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CHAPTER 10 – ADOPTION OF REVISED ORDINANCES

§10.010. CONTENTS OF CODE.

This Code contains all ordinances of a general and permanent nature of the City of Elsberry, Missouri and includes ordinances dealing with municipal administration, municipal elections, building and property regulation. business and occupations, health and sanitation, public order, and similar subjects.

1. Ordinances hereafter adopted which are not of a general or permanent nature shall be numbered consecutively, authenticated, published and recorded in the book of ordinances, but shall not be prepared for insertion in this Code, nor be deemed a part hereof.

2. Ordinances which are of a general or permanent nature shall be prepared for insertion in this code and be deemed a part hereof.

§10.020. CITATION OF CODE.

This Code may be known and cited as the"Elsberry, Missouri, City Code."

§10.030. OFFICIAL COPY.

The official copy of this Code, bearing the signature of the mayor and attestation of the city clerk as to its adoption shall be kept on file in the office of the city clerk. A copy of this Code shall be kept in the city clerk's office available for public inspection.

§10.040. ALTERING CODE.

It shall be unlawful for, any person to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Official Copy of the Code in any manner whatsoever which will cause the law of the City to be misrepresented thereby. Any person, firm or corporation violating this section shall be punished as provided in Chapter 13 of this Code.

§10.050. NUMBERING.

Each section number of this Code shall consist of two parts separated by a period; the figure before the period referring to the chapter number, and the figure after the period referring to the position of the section in the chapter. The latter figure shall consist of three digits.

§10.060. AMENDMENTS TO CODE.

All amendments to this Code, duly passed by the Board of Aldermen shall be prepared by the city clerk for insertion in this Code.

CHAPTER 11 – DEFINITIONS

§11.010. DEFINITIONS.

In the construction of this Code and of all other ordinances of the city, the following definitions shall be observed, unless it shall be otherwise expressly provided in any section or ordinance, or unless inconsistent with the manifest intent of the Board of Aldermen, or unless the context clearly requires otherwise:

1. **Board of Aldermen**. The words "**Board of Aldermen**" shall mean the Board of Aldermen of Elsberry, Missouri.

2. **City**. The words "**the city**" or "**this city**" or "**city**" shall mean the City of Elsberry, Missouri.

3. **County**. The words "**the county**" or "**this county**" or "**county**" shall mean the County of Lincoln, Missouri.

4. **Day**. The word "**day**" shall mean a day of 24 hours, beginning at 12 o'clock midnight.

5. **Keeper; proprietor**. The words "**keeper**" and "**proprietor**" shall mean and include persons, firms, associations, corporations, clubs, and partnerships, whether acting by themselves or by a representative, servant or agent.

6. **May**. The word "**may**" is permissive.

7. **Mayor**. The word "**mayor**" shall mean the Mayor of Elsberry, Missouri.

8. **Month**. The word "**month**" shall mean a calendar month.

9. **Oath**: The word "**oath**" shall be construed to include an affirmation in all cases in which an affirmation may be substituted for an oath, and in such cases the words "**swear**" and "**sworn**" shall be equivalent to the words "**affirm**" and "**affirmed**." '

10. **Owner**. The word "**owner**," applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

11. **Person**. The word "**person**" shall include a corporation, firm, partnership, association, organization and any other group acting as a unit as well as individuals. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "**person**" is used in any section of this Code prescribing a penalty or fine, as to partnerships or

associations, the word shall include the partners or members thereof, and as to corporations, shall include the officers, agents or members thereof who are responsible for any violation of such section.

12. **Preceding, following**. The words "**preceding**" and "**following**" shall mean next before and next after, respectively.

13. **Property**. The word "**property**" shall include real and tangible and intangible personal property.

14. **Public Way**. The words "**public way**" shall include any street, alley, boulevard, parkway, highway, sidewalk or other public thoroughfare .

15. **Real property**. The terms "**real property**," "**premises**," "**real estate**" or "**lands**" shall be deemed to be co-extensive with lands, tenements and hereditaments.

16. **Shall**. The word "**shall**" is mandatory.

17. **Sidewalk**. The word "**sidewalk**" shall mean that portion of the street between the curb line and the adjacent property line which is intended for the use of pedestrians.

18. **Signature**. Where the written signature of any person is required, the proper handwriting of such person or his mark shall be intended.

19. **State**. The words "**the state**", or "**this state**" or "**state**" shall mean the State of Missouri.

20. **Street**. The word "**street**" shall mean and include any public way, highway, street, avenue, boulevard, parkway, alley or other public thoroughfare, and each of such words shall include all of them.

21. **Tangible personal property**. "**Tangible personal property**" shall include goods, chattels and all personal property, except intangible personal property.

22. **Tenant, occupant**. The words "**tenant**" or "**occupant,**" applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

23. **Writing**. The word "**writing**" and "**written**" shall include printing, lithographing or any other mode of representing words and letters.

24. **Year**. The word "**year**" shall mean a calendar year, unless otherwise expressed, and the word "**year**" shall be equivalent to the words "**year of our Lord**."

§11.020. NEWSPAPER.

Whenever in this Code or other ordinance of the city it is required that notice be published in the "official newspaper" or a "newspaper of general circulation published in the" city," and if there is no such newspaper published within the city, the said notice shall be published in a newspaper of general circulation within the city, regardless of its place of publication.

CHAPTER 12 -- CONSTRUCTION OF ORDINANCES

§12.010. CONSTRUCTION, GENERALLY.

All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent ,and meaning of the Board of Aldermen, may be fully carried out. Technical words and phrases having a peculiar, and appropriate meaning in law shall be understood according to the technical import.

§12.020. HEADINGS.

The headings of the chapters and sections of this Code are intended as guides and not as part of this Code for purposes of, interpretation or construction.

§12.030. CONTINUATION OF PRIOR ORDINANCES.

The provisions appearing in this Code, so far as they are in substance the same as those of ordinances existing at the time of the adoption of this C(ode, shall be considered as a continuation thereof and not as new enactments.

§12.040. REPEAL OF ORDINANCES NOT TO AFFECT LIABILITIES.

Whenever any ordinance or part of an ordinance shall be repealed, or modified, either expressly or by implication, by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the prior ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in anywise be affected, released or discharged but may be prosecuted, enjoyed and recovered as fully as if such ordinance or provisions had continued in force; unless it shall be therein otherwise expressly provided.

§12.050. REPEAL NOT TO REVIVE FORMER ORDINANCE.

When an ordinance repealing a, former ordinance, clause or provision shall itself be repealed, ,such repeal shall not be construed to revive such former ordinance, clause or provision unless it be expressly so provided and such former ordinance, clause or provision is set forth at length.

§12.060. SEVERABILITY.

It is hereby declared to be the intention of the Board of Aldermen that the chapters, sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph, section, or chapter of this Code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections, and chapters of this Code since the same would have been enacted by the

Board of Aldermen without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or, section.

§12.070. TENSE.

Except as otherwise specifically provided or indicated by the context, all words used in this Code indicating the present tense shall not be limited to the time of adoption of this Code but shall extend to and include the time of the happening of any act, event, or requirement for which provision is made herein, either as a power, immunity, requirement, or prohibition.

§12.080. NOTICE.

Whenever notice may be required under the provisions of this Code or other city ordinance, the same shall be served in the following manner:

1. By delivering the notice to the. owner personally or by leaving the same at his residence, office or place of business with some person of suitable age and discretion, or

2. By mailing said notice by certified or registered mail to such owner at his last known address, or

3. If the owner is unknown, or may not be notified under the requirements of Section 12.080(1) or (2), then by posting said notice in some conspicuous place on the premises at least five (5) days before the act or action concerning which the notice is given is to take place. No person shall interfere with, obstruct, mutilate, conceal, or tear down any official notice or placard posted by any City officer, unless permission is given by said officer.

§12.090. SAME, EXCEPTIONS.

The provisions of the preceding section shall not apply to those chapters of this Code wherein there is a separate definition of notice.

§12.100. COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by this Code or by any notice or order issued pursuant thereto, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a legal holiday.

§12.110. GENDER.

When any subject matter, party or person is described or referred to by words importing the masculine, females as well as males, and associations and bodies corporate as well as individuals, shall be deemed to be included.

§12.120. JOINT AUTHORITY.

Words importing joint authority to three or more persons shall be construed as authority to a majority of such persons.

§12.130. NUMBER.

When any subject matter, party or person is described or referred to by words importing the singular number, the plural and separate matters, and persons and bodies corporate shall be deemed to be included; and when words importing the plural number are used, the singular shall be deemed to be included.

CHAPTER 13 -- PENALTIES

§13.010. GENERAL PENALTY.

Whenever in this Code or any other ordinance of the city, or in any rule, regulation, notice or order promulgated by any officer or agency of the city under authority duly vested in him or it, any act is prohibited or is declared to be unlawful or an offense or misdemeanor or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, and no specific penalty is provided for the violation thereof, upon conviction of a violation of any such provision of this Code or of any such ordinance, rule, regulation, notice or order, the violator shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the city or county jail not exceeding ninety days or by both such fine and imprisonment; provided, that in any case wherein the penalty for an offense is fixed by a statute of the state the statutory penalty, and no other, shall be imposed for such offense, except that imprisonments may be in the city prison or workhouse instead of the county jail.

§13.020. EVERY DAY A VIOLATION.

Every day any violation of this Code or any other ordinance or any such rule, regulation, notice or order shall continue shall constitute a separate offense.

§13.030. RESPONSIBILITY.

Whenever any act is prohibited by this Code, by an amendment thereof, or by any rule or regulation adopted thereunder, such prohibition shall extend to and include the causing, securing, aiding, or abetting of another person to do said act. Whenever any act is prohibited by this Code, an attempt to do the act is likewise prohibited.

CHAPTER 20 -- CITY SEAL

§20.010. SEAL DESCRIBED.

The seal of the City shall, as heretofore, be a seal of Justice, inside of and surrounded by a scroll or circular impression having inscribed therein the words, "Corporate Seal of the City of Elsberry." The seal shall be circular and about two inches in diameter. The city seal shall be safely kept in the office of the city clerk.

CHAPTER 21 -- CITY ORGANIZATION

SUBCHAPTER A -- GENERAL

§21.010. INCORPORATION AND CLASSIFICATION.

The City of Elsberry, Missouri is incorporated, and classified as a Fourth Class City. In accordance with State law, providing for optional forms of government, the City of Elsberry has adopted the Mayor-board form of government, and known as the "weak Mayor-board form." This means most administrative offices are elected, and appointments are made with consent of the board, and consequently the Mayor has little administrative power. This form of structure approximates the federal government in that it includes the concept of separation of powers (executive, legislative, and judicial) and checks and balances. The board is the basic governing unit because it levies taxes, appropriates monies, makes decisions on policy matters, and in some instances supervises the administration. The 'board is the legislative body of Elsberry. It adopts local resolutions and ordinances within the framework of latitude given it by State law. The laws of Elsberry are the ordinances, and these may be divided into three categories:

1. **Administrative**, dealing with the organization of government (i.e. the division of powers between administration departments, the salary scale for employees),

2. **Contractual**, such as the granting of franchises to private utility firms, and

3. **Penal ordinances**, that regulate the conduct of persons and are based on the general policy powers of the municipality to protect the health, welfare, and safety of the citizens of Elsberry. Many ordinances cover fields where State laws already operate. State laws may also be adopted by reference and incorporated into local ordinances. The City shall have power to enact all ordinances not repugnant to the Constitution and laws of this State.

SUBCHAPTER B -- OFFICERS AND EMPLOYEES

§21.100. OFFICERS ENUMERATED.

The officers of this City shall consist of:

1. the following elective officers:
    a. Mayor
    b. Collector
    c. Aldermen (two from each ward)

2. the following appointive officers:

    a. Clerk
    b. Treasurer
    c. Attorney
    d. Chief of Police

3. Immediately upon the suspension of an officer it shall be the duty of the mayor to appoint a competent, responsible person to discharge the duties of such officer for the period of the suspension.

4. All elected Officers and all appointed Officers of this City shall attend all meetings of the Board of Aldermen unless prevented from so doing by illness or emergency, or unless excused by prior approval of the Board of Aldermen.

(Amd. 12-1-01; 4-01-2005)

SUBCHAPTER C -- ALDERMEN

§21.200. QUALIFICATIONS OF ALDERMEN; TERMS OF OFFICE.

No person shall be eligible to the office of alderman who is not twenty-one years of age, a citizen of the United States, and an inhabitant and resident of the City for at least one year next before his election and a resident of the ward from which he is elected; nor shall any person be elected an alderman who is in arrears for any tax, lien, forfeiture or defalcation in office. All members of the board shall hold their office for a term of two years.

§21.210. OATH.

Before entering upon the discharge of the duties of his office, each alderman shall take and subscribe an oath or affirmation before the city clerk that he possesses all the qualifications prescribed for his office by the laws of the state and this Code or other ordinances of this City; that he will support the Constitution of the United States and of this state, and this Code and other ordinances of this City, and that he will faithfully demean himself in office.

§21.220. MEMBERSHIP.

The members of the board of aldermen shall be two in number from each ward of the City.

§21.230. COMPENSATION.

Aldermen shall receive such compensation for his services as shall from time to time be set by the board of aldermen prior to election.

Starting with Aldermen elected at the April 2019 election and thereafter, the compensation for each such Alderman shall be One Hundred Seventy-Five Dollars and no cents ($175.00) per calendar month.

(Amend. 2019-02-001)

§21.240. BENEFITS.

In addition to salary, members of the board of aldermen shall receive social security benefits.

SUBCHAPTER D -- MAYOR

§21.300. HOW ELECTED, ETC.

The chief executive officer of the City shall be the mayor, who shall be elected in even numbered years, by the qualified voters of the City, and shall hold his office for two years, and until his successor shall be elected and qualified. No person shall be mayor unless he be at least twenty-five years of age, a citizen of the United States, and a resident of the City at the time of and for at least, one year next preceding his election.

§21.310. STANDING COMMITTEE APPOINTMENTS.

Except as otherwise provided in the Elsberry City Code, the Mayor shall, with the advice and consent of the Board of Aldermen, appoint the members of each standing committee of the Board of Aldermen. The appointments shall be made at the first meeting of the Board of Aldermen after each annual election. Appointments to fill vacancies shall be made no later than at the next regularly scheduled monthly meeting of the Board of Aldermen. If the Mayor fails or refuses to make such appointments, the Board of Aldermen shall make the appointments upon motion and a majority vote on each appointment to be made.

(Ord. 8-3-06; 2-1-2009)
[Legislative authority: RSMo. §§79.110; 79.340;79.350;79.450]

§21.320. PROCLAMATIONS, MEETINGS, ELECTIONS.

The mayor shall have the power to issue proclamations, call mass meetings and regular and special elections in such a manner as this Code or other ordinances or state law may provide.

§21.330. APPOINT CERTAIN OFFICERS; CONTROL POLICE.

1. The Mayor, with the advice and consent of the Board of Aldermen, shall have the power to appoint all police officers of the City.

2. The Mayor, with the advice and consent of the Board of Aldermen, shall have the power to appoint persons to serve as Reserve Police Officers under the City's volunteer Reserve Police Officer Program.

3. The Mayor, with the advice and consent of the Board of Aldermen, may delegate to the Chief of Police the authority to designate persons to serve temporarily as Reserve Police Officers under the City's volunteer Reserve Police Officer program until the next regular Board of Aldermen meeting after the delegated appointment fo the officer by the Police Chief. If the Chief of Police has been delegated the authority to designate reserve officers, the Chief of Police shall submit any persons selected for the Reserve Police Officer program to the Board of Aldermen at the next regular Board meeting after the person's selection, for the Mayor and the Board to ratify or reject. The person selected for the Reserve Police Officer program shall serve in the Reserve Police Officer program until the Mayor and the Board take action to remove the person, or the person is removed under Subchapter B of Chapter 71 of the City Code. Similarly, if the Chief of Police removes a person serving in the Reserve Police Officer program, the Chief of Police shall submit such action to the Board of Aldermen at the next regular board meeting for ratification or rejection. The removed person may not serve in the Reserve Officer Program until the removal is rejected as provided in this section.

4. The Chief of Police and/or the Mayor, with the advice and consent of the Board of Aldermen, may remove any person serving in the Reserve Police Officer Program for any reason at any time.

5. The Mayor shall have authority to give such orders to the Chief of Police and policemen of the City as in his judgment the public good may require, and it shall be the duty of the Chief of Police and police officers to obey such orders.

(Amend. Ord. 2013-11-001; 2023-03-001).

§21.340 POWER TO ENFORCE LAWS.

The mayor shall be active and vigilant in enforcing all laws and this Code or other ordinances for the government of the City, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty; and he is hereby authorized to call on every inhabitant of the City to aid in enforcing the laws.

§21.350. PRESIDING OVER BOARD OF ALDERMEN; VOTING RIGHTS; SUPERVISION OF CITY AFFAIRS.

The mayor shall have a seat in and preside over the board of aldermen, but shall not vote on any question, except in case of a tie, nor shall he preside or vote in cases when he is an interested party. He shall exercise a general supervision over all the officers and affairs of the City, and shall take care that this Code or other ordinances of the City, and the state laws relating to such City, are complied with.

§21.360. COMMUNICATIONS TO BOARD.

The mayor shall from time to time communicate to the board of aldermen such measures as may, in his opinion, tend to the improvement of finances, the police, health, security, ornament, comfort and general prosperity of the City.

§21.370. APPROVAL OF BILLS; VETO POWER.

Every bill presented to the mayor for his approval shall be returned by him to the board of aldermen, with his approval endorsed thereon, or with his objections thereto, in writing, on or before the next regular meeting of the board succeeding the date on which the bill was so presented. The mayor may also veto any portion or all of the general appropriation bill, or any item of the same.

§21.380. COMPENSATION.

The mayor shall receive such compensation for his services as shall from time to time as set by the board of aldermen prior to election.

Starting with Mayor elected at the April 2020 election and thereafter, the compensation for each such Mayor shall be Three Hundred Fifty Dollars and no cents ($350.00) per calendar month.

(Amend. 2019-02-001)

§21.390. BENEFITS.

In addition to salary, the mayor shall receive social security benefits.

SUBCHAPTER E -- CITY ATTORNEY

§21.400. APPOINTMENT; TERM.

The mayor, with the advice and consent of the board of aldermen, at the first meeting after each annual City election shall appoint a suitable person as city attorney who shall hold office for one (1) year, unless sooner removed from office, and until his successor is appointed and qualified.

§21.410. QUALIFICATIONS.

No person shall be appointed to the office of city attorney unless he be a licensed and practicing attorney at law in this state.

§21.420. DUTIES, GENERALLY.

The city attorney shall, in addition to his other duties which are or may be required by this Code or other ordinance, when ordered by the mayor or board of aldermen to do so, to prosecute or

defend all suits and actions originating or pending in any court of this state, to which the City is a party, or in which the City is interested.

1. It shall be the duty of the city attorney to prosecute all persons charged with a violation of this Code or other ordinance of the City, when the same be a contested case.

2. The city attorney shall make, and he is hereby authorized and empowered to make, affidavits on behalf of the City in all cases where the same may be necessary in taking an appeal or change of venue or any other matters necessary to proper legal proceedings.

3. The city attorney shall give his opinion to all City officials when authorized by the board of aldermen to do so.

§21.430. REPORT TO BOARD OF ALDERMEN.

The city attorney shall attend all meetings of the board of aldermen unless excused by the mayor or a majority of the board. Any member of the board of aldermen may at any time call upon the city attorney for an oral or written opinion to decide any question of law, but not to decide upon any parliamentary rules or to resolve any dispute over the propriety of proposed legislative action.

1. The city attorney shall report to the board of aldermen the condition of any matters pending or unsettled in the city municipal court, or any other proceeding pending in any other court of which he may have charge under orders of the mayor or board of aldermen.

§21.440. TEMPORARY ABSENCE; ACTING CITY ATTORNEY.

In case of absence, sickness or other inability of the city attorney to attend court, or when, before assuming his official duties, he shall have been counsel adverse to the City, he shall inform the mayor thereof, in writing, and the mayor shall appoint some other attorney to represent the City in such cases, or during temporary absence, sickness or inability. Should the city attorney fail, neglect, or refuse to give such notice, as above provided, and the interests of the City in case of such failure, neglect or refusal, need the immediate services of an attorney, then the mayor may appoint some other attorney to attend to such cases, who shall receive the compensation allowed to the city attorney for like services.

§21.450. COMPENSATION.

The city attorney shall be allowed compensation such as from time to time shall be fixed by the board of aldermen. The city attorney shall not receive compensation contingent upon the outcome of any case in the municipal court.

1. In the event of a case in which the city is interested being tried in any circuit court, supreme court or court of appeal, then the board of aldermen shall allow the city attorney the usual and customary fees and necessary expenses allowed in like or similar cases.

2. In addition to his compensation, the city attorney, shall be reimbursed for unusual postage, recording and court fees advanced, and any other unusual expenses paid for or advanced by the city attorney in behalf of the City on City business other than usual office expense.

SUBCHAPTER F – CITY CLERK

§21.500. SELECTION BY BOARD OF ALDERMEN.

The board of aldermen shall elect a city clerk, at the first meeting of the board after each annual election on the first Tuesday in April of each year, who shall hold office for one year and until his successor is elected and qualified.

§21.510. DUTIES, GENERALLY.

The city clerk shall, in addition to other duties which are, or may be, required of him by this Code or other ordinance, attend all meetings of the board of aldermen.

1. He shall have the custody of the books, records, papers and documents belonging to the City.

2. He shall prepare all certificates of election or appointment of the City officers, and deliver the same to the persons elected or appointed.

3. He shall countersign all city bonds, warrants, drafts and orders upon the treasury for money, and shall see that all ordinances appropriating money out of the treasury are endorsed by the treasurer before passage, and shall affix thereto the seal of the City and keep a record thereof showing the number, date and amount thereof, the name of the person to whom, and on what account issued, and when redeemed.

4. He shall record the certificates, oaths and bonds of all the City officers.

5. He shall keep an index of the records of proceedings of the board of aldermen.

6. He shall prepare blank licenses for all purposes for which licenses are required to be issued, and when required, shall cause the same to be issued, signing his name and affixing the seal of the City thereto, and shall keep an account with the collector for such licenses and the amount of the license tax thereon.

7. He shall furnish within a reasonable time to any person, when called upon during business hours to do so, certified copies of any records, books, or papers which are in his custody, for which services a reasonable fee to be set by City ordinance may be charged, and which shall be paid by the person demanding such certified copy into the treasury of the City, of fifty cents ($.50) per sheet.

§21.515. BOND OF THE CITY CLERK

The City Clerk, before entering upon the duties of the Clerk's Office, shall enter into, and give to the City, good and sufficient bond in the amount of at least fifty thousand dollars ($50,000.00) : (1) for the faithful and honest performance of the Clerk's duties for the City; (2) for rendering a full and proper account to the City of Elsberry for funds and property that shall come into the possession or control of the Clerk, and (3) that he or she will pay over to the City all moneys belonging to the City, as provided by law, that may come into his or her hands, possession, or control. Such bond shall be approved by the Board of Aldermen. The Clerk may be required to provide the City with additional bonds as may be required by the City's financing entities. The cost of such bonds shall be paid by the City of Elsberry; provided that the Clerk is bondable at normal commercial rates. Otherwise, the City Clerk shall pay the excess premiums. If the City Clerk is covered by a blanket bond to the same extent as provided above, an individual bond shall not be required. For any breach of condition of any such bonds, suit may be instituted thereon by the City.

(Ord. 2020-05-003)

§21. 520. COMPENSATION.

The salary of the city clerk shall be such as from time to time the board of aldermen shall fix as a certain amount per month payable by warrant on the City treasury.

§21.525. BENEFITS.

In addition to salary, the city clerk shall receive the following benefits:

1. Holidays, vacation, sick leave, education leave, funeral leave, jury leave and disability leave identical to those given city employees under Chapter 23 of this Code.

2. Social security benefits; insurance benefits.

§21.530. TEMPORARY CITY CLERK.

Upon temporary disability or inability of the city clerk to perform his duties as set forth in this Code or other ordinances of the City due to illness, absence from the City or other cause, the board of aldermen shall, in the same manner as the city clerk is appointed as set forth in Section 21.500, proceed to appoint a temporary city clerk who shall have the same powers and duties as the regular city clerk and shall hold office until the disability of the city clerk is removed.

1. Such temporary city clerk shall receive as compensation such salary as the board of aldermen shall provide for at the time of the appointment.

SUBCHAPTER G -- CITY COLLECTOR

§21.600. ELECTION; TERM; QUALIFICATIONS.

No person shall be eligible to the office of city collector who is not twenty-one years of age, a

citizen of the United States, and an inhabitant and resident of the City for at least one year next before his election; nor shall any person be elected a city collector who is in arrears for any tax, lien, forfeiture or defalcation in office. The City collector shall hold office for a term of two (2) years.

§21.610. OATH.

The collector shall, before entering upon the duties of the office, take and subscribe an oath or affirmation that he possesses all the qualifications prescribed for the office by law, and that he will support the Constitution of the United States and of this state, the provisions of all laws of this state affecting cities of the fourth class, and this Code and other ordinances of this City, and faithfully demean himself in office.

§21.615. OFFICE OF THE COLLECTOR

1. The office of City Collector shall be a full-time position. The person holding such office shall devote a minimum of thirty-five (35) working hours per week during normal City Hall business hours in the active performance of the Collector's duties, exclusive of vacation time and other allowable and earned holidays, sick leave, and other leave time as provided for the Collector by ordinance.

2. The office of the City Collector shall be located at City Hall and shall open to the public for transaction of business at all times when other City offices are regularly open to the public for business. The Collector shall be available and perform the Collector's duties during such regular office hours, subject to lunch hours, breaks, approved non-public hours, allowable vacation days, allowable sick days, etc., or as otherwise approved by the Board of Aldermen. The Board of Alderman may limit the days and times that the Collector may work within City Hall and the locations were such business and work may be conducted..

3. The City Collector, before entering upon the duties of the Collector's Office, shall enter into, and give to the City, good and sufficient bond in the amount of at least fifty thousand dollars ($50,000.00) : (1) for the faithful and honest performance of the Collector's duties for the City; (2) for rendering a full and proper account to the City of Elsberry for funds and property that shall come into the possession or control of the Collector, and (3) that he or she will pay over tot he City all moneys belonging to the City, as provided by law, that may come into his or her hands, possession, or control. Such bond shall be approved by the Board of Aldermen. The Collector may be required to provide the City with additional bonds as may be required by the City's financing entities. The cost of such bonds shall be paid by the City of Elsberry; provided that the Collector is bondable at normal commercial rates. Otherwise, the City Collector shall pay the excess premiums. If the City Collector is covered by a blanket bond to the same extent as provided above, an individual bond shall not be required. For any breach of condition of any such bonds, suit may be instituted thereon by the City.

(Ord. 2013-03-002; Ord. 2018-12-002; Ord. 2020-05-003)

§21.620. DUTIES, GENERALLY.

The Collector shall perform all the duties specified in the Elsberry Municipal Code and the following:

1. Annually, at such times as may be designated by the Board of Aldermen, make a detailed report to the Board of Aldermen stating the various monies collected by the Collector during the year, and the amount uncollected and the names of the persons from which the Collector failed to collect and the causes therefor.

2. Annually, on the meeting of the Board of Aldermen in April of each year, or as soon thereafter as may be, to make out, under oath, lists of delinquent taxes remaining due and uncollected for each year, to be known as the "Land and Lot Delinquent List" and the "Personal Delinquent List".

3. Assess any costs incurred by the City to abate nuisances on the proper tax bills.

4. Monthly, make a detailed report of all monies collected by the Collector during the previous month. Such report shall be known as the "City Collector's Monthly Report" and a copy shall be made available to the City Clerk in sufficient time to provide copies to the Board of Aldermen for the Board's regular monthly meeting.

5. Collect and receive taxes, assessments, general licenses, utility charges, deposits, escrows, and fees required by the Elsberry Municipal Code or state law to be paid by any person to the City. The Collector shall issue a proper receipt to each person making any such payment.

6. Turn over to his/her successor in office all uncollected delinquent lists, receiving credit therefor, and his/her successor shall be charged therewith; provided, that the Board of Aldermen may declare worthless any and all personal delinquent taxes, and any and all licenses and other duties, which they may deem uncollectible.

7. Keep proper and accurate records pertaining to the Collector's collections and activities as may be required by Statute or ordinance.

8. Pay into the Treasury, at least weekly, all monies received by him/her from all sources.

9. Prepare and submit bills for all City Utility services to customers.

10. Answer customer questions and complaints concerning all Utility bills and payments.

11. Cause delinquent utilities to be disconnected, and reconnected upon full payment.

12. See that all persons engaged in any business, sale, or solicitation for which a

license or permit is required, take out such license or permit. Receive, review, and act upon applications for all such licenses or permits as required by Ordinance.

13. Attend and report to the Board of Aldermen at every regular meeting of the Board of Aldermen, and every other Board or Committee meeting as requested in advance by the Board of Aldermen, unless excused by the Board or the Mayor.

14. Assess, issue, and collect special tax bills.

15. If the City does not contract to have its property taxes collected by the County or other contractor, assess, bill, and collect such taxes.

16. Provide testimony in Court concerning the Collector's duties or actions as called upon by the City Attorney or by subpoena.

17. Issue permits for construction of private work on public works projects as required by Ordinance.

18. Conduct sales of property to collect delinquent taxes, assessments, and special tax bills as permitted by law.

19. Such other duties as may be directed by the Board of Aldermen and/or the Mayor.

(Ord. 2013-03-002)

§21.630. COMPENSATION.

The City Collector shall receive as compensation for the performance of the Collector's duties a salary of $97.86per day for each week day worked, excluding weekends but including holidays, vacation, sick leave, education leave, funeral leave, jury leave and disability leave (maximum of 260 paid work days per year. Holidays, vacation, sick leave, education leave, funeral leave, jury leave and disability leave days shall be earned as provided in §21.635. If the Collector fails to work during the full time of normal City Hall hours, the Collector shall be paid a percentage of her daily rate that day that is proportionate to the number of hours worked to the number of hours that City Hall is routinely open for public business (excluding night meetings). For example if City Hall is normally open for 7 hours a day, and the Collector only works 5 of those hours, the Collector will receive 5/7 of the daily rate or $69.90 for that day. The Collector may apply applicable and allowable sick leave, funeral leave, etc. for the time missed, provided that the sick leave, funeral, leave has been earned and is otherwise allowable to the Collector for the purpose intended..

(Ord. 2013-03-002; 2018-12-002)

§21.631. COMPASSION LEAVE.

If the City Collector is not covered by the federal Family Medical Leave Act ("FMLA") because the position is elected, the City Collector may apply to the Board of Aldermen for unpaid compassion leave for extraordinary circumstances due to illness, disability, maternity or paternity leave, or other reasons that would be permissible under the FMLA. The Collector must exhaust all vacation, sick leave, and other leave that the Collector may be lawfully entitled to before requesting Compassion Leave. Such Compassion Leave, when combined with available vacation, sick leave, and other leave that the Collector may be lawfully entitled to, may not exceed six weeks in any year. The granting of Compassion Leave is entirely discretionary by the Board of Aldermen.

(Ord. 2013-03-004)

§21.635. BENEFITS.

The City Collector shall receive the following benefits in addition to the Collector's salary:

1. Holidays, vacation, sick leave, education leave, funeral leave, jury leave and disability leave pay identical to those given City employees under Chapter 23 of this Code (except as otherwise indicated in Chapter 23). However, the Collector must obtain advance approval of the Board of Aldermen for the specific use of vacation or education leave days.

2. Insurance benefits identical to those given City employees under Chapter 23 of this Code (except as otherwise indicated in Chapter 23).

3. Retirement benefits identical to those Given City employees under Chapter 23 of this Code (except as otherwise indicated in Chapter 23).

(Ord. 2013-03-002)

§21.640. DEPUTY COLLECTOR.

The mayor may appoint a deputy collector to be approved by the board of aldermen, and when such deputy collector shall have taken and subscribed to the oath provided by this Code, such deputy collector shall possess all the powers and be charged with the same duties as the collector.

(Amd. 2019-03-004)

§21.650. DEPOSIT OF CHECKS.

Every check, draft, or other negotiable instrument of any type which is drawn in favor of the City of Elsberry, Missouri, may be negotiated only by including in the endorsement thereof on behalf of said city the phrase "For Deposit Only" or some similar statement, and the actual deposit thereof to the credit of said city in a depository designated for receipt of the funds of said city. No

such instrument shall be negotiated for cash.

§21.660 INSUFFICIENT CHECK FEES.

When any payment is attempted to be made to the City by the tender or presentment of a negotiable or financial instrument, such as a check, draft, credit card, debit card, or money order, and same is dishonored or returned unpaid to the City for any reason (including insufficient funds, stop payment order, improper endorsement or a closed account), a service fee of thirty dollars ($30.00) for each dishonored or returned check or instrument shall be assessed against the payor or presentor of the payment or instrument.

(Ord. 2012-04-007)

SUBCHAPTER H -- CITY TREASURER

§21.700. APPOINTMENT.

The mayor, with the advice and consent of the board of aldermen, at the first meeting after each annual City election shall appoint a suitable person as city treasurer who shall hold office for one (1) year and until his successor is appointed and qualified.

§21.710. OATH.

Before entering upon the discharge of the duties of his office, the city treasurer shall take and subscribe an oath that he possesses all of the qualifications prescribed for his office by this Code or other ordinances; that he will support the Constitution of the United States and of the State, the provisions of the state law which relate to this City and this Code and other ordinances of the City, and that he will faithfully demean himself in office.

§21.715. BOND OF THE TREASURER

The City Treasurer, before entering upon the duties of the Treasurer's Office, shall enter into, and give to the City, good and sufficient bond in the amount of at least fifty thousand dollars ($50,000.00) : (1) for the faithful and honest performance of the Treasurer's duties for the City; (2) for rendering a full and proper account to the City of Elsberry for funds and property that shall come into the possession or control of the Treasurer, and (3) that he or she will pay over to the City all moneys belonging to the City, as provided by law, that may come into his or her hands, possession, or control. Such bond shall be approved by the Board of Aldermen. The Treasurer may be required to provide the City with additional bonds as may be required by the City's financing entities. The cost of such bonds shall be paid by the City of Elsberry; provided that the Treasurer is bondable at normal commercial rates. Otherwise, the City Treasurer shall pay the excess premiums. If the City Treasurer is covered by a blanket bond to the same extent as provided above, an individual bond shall not be required. For any breach of condition of any such bonds, suit may be instituted thereon by the City.

(Ord. 2020-05-003)

§21.720. DUTIES, GENERALLY.

The treasurer shall receive and safely keep all money of the City which may come into his hands, and shall disburse the money only upon warrants properly drawn, and which are signed by the mayor and attested by the city clerk. He shall keep, in a set of books provided for that purpose, a full and accurate account of all money received and disbursed by him on behalf of the City specifying the date of receipt or disbursement from whom received to whom disbursed and on what account received and disbursed. He shall keep a separate account of each fund and appropriation, and the debits and credits belonging thereto. He shall keep a register of all warrants paid into the treasury, describing such warrants, by their date, number, name of payee and amount, specifying the time of receipt thereof, from whom received and on what account. He shall issue duplicate receipts for all sums of money which may be paid into the treasury, specifying in such receipts the date of payment and upon what account paid. One of these receipts shall be given to the person making the payment and the other he shall file with the city clerk who shall thereupon credit the person named in the receipt with the amount of his payment and charge the treasurer with the same. On the last week of each month he shall furnish the city clerk with a written statement showing the balance in the treasury at the beginning of the month, the amount received during the month and on what account received, the amounts disbursed during the month and on what account disbursed, and the balance remaining to the credit of each fund and constituting the general balance in the treasury at the close of business on the date when such statement is made as aforesaid. He shall receive and safely keep all warrants, bonds and obligations of the City entrusted to his care and shall dispose of the same only upon proper authority from the board of aldermen, or as provided by this Code or other ordinances. He shall provide to the city collector a copy of the extended taxes by August 1, charging the collector with the amounts of taxes due as shown by tax records; and shall perform such other duties as may be required of him. He shall prepare semiannually a statement of the receipts and expenditures of the City, and cause the same to be published in a newspaper published in the City.

§21.740. ACCESS TO OFFICERS' BOOKS; CITY CLERK TO ENJOY SAME ACCESS.

The city treasurer and city clerk shall have free access to each other's offices for the inspection of all books, accounts and papers which they respectively contain, and free access to all other offices of this City for the inspection of such books, accounts and papers as concern any of their duties.

§21.750. COMPENSATION.

The treasurer shall receive as full compensation such a sum as shall be, from time to time, set by the board of aldermen.

(Amd. Ord. 1-1-1992)

§21.760. BENEFITS.

In addition to salary set by ordinance, the city treasurer shall receive the following benefits:

1. Funeral leave, vacation leave, holiday leave, sick leave jury leave, educational leave, and disability leave identical to that given city employees under Chapter 23 of this Code (except as otherwise indicated in Chapter 23).

2. Retirement and insurance benefits identical to that given city employees under Chapter 23 of this Code (except as otherwise indicated in Chapter 23).

(Amd. Ord. 1-2-1992; 2013-03-004).

SUBCHAPTER I -- CHIEF OF POLICE

§21.800. APPOINTMENT BY THE MAYOR WITH THE APPROVAL OF THE BOARD OF ALDERMEN.

The Mayor, with the consent and approval of the majority of the members of the Board of Aldermen, shall appoint a Chief of Police, who shall hold office until his successor is appointed and qualified the following year. The Mayor shall appoint a Chief of Police at the first meeting of the Board of Aldermen after each annual municipal election of each year. With the consent of the majority of the members of the Board of Aldermen , the Mayor may make the appointment at a later meeting of the Board of Aldermen after the annual municipal election

(Ord. 4-01-2005; 04-02-2008; 2024-05-003).

§21.810. DUTIES.

1. The Chief of Police shall perform all duties required of him by law, including, but not by way of limitation, those duties set out in Chapter 71 of the Code of the City of Elsberry, Missouri, and the ordinances of said City.

2. The Chief of Police shall execute all process, orders, and notices arising and required under the ordinances of said City.

3. The Chief of Police shall devote all time necessary to the satisfactory performance of the duties of said office and shall not accept any employment during the term for which he is appointed from any other person, unless such employment is approved by the Board of Aldermen.

(Ord. 4-01-2005).

§21.820. POWERS.

1. The Chief of Police shall have power to make or order arrests with proper process for any offense against the ordinances of said City and the power to arrest without process in all cases where any offense be committed or attempted to be committed in his presence and shall, if necessary, commit such person to jail and detain him there overnight or until he

can be brought before the proper official for trial or examination, but he shall not detain such person unreasonably, and if the arrest is made without warrant, he shall file or have filed a complaint in writing against the person arrested. Further, all officers serving under the Chief of Police pursuant to the provisions of the ordinances of said City, including, but not limited to, Chapter 71 of the Code of said City, shall likewise possess all of the above powers.

2. The Chief of Police shall also have all powers provided to him pursuant to the provisions of Chapter 71 of the Code of said City.

(Ord. 4-01-2005).

§21.830. QUALIFICATIONS.

1. The Chief of Police shall be at least twenty-one years of age, a resident of the State of Missouri, and a citizen of the United States.

2. The Chief of Police shall at the time of his appointment and at all times during which he is serving, possess all training and certification required by the State of Missouri pursuant to Chapter 590 RSMo., and all amendments thereto, for individuals serving as peace officers, and at such time as any additional training or certification becomes required, the Chief of Police shall obtain such additional training and/or certification within the time allowed under the laws of the State of Missouri.

3. The Chief of Police shall possess those qualifications set out for patrolmen/police officers pursuant to the provisions of Chapter 71 of the Code of said City.

4. The Chief of Police shall possess such other qualifications as the Board of Aldermen, in their sole and absolute discretion, shall deem necessary to serve the best interest of the citizens of said City, and to provide for efficient and effective enforcement of the ordinances of said City.

(Ord. 4-01-2005).

§21.840. COMPENSATION.

The Chief of Police shall receive as full compensation such sum as shall be fixed by the Board of Aldermen.

(Ord. 4-01-2005).

§21.850. BENEFITS.

In addition to salary, the Chief of Police shall receive the following benefits:

1. Holidays, vacation, sick leave, education leave, funeral leave, jury leave and disability

leave identical to those given City employees under Chapter 23 of this Code, provided however:

a. That the Chief of Police shall not use any of this leave on a day set for municipal court, without specific advance approval from the City Attorney.

b. That the Board of Aldermen shall give specific advance approval to the use of vacation or education leave.

2. Social security benefits; insurance benefits.

(Ord. 4-01-2005).

§21.860. GENDER NEUTRAL TERMS.

Wherever the words "he", "him", or "his" are used herein, they shall be construed to mean the Chief of Police, whether male or female.

(Ord. 4-01-2005)

SUBCHAPTER J -- REMOVAL OF APPOINTED AND ELECTED OFFICIALS

§21.900. REMOVE APPOINTED OFFICERS, WHEN.

The mayor may, with the consent of a majority of all members of the board of aldermen, remove from office any appointed officer at will, and any such appointed officer may be removed by a two-thirds vote of all members of the board of aldermen, independently of the mayor's approval or recommendation.

§21.910. REMOVE ELECTED OFFICERS, WHEN.

The mayor may, with the consent of a majority of all members elected to the board of aldermen, remove from office for cause shown, any elective officer of the City; such officer first being given an opportunity, together with his witnesses, to be heard before the board of aldermen, sitting as a board of impeachment. Any elective officer including the mayor may, in like manner. for cause shown, be removed from office by a two-thirds vote of all members elected to the board of aldermen independently of the mayor's approval or recommendation.

§21.920. CHARGES MADE, HOW.

Such charge against elective officers shall be made in writing, and shall be preferred only by the mayor or some member of the board of aldermen. If the board shall deem it expedient to take action upon the charges preferred, they shall make an order suspending the officer so charged from further exercising the function of his office, such charges and order shall be filed with the city clerk; who shall forthwith make a copy thereof and deliver the same together with the original charge and order to the chief of police or assistant chief of police, who shall at once

serve such copies on the accused, by delivering the same to him or by leaving them at his usual place of abode, and shall return the original charge and order to the city clerk, with his return in writing of the time, place and manner of such service endorsed thereon, and the officer so charged shall be suspended from office from and after such service, until duly acquitted of such charges or otherwise ordered by the board of aldermen. In case of suspension of the mayor, as herein provided, the president of the board of aldermen shall be vested with the powers and duties of the mayor until the disability of said mayor be removed.

§21.930. HEARING.

Immediately upon the suspension of an elective officer, the board of aldermen shall fix a time for hearing the cause and the chief of police or assistant chief of police shall serve the officer so charged with written notice of the time and place of hearing such charges, in the usual manner of serving summons as provided for by the Statutes of the State of Missouri. On the day set for the hearing of the case, the board of aldermen shall meet and proceed according to such rules as they may adopt, to hear the evidence against and in favor of the accused, and they may adjourn from time to time, as may be necessary, until all the evidence shall have been taken. The board shall vote by "ayes" and "nays" upon the charges separately, and the question voted on shall be "Is the accused guilty?". If the board, by a majority vote of all the members elected, find the accused guilty of any charge or specification, such officer may, by resolution be removed from office. Upon the adoption of such resolution, the office of the accused shall be vacant. The proceedings of the board shall be entered at large upon the records of the City.

§21. 940. SUBPOENAS.

Subpoenas for witnesses may be issued by the mayor or the person acting as mayor, and shall be served by the chief of police, or assistant chief of police and the board of aldermen shall have the power to compel the attendance of witnesses and to compel witnesses to testify, and depositions may be taken and read in the same manner as in courts.

§21.950. ACCUSED TO BE HEARD; DUTY OF CITY ATTORNEY.

At the trial the accused shall be entitled to be heard in person and by attorney, and the city attorney or the person acting as such shall attend the trial and prosecute on behalf of the City.

CHAPTER 22 -- FINANCES AND RECORDS

SUBCHAPTER A -- FISCAL YEAR

§22.010. FISCAL YEAR.

The fiscal year of this city shall begin on January 1, and end on December 31 of the next succeeding year.

SUBCHAPTER B -- BUDGET

§22.100. BUDGET REQUIRED.

Prior to the commencement of each fiscal year, a budget for the City shall be prepared, and the same will be presented to and approved by the board of aldermen. The format of the budget shall be that illustrated by Appendix I to this Chapter.

§22.110. BUDGET CONTENTS.

The annual budget shall present a complete financial plan for the next fiscal year. The following shall be included in the budget:

1. A budget message to describe the important features of the budget and to point out any major changes from the previous year.

2. An estimate of revenues which are expected to be received during the next year from all sources, plus a comparative statement of the revenues for the previous two budget years. These comparisons shall be shown by year, fund, and source.

3. An estimate of the expenditures that are proposed to be spent during the budget year, plus a comparative statement of actual expenditures for the previous two years. These comparisons should be shown by year, fund, activity and object.

4. The amount of money required to pay any interest, amortization, or redemption charges which the municipality will owe during the budget year.

5. A general summary of the total proposed budget.

6. Grant matching fund information required under §22.360 of this Code.

(Amend. Ord. 10-02-2007)

§22.120. BUDGET OFFICER.

The budget officer for this City shal1 be the city clerk, or such other person as the mayor may designate. It is the responsibility of the budget officer to prepare the budget after reviewing expenditure requests and revenue estimates with other city officers. The budget officer shall submit. the completed budget and supporting schedules and exhibits to the mayor, who shall present the same to the board of aldermen.

§22.130. MAYOR TO SUPERVISE.

The budget officer shall prepare the city budget under the direction of the mayor. The mayor shall concur in the budget prior to its submission to the board of aldermen.

§22.140. EXPENDITURES LIMITED.

Expenditure estimates in the budget shall not be larger in amount than the total anticipated revenue for the budget year, plus any surplus from the previous year or less any deficit from the previous year.

§22.150. DEBT LIMITED.

The City shall not incur any debts which aggregate an amount greater than the anticipated revenues for the budget year, without the approval of the voters of the City, as required by law,

§22.160. BUDGET CALENDAR.

The budget officer shall prepare the city budget in accordance with the following calendar:

1. In July of each year, the budget officer will collect the data necessary, and make preliminary revenue estimates for the coming fiscal year. He will estimate expenditures for the present year, and note expenditures and revenues for the previous two fiscal years.

2. In August of each year, the budget officer will request from each city officer a statement of expenditures requested for the coming fiscal year.

3. In September of each year, the budget officer will review the departmental requests and make his final revenue estimates for the coming fiscal year, and will confer with department heads to discuss these requests.

4. In October of each year, the budget officer will begin assembling the city budget.

5. In November of each year, the budget officer will confer with the mayor and any such other officers as the mayor may designate, for preparation of the city budget for the next fiscal year to be submitted to the board of aldermen.

6. The budget shall be submitted to the board of aldermen at the regular, meeting in December.

§22.170. BUDGET PROCEDURES.

To the maximum extent practicable, and to the extent it does not conflict with state law, this Code, or other ordinances, the budget shall be prepared in accordance with generally accepted accounting principles.

SUBCHAPTER C -- RECORDS MANAGEMENT

§22.200. CITY CLERK TO KEEP RECORDS.

The records of the City Hall shall be kept in the custody of the city clerk.

1. As used in this subchapter, the word "record" or "records" shall mean any document,

book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this subchapter, and are hereinafter designated as "nonrecord" materials.

2. The city clerk may delegate to a subordinate or to another city official authority to have temporary custody of city records, after satisfying himself as to the safety of said records.

§22.210. DESTRUCTION OF RECORDS AND NONRECORD MATERIALS.

All records made or received by or under the authority of or coming into the custody, control or possession of local officials in the course of their public duties are the property of the City and shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law and this section.

1. The City shall retain and destroy records and nonrecord materials in accordance with the then current retention schedule adopted by the City Board of Aldermen by Resolution or Ordinance ("The Retention Schedule"). At the discretion of the City Clerk, or upon specific direction of the Board of Aldermen or the Mayor, concerning specific records or nonrecord materials, such items may be retained for a period of time longer than the minimum retention period stated in the Retention Schedule.

2. Notwithstanding subsection 1, no record or nonrecord material shall be destroyed or otherwise disposed of unless it is determined that the record has no further administrative, legal, fiscal, research or historical value.

