges municipalities face in providing necessary services to citizens. Legislator term limits dictate that this is an ongoing challenge.

Approximately 250 municipal officials participated in the annual Legislative Conference and legislator visits on February 13-14. I want to thank these officials for their advocacy and action. We can’t stress enough how important it is that you communicate with your representatives and senator, letting them know where you and MML stand on issues affecting cities. It’s also helpful to review their voting record on important municipal issues to understand if you have their support.

As I’ve said before, advocacy isn’t without cost. MML, depending on the quantity and nature of issues requiring our attention, expends about $200,000-$300,000
annually on lobbying, court cases, expert services and activities. While this is not a large amount in the context of lobby activity and compared to some of those organizations we go up against, it does represent a serious and increased commitment of MML resources.

When we surveyed our members, you told us advocacy was the number one priority area where MML should focus. We have done that. Because of the cost, I have asked municipalities that benefitted financially from several recent class action settlement decisions to contribute at least 5 percent of settlement amounts to the MML Advocacy Fund for the sole purpose of lobbying and advocacy efforts to block proposed legislation that is or would be harmful to your city. These contributions allow us to continue our advocacy efforts at the current level.

MML action in recent years stopped two separate, private interest legislative proposals that would have prohibited cities from participating in the class action settlements. They would have blocked a large number of affected cities from receiving their share of a $15.4 million dollar settlement in a Century Link underpayment of business license taxes case; blocked 338 cities from sharing a $10.2 million dollar settlement in the 2017 TracFone settlement for non-payment of municipal license taxes on prepaid wireless telephone gross receipts; and, just recently, would have blocked cities served by Ameren Missouri from receiving their share of the $20.6 million dollar settlement from the Winchester et al vs Ameren suit regarding underpayment of business license taxes on electric gross receipts.

To the cities who allocated five or more percent from these settlements, thanks for your investment. To those who have not, please consider contributing at least 5 percent of the TracFone or Ameren class action settlement amounts your city received to the MML Advocacy Fund. These funds will provide MML the non-dues resources to continue to oppose and lobby against harmful legislation at the current level of activity.

As always, thanks for your membership and your willingness to speak out on important municipal issues. Contact your MML staff at 573-635-9134 with any questions you may have.
In daily life, individuals are more likely to have contact with a municipal government or a homeowners association (HOA) than with the state or federal government because municipalities and HOAs are well suited to address issues of local concern. But individuals may have difficulty in determining whether an issue of local concern should be referred to the municipal government, the HOA, or both. For example, determining whether operation of an in-home daycare violates the local municipal code, the subdivision restrictions or both, is not always easy. Sometimes, both the municipality and the HOA will have an interest in addressing such an issue, so an individual might contact both entities with the complaint. This article discusses the interplay between municipalities and HOAs and how the two can work together, and separately, to address issues of local concern.

Mirriam-Webster’s dictionary defines a municipality as “a primarily urban political unit having corporate status and usually powers of self-government.” An HOA is an organization composed of owners of neighboring properties that is responsible for administering the covenants, conditions and restrictions (CCRs) that are applicable to those properties. There are approximately 800 municipalities in the state of Missouri. While that number seems large, there are far more HOAs operating in the state. An estimated 1,000 HOAs exist in the Kansas City area alone.

HOAs emerged in the late 1800s in the United States as a way to maintain property values and improve life for property owners within a specific geographical area. Today, one in five people in the U.S. is a member of a homeowners association. There are an estimated 342,000 to 344,000 HOAs in the U.S., and that number continues to grow. According to the Community Associations Institute, approximately 80 percent of newly constructed homes in the U.S. are in subdivisions with an HOA. The primary purposes of modern HOAs include providing public services, such as maintaining infrastructure, managing recreational facilities, promoting public safety, enforcing the CCRs, and providing sanitation services. Since municipalities traditionally provided these services, municipalities save an estimated $2 - $4 billion each year due to the existence of HOAs.

Supporters of HOAs argue that they fill funding gaps caused by restrictions on, or underfunding of, local governments. Transferring responsibility for enforcement of property maintenance standards, infrastructure improvements, and public safety to HOAs frees up public resources for use on other public
services. Conversely, critics contend that HOAs erode support for the local government. For example, if homeowners within an HOA are concerned about crime, they can erect a gate to their subdivision instead of voting for additional funding for public safety services. In this scenario, HOAs operate as a substitute provider of public services as opposed to a complementary provider.

Perhaps the most common service provided by an HOA is enforcement of property maintenance standards. An HOA’s legal authority to enforce property maintenance standards differs from a municipality’s authority. In Missouri, the state Constitution and state statutes set limits on the authority of a municipality. Chapter 89 of the Revised Statutes of Missouri (RSMo.) authorizes municipalities to enact zoning regulations. In particular, under Section 89.020.1, RSMo., the municipal governing body is “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.” Municipalities are subject to Dillon’s rule that provides a municipality may only exercise powers expressly granted, or those necessarily or fairly implied in express grants, or those essential to the declared objects of the municipality. Any reasonable doubt as to whether a power has been delegated to a municipality is resolved in favor of non-delegation.

