



May 31 Installation Dinner and MUNI Awards

MAY 2017

Upcoming League Meetings

- Wednesday, May 31, MUNI Awards & Installation Dinner, Sheraton Westport

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We hope that you will join your fellow officials at the Municipal League's 6th Annual "Muni" Awards Ceremony and Installation of Officers on Wednesday, May 31 at the Sheraton Westport Chalet at Westport Plaza in Maryland Heights. The cost is \$35 per person. The social hour (cash bar) will begin at 6:00 pm with the dinner at 7:00 pm, followed by the MUNI awards.

Legislators from St. Louis City and County are also invited as guests of the League although you are also encouraged to contact them and request that they attend..

The Muni Awards were introduced in 2012 and created a fun and exciting event as we announce award winners in a variety of categories

highlighting many of the innovative and collaborative efforts of our member municipalities. The categories are:

- Art & Culture
- Citizen Engagement
- Collaboration
- Parks & Recreation
- Public Safety
- Sustainability, and
- Buzz Westfall Award for Excellence in Local Government

We will also install the following new officers and board members:

- President – **Councilmember Chuck Caverly** of Maryland Heights;
Vice President – **Mayor Norm McCourt** of Black Jack
Finance Chairman – Mayor Matt Robinson of

Hazelwood
New Board Members – **Mayor Terry Briggs** of Bridgeton and **Councilmember Cindy Pool** of Ellisville.

Large group reservations are encouraged through your municipal clerk, while individual or small groups can contact the League office directly.

This is a wonderful opportunity to recognize these unique programs that serve our citizens and can be replicated in many of our municipalities.

May 25 Training Program Features Legislative Recap

The next Municipal Officials Training Academy program is set for **Thursday, May 25** from Noon to 1:15 p.m. The program is entitled "Legislative Recap" and will be presented by League Executive Director Pat Kelly.

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, May 23 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 jurisdiction 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.

April Meeting Synopsis

At the April meeting the membership heard an informative presentation from Kitty Ratcliffe, President of the St. Louis Convention & Visitors Commission, also known as Explore St. Louis. They work to encourage economic development through tourism. The CVC is the resulting of combining separate tourism bureaus in the City and County in the 1970s. It is funded by 3.75% tax on hotels in each jurisdiction, with 4/15 of the tax allocated to the Regional Arts Commission. Over \$3 million is spent annually on advertising to different markets around the Midwest. She played examples of the commercials.

In 2015, 25.8 million St. Louis hosted 25.8 million visitors who spent \$5.8 billion and supported 88,800 jobs, mostly at small businesses. The St. Louis area accounts for 31% of the State's tourists and generated \$1 billion in taxes.

The CVC took over operations of the convention center in 1991 and the dome was added later as a part of the center. She noted that the convention center is a major economic engine for the region but it is becoming dated due to improvements that other cities have completed or planned to their convention centers.

Recently the city hosted a school robotics convention that used 30,000 hotel rooms in the City and the surrounding counties, including Illinois. However, that convention has outgrown the center and will be going to other locations in the future. Ms. Ratcliffe indicated that St. Louis will continue to lose market share if improvements are not done.

She said that current bond payments for the dome by the City (23%), County (25%) and State (50%) will end in 2021. Taxes levied for the dome could be extended to cover improvements but State officials have yet to commit to funding.

Designs will be created to determine the best approach to pursue.

Also at the meeting the membership approved a policy supporting SB 190, the Economic Development and Infrastructure Investment Act proposed by Ameren Missouri. Page Selby, representing Ameren, indicated that the bill would allow for \$1 billion in infrastructure investment by the company, yielding \$2.4 billion in benefits to the State. She noted that electric rates in Missouri have increased 47% since 2007, while some states which have this legislation have seen a decrease. This includes five straight years of decreases in Illinois. Two of the major investments would be for cyber security prevent attacks on the power grid and the installation of smart meters for customers to help restore power from outages sooner.

Thanks to President Barry Glantz and the officials and employees of the City of Creve Coeur for hosting the meeting.

Legislature Approaches Final Week - Session Ends May 12

As the Legislature enters its last week, the Senate is bogged down and little is getting through. This bodes well for detrimental legislation that may not be brought up. At this time of year it is common to add bills as amendments to other legislation. Bills that still have a chance for passage include:

[HB 104](#) (Love) - Repeals provisions relating to prevailing wages on public works projects. Senate Informal 3rd Reading Calendar.

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

[HB 451](#) (Austin) - Specifies that a change in population shall not remove a city, county, or political subdivision from the operation of a law. Senate Informal 3rd Reading Calendar

[HB 656](#) (Rhodes) - Changes the law regarding the uniform wireless communication infrastructure deployment act. Utilities Committee. The Substitute bill virtually eliminates municipal authority over the public rights-of-way and places gross receipts business li-

censes and other fees on wireless service providers in jeopardy. Senate 3rd Reading Calendar

[HB 849](#) (Pfausch) - Political subdivisions not filing annual financial reports with the auditor subject to \$500 per day fine. Senate 3rd Reading Calendar

[SB 95](#) (Sater) - Amended in House committee to change the law regarding the sale of public bonds to require political subdivisions to issue debt at public sale. House 3rd Reading Calendar.

[SB 111](#) (Hegeman) - Amended in House to require that anyone running for office at a municipal, city, county, or statewide level must use their legal last name or maiden name. Also amended in House to change the law regarding the sale of public bonds to require political subdivisions to issue debt at public sale. Passed House 4/26. Returned to Senate for consideration of House amendments.