3. Records of the City may be disposed of or destroyed, without the approval of the Missouri Local Records Board, if done so in accordance with the Retention Schedule.

(Amend. Ord. 2010-12-002)

§22.250 CLOSED RECORDS

1. All records of the City regarding the hiring, firing, disciplining or promoting of any particular employee where personal information about the employee is discussed or recorded, or when there is a discussion or decision as to whether to hire, fire, promote or discipline any particular employee, and all other personal information relating to the performance or merits of individual employees are hereby declared to be closed records under RSMo §§610.021 and 610.022.

2. All records of legal actions, causes of action, or litigation involving the City, and any confidential or privileged communications between the City or its representatives and its

attorneys, are hereby declared to be closed records under RSMo §§610.021 and 610.022. However, the record of any vote relating to litigation involving the City shall be opened upon final disposition of the matter voted upon; provided, however, in matters involving the exercise of the power of eminent domain, the record of the vote shall be opened immediately following the action on the motion to authorize institution of such a legal action.

3. All records constituting legal work product are hereby declared to be closed records under RSMo §§610.021 and 610.022.

4. All records of the actual or potential lease, purchase, or sale of any interest in real estate by the City where public knowledge of the transaction might adversely affect the legal consideration therefore, are hereby declared to be closed records under RSMo §§610.021 and 610.022. However, any public record approving a contract relating to the lease, purchase or sale of real estate by the City shall be opened within seventy-two hours after execution of the lease, purchase or sale of the real estate.

5. All records of nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological or alcoholism or drug dependency diagnosis or treatment, are hereby declared to be closed records under RSMo §§610.021 and 610.022.

6. All records of testing and examination materials, before the test or examination is given, or if it is to be given again, before so given again, are hereby declared to be closed records under RSMo §§610.021 and 610.022.

7. All records of welfare cases of identifiable individuals are hereby declared to be closed records under RSMo §§610.021 and 610.022.

8. All records of preparation on behalf of the City or its representatives for negotiations with employee groups, including any discussions or work product, are hereby declared to be closed records under RSMo §§610.021 and 610.022.

9. All records of software codes for electronic data processing and documentation thereof are hereby declared to be closed records under RSMo §§610.021 and 610.022.

10. All records of specifications for competitive bidding, until either the specifications are officially approved by the City or the specifications are published for bid, are hereby declared to be closed records under RSMo §§610.021 and 610.022.

11. All records of sealed bids and related documents are hereby declared to be closed records under RSMo §§610.021 and 610.022, until the earlier of either when the bids are opened, or all bids are accepted or all bids are rejected.

12. All records of individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment are hereby declared to be closed,

except that this closure shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such are hereby declared to be closed records under RSMo §§610.021 and 610.022.

13. All other records that are protected from disclosure by law are hereby declared to be closed records under RSMo §§610.021 and 610.022.

14. All records of meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest are hereby declared to be closed records under RSMo §§610.021 and 610.022.

15. All records of confidential or privileged communications between the City and its auditor, including all auditor work product, are hereby declared to be closed records under RSMo §§610.021 and 610.022.

16. All records of operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health are hereby declared to be closed records under RSMo §§610.021 and 610.022. Nothing in this closure shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. The City has determined that disclosure of these records would impair the City's ability to protect the safety or health of persons, and that the public interest in nondisclosure outweighs the public interest in disclosure of the records.

17. All records of existing or proposed security systems and structural plans of real property owned or leased by the City are hereby declared to be closed records under RSMo §§610.021 and 610.022.

18. All information that is voluntarily submitted by a non-public entity owning or operating any infrastructure for use by the City in order to devise plans for protection of that infrastructure, are hereby declared to be closed records under RSMo §§610.021 and 610.022 to the extent that their public disclosure would threaten public safety. Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the City Clerk or Records Custodian to determine if retention of the document is necessary in furtherance of a security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed.

19. Notwithstanding the provisions of §§22.250.17 and 22.250.18 of the City Code, records related to the procurement of, or expenditures relating to, security systems purchased with public funds shall be open records under RSMo §§610.021 and 610.022.

20. The City has determined that the disclosure of the records closed pursuant to §§22.250.17 and 22.250.18 of the City Code would impair the City's ability to protect the security of safety of persons or real property, and that the public interest in nondisclosure outweighs

the public interest in disclosure of the records.

21. All records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of the City are hereby declared to be closed records under RSMo §§610.021 and 610.022. This closure shall not be used to limit or deny access to otherwise public records in a file, document, data file, or database containing public records that are not otherwise closed. Records related to the procurement of, or expenditures relating to, such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, the City for such computer, computer system, computer network, or telecommunications network shall be open records under RSMo §§610.021 and 610.022.

22. All records of credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between the City and a person or entity doing business with the City are hereby declared to be closed records under RSMo §§610.021 and 610.022. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of the City or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by the City.

23. All other records that may be closed under Missouri State Law are hereby declared to be closed records under RSMo §§610.021 and 610.022.

24. Any record that is closed under this Ordinance may be made public if a majority of the Board of Aldermen affirmatively votes to make a specific document available to the public.

(Ord. 9-01-2007; 10-04-2007)

SUBCHAPTER D –GRANTS

§22.300. DEFINITIONS

1. "Donation" means any financial aid requested by the City in an amount of $500.00 or more that does not need to be repaid and is not a grant.

2. "Grant" means any financial aid or subsidy in the form of money, property, or technical assistance in lieu of money that:

    a. does not need to be repaid in money,
    b. that is awarded based on a formal or informal application process,
    c. that is awarded for a stated purpose or project based on criteria selected by the party giving the financial aid or subsidy, and

d require some level of reporting to the party giving the financial aid or subsidy, or that party's designee.

3. If the City requests financial aid or a subsidy for an unspecified amount and does not expect to receive $500 or more from any one person or entity, the request is not a request for a "donation" or "grant" even if the City receives more than $500 from a single person or entity.

(Ord. 10-01-2007)

§22.310. CITY CLERK TO KEEP RECORDS OF GRANTS AND DONATIONS FOR PUBLIC INSPECTION.

The City Clerk shall keep a file of all grants and donations for which the City has submitted an application or request during the immediate past three years. This file shall be known as the Current Grant File. The file shall be available for inspection by the public. The file shall include the following information for each such grant or donation:

1. The name of the grant or purpose of the donation.
2. The entity or person with whom the application was filed.
3. The amount sought in the grant or donation.
4. The amount of matching funds required to be supplied by the City.
5. The source of the matching funds.
6. The purpose of the grant.
7. The date the application was submitted.
8. Whether the grant was awarded, in whole or in part.
9. The amount of the grant that was awarded or the donation made.
10. Any restrictions on the use of the funds.
11. The amount of the grant funds that have been expended to date and what the funds have been spent on.
12. A copy of the application.

(Ord. 10-01-2007)

§22.320. RECORDS OF ANONYMOUS DONATIONS.

The City Clerk does not need to keep in the Current Grant File any records of anonymous donations that were not specifically requested by the City from the anonymous donor.

(Ord. 10-01-2007)

§22.330 AUTHORIZATION REQUIRED TO PURSUE GRANTS

Before any City official or employee may pursue, apply for, or request any grant or donation, the following actions are required:

1. For grants or donations for the Police Department that do not require the City to provide matching funds, the Police Chief shall seek and obtain approval of the Emergency Services Committee before the grant or donation application or request can be submitted.

2. For all other grants or donations, the applicant shall seek and obtain the approval of the Board of Aldermen before the grant or donation application or request can be submitted.

(Ord. 10-01-2007; 2015-12-01)

§22.340 APPLICATION FORMS TO BE SUBMITTED TO ALDERMEN BEFORE A VOTE ON AUTHORIZATION TO FILE APPLICATION.

At least two days before any vote of the Emergency Services Committee or Board of Aldermen to authorize the pursuit of a grant or donation, the following information must be submitted to each Alderman who will vote on the request, unless a vote of two thirds of such Aldermen vote to waive this requirement:

1. A description of the donation or grant,
2. The blank application form,
3. The names of the persons or entities to whom the request or application is to be made,
4. The rules for the grant or donation, and
5. To the extent it is available, all of the information required by §22.310 of this Code.

(Ord. 10-01-2007; 2015-12-01)

§22.350 NO EXPENDITURE OF FUNDS FOR GRANT PURPOSES BEFORE RECEIPT OF GRANT FUNDS.

Unless required by the grant, no City funds may be expended for purposes of a grant that has been awarded to the City until the City has actually received the grant funds.

(Ord. 10-01-2007)

§22.360 GRANT MATCHING FUNDS TO BE STATED IN THE CITY BUDGET

The amount of any actual or potential matching funds required to satisfy any awarded or pending grant application, shall be stated in the City Budget under a separate line item for each grant until the grant has been closed, the application is withdrawn, or the application is rejected. The aggregate amount of such matching funds shall also be stated in the City Budget. Both the line items for each grant's matching funds, and the aggregate amount of all current awarded or pending matching funds, shall also be stated in the City Budget.

(Ord. 10-02-2007)

§22.370 EXPENDITURE OF FUNDS PURSUANT TO A GRANT

1. When the City has applied for, received, and accepted a grant of funds with conditions, the City shall comply with all of the lawful written conditions staed in the grant.

2. When the City has applied for, received, and accepted a grant of funds with the condition that the grant funds be used to reimburse the City only for the City's employees' work during overtime hours, the City will seek such reimbursement only for wages lawfully incurred and paid to such City employees as overtime.

(Ord. 2019-12-00__)

APPENDIX I

22 APPENDIX I-1 SAMPLE BUDGET FORMAT

The following Sample Budget is not meant to be complete. It is included to illustrate how the various parts of the budget may be set up. Material in brackets in this appendix is informational and explanatory and not part of the sample format.

22 APPENDIX I -2 SAMPLE BUDGET MESSAGE

Honorable Mayor and City Council
Your Town
Missouri

{Sample Budget Message by permission of }
{Robert J. Saunders, Liberty, Mo. }

Gentlemen:

Pursuant to the requirements of Section 67.020 of the Revised Statutes of Missouri, the 1967 budget is hereby submitted. This budget has been prepared in conjunction with the department heads who have attempted to anticipate the needs of their departments realistically in relation both to available money and departmental problems.

For the sake of clarity in this presentation a summary page is provided in addition to detailed expenditures. Reference to the summary pages will reveal major highlights of each division of the budget. In addition, various plates are included to graphically present budget information.

In every respect the 1967 budget meets the requirements that the expenditures do not exceed the revenues. In addition, all bond funds are anticipate to have more than adequate supporting revenues.

The anticipated revenues derived from various sources to finance the General Fund shows a net increase of $20,839. The total anticipated revenue in the General Fund is $353,630. General Fund expenditures, inc1uding $9,900 budgeted as a Contingent Account, balance with

anticipated revenues.

The revenues anticipated for the Street Department in both the maintenance and capital improvements sections total $127,400. This is a net decrease of $4,039. The reason for this decrease may be found in the flood relief refund item carried in the 1966 budget which constituted federal participation in flood relief.

The 1967 budget represents a total yearly program of $584,467 in the General Fund, Street Fund, Cemetery Fund, Parking System, and various bond retirement funds.

The 1967 budget is submitted with the belief that it represents a worthy effort to obtain a balanced, forward looking municipal program for the year. It represents in virtually every section a planned effort to improve the level or the quality of service now provided Your Town. The 1967 budget expresses on paper and in dollars the never ending struggle to provide Your Town citizens the most service possible for each of their tax dollars.

Respectfully submitted,

Budget Officer

22 APPENDIX I-3 BUDGET SUMMARY REVENUES -ALL FUNDS

CITY OF YOUR TOWN

Budget Summary
Revenues-All Funds
1968-69 Budget

TOTAL GENERAL FUND

	Actual 1966-67	Estimated 1961-68	Budget 1968-61
General Fund			
Property Taxes	$000,000	$000,000	$000,000
Other Tax Receipts	00,000	00,000	00,000
Permits, Fees, Misc. Licenses	0,00	0,000	00,000
Miscellaneous Income	00,00	00,000	00,000
TOTAL GENERAL FUND	000,000	000,000	000,000
Water Operating Fund			
Water Sales to Customers	000,000	000,000	000,000
Other Operating Revenue	00,000	00,000	00,000

Other Revenue	0,000	0,000	00,000
TOTAL WATER OPERATING FUND	000,000	000,000	000,000
General Debt Retirement			
Property Tax	00,000	00,000	0,000
Other Tax Receipts	0,000	0,000	000
TOTAL GENERAL DEBT RETIREMENT	00,000	00,000	0,000
Library Fund			
Property Tax	00,000	00,000	00,000
Other Tax Receipts	000	000	000
Fees, & Misc. Income	000	000	000
TOTAL LIBRARY FUND	00,000	00,000	00,000
TOTAL REVENUES	$000,000	$000,000	$000,000

22 APPENDIX I-4 GENERAL FUND ESTIMATED RESOURCES AND DISBURSEMENTS

CITY OF YOUR TOWN (Prepare similar schedule for each fund)

General Fund
Estimated Resources and Disbursements

Balance July I, 1968*	$ 00,000
BUDGETED REVENUE	000,000
FUNDS AVAILABLE	$000,000
BUDGETED EXPENDITURES	000,000
BALANCE JUNE 30, 1969**	$ 00,000

* Beginning date of your city's fiscal year
**Ending date of your city's fiscal year

22 APPENDIX I-5 ESTIMATED SOURCE OF FUNDS

CITY OF YOUR TOWN (Prepare similar schedule for each fund)

Estimated Source of Funds

General Fund

	Actual 1966-67	Estimated 1967-68	Budget 1968-69
Property Tax			
Real Property Tax	$000,000	$000,000	$000,000
Personal Property Tax	00,000	00,000	00,000
Delinquent Real Tax	0,000	0,000	0,000
Delinquent Personal Tax	000	000	000
TOTAL PROPERTY TAX	$000,000	$000,000	$000,000
Other Tax Receipts			
Merchants & Manufacturers	0,000	0,000	0,000
Corporations & Intangible	00,000	00,000	00,000
Interest & Penalties	0,000	0,000	0,000
Telephone Franchise	00,000	00,000	00,000
Electric Franchise	00,000	00,000	00,000

TOTAL OTHER TAXES	00,000	00,000	00,000
Permits, Fees, and Licenses			
Police Court Fines	00,000	00,000	00,000
Vehicle Licenses	00,000	00,000	00,000
Liquor Licenses	0,000	0,000	0,000
TOTAL PERMITS, FEES, ETC.	00,000	00,000	00,000
Miscellaneous Income			
Revenue from other Agencies	00,000	00,000	00,000
Sale of Maps	000	000	000
Investment Income	0,000	0,000	0,000
Miscellaneous	000	000	000
TOTAL MISCELLANEOUS	00,000	00,000	00,000
GRAND TOTAL	$000,000	$000,000	$000,000

22 APPENDIX I- 6 BUDGET SUMMARY EXPENDITURES - ALL FUNDS

CITY OF YOUR TOWN

Budget Summary
Expenditures -All Funds
1968-69 Budget

	Actual 1966-67	Estimated 1967-68	Budget 1968-69
General Fund			
Legislature	$ 0,000	$ 0,000	$ 0,000
General Administration	00,000	00,000	00,000
Police	00,000	00,000	00,000
Fire	00,000	00,000	00,000
Streets	00,000	00,000	00,000
Municipal Court	00,000	00,000	00,000
TOTAL GENERAL FUND	000,000	000,000	000,000
Water Operating Fund			
Water Distribution	00,000	00,000	00,000
Water Administration	00,000	00,000	00,000
Debt Service	00,000	00,000	00,000
Capital Investment	00,000	00,000	00,000

TOTAL WATER OPERATING FUND	000,000	000,000	000,000
General Debt Retirement			
Principal Payments	00,000	00,000	00,000
Interest Payments	00,000	00,000	00,000
Fiscal Agent Charges	00,000	00,000	00,000
TOTAL GENERAL DEBT RETIREMENT	000,000	000,000	000,000
Library Fund			
General Administration	0,000	0,000	0,000
Books & Periodicals	0,000	0,000	0,000
Equipment	0,000	0,000	0,000
TOTAL LIBRARY FUND	00,000	00,000	00,000
TOTAL EXPENDITURES	$000,000	$000,000	$000,000

22 APPENDIX I-7 PROPOSED EXPENDITURES - GENERAL FUND

CITY OF YOUR TOWN

General Fund
Proposed Expenditures

[Prepare similar schedule for each fund]

	Actual 1966-67	Estimated 1967-68	Budget 1968-69
Function			
Legislature	$ 0,000	$ 0,000	$ 0,000
General Administrative	00,000	00,000	00,000
Police	00,000	00,000	00,000
Fire	00,000	00,000	00,000
Streets	00,000	00,000	00,000
Municipal Court	0,000	0,000	0,000
TOTAL BUDGETED EXPENDITURES	$000,000	$000,000	$000,000

22 APPENDIX I-8 EXPENDITURE DETAIL

{An expenditure detail sheet should be made for each separate activity which is budgeted }

EXPENDITURE DETAIL

ACTIVITY Police		FUND General	
Function and Activity	Actual 1966-67	Estimated 1967-68	Budget 1968-69
Personal Services			
Salaries & Wages Full-time	$00,000	$00,000	$00,000
Salaries & Wages Part-time	0,000	0,000	0,000
Insurance Charges	0,000	0,000	0,000
Uniform Allowance	0,000	0,000	0,000
TOTAL	00,000	00,000	00,000
Contractual Services			
Dues and Subscriptions	000	000	000
Maintenance of Vehicles	0,000	0,000	0,000
Printing	000	000	000
Telephone	0,000	0,000	0,000
TOTAL	0,000	0,000	0,000
Commodities			
Food	000	000	000
Gasoline and Oil	0,000	0,000	0,000
Office Supplies	000	000	000
Other Commodities	0,000	0,000	0,000
TOTAL	0,000	0,000	0,000
Capital Outlay			
Motor Vehicles	0,000	0,000	0,000
Office Equipment	0,000	0,000	0,000
Radios & Equipment	000	000	000
TOTAL	00,000	00,000	00,000
GRAND TOTAL	$00,000	$00,000	$00,000

22 APPENDIX I - 9 PERSONNEL SCHEDULE

{A personnel schedule should accompany each expenditure detail sheet for each activity}

PERSONNEL SCHEDULE

ACTIVITY Police			FUND General
Number	Position Title	Current Year	Proposed Budget
1	Chief	$ 0,000	$ 0,000
1	Sergeant	0,000	0,000
4	Patrolmen	00,000	00,000
1	Security	0,000	0,000
	TOTAL	$ 00,000	$00,000

APPENDIX II

22 APPENDIX II - 1 RECORD RETENTION PERIODS

The material on the following pages indicates the length of time that city records are to be kept, in accordance with Subchapter C, "Records Management" of this Code of Ordinances.

		Retention Period
ADMINISTRATION		
1.	Affidavits of Publications and Notices of Publications.	5 years.
2.	Annexation Records - Petitions, correspondence, affidavits of publications, ordinances and public hearings.	5 years after recorded in minutes.
3.	Census Reports	Permanent.
4.	City Seal	Permanent.
5.	Complaints: General, Discrimination, Service, Maintenance, Repair, etc.	5 years after action completed.
6.	Departmental Daily Activity Log/Journal	3 years.
7.	Departmental Emergency Journal - A record of all alarms answered by Fire Department, Police Department, Ambulance, etc.	Permanent.
8.	Departmental Reports	
	a. Monthly	5 years.
	b. Semi-Annual	5 years.
	c. Annual Summary	Permanent.
9.	Federal Agencies - Correspondence, reports submitted or received.	Subject to Federal requirements.
10.	General Correspondence	5 years.
11.	Incorporation Records	Permanent.
12.	Index to Files	Same retention as file.
13.	Legal Opinions and Records	Permanent.
14.	Maintenance Records	
	a. Building	10 years.
	b. Vehicles	Length of Ownership.
	c. Equipment	2 years.

15.	Memorandums	5 years.
16.	Minutes - Council, special boards, committees and commission minutes.	Permanent.
17.	Notice of Meetings	10 years.
18.	Oath of Office - Elected or Appointed	Term of office.
19.	Ordinances and Resolutions Proposed but Rejected	5 years.
20.	Ordinances and Resolutions Signed (Originals)	Permanent.
21.	Petitions	5 years.
22.	Press Releases	1 year.
23.	Proclamations	1 year after recorded in minutes.
24.	Public Hearing Records	2 years after recorded in minutes.
25.	Record Disposal Sheet - Shows date, type of record and destroyed by whom.	Permanent.
26.	Reference Materials	Retain as long as material is of Administrative value.
27.	Special Committee Reports	5 years.
28.	State Agencies - Correspondence and reports submitted.	Subject to State requirements.

BONDS

29.	Bond and Interest Coupon Register	Permanent.
30.	Bond Sale Transcripts	Permanent.
31.	Cancelled Bonds and Coupons	5 years.
32.	Paid Bonds and Coupons	5 years.
33.	Performance, Surety, Contractor License,	5 years.

Indemnity Insurance, Fidelity and Appearance Bonds.

CEMETERY

34.	Burial Reports	Permanent.
35.	Lot Sales Journal	Permanent.
36.	Perpetual Care Service Ledger	Permanent.
37.	Report of Grave Openings and Body Transfers	Permanent.

CONTRACTS

38.	Accepted Contracts and Agreements - Bids and specifications:	
	a. Capital Improvements	10 years after expiration of contract
	b. Services and Supplies	3 years after completion of audit
39.	Deeds of Easement	Permanent.
40.	Deeds to Municipal Property	Permanent.
41.	Franchises granted by municipality	5 years after cancellation or expiration of franchise
42.	Leases of Municipal Property to others	5 years after cancellation or expiration of lease.
43.	Leases of Property to Municipality	5 years after cancellation or expiration of lease.
44.	Rejected Bids-Contracts and Supporting Papers	3 years.
45.	Titles to Municipal Vehicles and Equipment.	Length of Ownership

ELECTIONS

46.	Candidate Affidavit of Election Expense and Contributions	5 years.
47.	Certificates of Election Return Records	1 year after recorded in minutes.
48.	Completed Voting Ballots	1 year unless election contested.
49.	Declaration of Candidacy	5 years.
50.	Election Boundaries and Precincts	Until Revised.
51.	Nominating Petitions	3 years.
52.	Poll Books	1 year unless election contested.
53.	Rejected Ballots	1 year unless election contested.
54.	Tally Sheets	1 year unless election contested.
55.	Voting Certificates	2 years

FINANCIAL

56.	Accounts Receivable and Disbursement Journal	Permanent
57.	Annual Financial Budget (Final)	Permanent or 1 year after recorded in minutes.
58.	Audit Reports	Permanent.
59.	Bank Deposit Slips	5 years.
60.	Bank Statements	5 years.
61.	Billing Statements - (Taxes, utilities and other services.)	5 years.
62.	Bills of Sale - Duplicates of issue to purchaser of property other than real property, belonging to municipality.	5 years.

63.	Budget Formulation, Papers	5 years.
64.	Cancelled Checks or Warrants	5 years.
65.	Cash Remittance Slips	5 years.
66.	Cashier Daily Collection Report	5 years.
67.	Check Register	5 years.
68.	Check Stubs	5 years.
69.	City Financial Annual Reports/Statements	Permanent
70.	City Financial Monthly Reports/Statements	5 years.
71.	Equipment Inventories/Property Ledger	5 years.
72.	General Journal	Permanent.
73.	General Ledger	Permanent.
74.	Paid Invoices and Bills	5 years.
75.	Payroll Records a. Employee Earning Record b. Payroll Deduction and Authorizations c. Time Records (cards, ledgers, sheets) d. Leave of Absence, Vacation, Sick Leave	5 years.
76.	Purchase Orders and Requisitions	5 years.
77.	Receipt Books or Stubs for all Monies Received	5 years.
78.	Retirement Records (LAGERS)	5 years after termination of benefits of employee.
79.	Savings Account Book	5 years.
80.	Travel Expenditures Book	5 years.
81.	Vouchers	5 years.
82.	Warrants - Authorization to issue checks.	5 years.

83.	Work Orders	5 years.

INSURANCE

84.	Accident Files - Personnel and Property	10 years after settlement
85.	Insurance Policy Claims against the Municipality	10 years after settlement
86.	Insurance Policy Records	Retain for 5 years after expiration of policy.

PERMITS AND LICENSES

87.	Refused or Rejected Applications for Permits -arid Licenses	3 years.

Monies Received
(Application for and stub copy of License or Permit)

88.	Bicycle and Vehicle License or Permit	5 years after expiration
89.	Building Permits	Permanent.
90.	Excavating License or Permit	5 years after expiration
91.	Pet and Animal License or Permit	5 years after expiration
92.	To Operate Food Markets	5 years after expiration
93.	To Operate Recreational Facilities - Parks, tennis courts, bowling alleys, swimming pools, etc.	5 years after expiration
94.	To Own and Operate Professional Sport Teams, Facilities and Arenas -Baseball, football teams, stadium, arena, etc.	5 years after expiration
95.	To Own, Operate, Sell or Rent Miscellaneous	5 years after expiration

	Agencies, Activities and Services - Garage, school, hotel, restaurant, parking lot, employment agency, dance hall, theater, laundry, dry cleaning, garbage disposal, etc.	
96.	To Process, Manufacture or Package Goods	5 years after expiration
97.	To Sell Beer, Wine and Liquor	5 years after expiration
98.	To Sell Meat, Milk or Other Foods	5 years after expiration
99.	To Solicit Money for Various Causes	5 years after expiration

No Monies Received
(Application for and Stub Copy of License or Permit)

100.	To Hold Parade or Public Gatherings	1 year
101.	To Own, Use, Display or Hold Other Facilities, Activities or Things of a Nonbusiness Nature	1 year
102.	To Use Public Parks, Streams, Docks, etc.	1 year

PERSONNEL

103.	Application for Employment	3 years
104.	Departmental Rules and Regulations	Until Revised
105.	Employee Card File - A permanent card should be kept showing condensed pertinent information about the employee. Example: dates of employment, salary, promotions, citations, awards, etc.	Permanent.
106.	Employee Personnel Files - Contains applications, accident reports, citations, medical records, personal histories and personnel actions.	5 years after termination or retirement.
107.	Payroll information	See Financial.

PUBLIC SAFETY

Note: Kansas City and St. Louis City. The retention periods listed in this section do not over-ride the provisions of Senate Bill No.1 of the 77th General Assembly. (Sunshine Bill)

108.	Accident Reports	
	a. Submitted to Highway Patrol Hq.	5 years.
	b. Not submitted to Highway Patrol Hq.	Permanent.
109.	Breathalyzer Test Results	
	a. Positive	5 years after conviction.
	b. Negative	1 year.
110.	Complaints - Recorded only when incident requires a written report. (Peace disturbance, trespassing, etc.)	5 years.
111.	Court Calendar (Municipal)	Permanent.
112.	Court Docket (Municipal)	Permanent.
113.	Court Summons (Municipal)	Permanent.
114.	Criminal Case File - Listing felonies, misdemeanor, etc.	Permanent.
115.	Missing Person File	3 years.
116.	Officer Reports - List officers reports of theft, burglary, etc.	Permanent.
117.	Parking Tickets	
	a. Paid	5 years.
	b . Unpaid	5 years.
118.	Traffic Tickets (Uniform)	
	a. Paid	5 years.
	b. Unpaid	5 years.
119.	Vehicles Abandoned File	5 years.
120.	Warrants for Arrest	Permanent.

PUBLIC WORKS AND SERVICES

121.	Construction Blueprints for Completed City Buildings, Streets, Utilities, Parks, Recreational	Permanent.

Areas, Etc.

122.	Inspections - Inspection and testing records for electrical, elevators, fire, schools, hospitals, restaurants, sewers, safety and security, etc.	5 years after subsequent record defects have been corrected.
123.	Maps a. City Maps b. Street Maps c. Utility Maps - Water, gas, sewer, electrical lines, locations, etc. d. Zoning Maps - Area location and boundaries.	Permanent.
124.	Meter Reading Books - Cards and sheets.	5 years.
125.	Plats	Permanent.
126.	Project Records - Job summaries, costs, assessments, repair and work orders, resolutions and status reports of projects received and submitted by the department.	3 years after completion.
127.	Service Requests - For connections, disconnections or repair of electrical, gas, water, sewage, etc.	5 years.
128.	Water and Sewage Analysis Reports. Example: Swimming pools, water works, sewage treatment plants, etc.	5 years.

TAXES

129.	Ad-Valorem Tax Book - A listing of merchants, manufacturers, or professional establishments.	6 years.
130.	Court Orders - Copies pertaining to real estate, personal and ad-valorem taxes.	6 years.
131.	Delinquent Tax Books	6 years.
132.	Personal Property Tax Books - A listing of individuals, the assessed value and the amount of tax on property.	6 years.
133.	Property Transfer Slips	3 years.
134.	Real Estate Tax Books	6 years.

135.	Regular Assessment Sheets	5 years.
136.	Special Assessment Sheets	10 years after due date or final payment.

CHAPTER 23 -- PERSONNEL

§23.010. PROBATIONARY PERIOD.

Each employee receiving an appointment or a promotion to a position in the service of the City must serve a probationary period of six months or 1,040 hours work before his appointment or promotion shall be considered permanent. During the employee's probationary period, the employee's work habits, abilities, attitude, promptness and other pertinent characteristics will be observed and evaluated by his supervisor, department head or other appropriate city officials. If the probationary employee fails to meet required standards of performance, he is to be dismissed, or if he is a promoted regular employee, he may be restored to the position from which he was promoted or to a comparable. position. During the probationary period, the employee is not eligible for employee fringe benefits, such as sick leave and vacation, but will earn credit for those to be taken at a later date. Wages for designated holidays falling within the probationary period will be paid to probationary employees.

§23.020. SAME, DISCHARGE.

If at any time during the probationary period, the supervisor determines that the services of a city employee have been unsatisfactory, the employee may be separated from his position without the right of appeal or a hearing. The board shall notify the employee in writing at least seven calendar days before the effective date of separation of the reasons for the separation.

§23.030. SAME, TERMINATION OF PROBATIONARY PERIOD.

At the end of each employee's probationary period, the supervisor of the employee shall complete a probationary report and notify the mayor in writing that either (a) the employee has successfully completed his probationary period and is capable of performing the duties of the position satisfactorily, and is henceforth to be considered a regular employee with all rights and privileges due him; or (b) the employee has not demonstrated ability to perform satisfactorily the duties of the position and is to be separated from city government, or if promoted from another position returned to the previous or a similar position.

§23.035. DISCHARGE OF EMPLOYEES.

All employees serve the City "at will" and may be discharged at any time. Nothing in this Chapter is intended to create in an employee any "property right" cognizable under Federal law. The provisions of this Chapter are to be considered "directory" in nature, rather than "mandatory".

§23.040. APPOINTMENT AND PROMOTION.

Appointments and promotions to all classified positions shall be solely on the basis of merit, which shall be determined by evaluation of the applicant's:

1. training, education, experience and physical examination
2. oral interview, and
3. whenever practical, an examination or demonstration test
4. Physical exam verified with written statement.

§23.050. AGE.

The minimum age for employment as a probationary employee shall be eighteen years of age, unless the board shall in writing waive the requirement. The minimum age for employment of seasonal employees shall be sixteen years of age. The maximum age for employment shall be seventy years of age, unless the board shall in writing waive the requirement.

§23.060. RESIDENCE.

Employees of the City need not reside within the City, but are urged to do so. Employees must reside within the "trade area" surrounding the. City. The "trade area" is bounded by mid-points between the City of Elsberry and adjoining communities.

§23.070. PROMOTION POLICIES.

All vacancies occurring in the service of the City shall, whenever possible, be filled by promotion of a qualified employee within the city service. However, the board may authorize the recruitment of applicants from outside the city service whenever he has reason to believe that better qualified applicants are available than within the city service. Promotion within the city service shall be based on the qualifications and seniority of the person being appointed. Usually, the first consideration in filling of vacancies will be given to the most qualified senior applicant in the department in which the vacancy exists. Next, consideration will be given to the most qualified senior applicant from outside the department. If no acceptable applicant is found within the city service, the vacancy will be filled from outside the city service. The criteria used in the selection of the most qualified senior applicant shall be based upon experience, performance, evaluation and, where feasible, examination.

§23.080. RELATIVES IN THE CITY SERVICE.

Two members of an immediate family shall not be employed under the same supervisor; neither shall two members of an immediate family be employed at the same time, regardless of the administrative department, if such employment will result in an employee supervising a member of his immediate family. Immediate family is defined as wife, husband, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparents, grandchildren, stepmother, stepfather, brother-in-law, sister-in-law, uncle, and aunt.

§23.090. POLITICAL ACTIVITIES.

City employees shall not be appointed or retained on the basis of their political activity. City employees shall not be coerced to take part in political campaigns, to solicit votes, to levy, contribute or solicit funds or support, for the purpose of supporting or opposing the appointment or election of candidates for any municipal office.

§23.100. SAME, INDIVIDUAL ACTIVITIES.

No city employee shall actively advocate or oppose the candidacy of any individual for nomination or election to any municipal office, but an employee may participate in political affairs at other levels of government, provided such participation does not adversely affect his performance as a city employee. Employees are expected to exercise their right to vote in municipal elections, but shall not engage in, or participate in any other way in any municipal election.

§23.110. RECORDS.

Employees who create records of the City (as the same is defined in Chapter 22, Subchapter (C) are required to place the records in the custody of the City. Any employee who fails to turn over such records to the city clerk upon demand may be subject to immediate discharge. An employee, upon leaving the service of the City, who retains such records is guilty of a misdemeanor and may be prosecuted in the municipal court.

§23.120. OUTSIDE EMPLOYMENT.

No full-time employee of the city shall accept outside employment, whether part-time, temporary or permanent, without prior written approval from the board. Each change in outside employment shall require separate approval. Approval shall not be granted when such outside employment' conflicts or interferes, or is likely to conflict or interfere, with the employee's municipal service. Such approval, however, shall not be arbitrarily withheld. Employees may not engage in any private business or activity while on duty. No employee shall engage in or accept private employment or render any service for private interest when such employment or service is incompatible or creates a conflict of interest with his official duties. Outside employment of Police Officers shall be reviewed and acted upon by the Chief of Police in accordance with the Board approved outside employment policy for Police Officers. The Board shall not be required to approve outside employment requests for Police Officers. However, the Board may reject any request that it concludes violates the policy.

(Amend. Ord. 07-01-2007)

§23.130. CONDUCT, WORK HABITS, ATTITUDE.

It shall be the duty of each employee to maintain high standards of conduct, cooperation, efficiency and economy in their work for the city. Whenever work habits, attitude, production or

personal conduct of any employee falls below a desirable standard, supervisors should point out the deficiencies at the time they are observed. Corrections and suggestions should be presented in a constructive and helpful manner in an effort to elicit the cooperation and good will of the employee. Whenever possible, oral and/or written warnings with sufficient time for improvement shall precede formal discipline.

§23.140. DISCIPLINE POLICY.

It shall be the duty of all city employees to comply with and to assist in carrying into effect the provisions of the city's personnel rules and regulations. No permanent employee shall be disciplined except for violation of established rules and regulations, and such discipline shall be in accordance with procedures established by the personnel rules and regulations.

§23.150. GRIEVANCE POLICY.

The most effective accomplishment of the work of the city requires prompt consideration and equitable adjustment of the employee grievances. It is the desire of the city to adjust the causes of grievances informally, and both supervisors and employees are expected to make every effort to resolve problems as they arise.

§23.160. OVERTIME AND COMPENSATORY TIME.

1. Under this Chapter, the term “exempt employees” means those employees that are exempted from the requirement to pay minimum wage and/or overtime pay under the Federal Fair Labor Standards Act , 29 U.S.C. 201, et seq.

   Under this Chapter, the term “nonexempt employees” means those employees that are not exempted from the requirement to pay minimum wage and/or overtime pay under the Federal Fair Labor Standards Act , 29 U.S.C. 201, et seq.

2. The standard work week for non-exempt employees shall be five (5) days or a total of forty (40) hours per week, except police officers who shall work a standard of forty-eight and 85 hundredths (48.85) hours per 8-day work period; or forty- two and seventy-five hundredths hours 42.75 per 7-day work period. For any other work period established for the police department, full-time police officers shall work a standard work period equal to the number of hours that bears the same relationship to 171 as the number of days in the work period bears to 28.

3. Exempt employees are expected to work those hours necessary to assure the satisfactory performance of their departments, but not less than forty (40) hours per week. The chief of the police department is expected to work not less than forty-eight and 85 hundredths (48.85) hours per 8-day work period; or forty- two and seventy-five hundredths hours 42.75 per 8-day work period. For any other work period established for the police department, the Police Chief shall work the number of hours that bears the same relationship to 171 as the number of days in the work period bears to 28.

4. Nonexempt employees required to work overtime in any work period (5 or 8 days, as the case may be) will be compensated under this Section for overtime. Exempt employees will not be paid overtime compensation.

5. The department head or supervisor shall assign nonexempt employees regular work duties and responsibilities that can accomplished within the established work day and work week without the necessity for overtime. However, occasionally assigning some overtime work may be necessary for proper performance of work duties and responsibilities. Approval of the Mayor for overtime should be obtained whenever it is practical to do so.

6. Employees may be granted equivalent compensatory time off in lieu of cash compensation for overtime worked, by the employee's supervisor – subject to the following conditions:

    a. Compensatory time may be earned and should be used during the same year it is earned. The maximum accumulation of compensatory time is Forty (40) hours. Compensatory time is determined by multiplying the overtime hours actually worked by a factor of 1.5 (time and one-half).

    b. All scheduled use of the accumulated time must be completed within a reasonable period, not to exceed two years. Employees may use accumulated compensatory time within a reasonable period after a written request to their supervisor if such use does not unduly disrupt the operations of the City. While generally the choice of the use of accumulated compensatory time will be mutually agreed upon by the employee and the supervisor, in the event of a conflict, work schedule demands will prevail.

    c. Any unused compensatory time must be paid out at the higher of the wage at termination or the average of the last two years salary.

    d. Compensatory time must be earned before it is taken. Compensatory time is not considered as time worked for over-time pay purposes.

7. No overtime shall be payable until the total number of hours in the work week have been worked. No overtime shall be paid if an employee has less than one-half hour in anyone work period.

8. Time off for vacation, holidays, sick leaves or other authorized leave does not count as time worked during a work period.

(Amd. Ord. 2-1-1985; 2017-04-001; 2018-12-001)

2. The department head or supervisor shall employee regular work duties and responsibilities which can accomplished within the established work day and work week. However, occasionally some overtime work may be necessary for proper performance of

work duties and responsibilities.

3. When regular permanent employees are required to work extra or prolonged shifts, the department head may authorize compensatory time off, or he may at his option authorize overtime pay which shall be one and one-half times the employee's regular pay scale basis.

4. No overtime shall be payable until the total number of hours in the work week have been worked. No overtime shall be paid if an employee has less than one-half hour in anyone work period.

§23.170. HOLIDAYS.

1. All full-time employees of the city shall receive normal compensation for the nine legal holidays listed below. Legal holidays to be observed are:

New Year's Day – January 1
Presidents' Birthday – Third Monday in February
Memorial Day – Last Monday in May
Independence Day – July 4
Labor Day – First Monday in September
Columbus Day – Second Monday in October
Veteran's Day – November 11
Thanksgiving Day – Fourth Thursday and Friday in November
Christmas Day – December 25

2. An employee absent without authorized leave on the day preceding and/or the day following a holiday shall not receive regular compensation for the holiday.

3. Any employee of the City who shall be required to perform work or render services on regularly schedule holiday, may be compensated, at the employee's choice, with two and one-half times the employee's regular hourly rate of pay for the employee's service on the regularly scheduled holiday, or time off (hour for hour without any multiples) in lieu of the holiday missed ("compensatory time" or comp time"). The 2 ½ times is the maximum pay which shall be made for any holiday, and is not to be addition to any overtime which might otherwise be due for the same period. An employee calling in sick on a holiday that is a scheduled work day for the employee shall not get holiday pay or a substitute holiday.

4. The employee's department supervisor may designate the date the comp time is to be taken in lieu of the holiday. Such comp time shall be taken within 30 days after the scheduled holiday. The comp time may not be used on a holiday if the employee is scheduled to work on the holiday.

5. Comp time must be earned before it is taken. Comp time is not considered as time worked for over-time pay purposes.

6. For the Police Chief and full-time administrative staff whose office is located in City Hall, Christmas Eve and New Years Eve shall be holidays if they fall on a week day.

7. For the Police Chief and full-time administrative staff whose office is located in City Hall, if a holiday (other than Christmas Eve and New Years Eve) falls on a Saturday, such staff shall receive the preceding Friday as a holiday. For the Police Chief and full-time staff whose office is located in City Hall, if a holiday (other than Christmas Eve and New Years Eve) falls on a Sunday, such staff shall receive the following Monday as a holiday.

(Amd. Ord. 10-2-85; 1-2-1986; 2010-03-001; 2013-03-004; 2017-04-001; 2019-12-001).

§23.180. VACATION.

1. Every employee of the city service holding a permanent status position and having occupied such position for a period of twelve (12) consecutive calendar months shall be allowed annual vacation leave with pay.

2. Vacation leave shall be granted on the basis of the number of regularly scheduled hours in the standard work or duty week to which the employee is assigned at the time of his vacation.

3. Employees shall receive the following vacation:

   2 weeks of vacation after 1 year of uninterrupted service;

   3 weeks of vacation after 7 years of uninterrupted service;

   4 weeks of vacation after 12 years of uninterrupted service; and

   5 weeks of vacation after 20 years of uninterrupted service.

4. The above vacation shall accrue on the anniversary of the employee's most recent start date. For example, on the first anniversary of the eligible employee's most recent start date, the employee will have one week of vacation to use after the first anniversary.

5. No vacation leave in excess of that earned in one year may be carried forward to the next year, and no vacation leave in excess of that earned in one year shall be taken at one time. At least 3 months must pass before more than one year's worth of earned vacation is taken. Vacation days taken with the course of fifteen calender days shall be deemed to be taken together whether or not it is taken on consecutive days. For example, if a two year employee has four unused vacation days that are carried over to the next year, the employee may only take up to five vacations days in a row and must wait three months after taking the fifth day before taking any of the four carryover days. This limitation on taking more than one year's earned vacation at a time may be waived by the Mayor if there are extraordinary circumstances such as illness, child care, etc. An employee may appeal an adverse decision to the Board of Aldermen if it is done in writing within five

days of the adverse decision.

6. An employee may accumulate and carry-over only one year's worth of vacation. For example, during the first year of service, an employee takes no vacation because none is earned. On the first anniversary of the employee's start date, the employee earns one week of vacation (5 days if scheduled for a five day work week). If the employee only takes three days of vacation during the second year of the employee's tenure, the employee may use an additional two days of vacation during the third year of service in addition to the one week of vacation earned during the second year of service. This makes a total of seven available vacation days during the second year of service (2 unused + 5 newly earned). If that same employee only takes one day of vacation in the third year of service, the employee has six unused vacation days, but may only carry over 5 of those days to the fourth year, in addition to the 5 days earned in the third year, for a total of 10 vacation days that could be taken in the fourth year of service.

7. Absence in excess of authorized sick leave or disability leave may, at the request of the employee and within the discretion of the department head, be charged against vacation leave allowance. If a department head or City Officer is making the request, its allowance will be at the Mayor's discretion. An employee may appeal an adverse decision to the Board of Aldermen if it is done in writing within five days of the adverse decision.

8. Records of vacation leave allowance and use shall be kept by the person responsible for the employee's payroll payment. Vacation leave scheduled shall be in regard to the seniority of employees, to accord with operating requirements and, insofar as possible, with the requests of the employees.

9. When a regularly scheduled holiday occurs during the period of an employee's vacation, the holiday will not be counted as a vacation day.

10. No two employees shall be allowed vacation leave at the same time, if both are employed under the same supervisor. City Officers shall be deemed to have the same supervisor.

11. Unless specified elsewhere in the Municipal Code, supervisors' vacations must be agreed to in advance, by the Mayor.

12. All vacations must be scheduled at least 30 days in advance of the first day of vacation leave. The Mayor may waive this requirement.

13. In calculating the above service times, only the most recent hire date shall be used.

14. An interruption in service is the voluntary or involuntary termination of the employee's employment.

15. The term "City Officer" does not refer to a police officer, other than the appointed Chief of Police. City Officers include the City Clerk, City Treasurer, City Collector, City Chief of Police, and Municipal Court Clerk.

16. Upon the separation of an employee from City service or employment who at the time of separation was entitled to vacation pay, that employee shall be paid for all unused vacation days that the employee is entitled to accrue under this Ordinance at the time of separation. Vacation days for the year in which the separation occurs shall be prorated based on the days of actual service provided by the employee in that year.

(Amd. Ord. 4-1-2000; 7-2-2005; 2013-03-004; 2019-05-)

§23.190. SICK LEAVE.

All full-time city employees, with the exception of the City Clerk and the City Collector, shall earn sick leave with full pay at the rate of one day for 208 hours worked, and the City Clerk and City Collector shall earn sick leave with full pay at the rate of one day for 26 days worked. In each case, holidays shall be counted as "worked" in determining the number of hours or number of days worked. Sick leave shall accrue from the date of employment, but shall not be taken until the successful completion of the probationary period except with the written permission of the mayor. Sick leave may never be taken in advance of earning the time. Sick leave may be accumulated up to 60 days.

1. An employee may be eligible for sick leave for the following reasons:

    a. Personal illness or physical incapacity

    b. Quarantine of an employee by a physician

    c. Two days of sick leave may be used each year as personal days without the necessity of sickness, but said days may not be used in conjunction with the employee's vacation days or holidays.

2. An employee who is unable to report for work because of the reasons stated in subparagraphs (a) or (b) of this Section shall report the reason for his absence to his supervisor within ten minutes after the time he is expected to report for work. Absence as a result of the use of the personal days provided for in subparagraph (c) of this Section may be arranged for in advance as with vacation or reported within ten minutes after the time he is expected to report for work. Sick leave with pay shall not be granted unless such report has been timely made. Documentation may be required of the employee before any sick leave will be granted or payment made.

3. An employee terminating from city service shall not be allowed the use of sick leave in the last two calendar weeks of employment. Unused sick leave will not be compensated for in any way at the time of resignation or dismissal of an employee.

4. Abuse of the sick leave privilege can result in dismissal.

(Amd. Ord. 8-1-1990).

§23.200. DISCRETIONARY TRAINING LEAVE

At the City's sole discretion, the Mayor may authorize training in subjects relating to the work of the employee and which will benefit employee and the City service. The City will pay for the training, room, meals and mileage for such training.

(Amd. 2017-04-001)

§23.210. FUNERAL LEAVE.

An employee may be granted three (3) working days' leave as needed in the event of the death of his spouse, child, mother, father, sister, brother, mother-in-law, father-in-law, grandmother, grandfather, stepmother, stepfather, or stepchild. Such leave shall not be deducted from either sick leave or vacation leave. An employee shall be compensated for the funeral leave at his regular rate of pay.

(amended Ord. 02-02-2006)

§23.220. JURY LEAVE.

An employee may be granted leave with pay when required to be absent from work for jury duty or as a trial witness. Compensation for such leave shall be limited to the difference between pay received for this service and normal duty pay.

§23.230. DISABILITY LEAVE.

A permanent (full- or part-time) employee who is temporarily disabled in the line of duty shall receive pay equal to the difference between the amount received from Workmen's Compensation benefits and his normal salary amount for the period of his disability without charge against his vacation leave subject to the following conditions:

1. Provided that the disability resulted from an injury or illness sustained directly in the performance of the employee's work, as provided in the State Workmen's Compensation Act.

2. If incapacitated for his regular assignment, the employee may be given other duties with the city government for the period of recuperation. Unwillingness to accept such an assignment as directed by his department head or supervisor will make the employee ineligible for disability leave during the time involved.

3. A physician selected or approved by the City shall determine the physical ability of the employee to continue working or to return to work.

4. Disability leave shall not exceed sixty working days for anyone injury.

§23.240. VOLUNTEER FIREMEN.

All employees of the City are encouraged to participate as members of the volunteer fire department. Employees called away from the city service to duty as volunteer firemen shall be paid at the regular rate of compensation for such absence.