An HOA derives its authority from its CCRs. Typically, a subdivision developer executes and records the CCRs with the local recorder of deeds. The CCRs usually set out the scope of the HOA’s authority; provide architectural and aesthetic standards for buildings in the subdivision; regulate the uses of property in the subdivision; and provide procedures for the operation of the HOA. Under Missouri law, these regulations are referred to as restrictive covenants. Restrictive covenants restrict the free use of real property, so Missouri courts strictly construe them. However, there are few limits on the type or scope of restrictions that can be included in the CCRs. Consequently, while municipal zoning regulations and CCRs often contain similar prohibitions (e.g. a prohibition on operating a business from a residential property), CCRs may include prohibitions that a municipality may not be able to enact for legal or political reasons (e.g. allowing only a few types of signage on residential property based on the content of the signs).

Further, enforcement of zoning regulations and building codes by a municipality differs from enforcement of CCRs by an HOA. Municipalities are substantially limited to enforcing regulations through prosecution in municipal court. In recent years, municipal court prosecutions have received negative press due to perceived abuses in the municipal court system. Consequently, the Missouri General Assembly enacted Senate Bill 5 in 2015 and Senate Bill 572 in 2016, both of which impose restrictions on municipal court prosecutions and limit

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~ Ron Brackin

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a municipality’s ability to collect fines for municipal code violations.

Conversely, HOAs typically enforce CCRs in one of two ways: (1) instituting a lawsuit seeking an injunction or declaratory judgment to remedy the violation; or (2) if allowed by the CCRs, imposing a fine or suspending services provided by the HOA to the violating homeowner. Frequently, the CCRs provide that the fines imposed by an HOA become liens on the property. While municipalities are statutorily restricted in the amount of fines that can be recovered from a violation of a zoning regulation or building code, an HOA’s ability to levy fines, and the amount of the fines levied, are not similarly restricted and, so long as the HOA follows the procedures set forth in the CCRs, the HOA can increase the amount of the fines exponentially. In addition, municipal commissions and governing bodies are required to base their decisions to approve licenses or permits on specific standards that are set forth by law. Alternatively, CCRs can authorize HOAs to exercise substantial discretion to approve or deny requests of homeowners.

A frequent source of confusion for homeowners is whether the issuance of a permit by a municipality trumps a provision of the CCRs that prohibits the building or use authorized by the permit. Homeowners often request that municipalities deny licenses or permits for activities that are allowed by the municipal code but prohibited by the CCRs. However, municipalities cannot enforce CCRs. Only the HOA, or the homeowners themselves, can enforce the provisions of the CCRs.

While municipalities and HOAs have distinct enforcement authority, they can work together to promote the general welfare of the community. Generally, municipalities do not have the manpower to conduct frequent inspections of all residential properties to determine if there are any code violations. Conversely, because HOAs typically cover small geographic areas, it is easier for an HOA to identify properties that violate the CCRs. Because such violations also frequently violate the municipal code, an HOA can serve as a municipality’s first line of defense in identifying problem properties before the properties become public nuisances. If a property owner is facing municipal court prosecution, as well as the imposition of fines from the HOA, the property owner has a greater incentive to alleviate the problematic condition(s) on the property.

While an HOA is usually better able to identify problem properties than a municipality, HOAs may not have the technical sophistication necessary to appropriately enforce the CCRs. Municipalities frequently have full-time staff and legal counsel to assist in identifying and enforcing municipal codes. Further, municipalities usually have a budget that provides for the cost of such enforcement. Typically, HOAs operate on small budgets and do not have employees or legal counsel to assist with enforcement. Further, HOAs often suffer from apathy or disinterest and, therefore, might not diligently pursue enforcement of the CCRs.

HOAs frequently have more difficulty than municipalities in removing provisions from the CCRs that become burdensome, or adding new restrictions that become necessary, over time. If a municipality determines that the current zoning regulations or building codes do not adequately meet the needs of the municipality, removing regulations or adding new ones can occur over a few months and with the minimal procedural requirements imposed by state statute (i.e., public hearings and approval of an ordinance). Frequently, the CCRs contain language allowing the HOA to amend, change...
or modify the CCRs. However, this language, as construed by Missouri courts, is a limited grant of authority.

According to the Missouri Court of Appeals for the Eastern District, in the case of Hazelbaker v. County of St. Charles, in general, an amendment to CCRs that imposes additional burdens on the property owners subject to the CCRs is not valid except upon approval of such amendment by unanimous consent. In Hazelbaker, the owner of one lot within a subdivision sued for a declaratory judgment and injunction against enforcement of a provision of the CCRs prohibiting the subdividing of lots within the subdivision. The provision at issue was approved by a vote of owners of 60 out of the 66 lots in the subdivision. The subdivision’s original CCRs provided that “a majority of the Lots may ‘agree[] to change said covenants and restrictions in whole or in part.’” Reviewing prior Missouri decisions, the Court of Appeals held that this amendatory language “does not give owners the power to add new burdens to the restrictions by majority vote, rather it merely authorizes changes to existing burdens by majority.”