[HB 275](#) (Spencer) - Prohibits the use of automated traffic enforcement systems, and requires any political subdivision to complete or terminate any automated traffic enforcement contract within one year. Passed House 4/3. Senate Transportation Committee

Land Use and the Law by Mary B. Schultz

The purpose of zoning is to improve a community through land use planning and control of land development. The goal is to confine certain uses to designated areas without imposing undue burdens on individual property owners. The public interest in regulating land development for the benefit of the community is balanced against the private interest in individual freedom to use property for whatever purposes desired. *Huttig v. City of Richmond Heights*, 372 S.W.2d 833, 842 (Mo. 1963). Zoning adversely affects individual property rights, limiting development of even those uses that are not intrinsically offensive or harmful. Nevertheless, zoning is generally recognized as a valid exercise of "police power" for the "general welfare" of the community, and property owners are not entitled to compensation or other relief from the impact of zoning on the use and enjoyment of their property.

When does a zoning regulation go too far? Particular zoning regulations may be deemed a "taking" requiring "just compensation" under the Fifth and Fourteenth Amendments to the U.S. Constitution, or may be declared invalid, where they go beyond the enabling statutory authority, in Missouri the Zoning Enabling Act, §§ 89.010, R.S.Mo. *et seq.* (2000, as amended), where they cannot be shown to promote the general welfare, where they exceed what is reasonably necessary to do so, or where they deprive the property owner of all beneficial use of his property. If a zoning regulation goes too far as it relates to particular property, the government may in some cases condemn the property under its power of eminent domain and pay "just compensation" to the affected property owner, or the property owner may file a lawsuit seeking to have the existing zoning classification of property declared invalid.

When zoning as applied to particular property is challenged in court, there are two Missouri Supreme Court

cases on zoning that are often quoted, *Vatterott v. City of Florissant* and *Huttig v. City of Richmond Heights*. However, in my opinion the analysis in decisions written by Judge Harold Satz (deceased for more than a decade now) in three cases decided by the Missouri Court of Appeals for the Eastern District are instructive on the methodology to be applied in zoning cases: *Hoffman v. City of Town and Country* (decided in 1992); *Elam v. City of St. Ann* (decided in 1990); and *Loomstein v. St. Louis County* (decided in 1980). While there are many other zoning decisions in the Missouri Court of Appeals for the Eastern District, and the analysis appears very complicated, the decisions reflect a common rule of real estate: Location. Location. What is the surrounding land use and development? Is the property reasonably adapted to permitted uses allowed under existing zoning? There is often a "battle of experts" developed in the record before reviewing courts. *E.g.*, *Huttig*, 372 S.W.2d at 836.

The local government's legislative judgment in applying a zoning classification to a particular parcel should be presumed valid. *Vatterott v. City of Florissant*, 462 S.W.2d 711, 713 (Mo. 1971); *Hoffman v. City of Town and Country*, 831 S.W.2d 223, 229 (Mo.App.ED 1992). Reviewing courts are to defer to a city's zoning classification. If the benefit to the general public benefit of an existing zoning classification outweighs the private detriment, a city's zoning classification is to be upheld by reviewing courts. *See, e.g.*, *Loomstein v. St. Louis County*, 609 S.W.2d 443, 447 (Mo.App.ED 1980). Only where the private detriment to the property owner so grossly outweighs any public benefit, is the city's existing zoning declared "arbitrary and unreasonable". Factors relevant to a determination of private detriment include the adaptability of the property to uses permitted by the existing zoning, and the effect of existing zoning

on property value. The property owner must prove the property cannot feasibly be developed for any uses permitted within the zoning district. This usually involves an economic analysis of the cost of developing the property for uses permitted by the existing zoning, and of the market value of the property. It is not sufficient for the property owner to establish that the existing zoning does not allow for the "highest and best", or a more commercially valuable, use of the property. While local governments all too often become embroiled in a battle among experts, such evidence of private detriment is best refuted by showing that surrounding or similar properties under the same zoning classification are being used.

If the presumption of validity is overcome in a particular case, then the reviewing court in that case is to decide whether the zoning of a particular parcel is "fairly debatable". If the propriety of an existing zoning classification is "fairly debatable", the courts should defer to the local government's legislative decision and uphold the zoning. In other words, in order for a property owner to rebut the presumption favoring existing zoning, that property owner must prove that the unreasonableness of the zoning is not even "fairly debatable". *See e.g.*, *Hoffman v. City of Town and Country*, 831 S.W.2d at 228-229; *Elam v. City of St. Ann*, 784 S.W.2d 330 (Mo.App. 1990). I have observed that the factors relating to the first prong of the decision overlap with the "fairly debatable" prong. Indeed, in Judge Satz's decision in the *Hoffman* case, Judge Satz said the ONLY issue to be reviewed in that case was whether the city's decision to

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Plan to join us at the Installation and MUNI
Awards on May 31

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deny a rezoning petition by the property owner was “fairly debatable”. *Hoffman*, 831 S.W.2d at 228. Frankly, I am unsure of whether Judge Satz’s decisions from the *Loomstein* case in 1980 to the *Hoffman* case in 1992 reflect his own evolution of analysis, or whether the facts and circumstances of those cases impel differing results. In the *Loomstein* and *Hoffman* cases, the court determined respectively that the city’s existing zoning classification was unconstitutional. In the *Elam* case, decided by the Missouri Court of Appeals in 1990, the court upheld St. Ann’s decision to rezone property from a commercial zoning classification to a residential classification.

In summary, although the legal analysis in various court decisions is very complicated, in my opinion, as a practical matter whether a particular city’s particular zoning decision is upheld by a reviewing court distills down to a simple and stark reality: where is the property located and what are the surrounding land uses? Location. Location. Location.

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This column is intended to provide general information only. It does not constitute, nor should be relied upon, as legal advice or a legal opinion relating to specific facts or circumstances.

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