§23.250. EMPLOYEE BENEFITS.

All employees shall be entitled to the following benefits.

1. Unemployment insurance.

2. Workmen's Compensation insurance.

3. Social Security insurance.

4. Health insurance.

§23.260. EXCEPTIONS TO THIS CHAPTER.

The provisions of this Chapter shall not apply to uniformed employees (members of the fire and police departments) to the extent that the personnel policies of those departments (Chapter 70, entitled "Fire Department" and Chapter 71, entitled "Police Department") conflict with this Chapter. Notwithstanding any other provision in this Code, pursuant to, and to the extent provided by, §3105 and § 5102(a) of the Families First Coronavirus Response Act ("FFCRA"), employees of the City who are emergency responders shall be exempt from FFCRA's amendments to the Family and Medical Leave Act of 1993 (FFCRA §3102) and FFCRA's paid sick time requirements (FFCRA §5102).

(Ord. 2020-03-00__)

§23.270. OFFICERS ARE NOT EMPLOYEES.

Officers of the City (as defined in Section 21.100 of this Code) are not employees of the City, and are not entitled to claim privileges granted to employees under the terms of this Chapter, other than those specifically provided for elsewhere in the Municipal Code.

(Amended Ord 2013-03-004)

§23.280. EMPLOYEES ARE "AT-WILL" EMPLOYEES.

Notwithstanding the provisions of this Chapter, all employees of the city are employees at will, and subject to termination at any time by the board. of aldermen and mayor.

§23.285 BACKGROUND CHECKS

1. This ordinance is enacted pursuant to RSMo §43.535 to regulate the employment or engagement of law enforcement personnel, police officers, reserve police officers, city

clerk, city treasurer, and city court clerk.

2. Any applicant, employee or volunteer seeking to provide services to the City may be required to submit a set of his/ her fingerprints taken by the City Police Department to the Elsberry City Clerk, along with appropriate fees for taking and processing those fingerprints.

3. Upon receipt of the fingerprints and the appropriate fees, the City Clerk will transmit the fingerprints either electronically or via mail to the Missouri State Highway Patrol, together with the appropriate fees (unless a satisfactory billing arrangement has been entered into between the City and Missouri State Highway Patrol). The Missouri State Highway Patrol will compare the subject's fingerprints against its criminal file and, if necessary, submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the Missouri State Highway Patrol, which will disseminate the state and national results to the City.

4. The City shall render a fitness determination based upon the results of the criminal background check. In rendering a fitness determination, the City will decide whether the record subject has been convicted of, or is under pending indictment for: (a) a crime which bears upon his/her ability or fitness to serve in that capacity; or (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense.

5. A record subject may request and receive a copy of his/her criminal history record information from the City. Should the record subject seek to amend or correct his/her record, he/she must contact the Missouri State Highway Patrol for a Missouri state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

6. All criminal record check information shall be confidential and any person who discloses the information beyond the scope of the purposes allowed in this Ordinance is guilty of a class A misdemeanor.

(Ord. 8-4-2009)

§23.300. BONDS OF THE OFFICERS AND EMPLOYEES

All officers and employees of the City who receive, disburse, or are responsible for City funds, and the other officers and employees whom the City Board of Aldermen by Ordinance may designate, shall, before entering in the discharge of their duties, enter into, and give to the City, good and sufficient bond in the amount of at least fifty thousand dollars ($50,000.00) : (1) for the faithful and honest performance of their respective duties for the City; (2) for rendering a full and proper account to the City of Elsberry for funds and property that shall come into their respective possession or control, and (3) that they will pay over to the City all moneys belonging to the City, as provided by law, that may come into their respective hands, possession, or control. The

officer or employee may be required to provide the City with additional bonds as may be required by the City's financing entities. The City shall pay the premiums on all such bonds; provided that the officers and employees are is bondable at normal commercial rates. Otherwise, the officer or employee causing the excess premium shall pay the excess premiums. If the such officer or employee is covered by a blanket bond to the same extent as provided above, an individual bond for each such officer or employee shall not be required.

(Ord. 2020-05-003)

CHAPTER 24 -- BOARD OF ALDERMEN

§24.010. REGULAR MEETINGS.

The board of aldermen of this city shall meet in regular session in the council room of the City Hall at' the hour of 6:30 p.m. on the second Tuesday of each month.

1. When any such meeting day is a holiday, the regular meeting shall be held at such time as may be provided by the board on motion at the previous meeting. '

2. The board may, by motion, dispense with any regular meeting.,but at least one meeting, regular or special, must be held in each calendar month.

(Amended Ord. 09-2010-001; 2011-09-00_).

§24.020. SPECIAL MEETINGS.

Special meetings may be called by the mayor or by any two members of the board by written request filed with the city clerk, who shall thereupon prepare a notice of such special meeting, stating time, place and object thereof, which notice shall be served personally upon each member of the board or left at his usual place of residence at least twelve hours before the time of the meeting. It shall also be the duty of the city clerk, immediately upon receipt of the request for the meeting, to make diligent effort to notify each member of the board in person, either by telephone or otherwise, of such special session.

1. The city clerk shall make a diligent effort to notify those members of the mass media who customarily attend meetings of the board of aldermen of the special session, in the same manner as described above.

2. Failure to comply with the requirements of this section shall not invalidate any action taken at a special meeting of the board of aldermen.

3. Post notice of special meetings

§24.030. QUORUM.

A quorum of the board of aldermen shall consist of a majority of the full membership (including

vacancies and the mayor of the City) .

§24.040. COMPELLING ATTENDANCE.

In case a lesser number than a quorum shall convene at a regular or special meeting of the board of aldermen, the majority of the members present are authorized to direct the chief of police or other city officer to send for and compel the attendance of any or all absent members upon such terms and conditions and at such time as such majority of the members present shall agree.

§24.045. EFFECT OF ADJOURNED MEETINGS.

All adjourned meetings of the board shall, to all intents and purposes, be continuations of the meetings of which they are adjournments, and the same proceedings may be had at such adjourned meetings as at the meeting of which they are adjournments.

§24.050. DUTIES OF MAYOR AS PRESIDENT OF BOARD.

At the hour designated for board meetings the mayor shall call the board of aldermen to order, and he shall act as president of the board of aldermen.

1. The mayor shall appoint all committees, subject to the concurrence of the board of aldermen, the appointment or election of which is not otherwise provided for by this Code or other ordinance;

§24.055. ACTING PRESIDENT; ELECTION.

At the first meeting following the annual election the board shall elect one of their own number to act in the absence of the mayor who shall be styled "acting president of the board' of aldermen".

§24.060. ACTING PRESIDENT; DUTIES.

When any vacancy shall happen in the office of mayor by death, resignation, removal from the city, removal from office, refusal to qualify or from any other cause whatever, the acting president of the board of aldermen shall, for the time being, perform the duties of mayor, with all the rights, privileges, powers and jurisdiction of the mayor, until such vacancy is filled or such disability is removed; or, in case of temporary absence, until the mayor's return.

§24.070. RULES OF ORDER.

Except as otherwise provided by law or ordinance, the proceedings of the board of aldermen shall be controlled by Robert's Rules of Order, as revised.

§24.080. DECORUM.

The presiding officer of the board of aldermen shall preserve decorum and shall decide all questions of order subject to appeal to the board of aldermen. Any member may appeal to the board from a ruling of the presiding officer upon a question of order. If the motion for an appeal is seconded, the member making the appeal may briefly state his reason for the same and the presiding officer may briefly express his ruling, but there shall be no debate on the appeal and no other member shall participate in the discussion. The presiding officer shall then put the question to vote as to whether the decision of the chair shall be sustained. If a majority of the members present vote "aye" the ruling of the chair is sustained; otherwise, it is overruled.

§24.085. VOTING.

Every member of the board shall vote upon every question and when requested by any member the vote upon any question shall be taken by "ayes" and "nays" and be recorded.

§24.090. PERMISSION REQUIRED FOR MEMBERS TO LEAVE CHAMBER.

No member of the board of aldermen may leave the board chamber while in regular or special session without permission from the presiding officer.

§24.100. ORDER OF BUSINESS.

At the meetings of the board of aldermen, the order of business shall be as follows:

1. Call the meeting to order.

2. Pledge of Allegiance

3. Roll call.

4. Reading and acting upon unapproved minutes of previous meetings.

5. Unpaid bills. .

6. Petitions, remonstrances, complaints and requests, and the hearing of any person or group desiring to address the board, each of whom have filed prior requests to be placed on the agenda in compliance with City Code 24.105.

7. Opening of bids.

8. Public hearing as required by law or ordinance.

9. Acting on unfinished business. The unfinished business from the last preceding meeting shall take precedence over any new business.

10. New Business.

11. Reading of bills requiring only a final reading for passage.

12. Introduction and reading of bills for passage.

13. Resolutions which require action by the Board.

14. Reports of special boards and committees

15. Reports of Aldermen and Mayor.

16. Reports of City departments and officers.

17 . Miscellaneous business.

18. Public comment by any person or group desiring to address the board who has not filed prior requests to be placed on the agenda in compliance with City Code 24.105..

18. Vote to take up business to be conducted in closed session

19. Adjournment.

(Amend. Ord. 07- 01-2008; 08-06-2008).

§24.105 PREPARATION OF AGENDA AND REQUESTS FOR BUSINESS TO BE PLACED ON THE AGENDA

1. Only the following persons may request that the City Clerk place an item on an agenda for a meeting of the City Board of Aldermen, Planning and Zoning Commission, Board of Adjustment, or any committee thereof:

    a. The Mayor;
    b. An Alderman;
    c. A City elected or appointed officer;
    d. The City Attorney or Prosecutor;
    e. A City Department head;
    f. A member of the City Planning and Zoning Commission;
    g. A member of the City Board of Adjustment;
    h. The City Municipal Judge;
    i. A member of a City advisory committee;
    j. A person, or the person's legal representative, who is submitting a petition, remonstrance, or request specifically permitted by the City's ordinances;
    k. A City employee;
    l. A resident of the City; or
    m. A representative of a business with a physical location within the City limits.

2. The persons described in subsection 1(e) through (k) above, may request that items be placed on the agenda that directly effect them, or directly effect their official duties. Such requests must be received by the City Clerk three business days before the Board Meeting. For example, if the Board Meeting is at 6:30 pm on a Monday, the request must be received by the Clerk no later than the opening of business on the Thursday before the meeting. In the case of exceptional circumstances, this provision may be waived by a majority vote of the Board of Aldermen members present at the meeting

3. Anyone other than those listed in subsection 1 above, must have the Mayor or one Alderman sponsor their request to have an item placed on the Agenda.

4. Agendas shall be posted for public inspection and provided to all department heads as required by state statute. Upon request, agendas will be provided to any citizen. The City Clerk shall make available the draft agenda and Board meeting material to the Alderman at City Hall no later than two business days before the Board Meeting. For example, if the Board Meeting is at 6:30 pm on a Monday, the draft agenda and materials must be available to the Aldermen no later than the close of business on the Thursday before the meeting. In the case of exceptional circumstances, this provision may be waived by a majority vote of the Board of Aldermen members present at the meeting.

5. The draft and final agendas may be added to or amended by the Mayor, or by the vote of three Aldermen, unless there is objection by the majority of the members of the Board of Aldermen present.

6. Anyone other than those listed in subsection 1(a) through (g), must submit their petition, remonstrance, complaint, comment, presentation, or request to the City Clerk in writing at least five (5) business days preceding the meeting at which the same will be presented. The person submitting the petition, remonstrance, complaint, comment, presentation, or request shall provide a written statement giving the date it is made, the date of the meeting being requested, the person's name, the amount of time the presentation and discussion is expected to take, the basis for the person's standing to make the request to be placed on the agenda under this section, the person's address and telephone number, and a brief narrative description for the petition, remonstrance, complaint, comment, presentation, or request.

9. In special or emergency situations, the Board may decide to act on oral discussions of any petitions, remonstrances, complaints or requests presented by the interested parties appearing in an open meeting who have properly requested to be placed on the agenda. If a complaint is directed to another body or committee, the City Clerk shall forward said complaint to the proper representative. Any answer given by such other body or committee shall be given to the Board of Aldermen by such body or committee at the next Board of Aldermen meeting.

(Amend. Ord. 07- -2008; 12-03-2009; 2010-)

§24.110. EXPRESSION OF DISSENT OR PROTEST BY MEMBER.

Any member of the board of aldermen shall have the right to express dissent from or protest against any ordinance or resolution of the board and to have the reason therefor entered upon the journal. Such dissent or protest must be filed in writing and presented to the board not later than the next regular meeting following the date of the passage of the ordinance or resolution to which objection is taken.

§24.120. PUBLIC MEETINGS.

All meetings of the board shall be open to the public.

§24.125 MAINTAINING ORDER FOR PUBLIC MEETINGS

1. All public meetings of the City government shall be open to reasonable public participation as determined by this Chapter and Roberts Rules of Order. At each meeting, there shall be time set aside for public comment by anyone whether or not they have previously asked to be placed on the Agenda. However, topics that were not placed on the Agenda in accordance with §24.105 of the Elsberry City Code cannot be acted on by the Board at that meeting. Therefore, persons wishing to address the Board are urged to comply with §24.105. The Chair shall have the authority and discretion to determine the extent and manner of such public participation, subject to the provisions of this Code or the objection by a majority of the Board of Aldermen.

2. No member of the public shall make a comment or question until they are specifically recognized by the Chair. Each member of the public shall terminate their comments and questions when directed to do so by the Chair.

3. No member of the public shall engage in yelling, cursing or peace disturbance during a meeting of the Board of Aldermen.

4. No person shall speak more than twice on the same question at the same meeting, without permission of the Board by majority vote, nor more than once until every member choosing to speak shall have spoken. In all discussion disrespectful or personally abusive language shall be avoided.

5. Prior to the start of the meeting and before addressing the Board of Aldermen, each person wishing to speak shall first fill out a public comment card containing the name and residence address of the speaker, together with the topic of his or her address, whether or not he or she is speaking in favor of or against a specific proposal and whether his or her comments are directed toward an item on that meeting's agenda. Each person addressing the Board of Aldermen shall step up in front of the designated microphone and shall give his/her name and City of residence in an audible tone or voice for the record. All remarks shall be addressed to the Board of Aldermen as a body and not to any individual member thereof. During such meetings, no person, other than the Mayor, a member of the Board of Aldermen, City Clerk, City Attorney, or a speaker granted the privilege of the floor by the Board of Aldermen, shall be permitted to enter into any discussion with the Board of Aldermen.

6. Each public comment speaker shall be allowed no more than three (3) minutes to speak unless they have provided advance notice of their request to speak in compliance with comply with §24.105, in which case they shall be permitted to speak for up to seven (7) minutes. There shall be a limit of a total of twenty (20) minutes per topic. Pro and con speakers on each topic will alternate if present. Public comment shall last no more than thirty minutes in total. The Chair will be responsible for enforcing the time limits. If additional speakers wish to address the Board after these time limits are met, the Board may continue the discussion on the topic at a subsequent Board meeting, or by a two-thirds vote of all of the members of the Board of Aldermen, continue the discussion at the current meeting. These limits apply wherever the comments appear on the agenda, but shall not apply to those whom the Board have asked to make a presentation to the Board on a specific agenda topic prior to the meeting..

7. If there is insufficient time for all members of the public who wish to speak, priority shall be given as follows:

   a. A person, or the person's legal representative, who is submitting a petition, remonstrance, report, or request specifically permitted by the City's ordinances;
   b A member of the City Planning and Zoning Commission;
   c A member of the City Board of Adjustment;
   d. A City employee;
   e. A resident of the City; or
   f. A representative of a business with a physical location within the City limits.

8. In the event any member of the public becomes belligerent, abusive, intimidating, threatening, fails to adhere to the City Code concerning public meetings, or otherwise seeks to or does disrupt the orderly process of the meeting, the Chair shall have the authority and discretion to warn the offending member of the public to refrain from such behavior; and if the offending member of the public refuses to abate the offensive behavior, the Chair may request that the member leave the meeting. In the event that the member refuses to do so, the Chair may order that the offending person be removed by any City Police Officer who shall proceed to escort the offending member from the meeting premises. If in the Chair's judgment removal of the offending member is required and no Police Officer is in attendance to effect such removal, the Chair may suspend the meeting to request the attendance of a Police Officer and the removal of the offending member or may adjourn the meeting as may be appropriate.

9. No person attending any public meeting of the City of Elsberry may bring any item that may be used as a weapon to any such public meeting. This provision shall not apply to on duty law enforcement personnel.

10. All persons attending any public meeting of the City of Elsberry may be subject to security measures, including passing through metal detectors; use of electronic wands; or other searches of their person, brief cases, handbags, backpacks, bags, or other personal property in their possession.

11. The powers granted to the Mayor by this Section are also granted to the Presiding Officer, Chair, or presiding member of each commission, committee, agency and subunit of the City during meetings in which they are serving in that capacity.

(Amend Ord. 07- 2008; 08-06-2008; 2012-11-006)

§24.130. PROCEDURE AS TO ORDINANCES, RESOLUTIONS, ETC.

All ordinances and resolutions shall be introduced to the board of aldermen in written form with the name of the alderman introducing the same endorsed thereon. All proposed ordinances shall be prepared by the city attorney or bear his certification that they are in correct form. Failure to follow the procedure shall not invalidate any ordinance or resolution adopted by the board of aldermen.

1. Whenever this Code shall be amended, the title of each amendatory ordinance, adapted to the particular circumstances and purposes of the amendment, shall be substantially as follows:

   a. To amend any section:

      "AN ORDINANCE TO AMEND SECTION_____) (or SECTIONS _____ AND _____) OF THE CODE OF THE CITY OF ELSBERRY."

   b. To insert a new section, subchapter, chapter or title:

      "AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ELSBERRY BY ADDING A NEW SECTION (or NEW SECTIONS, A NEW SUBCHAPTER, A NEW CHAPTER, or A NEW TITLE, as the case May be) WHICH NEW SECTION (SECTIONS, SUBCHAPTER, CHAPTER or TITLE) SHALL BE DESIGNATED AS SECTION (or SECTIONS AND) OF CHAPTER OF TITLE (or proper designation if a chapter or title is added) OF SAID CODE."

   c. To repeal a section, chapter or title:

      "AN ORDINANCE TO REPEAL SECTION (SECTIONS AND , CHAPTER TITLE , ETC., as the case may be) OF THE CODE OF THE CITY OF ELSBERRY."

§24.135. READING ORDINANCES PRIOR TO VOTING.

1. Every proposed ordinance shall be introduced to the Board of Aldermen in writing and shall be read by title or in full two times prior to passage. If the proposed ordinance is read by title only, copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration by the Board of Aldermen. If reading in full is called for by an Alderman, and no objection is made by the Mayor or

another Alderman, the bill shall be read at length. If, however, objection be made to reading in full, the question shall be determined by the majority of the Board of Aldermen.

2. Only one reading of the proposed ordinance shall occur at a single meeting of the Board of Aldermen, unless a majority of the Aldermen in attendance at the meeting shall vote to have a first and second reading at the same meeting.

3. A proposed ordinance may be put to a final vote at the same meeting that the proposed ordinance is read a second time.

(Ord. 2011-04-004).

§24.140. PROCEDURE AS TO OBJECTIONS UPON SECOND READING OF BILL.

Upon the announcement of a second reading of any bill, if there are objections to it, the question shall be put by the chairman, "Shall the proposal be rejected?" If a majority of the board vote in favor of rejection, the bill shall be defeated.

§24.150. WHEN BILLS MAY BE AMENDED.

Any bill shall be subject to amendment until the vote upon final passage.

§24.160. RECORDATION OF "AYES" AND "NAYS" ON FINAL PASSAGE.

On the final passage of every ordinance, the "ayes" and "nays" shall be recorded in the record.

§24.165. STANDING COMMITTEES

A. The Board of Aldermen shall have the following standing committees:

Economic Development
Planning & Zoning
Cemetery/Parks
Infrastructure
Emergency Services
Emergency Management
Fair Housing

B. The members of each committee shall appoint a chairman from their number.

C. Except as otherwise provided in the Elsberry City Code, each standing committee shall consist of three appointed members of the Board of Aldermen.

D. The Fair Housing Committee shall consist of five members.

(Ord. 6-1-1989; 2-1-2009).
[Legislative authority: RSMo. §§79.110; 79.340;79.350;79.450]

§24.170. SPECIAL COMMITTEES.

All special committees shall be appointed by the mayor of the City unless otherwise ordered by a majority of the board. By consent of a majority of the board, a special committee may be appointed at any time to hold public hearings for the board upon any matter pending before it. A special committee is a committee composed of members of the board of aldermen; the concurrence of the board shall not be required as to the membership of the special committee, unless the board shall order otherwise.

§24.180. JOURNAL TO BE KEPT.

The board of aldermen shall cause to be kept a journal of its proceedings, and the ayes and nays shall be entered on any question at the request of any member.

§24.190. RULES OF PROCEDURE.

The board of aldermen may by resolution prescribe and enforce such rules as it may find necessary for the expeditious transaction of its business, but such rules shall not contravene the requirements of this Code or other ordinance.

§24.200. ATTENDANCE AND OATH OF WITNESSES; FEE FOR EXECUTION OF PROCESS.

The board of aldermen shall have power to compel the attendance of witnesses and the production of papers and records relating to any subject under consideration in which the interest of the City is involved, and shall have power to call on the proper officers of the City, or of the county in which such city is located, to execute such process. Such officer (other than a city officer) shall receive therefor such fees as are allowed by law in the circuit court for similar services, to be paid by the City. The mayor or acting mayor pro tern of the board of aldermen shall have power to administer oaths to witnesses.

§24.210. AMENDMENT OR SUSPENSION OF RULES.

Any rule of the board may be repealed, altered or amended by a majority vote of the members. Every amendment offered shall lie on the table until the next meeting of the board before being voted upon except by the unanimous consent of all elected members of the board of aldermen (including the mayor). Any rule may be suspended by a majority vote of the members of the board; or quorum being present by unanimous consent.

CHAPTER 25 -- PROCUREMENT, CONFLICT OF INTEREST

SUBCHAPTER A -- GENERAL PROVISIONS

§25.010. PURCHASING AGENT DESIGNATED.

The city clerk is hereby designated as purchasing agent for the city.

1. Except as provided in this Chapter, it shall be unlawful for any city officer or employee to order the purchase of any supplies or make any contract within the purview of this Chapter other than through a purchasing agent, and any purchase ordered or contract made contrary to the provisions hereof shall not be approved by city officials, and the city shall not be bound thereby.

§25.020. FORMAL CONTRACT PROCEDURE.

All supplies and contractual services, except as otherwise provided in this Chapter, when the estimated cost thereof shall exceed five thousand dollars ($5,000), shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting proposals. Provided, however, that the formal market procedures shall be used in the procurement of fuel for city vehicles and for insurance without regard to the dollar amount of the purchase. All sales of personal property which have become obsolete and unusable, when the estimated value shall exceed five thousand dollars ($5,000) shall be sold by formal written contract to the highest responsible bidder, after due notice inviting proposals.

§25.030. OPEN MARKET PROCEDURE.

All purchases of supplies and contractual services over $500.00; and all sales of personal property which has become obsolete and unusable for which competitive bidding is not required by Section 25.020 of this Code shall be made in the open market, without newspaper advertisement. Provided, however, that the formal market procedures shall be used in the procurement of fuel for city vehicles and for insurance without regard to the dollar amount of the purchase.

1. All open market purchases shall, whenever possible, be based on at least three competitive prices, and shall be awarded to the lowest responsible vendor.

2. The City shall solicit prices by

    a. direct mail request to prospective vendors

    b. by telephone, and

    c. by public notice posted on the bulletin board of the City Hall.

3. The city clerk shall keep a record of all open market orders and the bids submitted in competition thereon, and such records shall be open to public inspection.

(Amend. Ord 2011-04-001).

§25.040. EMERGENCY PURCHASES.

In case of an apparent emergency which requires immediate purchase of supplies or contractual services, the board of aldermen may authorize the purchase at the lowest obtainable price, any supplies or contractual services regardless of the amount of the expenditure. A full explanation of the circumstances of an emergency purchase shall be recorded in the journal of the board of aldermen.

§25.050. COOPERATIVE PROCUREMENT.

To the maximum extent practicable the purchases of this City shall be made under the provisions of the Missouri State - Local Technical Services Act. The provisions of this Chapter requiring competitive bidding at the local level shall not apply to such purchases.

§25.060. AUTHORITY OF AGENTS.

The purchasing agent may, on his own authority, contract for supplies not to exceed $300 total cost per order. Larger purchases must be approved in advance by the applicable committee chairman. All purchases are subject to final acceptance by the board of aldermen.

SUBCHAPTER B -- SELECTION OF ENGINEERING SERVICES

§25.500. DEFINITIONS.

1. The term **"professional services"** shall mean those services within the scope of practice of architecture, engineering, or land surveying, as defined by the laws of the State of Missouri, or those performed by any architect, professional engineer, or registered land surveyor in connection with this professional employment or practice. Furthermore, the term **"professional services"** shall encompass the services provided by planning consultants, insurance consultants, computer consultants, accountants, and other persons/firms providing consulting services.

2. The term **"firm"** shall mean any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or land surveying in the State of Missouri, or to provide professional services as described herein.

§25.510. ROSTER OF CONSULTANTS.

1. The City Clerk will maintain a roster, classified by category of professional service, of qualified firms interested in performing professional services for the city. Names of firms will be placed on the roster upon their request, at the request of the Mayor or members of the board of aldermen, or when recommended by city departments.

2. Each firm meeting the following minimum qualifications shall be deemed to be a qualified firm and meeting the qualifications of the city.

a. Duly authorized to conduct business in the State of Missouri in their particular profession.

b. Professional registration by the State of Missouri, if required.

c. At least one staff professional assigned to each project. Adequacy of personnel will be determined on a contract-by-contract basis against the city's estimate of manpower required to perform the work in the desired time frame.

3. Each firm listed on the roster shall be responsible for maintaining a current resume describing its qualifications and experience with the City Clerk.

Data which should be included is as follows:

a. Firm name, address. telephone numbers.

b. Year established and former firm names (if applicable) .

c. Types of services for which it is qualified.

d. Names of principals of the firm and states in which they are registered, if registration is required in that profession.

e. Names of key personnel, with experience of each and length of time in the organization.

f. Number of staff available for assignment.

g. Outside consultants and associates usually retained.

h. Current projects underway and estimated cost of each.

§25.520 CLASSES OF SERVICES.

Projects will be divided into two (2) classes as follows:

1. Class A - Services for projects where fees will exceed $10,000. Three members of the board of aldermen, appointed by the Mayor, will act as the screening and selection committee along with the Mayor and the department head having responsibility for the specific project. Advertising for this class of project is required.

2. Class B- Services for projects where fees will not exceed $10,000. The firm will be selected by a staff committee which will recommend the firm and appropriate contract to the Mayor and board of aldermen for their approval. Advertising for this class of project is required only in special instances, such as when highly specialized services are required.

3. It may be necessary on some projects to appoint persons to the selection committee from outside city government who are experts in a particular field and who are disinterested parties in the project at hand. If a project involves a department advised by a citizen commission, it may be desirable to include a representative from that commission on the selection committee. The Mayor may appoint these persons to either class of committee.

4. The board of aldermen may direct Class A projects to the staff for the selection process if the board of aldermen feels the type of project does not warrant board participation until actual selection is being considered. This delegation will be made by motion of the board of aldermen. The board of aldermen may also direct that representatives of the board of aldermen be included during the selection process for Class B projects if they feel there is a need for such inclusion.

§25.530. GENERAL PROCEDURE AND RESPONSIBILITIES.

1. Project Initiation. When a department of the City identifies a project for which professional services will be necessary, the department will draft a scope of services for the specific project. This scope of services will be submitted to the Mayor for authorization to initiate the project, and a determination as to which type of screening and selection committee will be required. The scope of services should include the following:

    a. A description of the work required and its objectives.

    b. The nature of specific tasks and services to be accomplished.

    c. The type and amount of assistance to be given by the City department involved.

    d. Required time frame

    e. Financial conditions or limitations; grant programs involved.

2. Expressions of interest. After authorization, the administering department will contact those firms on the roster and those firms responding- to advertisements for a written expression of interest in the specific project. The request should invite comment as to the special experience in the project being considered, describe previous experience with similar projects, and the availability of the firm to provide required service within any time limitations.

3. Initial screening and requests for proposals. The expressions of interest will then be presented to the appropriate screening and selection committee for initial screening. Factors to be determined in the initial screening will include:

    a. Specialized experience in the type of work required.

    b. Record of the firm in accomplishing work on other projects in the required time.

c. Quality of work previously performed by the firm for the city.

d. Recent experience showing accuracy of cost estimates.

e. Community relations including evidence of sensitivity to citizen concerns.

f. Geographic location of the office of the firm which would serve the project.

g. Qualifications and experience of key personnel.

h. Relations with previous clients.

The screening committee will designate three or four firms who will be requested to present detailed proposals on the project and be interviewed.

4. Detailed proposals. Firms submitting detailed proposals will be asked to provide the following:

a. A resume of the firm principal who will be responsible for the project.

b. A resume of the proposed project supervisor.

c. Resumes of key project personnel.

d. A statement of the ability of the firm to meet required time schedules.

e. A description of how the project would be conducted.

f. A schedule of hourly rates for various services offered and a proposed project fee range.

g. A list of municipal references for similar types of projects.

h. Any other pertinent information the firm wishes to present.

5. Interview and selection. Upon receipt of the detailed proposals, the selection and screening committee will be convened to review the proposals, interview the prospective firms, and make the final selections as to the firm for the project. Written interview and selection criteria utilizing a point system shall be established prior to receiving detailed proposals on a project. A copy of the system shall be placed on file with the City Clerk. Similar systems for rating shall be used on similar projects and will be standardized where possible. The prime factors to be rated in the final screening are:

a. Management capabilities

b. Technical capabilities

c. Approach to the project

d. Understanding. of City's objectives

e. Proposed work schedule

f. Staff to be assigned

g. Fee and/or schedule of hourly rates

h. Knowledge of local situation

I. Ability to communicate

j. Presentation and attitude

k. Confidence factor

6. Contract Negotiation. The selected firm will then be requested to come in for a final conference with the screening and selection committee to define precisely the scope of service to be provided and to finalize the compensation requirements for the work. A contract is prepared and submitted to the City Attorney for review, and then submitted to the Mayor and board of aldermen for approval.

   If, after reasonable effort, a contract cannot be negotiated, the negotiations with the designated firm shall be terminated and negotiations shall be started with the next firm recommended.

7. Exceptions.

   a. In view of the fact that special conditions will occasionally arise that make use of this policy impractical, there can be exceptions made. Reasons for exceptions may include an emergency situation which precludes a selection time frame of at least two months, or an extremely specialized need in which there is only one feasible source of expertise. If it appears there is a need for an exception to the policy, the Mayor will inform the board of aldermen to allow them the opportunity to deny the exception.

   b. If the number of firms willing and available to perform a specific task is small, the step involving initial screening may be skipped and the selection process will go directly to detailed proposals.

§25.540. COMPENSATION OR FEE.

This amount will include all services to be rendered to the City by the firm, with the exception of certain pass-through expenses that will be identified by contract. if applicable, and it will be

calculated by one of the following methods, at the preference of the City:

1. Lump sum or fixed fee

2. Cost per unit

3. Hourly basis with total not to exceed a fixed amount

§25.550. PROHIBITION AGAINST CONTINGENT FEES.

1. Each contract entered into by the board of aldermen for professional services shall contain a prohibition against contingent fees as follows:

   "No firm shall retain a person, to solicit or secure a City contract for professional services upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business."

2. For the breach or violation of the foregoing provision, the Mayor and board of aldermen shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

§25.560. USE OF PROCEDURES.

The procedures described herein shall be used in all projects requiring outside professional services. Exceptions to this policy shall be as follows:

1. After the City has used this process to select a firm with specialized expertise that is available to do similar required work in that field of expertise which would fall under Class B type projects, if new contracts can be negotiated, the firm can be retained for additional projects requiring that expertise for a period of no longer than three years. After three years, this procedure shall be used again for selection of professional services.

2. If, after project completion by a firm already selected by the City through this process to do a major project, the City requires professional services on an ongoing consultant basis on that project, the City may retain the services of that firm on a consultant basis for a period of three years. After that period of time, the City shall use this procedure again to select ongoing consultant services.

§25.570. WAIVER.

The Mayor and board of aldermen may waive any and all afore-mentioned procedural requirements in the best interests of the City.

SUBCHAPTER C -- PROCEDURE TO DISCLOSE POTENTIAL CONFLICTS OF INTEREST AND SUBSTANTIAL INTERESTS FOR CERTAIN CITY OFFICIALS

§25.600 DECLARATION OF POLICY.

The proper operation of municipal government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a procedure for disclosure by certain officials and employees of private financial or other interests in matters affecting the city.

(Ord. 8-1-2002; 9-1-2004; 08-01-06; 08-09-2008; 2010-08- 001; 2012-09-001; 2014-08-001; 2016-07-003; 2018-07-00__ ; 2020-07-001; 2022-09-001; 2024-09-001)

§25.610 CONFLICTS OF INTEREST.

a. All elected and appointed officials, as well as employees, of the the City of Elsberry ("the City") must comply with RSMo. §105.454 on conflicts of interest as well as any other state law governing official conduct.

b. Any member of the City Board of Aldermen who has a "substantial or private interest" in any measure, bill, order or ordinance proposed or pending before the City must disclose that interest to the City Clerk and such disclosure shall be recorded in the appropriate journal of the Board. Substantial or private interest is defined as ownership by the individual, his spouse, or his dependent children, whether singularly or collectively, directly or indirectly of: (1) 10% or more of any business entity; or (2) an interest having a value of $10,000 or more; or (3) the receipt of a salary, gratuity, or other compensation or remuneration of $5,000 or more, per year from any individual, partnership, organization, or association within any calendar year.

(Ord. 8-1-2002; 9-1-2004; 08-01-06; 08-09-2008; 2010-08- 001; 2012-09-001; 2014-08-001; 2016-07-003; 2018-07-00 ; 2020-07-001; 2022-09-001; 2024-09-001)

§25.620 DISCLOSURE REPORTS.

Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer, and the full-time general counsel of the City, if any, shall disclose the following information by May 1, or the appropriate deadline as referenced in Section 105.487, RSMo, if any such transactions occurred during the previous calendar year:

a. For such person, and all persons within the first degree of consanguinity or affinity of such person, the date and the identities of the parties to each transaction with a total value in excess of five hundred dollars, if any, that such person had with the City, other than compensation received as an employee or payment of any tax, fee or penalty due to the City, and other than transfers for no consideration to the City.

b. The date and the identities of the parties to each transaction known to the person with a total value in excess of five hundred dollars, if any, that any business entity in which such person had a substantial interest, had with the City, other than payment of any tax, fee or penalty due to the City or transactions involving payment for providing utility service to the City, and other than transfers for no consideration to the City.

c. The City chief administrative officer, chief purchasing officer, and candidates for either of these positions also shall disclose by May 1, or the appropriate deadline as referenced in Section 105.487, RSMo, the following information for the previous calendar year:

i. The name and address of each of the employers of such person from whom income of one thousand dollars or more was received during the year covered by the statement;

ii. The name and address of each sole proprietorship that he owned; the name, address and the general nature of the business conducted of each general partnership and joint venture in which he was a partner or participant; the name and address of each partner or coparticipant for each partnership or joint venture unless such names and addresses are filed by the partnership or joint venture with the secretary of state; the name, address and general nature of the business conducted of any closely held corporation or limited partnership in which the person owned ten percent or more of any class of the outstanding stock or limited partnership units; and the name of any publicly traded corporation or limited partnership that is listed on a regulated stock exchange or automated quotation system in which the person owned two percent or more of any class of outstanding stock, limited partnership units or other equity interests;

iii. The name and address of each corporation for which such person served in the capacity of a director, officer or receiver.

(Ord. 8-1-2002; 9-1-2004; 08-01-06; 08-09-2008; 2010-08- 001; 2012-09-001; 2014-08-001; 2016-07-003; 2018-07-00 ; 2020-07-001; 2022-09-001; 2024-09-001).

§25.630 FILING OF REPORTS.

a. The financial interest statements shall be filed at the following times, but no person is required to file more than one financial interest statement in any calendar year:

i. Every person required to file a financial interest statement shall file the statement annually not later than May 1 and the statement shall cover the calendar year ending the immediately preceding December 31; provided that any member of the board may supplement the financial interest statement to report additional interests acquired after December 31 of the covered year until the date of filing of the financial interest statement.

ii. Each person appointed to City office shall file the statement within thirty days of

such appointment or employment covering the calendar year ending the previous December 31;

iii. Every candidate required to file a personal financial disclosure statement shall file no later than fourteen days after the close of filing at which the candidate seeks nomination or election or nomination by caucus. The time period of this statement shall cover the twelve months prior to the closing date of filing for candidacy.

b. Financial disclosure reports giving the financial information required in Section 25.620 shall be filed with the City Clerk and with the Missouri Ethics Commission. The reports shall be available for public inspection and copying during normal business hours.

(Ord. 2010-08- 001; 2012-09-001; 2014-08-001; 2016-07-003; 2018-07-00 ; 2020-07-001; 2022-09-001; 2024-09-001)

§25.640 PENALTIES.

Any person required to file a financial interest statement by this Subchapter, who fails to file such statement by the times required by this Subchapter shall, if such person receives any compensation or other remuneration from public funds for the person's services, not be paid such compensation or receive such remuneration until the person has filed a financial interest statement as required by this Subchapter. Any person required by this Subchapter to file a financial statement who fails to file such statement by the time required by this Subchapter and continues to fail to file the required financial interest statement for thirty or more days after receiving notice from the City shall be guilty of an administrative infraction.

(Ord. 2010-08- 001; 2012-09-001; 2014-08-001; 2016-07-003; 2018-07-00 ; 2020-07-001; 2022-09-001; 2024-09-001)

CHAPTER 30 -- CITY PARKS AND RECREATIONAL FACILITIES

§30.010. DEFINITIONS

“City Park” means the park located on City owned property between Broadway to the North, Fifth Street to the West, Fourth Street to the East, and Griffin Street to the South.

“Event” means a non-commercial, not-or-profit, gathering, celebration, festival, meeting, fair, show, or similar activity to which the general public is invited to attend.

“Event Sponsor” means a City resident, a not-for-profit organization associated with Elsberry, or a not-for-profit entity associated with a City resident, who is holding, sponsoring, or conducting an event at a Municipal Park.

“Family Gathering” means a private family reunion, birthday party, anniversary party, or similar gathering to which the general public is not invited to attend. A family gathering is not an event.

"Municipal Park" means an area of land set aside by the Elsberry City Board of Aldermen for public recreational use, historical preservation, or maintenance of natural beauty.

"Page Branch Park" means the park located on City owned property north of Page Branch Road and west of Toll Gate Road, known as Lincoln County Assessor Map Id #025021002002002001 and is part of Lot 9 of the Mullanphy Tract and part of Blocks 14 & 15 the Cannon Heights Addition.

§30.020. DESIGNATION OF MUNICIPAL PARKS.

The following parks are designated as Municipal Parks:

City Park

Page Branch Park

§30.030 RULES FOR EVENTS AT MUNICIPAL PARKS

1. A Municipal Park, or a portion of a Municipal Park, may be reserved for an Event sponsored by a City resident, or sponsored by a not-for-profit entity associated with a City resident. Reserved Events may not be held for more than 24 hours at a time by a single Event Sponsor, and no more than three times a year by a single Event Sponsor. An Event may not be held in a Municipal Park when the Municipal Park is to be used for a City sponsored activities. Events in the Municipal Park may not be held, in the aggregate, for more than ten days during any one month..

2. If an Event Sponsor wishes to reserve a Municipal Park, or any portion of a Municipal Park, for an Event at a Municipal Park, the Event Sponsor must make a written application to the City Clerk for an Event permit at least four weeks prior to the Event.

3. The written application for the Event Permit shall state, at a minimum:

    a. The name, address, and telephone number of the Event Sponsor (if the Event Sponsor is an entity, the name, address, and telephone number of the City resident associated with the entity must also be provided),

    b. The name, address, and telephone number of the person who will be responsible for the event on the day of the event,

    c. The estimated number of people who will attend the event,

    d. The beginning and end time of the event,

    e. The Event Sponsor's liability insurance carrier (if required by the nature of the event),

f The area to be reserved,

g. The nature of the event, and

h The activities that will occur at the event.

4. The Event Permit will be denied if the Event will cause undue wear and tear on the Municipal Park, the area to be reserved is not large enough to accommodate the number of persons the City estimates will attend the Event, the Event will generate excessive noise or other nuisances, the Event will be an excessive burden of the City's emergency services or other resources, or any requirement of these Ordinances is not met.

5. The Event Sponsor must execute the City's standard Municipal Park event contract that will include clauses indemnifying the City and requiring the Event Sponsor's adherence to all applicable laws, including the City's Ordinances.

6. An Event Sponsor wishing to hold an Event with an expected attendance of 100 or more persons, must pay a $75.00 security deposit to the City prior to receiving a permit for the Event. Otherwise, the security deposit shall be $25.00. The security deposit shall be used to pay for any damage caused during the Event. Any part of the security deposit remaining after the damage is repaired shall be returned to the Event Sponsor.

7. Event Sponsors wishing to hold an Event with an expected attendance of 100 or more persons, must obtain adequate liability insurance to cover the event. Proof of insurance must be filed with City Clerk no later than two business days before the event begins.

8. Event sponsors wishing to hold an Event with an expected attendance of 100 or more persons must notify the Chief of Police of the Event.

9. Event Sponsors wishing to reserve a Municipal City Park, for an Event with an expected attendance of 100 or more persons are encouraged to monitor the restrooms for the entire time of the event or provide adequate portable sanitary stations for the estimated number of persons who may attend the event.

10. Event Sponsors must arrange for adequate trash bins for the Event by notifying the City Clerk.

11. Event Sponsors must clean-up the areas of the Municipal Park that were occupied immediately after the Event is over and before the Event Sponsor leaves the Municipal Park.

12. During an Event with an expected attendance of 100 or more persons, the Event Sponsor shall reserve and mark an adequate area that will allow for the unencumbered ingress and egress of emergency vehicles to and into the Municipal Park.

13. No pets are allowed in the City Park, except for service animals. The Event Sponsor

must post "NO PETS" signs posted throughout the City Park during the and must enforce this rule with the guests of the Event.

14. No intoxicating beverages shall be sold, possessed, or consumed in the City Park.

15. The Event Sponsor shall assume all liability for any damages or injuries that occur at the occupied area of the City Park during the Event.

16. For an event with an expected attendance of 100 or more persons, the Event permit must be approved by the Board of Alderman. All others shall be reviewed and approved or denied by the City Clerk. However, the City Clerk may refer any application to the Mayor and/or the Board of Aldermen for review and approval.

17. Any person aggrieved by a decision of the City Clerk under this Chapter may appeal the decision to the Board of Aldermen. Such appeal must be in writing stating the decision rendered and the reasons it should be reversed or revised. The appeal shall be filed with the Mayor within fourteen days of the City Clerk's decision.

18. Any Event Sponsor wishing to hold an Event, or any Resident wishing to hold a Family Gathering, at the Page Branch Park must pay a reservation fee of Twenty-five Dollars ($25.00). If the Event or Family Gathering has an expected attendance of 100 or more persons, the Event Sponsor or Resident must also pay a Fifty Dollar ($50.00) security deposit to the City prior to receiving a permit for the Event. Otherwise, the security deposit shall be Twenty-five Dollars ($25.00). The security deposit shall be used to pay for any damage caused during the Event or Family gathering. Any part of the security deposit remaining after the damage is repaired shall be returned to the Event Sponsor or Resident.

(Amend. Ord. 2011-04-006; 2016-08-001)

§30.035 EVENT PERMITS

No Event may be held at a Municipal Park without first receiving an Event permit from the City of Elsberry.

(Amend. Ord. 2011-04-006).

§30.040 COMMERCIAL ACTIVITIES

No commercial, for profit, activities may be conducted in a Municipal Park, unless they are conducted as a part of an Event or City sponsored activity. Except for the City sponsored activities, no person, may charge booth space fees, vendor fees, attendance or admission fees, or rental fee for an activity at a Municipal Park unless they first qualify for, and obtain, an Event permit.

§30.045 RESERVATION OF THE CITY PARK PAVILION FOR FAMILY GATHERINGS

1. The Pavilion at the City Park may be reserved by a City Resident for Family Gatherings.

2. To reserve the Pavilion at the City Park, a City resident must make a written application to the City Clerk.

3. The City Park Pavilion shall not be reserved for more than 24 hours at a time for a single Family Gathering, and no more than five times a year by a single City resident. The City Park Pavilion may not be reserved for a Family Gathering when the City Park is to be used for a City sponsored activity. The City Park Pavilion may not be reserved, in the aggregate, for more than ten days during any one month.

4. The person obtaining the reservation must clean-up the areas of the City Park that were occupied immediately after the Family Gathering is over.

5. No intoxicating beverages shall be sold, possessed, or consumed in the City Park.

6. The person obtaining the reservation shall assume all liability for any damages or injuries that occur at the occupied area of the City Park during the Family Gathering.

7. The reservation may be revoked if any City Ordinance is violated by the reservation applicant or any participants or attendees of the Family Gathering.

§30.050 PRECEDENCE OF CITY SPONSORED ACTIVITIES

All City sponsored activities take precedence over any proposed Events or Pavilion reservations at a Municipal Park.

(Amend. Ord. 2011-04-006)

§30.055 REVOCATION OF EVENT PERMITS.

Any Event Permit for a Municipal Park event shall be automatically revoked:

1. If the required certificate of insurance is not filed timely with the City;

2. If the required security deposit is not fully paid timely; or

3. If any City Ordinance is violated by the Event Sponsor or any participants or attendees of the event.

(Amend. Ord. 2011-04-006).

§30.060 LITTERING, DEFACING AND DAMAGING MUNICIPAL PARK PROPERTY – RESTITUTION

Littering, soiling, damaging, removing, marking, disfiguring, injuring, tampering with, moving, displacing or removing, or defacing any restroom, step, table, bench, City property, trees, shrubbery, rock, stones, down timber, building, bridge, fireplace, railing; paving or paving material, water line, other public utility; sign, notice, monument; stake; post, boundary markers, structures, equipment, facilities, or other Park property or grounds, including landscape and fixtures within a Municipal Park, is prohibited. Violation of this section may be grounds for immediate expulsion from the Park. Anyone who violates this section shall pay the City all costs incurred in cleaning, correcting, removing, repairing, or replacing, the impact and effects of such violation.

(Amend. Ord. 2011-04-006).

§30.065 INSPECTION AND CLOSURE OF MUNICIPAL PARKS

Any section or part of a Municipal Park or recreational facility may be inspected and declared closed to the public at the direction of the City at any time and for such intervals of time, either temporarily or at regular and stated intervals (daily or otherwise) as the City believes it is prudent. Such closures may be made such reasons the City deems best, including, but not limited to, the following:

a. public liability;

b. damage to turf;

c. public service; or

d. public health.

§30.070 RESTROOMS.

Any person using a Municipal Park restroom shall cooperate in maintaining it in a neat and sanitary condition and shall not cause misuse or waste paper products, water, or soap provided in the restroom. No person shall purposefully clog and drain toilet in a Municipal Park restroom. No person shall place any object in a Municipal Park restroom sink or toilet that such sink or toilet is not intended to accept. No person over the age of four (4) years shall use the restrooms and washrooms designated for the opposite sex.

(Amend. Ord. 2011-04-006).

§30.080 NO GLASS CONTAINERS

No person shall bring or possess any glass containers in a Municipal Park.

(Amend. Ord. 2011-04-006).

§30.090 TRASH

No person shall bring into, have brought in, dump, deposit or leave any refuse glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, or other trash ("refuse") on Municipal Park property. No such refuse shall be placed in any waters in, or contiguous to, any Municipal Park. All refuse generated at the Municipal Park shall be placed in the proper receptacles where they are provided. Where receptacles are not so provided, all such rubbish or waste shall be carried away from the Municipal Park by the person responsible for its presence, and properly disposed of elsewhere.

(Amend. Ord. 2011-04-006).