This case law imposes a severe restriction on an HOA’s ability to adapt the CCRs to changing conditions over time. Unless the CCRs expressly state that the HOA can add new burdens to the CCRs with less than a unanimous vote of the members of the HOA, then the HOA will have tremendous difficulty in adding new restrictions. For example, if small, roof-mounted windmills are developed that can provide enough electricity to power a residence, then homeowners will have an incentive to purchase and install those systems. An HOA may want to adopt a restriction prohibiting roof-mounted windmills, but it will not be able to get unanimous approval of that restriction because, at the very least, the property owner that wants to install the windmills will not approve the change.

Consequently, municipalities and HOAs both have limitations on their ability to respond quickly and adequately to issues of local concerns. While municipalities and HOAs have different motivations and powers, their basic purpose of providing public services is compatible. By working together to identify problem properties and encourage remediation of the properties, municipalities and HOAs can improve the general welfare of the community. Perhaps they are neither an “odd couple” nor “two peas in a pod,” but rather like “peanut butter and jelly;” two things that, while substantially different, work well together. K. Andrew Weber is an attorney at the law firm of Hamilton Weber LLC in St. Charles, Missouri. His primary practice areas include local government, corporate and real estate law. Weber has extensive experience working with local governments. Further, as part of his real estate practice, Weber represents multiple homeowners associations.

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One of the most difficult times that any city can experience is when it becomes necessary to impeach the mayor, an alderperson or councilperson. This issue is compounded by statutes that provide little guidance as to how this process should take place. Fortunately, or unfortunately, there is a large body of case law explaining how a city should proceed when impeachment is on the horizon.

Impeachment applies only for certain officials. Most municipal officers are employees at will, meaning that they can be terminated at any time. Usually this power rests with the chief executive officer, such as a city manager, mayor or city administrator. Cause for termination is not required, nor does the employee have an opportunity for a hearing, in most cases. An important exception is chiefs of police. After 2013, they are no longer employees at will and may be removed only by a separate statutory process.

**Authority For Impeachment**

For fourth class cities, the process of impeachment is set forth in § 79.240 RSMo. Although this statute has been placed by the revisor of statutes under the heading of “Officers” it does in fact also apply to the removal of elected officials. For the impeachment of an alderperson, or other elected official (such as an elected marshal or collector), this section provides that the mayor may remove the alderperson with a consent of a simple majority of the alderpersons, following a hearing. The board of aldermen may also remove elected officials (including the mayor) without the mayor’s consent if there is a concurrence of a two-thirds majority of the board, also following a hearing. Appointed officials in fourth class cities may be removed at-will by the mayor, with a majority of the board, or by a two-thirds vote of the board without the consent of the mayor (also at-will).

For third class cities, the authority is similar. Section 77.340 authorizes the mayor to remove any elected or appointed official with the consent of the council. In addition, the council, by a two-thirds majority may remove any elected or appointed official without the mayor’s consent. As with fourth class cities, a hearing is required for elected, but not appointed, officials. In a city of the third class, that has adopted the city manager form, the council retains the power to remove elected officials even though the city manager may now have the sole power over removal of appointed officials.§ It has been suggested that there is no process for impeachment in third class cities with a city manager form of government; however, § 78.440 RSMo provides that they would use the impeachment procedure for regular third-class cities.

There is an alternative procedure for impeachment found in Chapter 106 of the state statutes. However, the courts have declared that this procedure is only applicable when there is no other specific method of procedure. Thus, it does not apply to impeachment in third and fourth class cities.

There is no specific procedure for impeachment of a member of the board of trustees of a village. Section 80.080 RSMo allows a trustee to be expelled from a particular meeting by a vote of four of the five trustees. This expulsion, however, is limited to that particular meeting, and those sections of the statutes do not authorize expulsion for the rest of the trustee’s term. Therefore, impeachment in a village would be governed by Chapter 106. This procedure uses the county prosecuting attorney and a circuit judge. For the purposes of brevity, this article will not discuss impeachment in villages.

For charter cities, the power of impeachment is set forth in the charter. Charter provisions in this regard tend to be quite varied. Some charters have no provision for impeachment of council members or the mayor. Some have very...
Grounds For Impeachment

The statute governing impeachment in fourth class cities and the statute on the same subject for third class cities, require that impeachment can only be “for cause shown.” Recently the Court of Appeals for the Eastern District of Missouri tried to clarify exactly what the term “for cause” means. The Court said:

“the appropriate meaning of the ‘for cause’ standard for impeachment of the elected mayor here should not only ‘specifically [relate] to and [affect] the administration of [his] office, and ... be ... of a substantial nature directly affecting the rights and interests of the public,’ it should also be limited to objective reasons which reasonable people, regardless of their political persuasion, could agree would render any mayor’s performance ineffective.”

This succinct definition contains a number of very important points. First, the cause must be related to and affect the administration of the accused’s office. Thus, personal conduct would ordinarily not be grounds for impeachment unless it was of such a nature as to affect the person’s ability to fulfill the duties of his or her office. Where the acts complained of, all took place before the accused took office, there is no basis for impeachment. It is less clear whether acts that occurred during a previous term in office, would be grounds for impeachment in the current term.

