



MARCH 2017

Upcoming League Meetings

- Thursday, March 23, Membership Meeting, Webster Groves
- Wednesday, April 26, Newly Elected Officials Seminar, Maryland Heights
- Thursday, April 27, Membership Meeting, Creve Coeur
- Wednesday, May 31, MUNI Awards & Installation Dinner, Sheraton Westport

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March 23 Meeting at Webster Groves Rec Center

The next League meeting will be held at 7:15 pm on Thursday, March 23 at the Webster Groves Recreation Center, 33 E. Glendale Rd. Map (Directions: From I-170 or I-64/Hwy 40, exit at southbound Brentwood Blvd. Go south to Elm Ave. and turn left at the traffic light. Continue south crossing under I-44. The center will be on the left just past Hixson Middle School.

PLEASE NOTE THAT REFRESHMENTS WILL BE SERVED PRIOR TO THE MEETING AT 6:30 PM.

Program: St. Louis Regional Freightway - Mary Lamie was selected to lead the St. Louis region's new freight district in July of 2015. As Executive Director she will highlight her responsibilities, in-

cluding evaluating the freight needs of the bi-state region and the freight network's current operational status. She is developing public-private partnerships and creating a foundation for planning, marketing and advocacy of the bi-state region as a national freight hub

March 23 Training Program on Telcom & Right-of-Way

The next Municipal Officials Training Academy program is set for Thursday, March 23 from Noon to 1:15 p.m. The program is entitled "Wireless Facilities in the Rights-of-Way: Changing Laws, Technologies, and Trends" and will be presented by Dan Vogel and Erin Seele of the Cunningham, Vogel & Rost law firm.

Officials are invited to attend via Webinar or in person at Frontenac City Hall. Click HERE to register for the webinar.

Contact the Municipal League office at staff@stlmuni.org for in-person attendance. Space is

limited to the first 25 registrants.

The cost is \$20 per person unless the city has an annual subscription. Please make checks payable to and mail to the Municipal League of Metro St. Louis. Registration by Tuesday, February 21 is encouraged to ensure that all materials are emailed to registrants prior to the Webinar.

Due to the subsidized and focused nature of the Academy, persons attending must be authorized to attend on behalf of a Missouri municipality or political subdivision. Addition-

ally, registrants will need to state the municipality or political subdivision that has authorized the attendance of the registrant on its behalf upon registration. Approval for persons not attending on behalf of a specific municipality will be subject to the discretion of the Municipal League of Metro St. Louis and Cunningham, Vogel & Rost, P.C on a class-by-class basis and such approval may be denied.

Park Planning Grants Available

The Municipal Park Grant Commission is accepting planning grant applications to be awarded quarterly. If your city is planning to submit a planning grant application for consideration, please send it to the Municipal League office by Monday, April 24. The applications can be found on the Park Commission website: http://www.muniparkgrants.org/applications.html

February Meeting Synopsis

At the February meeting, the membership heard a presentation from Brian Hoelscher, Executive Director, and Lance LeComb Manager of Public Affairs, for the Metropolitan Sewer District who had been invited to provide an update on stormwater funding. Mr. Hoelscher thanked League members for their support of Proposition S, which passed in 2016 and helped provide additional stormwater funding for the region. A two cent property tax is used for stormwater management planning and compliance with Phase II stormwater guidelines to remove pollutants.

A ten cent tax will be used for channelization and other stormwater improvement projects totaling \$67 million by 2021. The district has identified \$500 million in funded stormwater projects so MSD is in the process of developing another stormwater tax proposal for presentation its Rate Commission in 2018. If the proposal is approved it could be on the April 2019 ballot.

MSD officials are seeking public input on the types of services desired so a series of meetings will be held throughout the district for this purpose. Mr. LeComb encouraged League members to contact MSD if

group presentations are desired. He also stated that municipal and public surveys will be conducted.

President Barry Glantz reported that the League Board had met to discuss Proposition P, the county-wide public safety sales tax that will be on the April ballot. It was the unanimous position of the Board that the League take no position on the proposal. Individual municipalities may wish to do so.

We wish to thank Mayor Bob Doerr and the officials and employees of the City of Bellefontaine Neighbors, who hosted the meeting.