§30.100 VEHICLE OPERATION

It shall be unlawful for any person in a Municipal Park to drive any motorized vehicle within the Municipal Park except for the paved motor vehicle public roads, parking areas, or such other areas as may be specifically designated and marked as temporary parking areas by the City. No motorized vehicle shall be driven on any Municipal Park Trail. A motorized wheel chair used by a handicapped person shall not be deemed to be a motorized vehicle for purposes of this section.

(Amend. Ord. 2011-04-006).

§30.110 PICNIC AREAS

1. **General.** It shall be unlawful for any person in a Municipal Park to picnic, eat a meal, or lunch in a place other than those designated for that purpose. The City shall have the authority to regulate the activities in such areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all. Visitors shall comply with any directions given to achieve this end.

2. **Availability.** Picnic facilities may be used on a "first come, first-served," basis; except in those cases where prior reservations have been made and granted with the City.

(Amend. Ord. 2011-04-006).

§30.120 CAMPING

It shall be unlawful for any person in a Municipal Park to sleep or camp in other than designated areas for organized camping by the City. Camping is not permitted in the City Park. Camping shall be limited to groups of persons under adequate adult supervision. No person shall set up tents, awnings, canopies, shacks or any other temporary shelter for the purpose of overnight camping unless they have received a permit from the City to do so.

(Amend. Ord. 2011-04-006).

§30.130 FIRES

It shall be unlawful for any person in a Municipal Park to build or attempt to build a fire except in such area and under such regulations as may be designated by the City. No person shall drop, throw, or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco paper or other flammable material, within any Municipal Park area or on any highway, road or street abutting or contiguous thereto.

(Amend. Ord. 2011-04-006).

§30.140 HOURS OF OPERATION

1. The opening and closing hours for the Municipal Park shall be posted therein for public information.

2. Except for unusual and unforeseen emergencies, the City Park and Page Branch Park shall be open to the public every day of the year only between sunrise and sundown, unless such person shall have a permit allowing such exception. *See Elsberry Mun. Code §77.240*.

(Amend. Ord. 2011-04-006; 2011-05-001; 2016-05-001).

§30.150 PERMITS FOR SPECIAL ACTIVITIES AND RESERVATIONS IN PAGE BRANCH PARK.

1. **Permits Required When**. A Permit must be obtained from the City Clerk before participating in any picnic, camping, or other special activity in the Page Branch Park, or when reserving the use of any portion of the Page Branch Park.

2. **Reservations.** The Page Branch Park Pavilion and other designated spaces in the Page Branch Park are available for use by reservation. A reservation will reserve the designated space or amenity for a specific time. A reservation for a "family gathering" will require a $25.00 refundable reservation fee. A reservation for an "event" will require a $75.00 refundable reservation fee. The City's designee shall inspect the grounds prior to the reserved use and afterwards to determine if any of the deposit should be returned.

3. **Application.** A person seeking issuance of a special activity permit or a reservation hereunder shall file an application with City Clerk. The application shall state:

    a. The name and address of the applicant.

    b. The name and address of the person sponsoring the activity, if any.

    c. The day and hours for which the permit is desired.

d. The portion of the Page Branch Park for which such permit is requested.

e. An estimate of the anticipated number of attendees.

f. Any other information which the City may require to determine whether a permit should be issued.

3. **Standards for Issuance.** The City Clerk shall issue a special activity permit when the Clerk finds:

a. The proposed activity or use of the Page Branch Park will not unreasonably interfere with, or detract from, the general public enjoyment of the Page Branch Park.

b. The proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation with the Page Branch Park.

c. The proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct.

d. The proposed activity will not entail unusual, extraordinary, wasteful, or burdensome expense upon the City, or on the City's police operations.

e. The facilities have not been reserved for other use at the day and hour requested in the application.

4. **Response.** Within five (5) business days after receipt of an application, the City Clerk shall apprise an applicant, in writing, of the Clerk's decision to either grant the application, request additional information, or deny the application. Any day that the Clerk is absent from the Clerk's duties shall not be deemed a business day. If the application is denied, the Clerk shall also state the reasons for the denial at the time the denial is made.

5. **Appeal**. Any person aggrieved by the Clerk's decision on a special activity permit application shall have the right of appeal, in writing, within five (5) days to the Board of Aldermen, who shall consider the application under the standards set forth in subsection 3 above. The decision of the Board of Aldermen shall be final.

6. **Use Agreement.** Each permit applicant that is issued a permit shall execute the City's User Agreement.

7. **Liability of the Permittee**. The person to whom a permit is issued shall be liable for any applicable ordinances as fully as though the same were inserted in the permits. The

person(s) to whom a permit is issued shall be liable for any loss, damage, or injury caused by the negligence or ordinance violation of any person using the Park under such permit.

8. **Revocation**. The City Clerk, Mayor, or a City Police Officer shall have the authority to revoke a permit upon a finding violation of any rule or ordinance, or upon good cause shown.

9. **Groups and Leagues** Groups and leagues will be responsible for ensuring that their members comply with all ordinances and park rules and regulations. Failure to comply will result in revocation of the group's or league's special activity permit.

(Amend. Ord. 2011-04-006).

§30.160 PARK TRAILS.

1. **Definitions and Rules of Construction**. The following definitions and rules of construction apply to this Section.

"Park Trail" means any trail maintained by the City for use by pedestrians or cyclists within a Municipal Park.

"Cycle" means any device, other than a wheelchair, which is propelled by human power and has one or more wheels

"Pedestrian" means a person who is walking and includes any person riding in a wheelchair.

"Wheelchair" means a chair mounted on wheels designed for use by disabled or handicapped individuals.

2. **Trail Use by Cyclists.**

a. Every person operating a cycle upon a Park Trail shall ride as near to the right side of the trail as practicable, exercising due care when passing a pedestrian or other cyclist.

b. Persons operating cycles upon a city trail shall ride single file when passing a pedestrian or other cyclist.

c. No person shall operate a cycle upon a Park Trail at a speed greater than is reasonable and prudent under conditions then existing.

d. Every person operating a cycle upon a Park Trail shall give an audible signal before passing a pedestrian or another cyclist.

e. Every person operating a cycle upon a Park Trail shall at all times exercise the

highest degree of care to avoid colliding with another trail user.

f. Pedestrians have the right-of-way over cyclists on Park Trails.

3. **Trail Use by Pedestrians.** Pedestrians on a Park Trail shall remain as near to the right side of the trail as practicable.

4. The Park Trail within Page Branch park is hereby designated as, and shall be known as, "the Wallace and Dorothy Taylor Memorial Trail." This designation honors Wallace and Dorothy Taylor who donated the land to establish the Page Branch park for the enjoyment of the community.

(Amend. Ord. 2011-04-006).

§30.170 BRIDGES.

The bridge at the Page Branch Park from the Page Branch Parking lot to the Park the bridge is hereby designated as, and shall be known as, "the Robert Donnelly Memorial Bridge." This designation honors Robert Donnelly who volunteered many hours to establishing and improving the Page Branch park for the enjoyment of the community.

(Amend. Ord. 2011-04-006).

§30.180 DOGS

1. Any person keeping, harboring, playing with, in possession of, owning, or responsible for a dog within the Page Branch Park shall have the dog on a leash held by a person sufficiently competent to restrain the dog at all times. The provisions of this section shall not apply to a dog in a vehicle if the dog is secured in a manner that prevents escape.

2. It is an affirmative defense to a charge of violating this section that the dog involved is a working dog trained to assist disabled individuals and that the dog is under the control of a competent person and obedient to the command of such person.

3. It is an affirmative defense to a charge of violating this section that the dog involved was participating in an organized competition pursuant to a valid special activity permit issued by the City, or that the dog involved was engaged in an organized training exercise under the supervision of a person competent to provide such training.

4. It is an affirmative defense to a charge of violating this section that the dog involved is a trained police dog and that the dog is under the control of a competent person and obedient to the command of such person.

5. The provisions of this section shall not apply to any dog in a dog running area established by the City and the dog is under the control of a competent person and obedient to the command of such person.

6. No person owning, in possession of, or responsible for a dog shall permit the dog to defecate in the Municipal Park, unless the person charged immediately removed the excrement and properly disposed of it in a sanitary manner. It is a specific defense to a charge of violating this subsection that the dog involved is a certified working dog trained to assist disabled individuals and that the person charged has a disability that prevents the individual from removing the excrement and properly disposing of it in a sanitary manner."

(Amend. Ord. 2011-04-006).

§30.190 UNSUPERVISED CHILDREN PROHIBITED FROM USING MUNICIPAL PARKS.

1. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eleven (11) years to permit, or fail to prevent, such minor from entering, using, or playing in or upon any Municipal Park unless such minor is accompanied and directly supervised at all times by his/her parent, guardian, or other person at least 16 years of age having the care and custody of such minor while such minor is within the Municipal Park. No summons shall be issued for a violation of this ordinance unless the defendant has been given a previous written warning.

2. The parent, guardian, or other adult person having the care and custody of a minor under the age of eleven (11) years while such minor is within the Municipal Park shall bear the financial and legal liability and responsibility for all damage or injury done by such minor while at the Municipal Park.

(Ord. 2013-07-002)

CHAPTER 31 – TREES

§31.010. PURPOSE AND INTENT

It is the purpose of this Article to promote and protect the public health, safety, and general welfare by providing for the development and implementation of a Community Forestry Plan to provide guidance for planting, maintaining and removing trees from streets, parks and other public spaces in order to promote, maintain, and improve the arboreal resources of the City of Elsberry.

§31.020 DEFINITIONS

The following terms shall have the following meanings when used in this Chapter:

Hazardous Limbs. Tree limbs with severe structural defects or splits.

Hazard Trees. Trees with severe structural defects or splits.

Park Trees. Trees, shrubs, bushes and all other woody vegetation in City of Elsberry public parks.

Public Community Forest. All trees, shrubs, and plants whose trunks or stems lie within the following property owned by the City of Elsberry as a total resource:

1. The City's public parks;
2. The City's property acquired by flood buy-out program while the property is owned by the City of Elsberry;
3. The City's water plant and lagoon;
4. City Hall; and
5. All other City owned property, but excluding the City cemetery, and excluding street rights-of-way and the areas between sidewalks and streets.

Street trees: "Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the City.

§31.030 CREATION OF TREE BOARD.

There is hereby created and established a Tree Board for the City, which shall consist of five (5) members, citizens, and residents of the City of Elsberry, at least eighteen (18) years of age, who shall be appointed by the Mayor with the approval of the Board of Alderman, to serve at the pleasure of the Board of Alderman.

§31.040 COMPENSATION OF BOARD MEMBERS.

Members of the Tree Board shall serve without compensation. However, the Board of Alderman may, but is not required to, reimburse such members for reasonable, authorized, and necessary expenses incurred in the performance of their duties that are approved by the Board of Aldermen before they are incurred.

§31.050 TERMS OF OFFICE.

The term of the five persons to be appointed by the Mayor shall be three (3) years each, except that the term of two of the members appointed to the first Board shall be for only one (1) year and the term of two members of the first Board shall be two (2) years as designated by the Mayor. The Mayor may, by and with the consent of the Board of Alderman, remove any member of the Board at any time when, in their judgment, such removal shall be in the best interests of the City.

§31.060 VACANCIES.

In the event a vacancy shall occur during the term of any Board member due to death, resignation or removal, his successor shall be appointed for the unexpired portion of his term in accordance with §31.030.

§31.070 BOARD'S DUTIES AND AUTHORITY.

The Tree Board shall:

1. Choose its own officers, make its own rules and regulations, keep minutes of its meetings, and act by a vote of a majority of its five members at meetings at which a quorum shall be present. A majority of the Board shall constitute a quorum.

2. Develop a management plan for the planting, care, cultivation, pruning and removal of trees, shrubs, and plants located on City-owned property. The plan may include provisions designating the species of trees, shrubs, and plants to be planted, preserved and removed or replaced. Such plan shall be presented to the Board of Alderman for approval and upon acceptance and approval by the Board of Aldermen, such plan shall constitute the official comprehensive tree, shrubs and plants plan for the City of Elsberry.

§31.080 DUTIES AND RESPONSIBILITIES

It shall be the responsibility of the Tree Board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in City owned parks, along streets, and in other public areas. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official Community Forestry Plan for the City of Elsberry. The Tree Board, when requested by the City Board of Aldermen, shall consider; investigate; and make findings, reports, and recommends upon any special matter or question coming within the scope of this Chapter.

§31.090 COMMUNITY FOREST MANAGER.

Each year, the Tree Board shall appoint one of the Board members to act as the Community Forest Manager. The Community Forest Manager shall be the official representative of the City of Elsberry concerning the City's Community Forest Plan. The Community Forest Manager shall serve at the pleasure of the Tree Board. If the Tree Board has not appointed a Community Forest Manager, the Mayor may appoint any person to serve as Community Forest Manager for a three month term. The Mayor may reappoint such person for successive terms if the Tree Board has not appointed a successor.

§31.100 STREET TREE SPECIES TO BE PLANTED

The Tree Board shall include a list of recommended tree species that may be planted as Street Trees in its annual report to the Board of Aldermen. The Tree Board shall give special consideration to what species are recommended for particular locations and areas based on the local conditions in those areas. The Tree Board shall divide the list of recommended tree species into Small, Medium, and Large categories. For each of these three categories of recommended tree species, the Tree Board shall provide recommended planting distances (1) between trees, (2) from curb lines and sidewalks, and (3) from fire plugs and street intersections.

§31.110 DISTANCE FOR PLANTING

Trees within the Public Community Forest shall be planted in accordance with the guidelines contained in the Community Forestry Plan approved by the Board of Aldermen.

§31.120 UTILITIES

1. No Street Trees other than those species listed as Small Trees in the Community Forestry Plan approved by the Board of Aldermen may be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line or other utility. The person planting the tree shall comply with the Missouri "One Call" system,(RSMo. §§319.010 through 319.045) as if that person was an "excavator" under RSMo. §319.025.

2. The right, license, privilege and permission is hereby granted to the City's franchisee telephone company and cable company, to trim trees upon and overhanging the streets, avenues, alleys, thoroughfares, sidewalks, and public grounds and places of the said City, so as to prevent the branches of such trees from coming in contact with the wires, cables, or equipment of the telephone company, all of the said trimmings to be done under the supervision and direction of the Board of Aldermen of the City or any city official or officials to whom said duties have been or may be delegated. Such franchisee company shall comply with the requirements of this Chapter.

§31.130 PERMITS REQUIRED

No person shall plant trees, shrubs or any plants on City-owned property without first obtaining a permit from the Tree Board. There will be no fee for such permit.

§31.140 CLEARANCE OVER WALKWAYS AND STREETS

A minimum clearance of 12 feet must be maintained between the lower portion of the tree canopy and walkways and a minimum clearance of 16 feet must be maintained over streets and alleys.

§31.150. PUBLIC TREE CARE

The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The City may remove, cause, or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This Section does not prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of said trees is in accordance with the Municipal Code.

§31.160. PRUNING, CORNER CLEARANCE

1. Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of the street or sidewalk.

2. The City shall have the right to prune any tree or shrub on private property when the tree or shrub interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

3. All trees, bushes or vegetation which overhang a public thoroughfare in such a way as to hinder the movement, obstruct the view or otherwise create a hazard for vehicles and pedestrians shall be trimmed or removed by their owner.

4. Every person owning any lot located alongside any street in the City shall keep all trees trimmed of limbs, branches, and leaves which hang down or obstruct the vision between a point six (6) feet above the crown of any such street and a point three (3) feet above the crown of any such street where such trees are located nearer than eight (8) feet from the curb of any such street, and the failure to so maintain said trees in such condition is deemed a nuisance. It is deemed a nuisance for the owner or occupant of any such lot or land to keep or maintain any plants, flowers, shrubs, or bushes, other then trees, on any such lot or land at a point nearer than eight (8) feet to the curb of any street at a greater height than three (3) feet above the crown of such street, unless the same are trimmed of limbs, branches and leaves between a point six (6) feet above the crown of such street and a point three (3) feet above the crown of such street.

§31.170. REMOVAL OF STUMPS

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§31.180. TREE TOPPING

No person, firm or City department shall "top" any tree in the Public Community Forest. "Topping" is defined as the systematic cutting back of limbs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes where other pruning practices are impractical may be exempted from this section at the determination of the Tree Board.

§31.190. COMPENSATORY PAYMENTS

The Tree Board must first give permission, in writing, before any public trees can be removed or killed within the Public Community Forest. If any public trees are removed or killed without approval, the person or persons responsible shall replace such tree with a tree or trees of

equivalent dollar value in the vicinity of the killed or removed tree. The value of trees shall be determined by the Tree Board considering the species, location, size and condition of trees. If no suitable location exists in the vicinity of the tree to be removed or killed, or if the replacement tree is of lesser value, the person causing the tree to be removed or killed shall make a compensatory payment to the City equal to the difference in value between the tree removed or killed and any replacement tree. Such compensatory payment shall be paid into a fund established by the Board of Alderman and used solely for the purpose of enhancing the Public Community Forest.

§31.200. ARBORISTS LICENSE AND BOND

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing any street trees or park trees within the City without first applying for and procuring a license. The license fee shall be $25 annually in advance; provided, however, that no license shall be required of any public service company, City employee, or City franchisee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file written proof of the applicant's qualifications and experience to be an arborist (including any certifications), and also evidence of possession of liability insurance in the minimum amounts of $50,000 for bodily injury and $100,000 property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described. Such information shall be open for inspection to the public at City Hall. It is recommended that persons only hire Certified Arborists to prune, treat, or remove any tree.

§31.210. ENFORCEMENT

The Tree Board or the Community Forest Manager may recommend to the City Board of Aldermen the institution of any legal proceedings as may be required to enforce this ordinance. Violations of this Chapter are deemed to be public nuisances.

§31.220. INTERFERENCE WITH THE TREE BOARD

It shall be unlawful for any person to unlawfully prevent, delay, or interfere with the City, Tree Board, the Community Forest Manager, or any of its representatives or agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees within the Public Community Forest.

§31.230. ACCESS TO PRIVATE PROPERTY

It shall be unlawful for any person to unlawfully prevent, delay, or interfere with access to private property by the City or any of its representatives or agents, in the legal performance of any section of this Chapter.

§31.240. REVIEW AND APPEALS OF ACTIONS OR DECISIONS OF THE COMMUNITY FOREST MANAGER OR THE TREE BOARD.

1. The Board of Aldermen shall have the right on its own initiative, or on the request of an aggrieved person, to review and overrule the conduct, acts, and decisions of the City Tree Board.

2. Unless otherwise specified in this Chapter, whenever it is claimed that the provisions of this Chapter do not apply, or that the true intent and meaning of this Article has been misconstrued or wrongly interpreted by the Community Forest Manager or the Tree Board, the person aggrieved by that decision or action of the Community Forest Manager or the Tree Board may appeal the decision or action to the City Board of Aldermen. Such appeal shall be made in writing and filed with the City Clerk.

2. In passing upon appeals, the Board of Aldermen may consider any practical difficulties or unnecessary hardships in carrying out the strict letter of this Chapter. The Board of Aldermen may vary or modify the application of any of the provisions of this Chapter so that the spirit of the Chapter shall be observed, public safety and welfare secured, and substantial justice done.

(Ord. 2015-02-001)

CHAPTER 35 -- CEMETERY

SUBCHAPTER A – GENERAL

§35.010 DEFINITIONS

For purposes of this Chapter, the following terms will have the following meanings:

"Cemetery Lot" means any parcel of ground in the City Cemetery that is set aside for burials, and includes, Full Lots, Half Lots, and Single Grave Lots.

"Child" means a person who died prior to the twelfth anniversary of his or her birthday.

"City Cemetery" means the cemetery owned and operated by the City along State Highway B, and all of its additions. A map and plat of the City Cemetery are on file with the City Clerk.

"Double Grave Lot" means two adjacent side-by-side Single Grave Lots that are joined together for common burial.

"Footstone Marker" means a memorial stone or marker placed at the foot area of a grave.

"Full Lot" means ten (10) platted burial spaces in of the City Cemetery, except in the Original Section, which is eight platted (8) burial spaces.

"Half Lot" means one half of a Full Lot.

“Headstone Marker” means the main memorial marker placed at the head of a grave site. Headstone markers may be flat, angled, or upright.

“Infant Grave” means a grave dug to accommodate a casket of less than 4 feet in length.

“Marker” means a burial marker, gravemarker, tombstone, headstone, footstone, gravestone or other memorial identifying the occupant of a particular grave that may include such data as the name of the individual, date and place of birth, date and place of death. Markers do not include mausoleums, monuments, or columbarium.

“Mausoleum” means an external freestanding building constructed as a monument enclosing the interment space or burial chamber of a deceased person or people.

“Memorial Structure” means a marker, mausoleum, monument, Surface Lawn Crypt, or any other type of permanent structure that is allowed in the City Cemetery by existing ordinances of the City.

“Monument” means a statue, permanent bench, structure, obelisk, or sculpture erected as a memorial. A structure that meets the definition of a mausoleum is not a monument.

“New Addition” means the platted West, Center, and East Blocks of the City Cemetery, which is located in the area north of the pond, and north of the mausoleum and the maintenance shed.

“Non-resident” shall mean anyone other than a “Resident.”

“Original Section” means the original platted portion of the City Cemetery, which is generally located in the “lower” southern portion of the City Cemetery.

“Resident” means:

A. Any individual who is domiciled within the City limits of Elsberry, Missouri at the time he or she purchases the Cemetery Lot at issue.

B. Any individual, or estate representative, who is purchasing the Cemetery Lot to inter the remains of a decedent who was domiciled within the City limits of Elsberry, Missouri at the time of the decedent’s death.

C. Any estate, or estate representative, who is purchasing the Cemetery Lot to inter the remains of a decedent who is related by blood or marriage within the second degree to an individual who was domiciled within the City limits of Elsberry, Missouri continuously for at least three years immediately prior to the decedent’s death.

“Rose Hill (Ligon Addition)” means the platted 'A' and 'B' sections of the City Cemetery, which is generally located on the right when entering the City Cemetery through the most easterly roadway.

“Single Grave Lot” means a platted space for burial of one person.

"Surface Lawn Crypt" means a solid sealed enclosure for the interment of the burial remains whose lid protrudes above the land surface and is not a mausoleum.

“Upright Marker” shall be any marker that protrudes more than one inch above ground level.

(2021-09-003)

§35.020. CITY NOT RESPONSIBLE FOR DAMAGE OR ITEMS

The City is not responsible or liable for any damage or loss for any items, articles, or flowers left on burial sites. Nor is the City responsible or liable for any damage or loss to any memorial structures caused by the City or that is beyond the City’s control, such as that caused by natural elements, thieves, vandals, or civil disorder.

§35.030. RIGHT OF CITY TO ENTER ON CEMETERY LOT TO WORK

The City reserves the right to enter upon any Cemetery Lot and change the surface level thereof to conform with the surrounding ground and to do any such work considered to be for the betterment of the City Cemetery as a whole.

SUBCHAPTER B – FINANCIAL

§35.100. SALE OF CEMETERY LOTS.

1. The price to be charged for Cemetery Lots within the City Cemetery shall be as follows:

   All Sections except Rose Hill:

Full Lot (10 graves)	$2,600.00
Half Lot (5 graves)	$1,500.00
Single Grave Lot (1 grave)	$350.00

   PLUS the amounts stated in Subsection 2 below, if applicable.

   Rose Hill (Ligon Addition)

Full Lot (8 graves)	$2,100.00
Half Lot (4 graves)	$1,200.00
Single Grave Lot (1 grave)	$350.00

   PLUS the amounts stated in Subsection 2 below, if applicable.

2. In addition to the above lot fees, a Non-resident purchaser shall also pay the following amounts at the time of purchase which shall be placed in Elsberry's Perpetual Care Cemetery Fund:

All Sections except Rose Hill:

Full Lot (10 graves)	$3,000.00
Half Lot (5 graves)	$1,500.00
Single Grave Lot (1 grave)	$300.00

Rose Hill (Ligon Addition)

Full Lot (8 graves)	$2,400.00
Half Lot (4 graves)	$1,200.00
Single Grave Lot (1 grave)	$300.00

3. Specified sites for the interment of cremains in the City Cemetery shall be sold at the Single Grave Lot price for the applicable area within the cemetery.

4. For all Cemetery Lots sold by the City in the City Cemetery after February 1, 2020, there shall be a fee of $750.00 to inter the remains of each decedent who was not related by blood or marriage to the person who purchased the Cemetery Lot from the City. The fee shall not be applicable if the person who purchased the Cemetery Lot from the City was the estate, or estate representative, of the decedent who is being interred. The fee shall be paid to the City of Elsberry prior to the interment by, or on behalf of, the estate of the person to be interred. All deeds to Cemetery Lots executed after February 1, 2020 shall bear a notice of this restriction and fee. The purpose of this fee is to discourage commercial arbitrage of a limited resource by recouping the cost differential between residential and non-residential sales of lots when lots are resold after the original sale."

(Ord. 6-1-1995; 9-1-1998; 02-1-2007; 2018-06-002; 2019-08-003; 2019-12-005; 2021-09-003; 2021-10-002)

§35.110. REGISTRATION AND DIGGING OF GRAVES - FEES.

1. The City Treasurer shall charge and collect full payment, in advance, the following fees for registration and digging graves and making interments at the City Cemetery from those parties requesting such services:

Grave Registration:	$150.00	(whether adult or infant, whether vault or box, or related to cremated ashes)

Grave Digging Fees:

	Weekday (Non-holiday)	Weekends/Holidays
Adult	$300	$400
Double Depth	$550	$650
Removal	$400	$500
Double Depth Removal	$600	$700
Infant	$125	$125
Cremation	$150	$250

2. All of the above fees shall be deposited in the Cemetery general fund.

3. All interments must be paid in full in advance. No interments shall be made at the expense of the City or on credit without a written order of the Board of Aldermen.

(Ord. 2019-08-003; 2021-09- 003).

§35.120 PERPETUAL CARE FEES.

1. For mausoleums, there is hereby assessed an initial fee of $1,000 for increased maintenance costs, due upon the issuance of the approved permit.

2. For Surface Lawn Crypts and monuments, there is hereby assessed an initial fee of $500 for increased maintenance costs, due upon the issuance of the approved permit.

3. Such fees shall be jointly and severally owed by any owner of the grave or portion of the lot and the person requesting the interment.

4. Any amounts paid pursuant to this Section shall be segregated and deposited into the Perpetual Care Fund and used as set out in this Chapter.

(Ord 9-1-98; 2021-09-003)

§35.130 MONIES TO BE PAID TO CITY TREASURER.

The Treasurer of the City of Elsberry, Missouri, shall segregate the monies paid for the sale of Cemetery Lots, City Cemetery services, and perpetual care into two separate Cemetery Fund accounts which shall be known as:

The General Cemetery Fund
The Perpetual Care Fund

(Ord. 6-1-1995; 9-1-98)

§35.140 GENERAL CEMETERY FUND.

The monies deposited to the General Cemetery Fund shall be those funds received from the sale of Cemetery Lots, or from any other source, except as provided in sections 35.150. The monies shall be under the control of the Board of Aldermen and shall be used only for the benefit of the City Cemetery.

(Ord. 9-1-1998)

§35.150. PERPETUAL CARE FUND.

1. There is hereby continued the Perpetual Care Cemetery Fund for the preservation, care, upkeep and adornment of the City Cemetery. Any person desiring to contribute to the Perpetual Care of the City Cemetery, may do so by deposit, payment, or donation by will or by gift.

2. The monies deposited to the Perpetual Care Fund shall be used for perpetual preservation, care, upkeep, and adornment of the cemetery. The principal of the fund is to be kept intact and deposited in interest-bearing accounts or certificates, the interest to be used as provided herein, any unused interest to be added to principal. The monies shall be under the control of the Board of Aldermen for the above mentioned uses and purposes.

(Ord. 6-1-1986; 9-1-1998)

§35.160 ACCOUNTS.

The City Treasurer shall keep a full and correct account of all City Cemetery receipts showing from what source derived, and the amount of outstanding bills.

(Ord. 6-1-1986; 9-1-1998)

SUBCHAPTER C – INTERMENT

§35.200 INTERMENTS

1. Only human remains may be interred in the City Cemetery.

2. Burial of human remains must be in a concrete burial vault or equivalent burial receptacle.

3. No more than two (2) burial receptacles may be buried in a Single Grave Lot. A single receptacle may contain the remains or cremains of up to two persons, provided that if more than one person's remains or cremains are to be placed in a single burial receptacle, the original buried receptacle cannot be opened after burial to intern the second person's

remains or cremains.

4. If two (2) burial receptacles are to be buried on a Single Grave Lot, the grave must be dug no less than eight (8) feet in depth for the first (1st) burial receptacle. If the City does not have a credible record of the depth of the first burial receptacle in its official records, then the owner of the Cemetery Lot at issue shall provide the City Clerk with a written statement under oath verifying that the initial burial receptacle was dug to eight (8) feet deep on the first (1st) burial receptacle together with documentation of that depth. The City Clerk shall identify such depth on the map of the City Cemetery.

5. The grave for the burial of a single person on a Cemetery Lot must be dug at least four and one-half (4.5) feet deep. The cremated remains of a second (2nd) individual may be buried above the original vault according to the rules for a cremated remains burial.

6. The grave for a Child, must be dug at least three (3) feet deep. If the Child was buried before another person that is to be buried in that grave, the party requesting a later burial in a double deep Cemetery Lot must request a written permission for disinterment from the City Clerk. The party requesting the second (2nd) burial is responsible for all costs for the disinterment, digging the grave to the required depth, and the interment of both vaults.

7. Cremated remains are to be buried in an approved burial receptacle within an approved vault and the grave dug at least three (3) feet deep. Scattering of ashes in the City Cemetery is prohibited.

8. In all the interments, the top of the vault or container shall be at least twelve (12) inches below the surface of the ground.

9. At the time of burial of a second (2nd) person on a Single Grave Lot, the party requesting the second (2nd) burial must pay a grave digging fee at the rate published by the City prior to the interment.

10. Disinterment for any reason including the burial of a second (2nd) person's remains on a Single Grave Lot according to the preceding burial rules without written permission from the City is prohibited.

11. The cremated remains of one person may be interred on the same Single Grave Lot containing the remains a single person, provided it does not interfere with the existing interment and all of the applicable registration and digging fees are paid for the interment of the cremated remains.

(Amend. 2019-08-003; 2020-01-001; 2021-09-003; 2021-10-002)

§35.210. REGISTER OF INTERMENTS.

The City Clerk shall keep a complete register of the ages of all persons interred in the City

Cemetery, with the date of such interment, nationality, birth, and such other particulars as may be required by the Board of Aldermen.

(Ord. 6-1-1986; 9-1-1998; 2021-10-002)

SUBCHAPTER D – MAUSOLEUMS, MARKERS, AND MONUMENTS

§35.300 LOCATION AND RESTRICTIONS

1. A mausoleum may be built only on a Full Lot and only one mausoleum may be built on a Full Lot.

2. A Surface Lawn Crypt or monument may be built only on a Double Grave Lot and only one Surface Lawn Crypt or monument may be built on a Double Grave Lot.

3. The maximum burials that may be made in a single mausoleum is ten. The capacity of a mausoleum will be established when the permit is issued. If no limit is stated in the permit, then the maximum number shall be ten.

4. The maximum burials that may be made in a Surface Lawn Crypt is two. The capacity of a Surface Lawn Crypt will be established when the permit is issued. If no limit is stated in the permit, then the maximum number shall be two.

5. A mausoleum must be located at the center of the Full Lot.

6. A Surface Lawn Crypt must be located at the center of the Double Grave Lot.

7. A Surface Lawn Crypt may not extend more than six inches above the surface of the Cemetery Lot it is on and the adjacent Cemetery Lots.

8. Mausoleums and monuments may not be more than twelve feet in height.

9. Mausoleums, monuments, and Surface Lawn Crypts must meet the applicable sections of the International Building Code (2009).

10. The Board of Aldermen may set aside a section or portion of the City Cemetery for the location of mausoleums."

(Ord. 2021-09-003)

§35.310 NO CONSTRUCTION WITHOUT A PERMIT

No person shall do any construction work of any kind whatsoever in the City Cemetery, except for approved opening of graves, nor cause any such work to be done in the City Cemetery without first obtaining a permit to do such work from the City.

§35.315 APPLICATION TO CONSTRUCT -- CONTENTS

Any person who may desire to erect a mausoleum, monument, or Surface Lawn Crypt in the City Cemetery shall first submit a written application to the Board of Aldermen requesting permission to construct such mausoleum, monument, or Surface Lawn Crypt. The application fee shall be $50.00 and shall be paid with the submission of the application. The application fee is non-refundable. Each such application shall include, at least the following information:

1. The name of the person proposing to erect the mausoleum, monument, or Surface Lawn Crypt.

2. The name of the contractor, if any, or the person who will be in immediate charge of the actual construction.

3. The number and location of lots purchased or to be purchased for the site.

4. The name of the ultimate owner, if different from the person proposing to erect the mausoleum, monument, or Surface Lawn Crypt.

5. The estimated date of start of construction and the date of completion.

6. The proposed burial capacity of the mausoleum or Surface Lawn Crypt.

7. The details of any private restrictions as to interment in the proposed mausoleum or Surface Lawn Crypt.

8. The details of any fund which the erector or ultimate owner proposes to establish for the perpetual maintenance and care of the lots and the mausoleum, monument, or Surface Lawn Crypt to be erected.

9. A detailed set of design and construction plans and specifications showing the dimensions, the type and kind of materials to be used in its construction, the number, location and description of any ornamental shrubs to be planted on the site, and an artist's or architect's conception of the completed structure.

10. Certification from a licensed architect or engineer that the mausoleum or Surface Lawn Crypt is structurally sound and a sound service life expectancy of at least 100 years."

(Ord. 2021-09-003)

§35.320 STANDARDS FOR GRANTING A PERMIT

1. In deciding whether to grant a permit for the construction of a mausoleum, monument, or Surface Lawn Crypt, the Board of Aldermen shall consider the following:

1. The proposed mausoleum, monument, or Surface Lawn Crypt is of an approved type that will enhance the general beauty of the City Cemetery,

2. It will be properly constructed in accordance with approved and accepted methods,

3. Sufficient space has been or will be purchased for the site so that the grounds surrounding the structure can be easily maintained and beautified without disturbing or interfering with surrounding graves or lots,

4. Any private restrictions to be imposed are reasonable and do not in conflict with the Regulations and Ordinances for the City Cemetery.

5. Proper provision for the perpetual care and maintenance of the Cemetery Lots and the mausoleum, monument, or Surface Lawn Crypt to be constructed has been or will be provided prior to its completion,

6. It complies with all City Ordinances.

7. It will not interfere with, or place burdens, on the general care of the City Cemetery.

2. The Board of Aldermen may approve the application, approve the application with conditions, return the application for resubmission with comments, or deny the application.

(Ord. 2021-09-003)

§35.325 ISSUING THE PERMIT

If the Board of Aldermen approves the application, the City Clerk shall issue the permit noting the date of completion and any special requirements or conditions imposed by the Board of Aldermen. For mausoleums and Surface Lawn Crypts, the permit shall also state the maximum number of burials permitted as determined by the Board of Aldermen. "

Ord. 2021-09-003)

§35.330 TIMELY COMMENCEMENT AND COMPLETION OF WORK

The work for which any permit under this article is given shall be begun within thirty (30) days from the date of the permit and completed by the date stated in the permit. If the work is not so begun or completed, another permit shall be applied for (along with a new application fee), and a new permit obtained for before such work may be begun or completed.

§35.335 INSPECTIONS; DEVIATION FROM APPROVED PLAN; INTERMENT CONTINGENT UPON CERTIFICATE OF APPROVAL

1. The City Inspector or other person designated by the Mayor, is hereby authorized and directed to make inspections of the mausoleum, monument, or Surface Lawn Crypt at suitable intervals during its erection to determine whether or not it is being constructed in accordance with the permit and the plans and specifications as approved by the Board of Aldermen. In the event that there shall be any deviation from the approved plans, specifications, and conditions, without prior written approval of the Board of Aldermen, the City Inspector or other person designated by the Mayor, is hereby authorized to immediately halt the construction of the mausoleum, monument, or Surface Lawn Crypt and report the deviation to the Board of Aldermen. If the Board of Aldermen fail to waive such deviation, the City Inspector or other person designated by the Mayor, shall cause a notice to be served on the erector of the mausoleum, monument, or Surface Lawn Crypt to either: (1) correct such deviation within thirty (30) calendar days, or (2) at the City's sole discretion, the City shall be authorized to remove such mausoleum, monument, or Surface Lawn Crypt or any part thereof all at the cost of the erector and/or owner of the Lot.

2. Upon the completion of the permitted mausoleum, monument, or Surface Lawn Crypt in accordance with the approved plans and specifications, the City Inspector or other person designated by the Mayor shall issue to the erector or ultimate owner a certificate of approval. No interment in a mausoleum, monument, or Surface Lawn Crypt shall be made without the issuance of a certificate of approval.

(Ord. 2021-09-003)

§35.340 PLACEMENT AND STANDARDS FOR MARKERS

There may be placed on each grave in the City Cemetery a headstone marker and footstone marker that comply with this Chapter.

1. All headstone markers shall be placed on the west end of the respective grave sites. All footstone markers shall be placed on the east end of the respective grave sites.

2. All markers shall be placed in the center of the grave site's north-south axis so that they shall be in the line with other markers of the same type and in a position approved by the City Inspector or other person as designated by the Mayor.

3. Markers must be made of a permanent material.

4. Headstone markers must be placed by a professional marker installer. The installer must obtain approval from the City Clerk for the marker design and location prior to placing the marker.

5. Each such marker shall be placed on a permanent foundation with a concrete apron of a minimum width of four (4) inches outside the edge of the respective marker.

6. The raised portion of any headstone marker including foundation and apron must be at

least six (6) inches minimum from either side of a Single Grave Lot. An upright headstone marker must be at least four (4) inches high from the top surface of the foundation. A flat headstone marker must be no more than one (1) inch above ground level at any point. The front to back thickness of the raised portion of any headstone marker including the base must be sixteen (16) inches or less.

7. When a headstone marker serves two (2) or more Single Grave Lots, a single headstone marker may be located centered on the two (2) Single Grave Lots and be no more than five (5) feet wide and sixteen (16) inches thick.

8. All headstone markers on a Single Grave Lot are to have a concrete foundation at least fourteen (14) inches deep. Foundations for headstone markers that are centered over two (2) Single Grave Lots are to have concrete foundations at least eighteen (18) inches deep. The foundation is to be level with the ground or if on sloping grades, the foundation is to be level with the ground on the uphill side. The foundation is to be sufficiently wide to support the headstone marker but the width may not be more than twenty-four (24) inches wide.

9. Not more than one (1) footstone marker is allowed on a Single Grave Lot. Footstone markers are to be no more than one (1) inch higher than the plane of the ground at any point. The east edge of the footstone marker to be located on a line thirty (30) inches from the foot of the Single Grave Lot. Individual footstone markers may be no larger than twenty (20) inches wide and thirty-two (32) inches long including the visible part of the foundation.

10. Veterans' memorial plaques may also be placed on the grave site.

11. If any marker headstone or footstone marker or its inscription is determined by the City to be offensive, the City may issue an order to deny placement of the offending item or to remove it if it has already been placed. The person wishing to place the offending marker may appeal the decision in writing to the City Board of Aldermen within fourteen (14) days of notice of the decision. If the Board of Aldermen do not sustain the appeal, the City Prosecutor shall file an information with the Municipal Court to determine if there is a violation of the Ordinance. If a violation is found by the Municipal Judge, the City may require the offensive item to be replaced or altered at the owner or installer's expense. Should the owner or installer not comply, the City may remove the item.

12. Temporary markers are allowed up to a maximum of one (1) year after which they may be removed by the City without notice."

(Ord. 2021-09-003)

§35.345. MONUMENTS.

Monuments must be built on foundations that are adequate to bear the load.

§35.350 FOUNDATIONS REQUIRED--INSTALLATION

1. All Memorial Structures shall have suitable, properly mixed, set concrete foundations, which shall be installed at the grave site at the owner's expense.

2. All headstone markers shall be placed on foundation of a minimum of twenty-four (24) inches deep.

3. Footstone markers shall be placed on a concrete foundation of at least fourteen (14) inches in depth.

4. The top of the foundation shall be ground level.

5. All benches or similar types of memorials shall be placed upon a concrete foundation that has a depth at least equal to its height and/or weight.

6. The above standards are minimum requirements and the City may impose stricter or greater standards as the situation may require.

7. No memorial structure may be set until the foundation has been approved by the City Inspector or other person designated by the City. Failure to comply with this section may result in removal of the memorial structure. The owner must pay an inspection fee of fifty dollars ($50.00).

(Ord. 2020-01-001; 2021-09-003)

§35.355 REMOVAL OF DECAYED, DILAPIDATED, OR DANGEROUS MEMORIAL STRUCTURES.

If any Memorial Structure shall fall into a state of dilapidation or decay, or shall be determined by the City to be offensive or in any way injurious to the appearance of the City Cemetery, and no adequate provisions have been made by the owner for repair and preservation of such structure, the City shall have the right to remove the structure and to inter any body contained therein in the earth upon the lot on which such structure was located, maintaining such lot thereafter in good and similar condition as done with other lots in the City Cemetery.

SUBCHAPTER E – REGULATIONS

§35.400 DECORATIONS.

1. Flowers are to be maintained and removed when they become faded and unsightly.

2. Funeral flowers may remain on the grave for a maximum of three (3) days after burial. After this time period, the City may remove the funeral flowers without notice.

3. Flags may only be placed on or beside a headstone monument between three (3) days prior to and seven (7) days after Memorial Day, July Fourth (4th), and Veterans Day. Flags may be no larger than eighteen (18) inches by twelve (12) inches. All flags that are faded or torn or which contain offensive language or symbols, in the opinion of the City, will be removed by the City.

4. Grave blankets are allowed after November first (1st) but must be removed by March first (1st).

5. One (1) "eternal" or "memorial" type light is permitted per headstone monument. Only battery or solar operated styles that do not flash are allowed. The light must be securely mounted to the tombstone and be secured in such a manner that it cannot blow or fall off.

6. No plantings other than grass are permitted on grave sites.

7. No fences, stakes, curbs, corner markers, or rails shall be allowed, whether of material or living substance, to mark individual lots or graves.

8. The City reserves the right to remove and dispose of flowers that have become unsightly or become detached from a monument without notice or compensation. The City also reserves the right to remove all non-conforming materials including an eternal or memorial light if it becomes a maintenance issue or exceeds the number allowed without notice or compensation.

(Ord. 9-1-1998); amend. Ord. 2016-11-002 [Nov. 8 2016]).

§35.410 GRADING.

No person owning a lot in the City Cemetery shall be permitted to grade or fill his lot above the natural elevation of the lots adjoining his, nor to fill or grade the same in any manner that will injure the appearance, usefulness or value of the adjoining lots.

(Ord. 9-1-98)

§35.420 TREES AND PLANTINGS.

The Board of Aldermen is hereby given sole power and control over the matter of planting shade and ornamental trees and shrubs on the roads, drives, and avenues of the City Cemetery and of otherwise ornamenting same.

(Ord. 9-1-1998)

§35.430 RECREATIONAL ACTIVITIES

No person may engage in any form of athletics, sport, or other recreational activity or event,

whether organized or spontaneous, that is engaged in by one or more persons for the primary purpose of exercise, recreation, or enjoyment, including but not limited to the following: racing, skating, skateboarding, ball playing, kite flying, model airplane flying, throwing objects through the air, sunbathing, bicycling, loitering, and picnicking. This term does not include visitation, walking, hiking, or casual strolling.

§35.440 GENERAL REGULATIONS

The following rules shall govern the operation and maintenance of the City Cemetery:

1. Any placement on a grave site, drive, alley, or common areas that interferes with the City's orderly mowing or care of the Cemetery will not be permitted and will be removed.

2. No memorial structure shall be allowed on adjacent spaces or into the alleys or passage lines.

3. No trees, shrubbery or other growth, except grass, is to be planted on any grave or Cemetery Lot.

4. The City shall have the authority to remove any and all items that violate this Section.

5. Concrete vaults shall be required for all interments.

6. Care and placement of memorial structures shall be the responsibility of the grave owner.

7. Behaviors that do not respect the solemnity of the cemetery are prohibited.

8. Dogs must be on a leash at all times while on the premises and feces must be bagged and removed from the cemetery by the dog's owner and/or handler."

(Ord. 2021-09-003)

§35.450 VISITATION HOURS.

Hours of visitation at the City Cemetery shall be from sunrise to sunset. No person shall be in the City Cemetery beyond the hours of visitation unless they have received prior written permission from the Mayor or Board of Aldermen for that specific visit."

(Ord. 9-1-1998; 2021-09-003)

§35.460 TIMES AND DURATION OF BURIAL SERVICES – EXTENDED TIME FEES.

1. To allow for proper and timely interments, no funeral, burial, interment, committal, or

memorial service shall commence at the Cemetery after 3:00 p.m. The duration of all funeral, burial, interment, committal, or memorial services, including associated grave side visitations, shall be no longer than one hour after those services begin. All visitors attending such services, and all persons associated with such services shall leave the Cemetery after the allotted one hour time period.

2. The funeral director or person responsible for the funeral, burial, interment, committal, or memorial service will be charged an additional extended time access fee of Fifty Dollars ($50.00) per each one-half hour (or part thereof) that any attendees or participants of such services remain in the Cemetery after the one hour allotted time. This excess time access fee is in addition to any fines assessed for violation of this Chapter, including regulations concerning Cemetery hours and funeral duration. Payment of the excess time access fee does not excuse or exempt any person from liability for violations of this Chapter, including the regulations concerning Cemetery hours and funeral duration."

(Ord. 2020-10-002; 2021-09-003)

SUBCHAPTER F – OFFENSES

§35.500 VANDALIZING CEMETERIES AND PROPERTY

1. It shall be unlawful for any person to vandalize, destroy, mutilate, disfigure, deface, break, injure, tear down, or remove any memorial structure grave, lot, fence, gate, tree, shrub, flower, decoration, memento, memorial, roadway, improvement, or any fixture belonging to any grave in the City Cemetery.

2. No person may disturb or remove the earth from any grave or Cemetery Lot without prior written approval of the Board of Aldermen.

3. It shall be unlawful for any person to remove any memorial structure grave, lot, fence, tree, shrub, flower, decoration, memento, memorial, or any fixture belonging to any grave in the City Cemetery in violation of this Chapter or without the approval of the Cemetery Lot Owner or the Board of Aldermen.

§35.510 DRIVING OFF ROADWAYS

It shall be unlawful for any person to his any vehicle upon any grounds of the Cemetery, except the established avenues, roads and driveways, or as permitted by the requirements or order of the Board of Aldermen on funeral occasions.

§35.530 DISCHARGING FIREARMS, FIREWORKS, OR EXPLOSIVES.

It shall be unlawful for any person to discharge firearms or any other loud explosive charges in

the City Cemetery. Exceptions may be made to allow for the discharge of firearms as part of the observance of military and/or law enforcement services, and for special memorial services. Said discharge of firearms to be conducted by organizations, with recognized knowledge of firearms use, such as the American Legion and the Veterans of Foreign Wars.

§35.540 HUNTING

It shall be unlawful to be on the City Cemetery grounds for the purpose of stalking, hunting, fishing or otherwise pursuing wildlife.

§35.550 FUNERAL DISTURBANCE

1. Every citizen may exercise their constitutional rights while being responsible for the abuse of those rights, but no person shall disturb, picket, or engage in other protest activities, nor shall any association or corporation cause picketing or other protest activities to occur within three hundred (300) feet of any residence, cemetery, funeral home, church, synagogue, or other establishment during or within one (1) hour before or one (1) hour after the conducting of any actual funeral, visitation, or burial service at that place.

2. As used in this Section, "other protest activities" means any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service.

3. As used in this Section, "funeral", “visitation”, and "burial service" mean the ceremonies and memorial services held in conjunction with the burial or cremation of the dead, but this Section does not apply to processions while they are in transit beyond any three hundred (300) foot zone that is established under Subsection 1 above.

(Ord. 6-1-1986; 6-1-1995; 1-1-1998; 9-1-1998; 2-1-2003; 2013-03-001; 2013-05-003)

CHAPTER 39 -- BOARD OF PUBLIC WORKS

§39.010. ABOLISHED.