Second, the cause must substantially and directly affect the rights and interests of the public. Likely this means that minor offenses that have no impact on the public would not be sufficient to support an impeachment. Third, the reason must be objective and not based on a person’s political perspective. It would not be enough to say someone was a bad mayor or was not doing a good job. Rather, the reason must be such that any objective person would believe that the commitment of such an offense makes any person holding that office ineffective.

Of course, while this definition gives some criteria, it does not identify specific acts that would constitute cause for impeachment. There are a number of examples of grounds over the years that may help clarify what the courts view as sufficient grounds. In Fitzgerald v. City of Maryland Heights, the court said that “acts of misfeasance, the improper performance of some act that may lawfully be done; malfeasance, the commission of some act wholly beyond actor’s authority; and nonfeasance, the failure to perform a required duty” would all be sufficient grounds. A fair list of prior grounds used can be found in the case of Mason v. City of Breckenridge Hills.
Commencement Of Impeachment And Pre-Hearing Procedures

Except where otherwise provided by the statutes, the impeachment process is governed by the Administrative Procedures Act (APA), found at Chapter 536 RSMo. It is a contested case, as that term is used in the APA, because a hearing is required. Like all contested cases, the process is initiated by the filing of a “writing” requesting affirmative relief (in this case impeachment) and the reasons (charges) for which impeachment is sought. In this case, such a writing is often called a Bill of Impeachment or Articles of Impeachment. The reasons need not be set out with the technical precision of a criminal indictment, but must fairly appraise the accused of what he or she is charged with. The complaint should be served on the accused by mail. Personal service is permissible as well; however, it should not substitute for mailed service since that is what the APA requires. The accused can file an answer, although an answer is not required.

The notice should indicate when the hearing will take place. Generally, the APA requires 10 days’ notice of the hearing, but that time can be shortened if it is in the public interest. The courts have specifically found that expediting an impeachment hearing is in the public interest.

Prior to the actual hearing, the ability of either side to conduct traditional discovery is limited. The APA allows parties to use only depositions, subpoenas of witnesses, and subpoenas duces tecum (a subpoena for documents). Since both §§ 77.340 and 79.240 allow cities to adopt procedural rules for impeachment hearings, it is possible for the city to grant more expansive discovery (such as interrogatories and requests for admission). However, it may be impractical to try to adopt such procedures once impeachment has been commenced. Both the applicable statutes and the APA provide for the ability of both sides to call witnesses at the trial. Unlike criminal trials, the accused may be called as a witness under the APA rules.

The Board Of Impeachment

The impeachment hearing is conducted by the city council (or board of aldermen, but for brevity the term city council will be used herein to indicate both) sitting as a board of impeachment. If the accused is not the mayor, then the mayor presides over the meeting. If the accused is the mayor, then the mayor pro tem would be the presiding officer. In some of the reported cases the city has engaged a separate attorney to serve as a hearing officer. This is wise, since the board of impeachment may be faced with many evidentiary questions and technical procedural issues.

The accused may not block the hearing by use of a Writ of Prohibition from the circuit court.

Considering the volatility of impeachment, it is likely that the issue of bias by the council members will arise. The accused is entitled to a hearing before a board that is impartial and “free of bias, hostility and prejudgment.” If council members are biased they should be disqualified and not sit on the board of impeachment. Failure to disqualify biased council members can be grounds for overturning the impeachment.

In reviewing an impeachment case, a court will presume that the members of the board of impeachment are honest and acting with integrity. Past conflict between the accused and board members, even borderline hostility, is not sufficient to prove bias. The fact that the council both initiates the charges and conducts the hearing is not evidence of bias. Rather, to show bias the accused must prove that the council member in question was incapable of fairly weighing the evidence. The accused is entitled to inquire as to bias at the beginning of the proceeding.

Obviously, excluding council members from sitting on the board of impeachment creates a problem; there may be too few council members left to render a decision. For example, if a city is impeaching its mayor and has four alderpersons, but two are disqualified, the board of impeachment could never reach the two-thirds majority (three votes) necessary to impeach. In those instances where the only forum authorized by statute would be unable to proceed, the Rule of Necessity could be invoked to permit a decision to be made by the adjudicating body in spite of its possible bias or self-interest. However, while the Rule of Necessity allows the board of impeachment to proceed despite the bias of some members, it does not apply if those members can be disqualified and a vote can still occur, even if it would require a unanimous decision of the remaining members.