Land Use and the Law - by Mary B. Schultz

Non-Conforming Uses Predating Zoning and Land Use Regulations

Zoning and land use regulations which control the use of property prospectively, and which have a substantial relationship to public health, safety, morals or general welfare, are upheld as a proper exercise of government power. However, nonconforming uses of property that lawfully existed prior to applicable zoning and land use regulations are generally exempt from those regulations. Heck v. City of Pacific Board of Zoning Adjustment, 447 S.W. 3d 202, 205 (Mo.App.ED 2014); Storage Masters—Chesterfield, L.L.C. v. City of Chesterfield, 27 SW3d 862, 865 (Mo.App.ED 2000); City of Sugar Creek v. Reese, 969 SW2d 888, 891 (Mo.App.WD 1998). For example, a city desiring to control density may enact a zoning ordinance requiring residential lots to be a minimum of one acre in size. That city could not lawfully require existing homes on lots of less than an acre be demolished unless it paid fair market value or "just compensation" for those homes. Missouri has determined such pre-existing nonconforming uses constitute vested property rights which may not be prohibited by zoning ordinances or other restrictions without compensation. City of Sugar Creek, 969 S.W.3d at 891. To terminate a pre-existing nonconforming use would constitute a taking of private property without compensation in violation of Article I, § 26 of the Missouri Constitution of 1945. Hoffmann v. Kinealy, 389 S.W.2d 745 (Mo.banc 1965).

State and local governments have employed various techniques for terminating nonconforming uses in an effort to make their land use controls more effective. For example, property put to a nonconforming use may be condemned through the power of eminent domain.

The nonconforming use may be eliminated as a public nuisance. A nonconforming use may be prohibited after it has been abandoned or there has been an interruption or discontinuation of the use for a period of time. Material extensions or repairs of nonconforming uses may be prohibited. Such methods generally have been approved in Missouri.

Another method for terminating nonconforming uses that has been successfully employed in a majority of jurisdictions is amortization. Amortization regulations require that a nonconforming use be terminated at the expiration of a specified period of time, which period is to equal the remaining useful economic life of the use. The property owner may continue the nonconforming use for the specified period, but must either conform or eliminate the use at the end of that period. Most jurisdictions accept amortization as a valid means of addressing nonconforming uses. Missouri, however, is one of the few states which has refused to do so. In Hoffmann v. Kinealy, *supra*, the Missouri Supreme Court held an amortization provision in the St. Louis Zoning Ordinance constituted a taking of private property for public use without just compensation in violation of Article I, § 26 of the Missouri Constitution of 1945. Hoffmann remains good law in Missouri.

Although some Missouri courts have stricken amortization regulations, others have found ways to distinguish Hoffmann, allowing local governments to "regulate", but not "prohibit", nonconforming uses. An analysis of the case law reveals however that, as a practical matter, the distinction between "regulation" and "prohibition" may be a distinction without a difference. For example, an ordinance limiting the number and height of billboards after a three year "grace period" was upheld as a valid "regulation" of a nonconforming use.

In a 2014 case, the Missouri Court of Appeals for the

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Nominating Committee to Meet in April

The League's Nominating Committee will meet in early April after the municipal elections to make recommendations to the full membership on a slate of candidates for officers and board members for the 2017-2018 year. There will be at least two vacancies on the Board to be filled.

The Board meets about nine times per year and is open to any elected official from a member municipality. If you would like to be considered by the Committee, please send a letter to the League office by April 1 indicating your interest.

The staff will compile all letters received for the Committee to review. They will consider attendance at League meetings and service on committees among other criteria.

The Committee will be chaired by Mayor Mike Schneider of Overland, Immediate Past President. The recommended slate of candidates will be presented at the April meeting. So, if you are interested in serving on the Board please let us know!

MUNI Award Nominations Sought

Is your municipality an award winner? You will never know unless you nominate your community, collaborating cities, or a group in your municipality for a 2017 Muni Award presented by the Municipal League of Metro St. Louis.

Since their inception, the MUNI Awards have provided an opportunity for League members from across the County to come together to recognize their fellow municipalities and take home a MUNI Award.

You can be a winner this year by nominating your city or a group within your city for achievement in one of the following categories: Arts/Culture; Citizen Engagement; Collaboration; Parks/Recreation/Wellness; Public Safety, and Sustainability/Preservation.