The ordinance relating to the establishment of the Board of Public Works for the City of Elsberry is hereby repealed and the Board of Public Works is hereby abolished and directed to transfer all books, records and funds of the said Board to the board of aldermen within ten (10) days from June 4, 1974.

CHAPTER 40 -- PLANNING COMMISSION

§40.010. COMPOSITION, APPOINTMENT, TERM, QUALIFICATIONS AND COMPENSATION OF MEMBERS.

The Planning Commission shall consist of seven members, including the mayor, a member of the

board of aldermen selected by the board of aldermen, the city engineer or similar city official and four citizens appointed by the mayor and approved by the board of aldermen. All citizen members of the Commission shall serve without compensation. The terms of each of the citizen members shall be for four years, except that the terms of the citizen members first appointed shall be for varying periods so that succeeding terms will be staggered. Any vacancy in a membership shall be filled for the unexpired term by appointment as aforesaid. The board of aldermen may remove any citizen member for cause stated in writing and after public hearing.

§40.020. COMMISSION OFFICERS, RULES, RECORDS, EMPLOYEES, EXPENDITURES.

The Planning Commission shall elect annually, from its members, its own chairman, vice chairman and secretary, and from time to time provide such rules and regulations not inconsistent with the ordinances of the City or the laws 'of the state, for its own organization and procedure as it may deem proper, provided, however, its chairman shall be elected from the appointed citizen members. The Commission shall hold regular meetings and special meetings as they provide by rule, and shall keep a record of its proceedings. These records shall be public records. The Commission shall appoint the employees and staff necessary for its work, and may contract with city planners and other professional persons for the services that it requires. The expenditures of the Commission shall be within the amounts appropriated for the purpose by the board of aldermen.

§40.030. REPORTS.

The Planning Commission shall make an annual report to the board of aldermen covering their investigations, transactions, recommendations and such other and further reports relative thereto, as it may deem proper or as required by the board of aldermen.

§40.040. PURPOSE, POWERS AND DUTIES.

1. The Commission shall make and adopt a city plan for the physical development of the City and, in the preparation of the plan, the Commission shall make careful and comprehensive surveys and studies of the existing conditions, and its probable future growth, including recommendations relative to the location, length, width and arrangement of the streets, alleys, bridges, viaducts, parks, parkways, playgrounds, recreation areas, boulevards or other public grounds or improvements, the platting of public property into lots, plots, streets or alleys, the location of railroad or street car lines, transportation or other channels for communication. of, any kind, the grouping of public buildings, the design and placing of memorials, works of art, power and lighting plants, street lighting standards, telegraph, telephone and electric poles, street name signs, billboards or projecting signs, elimination of railroad grade crossings and other things pertaining to the welfare, housing appearance or beauty of the City or any portion thereof.

2. Make recommendations in connection with the execution and detailed interpretation of the city plan, and make such changes and adjustments in the plan as may be deemed desirable from time to time.

3. Prepare and recommend to the board of aldermen rules controlling the subdivision of land.

4. Make recommendations regarding the approval or disapproval of plats for land subdivision. Such plats shall be referred to the Planning Commission before the board of aldermen takes any action. Failure of the City Planning Commission to act within sixty (60) days shall be deemed an approval.

5. Recommend from time to time legislation which may be desirable to further the purposes of city planning.

6. Assume any other powers or duties as are provided by the ordinances of the City or as are provided by Statute of the State of Missouri, relative to planning in this municipality.

§40.050. ADOPTION OF PLAN, PROCEDURE.

The Commission may adopt the Plan as a whole by a single resolution, or as the work progresses, may from time to time adopt a part or parts thereof, ay part to correspond generally with one or more of the functional subdivisions of the subject matter of the Plan. Before the adoption amendment or extension of the Plan or portion thereof, the Commission shall hold at least one (1) public hearing thereon. Fifteen (15) days notice of the time and place of such hearing shall be published in at least one newspaper having general circulation within the City of Elsberry. The hearing may be adjourned from time to time. The adoption of the Plan requires a majority vote of the full membership of the Planning Commission. The resolution shall refer expressly to the maps, descriptive matter and other matters extended by the Commission to form the whole or part of the Plan, and the action taken shall be recorded on the adopted Plan or part thereof by the identifying signature of the secretary of the Commission and filed in the office of the Commission, identified properly by file number; and a copy of the Plan or part thereof shall be certified to the board of aldermen and the city clerk; and a copy shall be recorded in the office of the county recorder of deeds.

§40.060. VIOLATION, PENALTY.

Any person violating the provisions of this Chapter or any rules or regulations of the Planning Commission, as promulgated under authority of this Chapter, is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred ($100.00) nor more than five hundred dollars ($500.00), or by confinement in the county jail for not more than one year, or by both such fine and confinement.

CHAPTER 41
ZONING

§41.010 PURPOSE

The zoning regulations set forth herein are enacted to implement the land use portion of the

Comprehensive Development Plan for the City of Elsberry and to promote the health, safety, morals, and general welfare of the citizens of the city. These regulations are intended to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of the land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.

(Ord. 9-9-1997)

§41.020 AUTHORITY

The provisions set forth in these regulations have been prepared in accordance with the authority granted by the General Assemble of the State of Missouri as provided by Municipal Planning Act of 1963, Sections 89.300, Revised Statute of Missouri.

(Ord. 9-9-1997)

§41.030 JURISDICTION

The jurisdiction of these regulations shall include all land in the Corporate Limits. These regulations shall also apply to any land added to the Corporate Limits after such land shall have been legally annexed.

(Ord. 9-9-1997)

§41.040 DEFINITION OF "CITY"

For the purpose of this ordinance, "city" shall refer to Elsberry, Missouri.

(Ord. 9-9-1997)

§41.050 GRAMMATICAL USAGE

For the purpose of these regulations words used in the present tense shall include the future tense; words in the singular number include the plural and words in the plural number include the singular, except where the natural construction of the writing indicates otherwise. The word "shall" is mandatory and not directory.

(Ord. 9-9-1997)

§41.060 GENERAL DEFINITIONS

For the purpose of these regulations, certain terms and words are to be used and interpreted as defined, hereinafter.

Accessory Building or **Use** means a subordinate building or a portion of the main building, the use of which is incidental to that of the dominant use of the main building or land. An accessory use is one which is incidental to the main use of the premises.

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

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

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

(c) Application of ointments or balms;

(d) Transdermal patches and suppositories;

(e) Consuming marijuana-infused food products; or

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

Alley means a way which affords only a secondary means of access to property abutting thereon, or which is less than 30 feet wide.

Apartment means a room or suite or rooms used as the dwelling of a family, including bath and culinary accommodations, located in a building in which there are three or more such rooms or suite.

Apartment House . See Dwelling, Multiple.

Basement means a story having part but not more than one half of its height above grade and used for storage, garages for use of occupants of the building, janitor or watchman quarters, or other utilities common for the rest of the building. A basement used for the above purpose shall not be counted as a story.

Boarding House means a building other than a hotel where, for compensation and by arrangement, meals or lodging and meals are provided for three or more persons.

Building means any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind.

Building, Height of means the vertical distance from the grade to the highest point of the coping of the flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.

Cellar means a story having more than one-half of its height below grade. A cellar is not included in computing the number of stories for the purpose of height measurement.

Church means a permanent building primarily and regularly used as a place of religious worship.

Clinic, Health means an establishment where patients, who are not lodged overnight, are admitted for examination and treatment by a group of licensed health practitioners practicing together.

Comprehensive facility means a comprehensive marijuana cultivation facility, comprehensive marijuana dispensary facility, or a comprehensive marijuana-infused products manufacturing facility.

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

Comprehensive marijuana dispensary facility means a facility licensed by the department to acquire, process, package, store on site or off site, sell, transport to or from, and deliver marijuana, marijuana seeds, marijuana vegetative cuttings (also known as clones), marijuana-infused products, and drug paraphernalia used to administer marijuana as provided for in this section to a qualifying patient or primary caregiver, as those terms are defined in section 1 of this Article, or to a consumer, anywhere on the licensed property or to any address as directed by the patient, primary caregiver, or consumer and consistent with the limitations of this Article and as otherwise allowed by law, to a comprehensive facility, a marijuana testing facility, or a medical facility. Comprehensive dispensary facilities may receive transaction orders at the dispensary directly from the consumer in person, by phone, or via the internet, including from a third party. A comprehensive marijuana dispensary facility need not segregate or account for its marijuana products as either non-medical marijuana or medical marijuana, but shall collect all appropriate tangible personal property sales tax for each sale, as set forth in this Article and provided for by general or local law. A comprehensive marijuana dispensary facility's authority to process marijuana shall include the creation of prerolls.

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

Consumer means a person who is at least twenty-one years of age.

Conditional Use means a use that, owing to some special characteristics attendant to its operation or installation, is permitted in a district subject to approval by the Board of Aldermen and subject to special requirements or conditions which are different from those usual requirements for permitted uses within the district in which the conditional use may be located. Conditional Use and Special Use shall be used interchangeably.

Corner Lot. A lot abutting upon two or more streets at their intersection.

Daycare means a child-care facility, as defined by section 210.20l, RSMo, or successor provisions, that is licensed by the state of Missouri.

Department means the department of health and senior services, or its successor agency.

District. A section or sections of the City of Elsberry for which the zoning regulations govern the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

Double Frontage Lot means a lot having a frontage on two non-intersecting streets as distinguished from a comer lot.

Dwelling means any building or portion thereof which is designed for or used exclusively for residential purposes.

Dwelling, Single-Family means a building, excluding manufactured homes, designed for or occupied by one family. (Amend Ord. 1-4-04)

Dwelling, Two-Family means a building, excluding manufactured homes, designed for or occupied exclusively by two families. (Amend Ord. 1-4-04)

Dwelling, Multiple means a building, excluding manufactured homes, designed for or occupied exclusively by more than two families. (Amend Ord. 1-4-04)

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

Family means a group of one or more person occupying a premises and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from a group occupying a boarding house, lodging house or hotel as herein defined.

Fence. means a structure and/or materials consisting of wood (rails or stakes), wire, masonry, vegetation (hedge) or other similar materials erected so as to provide a barrier or enclosure along

the boundaries of, or within, a yard or lot. Such fence may or may not have openings for sidewalks and driveways within its vertical surface depending on its construction and use.

Filling Station or Service Station means any building, structure or land used for the dispensing, sale or offering for sale at retail of any automobile fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories but not including major repair work such as motor replacement, body and fender repair or spray painting.

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

Frontage means all the property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead ended, then all the property abutting on one side between an intersecting street and the dead end of the street.

Grade means:

a. For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street.

b. For buildings having walls adjoining more than one street, the average of the elevation of the sidewalks at the centers of all walls adjoining the street.

c. For buildings having no wall adjoining the street, the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Any wall approximately parallel to and not more than five feet from a street line shall be considered as adjoining the street. Where no sidewalk exists, the grade shall be established by the City Engineer.

Half Story. A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than three feet above the floor of such story, except that any partial story used for residence purposes other than for a janitor or care-taker or his family or by a family occupying the floor immediately below it, shall be deemed a full story.

Home Occupation. Any occupation or activity which is clearly incidental and secondary to the use of the premises for dwelling purposes and which is carried on wholly within a main building by a member of a family residing on the premises, in connection with which there is not advertising on the premises other than an identification sign of not more than two square foot in area and no other display or storage of materials or exterior identification of the home occupation or variation from the residential character of the main building or accessory building; and in connection with which no person outside the family is employed and no equipment used which creates offensive noise, vibration, smoke, dust, odor, heat or glare. A home occupation shall not include the conducting of a beauty or barber shop, tea room or restaurant, rest home, clinic, doctor or dentist office, child care center, tourist home, real estate office, or cabinet, metal or

auto repair shop.

Hotel. A building in which lodging or boarding and lodging are provided and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public as opposed to a boarding house, a lodging house, or an apartment which are herein separately defined.

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

Institution. A building occupied by a non-profit corporation or non-profit establishment for public use.

Laundromat. A business that provides home-type washing, drying or ironing machines for hire to be used by customers on the premises.

Licensed Day Care" means a Missouri Department of Health and Senior Services licensed, regulated, or childcare subsidized facility where care is provided for children by a child care provider for any part of the twenty-four (24)-hour day.

Loading Space. A space within the main building or on the same lot, providing for the standing, loading or unloading of trucks, having a minimum dimension of 12 by 45 feet and a vertical clearance of at least 16 feet.

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

Lodging House." A building other than a hotel where lodging only is provided for three or more but not more than 20 persons.

Lot". A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance, including one main building together with its accessory buildings, the open spaces and parking spaces required by the Zoning Ordinance, and having its principal frontage upon a street or upon an officially approved place.

Lot of Record. A lot which is part of a subdivision, the map of which has been recorded in the Office of the Recorder of Deeds of the County of Lincoln, or a parcel of land, the deed of which was recorded in the Office of the Recorder of Deeds prior to the adoption of this Ordinance.

Manufactured Home. A factory-built structure or structures which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, contains three hundred twenty or more square feet, equipped with the necessary service

connections and made so as to be readily moveable as a unit or units on its or their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation. The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the manufactured home placed thereon may be moved from time to time at the convenience of the owner. (Amend. Ord. 1-4-04)

Manufactured Home Park District. A manufactured home park district is any parcel of land consisting of three or more acres upon which two or more manufactured homes, occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodation. A manufactured home space means the area within a manufactured home district designed for the accommodation of one manufactured home. (Amend. Ord. 1-4-04)

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

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

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

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

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

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

Medical facility means any medical marijuana cultivation facility, medical marijuana dispensary

facility, or medical marijuana-infused products manufacturing facility, as defined in this section.

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

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

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

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

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

the creation of prerolls.

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

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

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

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

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

Planning and Zoning Commission. The official planning and zoning body of the City of Elsberry, Missouri.

Pool Fences. A permanent fence, wall, building wall, or combination thereof that completely surrounds the pool and obstructs the access to the pool. The term "permanent"shall mean not being able to be removed, lifted, or relocated without the use of a tool.

Private Garage. An accessory building designed or used for the storage of not more than four motor vehicles owned and used by the occupants of the building to which it is accessory. Not more than one of the vehicles may be a commercial vehicle and said commercial vehicle shall not be more than two ton cargo capacity.

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

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

Public Garage. A building or portion thereof other than a private or storage garage, or filling station or service station, designed or used for equipping, servicing, repairing, hiring, selling or storing motor-driven vehicles.

Public Sewage System. A system serving two or more dwelling units and approved by the Missouri Department of Health and the Missouri Water Pollution Board.

Public Water Supply System. A system serving two or more dwelling units and approved by the Missouri Department of Health.

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

(a) Cancer;

(b) Epilepsy;

(c) Glaucoma;

(d) Intractable migraines unresponsive to other treatment;

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

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

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

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

(i) Any terminal illness; or

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

Qualifying patient means an individual diagnosed with at least one qualifying medical condition.

Rooming House. See Lodging House.

Sight-Proof Fence. Any fence which substantially reduces the sight-distance for adjacent properties or the traveling public. These fence types include, but are not limited to, wood stockade fence, masonry fence, shadow-box fence or thick vegetation (hedges).

Special Use means a use that, owing to some special characteristics attendant to its operation or installation, is permitted in a district subject to approval by the Board of Aldermen and subject to special requirements or conditions which are different from those usual requirements for permitted uses within the district in which the conditional use may be located. Conditional Use and Special Use shall be used interchangeably.

"**Storage or Parking Garage.** A building or portion thereof designed or used exclusively for term storage by rearrangement of motor-driven vehicles, as distinguished from daily storage furnished transients, and within which motor fuels and oils may be sold, but no motor-driven vehicles are equipped, repaired, hired or sold.

Story. That portion of a building other than a cellar included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

Street. A public or private thoroughfare which affords the principal means of access to abutting property.

Street Line. A dividing line between a lot, tract or parcel of land and a continuous street.

Structure. Any building, mobile home or anything constructed or erected, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground, including, but without limiting the general inclusiveness of the foregoing, advertising signs, billboards, back stops for tennis courts and pergolas.

Structural Alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial change in the roof or in the exterior walls excepting such repair or replacement as may be required for safety of the building, but not including openings in bearing walls as permitted by existing ordinances.

Tourist Home. A building other than a hotel where lodging is provided and offered to the public for compensation for not more than 20 individuals and open to transient guests, with which there is used only one sign not more than two square feet in area.

Tourist or Trailer Camp. An area where one or more tents, recreational vehicles or auto trailers can be or are intended to be parked, designed or intended to be used as temporary living facilities of one or more families and intended primarily for automobile transients.

Trailer. A vehicle, other than a motor vehicle, designed or intended for use as dwelling

purposes, whether or not such vehicle is attached to or resting on the ground or something having a location on the ground.

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

Yard. An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as other wise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of the rear yard, the minimum horizontal distance between the lot line and main building shall be used.

Yard, Front. A yard extending across the front of a lot and being the minimum horizontal distance between the street or place line and the main building or any projections thereof other than the projection of the usual uncovered steps, uncovered balconies, or uncovered porch. On comer lots the front yard shall be considered as parallel to the street upon which the lot has its least dimension.

Yard, Rear. A yard extending across the rear of a lot and being the minimum horizontal distance between the rear lot line and rear of the main building or any projections of uncovered steps, unenclosed balconies or unenclosed porches. On all lots, the rear yard shall be in the rear of the front yard.

Yard, Side. A yard between the main building and the side line of the lot, and extending from the front yard to the rear yard, and being the minimum horizontal distance between a side lot line and the side of the main building or any projections thereof.

Zoning, Inspector. A person or persons designated by the Board of Aldermen of the City of Elsberry, Missouri.

Zoning Map. The official Zoning Map of Elsberry, Missouri, such map being located in the Office of the City Clerk.

(Ord. 9-9-1997; 1-4-2004; 06-11-2019; 2020-06-001; 2020-06-002; 2023–09-001)

§41.070 BOUNDARY MAPS

The boundaries of the zoning districts shall be shown upon the zoning maps this day marked as exhibit A and said zoning maps is hereby incorporated by reference herein as though fully set forth and is part of this ordinance. The zoning maps shall be located in the office of the City Clerk of Elsberry, Missouri. The Residential zones shown on the maps are divided into two subdistricts. Areas marked as Residential that lie East of 7th Street and South of Brownsmill Road are zoned as R-1 residential; and all other city Residential lots are zoned R-2, unless specifically designated by separate Ordinance. Regulations applicable to residential zones without specifically referring to R-1, R-2, or R-3 shall apply to both R-1 and R-2 zoned properties unless contrary to the specific regulations of the applicable Residential Subdistrict.

(Ord. 9-9-1997; 5-1-1998; 2019-08-001; 2023-06-001; 2023-08-00_; 2023-10-04)

§41.080 INTERPRETATION

Where uncertainty exists with respect to the boundaries of the zoning districts as shown on the zoning map, the following rules shall apply.

1. The zoning district boundaries shall be streets or alleys unless otherwise shown. Where the districts designated on the zoning map accompanying and made a part of this Ordinance are bounded approximately by street or alley lines, the centerline of the street or alley shall be construed to be the boundary of the district.

2. Where the district boundaries are not otherwise indicated, and where the property has been or may hereafter be divided into blocks and lots, the zoning district boundaries shall be construed to be the lot lines. Where the districts designated on the zoning map are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of the zoning districts unless the boundaries are otherwise indicated on the zoning map.

3. In unsubdivided property, the zoning district's boundary lines on the zoning map accompanying and made a part of this Ordinance shall be determined by the use of the scale appearing on the zoning map.

(Ord. 9-9-1997)

§41.090 ANNEXED AREAS

All territory which may hereafter be annexed to the City of Elsberry, Missouri, shall be classified as an A General Agriculture District until within a period not to exceed ninety (90) days following the date of annexation, the Planning Board shall appropriately reclassify-such territory in accordance with ARTICLE V of the Ordinance [§§41.110 through 41.180].

(Ord. 9-9-1997)

§41.100 GENERAL USE PROHIBITIONS

Except as hereinafter specifically provided:

1. No land shall be used except for a purpose permitted in the zoning district in which it is located.

2. No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building be used, except for a use permitted in the zoning district in which such building is located.

3. No building shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the zoning district in which such building is located.

4. The minimum yards, and open spaces, including lot area per family, required by this Ordinance for each and every building existing at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as part of the yard or parking space or open space required for any other building, nor shall any lot area be reduced below the requirements of this Ordinance for the zoning district in which such lot is located.

5. Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on one lot except as specifically provided hereinafter.

(Ord. 9-9-1997)

§41.110 ZONING DISTRICTS

For the purposes of this Ordinance, the City of Elsberry, Missouri, is divided into the following districts:

"A" GENERAL AGRICULTURE DISTRICT
"R" RESIDENTIAL DISTRICT
"R-1" Residential Subdistrict
"R-2" Residential Subdistrict
"R-3" Residential Subdistrict
"CB" CENTRAL BUSINESS DISTRICT
"GC" GENERAL COMMERCIAL DISTRICT
"I" INDUSTRIAL DISTRICT
"M" MANUFACTURED HOME DISTRICT
"F" FLOOD PLAIN OVERLAY DISTRICT

1. "A" General Agriculture District. Primarily undeveloped land generally found on the periphery of the city. Such lands are usually restricted to agriculture and limited residential use, and constitute the prime areas for urban growth and

expansion.

2. "R" Residential District. Residential district with related recreational, religious and educational facilities being provided. Residential subdistrict R-1 is for moderate density residential use, R-2 is for low density residential use, and R-3 is for high density residential use. The Residential zones shown on the maps are divided into three subdistricts. Areas marked as Residential that lie East of 7th Street and South of Brownsmill Road are zoned as R-1 residential; and all other city Residential lots are zoned R-2, unless a specific Ordinance provides otherwise. Regulations applicable to residential zones without specifically referring to R-1, R-2, or R-3 shall apply to both R-1 and R-2 zoned properties unless contrary to the specific regulations of the applicable Residential Subdistrict.

3. "CB" Central Business District. The commercial district usually composing the city center. Such a district should offer a wide range of services and outlets and should be pedestrian oriented.

4. "GC" General Commercial District. Automobile oriented commercial districts providing a wide variety of business services and retail outlets. Such districts usually generate a lot of traffic and require parking, paving width, and building setback provisions.

5. "I" Industrial District. An industrial district intended for primarily light manufacturing, assembling, fabrication or warehousing, wholesale and service uses. This area may require access to rail and street transportation. Buildings should be architecturally attractive and surrounded by landscaped yards.

6. "M" Manufactured Home District. An area intended fur the orderly planned development of manufactured homes and related facilities.

7. "F" Flood Plain Overlay District. This district, shall be superimposed on the underlying zoning districts within it borders and shall be defined and depicted on the current Flood Insurance Rate Maps of the City of Elsberry, Missouri, including all FIRM panels depicting land within the City of Elsberry, as issued by the Federal Emergency Management Agency for the National Flood Insurance Program which maps are hereby incorporated by reference to establish the Flood Plain Overlay District, and shall further be governed by Ordinance No. 3-1-87 enacted by the Elsberry Board of Alderman on March 10, 1987, and any amendments thereto. Uses and buildings in the overlay district shall be subject to both the provisions of this Zoning Ordinance governing the underlying zoning districts and the above-mentioned City Flood Plain Ordinance.

(Ord. 9-9-1997; 8-1-1999; 12-1-2001; 1-4-2004; 5-1-2005; 2019-08-001; 2023-10-004)

§41.120 ZONING DISTRICT A, GENERAL AGRICULTURE DISTRICT

1. Use Regulations. All buildings and land within an A Zoning District shall be limited to the following:

    a. One family or two family dwelling.
    b. All agriculture pursuits including buildings associated thereto.
    c. Oil well operation and gas well operation including drilling thereof.
    d. Transportation, pipeline, and utility easements and rights-of-way.
    e. Temporary roadside stands for the sale of farm products grown on the premises; such a temporary stand shall be required to set back from the edge of the roadway at least 25 feet.
    f. Churches, hospitals, kennels, public parks, home occupations.
    g. Cemeteries.
    h. Golf courses and country clubs.
    i. Public buildings, facilities and utilities.
    j. Airport or airfield.
    k. Public stables or riding academies.

2. Coverage. Main and accessory buildings shall comply with the dimensional requirements of ARTICLE VI [§41.200].

3. Water Supply and Sewer System. Main and accessory buildings shall comply with the dimensional requirements of ARTICLE VI [§41.200].

4. Special Uses:

    a. Facilities for the storage, parking, or maintenance of vehicles.

    b. School buildings containing classrooms.

5. Dimensional Requirements. Main and accessory buildings shall comply with the dimensional requirements of ARTICLE VI [§41.200].

(Ord. 9-9-1997; 11-2-2008)

§41.121 PERMITS AND ANNUAL LICENSE REQUIRED TO KEEP LIVESTOCK FOR EDUCATIONAL PROGRAMS

1. For purposes of §§41.121 through 41.126, the term “livestock” shall mean chickens, rabbits, show pigs or swine, and sheep.

2. The Board of Aldermen shall have full power and authority to grant permits and licenses to public school districts to keep certain specified livestock, and possess certain cattle, in

the City limits for public school educational programs only. The Board of Aldermen shall have full power and authority to cancel any such permit or license that was granted upon a finding by the Board or Municipal Court that there has been a violation of §§41.121 through 41.128, or repetitive notices under §41.123(3).

(Ord. 11-2-2008)

§41.122 REQUIREMENTS FOR PERMITS AND ANNUAL LICENSE TO KEEP LIVESTOCK

1. No person may possess, keep, raise, breed, or feed any livestock, or possess any cattle, within the City limits unless the person is an authorized participant in a public school agricultural program and the school district has obtained a permit and maintains an annual license from the City for such purposes. Such permits and licenses may only be issued to public school districts for animals to be kept for educational purposes within an agriculture zoning district.

2. An application for a permit or license to keep livestock within an agriculture zoning district for educational purposes shall contain:

   (a) Name and address of applicant;
   (b) Legal description of property upon which the livestock are to be kept;
   (c) Complete description of facilities on the premises, including the source of water supply, kind of soil, comprehensive data as to drainage, and location of all residences within a 300-foot radius of the proposed livestock.
   (d) A Plan of Intent stating the types and number of animals to be kept and how the applicant will meet the requirements of §§41.121 - 41.128.
   (e) A site plan, drawn to scale, showing dwellings, barns, sheds, pens, enclosures, and structures including those proposed or intended and dimensions thereof.
   (f) The site plan shall also show the neighboring dwellings and distances thereto; distances from barns, sheds, pens, and structures to property lines; and calculation of total available/suitable area in acres on which animals are to be kept.
   (g) The name, address, and telephone number of the individual who will be responsible for the program; and the name, address, and telephone number of the individual who will be able to respond to off-hour emergencies.

3. The applicant shall pay to the City the sum of One Hundred Fifty Dollars ($150.00) at the time the permit application is filed. The application fee shall be deemed the first annual license fee if the permit is granted.

4. The annual license fee shall be One Hundred Fifty Dollars ($150.00) per year which shall be payable on the anniversary date of the issuance of the permit.

5. Before any permit or license to keep livestock, or possess cattle, within the City is granted by the City, the City Board of Aldermen may, in its discretion, hold a public hearing with advance notice to all property owners within 300 feet of the subject property.

6. Before any permit or license to keep livestock, or possess cattle, within the City is granted by the City, the City Code enforcement Officer or Animal Control Officer shall inspect the premises and issue a report to the City Board of Aldermen stating whether the property and the applicant's Plan of Intent complies with §§41.121 - 41.128.

(Ord. 11-2-2008)

§41.123 INSPECTIONS AND ABATEMENT

1. By applying for a permit or license to keep livestock, or possess cattle, the applicant agrees to allow inspection of his premises by the City prior to issuance of the permit or license.

2. As a condition to maintain a license, to keep livestock, or possess cattle, the licensee shall permit periodic inspections by the City to determine if the licensee is in compliance with this Code.

3. The City may order the immediate cleaning and disinfecting of all or any part of any premises where animals are kept, at the licensee's sole cost, upon finding a violation of §§41.121 through 41.128, if such violation is not corrected with 72 hours after written or oral notice to the licensee.

(Ord. 11-2-2008)

§41.124 LIVESTOCK MAINTENANCE STANDARDS

1. Chickens. Chickens shall be kept in pens and such pens shall be placed no closer than one hundred (100) feet from the nearest point from the dwelling or place of business of another.

2. Rabbits. Rabbits shall be kept in pens and such pens shall be placed no closer than one hundred (100) feet from the nearest point from the dwelling or place of business of another. No more than fourteen (14) rabbits over the age of five (5) months shall be kept by the licensee at one time.

3. No more than a combination of thirty chickens or rabbits over the age of five (5) months shall be kept by the licensee at one time.

4. Sheep. Sheep shall be kept in pens and such pens shall be placed no closer than one hundred (100) feet from the nearest point from the dwelling or place of business of another. Sheep shall be kept in yards fenced in by a suitable woven wire fence system. Individual pens for sheep shall be at least 26 feet by 10 feet and shall have appropriate bedding to absorb liquid and odors. No more than twelve (12) sheep over the age of eight (8) months shall be kept by the licensee at one time.

5. Swine (show pigs). Swine shall be kept in pens and such pens shall be placed no closer than one hundred twenty (120) feet from the nearest point from the dwelling or place of business of another. Swine shall be kept in yards fenced in by a suitable woven wire fence system (hog panels) at least 3.5 feet tall. Individual pens for swine shall be at least 10 feet by 10 feet and shall have appropriate bedding to absorb liquid and odors. No more than eight (8) swine over the age of eight (8) months shall be kept by the licensee at one time.

(Ord. 11-2-2008)

§41.125 CATTLE DEMONSTRATIONS

Any person holding a livestock permit may bring no more than ten cattle at one time onto the permitted premises for purposes of conducting educational demonstrations only. The cattle may not be kept overnight. The cattle may not be on the premises for more than eight (8) days a year. When on the premises, the cattle will be properly restrained or fenced in pens no closer than one hundred twenty (120) feet from the nearest point from the dwelling or place of business of another.

(Ord. 11-2-2008)

§41.126 MINIMUM CLEANLINESS STANDARDS

Animals, and areas where animals are kept on the permitted or licensed premises, shall be kept clean at all times. At a minimum, the following cleanliness standards shall be met for all animals possessed or kept on the permitted or licensed premises. Additional standards may be imposed by the Animal Control Officer or Code Enforcement Officer as specific conditions dictate.

1. Any structure, pen, coop, or yard wherein livestock are kept or permitted, shall be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odors. The enclosed area of all such structures shall be constructed in such a way as to be dry at all times on the inside.

2. No offensive, disagreeable or noxious smell or odor shall be allowed to injure, annoy, or inconvenience any inhabitants of the surrounding properties.

3. All manure accumulations in the area where livestock and other animals are kept in pens shall be removed daily and shall be stored or disposed of in such a manner as to prevent the breeding of flies and the spread of disease, and to reduce odors.

4. All animal feed, except hay or grass, shall be stored in a secure, fly-tight, and rat-proof containers.

(Ord. 11-2-2008)

§41.127 LOT SIZE AND AREA USAGE

1. Minimum parcel size is eight (8) acres.

2. All livestock buildings or enclosures shall be set back no less than fifty (50) feet from any residentially zoned property.

3. No feeding, spreading, or disposal/storage of garbage, rubbish or offal shall be permitted within one hundred (100) feet of any property line.

(Ord. 11-2-2008)

§41.128 VIOLATIONS

The keeping of livestock within the City limits in violation of this Code shall be deemed a nuisance. Any person who keeps, raises, breeds, or feeds livestock within the City limits in violation of this Code shall be guilty of a misdemeanor."

(Ord. 11-2-2008)

§41.130 ZONING DISTRICT R, RESIDENTIAL

1. There shall be three Residential Subdistricts: R-1, R-2, and R-3. The Residential zones shown on the maps are divided into three subdistricts. Areas marked as Residential that lie East of 7th Street and South of Brownsmill Road are zoned as R-1 residential; and all other city Residential lots are zoned R-2, unless a specific Ordinance provides otherwise. Regulations applicable to residential zones without specifically referring to R-1, R-2, or R-3 shall apply to both R-1 and R-2 zoned properties unless contrary to the specific regulations of the applicable Residential Subdistrict.

2. Use Regulations. All buildings and land within an "R" Residential Zoning District shall be limited to the following uses:

    a. Single-family dwellings.
    b. Accessory buildings customary, incidental, and subordinate to the use of the main buildings.
    c. Churches.
    d. Home occupations.
    e. Public parks and playgrounds
    f. Public buildings, facilities, and utilities.

3. Set back Requirements. Main and accessory buildings shall comply with the dimensional requirements of Elsberry Mun. Code §41.200(1).

4. Lot Size Requirements: Minimum width, depth, and minimum lot size shall be provided in accordance with the requirements set forth in Elsberry Mun. Code §41.200(2).

5. Special uses: The following special uses are available:

   a. Notwithstanding any provisions of Elsberry Mun. Code §§41.120(3) and 41.200(2) to the contrary, any lot in an "R" Zoning District in existence as of January 1, 1997 that does not meet the lot size requirements of §§41.130(3) and 41.200(2), but has a minimum lot size of 50 feet by 100 feet or 5,000 square feet; may apply for a Special Use Permit to permit the use or construction of a residential building, structure, or improvement on the lot.

   b. If there is an existing home on any size Residential lot, and it is destroyed or has major damage due to fire or other casualty, it may be rebuilt to its pre-damage dimensions on the pre-damage foundation and up to the set backs existing immediately prior to the damage; provided that the owner first obtains a Special Use Permit to permit the use or construction of a residential building, structure, or improvement on the lot.

   c. Lots within an R-3 subdistrict may apply for a Conditional Use permit to allow for lots with a minimum area of 6,000 square feet and minimum lot width of 45 feet may apply for a special use permit, which may include alteration of the requirements for the right of way width in R-3 subdivisions to a minimum of 30 feet in appropriate circumstances. At a minimum, Special Use permits for R-3 Subdistricts shall require that:

      1. If the right-of way width for a subdivision in an R-3 subdistrict is reduced below 50 feet, there shall be no on street parking and each Lot in the subdivision must provide for off-street parking for two standard size automobiles on paved surfaces within the Lot such that no vehicle shall extend over a sidewalk or into the right-of-way and shall not extend over or into the Lot's set back lines. In addition, the subdivisions must have at least one paved sidewalk located beyond the right of way. The subdivision must also provide for recorded Restrictions providing for adequate regulation to accommodate the high density use.

      2. Minimum Lot size of 6,000 square feet.

      3. Minimum frontage width of 45 feet.

      4. No accessory buildings shall be permitted within an R-3 Subdistrict.

      5. All dwellings shall comply with the City's Property Maintenance

Code and its Minimum Living Space and Facilities Standards.

6. Open fires and open burning are prohibited. Enclosed gas and charcoal grills used for cooking are not "open fires."

7. In addition to the foregoing, the City may impose such other conditions, requirements or limitations concerning the design, development and operation of R-3 use as it may deem necessary for the protection of adjacent properties and the public interest.

5. Water Supply and Sewer System. Each lot within an R Zoning District shall be served by a public water supply and a public sewer system and a separate meter.

(Ord. 9-9-1997; 5-1-2005; 8-10-2006; 2019-08-001; 2023-10-004)

§41.131: MOTOR HOMES, BOATS, CAMPERS, AND TRAILERS IN RESIDENTIAL DISTRICTS

It shall be unlawful for any person to keep, maintain, park, or store any recreational vehicle, motor home, trailer, tractor-trailer trucks, camper, or boat in any residential district in the City except as provided in this section.

A. The parking and storage of recreational vehicles, motor homes, campers, trailers, or boats shall be permitted only within the rear and side yards of the property or within an enclosed garage, provided that such vehicles adhere to the following size restrictions:

1. The overall length of the vehicle, including the tongue of the trailer and the further most projection of the trailer and vehicle being towed does not exceed a length of twenty-five feet (25'); twenty feet (20') if the vehicle has a tandem axle.

2. The overall height shall not exceed nine feet (9').

3. The overall width shall not exceed nine feet (9').

B. No portion of any recreational vehicle, motor home, camper, trailer, or boat shall be permitted to overhang or block the public sidewalk, alley, or street.

C. Not more than two recreational vehicles, motor homes, campers, trailers, or boats combined shall be parked or stored on a lot in a residential zoned district. In addition, the owner of a recreational vehicle, trailer, or boat shall not park or store such vehicle in such a manner as to create a dangerous or unsafe condition on the property where parked or stored. Parking or storage in such a fashion that the vehicle, whether loaded or not, may readily tip or roll shall be considered a dangerous and unsafe condition. The ground under and surrounding any parked recreational vehicle, motor home, trailer, or boat shall be free of noxious weeds, overgrowth, litter or debris.

D. Not withstanding the above, recreational vehicles, motor homes, campers, trailers and boats, in excess of any of the size limitations, may be parked in the front of the building line for a period of time not to exceed 24 hours per month in duration for the purpose of loading, unloading, cleaning and maintenance.

E. Motor homes, recreational vehicles, campers, boats, and trailers shall not be used as an accessory structure as defined in the Zoning Ordinance. No recreational vehicle, motor home, camper, boat, or trailer shall be used for the storage of goods, material, or equipment other than those items required for its original designed purpose.

F. Motor homes, recreational vehicles, campers, boats, and trailers shall not have fixed connections to electricity, water, gas, or sanitary sewer facilities in any district. At no time shall motor homes or campers be used for living or housekeeping purposes in any district for more than seven consecutive days or seven days per three month period.

G. No person shall park or store any recreational vehicle, motor home, camper, boat, or trailer in a residentially zoned property that is not in good repair and/or does not carry a current year license and/or registration.

H. Motor homes, recreational vehicles, campers, boats, and trailers may not be parked or stored on public property or street right of way, except in areas specifically designated by the City for such use.

I. No person may use or occupy a recreational vehicle, motor home, trailer, camper, or boat in the corporate limits of the City of Elsberry as a temporary living quarters for a period exceeding 30 days in any one year period.

(Ord. 2018-08-003).

§41.140 ZONING DISTRICT CB, CENTRAL BUSINESS

1. Use Regulations. All buildings and all land within a CB Zoning District shall be limited to the following uses:

    1. Artisan shops
    2. Pool Halls
    3. Churches
    4. Dental and medical laboratories
    5. Department stores
    6. Funeral homes and mortuaries
    7. Heating and air conditioning and plumbing shops
    8. Libraries
    9. Arcades
    10. Offices
    11. Retail and wholesale shops and stores not listed under GC Commercial District

12. Lodge, fraternal and service organizations
13. Restaurants
14. Second story apartments for residential living
15. City government buildings
16. Museums
17. Institutions with uses permitted herein above for CB Zoning Districts

2. Coverage. Main and accessory buildings shall comply with the dimensional requirements of ARTICLE VI [§41.200].

3. Water Supply and Sewer System. Each lot within a CB Zoning District shall be served by a public water supply and a public sewer system.

4. Dimensional Requirements. Minimum width, depth and minimum lot size shall be provided in accordance with the requirements set forth in ARTICLE VI of this Ordinance [§41.200].

(Ord. 9-9-1997; 12-1-2001)

§41.150 ZONING DISTRICT GC, GENERAL COMMERCIAL

1. Use Regulations. All buildings and all land within a GC Zoning District shall be limited to the following uses:

1. All uses permitted under CB, Central Business Zoning District
2. Ambulance service offices and garages
3. Automobile sales
4. Boat sales
5. Bus, truck, and freight yards and terminals
6. Drive in restaurants and theaters
7. Farm implements, sales, and services
8. Feed and seed stores
9. Golf courses and miniature and practice ranges
10. Hospitals
11. Motels, hotels, motor courts, tourist homes, tourist or trailer camps, and lodging houses.
12. Car wash
13. Nurseries and garden supplies
14. Filling stations and service stations
15. Nursing homes
16. Public garages
17. Storage and parking garages
18. Laundromats
19. Bowling alleys
20. Convenience stores

21. Institutions
22. Trailer, R.V., camper, and mobile and manufactured home sales
23. Building material sales and lumber yards
24. Amusement enterprises
25. Liquor stores
26. Two-family dwellings
27. Multiple family dwellings
28. Banks
29. Tattoo parlors, body piercing parlors, or similar service and retail establishments.
30. Medical Marijuana Dispensary

(Amend 2010-08-002; 06-13-2019; 2019-08-001).

2. Special Uses.

Microbusiness dispensary facility.

(Amend 2023-09-001)

3. Coverage. Main and accessory buildings shall comply with the dimensional requirements of ARTICLE VI [§41.200].

4. Water Supply and Sewer System. Each lot within a CB Zoning District shall be served by a public water supply and a public sewer system.

5. Type of Development. Any article or material stored outside of an enclosed building as an incidental part of the primary operation, including, but not limited to, garbage containers and dumpsters, shall be screened by a privacy fence or hedge a minimum height of six (6) feet so that any such article or material cannot be seen from adjoining streets and/or adjacent lots when viewed by a person standing on ground level.

6. Dimensional Requirements. Minimum width, depth and minimum lot size shall be provided in accordance with the requirements set forth in ARTICLE VI of this Ordinance [§41.200].

(Ord. 9-9-1997; 1-2-1998; 12-1-2001; 1-1-2004; 1-3-2005)

§41.160 ZONING DISTRICT I INDUSTRIAL

1. Use Regulations. All buildings and land within an I Zoning District shall be limited to the following uses:

   a. All uses permitted under CB, Central Business Zoning District, and GC, General Commercial Zoning District.
   b. Accessory buildings customary, incidental and subordinate to the use of the main

building.

c. Bakeries
d. Bottling works
e. Book Binderies
f. Building material sales and lumber yards
g. Electrical equipment assembly and manufacturing
h. Food products processing and packing
I. Furniture manufacturing
j. Instrument and meter manufacturing
k. Paper, leather, optical or sporting goods manufacturing
l. Trailer or mobile home manufacturing and sales
m. Medical Marijuana Cultivation Facility, Medical Marijuana Infused Products Manufacturing Facility, or Medical Marijuana Testing Facility.
n. Comprehensive marijuana cultivation facility, Comprehensive marijuana dispensary facility, Comprehensive marijuana-infused products manufacturing facility, Microbusiness dispensary facility, Microbusiness wholesale facility

2. Coverage. Main and accessory buildings shall comply with the dimensional requirements of ARTICLE VI of this Ordinance [§41.200].

3. Type of Development. All of the uses permitted under this section shall have their primary operations conducted within enclosed building, and shall not emit dust or smoke or noxious odor or fumes outside the building housing the main operation, or produce a noise level occurring on the adjacent street. Any article or material stored outside of an enclosed building as an incidental part of the primary operation shall be so screened by ornamental walls and fences or evergreen planting that it cannot be seen from adjoining street or adjacent lots when viewed by a person standing on ground level.

4. Dimensional Requirements. Minimum width, depth and minimum lot size shall be provided in accordance with the requirements set forth in ARTICLE VI of this Ordinance [§41.200].

(Ord. 9-9-1997;1-1-2002; 06-13-2019; 2023-09-001)

§41.170 ZONING DISTRICT M, MANUFACTURED HOME DISTRICT

1. Use Regulations. All buildings and land within an M Zoning District shall be limited to the following uses:

a. Manufactured homes.

b. Accessory buildings customarily incidental and subordinate to the use of manufactured homes. Buildings housing such facilities as laundromats, nurseries, etc., and only when such facilities are intended for the use of persons residing within the zoning district.

c. An M Zoning District is the only place where manufactured homes may be located.

2. Design Standards.

a. A manufactured home district shall be no less than three (3) acres in total.

b. Each manufactured home in a manufactured home park district shall occupy a designated space having at least four thousand (4,000) square feet.

c. Each manufactured home space shall have a width of at least forty (40) feet.

d. Each manufactured home space shall abut a street within the park. Said street shall be graded and surfaced with not less than six (6) inches of crushed stone or other suitable material on a well compacted subbase to a continuous width of twenty-five (25) feet, exclusive of required parking spaces.

e. Two (2) off-street parking spaces with not less than six (6) inches of crushed stone or other suitable material on a well compacted subbase shall be provided for each manufactured home space. Required parking spaces may be included within the four thousand (4,000) square feet required for each manufactured home space.

f. At least two hundred (200) square feet of recreation space for each manufactured home space shall be reserved within each manufactured home park as common recreation space for residents of the park. Such area shall, along with driveways and walkways, be adequately lighted for safety.

g. Storage or other auxiliary structures for the exclusive use of the manufactured home may be no closer to another manufactured home than twenty (20) feet.

h. No manufactured home shall be located closer than twenty-five (25) feet of the exterior boundary of the park or of a bounding street right-of-way. Buildings used for laundry or recreation purposes shall be located no closer than forty (40) feet from the exterior boundary or the right-of-way of a bounding street.

i. The manufactured home park district and all occupied units located in it must be connected to the municipal water and sewerage systems.

j. Plans clearly indicating the developer's intention to comply with the provisions of this section shall be submitted to and approved by the Planning and Zoning Commission. Such plans must be drawn to a scale of not less than 1 " = 50' by a registered land surveyor. Such plans must show the area to be used for the proposed manufactured home park district; the ownership and use of neighboring properties; all proposed entrances, exits, driveways, walkways, and off-street parking spaces; the location of manufactured home spaces, recreation areas and

service buildings; the location of sanitary conveniences, including toilets, laundries and refuse receptacles; the proposed plan of water supply, sewerage disposal and electric lighting. The Planning Commission shall have the authority to impose such reasonable conditions and safeguards on the proposed development as it deems necessary for the protection of adjoining properties and the public interest.

k. Buffer. A densely planted buffer strip, consisting of trees, shrubs, and other plantings at least five (5) feet in height, shall be provided along all rear and side property lines of the park.

1. A steel cable or strap shall be securely attached to all corners of each manufactured home and to concrete anchors which extend at least twenty-four (24) inches below the surface of the ground.

m. Any expansion of manufactured home parks in existence on the effective date of this Ordinance shall comply with the provisions of this section.

(Ord. 9-9-1997; 1-4-2004)

§41.180 ZONING DISTRICT F, FLOOD PLAIN OVERLAY DISTRICT

1. Use Regulations. All buildings and land within an "F" Zoning District shall be limited to the following uses:

a. Those uses permitted in the underlying zoning districts as reflected on the Zoning Map, provided all applicable provisions of Ordinance No. 3-1-87, and any amendments thereto are complied with. [See. Ord. 9-2-1998 Elsberry Mun. Code §§45.010 -41.500]

b. No building within a flood plain district shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the applicable provisions of this Zoning Ordinance and Ordinance No. 3-1-87 of the City of Elsberry, Missouri. [See. Ord. 9-2-1998 Elsberry Mun. Code §§45.010 -41.500]

(Ord. 9-9-1997)

§41.200 ZONING DISTRICT DIMENSIONAL REQUIREMENTS

1. Setbacks:

District:	Minimum Depth of Front Yard in Feet	Minimum Depth of Side Yard in Feet	Minimum Depth of Rear Yard in Feet
A General Agriculture	100	75	100
R Residential	25	7.5	20
CB Central Business	None	None	None
GC General Commercial	25	5	10
I Industrial	35	20	35
F Flood Plain Overlay	None	None	None
M Manufactured Home	12	13	8

(Ord. 11-2-2008)

2. Lot Size:

	District:	Minimum Lot Area Per Family In Square Feet	Minimum Lot Width In Feet	Minimum Lot Size In Square Feet
A	General Agriculture	1 acre	150	1 acre
R	Residential			
	R-1 and R-3	6,000	60	6,000
	R-2	10,800	100	10,800
CB	Central Business	Not Applicable	None	None
GC	General Commercial	Not Applicable	None	None
I	Industrial	Not Applicable	None	1 acre
F	Flood Plain Overlay	None	None	None
M	Manufactured Home	4,000	40	3 acres

(Ord. 9-9-1997; 8-1-1999; 12-1-2001; 1-4-2004; 2-1-2004; 5-1-2005; 2019-08-001; 2023-10-004).

§41.250 SPECIAL USES — PERMIT REQUIRED

1. Certain zoning districts list specific uses allowed in that district upon issuance of a special use permit. Special use permits are issued pursuant to the procedures described below.