The majority required to convict the accused depends on the circumstances. If the impeachment is the result of a recommendation by the mayor, a simple majority of the council, sitting as the board of impeachment, is required. However, if the council is moving to impeach without the mayor’s recommendation, for instance when the mayor is being impeached, a two-thirds majority is required. In both cases, the required majority is calculated based on all of the members elected to the council, not just those participating on the board of impeachment. The mayor, if sitting on the board of impeachment,
does not count when calculating the required number of votes in a city where the mayor is not a voting member. However, where the mayor is authorized to vote in the instance of a tie, the mayor, or mayor pro tem, may vote to break the tie.30

Often the bill of impeachment will contain multiple counts. It is not necessary that the accused be convicted on every count. A conviction on a single count is sufficient to displace the accused from his or her office.31 The decision of the board of impeachment must be in writing and must contain findings of fact and conclusions of law.32

Effects Of Impeachment

If the board votes for impeachment, the accused is removed from office. At that point, the accused may be said to have been impeached. The office becomes vacant, even if an appeal is filed. The vacancy is filled in the usual manner for vacancies. The accused cannot be appointed to the vacant office or be elected to that office during the same term. He or she may be elected back into office at the next term unless precluded by some other provision. If the accused is impeached, but the impeachment is overturned by the courts, the accused returns to office, unless his or her term has already expired.33 In that case, the accused has no relief that can be granted.

The accused may appeal the impeachment to the circuit court. The court will “presume the correctness of the decision by a city council sitting as a board of impeachment and uphold that decision if it is supported by competent and substantial evidence that [the court will] view in the light most favorable to the council’s determination, disregarding all contrary evidence.”34 In addition to considering any procedural defects in the process, the circuit court must find that there was competent and substantial evidence of the “good cause” upon which the impeachment was based.

If the board does not vote for impeachment, the accused remains in office. If the court reverses the impeachment, the accused would be entitled to reimbursement of any pay missed while out of office.35 The accused is not entitled to have his or her attorney’s fees reimbursed.36

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Please contact the Missouri Municipal League for Endnotes at (573) 635-9134.
In 1999, an initiative to authorize concealed carry permits (CCW permits) narrowly failed, with strong opposition from urban areas edging strong outstate support.1 In 2002, it was a felony to carry a concealed firearm anywhere.2 A CCW permitting statute went into effect in 2003, after the Governor’s veto was overridden.3 The statutes regulating firearms have repeatedly undergone significant revisions since 2003.4 In 2007, the legislature enacted § 44.101, RSMo prohibiting cities from restricting possession of firearms even when a state of emergency has been declared.5 In 2008, the U.S. Supreme Court struck down Washington, D.C.’s handgun ban and held that the Second Amendment confers an individual right to bear arms.6 In 2014, Missouri voters approved a constitutional amendment declaring that the right to bear arms “shall not be questioned.”7 In 2017, a new statute authorized carrying concealed firearms most anywhere, even without a CCW permit, with few locations exempted.8 Whether one regards these changes as a necessary rollback of unwarranted restrictions or a dangerous, ideologically-driven campaign, the changes have been indisputably far-reaching.

Public Safety

What does this mean for police and city officials concerned about public safety?

A Missouri statute preempts any order, ordinance or regulation of a city or political subdivision that is inconsistent with state law, with few exceptions.9 These recent changes create new challenges for cities. At an emotionally charged demonstration 20 years ago, police could assume the crowd was unarmed. Now, they can (and probably should) presume that anyone could be armed. The possibility of a shouting match escalating into a deadly encounter cannot be ignored. Still, cities must take care not to infringe on the rights of law-abiding citizens carrying firearms in accordance with the law. When city officials are informed that a gun-rights demonstration will be held at a coffee shop (or a park, library or governmental building), or that a person is walking down the street with an AR-15, it is important that police and the public understand what is permissible.

While Missouri law now permits carrying concealed firearms in most places, the nuances can be confusing. State law does not prohibit openly carrying firearms, but a statute permits cities to do so. Though a permit is no longer necessary to carry concealed firearms, state law treats CCW permit holders quite differently from everyone.

It is difficult to overstate just how divisive the issue of guns has become. One can easily lose sight of how dramatically the laws have changed over the last 15 years. Though public opinion is sharply divided nationwide, Missouri’s statutes have moved sharply in the direction of fewer restrictions. However, recent shootings in schools and other public places have galvanized opposition to firearms and prompted lawmakers to consider whether gun laws should be revised to protect the public.
else. It is important to understand the interplay and overlap between § 571.030 RSMo defining unlawful use of weapons (UUW) and § 571.107 RSMo listing locations where a CCW permit does not authorize carrying concealed firearms to determine where firearms are permitted.

Prior to 2017, § 571.030.1 made it a crime of UUW to carry a concealed firearm anywhere, though CCW permit holders have been exempted since 2003.¹⁰ CCW permit holders were (and still are) restricted from carrying concealed firearms in locations listed in § 571.107 (police stations, polling places, courthouses, airports, schools, and taverns, among others). Starting in 2017, § 571.030.1 made it a crime to carry a concealed firearm only in those locations listed in § 571.107.¹¹ Persons without a CCW permit may now carry concealed firearms most anywhere except the locations listed in § 571.107. Additionally, this 2017 change created two different penalties for CCW permit holders and non-CCW permit holders for carrying concealed firearms in a restricted area. If a non-CCW permit holder carries a concealed firearm into a location listed in § 571.107, that person is guilty of UUW, a misdemeanor.¹² However, if a CCW permit holder carries a concealed firearm into such location, doing so is not “a criminal act but may subject the person to denial to the premises” and a $100 fine.¹³

Section 571.107 is silent regarding openly carrying firearms.¹⁴ Section 571.030.1 only criminalizes carrying concealed firearms into places listed in § 571.107. Section 571.107 states that no CCW permit “shall authorize any person to carry concealed firearms into the listed locations. Subdivision (8) of § 571.030.1 prohibits carrying firearms (openly or concealed) into churches, election precincts, or buildings “owned or occupied by … the federal government, state government, or political subdivision.” Similarly, § 571.030.1(10) prohibits carrying firearms (openly or concealed) into schools or school functions. However, § 571.030.4 provides that subdivisions (8) and (10) do not apply to CCW permit holders. While § 571.107 prohibits CCW permit holders from carrying concealed firearms into schools or police stations, § 571.107 does not address openly carrying firearms.