To nominate, send a letter to the League office identifying the city, organization or person and why that group or individual should be recognized for accomplishment in one of the designated categories.

Nominations must be received at the Municipal League office by April 21. Winning a MUNI Award tells your residents what you are doing right for your community. Then, join us on May 31 at the Sheraton Westport Chalet in Maryland Heights when the MUNI Award will be presented and new Municipal League officers will be installed.

Legislative Update

The General Assembly is now focusing on floor debate on priority bills. To see the full legislative report for the week ended March 3, click [here](#).

Court Bills

[SB 520](#) (Emery) - Enacts favorable revisions to SB 5 and SB 572.

Economic Development Bills

[HJR 20](#) (Ellington) - Constitutional amendment to require countywide public vote for TIF projects. Local Government Committee. Heard 3/8.

Election Bills

[HB 353](#) (Eggleston) - Increase population limit to 2000 for cities to forgo elections if the number of candidates equals the number of open seats. Perfected 3/6

[HJR 13](#) (Bahr) - Constitutional amendment to establish term limits of 12 years for local offices. Elections Committee. Heard 3/1

General Government Bills

[HB 451](#) (Austin) - Provides that change in population shall not remove a city,

county or political subdivision from operation of a law. Passed House 3/1.

[HB 849](#) (Pfausch) - Political subdivisions not filing annual financial reports with the auditor subject to \$500 per day fine. Government Efficiency Committee

Land Use Bills

[HB 608](#) (Anderson) - Prohibits cities from enforcing or enacting ordinances that prohibit residential dwelling rentals (Air B&B). Ordinances in effect prior to January 1, 2018, may be enforced. Taxes to be collected. Heard 2/21 General Laws Committee.

[HB 1189](#) (Cross) - Prohibits municipalities from conducting interior property inspections of residences.

Police & Public Safety Bills

[HB 504](#) (Ellington) - Requires police officers to wear a video camera while on duty to record any interaction between the officer and a member of

the public. To be funded with 5% of traffic fines collected within the jurisdiction

[HB 1191](#) (Smith) - Requires police officers in St. Louis County to be paid a minimum of \$20 per hour

Tax Issues

[HJR 1](#) (Cross) & [HJR 32](#) (Cookson) Proposes a constitutional amendment to eliminate personal property tax

[SB 105](#) (Wallingford) - Requires the Department of Revenue to enter into the Streamlined Sales and Use Tax Agreement. Ways & Means Committee. Heard 2/7. Passed Committee 2/28

[SJR 13](#) (Emery) - Eliminates income taxes and replaces them with an expanded sales and use tax. Ways & Means Committee

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The March 23 Meeting will be at the Webster
Groves Recreation Center

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*See our website at
www.stlmuni.org*

Land Use and the Law (continued)

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Eastern District in Heck v. City of Pacific Board of Zoning Adjustment, 447 S.W.3d at 205-206, summarized Missouri law on nonconforming uses:

The term “nonconforming use” means a use of land that lawfully existed prior to the enactment of a zoning ordinance and which is maintained after the effective date of the ordinance even though not in compliance with use restrictions. A nonconforming use is a vested property right that may not be abrogated by a zoning ordinance. Zoning ordinances must permit continuation of nonconforming uses in existence at the time of enactment to avoid violation of constitutional provisions preventing the taking of private property without compensation. At the same time, our Supreme Court has recognized that the spirit of zoning ordinances always has been and still is to diminish and decrease nonconforming uses. Accordingly, Missouri courts have allowed municipalities to regulate and limit the nonconforming uses by various means such as prohibiting the resumption of a nonconforming use after its abandonment or discontinuance, prohibiting the rebuilding or alteration of nonconforming structures occupied for nonconforming uses, and prohibiting or rigidly restricting a change from one nonconforming use to another. The party claiming the vested property right has the burden of proving the existence of a prior nonconforming use. Typically, the existence of a nonconforming use is asserted as an affirmative defense when an action is brought to enforce a zoning ordinance.

Id. (internal citations and quotations omitted). See State ex rel. Claudia Lee & Associates, Inc. v. Board of Zoning Adjustment of Kansas City, 297 S.W.3d 107, 112 (Mo.App.WD 2009) (discussion of what is necessary to establish a “vested right” in a nonconforming use).

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