2. Application for special use permit may be made by any person, or his/her agent, who owns the land sought to be subject to the special use permit, or who is purchasing said land under written contract with the owner. If such application is made by the owner's agent, said agent shall enter upon the application the name and current mailing address of the owner. Such application shall be made in letter form describing the special use permit requested, along with map exhibits identifying the property, to the City Clerk.

3. A fee of one hundred seventy-five dollars ($175.00) shall accompany each application and, in addition to the filing fee, the applicant shall pay the cost of publication, if any.

4. All such applications shall be set down for hearing before the Planning and Zoning Commission not later than the second (2nd) regularly scheduled meeting of the Planning and Zoning Commission from the date of filing the same. Any such hearing, for good cause, at the request of the applicant or in the discretion of the Planning and Zoning Commission, may be continued. At least five (5) and not more than fifteen (15) days' notice of the time and place of such hearing shall be published in a newspaper of general circulation within the City. In addition, the Building Official shall post notice of said hearing and the reasons therefor by placing a notice or sign (1) on the subject land; and (2) on public bulletin boards at City Hall and/or the post office.

5. In the event an applicant and/or his/her representative fails to appear before the Planning and Zoning Commission or the Board of Aldermen for hearings as provided in this Section at the time advertised for said hearing, said request will be stricken from the agenda. Before the Board of Aldermen or the Planning and Zoning Commission shall further hear the application, the applicant shall be required to pay an additional fee to the City in the amount of twenty-five dollars ($25.00), plus the cost of publication. Upon payment, the request shall be republished as prescribed in this Section for a new public hearing time and place. In the event that the applicant does not pay the additional fee within sixty (60) days from the date of the previous scheduled hearing, such request shall be considered as rejected and no further hearings may be had thereon without re-application as a new request.

6. The Planning and Zoning Commission shall not recommend approval of any request for special use permit unless it shall in each case make specific written findings of fact based directly upon the particular evidence presented to it supporting the conclusion that the special use:

    a. Complies with all applicable provisions of the City Zoning Ordinances (other than the need for a special use permit);

    b. At the specific location will contribute to, and promote, the community welfare or convenience;

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

d. Complies with the overall comprehensive plan and the intent of the existing zoning district provisions;

e. Will provide, if applicable, off-street parking and loading areas;

f. Will not substantially increase traffic hazards;

g. Will not substantially increase fire hazards;

h. Will blend aesthetically with the surrounding properties and neighborhood;

I. Will not overtax public utilities; and

j. Will not constitute a nuisance.

7. In determining whether the evidence presented supports the conclusions, the Planning and Zoning Commission shall consider the extent to which the evidence demonstrates the following:

   a. The proposed use or amendment complies with the standards of the Zoning Ordinances, if any, in regard to:

      (1) Yard and setback;

      (2) Parking and loading areas;

      (3) Screening and buffering.

   b. The impact of the projected vehicular ingress and egress of the use is determined with regard to the surrounding traffic flow, pedestrian safety and accessibility of fire-fighting equipment.

   c. The proposed use is compatible with the surrounding area and its impact upon community facilities and services.

8. In recommending approval of such special use permit, the Planning and Zoning Commission may recommend such conditions and restrictions which are in conformity with these regulations and may be necessary to assure that the general intent of these regulations is carried out.

9. Upon completion of the hearing of such application, the Planning and Zoning Commission shall deliver a report of such action, together with a recommendation by the Planning and Zoning Commission for approval or denial of the special use permit, to the Board of Aldermen.

10. Upon receipt of a report and recommendation by the Planning and Zoning Commission, the Board of Aldermen shall schedule a public hearing, following the same notice procedures provided for the Planning and Zoning Commission in Subsection 41.250(4) and (5) above. The Board of Aldermen may, by majority vote, approve the special use permit, deny the special use permit, or approve the special use permit with conditions. In taking action on a special use permit application, the Board of Aldermen shall make findings and shall be governed by the same standards as those described in 41.250(6) and (7) above for the Planning and Zoning Commission.

11. The failure to comply with any conditions to a special use permit constitutes a violation of the Zoning Ordinances punishable as provided in Section 41.900; and further constitutes grounds for revocation of the special use permit by the Board of Aldermen, following a hearing by the Board of Aldermen conducted according to the same procedure and with the same notice as public hearings before the Board of Aldermen upon application for issuance of a special use permit.

12. No special use permit granted by the Board of Aldermen shall be valid for more than one hundred eighty (180) days, unless within such period a building permit is obtained and the erection or alteration of the structure is commenced or, where no building permit is necessary, the amendment or use is otherwise utilized by the entity originally requesting it.

13. Special use permits shall be valid for an unlimited period unless a lesser period shall be provided in a particular permit. Upon the expiration of the time limit specified in a particular permit, the property owner may request that the special use permit be reviewed by the Planning and Zoning Commission, which may extend it for an unlimited period or for a specified additional period of years.

(Ord. 8-10 -2006; 2019-03-003).

§41.300 FENCES IN "R" ZONING DISTRICT

The following general fence provisions shall apply to all zoning districts:

1. No fence may be erected within ten (10) feet of an existing dwelling on an adjoining lot.

2. A permit shall be required for the erection, installation or alteration of any fence within the City of Elsberry. Fence completion shall occur within six (6) months from the start of construction.

3. No fence, wall, shrub, or hedge shall be constructed or altered to exceed six (6) feet in height.

4. No person shall erect, or cause to be erected, maintain, or cause to be maintained, any fence or enclosure of which any part is charged with or designed to be charged with the

electrical current except as specified in an Agricultural District.

5. In no case shall a fence be erected so as to enclose or block a stormwater catch basin, culvert, ditch, or other stormwater structure.

6. All fencing must be maintained in good condition at all times. "Good condition" is hereby defined to include, but shall not be limited to, replacement of damaged boards, staining or painting of surfaces and removal of rust.

7. When a fence is adjacent a public street, the improved side of the fence shall be oriented to the outside.

8. The owners and occupants of the property shall be responsible for maintaining the fences and to remove any fence if it becomes unsightly or a menace to public safety, health or welfare.

9. Any fence must be constructed in a workmanship like manner so that the horizontal and vertical support posts are inside of the fence area or hidden from both the adjoing property's and general public's view.

10. All fences shall be maintained in their original, upright condition.

11. Fences designed for painting or similar surface finishes shall be maintained in their original condition as designed.

12. Missing boards, pickets, bars, or posts shall be replaced in a timely manner with material of the same type and quality.

(Ord. 9-9-1997; 8-1-1999; 2020-06-001; 2020-06-002)

§41.301 PROHIBITED FENCING

The following fences are prohibited in all Zoning Districts:

1. No fence shall be constructed solely of single wires, either solely or in multiples, between posts or supports.

2. No more than two (2) different types of fencing material may be combined and connected in a continuous running length. This provision has no effect on freestanding, ornamental fence panels used as yard decorations, pathway entrances, or address markers.

3. No person shall erect or maintain any division fence or screen, in whole or part, being constructed of cloth, canvas, corrugated tin, woven wire, chicken wire, or other like materials.

4. No person shall permit any fence erected or maintained on premises owned, occupied, or leased by him/her to be used for advertising purposes, except for a small advertising placard stating the contractor who installed the fence, or manufacturers placard which has been made part of the fencing materials.

(2020-06-001)

§41.302 FENCES IN AGRICULTURAL DISTRICTS.

Electrified and barbed wire fences shall be permitted in Agricultural Districts when used in connection with an approved farming operation.

(2020-06-001)

§41.303 FENCES IN ALL "R" (RESIDENTIAL) DISTRICTS.

1. The use of barbed wire, hardware cloth, or any other similar material shall not be permitted as fencing in residential districts.

2. Residential fences shall not exceed six (6) feet in height.

3. A fence shall not extend toward the front of the lot beyond the front building line, which is parallel to the front of the house.

4. In no case shall any front yard be enclosed by a fence.

5. Fences shall be erected around swimming pools according to the adopted Building Codes of the City of Elsberry.

6. There shall be no fences consisting of one (1) or more strand wires constructed in residential districts.

7. Fences which are four (4) feet or less in height may be constructed of wood, masonry, vinyl materials, metal in the appearance of wrought iron, or chain link materials. Vinyl materials shall be considered slats or planks; vinyl coated chain link fencing or metal shall not be considered vinyl fencing.

8. Fences which are greater than four (4) feet in height shall be constructed of wood, metal in the appearance of wrought iron, or vinyl materials. Vinyl materials shall be considered slats or planks; vinyl coated chain link fencing or other vinyl coated metal fencing shall not be considered vinyl fencing.

9. Chain link and masonry may be used if approved by the Building Inspector after

substantial evidence has been provided by the Owner indicating that other materials are not practical and that such fencing will not create an aesthetic problem.

(2020-06-001)

§41.304 FENCES IN ALL "C" (COMMERCIAL), "CB" (CENTRAL BUSINESS), AND "I" (INDUSTRIAL) DISTRICTS.

1. The following may be approved by the Building Inspector:

    a. Requests stating the reason must be made in writing to and approved by the Building Inspector prior to construction or erection.

    b. Fences higher than six (6) feet may be permitted for security and/or screening purposes. Also, barbed wire or razor wire shall be permitted only if the lowest strand is at least seven (7) feet above grade, and when used for security purposes in addition to a regular fence.

2. Fences are permitted on any lot or paved area so long as they do not extend beyond the front building line unless otherwise approved by the Planning and Zoning Commission.

3. Where a fence is constructed to comply with a screening requirement, all fencing regulations regarding maintenance, materials and height shall apply.

4. All fences that abut residential properties that are used for the purpose of screening between districts shall be masonry, wood composite, or vinyl.

5. Fences constructed of chain link that are located within commercial and industrial zoning districts shall be coated with vinyl.

6. A fence or rail shall be installed on all retaining walls that exceed four (4) feet in height that are located in commercial zoning districts or within a commercial development in an industrial zoning district. The fence or rail shall be a minimum of thirty-six (36) inches in height.

(2020-06-001)

§41.305 POOL FENCES.

Outdoor pools, both in-ground and on-ground, shall be surrounded by a pool fence that complies with this Section and the applicable portions of §41.300 through §41.304.

1. **Height and Clearances.** Pool fence heights and clearances shall be in accordance with all of the following:

A. The top of the pool fence shall be not less than 48 inches (1219 mm) above grade where measured on the side of the pool fence that faces away from the pool. Such height shall exist around the entire perimeter of the pool fence and for a distance of 3 feet (914 mm) measured horizontally from the outside of the required pool fence.

B. The vertical clearance between grade and the bottom of the pool fence shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the pool fence that faces away from the pool.

C. The vertical clearance between a surface below the pool fence to a solid surface, such as concrete, and the bottom of the required pool fence shall not exceed 4 inches (102 mm) where measured on the side of the required pool fence that faces away from the pool.

D. Where the top of the pool structure is above grade, the pool fence shall be installed on grade or shall be mounted on top of the pool structure. Where the pool fence is mounted on the top of the pool, the vertical clearance between the top of the pool and the bottom of the pool fence shall not exceed 4 inches (102 mm).

2. **Openings.** Openings in the pool fence shall not allow passage of a 4-inch-diameter (102 mm) sphere.

3. **Solid Pool Fence Surfaces**. Solid pool fences that do not have openings shall not contain indentations or protrusions that form handholds and footholds, except for normal construction tolerances and tooled masonry joints.

4. **Mesh Fence as a Pool Fence.** Mesh fences, other than chain link fences in accordance with § 41.305.7, shall be installed in accordance with the manufacturer's instructions and shall comply with the following:

A. The bottom of the mesh fence shall be not more than 1 inch (25 mm) above the deck or installed surface or grade.

B. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not permit the fence to be lifted more than 4 inches (102 mm) from grade or decking.

C. The fence shall be designed and constructed so that it does not allow passage of a 4-inch (102 mm) sphere under any mesh panel. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not be more than 4 inches (102 mm) from grade or decking.

D. An attachment device shall attach each pool fence section at a height not lower than 45 inches (1143 mm) above grade. Common attachment devices include, but are not limited to, devices that provide the security equal to or greater than that of a hook-and-eye type latch incorporating a spring-actuated retaining lever such as a safety gate hook.

E. Where a hinged gate is used with a mesh fence, the gate shall comply with § 41.305.3.

F. Patio deck sleeves such as vertical post receptacles that are placed inside the patio surface shall be of a nonconductive material.

G. Mesh fences shall not be installed on top of on-ground residential pools.

5. **Closely Spaced Horizontal Members**. Where the pool fence is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches (1143 mm), the horizontal members shall be located on the pool side of the fence. Spacing between vertical members shall not exceed 13/4 inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 13/4 inches (44 mm) in width.

6. **Widely Spaced Horizontal Members.** Where the pool fence is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, spacing between vertical members shall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, the interior width of the cutouts shall not exceed 13/4 inches (44 mm).

7. **Chain Link Dimensions**. The maximum opening formed by a chain link fence shall be not more than 13/4 inches (44 mm). Where the fence is provided with slats fastened at the top and bottom which reduce the openings, such openings shall be not more than 13/4 inches (44 mm).

8. **Diagonal Members**. Where the pool fence is composed of diagonal members, the maximum opening formed by the diagonal members shall be not more than13/4 inches (44 mm). The angle of diagonal members shall be not greater than 45 degrees (0.79 rad) from vertical.

9. **Clear Zone**. There shall be a clear zone of not less than 36 inches (914 mm) between the exterior of the pool fence and any permanent structures or equipment such as pumps, filters and heaters that can be used to climb the pool fence.

10. **Poolside Pool Fence Setbacks**. The pool side of the required pool fence shall be not less than 20 inches (508 mm) from the water's edge.

11. **Gates**. Access gates shall comply with the requirements of this Subsection and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outward away from the pool, shall be self-closing and shall have a self-latching device.

    A. Utility or Service Gates. Gates not intended for pedestrian use, such as utility or service gates, shall remain locked when not in use.

    B. Double or Multiple Gates. Double gates or multiple gates shall have at least one leaf secured in place and the adjacent leaf shall be secured with a self-latching device. The gate and pool fence shall not have openings larger than ½ inch (12.7 mm) within 18 inches (457 mm) of the latch release mechanism. The self-latching device shall comply with the requirements of § 41.305.11.C.

    C. Latches. Where the release mechanism of the self-latching device is located less than 54 inches (1372 mm) from grade, the release mechanism shall be located on the pool side of the gate not less than 3 inches (76 mm) below the top of the gate, and the gate and pool fence shall not have openings greater than ½ inch (12.7 mm) within 18 inches (457 mm) of the release mechanism.

12. **Structure Wall as a Pool Fence**. Where a wall of a dwelling or structure serves as part of the pool fence and where doors provide direct access to the pool through that wall, one of the following shall be required:

    A. Doors shall have an alarm that produces an audible warning when the door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017.

    B. A safety cover that is listed and labeled in accordance with ASTM F 1346 is installed for the pools.

    C. An approved means of protection, such as self-closing doors with self-latching devices, is provided. Such means of protection shall provide a degree of protection that is not less than the protection afforded by Item A or B.

13. **On-ground Residential Pool Structure as a Pool Fence**. An on-ground residential pool wall structure or a pool fence mounted on top of an on-ground residential pool wall structure shall serve as a pool fence where all of the following conditions are present:

    A. Where only the pool wall serves as the pool fence, the bottom of the wall is on grade, the top of the wall is not less than 48 inches (1219 mm) above grade for the entire perimeter of the pool, the wall complies with the requirements of Subsections 1 through 10, and the pool manufacturer allows the wall to serve as a pool fence.

    B. Where a pool fence is mounted on top of the pool wall, the top of the pool fence is

not less than 48 inches (1219 mm) above grade for the entire perimeter of the pool, and the wall and the pool fence on top of the wall comply with the requirements of Subsections 1 through 10.

C. Ladders or steps used as means of access to the pool are capable of being secured, locked or removed to prevent access except where the ladder or steps are surrounded by a pool fence that meets the requirements of § 41.305.

D. Openings created by the securing, locking or removal of ladders and steps do not allow the passage of a 4-inch (102 mm) diameter sphere.

E. Pool fences that are mounted on top of on-ground residential pool walls are installed in accordance with the pool manufacturer's instructions.

14. **Natural Barriers as Pool Fences**. In the case where the pool area abuts the edge of a lake or other natural body of water, public access is not permitted or allowed along the shoreline, and required pool fences extend to and beyond the water's edge not less than 18 inches (457 mm), a pool fence is not required between the natural body of water shoreline and the pool.

15. **Natural Topography as a Pool Fence**. Natural topography that prevents direct access to the pool area shall include but not be limited to mountains and natural rock formations. A natural pool fence approved by the governing body shall be acceptable provided that the degree of protection is not less than the protection afforded by the requirements of Subsections 1 through 13.

(Ord. 2020-06-002)

§41.310 ONE BUILDING PER LOT, EXCEPTIONS

Every building hereafter erected, moved or structurally altered shall be located on a lot and in no case shall there be more than one (1) principal building and its customary accessory buildings on any lot, except in the case of a specially designed complex of institutional, residential, commercial or industrial buildings in an appropriate zoning district, i.e., school campus, cluster housing, shopping center, industrial park, and so forth.

(Ord. 9-9-1997)

§41.320 NO ACCESSORY BUILDINGS IN FRONT OR SIDE YARDS

No accessory building shall be located in a "front yard" or "side yard" as defined by this Ordinance, except specially designed institutional, residential, commercial or industrial buildings in a commercial, agricultural, or agricultural-governmental zoning districts that receive a permit for such use.

(Ord. 9-9-1997; 11-2-2008)

§41.330 ACCESSORY BUILDINGS ARE TO BE BUILT AFTER MAIN BUILDING

No accessory building shall be constructed upon a lot until the construction of the main building has actually been commenced and no accessory building shall be used as a residence.

(Ord. 9-9-1997)

§41.340 EXCEPT FOR STREET WIDENING, NO LOTS OR YARDS MAY BE REDUCED BELOW MINIMUM REQUIREMENTS

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein, except for street widening. Yard or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

(Ord. 9-9-1997)

§41.350 NO UNLICENSED VEHICLES STORED OUTSIDE ENCLOSED BUILDINGS

Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.

(Ord. 9-9-1997)

§41.360 MOBILE HOMES

1. That for the purpose of this [Section], a mobile home shall mean a structure, transportable in one or more sections, which is built on a permanent chassis, and which is designed for use with or without a permanent foundation when connected to the required utilities.

2. Mobile homes over five (5) years old – No mobile home older than five (5) years shall be placed within the city limits of the City of Elsberry without prior approval by the Zoning Administrative Officer, and shall then only be placed in mobile home parks. .

3. Any person wishing to place a mobile home older than five (5) years within the city limits of the City of Elsberry must petition the Zoning Administrative Officer in writing prior to the placement of any such mobile home.

4. The Zoning Administrative Officer shall have the authority to grant or refuse placement of said mobile home and have the power to authorize any inspection of said mobile home prior to any approval. Said inspection shall be done at the mobile home owner's expense.

5. That nothing in this [Section] in any way affects those mobile homes located within the

city limits of the City of Elsberry prior to the enactment of this [Section][June 8, 1999].

6. Any person found in violation of this [Section] shall be subject to a fine not to exceed $100.00, or by imprisonment in the Lincoln County Jail not to exceed thirty (30) days, or by both such fine and imprisonment. Each day of said violation shall be considered a separate and distinguishable offense.

(Ord. 4-2-99)

§41.370 Standards for Marijuana Facilities

No building shall be constructed, altered, or used for any Marijuana Facility, without complying with the following regulations.

Buffer Requirement. No Marijuana Facility shall be located within one thousand (1,000) feet of an existing elementary or secondary school, licensed child day care center, or church. The distance between the facility and the school, daycare, or church shall be measured from the external wall of the facility structure closest in proximity to the school, daycare, or church to the closest point of the property line of the school, daycare, or church.

Outdoor Operations or Storage Prohibited. All operations and all storage of materials, products, or equipment shall be within a fully enclosed building. No outdoor operations or storage shall be permitted.

Onsite Usage Prohibited. No marijuana may be smoked, ingested, or otherwise consumed on the premises of a Marijuana Facility.

Hours of Operation. No sales or distribution of marijuana shall occur upon the premises or by delivery from the premises of any marijuana facility between the hours of 10:00 P.M. and 8:00 A.M.

Display of Licenses Required. The marijuana license issued by the State of Missouri shall be displayed in an open and conspicuous place on the premises.

Residential Dwelling Units Prohibited. No Marijuana Facility shall be located in a building or on a lot that contains a residence.

Ventilation Required. All Marijuana Facilities shall install and operate a ventilation system that will prevent any odor of marijuana from leaving the premises of the facility. No odors shall be detectable by a person with a normal sense of smell outside the boundary of the parcel on which the facility is located.

Security. The Marijuana Facility shall have sufficient security measures and features to prevent unauthorized use, diversion, or theft of the Marijuana or Marijuana Infused

Products

Site Plan Review Required. A site plan meeting the requirements of this Chapter shall be submitted for review and approval to the City's Code Enforcement and Administrative Officer(s). The site plan shall include a description of the ventilation system to be used to contain odors within the building. The site's security features shall also be submitted in a confidential plan which will be treated as closed document under RSMo §610.021 (14), (20), and (21)..

(Ord. 06-13-2019; 2024-09-001)

§41.400 GENERAL PROVISION AFFECTING NON-CONFORMITIES

a. Within the districts established by this Ordinance or by amendments that may later be adopted, there exists lots, premises, structures, and uses of land which are lawful before this Ordinance was effective or amended, but which would be prohibited, or restricted under the provisions of this Ordinance or future amendments, and these are non-conforming uses.

b. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed or discontinued (except as otherwise herein provided), but not to encourage their survival. Such non-conformities are declared by this Ordinance to be incompatible with the permitted structures and uses of land and structures in the district involved. It is further the intent of this Ordinance that such non-conformities shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other structures elsewhere in the same district.

c. A non-conforming use of land, premises, or structure shall not be enlarged upon, expanded, or extended after the effective date of this Ordinance.

d. If a non-conforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official pursuant to ordinances of the City of Elsberry to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

(Ord. 9-9-1997)

§41.410 NON-CONFORMING USE OF LAND

Where, on the effective date of adoption or amendment of this Ordinance, a lawful use of land exists that is no longer permissible under the regulations and standards of this Ordinance as adopted or amended, such use may be continued so long as it remains otherwise lawful subject to the following provisions:

a. No such non-conforming use of land shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this Ordinance.

b. No such non-conforming use of land shall be moved in whole or in part to any other portion of the lot or tract of land occupied on the effective date of adoption or amendment of this Ordinance.

c. If any such non-conforming use of land ceases for any reason for a period of more than thirty (30) consecutive days, any subsequent use of such land shall conform to the resolutions and standards set by this Ordinance for the district in which such land is located.

d. A non-conforming use of land shall not be changed to any other use except to a use permitted in the district in which the land is located.

(Ord. 9-9-1997)

§41.420 NON-CONFORMING STRUCTURES

Where, on the effective date of the adoption or amendment of this Ordinance, a lawful structure, including a mobile home, exists that could not be built or located under the regulations and standards of this Ordinance as adopted or amended, by reasons of restrictions on lot area, lot coverage, floor area, ratio, yards, heights, spacing between buildings, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains lawful subject to the following provisions:

a. No such structure may be enlarged or altered in a way which increases its nonconformity. On a non-conforming structure work may be done in any period of twelve (12) consecutive months on ordinary repairs, provided that the volume of such building or size of such structure as it existed at the effective date of adoption, or amendment, of this Ordinance shall not be increased.

b. Should such structures be destroyed by any means to an extent of more than sixty percent (60%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

c. Should any such structure be moved for any reason for any distance whatever, for a period in excess of seven (7) days, the non-conforming structures shall not be returned to said location and no other non-conforming structures shall be located thereon.

(Ord. 9-9-1997)

§41.430 NON-CONFORMING USES OF STRUCTURES

Where, on the effective date of adoption, or amendment of this Ordinance, a lawful use of a structure, or a premises, exists that is no longer permissible under the regulations and standards of this Ordinance as adopted or amended, such use may be continued so long as it remains otherwise lawful subject to the following provisions:

a. No existing building or structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, moved, or altered except in changing the use of such building or structure to a use permitted in the district in which it is located. On a structure devoted to a non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed ten percent (10%) of the then current replacement value of the structure, provided that the volume of such building or the size of such structure as it existed at the effective date of adoption, or amendment, of this Ordinance shall not be increased.

b. Any non-conforming use may be extended throughout any parts of the building or structure which were manifestly arranged or designed for such use at the effective date of adoption, or amendment, of this Ordinance, but no such use shall be extended to occupy land outside of such building or structure.

c. If no structural alterations are made, any non-conforming use of a building or structure, or of any premises, may be changed to another non-conforming use provided that the proposed use is equally appropriate or more appropriate- to the district than the existing non-conforming use. In permitting such changes the appropriate conditions and safeguards in accordance with the provision of this Ordinance may be required.

d. Any building or structure, or any premises, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations and standards of the district in which such building, structure, or premises is located, and the non-conforming use shall not be resumed.

e. When a non-conforming use of a building or structure or of a premises is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the building or structure, or the premises shall not thereafter be used except in conformance with the regulations and standards of the district in which it is located.

f. Where non-conforming use status applies to the use of a building or structure, removal or destruction of the building or structure shall eliminate the non-conforming use status, and any use in which it is located. Destruction for this purpose is defined as damage to an extent of more than sixty percent (60%) of the replacement cost at the time of destruction. Provided, however, that notwithstanding the foregoing provision concerning elimination of non-conforming use status upon destruction of a building or structure, a single family dwelling located in the Central Business District and enjoying non-conforming use status shall not lose said status upon its destruction if said destruction is a direct and proximate result of wind, fire, or other casualty loss and if said single family dwelling is reconstructed within one (1) year of said destruction on the same location with the same size and dimensions and with no extension or enlargement.

(Ord. 9-9-1997; 10-1-2005)

§41.500 ADMINISTRATIVE OFFICER

The Administrative Officer shall administer and enforce the provisions of this Ordinance. The Administrative Officer shall be any person appointed as such by the Board of Aldermen of the City of Elsberry, Missouri.

(Ord. 9-9-1997)

§41.510 POWERS OF THE ADMINISTRATIVE OFFICER

The powers and duties of the Administrative Officer shall be as follows:

1. To administer and enforce the provisions of this Zoning Ordinance.

2. Issue all building permits and certificates of occupancy and make and maintain records thereof, if, after examination, he finds no objection to the same and it appears that the proposed work or use or occupancy will be in compliance with the laws and orders applicable thereto. If the Administrative Officer's examination reveals otherwise, he shall reject such application, noting his findings in a report to be attached to the application, with a copy delivered to the applicant.

3. Conduct inspections of buildings, structures, and the use of land to determine compliance with the terms of this ordinance. Specific requirements of this ordinance are as follows:

a) That house numbers are displayed in a manner to be easily visible by emergency personnel from the street.

b) That smoke detectors are installed in each sleeping room, and at least one smoke detector outside the sleeping rooms, plus the basement, if furnace/water heater is in basement.

c) That GFCI circuit breakers are installed in bathrooms and kitchens.

d) That electric panel boxes include circuit labeling.

e) That circuit conductors are attached to devices in such a fashion that the Polarity is not crossed on the same circuit.

f) That the grounding conductor is properly installed.

g) That furnaces are adequately piped/wired in a safe manner. That water heaters have a pressure/temperature/relief valve with drain line extending to within 6" of the floor, and that electric cut-off close to appliance.

h) That there is adequate air supply to the furnace (gas) to keep pilot light burning.

I) That connections to air conditioning units are to be solid, and protected to prevent possible serious injury to people and pets.

j) That electrical and plumbing fixtures are mounted securely.

k) That raw sewage is not backing up in floor drain, washer stand pipe, or bath tub.

i) That hot water heat (boiler system) not closed units, and swimming pools do not drain back into Potable water lines.

m) That gas lines are constructed of proper size piping and material, and in workmanlike manner.

n) That porches, stoops and decks are stable.

o) That guard rails and hand rails are stable.

p) That new multifamily dwellings with four (4) or more units meet adaptability and accessibility requirements for handicapped.

4. Require that all construction or work of any type be stopped when such work is not in compliance with this Ordinance.

5. Revoke any permit which was unlawfully issued or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.

6. Maintain permanent and current records of this Ordinance, including, but not limited to, all maps, amendments, variances, appeals, and applications.

7. Provide and maintain a public information bureau relative to all matters arising out of this Ordinance.

8. Forward to the Elsberry Planning and Zoning Commission and the Elsberry Board of Aldermen all applications for amendments to this Ordinance which are received by said Administrative Officer.

9. Forward to the Board of Adjustment, applications for appeals, variances, or other matters on which the Board of Adjustment is required to pass under this Ordinance.

10. Issue permits regulating the erection and use of tents for periods not to exceed ten (10) days for specific purposes such as: temporary carnivals, churches, charities, or charitable uses, and revival meetings, such uses not being detrimental to the public health, safety, morals, comfort, convenience, or general welfare; provided, however, that said tents or operations are in conformance with all other ordinances of the City of Elsberry.

11. Initiate, direct, and review, from time to time, a study of the provisions of this Ordinance, and to make reports of the study and to make such reports available to the Elsberry Planning and Zoning commission and the Elsberry Board of Aldermen not less than once a year.

(Ord. 9-9-1997; 4-1-1998)

§41.600 PERMITS REQUIRED

1. It shall be unlawful to commence or to proceed with the erection, construction, reconstruction, conversion, alteration, extension, raising or moving of any building or structure, or of any portion thereof, without first having applied in writing to the Administrative Officer for a building permit to do so and a building permit has been granted therefor.

2. Every application for a building permit shall be in writing and delivered to the Administrative Officer and shall be accompanied by the appropriate fee as provided hereinafter and a detailed set of plans, in duplicate, drawn to scale on not less than 1"-50' showing:

   a. The shape and dimensions of the lot which the proposed building or use is to be erected or conducted;
   b. The location of the said lot with respect to adjacent rights-of-way;
   c. The shape, dimensions, and location of all buildings existing and proposed, on the said lot;
   d. The nature of the proposed use of the building or land including the extent and location of the use, or the said lot;
   e. Any other information the Administrative Officer may deem necessary for consideration in enforcing the provisions of this Ordinance.

   On the issuance of a permit, one set of said plans shall be retained by the Administrative Officer as a permanent record and one set shall be returned to the applicant. Said application shall be made by the owner or lessee, or agent of either, or the architect, engineer, surveyor or builder employed in connection with the proposed work. If such application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner in fee, or of the person making the application, that the proposed work is authorized by the owner in fee and that the person making the application is authorized by the owner in fee and that the person making the application is authorized to make such application. Such application shall contain the full names and addresses of the applicant and of the owner and, if the owner is a corporate body, of its responsible officers. Such application shall describe briefly the proposed work. No building permit for the erection, construction, reconstruction, conversion, alteration, enlargement, extension, raising or moving of any building or structure shall be issued unless the plans and specifications show that the building or structure will be in compliance with the provisions of this Zoning Ordinance.

3. It shall be unlawful to make a change in the use or occupancy of land or to change the use or occupancy of an existing building, other than for single family dwelling purposes, or to use or occupy a new building without first having applied in writing to the Administrative Officer for a certificate of occupancy to do so and certificate of occupancy has been granted therefor.

   However, inspection of the premises shall not be required more often than once per year, and said certificate of occupancy shall be valid for a period of at least one year, unless there is a specific showing that the building is no longer in compliance. A certificate of occupancy shall be valid for more than one tenant moving into a residence within one year of the certificate being issued. [See 44.515]

   Any permit granted upon condition of completing correction of deficiencies, may be revoked upon expiration of time allowed for correction of said deficiencies, and City

utilities may thereafter be turned off or disconnected.

4. Every application for a certificate of occupancy may be made coincident with and as a part of the application for building permit, or may be made alone if no construction, reconstruction, conversion, alteration, enlargement, extension, raising or moving of any building is involved. The application shall describe the particular use or occupancy for which the building or land is to be subjected. Said application shall be made by the owner, lessee, or agent of either. If such application is made by other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner in fee, or of the person making the application that the proposed use or occupancy is authorized to make such application. No certificate of occupancy shall be issued unless the use or occupancy will be in compliance with the provisions of this Zoning Ordinance.

5. The failure to obtain the necessary building permit and\or certificate of occupancy shall be punishable under ARTICLE X, Section E of this Zoning Ordinance [§41.900].

6. Building permits, and/or certificate of occupancy issued on the basis of plans and applications approved by the Administrative Officer authorize only the construction, arrangement and use as set forth in such approved plans and applications, and all work performed under a permit shall conform to the approved applications and plans. Any construction arrangement, or use at variance with that permitted or authorized or any reduction in or diminishing of the area of a lot or plot which has been used as the basis for a permit (except in the case of a public taking for a street opening, widening, or other public improvement) shall be punishable as provided for by ARTICLE X, Section E of this Zoning Ordinance [§41.900].

7. Nothing in this Ordinance shall prohibit the filing of amendments, to an application or to a plan or other record accompanying same, at any time before the completion of the work for which the permit was sought. Such amendments, after approval, shall be filed with and be deemed a part of the original application.

8. Every permit issued by the Administrative Officer under the provisions of this Ordinance shall have his or her signature affixed thereto; provided, however, that this shall not prevent the Administrative Officer from authorizing a subordinate to affix such.

9. Blank forms shall be provided by the Administrative Officer for the use of those applying for a building permit and/or certificate of occupancy as provided for in this Ordinance. Any permits issued by the Administrative Officer shall be on standard forms for such purpose and furnished by the City.

10. An application for a building permit and a certificate of occupancy may be made together or an application for either alone may be made, and the fees to be charged therefore shall be as follows:

    a. Application for building permit alone, or for building permit combined with a

certificate of occupancy, for work costing over $500, the permit fee will be $20 plus the following percentage of the cost of the work:

For work costing over $1,000, but not over $25,000	½ of 1%
For work costing over $25,000 but not over $50,000	⅓ of 1%
For work costing over $50,000 but not over $125,000	¼ of 1%
For work costing over $125,000 but not over $250,000	1/5 of 1%
For work costing over $250,000 but not over $500,000	1/6 of 1%
For work costing over $500,000	1/8 of 1%

The above fees will be reduced by 50% for any applicant that is a governmental entity to whom citizens of the City of Elsberry pay taxes.

b. *Application for certificate of occupancy only:* *$20.00*
[See 44.520]

c. If the inspector is required to visit the site more than twice to inspect items that are to be corrected, an additional $20.00 fee per visit must be paid by the permit holder for the third and subsequent visits.

11. Any building permit, under which no construction work has been commenced within six months after the date of issue of said permit or under which the proposed construction has not been completed within two years of the date of issue shall expire by limitation; and no work or operation shall take place under such permit after such expiration. Upon payment of ten cents (.10) per month for each one thousand dollars ($1,000) of the construction cost on which the original permit was issued but not less than one dollar ($1.00) per month in any case, a building permit may be once extended for a period not exceeding six months by the Administrative Officer.

12. If a building permit or certificate of occupancy is denied by the Administrative Officer, the applicant may appeal the action of Administrative Office to the Board of Adjustment.

(Ord. 9-9-1997; 8-1-1999; 8-4-2008 [Ord 12-02-2009] italicized section repealed by implication due to inconsistency)

§41.700 BOARD OF ADJUSTMENT

A Board of Adjustment is hereby created. The Board shall consist of five members, who shall be residents of the City of Elsberry, Missouri, and appointed by the Mayor with the approval of the Board of Aldermen. The membership of the first board appointed shall serve respectively, one for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter members shall be appointed for the terms of five years each. All members shall be removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect its own chairman who shall serve for one year. The board shall adopt rules

in accordance with the provisions of this Ordinance. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. All testimony, objections thereto, and rulings thereon, shall be taken down by a reporter who is employed by the board for that purpose.

(Ord. 9-9-1997; 8-1-1999).

§41.710 BOARD OF ADJUSTMENT POWERS

The Board of Adjustment shall have the following powers:

a. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Administrative Officer in the enforcement of this Ordinance. In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such Ordinance, to vary or modify the application of any of the regulations or provisions of the Ordinance relating to the use, construction or alteration of building or structures or the use of land so that the spirit of the Ordinance shall be observed, public safety and welfare secured and substantial justice done.

b. To hear requests for variances from the literal provisions of this Zoning Ordinance in instances where strict enforcement of this Ordinance would cause undue hardship due to circumstances unique to the individual property under consideration and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the Zoning Ordinance. The Board of Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

c. In exercising the above mentioned powers such board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement decision of determination as ought to be made and to that end shall have all the powers of the Administrative Officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Officer, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

d. A person requesting a variance or other relief from the Board of Adjustment shall submit a written application to the City Clerk that shall contain, or be accompanied by, such legal descriptions, maps, plans, names and any other information as may be requested by the City, including the following minimum

information:

The full names, addresses, and telephone numbers, of the applicant and all owners of the property.

A complete, concise legal description of the area in question.

Plot plan for the area for which the variance is requested showing existing buildings, proposed buildings, distances from property lines, etc. (may be hand drawn by applicant)..4.

Location sketch, or plat of the land, showing adjoining and abutting tracts and the owners of those tracts.

Area or size of property in square feet or acres.

Whether a variance for this property was requested previously, and if so, when, what was the variance that was requested, and the result of the request.

A list of owners of record title of the subject property and of all property within 185 feet of the boundaries of the subject property with current mailing addresses of such owners as set forth in the land records of Lincoln County, Missouri.

Describe the request and any past and present issues related to the request.

Current specific use of property (describe all present improvements).

Specific use proposed for the property if the variance is granted.

Why, in your opinion, is your current situation, or the existing size/extent of the use not acceptable.

List reasons why strict application of the provisions of the zoning ordinance would deprive you of reasonable use of the land, structure or building in a manner equivalent to the use permitted to be made by other owners of neighboring lands, structures or buildings in the same district. Include a statement of specific facts (with any accompanying documentary proof and exhibits) that establish each of the requirements and conditions set out in Elsberry Municipal Code for the granting of variances, including §§ 41.730 and 71.740.

The application must be completed and signed by the property owner.

e. A fee of one hundred seventy-five dollars ($175.00) shall be paid by the person requesting a variance or other relief from the Board of Adjustment to the City and, in addition to the filing fee, the requester shall pay the cost of publication, if any. Such fees and costs shall accompany each such request.

f. The applicant must prove undue and unnecessary hardship due to a provision or provisions herein contained as applied to a specific lot or tract. The variance requested must not be contrary to the general spirit and intent of the zoning regulations, nor can it adversely affect the public safety or general welfare."

(Ord. 9-9-1997; 2019-03-003)

§41.720 APPEALS FROM THE BOARD OF ADJUSTMENT

An appeal may be taken by any person, group or organization, public or private, affected by the decision of the Administrative Officer. Appeals so taken, shall be taken including appeals accompanied by requests for variance, in the following manner:

a. All appeals shall be taken within sixty (60) days of the date of the action which is appealed.

b. A notice of appeal specifying the grounds therefore and making any requests for variances signed by the appellant, shall be filed with both the Board of Adjustment and the Administrative Officer. A fee of one hundred seventy-five dollars ($175.00) shall be paid by the appellant to the City and such fee shall accompany each such request and, in addition to the filing fee, the appellant shall pay the cost of publication, if any. The Notice of Appeal shall contain or be accompanied by such legal descriptions, maps, plans, and other information so as to completely describe the decisions or interpretation being appealed, the reasons for such appeal, and any variance requested.

c. The Administrative Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed was taken. The Chairman of the Board of Adjustment shall schedule a public hearing to be held within sixty (60) days from the filing of the notice of appeal. Public notice of the hearing shall be published in a newspaper of general circulation in the City of Elsberry at least fifteen (15) days prior to the hearing. The Administrative Officer shall post notice on the property involved for a period of one week prior to the hearing, and notice shall be given to the parties in interest.

d. An appeal stays all proceedings in furtherance of the action appealed from unless the Administrative Officer 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 and property, in which 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.

(Ord. 9-9-1997; 2019-03-003)

§41.730 CRITERIA FOR GRANTING VARIANCES

In order to grant any variance, the Board of Adjustment must find that all of the following criteria are met:

a. Special circumstances exist which are peculiar to the applicant's land, structure or building and do not generally apply to the neighboring lands, structures or buildings in the same district or vicinity.

b. Strict application of the provisions of this Ordinance would deprive the applicant of reasonable uses of the land, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures, or buildings in the same district.

c. The special circumstances are not the result of action of the applicant taken subsequent to the adoption of this Ordinance.

d. Relief, if approved, will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.

(Ord. 9-9-1997)

§41.740 RULES TO BE FOLLOWED IN REVIEWING REQUESTS FOR VARIANCES

The following rules shall be considered by the Board of Adjustment when approving or denying a variance.

a. Financial disadvantages to the property owner shall not constitute conclusive proof of unnecessary hardship within the purpose of zoning.

b. The Board does not possess the power to grant a variance permitting a zoned use of land or building that is not permitted as a principal use or structure, accessory use or structure in the district involved.

c. In granting a variance, the Board may attach thereto any conditions and safeguards it deems necessary or desirable in furthering the purposes of this Ordinance. Violation of any of these conditions or safeguards shall be deemed a violation of this Ordinance.

d. Unless otherwise specified at the time the variance is granted, the variance applies to the subject property and not the individual who applied. Consequently, the

variance is transferable to any further owner of the subject property, but cannot be transferred by the applicant to a different site.

e. A variance shall continue for an indefinite period of time unless otherwise specified at the time the variance is granted, except that when a variance has not been used within one year after the date it was granted, the variance shall be canceled by the Administrative Officer and written notices shall be given to the property owner.

(Ord. 9-9-1997)

§41.800 AMENDMENTS AND CHANGES

The Elsberry Board of Aldermen may, from time to time, on its own motion, or on petition, amend, supplement, change, or repeal by ordinance the boundaries of districts or regulations or restrictions herein established, provided that in all amendatory orders adopted under the authority of this section, due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire community, and the uses to which property is devoted at the time of the adoption of such amendatory order.

(Ord. 9-9-1997)

§41.810 AMENDMENT PROCEDURES

This [Zoning] Ordinance shall be amended in the following manner:

1. Amendments may be petitioned for, by any citizen, organization or governmental body.

2. A Petition for an amendment to this Ordinance shall be filed with the Administrative Officer in such form and accompanied by such information as required by the Administrative Officer. The Administrative Officer, upon receiving a Petition for Amendment, shall forthwith transmit one (1) copy of such Petition along with all pertinent data filed therewith, to the following agencies and/or legal entities for their review and written recommendations, protests or comments:

    a. Elsberry Planning and Zoning Commission
    b. Board of Aldermen of the City of Elsberry

3. A fee of one hundred seventy-five dollars ($175.00) shall be paid by the petitioner to the City for each petition for an amendment and, in addition to the filing fee, the petitioner shall pay the cost of publication, if any.. The Board of Aldermen, the Planning and Zoning Commission and Board of Adjustment shall be exempt from this fee.

4. Before acting on a Petition, the Elsberry Board of Aldermen shall hold a public hearing on each Petition for an amendment at such time and place as shall be established by the Board of Aldermen. The hearing shall be conducted and a record of such proceedings shall be preserved in such manner as the Board of Aldermen shall, by rule, prescribe from time to time.

5. Notice of time and place of such hearing shall be published at least once in a newspaper of general circulation in the City of Elsberry no less than 15 days before such hearing. Supplemental or additional notices may be published or distributed as the Board of Aldermen, by rule, prescribed from time to time.

6. The Elsberry Planning and Zoning Commission may make written findings of fact and shall submit any such findings together with its recommendations to the Elsberry Board of Aldermen prior to the public hearing. If the Elsberry Planning and Zoning Commission makes no written findings of fact and recommendations to the Board of Aldermen prior to the public hearing, the said Commission shall be considered to have made a report approving the proposed amendment, supplement, modification, repeal or change. Where the purpose and effect of the proposed amendment is to change the zoning classification of particular property, any findings made by said Commission shall be based upon a review of the evidence presented to it in each specific case with consideration being given to the following criteria:

    a. Relatedness of the proposed amendment to goals and outlines of the long range physical plan of the City of Elsberry, Missouri.
    b. Existing uses of property within the general area of the property in question.
    c. The zoning classification of property within the general area of the property in question.
    d. The suitability of the property in question to the uses permitted under the existing zoning classification.
    e. The trend of development, if any, in the general area of the property in question, including changes, if any, which have taken place in its present zoning classification.

7. After conducting its public hearing, the Elsberry Board of Aldermen shall approve or deny the proposed amendment, supplement, modification, repeal or change. In case of an adverse report by the Elsberry Planning and Zoning Commission or if a protest against such proposed amendment, supplement, change, modification or repeal shall be presented in writing to the City Clerk, duly signed and acknowledged by the owners of ten percent or more, either of the area of the land (exclusive of streets, places, and alleys) included within such proposed amendment, supplement, change, repeal or modification, or within an area, determined by lines drawn parallel to and one hundred eighty-five feet distant from the boundaries of the district proposed to be changed, such amendment

supplement, change, repeal or modification shall not become effective except by the favorable vote of three-fourths of all the members of the Boards of Aldermen.

(Ord. 9-9-1997; 2019-03-003)

§41.900 VIOLATION AND PENALTIES

1. The owner or agent of a building or premises in or upon which a violation of any provision of this Ordinance has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which such violation has been committed or shall exist or the owner, agent, lessee or tenant of any part of the building or premises in or upon which such violation has been committed or shall exist or the owner, agent, lessee or tenant of any part of the building or premises in or upon which such violation has been committed or shall exist, or the agent, architect, builder, contractor or any other person who commits, takes part of, assists in any such violation or who maintains any building or premises in or upon which any such violation shall exist shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars and not more than one hundred dollars for each and every day that such violation continues, but if the offense by willful on conviction thereof, the punishment shall be a fine of not less than one hundred dollars ($100.00) or more than two hundred and fifty dollars ($250.00) for each and every day that such violation shall continue or by both such fine and imprisonment in the discretion of the court.

2. Any such person who having been served with an order to remove any such violation shall fail to comply with said order within ten days after such service or shall continue to violate any provisions of this Ordinance in the respect named in such order shall also be subject to a civil penalty of two hundred and fifty dollars ($250.00)

3. Nothing contained herein shall prevent the Elsberry Board of Aldermen from taking such other lawful action as it deems necessary to prevent or remedy any violation.

(Ord. 9-9-1997)

CHAPTER 42. SIGN REGULATIONS

§ 42.100 PURPOSE

The purpose of these regulations is to protect the health, safety, and general welfare of the public, as it relates to pedestrian and traffic safety; and protection of property values by minimizing the adverse effects of signage on nearby public and private property. Additionally, these regulations will ensure the implementation of the City's Comprehensive Plan, particularly in regard to the creation and enhancement of the desired overall character of the community, and its constituent zoning districts, by:

1. controlling the location, type, size, height, number, design, construction, installation, maintenance and removal of signs;

2. encouraging the effective and efficient use of signs as a communications tool; and

3. creating a cityscape that is free of overly distracting and/or intrusive visual clutter.

(Ord.11-12-2008

§ 42.110 DEFINITIONS

The following definitions shall be used by these regulations to assist in the establishment of well defined signage regulations:

ABANDONED SIGN: a sign on a subject property that promotes a use that has not been active on that property for more than 180 days. (See Abandonment of Business Signs.)

BILLBOARDS: permanent and semi permanent off-premises free-standing signs exceeding forty-eight (48) square feet in size. This does not include wall signs that are a part of buildings.

BUILDING FAÇADE OR WALL: the exterior surface area of a building (including all windows and architectural features) in a single elevation, between finished grade and the line formed where the wall meets the roof.

CITY: the City of Elsberry, Missouri.

ERECT: to build, construct, re-construct, attach, hang, re-hang, alter, place, affix, enlarge, move, or relocate any signage or associated structures and components.

GROUND LEVEL: the elevation of the ground upon which the sign and all associated structures are placed. This elevation shall be the same as shown on the approved grading plan, except when the sign rests upon a berm or other area elevated above the surrounding ground. In such cases, the elevation of the base of such berm or other area shall be considered as the ground level.

GROUND SIGN: a free-standing sign where the bottom edge of the sign panel is located at or within one foot of the ground or berm on which it is located. (See Design, Illumination, and Placement.)

HEIGHT OF SIGN: the vertical distance measured from the ground level to the highest point of the sign.