While cities may ban openly carrying firearms under § 21.750, this statute was amended in 2014 to authorize CCW permit holders to openly carry in cities banning open carrying, so long as they carry their permits.¹⁵ If a city does not ban open carry, there is generally no prohibition on CCW permit holders openly carrying firearms even in locations listed in § 571.107. Now that an open carry ban is unenforceable against CCW permit holders, does that mean a person could openly carry firearms into a location listed § 571.107, in spite of a city’s open carry ban? According to a recent case, the answer is no. However, some unanswered questions remain, and the decision does not address cities with no open carry ban.

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Zoological Park Subdistrict v. Jeffry Smith

In Zoological Park Subdistrict v. Jeffry Smith, St. Louis Zoo personnel were informed that a CCW permit holder intended to conduct an open carry demonstration at the Zoo. The city of St. Louis bans open carrying. Signs at the Zoo state that firearms are prohibited. The Zoo obtained an injunction preventing the demonstration, asserting that, as an amusement park, firearms are prohibited in subsections (10), (11), and (13) of § 571.107. Smith has appealed. The court agreed that the Zoo is an amusement park/educational facility/daycare, and that concealed firearms are banned locations. Further, the court found that openly carrying firearms was prohibited in the Zoo as well.

The Zoo argued that Missouri law “prohibits the open or concealed carrying of firearms onto its property based on the fact that it falls under several of the Gun Free Zone categories identified in … § 571.107.1…. The court did not conclude that § 571.107 directly bans openly carrying firearms in places listed in § 571.107 (which the Zoo describes as Gun Free Zones). Rather, the court relied on St. Louis's open carry ban. The Zoo contended that, because § 21.750.3 only exempts CCW permit holders like Smith from a city's open carry ban if he carries his CCW permit, and § 571.107 prohibits CCW permit holders from carrying concealed firearms in places listed therein, St. Louis's open carry ban is not preempted in such locations. The Zoo argued that § 571.107 “sets forth locations and facilities where concealed carry endorsements and permits are not valid and, therefore, do not authorize the concealed carrying of firearms. Because §21.750.3 allowing the open carry of firearms, is premised on a valid CCW permit, in places where a CCW permit does not authorize the carrying of a concealed weapon, a person who holds an open carry endorsement/permit cannot openly carry his or her firearm in those places either.”

The court agreed, though it found “the statute may be somewhat ambiguous in this regard.” Presumably then, if St. Louis did not ban open carry, there would be no restriction on open carrying in “Gun Free Zones.”

This raises the question of whether the locations in § 571.107 are Gun Free Zones if that status hinges on a city's open carry ban. Section 21.750.3 does not apply in cities with no open carry ban. Furthermore, CCW permit holders must carry permits anytime they carry firearms, whether concealed or openly. Failure to carry a permit is a non-criminal offense with a $35 fine. An alternate construction to the Zoo’s theory is that, if a person carries a CCW permit, the ordinance banning open carry is preempted, without regard for any restriction in state law regarding concealed firearms. There is no explicit mention of the limitations of § 571.107 in § 21.750.3.

Did the legislature intend for § 571.107 to have one meaning in cities banning...
open carry and a different meaning in others? Under what statute or ordinance could a person be prosecuted for openly carrying in these locations? While the legislature is presumed to act with full awareness of the present state of the law, including judicial and legislative precedent, this presumption does not extend to municipal ordinances. The characterization of places in § 571.107 as Gun Free Zones is undercut by the provisions authorizing carrying concealed firearms with consent of the chief (for police stations) or a school board/principal (for schools). Section 571.107.1(5) that bans carrying concealed firearms at a meeting of a local government, permits members of the governmental body with CCW permits to carry concealed firearms at meetings. It is difficult to argue that these places are Gun Free Zones where substantial exceptions are made.

Firearms In Vehicles

For most of the locations in subdivisions (1) through (17) of § 571.107.1, the following statement appears: “Possession of a firearm in a vehicle on the premises of any of the areas listed in this subdivision shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.” Does this mean it is a criminal offense to remove a firearm from a vehicle and openly carry it? There are legal and practical problems with this construction. To prosecute someone for openly carrying (or for refusing to leave), prosecutors must prove the elements of the offense, including that the firearm was removed from a vehicle. There may not be a vehicle on the premises. Penal statutes are strictly construed against the state and the rule of lenity dictates that ambiguity be interpreted in a defendant's favor. The more reasonable interpretation is that, since § 571.107.1 states that CCW permits authorize persons to “carry concealed firearms on or about [a] his or her person or [b] vehicle throughout the state,” only [a] is prohibited at the locations listed in subdivisions (1) through (17).