ITEM OF INFORMATION: a word, initial or series of initials, logo, abbreviation, number, telephone number, street address, business name, symbol, graphic, or geometric

shape contained within a sign.

LOGO: a letter, character, or symbol, registered with an independent third party, used to represent a person, corporation, or business enterprise. (See Item of Information.)

LOT: a parcel, tract, plot, or area of land accessible by means of a street or other permanently reserved principal means of access. It may be a single parcel separately described in a deed or plat which is recorded in the Office of the Pike County Recorder of Deeds.

NON-DURABLE SIGNS: any sign that is intended for temporary use only, (by way of design or materials) that is installed and used as permanent sign.

OWNER: a person or entity who is recorded as such on all official records and has a vested or contingent interest in the property or business in question.

PREMISES: an area of land with its appurtenances and buildings which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

PROHIBITED SIGN: a sign that is not allowed to be erected within the corporate limits of the City.

PROJECTING SIGN: a type of wall sign that is mounted to a wall and projects at an angle greater than 2 degrees, and a distance greater than 10 inches, from the vertical plane of the wall to which it is attached.

PYLON SIGN: a free-standing sign erected upon pylon(s) or post(s) where the bottom edge of the sign panel is more than one foot above the ground or berm on which the sign is located.

RIGHT OF WAY (R.O.W.): the area of land adjacent to the paved surface of any public roadway that has been dedicated to or is maintained by the City, County, State, or any other government agency.

RIGHT-OF-WAY SIGNS: any and all signage placed within the public rights-of-way.

SIGN: any object, devise, display, structure, or part thereof, situated outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images.

SIGN STRUCTURE: the sign and all parts associated with its construction.

STREET: a paved surface contained within a public right-of-way or easement that serves

as a permanently reserved principal means of vehicular and pedestrian access between defined properties.

STRUCTURAL TRIM: the molding, batten, capping, nailing strips, latticing, and platforms that are attached to the sign structure. (See Design, Illumination and Placement.)

TEMPORARY SIGN: a non-permanent sign or advertising display intended to be used for a short, usually fixed period of time that directs attention to either a for-profit business or not-for-profit service entity for the purpose of conducting commercial transactions. (See Temporary Signs and Prohibited Signs.)

USE: the legal purpose for which a building, lot, sign or other structure is arranged, intended, designed, occupied or maintained.

WALL SIGN: a sign mounted flush on a building façade or other vertical building surface (on the same vertical plane as the wall). Wall signs shall not extend beyond the edge of any wall or other surface to which they are mounted, nor shall the front of a flush-mounted wall sign project more than 12 inches from the wall's surface.

ZONING ORDINANCE: the Zoning Code of the City of Elsberry and the current Zoning District Map related thereto.

§ 42.120: APPLICABILITY

Any and all signage used within the city limits of Elsberry, Missouri shall be governed by this Article and all other applicable regulations of the *Elsberry Zoning Code*.

§ 42.130: PERMITS REQUIRED

No person shall erect, alter, or relocate, within the City, any sign or sign structure without first obtaining a sign permit, with the exception of the following:

1. Signs that do not require a permit, as listed in this Article, and;

2. The repainting, changing of parts, and preventive maintenance of existing signs which do not alter the sign's message. Changing of a sign face in accordance with all applicable regulations herein, including number of items of information, shall require a sign permit.

§ 42.140: PERMIT APPLICATIONS

The primary responsibility for securing the necessary permits shall be the property owner(s). However, a duly authorized agent or notary, purchaser, lessee, devisee, or judiciary may be allowed to represent the owner with proper consent. Regardless of whether the owner or their agent applies, all required permits and approvals must be secured prior to any work being

initiated.

A) Application Requirements: All applications for sign permits shall be made in writing on a form supplied by the City. All forms are to be completed in their entirety and shall have attached thereto the following information:

1) A location map: For all free standing signs, a copy of the approved site plan showing the location of the sign on the subject property. The location of the proposed sign shall be shown by giving the distances of that sign from the property lines and the backs of applicable curbing. For all wall signs, a building elevation showing the location of the proposed wall sign and a site plan verifying that the proposed location is a street frontage.

2) A drawing, sketch or rendering of the proposed sign listing the height, width, total square footage (including sign area calculations), proposed items of information, method of attachment, method of illumination, sign construction materials and colors.

3) Footing/foundation details (applies to free-standing signs).

4) Seismic and wind load calculations in accordance with the City's Building Code (applies to free-standing signs).

5) Application date.

6) Name, address, and telephone number of the owner and, if different, the owner of the land on which the sign will be erected.

7) Address of the property where the sign or sign structure will be erected.

8) Signature(s) of the sign owner and, if different, the owner of the land on which the sign will be displayed.

9) For signs to be located in Elsberry's Historic Commercial, Historic Residential, and/or Parks-Recreation Zoning Districts, the application must include a copy of the Elsberry Historic Commission's written approval for the proposed sign, or its recommendations concerning the proposed sign.

10) Any other information requested by the City Clerk or the Planning and Zoning Commission in order to carry out the purpose and intent of these regulations.

B) Review Procedure: The City Clerk shall review the submitted application for compliance with the requirements of the subsection above. If the application is determined to be complete, The City Clerk shall review said application for

compliance with the requirements of this Article, and shall approve the sign permit, deny the sign Permit, or pass the application on to the Planning Zoning Commission for further action,

C) Fees: The processing fee is applicable regardless of approval of the sign. A permit approved by the City is not valid until the permit fee has been paid in full. The following fees are hereby established and required:

Permanent Sign: $10 + $1 per square foot of sign area over 10 square feet.
Sidewalk Sign $0+ $0 week
Temporary Sign: $0 per 2 week permit
Continuance (Temporary): $0 per 2 week extension

D) Installation: The base or support(s) of any and all permanent free-standing signs shall be securely anchored to a concrete base or footing.. All signs shall be constructed and mounted in accordance with the City's Building Code.

E) Inspection: All permanent free-standing signs require a footing inspected and certified by the Building Inspector and an inspection report sealed by a registered engineer stating that the sign and footings are properly built for the structure and in compliance with the City Building Code. The engineer's report shall be filed with the City Clerk within twenty days after the sign is constructed.

F) Maintenance: All signs, including non-conforming signs, shall be maintained in their original, pristine condition. Any signs which may be, or may hereafter become, rotted, unsafe, or in a state which is not properly maintained shall be repaired or removed by the licensee or owner of the sign, or owner of the property upon which the sign stands, upon notice from the City.

G) Dangerous Signs:

If it is deemed by the Building Inspector that an existing sign (or a sign currently under construction) is, or becomes, an immediate danger or hazard to the health, safety or general welfare of residents, pedestrians and/or vehicular traffic, City Staff is hereby empowered to immediately remove the sign and its structure without notice to, and at the expense of, the property and/or sign owner. City Staff is also hereby empowered to issue a stop-work order upon such a sign currently under construction.

H) Central Business District:

Notwithstanding any provision of this Article to the contrary, any sign within Elsberry's Central Business District must be designed, sized, illuminated, constructed, placed, and maintained so that it is of high aesthetic quality, and shall be compatible with, and enhance, the surroundings of the District. Any specific

provisions in this Chapter concerning the design, size, height, illumination, construction, placement, content, duration, and maintenance of a sign is subject to the separate, and more restrictive, requirements of this Section.

§ 42.150: ADMINISTRATION

The provisions of this Article shall be administered by Code Enforcement Officer, who shall be assisted by the City Clerk and/or the City's Building Inspector. The Code Enforcement Officer, City Clerk, and Building Inspector are hereby empowered in the performance of his/her functions to enter upon any land in the City for the purpose of making inspections, examinations, and surveys, or to remove illegal signage, or to place and maintain thereon markers, notices, or signs required to effect provisions of this Article. The above-authorized person shall be required to present proper credentials upon demand when entering upon any land or structure for the purpose of this Article.

§ 42.160 BILLBOARDS

1. No new billboards shall be erected within the City.

2. All existing billboards shall be maintained in accordance with the following standards:

    1. All billboards shall comply with applicable provisions of the City Building Code at all times.

    2. All billboards shall be constructed of permanent materials and shall be permanently attached to the ground, by direct attachment to a rigid wall, frame, or structure.

    3. All billboards shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this code, at all times.

    4. In keeping with the ascetics of the surrounding area.

3. Non-conforming Billboards

    1. *Continuance*: Each non-conforming billboard and billboard structure shall be allowed to be displayed for three (3) years from the adoption of this Ordinance, to provide a reasonable opportunity for the owner to recover the full economic value of the investment made in the billboard.

    2. *Removal*: Non-conforming billboards and billboard structures shall be removed at the owner's or lessor's expense under the following circumstances:

        a) Not later than three (3) years from the date of the adoption of this

Ordinance, if not brought into compliance with this Ordinance.

b) The billboard is abandoned.

c) The billboard becomes damaged or dilapidated to 50 % or more of its physical structure or economic value.

4. Immediate Peril:

If the City Code Enforcement Officer, Clerk, or Building Inspector shall find any billboard which poses an immediate peril to persons or property, the billboard shall be removed. If the Building Inspector cannot locate the billboard owner or lessor for immediate removal of the billboard, he shall remove or order the removal of the billboard at the expense of the billboard owner or lessor.

§ 42.170: PROHIBITED SIGNS

Signs other than those specifically permitted under this ordinance or those that are considered exempt, are to be considered prohibited by the terms herein. Prohibited signs shall include but are not limited to:

1. Beacons, Spotlights, and Searchlights

2. Non-Durable Signs

3. Obscene or Indecent Signs:

Signs which contain characters, cartoons, or contain statements, words, or pictures of an obscene, indecent, prurient, or immoral character.

4. *Right-Of-Way Signs and Signs on Public Property*:

No sign, unless erected by or required by a government agency to protect the health and safety of the general public (such as emergency or warning signs), shall be located on, within, or across any public right-of-way, parking space, public property, or utility pole.

5. *Traffic Imitating or Interfering Devices or Signs*:

No sign shall be erected or maintained at any location where, by reason of its position, wording, illumination, size, shape, or color, it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal or device. No sign shall use any word, phrase, symbol, shape, form, or character in such manner as to interfere with moving traffic, including signs that incorporate typical street-type and/or traffic control-type signage designs

and colors.

§ 42.180 SIDEWALK SIGNS

Signs may not be erected on public sidewalks in such a manner as to impede the flow of pedestrian traffic or limit the dimensions of the clear passageway of the sidewalk to dimensions that are less than the allowed dimensions of the federal Americans with Disabilities Act's Standards for Accessible Design. *See 28 C.F.R. Part 36, Appendix A.*

§ 42.190 ABANDONED SIGNS

A. A*bandoned Signs Defined*:

When a use ceases, or when the building or structure that houses a use is vacated, for more than one hundred and eighty (180) days (except where Government action prevents access to the premises) that lot shall be considered abandoned and, therefore, all signs are abandoned.

B. *Removal of Abandoned Signs*:

If at any time the property is redeveloped, or a new occupant makes use of the existing structures, all signs that are classified as abandoned shall be removed before any new signs are permitted. All parts of the abandoned sign (including all associated structural sign supports) shall be removed, and the grass, wall or pavement restored by the owner or developer of the property.

§ 42.200: SIGNS THAT DO NOT REQUIRE A SIGN PERMIT

These signs are permitted in all zoning districts for the following uses and purposes without the need for a sign permit. Such signs shall not count as part of the maximum permitted sign area, maximum number of signs per lot or building, items of information, and other bulk and design regulations. No sign permitted by this Section shall be displayed in a manner that would otherwise cause it to be prohibited. All signs permitted in this Section shall comply with all applicable codes and ordinances in regard to design, illumination, placement, construction, and maintenance:

A) Address and Nameplates:

Address and name plates not exceeding one (1) square foot in area.

B) Artwork:

Any display that is installed for aesthetic purposes only and does not include commercial messages, brand names, or product identification of any type.

C) Campaign Signs:

Such signs shall not exceed thirty-two (32) square feet in area and a height of eight (8) feet in residential areas, or twelve feet (12) in commercial areas (if freestanding). Although these signs can be installed at any time, they shall be removed within the first three (3) days after the scheduled election, except during specified election years, when the signs may be left in place during the time between the primary and general elections.

D) Construction Identification Signs:

For construction on or development of a lot, one (1) sign per street frontage, not more than forty-eight (48) square feet in area and a maximum of twelve (12) feet in height (if free-standing). Construction signs shall be removed upon issuance of an occupancy permit.

E) Directional Signs:

For each permitted or required parking area, one (1) sign not more than four (4) square feet in area, designating each entrance and/or exit is allowed. In addition, three (3) other on-premise directional signs per lot, a maximum of four (4) square feet each, shall be allowed. No directional sign shall exceed three and one-half (3½) feet in height if an individual free-standing sign rather than a wall sign.

F) Flags:

Flags identifying political entities (US Flag, State Flags, City Flags, etc) or non commercial entities or organizations (Red Cross, POW/MIA, etc) shall be permitted in any number and without permits. Flags identifying commercial entities shall be limited to one (1) per lot. If additional flags are displayed, they will be considered attention-getting devices and require a Temporary Sign Permit.

G) For Sale or Rent Signs:

For each residential lot: one (1) “For Sale” or “For Rent” sign, not more than twelve (12) square feet in area, and no more than eight (8) feet in height (if freestanding). For each commercial lot: one (1) “For Sale” or “For Rent” per street frontage (maximum of two signs) may be permitted, up to a maximum of thirty-two (32) square feet in area and twelve (12) feet in height (if free-standing) for each sign, to advertise the sale and leasing of the premises.

H) Government and Governmental Endowment Signs

I) Holiday Signs and Decorations

J) Home Occupation Signage

K) Instructional Signs:

Instructional signs four (4) square feet in area or less and eight (8) feet or less in height (if free-standing).

L) Interior Signs not readily viewable from outside the building where the sign is located.

M) Legal/Public Notices:

Any public notice or warning required by applicable federal, state, or local law, regulation, or ordinance.

N) Memorial Signs

O) Picketers and Picket Signs:

They may only operate under permission of the owner of the site on which the event occurs, or in a designated public space (common ground, sidewalks, etc), and may not operate in the public right-of-way. Their activities shall not impede vehicular or pedestrian traffic, or constitute a safety hazard.

P) Political Signs:

Such signs shall not exceed thirty-two (32) square feet in area and a height of eight (8) feet in residential areas, or twelve feet (12) in commercial areas, (if freestanding).

Q) Residential Directional Signs:

Signs placed by a real estate agent or individual homeowner to advertise the sale or lease of an individual home within the City of Elsberry and direct potential buyers to the subject property. These signs are not to exceed four (4) square feet in size and are not to be placed outside of the subdivision in which the home is located.

R) Temporary Non-Business Special Event Signs:

For a temporary event of public interest sponsored by an institutional use or a non-profit entity, such as a neighborhood garage sale, fund raiser, church fair, carnival, festival, concert, parade, or similar event, limited to the following:.

1) On-Site Identification Signs: No more than two (2) wall, banner, or free-

standing signs, not over forty-eight (48) square feet in area for each such sign, and at a height of eight (8) feet in residential areas, or twelve feet (12) in commercial areas, (if free-standing), located upon the site of the event, shall be permitted. Such sign shall not be erected more than fifteen (15) days before the event and shall be removed not more than three (3) days after the event.

2) Barkers: A maximum of two (2) Barkers may be active during the day of the event. They may only operate under permission of the owner of the site on which the event occurs, or in a designated public space (common ground, sidewalks, etc), and may not operate in the public right-of-way. Their activities shall not impede vehicular or pedestrian traffic, or constitute a safety hazard. For each Barker on site under the age of 16, there shall be one competent person of legal majority on site to supervise their activities.

3) Items of Information: Special Event Signs shall not be limited to a maximum number of items of information.

4) Duration: Non-business or not-for-profit entities are limited to six (6) special events per calendar year.

S) Window Displays:

Merchandise and pictures or models of products or services incorporated in a window display are not considered signs.

T) Window Signs.

U) Yard Sale Signs on the property where the sale occurs.

1) Duration: Yard Sale signs are limited to a total of 30 days per calendar year. Thereafter, a permit will be required for the Yard Sale signs.

§ 42.210: VOIDING OF A SIGN PERMIT

A permit may be revoked by the City Clerk, the Planning and Zoning Commission, or the Board of Aldermen, at any time it appears that there is departure from the plans, specifications, or conditions as required under terms of the permit, that the same was procured by false representation, or that any provisions of this Article are being violated.

A) Notice of such revocation shall be served upon the owner, his/her agent, contractor, or upon any such person employed on the building or structure for which such permit was issued, via a Stop-Work Order, which shall be posted in a prominent location, and thereafter no such construction shall proceed.

B) A new permit application shall be completed that correctly and completely reflects the departure from the voided permit(s) and/or plans, specifications or conditions. If said application is not returned within thirty (30) days (for a permanent sign, or 24 hours for a temporary sign) of the date of notification, a summons may be issued. A summons may be issued for each subsequent day of non-compliance.

C) If the sign, as detailed in the revised permit application, does not meet the standards of this Article, the City Clerk or the Planning and Zoning Commission shall notify the owner or authorized agent of same and shall allow thirty (30) days (for a permanent sign, or 24 hours for a temporary sign) for the removal of the sign. If the sign is not removed within the time allotted, a summons may be issued by the City Attorney or City Prosecutor as of the expiration of the grace period, and each subsequent day thereafter, until the violation is abated.

D) Any sign permit under which no construction work has been commenced within six (6) months after the date of issuance of said permit, or under which proposed construction has not been completed within one (1) year of the time of issuance, shall expire by limitation.

§ 42.220 VIOLATIONS

A. *Illegal Signs:*

All signs erected within the city limits of Elsberry Missouri found not to be in compliance with the provisions of the prevailing ordinance in force at the time of their erection, shall be deemed illegal. All such signs shall be removed within fifteen (15) days of official notice of noncompliance and removal from the Building Inspector.

B. *Nuisance.* A sign that is in violation of this Chapter shall be deemed to be a nuisance.

C. *Code Violations*:

If it is found that a sign is in violation of this Section, official notice shall be given to the owner of the sign, or if the owner cannot be located, to the owner or property management agent of the premises on which the sign is located or, if the sign erection is not complete, to the sign erector. Such notice shall state:

1) The violations found.

2) That all violations must be brought into compliance with the requirements of this Article and all other provisions of the *Elsberry Zoning Code* within the time frame allowed (thirty days from the date of such notice for a

permanent sign, or 24 hours for a temporary sign).

3) The requirements which must be met.

D. *Penalties.*

Any person found to be in violation of any provision of this Article shall be subject to a fine of five hundred dollars ($500.00), up to ninety (90) days imprisonment, or both. With each day of such violation constituting a separate offense without further notice being required.

E. *Civil Enforcement*.

The City Attorney may bring a civil action to enjoin any violation of this Article, including obtaining an order to demolish or remove the illegal sign at the lot owner's expense. All costs of such action, including attorneys fees, witness fees, duplication costs, court costs, expert fees, and exhibit fees shall be awarded to the City if the City prevails to any extent.

§ 42.240 AMENDMENTS, CONDITIONAL USE PERMITS, VARIANCES, INTERPRETATIONS AND APPEALS

All text amendments, Conditional Use Permits, variances, interpretations or appeals sought from the provisions of this Ordinance shall follow the procedures outlined in the Zoning Code. "Undue hardship is not considered to be the loss of possible advantage, economic loss or gain, or mere inconvenience to the applicant.

CHAPTER 43. -- SUBDIVISION REGULATIONS

SUBCHAPTER A -- GENERAL

§43.010. TITLE.

This Chapter shall be known, referred to and cited as "The Land Subdivision Ordinance of Elsberry, Missouri."

§43.020. PURPOSE.

This Chapter is designed to provide for the coordination of streets within subdivisions with other existing or planned streets or with other features of the Comprehensive Plan of Elsberry, Missouri; for minimum requirements of the Preliminary and Final Plats; for minimum standards of physical improvements in new subdivisions; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and traffic for the health, safety, and general welfare of the community.

§43.030. DEFINITIONS.

For the purpose of this Chapter, certain words and terms are herewith defined; the singular includes the plural and the plural includes the singular, the word "shall" is mandatory and not directory.

1. **Subdivision**. The division of a lot, tract or parcel of land into two or more lots, or other division of land into parcels of one acre or less in area, or the dedication of streets, ways, or other areas for the use of the public. The sale or transfer of land of one acre or more is exempted from recording a plat but shall be certified by the City Planning Commission.

2. **Building line**. A line on a plat between which line and a street no building or structure may be erected.

3. **Comprehensive plan**. The comprehensive plan made and adopted by the Planning Commission indicating the general locations recommended for the streets, parks, public buildings, zoning districts and all other public improvements.

4. **Cul-de-sac**. A minor street with ,only one outlet and culminated by a turnaround.

5. **Major street**. A street intended to serve as a major traffic way and designated as a major street in the comprehensive plan.

6. **Minor street**. A street intended to serve the local needs of an area not designated as a major street in the comprehensive plan.

§43.040. JURISDICTION AND PROCEDURE.

It shall be unlawful for any person being the owner, agent, or person having control of any land within the City of Elsberry, Missouri, to subdivide or layout such land in lots unless by a plat, in accordance with the regulations contained herein. No lots shall be sold nor any plat recorded until such plat has been approved as herein provided.

§43.050. PRELIMINARY PLAN.

The subdivider shall submit preliminary plans in accordance with the specifications of Subchapter C hereof. A preliminary plan shall first be submitted to the Planning Commission for approval. After the preliminary plans are approved by the Planning Commission in accordance with this Chapter, such preliminary plans shall be submitted to the board of aldermen for its approval or disapproval.

l. Following approval of the preliminary plan, the subdivider shall:

   a. install the minimum improvements,

b. furnish a bond to cover the cost of the improvements, or

c. provide for an assessment guaranteeing such installations, in accordance with Subchapter B hereof.

2. Upon approval of improvement installations or arrangement therefor, the final plat shall be submitted to the Planning Commission and board of aldermen in accordance with the provisions of Subchapter E hereof.

SUBCHAPTER B– SUBDIVISION DESIGN STANDARDS

§43.100. RELATION TO ADJOINING STREET SYSTEM.

The arrangement of streets in new subdivisions shall make provisions for the continuation of the principal existing streets in adjoining areas (or their proper projection where adjoining land is not subdivided), insofar as they may be deemed necessary by the Commission for public requirements. Off-set streets should be avoided. The angle of intersection between minor streets and major streets should not vary by more than ten degrees from a right angle. Streets obviously in alignment with existing streets shall bear the names of the existing streets. All proposed street names shall be checked against duplication of other street names. The widths and locations of major streets shall conform to the widths and locations designated on the comprehensive plan.

§43.110. DESIGN STANDARDS.

The following design standards shall control construction of streets within a subdivision:

	Low-Density Area - Over 20,000 sq. ft. per unit	Medium Density Area - 6,000 to 20,000 sq. ft. per unit	High-Density Area - less than 6,000 sq. ft. per unit
For Rights of Way			
(1) Right-of-Way	50	50	60
(2) Alley width if provided (ft.)	20	20	24
(3) Easements-Total ft.	10	10	10
(4) Maximum block length (ft.)	1,500	1,000	1,000
(5) Minimum block length '(ft.)	500	500	400
(6) Maximum Cul-de-Sac length (ft.)	1,500	1,000	750

(7) Minimum Cul-de-Sac radius (ft.)	40	50	50
For Improvements			
(8) Pavement width (ft.)	20	28	36
(9) Maximum Grade (ft.)	8	8	8
(10) Minimum Sight Distance (ft.)	150	150	150
(11) Sidewalk width (ft.)	0	4	5
(12) Sidewalk Distance from curb (ft.)	-	6	6
For Lots			
(13) Minimum Building Line (ft.)	25	25	25
(14) Minimum Lot Width at Building line (ft.)	80	60	50
(15) Minimum Lot Depth	125	100	100
(16) Maximum lot depth (ft.)	3 times width	3 times width	3 times width
(17) Minimum average lot width for corner lots (ft.)	85	85	85
(18) Radius on corner lots (ft.)	20	20	30

§43.120. CHARACTER OF DEVELOPMENT.

The Commission shall confer with the subdivider regarding the type and character of development that will be permitted in the subdivision and may agree with the subdivider as to certain minimum restrictions to be placed upon the property.

1. Deed restrictions or covenants should be included to provide for the creation of a property owners' association or board of trustees for the proper protection and maintenance of the development in the future, provided, however, that such deed restrictions or covenants shall not contain reversionary clauses wherein any lot shall return to the subdivider because of a violation thereon of the terms of the restrictions or covenants.

2. Where the subdivision contains sewers, sewage treatment plants, water supply systems, park areas, street trees or other physical facilities necessary or desirable for the welfare of the area and which are of Common use or benefit and are not or cannot be satisfactorily maintained by an existing public agency provision shall be made by trust agreement, made a part of the deed restrictions acceptable to any agency having jurisdiction over the

location and improvement of such facilities, for the proper and continuous maintenance and supervision of such facilities.

§43.130. PARKS, SCHOOL SITES, ETC.

Where an area being subdivided includes lands proposed to be used for parks or schools, under the duly adopted comprehensive plan of the City and environs, the subdivider shall not plat such lands as a part of the subdivision plat; and shall confer with the appropriate public agency regarding the time, method and amount of payment for the agency to acquire the land. If no agreement has been reached upon the acquisition of the area within two years from the date of the submission of the preliminary plan, the subdivider may then plat the balance of the area.

§43.140. EASEMENTS ALONG STREAMS.

Whenever any stream or important surface drainage course is located in an area which is being subdivided, the subdivider shall provide an adequate easement along each side of the stream for the purpose of widening, deepening, sloping, improving, or protecting the stream or drainage course.

SUBCHAPTER C -- PRELIMINARY PLAN

§43.200. APPLICATION.

Whenever any person desires to subdivide land he shall submit three copies of the preliminary sketch plan conforming to the requirements of Subchapter B to the Planning Commission before submission of the final plat.

§43.210. SAME, CONTENTS.

The preliminary plan shall show:

1. The location of present property lines, streets, buildings, watercourses, tree masses and other existing features within the area to be subdivided and similar information regarding existing conditions of land immediately adjacent thereto.

2. The proposed location and width of streets, alleys, lots, building and setback lines and easements.

3. Existing sanitary and storm sewers, water mains, culverts, and other underground structures within the tract or immediately adjacent thereto. The location and size of the nearest water main and sewer outlet are to be indicated in a general way upon the plat.

4. The title under which the proposed subdivision is to be recorded and the name of the subdivider platting the tract.

5. The names and adjoining boundaries of all adjoining subdivisions and the names of recorded owners of adjoining parcels of unsubdivided land.

6. Contours with intervals sufficient to determine the character and topography of the land to be subdivided, but in no case shall the intervals be more than five feet.

7. North point, scale and date.

8. Grades and profiles of streets and plans or written and signed statements regarding the grades of proposed streets, and the width and type of pavement, location, size, and type of sanitary sewer or other sewage disposal facilities; water mains and other utilities, facilities for storm water drainage; and other proposed improvements such as sidewalks, planting and parks, and any grading of individual lots.

§43.220. BOARD PROCEDURE.

After the preliminary plan has been approved by the Planning Commission, it shall be submitted to the board of aldermen for its approval or disapproval. Approval of the preliminary plan by the board of aldermen does not constitute an acceptance or approval of the subdivision plat. One copy of the approved plan, signed by the mayor, shall be retained in the office of the city clerk. One signed copy will be given to the subdivider.

SUBCHAPTER D -- MINIMUM IMPROVEMENTS REQUIRED

§43.300. MAY PROCEED WITH PLANS AND FINAL PLAT.

Receipt of the signed copy of the. preliminary plan is authorization for the subdivider to proceed with the preparation of the plans and specifications for the following minimum improvements and with the preparation of the final plat. Prior to the construction of any improvements required or to the submission of a bond in lieu thereof, or to the provision for any assessment for such construction, the subdivider shall furnish the city engineer all plans, information and data necessary to determine the character of said improvements. These plans shall be examined by the city engineer and will be approved, if in accordance with the requirements of this Section. Following this approval construction can be started or the amount of a bond determined, or an assessment provided for.

§43.310. REQUIREMENTS FOR APPROVAL.

No final or official plat of any subdivision shall be approved unless:

1. The subdivider agrees with the board of aldermen upon an assessment whereby the City is put in an assured position to install the improvements listed below at the cost of the owners of property within the subdivision, or

2. The improvements listed below have been installed prior to such approval, or

3. The subdivider file with the board of aldermen a surety bond, cashier's check, or a certified check upon a solvent bank located in the City of Elsberry conditioned to secure the construction of the improvements listed below in a satisfactory manner and within a period specified by the board of aldermen, such period not to exceed two years. No such bond or check shall be accepted unless it be enforceable by or payable to the City in a sum at least equal to the cost of constructing the improvements as estimated by the city engineer and in form with surety and conditions approved by the city attorney.

§43.320. PARTIAL CONSTRUCTION.

The owner of a tract may prepare and secure approval of a preliminary subdivision plan of an entire area and may install the above improvements only in a portion of such area, but the improvements must be installed in every portion of the area for which a final plat is approved for recording; provided, however, that trunk sewers and any sewage treatment plants shall be designated and built in such a manner that they can easily be expanded or extended to serve the entire area.

§43.330. PERMANENT MARKERS.

All subdivision boundary corners and the four corners of all street intersections shall be marked with permanent monuments. A permanent monument shall be deemed to be concrete with a minimum dimension of four inches extending below the frost line, or steel pipe of at least one-inch diameter firmly imbedded in concrete which extends below the frost line. Should conditions prohibit the placing of monuments on the line, off-set marking will be permitted; provided, however, that exact off-set courses and distances are shown on the subdivision plat.

1. A permanent bench mark shall be accessibly placed and accurately noted on the subdivision plat, the elevation of such bench mark to be based on the U.S.G.S. data.

§43.340. STREET IMPROVEMENTS.

All street and public ways shall be graded to their full width, including side slopes, and to the appropriate grade, and shall be surfaced with a 26-foot width of surfacing in accordance with applicable standard specifications of the City. Such construction shall be subject to inspection and approval by the city engineer.

§43.350. SIDEWALKS.

Concrete sidewalks shall be constructed along at least one side of every minor street shown on the plat in accordance with applicable standard specifications of the City, and concrete sidewalks shall be constructed along both sides of all major streets; provided, however, that where the property is platted in lots having an area of 20,000 square feet or more and a width of 100 feet or more, the board of aldermen may waive this requirement. .

§43.360. WATER LINES.

1. Each lot within the subdivided area shall e provided with a connection to an approved public water supply where reasonably accessible;

2. Fire hydrants shall be installed in all subdivisions.

§43.370. SANITARY SEWERS.

Each lot within the subdivided area shall be provided with a connection to a public sanitary sewer where reasonably accessible. All connections and the subdivision sewer system shall comply with regulations of the State Board of Health and shall be approved by the city engineer. When a public sewer system is not accessible, proper provisions shall be made for the disposal of sanitary wastes as approved by the State Board of Health.

§43.380. DRAINAGE.

All necessary facilities shall be installed sufficient to prevent the collection of surface water in any low spot, and to maintain any natural water course. Drainage facilities satisfactory to the city engineer shall be provided for the ends of all cul-de-sacs and dead end streets.

SUBCHAPTER E -- FINAL PLAT

§43.400. SUBMIT TO BOARD OF ALDERMEN.

The final plat on tracing cloth and five prints thereof, together with copies of any deed restrictions where such restrictions are too lengthy to be shown on the plat, shall be submitted to the board of aldermen. The final plat is to be drawn at a scale of not more than 100 feet to. the inch from an accurate survey and on one or more sheets whose-maximum-dimensions are 18 inches by 24 inches. If more than two sheets are required, an index sheet of the same dimensions shall be filed showing the entire subdivision on one sheet and the areas shown on other sheets. '

§43.410. CONTENTS.

The final plat shall show:

1. The boundary lines of the area being subdivided with accurate distances and bearings.

2. The lines of all proposed streets and alleys ,with their widths and names.

3. The accurate outline of any portions of the property intended to be dedicated or granted for public use.

4. The line of departure of one street from another.

5. The lines of all adjoining property and the lines of adjoining streets and alleys with their widths and names.

6. All lot lines together with an identification system for all lots and blocks.

7. The location of all building lines and easements provided for public use, services or utilities.

8. All dimensions, both linear and angular, necessary for locating the boundaries of the subdivision, lots, streets, alleys, easements, and any other areas for public or private use. Linear dimensions are to be given to the nearest 1/100 of a foot. .

9. The radii, arcs, chords, points of tangency and central angles for all curvilinear streets and radii for rounded corners.

10. The location of all survey monuments and bench marks together with their descriptions.

11. The name of the subdivision, a small sketch showing its general location, and the scale of the plat, points of the compass, and name of owner or owners or subdivider.

12. The certificate of the surveyor attesting to the accuracy of the survey and the correct location of all monuments shown.

13. Private restrictions and trusteeships and their periods of existence. Should these restrictions or trusteeships be of such length as to make their lettering on the plat impracticable and thus necessitate the preparation of a separate instrument, reference to such instrument shall be made on the plat.

14. Acknowledgment of the owner or owners to the plat and restrictions, including dedication to public use of all streets, alleys, parks or other open spaces shown thereon and the granting of easements required.

15. Certificates of approval for endorsement by the board of aldermen.

SUBCHAPTER F -- ENFORCEMENT

§43.500. VARIATIONS AND EXCEPTIONS.

Whenever the tract to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in these regulations would result in real difficulties or substantial hardship or injustice, the board of aldermen, after report by the Planning Commission, may vary or modify such requirements so that the subdivider may develop his property in a reasonable manner, but so that, at the same time, the public welfare and interests of the City are protected and the general intent and spirit of these regulations preserved.

§43.510. VIOLATION AND PENALTY.

Whoever, being the owner or agent of the owner of any land located within the City of Elsberry, knowingly or with intent to defraud, transfers or sells by reference to or exhibition of or by other use of a plat of subdivision of such land before such plat has been approved by the board of aldermen, shall forfeit and pay the penalty of not more than one hundred dollars for each lot so transferred or sold or agreed or negotiated to be sold, and a description by metes and bounds shall not exempt the transaction from such penalties. A contract of sale requiring conformity with this Chapter may be entered into.

§43.520. CHANGES AND AMENDMENTS.

Any regulations or provisions of this Chapter may be changed and amended from time to time by the board of aldermen; provided, however, that such changes or amendments shall not become effective until after a study and report by the Planning Commission and until after a public hearing has been held, public notice of which shall have been given in a newspaper of general circulation at least fifteen days prior to such hearing.

CHAPTER 44 -- BUILDING CODES

SUBCHAPTER A – SESMIC STANDARDS

§44.100. COMPLIANCE WITH SEISMIC STANDARDS

1. Any new construction or major structural renovation begun after January 1, 1991, all buildings for which leases are executed by political subdivisions of the state after January 1, 1994, and all buildings for which leases are executed by the state or any institution of higher education after January 1, 1994, shall comply with the standards for seismic design and construction of the building officials and code administrators code, or of the uniform building code.

2. This section shall not apply to any building owned by the state, any institution of higher education, any political subdivision upon which construction was begun or finished before the effective date of this section, any private structure with less then ten thousand square feet in total area, or any single family or duplex residence.

3. As used in this section, the term "major structural renovation" means any reconstruction, rehabilitation, addition or other improvement of any existing structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the start of construction or the major structural renovation.

(Ord. 12-2-90)

SUBCHAPTER B -- PROPERTY MAINTENANCE AND OCCUPANCY AND CODE

§44.500 DEFINITIONS.

The following definitions shall be used in Subchapter B of Chapter 44

BASEMENT: That portion of a building which is partly or completely below grade.

BUILDING: Any structure containing, or originally designed to contain, a roof and two or more walls, that is used or intended to be used, for supporting or sheltering any human use or occupancy, including commercial businesses, warehouses, retail stores, office buildings, dwellings, hotels, motels, boarding or lodging houses, institutions, schools, manufacturing plants, and the like.

BUILDING OFFICIAL: The person or entity appointed by the Mayor of the City of Elsberry and confirmed by the Board of Aldermen to serve as the Building Official.

CITY CODE: The Municipal Code of Ordinances of the City of Elsberry, Missouri.

DWELLING: A building or portion thereof designed or used exclusively for residential occupancy including single-family dwelling units, two-family dwelling units, multiple-family dwelling units, house trailers, mobile homes, manufactured homes, and residential apartment buildings; but not including hotels, boarding or lodging houses.

GROSS SPACE:

1. Total space in the principal building less non-habitable attic, basement and garage areas computed from exterior dimensions.

2. If additional habitable space has been added for living, eating or sleeping purposes, the owner shall provide documentation or allow the City access to the property to verify that such additional space is in compliance with the City's Ordinances.

HABITABLE ROOM: A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, furnace rooms, unfinished basements (those without floor covering, ceiling covering, wall finish, required ventilation, required electric outlets and required exit facilities), pantries, utility rooms of less than fifty (50) square feet of floor space, foyers, communicating corridors, stairways, closets, storage spaces and workshops, hobby and recreation areas in parts of the structure below ground level or in attics.

INSPECTOR: A member of the City staff, or a person contracted by the City, who performs the function of inspections of dwellings for compliance with the provisions of this Ordinance. All city police officers may perform the functions of the inspector within the meaning of this Ordinance.

KITCHEN: A space that contains a sink with counter working space, space for installing cooking and refrigeration equipment, and space for the storage of cooking utensils.

OCCUPANT: A dwelling or building tenant; any person who is residing or living in a dwelling or other structure overnight as his or her primary residence (other than a temporary guest who is staying at the dwelling or other structure for less than two weeks per year).

OWNER: Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the State, County or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON: An individual, firm, partnership, association, limited liability corporation, limited liability company, corporation or joint venture or organization of any kind.

PREMISES: A lot, plot or parcel of land, easement, or public way, which may, or may not contain one or more structures. Premises includes all structures on the land.

PUBLIC NUISANCE: Includes, but is not limited to, the following:

1. The physical condition or use of any premises regarded as a public nuisance at common law;

2. Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children including, but not limited to, pools, trampolines, abandoned wells, shafts, basements, excavations, fences or structures that are in an unsafe condition;

3. Any premises which has unsanitary sewerage or plumbing facilities;

4. Any premises designated as unsafe for human habitation or use;

5. Any premises that violates this Ordinance; or

6. Any premises which is manifestly capable of being a fire hazard, or is manifestly unsafe or insecure so as to endanger life, limb or property.

REFUSE: All putrescible and non-putrescible waste solids including garbage and rubbish.

RENT, RENTED, RENTS, RENTING: Includes to lease, to sublease, to license, to let and to grant for consideration the right to occupy premises not owned by occupant.

RENTAL UNIT: A dwelling or dwelling unit let or intended to be let for rent or lease.

REPAIR: To put into a sound and acceptable state of operation, serviceability or appearance.

RUBBISH: Non-putrescible solid wastes consisting of both combustible and non- combustible

wastes such as paper, cardboard, tin cans, grass and shrubbery clippings, wood, glass, brick plaster, bedding, crockery and similar materials.

SAFETY: The condition of being reasonably free from danger and hazards that may cause accidents or disease.

STRUCTURE: That which is built or constructed including, without limitation because of enumeration, buildings for any occupancy or use whatsoever, dwellings, sheds, garages, outbuildings, accessory buildings, decks, pools, landscape walls, driveways, fences, signs, billboards, fire escapes, chute escapes, railings, water tanks, towers, open grade steps, sidewalks or stairways, tents or anything erected and framed of component parts that is fastened, anchored or rests on the ground or a foundation.

SUBSTANDARD: Does not conform to the minimum standards established by the City Code.

SUPPLIED: Paid for, furnished by, provided by or under the control of the owner, operator or agent of a dwelling.

UNFIT FOR HUMAN OCCUPANCY: A structure is unfit for human occupancy whenever such structure is unsafe, unlawful, or constitutes a hazard to the occupants of the structure or to the public. A structure may be a hazard if the structure is in disrepair; lacks maintenance; is unsanitary; insect, vermin or rat infested; contains filth and contamination; contains accumulations of rubbish, litter, or debris; or lacks ventilation, illumination, sanitary, or heating facilities or other essential equipment required by this Code.

UNSAFE EQUIPMENT. Any equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises, or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

UNSAFE. A structure, building or dwelling is unsafe when it is dangerous to the life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such it contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

YARD. An open space on the same lot with a building or dwelling.

(Ord 12-02-2009)

§44.505 MINIMUM MAINTENANCE, HEALTH, AND SAFETY STANDARDS.

A. *Premises*. All premises in the City of Elsberry shall meet the following minimum standards.

1. All exterior property and premises shall be maintained in a clean, safe, and sanitary condition.

2. All sidewalks, walkways, stairs, driveways, parking spaces, adjacent alleyways, drainage ditches and trenches, and similar areas, shall be kept in a proper state of repair, and free of debris, blockages, and hazardous conditions. Drainage ditches on easements shall be maintained by the owner of the underlying fee interest as well as the owner or occupant of the easement.

3. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at anytime be in a state of, major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. However, a vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

B. *Structures.* All structures in the City of Elsberry shall meet the following minimum standards.

1. The structure shall be maintained in good repair; structurally sound; and clean and sanitary so as not to pose a threat to the health, safety or general welfare of the public and/or the occupants or users.

2. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.

3. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

4. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure by placing any marking, carving or graffiti on it. The Owner and occupant of the premises shall restore said surface subjected to the marking, carving or graffiti to an approved state of maintenance and repair.

5. Swimming pools, permanent and temporary, shall be maintained in good repair in a clean, safe, and sanitary condition.

6. All structural members of any structure shall be maintained free from deterioration, and shall be capable of safely supporting the dead and live loads imposed on them.

7. The electric service and fixtures shall be maintained in safe working condition and shall be energized by an approved source of electric power and in compliance with the City Code and the laws, rules, and regulations of the State of Missouri. The electrical system in a structure shall be maintained so that it is free of any hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons.

C. *Buildings.* All buildings in the City of Elsberry shall meet the following minimum standards.

1. Architectural features. Architectural or decorative features such as cornices, belt courses, corbels, terra cotta, trim, wall facings and similar amenities shall be maintained in good repair with proper anchorage, painting, and in a safe condition.

2. Chimneys. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be structurally safe and sound, and maintained in good repair.

3. Exterior walls. Every exterior wall shall be plumb (unless originally designed otherwise); and free of holes, breaks, loose or rotting boards or timbers and any other conditions which might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building. All exterior surface materials, including wood, composition or metal siding, shall be maintained weatherproof and shall be properly surface coated when required to prevent deterioration. Masonry walls shall be plumb, free of cracks, chipping or missing material. Mortar joints shall be properly maintained and tuck pointed as needed to prevent loose joints or deterioration.

4. Fire Hazards. All buildings shall be free of all fire hazards and shall provide safe and sufficient means of egress in the event of a fire.

5. Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

6. Lighting fixtures. Every interior stairway, toilet room, kitchen, bedroom, bathroom, laundry room, boiler room and furnace room shall contain at least one electric lighting fixture.

7. Mechanical and HVAC systems and equipment. All mechanical, cooking, heating, ventilation, cooling, and air conditioning systems and equipment shall be properly installed and maintained in a safe, sanitary, and working condition, and shall be capable of performing their intended function. All safe controls for fuel burning equipment shall be maintained in effective operation. A sufficient safe supply of air for complete combustion of the fuel and for ventilation of the space containing

the fuel-burning equipment shall be provided for the fuel burning equipment.

8. Plumbing. All plumbing fixtures, stack, vents, and waste and sewer lines shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which they are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition. Plumbing fixtures shall have adequate clearances for usage and cleaning. A plumbing system shall be free of all hazards to the occupants or the building by reason of inadequate service, inadequate venting, cross connection back siphonage, improper installation, deterioration or damage or for similar reasons.

9. Roof. All roofs and flashing shall be sound, tight, sufficiently waterproof, weatherproof and fitted to exclude the entrance of rain, rodents, birds and other impediments to the maintenance of interior health and safety. All roofs shall be kept in good repair and free from defects, curling, missing, or deteriorating surface materials.

10. Stairs, decks, porches, etc. Every stair, deck, porch, fire escape, balcony and all appurtenances attached thereto shall be so constructed as to be safe to use, structurally sound, provide proper anchorage, and be capable of supporting the imposed loads. They shall be maintained in good repair and all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment. Every flight of stairs which is more than four (4) risers high shall have a graspable handrail on at least one (1) side of the stair and every open portion of stair, fire escape, porch, landing or balcony which is more than thirty (30) inches (762 mm) above the grade below shall have guardrails. Handrails shall be not less than thirty (30) inches (762 mm) nor more than thirty-four (34) inches (864 mm) high, measured vertically above the nosing of the treads. Guardrails shall not be less than thirty-six (36) inches (762 mm) high above the floor of the porch, landing or balcony. Every handrail and guardrail shall be firmly fastened and capable of bearing normally imposed loads and shall be maintained in good condition.

11. Street numbers. Each dwelling and building to which a street number has been assigned shall have the number so assigned displayed in a contrasting color to its background and in a position easily observed and readable from the adjacent street day and night. All numbers shall be at least four (4) inches high and a proportional width, with the minimum height increased by one (1) inch in height for every 75 feet that the numbers are located from the adjacent street.

12. Structural capacity. Every foundation, roof, floor, exterior wall, interior wall, ceiling, inside and outside stairways, every porch, balcony and every attachment to them shall be safe to use and capable of supporting loads that may be anticipated to be placed on them in normal use.

13. Surfaces. Every floor shall be free of loose, warped, protruding or rotted flooring materials. Paints or materials that remain toxic after being applied and after drying or hardening shall not be used. Every kitchen and bathroom floor surface shall be capable of being easily maintained in a clean and sanitary manner.

14. Water Service. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by an approved atmospheric type vacuum breaker or an approved permanently attached hose connection vacuum breaker. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices, and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C). A gas burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

15. Windows, doors and other openings. All openings in exterior walls shall be properly fitted with windows, doors or other such fixtures for which the opening was intended. Said windows, doors or other such fixtures shall be made of suitable materials compatible with the residential building, garage, accessory structure or other structure in which they are installed and they shall be maintained weatherproof and shall be properly surface coated when required to prevent deterioration. Every window and exterior door shall be substantially tight and shall be kept in sound condition and repair. Every window sash and door shall fit reasonably tight within its frame and shall be properly hinged. Every window shall be fully supplied with panes of glass or a rigid translucent substitute, free of cracks or holes. Screens, if installed, shall be kept in good repair. Every exterior door and its hardware shall be maintained in good condition. Door locks on all doors entering the dwelling or building shall be in good repair and capable of tightly securing the door.

16. Vegetation. All yard areas shall be covered by lawn, vegetation or landscaped in such a way as to prevent erosion of soil, dust or the blowing or scattering of dirt particles into the area or shall be treated to prevent same. All trees, bushes or

vegetation which overhang a public thoroughfare in such a way as to hinder the movement, obstruct the view or otherwise create a hazard for vehicles and pedestrians shall be trimmed or removed. Hazardous dead trees and shrubs shall be promptly removed.

17. Rubbish. All exterior property and premises, and the interior of every dwelling and building, shall be free from any accumulation of rubbish, refuse, trash, debris, or garbage. All rubbish, refuse, trash, debris, and garbage shall be disposed of in a clean and sanitary manner by placing such rubbish in approved containers.

18. Facilities for employees. All buildings at which employees are assigned to stay for at least two hours a day, shall contain a minimum of one interior toilet, one lavatory, and one drinking facility which shall be maintained in a clean and sanitary condition. Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared bathrooms and toilet rooms.

D. Vacant Land. All vacant land in the City of Elsberry shall meet the following minimum standards

1. All vacant premises or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

2. Vegetation. All yard areas shall be covered by lawn, vegetation or landscaped in such a way as to prevent erosion of soil, dust or the blowing or scattering of dirt particles into the area or shall be treated to prevent same. All trees, bushes or vegetation which overhang a public thoroughfare in such a way as to hinder the movement, obstruct the view or otherwise create a hazard for vehicles and pedestrians shall be trimmed or removed. Hazardous dead trees and shrubs shall be promptly removed.