The Zoo case has important implications for cities across the state. If upheld, cities can prohibit firearms in sensitive areas via ordinance. If reversed, cities would be unable to restrict open carry in the locations listed in § 571.107, even though these locations have been deemed too sensitive for concealed firearms. Cities should give careful consideration to how their government buildings and other facilities listed in § 571.107 are protected. The public should be skeptical that any place is truly off limits to firearms, particularly in cities with no open carry ban.

Conclusion

Is the public protected by a prohibition on carrying concealed firearms in sensitive locations if it is legal to openly carry firearms in such locations? Did the General Assembly intend, in 2014, to permit open carry in the places listed in § 571.107 when it preempted open carry bans as to CCW permit holders? The rationale for Missouri’s firearms laws is muddled at best. Until the legislature or the courts provide clarity, local officials should work closely with their attorneys to determine which locations are sensitive and examine the appropriate steps to protect the public without infringing on the rights of their citizens.
What is the NLC Service Line Warranty Program?
Nationwide, a water main breaks every two minutes. The same elements that cause those failures also exist on your residents’ private lines: age of lines, deteriorating pipe material, freezing and thawing, and ground shifting. When private service lines break or leak, many homeowners call the city first and are often surprised – and frustrated – to learn that the city cannot help. The National League of Cities (NLC) Service Line Warranty Program was conceived in partnership with the National League of Cities to educate property owners about their service line responsibilities and to help residents avoid the out-of-pocket expense for unanticipated and potentially costly service line repairs and replacements.

How many cities and homeowners participate in the program?
We currently have more than 400 municipal partnerships and more than 520,000 customers. Over the last three years, the program has completed more than 76,000 jobs, saving homeowners more than $45 million. In Missouri, there are 10 partnerships; over the last three years, more than 2,600 jobs saved homeowners more than $1.5 million.

Who administers the program?
Utility Service Partners (USP), a HomeServe company, administers the program and is responsible for all aspects of the program, including marketing, billing, customer service, and performing all repairs to local code. USP has a rating of A+ from the Better Business Bureau and consistently achieves 98 percent customer satisfaction.

How does the program benefit homeowners?
With aging infrastructure causing more service disruptions every year, homeowners are becoming increasingly frustrated with the high cost and hassle of unforeseen repairs to their service lines, especially when many of them first learn of their financial responsibilities when they call the city during an emergency. Studies show that most Americans do not have enough savings to cover an emergency repair cost, ranging from hundreds to as much as $3,500 or more. In addition, citizens can be overwhelmed by having to find a trustworthy contractor. The program provides affordable repair plans backed by vetted, local area contractors.

How are residents educated about their service line responsibility and the program?
USP mails each resident a letter, which explains their service line responsibility and outlines the city’s endorsement. This is followed by a reminder letter two weeks later. All homeowners will have the option to enroll in the program, regardless of the age of their residence, and a pre-inspection of the property is not required.
What items are included as part of the warranty?
The external water and/or sewer line warranty covers up to $8,500 per incident for repair/replacement of leaking, clogged or broken lines from the point of utility connection to the home exterior. If any part of the line is broken and/or leaking, Service Line Warranty of America will repair or replace the line in order to restore the service (including clearing tree roots from the water or sewer line). The program also offers a warranty for in-home plumbing that covers up to $3,000 per incident on all water, sewer and drain lines inside the home after the point of entry.

What is the claims process?
We are committed to making the claims process convenient, easy, fast and all inclusive. We operate an in-house contact center with more than 400 employees. Within our contact center, the repair management group is staffed around the clock with live agents ready to serve our customers whenever they need assistance. After calling to report a home repair emergency, the customer receives a callback from a qualified contractor within one hour to agree upon a convenient time for the contractor to arrive at the home to execute the repair. Recent advancements in digital technology with our repair management platform have reduced callback times to under 30 minutes and contractor arrival to under two hours in many instances.

Who performs the repair work?
We currently manage and deploy more than 1,100 independent contractor firms in North America, employing thousands of highly qualified service technicians. We are very selective when recruiting contractors to be part of our network. In fact, less than 10 percent of all contractors researched and interviewed are actually selected to become network contractors. Our contractor compliance requirements include: valid and active licensing, bonding and liability, workers compensation and motor vehicle insurance; certification by the contractor that their employees are legally able to work in the U.S.; drug screening and state background checks; references from previous jobs they have completed for residential customers; willingness to sign our agreement that stipulates performance standards, code of conduct and more.

What is required for cities to participate?
The city allows the use of the city name/logo on marketing materials sent to citizens. The logo is utilized to indicate that there is a formal relationship in place and to let customers know that the offering is legitimate; it is for the customers benefit; and has the approval of the city. The city reviews and approves all materials prior to mailing to residents, and all materials clearly state that the services are optional and that they are offered by USP, a private company that is separate from the city.

Does this program cost the city any money?
Not a cent. USP pays for all marketing materials and program administration. Furthermore, the program will pay the city a royalty for every resident that participates in the program. Some cities apply their commission to community initiatives including the enhancement of public parks; assistance to local charities; and programs to help disadvantaged citizens with utility bills and other needs.

What benefit does the city receive from offering the program?
By offering the program, the city can reduce residents’ frustration over utility line failures by bringing them low-cost service options. This enhances residents’ image of the city because the program is offered as a service by the city. These programs also generate extra revenue for the city through the per-policy royalty. Finally our programs help to stimulate the local economy. We only use local contractors to complete the repairs helping to keep the dollars in the local community.
The 2018 MML Legislative Conference brought together hundreds of municipal officials to learn about the most pressing issues under consideration at the state level that affect Missouri communities. Speakers included Rep. Shamed Dogan, chair of the House Local Government Committee, and Rep. Kevin Corlew, chair of Missouri’s 21st Century Transportation Task Force.
Buckle Up. Phone Down.

A group of Missouri mayors came together on Feb. 14 after the MML Legislative Conference to voice support for an initiative aimed at encouraging people to wear their seat belts and put down their cell phones while driving.

Jefferson City Mayor Carrie Tergin spearheaded the effort to promote the Buckle Up/Phone Down campaign, an outreach program the Missouri Department of Transportation implemented more than a year ago. Tergin was joined by about 25 mayors, including Kansas City Mayor Sly James, Springfield Mayor Ken McClure and Florissant Mayor Tom Schneider, in voicing support for Buckle Up/Phone Down, also known as BUPD, on electronic message boards throughout the state.

“There are two simple acts that can save your life, and the lives of others,” Tergin said. “Buckle up and make sure every passenger in your vehicle is buckled up. If you’re driving, put the phone down.”

“No text, email or phone call is more important than a life,” said James.

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### MML 2018 Calendar of Events

#### March
- 22..... MML Webinar: Building Inclusion by Ending Workplace Bullying
- 26-28..... Main Street Now Conference, Kansas City, Missouri

#### April
- 3..... Municipal Election Day
- 8-14..... Missouri Local Government Week
- 10..... 4th Annual Missouri Partners In Governance Conference, Columbia, Missouri
- 12..... MML Webinar: Sources of Revenue and Financing Alternatives for Missouri Municipalities
- 12..... MML Northwest Regional Meeting, Cameron, Missouri
- 19..... MML Southeast Regional Meeting, Farmington, Missouri
- 28..... MML Pop-up Training for Municipal Officials, El Dorado Springs, Missouri

#### May
- 1-2..... Missouri Concrete Conference, Rolla, Missouri
- 6-9..... National Government Finance Officers Association 112th Annual Conference, St. Louis, Missouri
- 10..... MML Webinar: Post Disaster Recovery Effectively Using CDBG-DR Funds
- 17..... MML Board of Directors Meeting, Jefferson City, Missouri
- 20-23..... International Institute of Municipal Clerks, Norfolk, Missouri
- 24..... MML West Gate Regional Meeting, Location TBD

#### June
- 7-8..... MML Elected Officials Training Conference, Columbia, Missouri
- 12..... MML Webinar: The Benefits of Native Plants for Communities
- 19..... MML Webinar: Fundamentals of Municipal Contracting

*Find more events and details on [www.mocities.com](http://www.mocities.com) and in the MML monthly e-newsletter.*

### Dedicated Service

Grandview Mayor Leonard Jones and the Board of Aldermen would like to thank Cory Smith for his dedication and hard work over the 26 years he served as city administrator. Smith retired at the end of 2017 after more than 40 years working for Grandview. He started out as assistant to the city administrator and worked his way up, appointed city administrator in 1991. In retirement, Smith is looking forward to traveling and spending more time with wife, Marilyn, and their dog, Jenny.

### MML Welcomes New Board Member Rob Binney

The Missouri Municipal League welcomes Mayor Pro Tem Rob Binney, Lee’s Summit, as a member of the MML Board of Directors. Mayor Pro Tem Binney was appointed at the November 2017 MML Board meeting. Binney has served on the Lee’s Summit City Council since 2012. He was elected Mayor Pro Tem by the Council in 2016 and is currently serving his second term in that role. He was re-elected to a Council seat for District 1 in 2016. Binney grew up in South Kansas City and has been a Lee’s Summit resident for almost 20 years. He serves as the chairman of the MML Finance and Taxation policy committee and on the MML Resolutions Committee.

### Environmental Achievement Award

The Kansas City Water Communications Team received a National Environmental Achievement Award from the National Association of Clean Water Agencies (NACWA) for their “Don’t Flush the Wipes: A Horror Story” video.

### Engineering Excellence Award

The city of Cape Girardeau and Horner & Shifrin (a participating affiliate member of MML) were honored with an Engineering Excellence Award for the S. Sprigg St. Bridge Project. The award was presented by The American Council of Engineering Companies of Missouri (ACEC Missouri) at the organization’s annual awards banquet in February.
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