3. Rubbish. All exterior property and premises, and the interior of every dwelling and building, shall be free from any accumulation of rubbish, refuse, trash, debris, or garbage. All rubbish, refuse, trash, debris, and garbage shall be disposed of in a clean and sanitary manner by placing such rubbish in approved containers.

E. Unoccupied Dwellings and Buildings. In addition to the other requirements of this section, any unoccupied structure in the City of Elsberry that is vacant for a period of thirty (30) days or more, or has been declared unfit for human habitation or unsafe, shall be made safe and secure so that it is not hazardous to the health, safety or welfare of the public and does not constitute a public nuisance. Any vacant structure with open and unguarded doors, entry ways, or windows shall be deemed to be a hazard to the public health, safety or general welfare and a public nuisance within the meaning of the City

Code.

(Ord 12-02-2009)

§44.510 MINIMUM LIVING SPACE AND FACILITIES STANDARDS FOR DWELLINGS.

All dwellings in the City of Elsberry shall meet the following minimum standards in addition to the standards stated in §44.505.

1. Minimum living space regulations. Every dwelling shall contain a minimum gross floor area of not less than six hundred (600) square feet for the first four (4) occupants of the dwelling, and two hundred (200) square feet for each additional occupant of the dwelling. The requirement shall be based on the measurement of the exterior perimeter of each habitable floor. It shall not include uninhabitable basements, crawlspaces, or attics.

2. Area for sleeping purposes. There shall be sufficient bedrooms for each occupant of the dwelling. Every bedroom shall have a minimum of 70 square feet. For bedrooms occupied by more than one person, the bedroom shall have a minimum of 50 square feet for each such person. Kitchens, dining rooms, and non-habitable spaces shall not be used for bedrooms or sleeping purposes.

3. Bathroom facilities: There shall be at least one properly functioning indoor toilet and lavatory in the dwelling. All toilets and lavatories shall be connected to an approved water supply, including hot and cold water, and to an approved sewer system. The lavatory shall be placed in the same room as the toilet. A kitchen sink shall not be used as a substitute for the required lavatory. There shall be one indoor bath or shower facility for every six occupants of the residential dwelling. Each bathroom shall be served by properly functioning and sanitary plumbing systems and facilities.

4. Kitchen: There shall be at least one kitchen containing: (a) a sink in good working condition, connected to an approved water supply including hot and cold water and also connected to an approved sewer system; (b) cabinets or shelves for the sanitary storage of non-perishable foodstuffs and for eating, drinking and cooking equipment and utensils; (c) adequate and safe space and hookups for a stove or similar device for cooking food; (d) a stove or similar device for cooking food; and (e) a properly working refrigerator or similar device for the sanitary storage of perishable foodstuffs.

5. Living room/Dining Room. If a dwelling has three to five occupants, it must have a combined minimum living room and dining room area of 150 square feet. If a dwelling has six or more occupants, it must have a combined minimum living room and dining room area of 200 square feet. Such area may not be included as a bedroom or sleeping area for purposes of establishing the minimum sleeping area

of the dwelling.

6. Heating. All dwellings shall be provided with heating facilities capable of maintaining an indoor room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

7. Electrical service. Dwellings shall be served by a three-wire, 120/240 volt, single phase electrical service having a rating of not less than 60 amperes. Every habitable space in a dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain at least one receptacle. Any bathroom receptacle outlet shall have ground fault circuit interrupter protection.

(Ord 12-02-2009)

§44.515 CERTIFICATE OF OCCUPANCY COMPLIANCE REQUIREMENTS

1. When a certificate of occupancy compliance is required under this Code, it shall be unlawful for any person to occupy, or for any owner or owner's agent to permit the occupation of, any dwelling without a certificate of occupancy compliance.

2. A new or renewed certificate of occupancy compliance shall be required for a building whenever:

    a. Ownership changes;

    b. If it is rented, when any of the tenants change;

    c. It has been found or declared unsafe or a public nuisance.

    d. A City Code violation complaint is filed regarding the property.

    e. A substantial portion of it has been repaired, rebuilt, remodeled, or added.

    f. It is newly constructed.

    g. When there is a change of use of the property or a change in occupancy.

3. Any certificate of occupancy compliance that is issued shall be valid and current through the time a renewed certificate is required under this Subchapter 44B.

4. It shall be the responsibility of both the proposed owner or tenant, and the current owner, of the property to apply for, and obtain a new or renewed certificate of occupancy

compliance when such certificate is required by the City Code. The City shall issue a certificate only if the premises, and its occupancy, comply with the requirements of this Ordinance.

5. The City may revoke a certificate of occupancy compliance if the dwelling, dwelling premises, or its occupancy fail to pass any inspection under this Code.

(Ord 12-02-2009)

§44.520 FEE FOR CERTIFICATE.

Upon application for a new or renewed certificate of occupancy compliance, the applicant shall pay a fee to the City in the amount of forty dollars ($40.00) which shall compensate the City for the cost of the initial inspection and one (1) reinspection. Each additional reinspection after the first reinspection shall be twenty-five dollars ($25.00). If a certificate of occupancy compliance is denied or suspended, the fees are non-refundable.

(Ord 12-02-2009)

§44.525 CONDITIONAL OCCUPANCY CERTIFICATE.

Occupancy shall be permitted on a conditional basis when, in the judgment of the Building Official, practical difficulties interfere with completion of all repairs required to bring the premises into full compliance prior to permitting occupancy. However, no conditional certificate shall be issued where there is a condition on the premises which can immediately threaten the interest of health, safety or general welfare of the general public or an occupant.

(Ord 12-02-2009)

§44.530 ISSUANCE OF OCCUPANCY CERTIFICATE.

A Certificate of Occupancy Compliance shall be issued when the building is in full compliance with this Ordinance.

(Ord 12-02-2009)

§44.535 OWNERS AND OCCUPANTS RESPONSIBLE FOR COMPLIANCE.

Both the owner, tenant, and occupant of a dwelling, building or structure shall comply with the requirements of this Subchapter 44B and maintain the premises that they own, rent, or occupy in accordance with those requirements and standards. Failure of an owner, tenant, or occupant to do so is a violation of this Code. Tenants and occupants of a dwelling shall keep that part of the dwelling or premises that they occupy or control in a clean, sanitary, and safe condition.

(Ord 12-02-2009)

§44.536 REPORTING CHANGE OF OCCUPANCY

1. Whenever there is a change of occupancy in a building, living unit, dwelling, or structure, both the owner and potential new occupant must report the change to the City Collector in writing before the change occurs so that an enforcement official may conduct a code compliance inspection according to the provisions of this Code.

2. Every three months, the owner of any two-family dwelling units, multiple-family dwelling units, mobile home park, or residential apartment building that has City water meters that serve more than one living unit, must file a written report with the City Collector stating whether there has been any change of occupancy during the previous three months or since the owner's last report, whichever is longer ("the 3 Month Report"). The 3 Month Reports must be filed on or within five business days prior to February 1st, May 1st, August 1st, and November 1st of each year. The 3 Month Reports filed for May 1st and November 1st must also list all tenants occupying each unit during the previous six months or since the owner's last 6 Month Report was filed, whichever is longer ("6 Month Report"). The 6 Month Report must list each such occupant by name, unit occupied, move-in and move-out dates, and dates of each certificate of occupancy issued for the Unit for the time period covered.

3. Failure to report a change of occupancy or failing to file a 3 Month or 6 Month report timely or accurately shall constitute a violation of this Chapter, and the person responsible for the failure shall be subject to the penalties of this Code.

(Ord. 2013-08-001)

§44.540 UNLAWFUL OCCUPANCY.

A person shall not occupy as owner-occupant or permit another person to occupy any unlawful structure or premises that are not in a sanitary and safe condition. It shall be unlawful to rent any building or dwelling when any of the minimum standards stated in this Code are not met. It shall be unlawful for any owner of a dwelling to permit that dwelling to be occupied when the minimum standards stated in this Ordinance are not met. Dwellings shall not be occupied by more occupants than permitted by this Ordinance.

(Ord 12-02-2009)

§44.545 ADMINISTRATION

A. Relief from Personal Liability. Any City Inspector, Building Official, officer, or employee who acts in good faith and without malice in the discharge of duties of enforcement of this Ordinance is relieved of all personal liability for any damage accruing to persons or property as a result of such acts or alleged failure to act. Further, the Inspector and Building Official shall not be held liable for any costs in any action, suit or proceeding that is instituted by the Building Official in the enforcement of this Chapter. In any of these

actions, the Building Official, inspector, officer or employee shall be defended or represented by the City's attorney at law until the final termination of the proceedings.

B. Inspections. In order to safeguard the public health, safety and welfare, the Inspector or Building Official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. Every owner and occupant of the premises shall give the Inspector or Building Official, agent or employee access to the premises at reasonable times for the purpose of making such inspection, maintenance, repairs or alterations as are necessary to comply with the provisions of the City Code. If any owner, occupant or other person in charge of a rental unit fails or refuses to permit free access and entry to the structure or premises under his control for any inspection pursuant to this Ordinance, the Inspector or Building Official may seek an administrative search warrant or other appropriate court order authorizing such inspections. The inspector shall disclose proper credentials of their respective office for the purpose of inspecting any and all buildings and premises in the performance of duties under this Ordinance. Whenever inspections are necessary by any other agency, the Building Official or Inspector shall make reasonable effort to arrange for the coordination of such inspections so as to minimize the number of visits by inspectors.

C. Workmanship. Any repairs or alterations which are caused directly or indirectly by the enforcement of this Ordinance shall be executed in a thorough and workmanlike manner. All materials utilized in the repair of structures shall match the appearance of the existing structure's material and color. When there are practical difficulties involved in carrying out provisions of this Ordinance, the Building Official shall be permitted to vary or modify such provision upon application of the owner or the owner's representative, provided that the spirit and intent of the law shall be observed and public health, safety and general welfare are assured. The provisions of this Ordinance are not intended to prevent the use of any material or method of construction not specifically prescribed by this Ordinance, provided any such alternative has been approved. An alternative material or method of construction shall be approved when the Inspector or Building Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this Ordinance and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Ordinance in quality, strength, effectiveness, fire-resistance, durability and safety. The Inspector or Building Official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly and if it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the Inspector or Building Official shall approve its use subject to the requirements of this Ordinance. The costs of all tests, reports and investigations required under these provisions shall be paid by the applicant.

D. Non-Conforming Conditions. If additional non-conforming conditions are encountered during the course of any approved alteration or repair which were not considered or known initially, the Inspector or Building Official shall have the authority to require compliance of such conditions with this Ordinance. The determination of what is necessary to bring such conditions into compliance shall take into consideration the use of alternatives and

equivalent approaches as provided for in this Ordinance. The Inspector or Building Official shall have the authority to approve construction changes in the field when conditions are encountered which make the originally approved work impractical, provided such changes in approved work can be readily determined to be in compliance with this Ordinance and are requested by the owner or the owner's agent, in writing, prior to such construction changes. Such changes shall be specifically documented by the owner or the owner's agent in describing the change in work and the reasons and justification for the change and shall be filed with the permit for the project.

(Ord 12-02-2009)

§44.550 NOTICES, AND ORDERS

A. Notice to Owner or to Person or Persons Responsible. Whenever the Building Official determines that there has been a violation of this Ordinance or has reasonable grounds to believe that such a violation has occurred, the Building Official may, in addition to serving a violation citation, give a notice and orders to the owner or any person responsible for the dwelling or dwelling property in the manner prescribed below. Such notice shall:

1. Be in writing;

2. Include a description of the property sufficient for identification (an address is sufficient);

3. Include a statement of the reason or reasons why it is being issued; and

4. Include a correction order requiring that action be completed to bring the premises into compliance with the provisions of this Ordinance within a period of ten (10) days or other time period deemed by the Inspector or Building Official to be reasonable for the action required.

B. Service of the Notice or Order. Service shall be deemed to be properly served upon such owner if a copy thereof is delivered to the owner personally; or by certified or registered mail addressed to the owner at the last known address with return receipt requested; or if the certified or registered letter is returned with receipt showing that it has not been delivered, by posting a copy thereof in a conspicuous place on the premises or about the structure affected by such notice and at least one (1) publication of such notice in a local newspaper of general circulation.

(Ord 12-02-2009)

§44.555 TRANSFER OF OWNERSHIP.

It shall be unlawful for the owner of any dwelling, building, premises or structure who has

received a violation notice or compliance order, or upon whom a notice of violation has been served, to sell, transfer, lease or otherwise dispose of the substandard building, dwelling, structure, or premises to another person until the provisions of the compliance order or notice of violation have been complied with, or sufficient financial and logistical arrangements for such compliance are made with the Building Official.

(Ord 12-02-2009)

§44.556 REVOCATION OF A CERTIFICATE OF OCCUPANCY

The certificate of occupancy compliance which has been issued for a dwelling make be revoked by the Building Inspector or the City Clerk:

1. When an owner neglects or refuses to make repairs or take other corrective action called for by order or notice of violation issued by a compliance official; or

2. There is a violation of this Subchapter at the dwelling.

§44.560 EMERGENCY.

Whenever the Building Official finds that an emergency exists on any premises or any structure or part thereof which requires immediate action to protect the public's health, safety or general welfare or that of the occupants thereof, the Building Official shall, with proper notice and service in accordance with the provisions of this Ordinance, issue an order reciting the existence of such an emergency and requiring such action taken as is necessary to meet such emergency. Notwithstanding other provisions of this Ordinance, such order shall be effective immediately.

(Ord 12-02-2009)

§44.565 APPEALS

A. Appeals. Any person affected by any order or notice which has been issued in connection with the enforcement of any provision of this Ordinance shall have the right to request a hearing on the matter before the City of Elsberry Board of Aldermen. the request for a hearing shall be granted if such person shall file a written petition with the Building Official requesting such hearing, pays an application fee in the amount of seventy-five dollars ($75.00), and states the grounds for the appeal within fifteen (15) days after the notice of violation was served.

B. Stay. Upon filing a notice of appeal with the Building Official, the Building Official shall submit to the City of Elsberry Board of Aldermen all documents constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from until the City of Elsberry Board of Aldermen renders its decision; provided however, that if the Building Official certifies to the City of

Elsberry Board of Aldermen that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, the enforcement proceedings shall not be stayed.

(Ord 12-02-2009)

§44.570 VIOLATION -- PENALTIES

1. Any person who shall violate a provision of this Ordinance, or shall fail to comply with any notice or order of the Building Inspector or Building Official provided for in this Ordinance, shall be guilty of a misdemeanor, punishable by a fine of up to Five Hundred Dollars ($500) for each violation. Each day that a violation continues without abatement is a separate violation.

2. The violator must also pay restitution to the City for any inspections, abatement notices, or abatement work performed at the cited address.

3. *Violations After Written Notice To Abate*. If the violation occurs after the defendant has received a written notice of abatement, and the violation is not abated within the times stated in the notice, then the violation shall punishable by a fine of not less than $200.00 for a first offense period at a single address, not less than $350.00 for a second offense period at a single address, and not less than $500.00 for any subsequent offense period at a single address. Each day that a violation continues without abatement is a separate violation. However, for purposes of determining the level of the fine based on the number of "offenses periods"(*i.e.,* $200, $350, or $500), the same violation at the same address that continues on consecutive days until abatement is considered as one "offense period". For example, if an abatement letter is received and tall weeds continue at the same address for five consecutive days after the abatement period expires, there are five separate violations that occurred during a single offense period. Thus, the fines for each of the five violations must be at least $40 each in order to assess a minimum fine of $200 for the entire offense period. (5 X $400 = $200). If the same owner repeats this same conduct the next month after receiving a second abatement letter, the fine for that second offense period must be a combined minimum of $350. Thus, each of the five violations that occurred in the second offense period would have to have a minimum fine of $70 to reach the $350 minimum (5 X $70 = $350). A higher fine may be imposed if the circumstances warrant it.

(Ord 12-02-2009).

§44.575 NUISANCE, INJUNCTION

Any violation of this Ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this Ordinance, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this Ordinance. Such application for

relief may include seeking a temporary restraining order, temporary injunction, or permanent injunction.

(Ord 12-02-2009)

§44.580 ABATEMENT

Any violation of this Subchapter constituting a nuisance shall be abated in accordance with the procedures in Chapter 61 of this Code.

(Ord. 2020-07-006)

SUBCHAPTER C – DEMOLITION

§44.700. DEMOLITION PERMIT REQUIRED

1. Any owner of property upon which an existing building is to be demolished in excess of four hundred (400) square feet within the City limits, and any person performing the demolition of such structure, must first apply for, and obtain, a demolition permit from the City. However, if such demolition work must be performed on an emergency basis, and the owner of the structure and the person performing the demolition obtain the permission of the Mayor or Chief of Police, the demolition may occur to the extent needed to address the emergency, in which case the person conducting the work shall notify the City and apply for the required demolition permit no later than the third (3rd) business day following the commencement of such demolition work.

2. If a permit is issued, the applicant shall pay the City a permit fee of Fifty Dollars ($50.00).

3. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance. If the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced, the Board of Aldermen is authorized to grant, in writing, one or more extensions of time for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

4. The City Code Enforcement Officer is authorized to suspend or revoke a permit issued under the provisions of this Code wherever the permit is issued in error; or on the basis of incorrect, inaccurate, or incomplete information; or the work is done in violation of any ordinance or regulation, or any of the provisions of this Code.

5. The demolition permit or copy shall be kept on the site of the work until the completion of the project.

(Ord. 2014-02-001; Amd. 2019-08-004)

§44.710. DEMOLITION PERMIT APPLICATION.

An application for a demolition permit shall be made in writing by the person owning the property upon which the demolition shall occur before the demolition work is commenced. The application shall be submitted to the City Code Enforcement Officer. The applicant shall pay a non-refundable application fee of Twenty-five Dollars ($25.00) to the City with the submission of the application and before any work is done. The application shall contain the following:

1. The address and location of the building or structure.

2. A description of the building or structure.

3. The dates when demolition is to commence and shall be completed.

4. A certificate, showing that public liability insurance in the amount of one hundred thousand dollars ($100,000.00) has been obtained by the applicant covering the demolition project.

5. A plan to ensure that the demolition shall not endanger any sewer or water connections with the City sewer and water systems, or any gas lines, electrical wires, fiber optics, communication lines, or other utility installations.

6. A copy of the security deposit required by this Subchapter.

7. An informal site plan showing the size and location of existing structures on the site, which structures are to be demolished and which are to remain, distances from lot lines, the established street grades, and the proposed finished grades.

8. A demolition plan stating: the demolition methods to be used, whether there are party walls involved, the safety plan to be implemented, the major equipment to be used, the noise and dust abatement measures to be used, the plans for the protection of pedestrian and vehicle traffic; the plans for the protection of adjacent structures, the hours of operation, the procedures for removing waste and debris from the site, and the procedures and sequence of the demolition work.

9. The name, address, and qualifications of the person or contractor who will be performing the demolition.

10. The name, address, and qualifications of the waste and debris hauler and a copy of the hauler's City waste hauling permit.

11. The name, address, and credentials of the site or facility where the waste and debris shall be taken. The site must be a properly permitted landfill or transfer station.

12. If required under Missouri or Federal law, a written report from a Missouri

certified asbestos inspector showing that there is no asbestos, lead, or other hazardous material that will cause a nuisance in the demolition process. If lead, asbestos, or other hazardous materials are present, include an abatement plan that will comply with State and Federal regulations shall be submitted.

13. The "One Call" or "DIG-RITE" reports showing the location of utilities on the site.

14. A statement from the owner whether there are hazardous materials in the building such as lead pipes, lead paint, thermostats, fluorescent bulbs, light ballasts that may contain Polychlorinated Biphenyls or PCBs, batteries, pesticides, cleaners, mercury-containing devices, air conditioning units or refrigeration units with refrigerants such as chlorofluorocarbons, CFCs, or other chemicals that would become hazardous wastes. If any such materials are present, the applicant must present a plan for the handling and disposal of those hazardous items in accordance with all applicable laws and regulations must be submitted.

15. Such other information as may be required by the City Code Enforcement Officer.

(Ord. 2014-02-001; Amd. 2019-08-004)

§44.720. ACTION ON DEMOLITION APPLICATION

1. Before any such permit shall be approved, the Code Enforcement Officer shall inspect the premises where the demolition work is to take place, and determine whether sufficient provisions for compliance with this Code, the proper care safety of the public, and of the City infrastructure on and adjacent to the property, have been made by the applicant.

2. If the Code Enforcement Officer finds that the terms of this Subchapter have not been, or are not being, fully complied with by the applicant; the Code Enforcement Officer shall reject the application and provide the applicant with written reasons that the application is being rejected. The applicant may resubmit the application within thirty days of the rejection once without paying any additional application fee. Any further applications shall require the payment of a separate application fee and shall be considered to be a separate application.

3. If the Code Enforcement Officer finds that the terms of this Subchapter have been, and are being, fully complied with by the applicant; the Code Enforcement Officer shall approve the application and issue a permit for such demolition in accordance with this Code and any special conditions required by the Code Enforcement Officer for the proper care safety of the public, and of the City infrastructure on and adjacent to the property, by the applicant.

(Ord. 2014-02-001; Amd. 2019-08-004)

§44.725. RIGHT OF APPEAL.

Any person aggrieved by any decision of the City Code Enforcement Officer shall have the right to appeal to the City Board of Aldermen by filing a written appeal with such City's Clerk and the City Code Enforcement Officer within ten days following the effective date of the action or decision complained of.

1. *Contents of appeal.* Such appeal shall set out generally the order or decision appealed from and shall include a statement of the facts and/or law relied upon to avoid such order.

2. *Hearing*. The board of aldermen shall fix a time and place for hearing the appeal and shall serve a written notice, as provided upon the appellant informing the appellant of the date, time, and location of the hearing. The Board of Aldermen shall also give such notice to the license officer and such officer shall be entitled to appear and defend such order.

3. *Effect of decision*. The findings of the Board of Aldermen shall be final and conclusive and shall be personally served upon the appellant as required herein.

(Ord. 2014-02-001; Amd. 2019-08-004)

§44.730. NOTICES REQUIRED BEFORE DEMOLITION MAY BEGIN

1. The applicant shall notify all utility companies serving the premises prior to commencing the demolition.

2. If required by applicable State, Federal, or County laws, the applicant must to the City submit an Asbestos National Emissions Standards for Hazardous Air Pollutants , or NESHAP , Notification of Demolition and Renovation form (780-1923) to the Air Pollution Control Program at least 10 business days prior to demolition start date. If required by applicable State, Federal, or County laws, the applicant must include a copy of the asbestos inspection report by a Missouri certified asbestos inspector.

3. If required by applicable State, Federal, or County laws, the applicant must submit to the City an Asbestos Project Notification form (780-1226) to the Air Pollution Control program at least 10 business days prior to the project start date. This is normally required if removal or disturbance of greater than 160 square feet, 260 linear feet or 35 cubic feet of regulated asbestos-containing materials will occur during the demolition project.

(Ord. 2014-02-001; Amd. 2019-08-004)

§44.735. DEMOLITION PERFORMANCE STANDARDS

All person owning property upon which demolition work is being performed, and any person performing such demolition work, shall comply with each of the following performance standards:

1. All demolition work shall be performed in a workmanlike manner and with the least amount of noise as practically possible. Care shall be taken to protect neighboring structures with adequate shoring and other measures to protect such structures.

2. Signs stating "Demolition work going on—No Trespassing" shall be erected on each side of the building that faces on a public street or alley. All persons working on or responsible for such demolition shall ensure that persons not performing the demolition are warned away from such premises, and are not permitted to play in, or on, or frequent, such structures.

3. Adequate protection shall be provided to prevent injury to any City or public street, utility, infrastructure, or appurtenances.

4. Demolition equipment and materials shall be stored and placed so as not to endanger the public, the workers, or adjoining property for the duration of the project.

5. Waste materials shall be removed in a manner which prevents injury or damage to persons, adjoining properties, and public rights-of-way.

6. Adequate fire safety equipment and protocols shall be maintained during demolition.

7. The work of demolishing any building shall not be commenced until adequate and sufficient pedestrian protection is in place. Pedestrians shall be protected during demolition activities. Signs shall be provided to direct pedestrian traffic safely away from the demolition site.

8. Adjoining public and private property shall be protected from damage during demolition work. Protection must be provided for the adjoining property's footings, foundations, party walls, chimneys, skylights and roofs. Provisions shall be made to control water runoff and erosion during demolition activities. The person making or causing an excavation to be made as part of the demolition must give written notice to the owners of adjoining buildings advising them that the excavation is to be made and that the adjoining buildings should be protected. Said notification shall be delivered not less than five (5) days prior to the scheduled starting date of the excavation.

9. Demolition materials and equipment shall not be placed or stored so as to obstruct access to fire hydrants, standpipes, fire or police alarm boxes, catch basins or manholes, nor shall such material or equipment be located within 20 feet of a street intersection, or placed so as to obstruct normal observations of traffic signals or to hinder the use of public transit

loading platforms.

10. Demolition materials, fences, sheds or any obstruction of any kind shall not be placed so as to obstruct free approach to any fire hydrant, fire department connection, utility pole, manhole, fire alarm box, or catch basin, or so as to interfere with the passage of water in the gutter or storm drains. Protection against damage shall be provided to such utility fixtures during the progress of the work, but the sight of such fixtures shall not be obstructed.

11. Where a structure has been demolished or removed, the vacant lot shall be filled and maintained to the surrounding pre-demolition existing grade.

12. Combustible debris shall not be accumulated within buildings. Combustible debris, rubbish and waste material shall be removed from buildings at the end of each shift of work. Combustible debris, rubbish and waste material shall not be disposed of by burning on the site.

13. Materials susceptible to spontaneous ignition, such as oily rags, shall be stored in an approved safety disposal container.

14. The owner of the property upon which the demolition work is being performed shall designate a person to be the fire prevention program superintendent who shall be responsible for the fire prevention program and ensure that it is carried out through completion of the project.

14. When required by the City Code Official or the Elsberry Fire Protection District Fire Chief, qualified personnel shall be provided to serve as an on-site fire watch during work that is hazardous in nature – including welding and cutting with welding equipment or torches. Fire watch personnel shall be provided with at least one approved means for notification of the fire department and their sole duty shall be to perform constant patrols and watch for the occurrence of fire.

15. Operations involving the use of cutting and welding shall be done with two persons present at all times and shall be done safely with adequate and sufficient safeguards for fire prevention and suppression.

16. Approved vehicle access for fire fighting shall be provided to all demolition sites. Vehicle access shall be provided to within 100 feet (30 480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus access is available.

17. Service utility connections shall be discontinued and capped in accordance with the City requirements and Codes.

18. Comply with any lead, asbestos, or other hazardous materials abatement plan and with all applicable State and Federal regulations relating to such materials and conditions.

19. Comply with all applicable State and Federal laws and regulations.

20. Comply with all applicable City Codes and all requirements stated in the approved demolition permit, including ordinances regulating noise and hours of operation of machinery.

21. Comply with all plans submitted to the City, including noise abatement and dust abatement.

22. No demolition work shall be performed between the hours of 8:00 pm. and 7:00 a.m.

(Ord. 2014-02-001; Amd. 2019-08-004)

§44.740. DISPOSAL OF DEMOLITION MATERIALS.

Material from buildings which are being demolished shall be disposed of at an approved solid waste disposal facility and shall comply with all applicable Federal, State, and local rules and regulations and any special conditions which may be established for that site.

(Ord. 2014-02-001; Amd. 2019-08-004)

CHAPTER 45 – FLOODPLAIN MANAGEMENT ORDINANCE

ARTICLE 1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES

§45.010. STATUTORY AUTHORIZATION.

The legislature of the State of Missouri has in Chapter 89, RSMO. delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect health, safety, and general welfare. Therefore, the Board of Aldermen of Elsberry, Missouri ordains as follows:

(amended 9-2-98)

§45.020. FINDINGS OF FACT

1. Flood Losses Resulting from Periodic Inundation.

   The flood special hazard areas of Elsberry, Missouri are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of

commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

2. General Causes of the Flood Losses.

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy in flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated or otherwise unprotected from flood damages.

3. Methods Used to Analyze Flood Hazards.

The Federal Insurance Administrator's Flood Insurance Study (FIS) associated with the September 29, 2010 Flood Insurance Rate Map identified in §45.100, which is adopted as the basis of this ordinance, uses a standard engineering method of analyzing flood hazards which consist of a series of interrelated steps.

a. Selection of a base flood that is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent change of occurrence in anyone year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated September 29, 2010, as amended, and any future revisions thereto.

b. Calculation of water surface profiles are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.

c. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.

d. Delineation of floodway encroachment lines which within no development is permitted that would cause any increase in flood height.

e. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

(amended 9-2-98; 06-2010-001)

§45.030. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare; to minimize those losses described in Article 1, Section B(l) [§45.020(1)]; to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) by applying the provisions of this ordinance to:

1. restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;

2. require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and

3. protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

(amended 9-2-98)

ARTICLE 2 GENERAL PROVISIONS

§45.100. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of the City of Elsberry, Missouri identified as numbered and unnumbered A zones and AE zones, on the Flood Insurance Rate Map (FIRM) for Lincoln County, Missouri on map panels 29113C0110D, and 29113C0120D dated September 29, 2010 as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the Board of Aldermen or its duly designated representative under such safeguards and restrictions as the Board of Aldermen or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

(amended 9-2-98; 06-2010-001)

§45.110. FLOODPLAIN ADMINISTRATOR

The Zoning Administrator is hereby designated as the Floodplain Administrator under this ordinance. If the office of Zoning Administrator is vacant, then the City Clerk shall serve as the Floodplain Administrator under this ordinance.

(amended 9-2-98; 06-2010-001)

§45.120. COMPLIANCE

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this

ordinance and other applicable regulations.

(amended 9-2-98)

§45.130. ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

(amended 9-2-98)

§45.140. INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

(amended 9-2-98)

§45.150. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of Elsberry, Missouri, any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(amended 9-2-98)

ARTICLE 3 ADMINISTRATION

§45.200. FLOODPLAIN DEVELOPMENT PERMIT (REQUIRED)

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in Article 2, Section A. [§45.100] No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

(amended 9-2-98)

§45.210. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The City Clerk is hereby appointed to administer and implement the provisions of this ordinance.

(amended 9-2-98)

§45.220. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

Duties of the Floodplain Administrator shall include, but not be limited to:

1. review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;

2. review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State or local governmental agencies from which prior approval is required by Federal, State, or local law, including §404 of the Federal Water pollution Control Act of 1972, 33U.S.C.§1334;;

3. review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.;

4. issue floodplain development permits for all approved applications;

5. notify adjacent communities and the appropriate agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);

6. assure that maintenance is provided within the altered or relocated portion of any watercourse so that the flood-carrying capacity is not diminished; and

7. verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;

8. verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;

9. when floodproofing techniques are utilized for a particular non-residential structure, the Floodplain Administrator shall require certification from a registered professional engineer or architect.

10. In areas through which rivers, streams or creeks, continuously or periodically flow, or which are subject to flooding by spring freshets, fall and early winter storms and intense rainstorms, provide notice to adjacent communities, the State Coordinating Office, and the

Federal Insurance Administrator of any proposed alteration or relocation of a watercourse. No permit for such areas where a water course is to be altered or relocated may be issued until the application is approved by the State Coordinating Office or waived by the Federal Insurance Administrator.

(amended 9-2-98; 06-2010-001)

§45.230. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;

2. identify and describe the work to be covered by the floodplain development permit;

3. indicate the use or occupancy for which the proposed work is intended;

4. indicate the assessed value of the structure and the fair market value of the improvement;

5. specify whether development is located in designated flood fringe or floodway;

6. identify the existing base flood elevation and the elevation of the proposed development;

7. give such other information as reasonable may be required by the Floodplain Administrator;

8. be accompanied by plans and specifications for proposed construction; and

9. be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

10. Provide the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;

11. If the structure has been floodproofed in accordance with this Chapter, provide the elevation in relation to mean sea level) to which the structure was floodproofed;

12. Document and provide assurances that the previous flood carrying capacity within any altered or relocated portion of any watercourse is maintained; and

13. In areas through which rivers, streams or creeks, continuously or periodically flow, or which are subject to flooding by spring freshets, fall and early winter storms and intense

rainstorms, document any alteration or relocation of a watercourse. If any such watercourse is to be altered or relocated, provide draft notices to adjacent communities, the State Coordinating Office, and the Federal Insurance Administrator for the Floodplain Administrator's use.

(amended 9-2-98; 06-2010-001)

ARTICLE 4 PROVISIONS FOR FLOOD HAZARD REDUCTION

§45.300. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A zones and AE zones, unless the conditions of this section are satisfied.

2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.

3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any numbered A zone or AE zone on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

4. For all areas subject to this Chapter under §45.100:

    A. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall be:

        1. designed or modified to provide adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

        2. constructed with materials resistant to flood damage;

        3. constructed by methods and practices that minimize flood damages; and

        4. constructed with all electrical, heating, ventilation, plumbing,

air-conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

B. All new or replacement water supply systems and/or sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. On-site waste disposal systems shall be located so as to avoid impairment or contamination.

C. All subdivision proposals and other proposed new development, including manufactured home parks or subdivisions shall:

1. Be consistent with the need to minimize flood damage;

(2) Locate and construct all public utilities and facilities, such as sewer, gas, electrical, to minimize or eliminate flood damage;

(3) Provide adequate drainage so as to reduce exposure to flood hazards; and

D. All proposals for development, including proposals for manufactured home parks and subdivisions, of five (5) acres or fifty (50) lots, whichever is less, shall include the base flood elevation data within such proposals.

5. Storage, material, and equipment

a. The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

b. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

6. Accessory Structures

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard floodplain management requirements of this ordinance; and a floodplain development permit has been issued.

(amended 9-2-98; 06-2010-001)

§45.310. SPECIFIC STANDARDS

1. In all areas identified as numbered and unnumbered A zones and AE zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2) [§45.300(2)], the following provisions are required:

   a. Residential Construction

      New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated to or one foot above base flood elevation.

   b. Non-Residential Construction

      New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated to or one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 3, Section C (9) [§45.220(a)].

   c. Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

      (1) A minimum of two openings have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and

      (2) the bottom of all opening shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(amended 9-2-98)

§45.320. MANUFACTURED HOMES

1. All manufactured homes to be placed within all unnumbered and numbered A zones and AE zones, on the community's FIRM shall be required to be installed using methods and

practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. The manufactured home must also meet all other requirement of State law and the City Code, including tie down requirements for resisting wind forces.

2. All manufactured homes that are placed or substantially improved within unnumbered or numbered A zones and AE zones, on the community's FIRM on sites that are outside of manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to and existing manufactured home park or subdivisions; or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial-damage as the result of a flood, shall be:

    a. elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or one foot above the base flood elevation;

    b. be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement; and

    c. meet all other requirement of State law and the City Code, including tie down requirements for resisting wind forces..

3. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones and AE zones, on the community's FIRM, that are not subject to the provisions of subsection 2 above, shall be elevated so that either:

    a. the lowest floor of the manufacture home is at or one foot above the base flood level; or

    b. that manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

The manufactured home must also meet all other requirement of State law and the City Code, including tie down requirements for resisting wind forces.

(amended 9-2-98; 06-2010-001)

§45.330. FLOODWAY

Located within areas of special flood hazard established in Article 2, Section A [§45.100] are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters that carry debris and potential projectiles, the following provisions shall

apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot at any point.

2. The community shall prohibit any encroachments, including fill, new construction, substantial-improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

3. If Article 4, Section D(2) [§45.330(2)] is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Article 4.

4. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4, Section A(2) [§45.300(2)].

(amended 9-2-98)

§45.340. RECREATIONAL VEHICLES

1. Require that recreational vehicles placed on sites within all unnumbered and numbered A zones and AE zones on the community's FIRM either:

    a. be on the site for fewer than 180 consecutive days, and be fully licensed and ready for highway use*; or

    b. meet the permitting, elevating, and the anchoring requirements for manufactured homes of this ordinance.

    * A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

(amended 9-2-98)

ARTICLE 5 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

§45.400. ESTABLISHMENT OF APPEAL BOARD

The Board of Adjustment as established by Elsberry, Missouri, shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

(amended 9-2-98)

§45.410. RESPONSIBILITY OF APPEAL BOARD

Where an application for a floodplain development permit or request for a variance from the floodplain management regulations is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit or variance directly to the Appeal Board, as defined in Article 5, Section A.

The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

(amended 9-2-98)

§45.420. FURTHER APPEALS

Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the Board of Aldermen.

(amended 9-2-98)

§45.430. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

In passing upon such applications for variances, the Board of Adjustment shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. the danger to life and property due to flood damage;

2. the danger that materials may be swept onto other lands to the injury of others;

3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. the importance of the services provided by the proposed facility to the community;

5. the necessity to the facility of a waterfront location, where applicable;

6. the availability of alternative locations, not subject to flood damage, for the proposed use;

7. the compatibility of the proposed use with existing and anticipated development;

8. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. the safety of access to the property in times of flood for ordinary and emergency vehicles;

10. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,

11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

(amended 9-2-98)

§45.440. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 2 through 6 below have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination provided the proposed activity will not preclude the structure's continued historic designation.

3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5. Variances shall only be issued upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as $25.00 for $100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record

of all variance actions as required by this ordinance.

(amended 9-2-98)

§45.450. CONDITIONS FOR APPROVING VARIANCES FOR ACCESSORY STRUCTURES

Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Article 5, Sections D and E of this ordinance.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-floodproofed.

1. Use of the accessory structures must be solely for parking and limited storage purposes in zone A only as identified on the community's Flood Insurance Rate Map (FIRM).

2. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A(4)(b) [§45.300(4)(b)] of this ordinance.

3. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) [§45.300(4)(a)] of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

4. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A(4)(d) [§45.300(4)(d)] of this ordinance.

5. The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with Article 4, Section B (1)(c) [§45.310(1)(c)] of this ordinance.

6. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section D(2) [§45.330(2)] of this ordinance. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.

7. Equipment, machinery, or other contents must be protected from any flood damage.

8. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.

9. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as $25.00 for $100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

10. Wet-floodproofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

(amended 9-2-98)

ARTICLE 6 PENALTIES FOR VIOLATION

§45.500 PENALTIES

Violation of the provisions of this ordinance 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 ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Flood Administrator or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

(amended 9-2-98)

ARTICLE 7 AMENDMENTS

§45.600. AMENDMENTS

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Elsberry, Missouri. At least 20 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Region VII office of the Federal Emergency Management Agency (FEMA). The

regulations of this ordinance are in compliance with the National Flood Insurance Program (NFIP) regulations.

(amended 9-2-98)

ARTICLE 8 DEFINITIONS

§45.700 DEFINITION

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

"**100-year Flood**" see "base flood."

"**Accessory Structure**" means the same as "appurtenant structure."

"**Actuarial Rates**" see "risk premium rates."

"**Administrator**" means the Federal Insurance Administrator.

"**Agency**" means the Federal Emergency Management Agency (FEMA).

"**Appeal**" means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

"**Appurtenant Structure**" means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

"**Area of Special Flood Hazard**" is the land in the floodplain within a community subject to a one percent or greater change of flooding in any given year.

"**Base Flood**" means the flood having a one percent chance of being equaled or exceeded in any given year.

"**Basement**" means any area of the structure having its floor subgrade (below ground level) on all sides.

"**Building**" see "structure."

"**Chief Executive Officer**" or "**Chief Elected Official**" means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

"**Community**" means any State or area or political subdivision thereof, which has authority to

adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"**Development**" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"**Elevated Building**" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"**Eligible Community**" or "**Participating Community**" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood insurance Program (NFIP).

"**Existing Construction**" means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January I, 1975, for FIRMs effective before that date. "*existing construction*" may also be referred to as "*existing structures*. "

"**Expansion to an Existing Manufactured Home Park or Subdivision**" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"**Flood**" or "**Flooding**" means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland and/or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"**Flood Boundary and Floodway Map (FBFM)**" means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"**Flood Elevation Determination**" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"**Flood Elevation Study**" means an examination, evaluation and determination of flood hazards.

"**Flood Fringe**" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"**Flood Hazard Boundary Map (FHBM)**" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"**Flood Insurance Rate Map (FIRM)**" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"**Flood Insurance Study (FIS)**" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"**Floodplain**" or "**Flood-prone Area**" means any land area susceptible to being inundated by water from any source (see "flooding').

"**Floodplain Management**" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"**Floodplain Management Regulations**" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

"**Floodproofing**" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

"**Floodway**" or "**Regulatory Floodway**" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"**Floodway Encroachment Lines**" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

"**Freeboard**" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "*Freeboard*" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"**Functionally Dependent Use**" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"**Highest Adjacent Grade**" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"**Historic Structure**" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly, by the Secretary of the Interior in states without approved programs.

"**Lowest Floor**" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

"**Manufactured Home**" means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "*manufactured home*" does not include a "*recreational vehicle.* "

"**Manufactured Home Park or Subdivision**" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"**Map**" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value" or **"Fair Market Value"** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"**Mean Sea Level**" means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"**New Construction**" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"**New Manufactured Home Park or Subdivision**" means a manufactured home park or

subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"**(NFIP)**" means the National Flood Insurance Program (NFIP).

"**Participating Community**" also known as an "*eligible community*, " means a community in which the Administrator has authorized the sale of flood insurance.

"**Person**" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"**Principally Above Ground**" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"**Recreational Vehicle**" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy A Violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"**Risk Premium Rates**" means those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. "*Risk premium rates*" include provisions for operating costs and allowances.

"**Special Flood Hazard Area**" see "*area of special flood hazard*."

"**Special Hazard Area**" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A and AE.

"**Start of Construction**" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory

structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State Coordinating Agency" means that agency of the state government, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"**Structure**" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "*Structure*" for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"**Substantial-Damage**" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"S**ubstantial-Improvement**" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "*start of construction*" of the improvement. This term includes structures which have incurred "*substantial damage*," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "*historic structure*, "provided that the alteration will not preclude the structure's continued designation as a "*historic structure*. "

(amended 9-2-98)

CHAPTER 46 - FAIR HOUSING

§46.010

The Board of Aldermen of the City of Elsberry hereby declares it to be the public policy of said City to eliminate discrimination and safeguard the right of any person to sell, purchase, lease, rent or obtain financing of real property without regard to race, color, sex, national origin or ancestry and religion. This Chapter shall be deemed an exercise of the police powers of the City of Elsberry, Missouri, for the protection of the public welfare, prosperity, health and peace of the people of said City.

(Ord. 10-1-1988)

§46.020 DEFINITIONS

For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein unless the context otherwise indicates.

1. The word **"person"** shall include one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy, or receivers.

2. The phrase **"unlawful discriminatory housing practice"** shall mean any discrimination or segregation or separation against any person or group of persons because of race, color, sex, national origin or ancestry, and religion, and shall include only those unlawful practices and acts as set forth in Section 46.030 of this Chapter.

3. The word **"owner"** shall mean and include the owners, lessee, sublessee, assignee, manager, agent, or other person, firm or corporation, having the right to sell, rent or lease any housing accommodation or real property within the corporate limits of the City.

4. The term **"real estate broker"** shall mean any person who, for a fee or other valuable consideration sells, purchases, exchanges, rents, negotiates, offers, or attempts to negotiate the sale, purchase, exchange of rental or housing accommodations or real property of another person.

5. The term **"real estate salesman or agent"** shall mean any person employed by a real estate broker to perform, or to assist in the performance of, any or all of the functions of a real estate broker.

6. The term **"financial institution"** shall mean any person regularly engaged in the business of lending money or guaranteeing loans on housing accommodations or real property.

7. The term **"real property"** shall include all real estate, leaseholds, and any vacant land offered for sale or rent.

8. The term **"housing accommodation"** shall mean:

    A. Any building or portion thereof, whether such building or portion is constructed or is to be constructed, which is used or intended for use as the residence or sleeping place of one or more persons.

    B. The term "housing accommodation" shall not mean or include:

        (1) The rental of a dwelling, or a portion thereof, containing accommodation for no more than two families, one of which is occupied by the owner or his family at the time of rental.

(2) The rental of less than four (4) rooms in a one-family dwelling to another person or persons by the owner or occupant of such accommodation in which he or members of his family reside.

(Ord. 10-1-1988)

§46.030 UNLAWFUL DISCRIMINATORY HOUSING PRACTICES

It shall be unlawful discriminatory housing practices:

1. For the owner, real estate broker, real estate salesman, or employees or agent thereof:

   A. To refuse to sell, rent, assign, lease, or sublease, or offer for sale, rental, lease, assignment, or sublease, or to refuse to negotiate for the sale, rental, lease, assignment, or sublease of any real property or portion thereof which is in fact listed or available for sale, rent, lease, or sublease to any person who has shown the financial ability to satisfy the terms and conditions of a sale, rental, assignment, lease, or sublease of said property, or to otherwise deny or withhold any housing accommodations or real property or any part or portion thereof to or from any person because of the race, color, sex, religion, national origin, or ancestry of such person.

   B. To discriminate against any person because of his race, color, sex, religion, national origin or ancestry in the terms, conditions, or privileges of the sale, lease, rental, assignment or sublease of any housing accommodations or real property or part or portion thereof or in the furnishing of facilities or services in connection therewith; or

   C. To print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed posted, or mailed, any statement, advertisement, publication, or sign, or use any form of application for the purchase, rental, lease, assignment, or sublease of any housing accommodations or real property or part or portion thereof which expresses, directly or indirectly any limitation, specification, or discrimination as to race, color, sex, religion, national origin or ancestry or any intent to make any such limitation, specification or discrimination.

2. For any persons or financial institution or loan institution to which application is made for financial assistance for the purchase, acquisition or construction of any housing accommodations or real property or part or portion thereof or any agent employee thereof:

   A. To discriminate against any person because of the race, color, sex, religion, national origin or ancestry of such person or of prospective occupants or tenants of such housing accommodations or real property or part or portion thereof, in the granting, withholding, extending, modifying, or renewing, or in the fixing of the

rates, terms, conditions, or provisions or any such financial assistance or in the extension of services in connection therewith; or

B. To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, sex, religion, national origin, or ancestry, or any intent to make any such limitation, specification or discrimination.

3. For any person, owner, real estate broker, real estate salesman, or agent thereof:

A. To discriminate against any person because of the race, color, sex, religion, national origin or ancestry of such person or of prospective occupants or tenants of such housing accommodations or real property or part or portion thereof, in the granting, withholding, extending, modifying, or renewing, or in the fixing of the rates, terms, conditions, or provisions of any such financial assistance or in the extension of services in connection therewith; or

B. To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, sex, religion, national origin, or ancestry, or any intent to make any such limitation, specification or discrimination.

4. For any person, owner, real estate broker, real estate salesman, or agent thereof:

A. To discriminate or to engage in economic or other reprisals against another person because such person complies with the provisions of this Chapter or has opposed any practice forbidden under this act, or has fled a complaint, testified, or assisted in any proceedings under this Chapter.

B. To aid, abet, incite, compel, coerce, cooperate or participate in the doing of any act declared to be a discriminatory practice under the provisions of this Chapter, or to obstruct or prevent compliance with the provisions of this Chapter, or to attempt directly or indirectly to commit any act declared by this Chapter to be a discriminatory practice.

C. To induce or attempt to induce the sale or listing for sale of any dwelling unit, commercial unit, or real property or any part or portion thereof by representing that a change has occurred or will or may occur with respect to the racial, religious, or ethnic composition of the block, neighborhood, or area in which the property is located, or to induce or attempt to induce such sale by representing that the presence or anticipated presence of persons of any particular race, religion, sex, or national origin or color in the area will or may result in:

(1) The lowering of property values;

(2) A change in the racial, religious, or ethnic composition of the block, neighborhood, or area in which the property is located;

(3) An increase in behavior in criminal or anti-social behavior in the area;

(4) A decline in the quality of the schools serving the area.

(Ord. 10-1-1988)

§46.040 EXEMPTIONS

Nothing in this Chapter shall prohibit a religious organization, association, or society, or any non-profit institution or organization organized, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rentals or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this Chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(Ord. 10-1-1988)

§46.050 ADMINISTRATION OF THIS CHAPTER

1. Any person claiming to be aggrieved of an unlawful discriminatory housing practice, hereinafter referred to as a "complainant" may on his own behalf, or by his attorney, make, sign and file with the City Clerk a complaint in writing, under oath, which shall state the name and address of the person alleged to have committed an unlawful discriminatory housing practice. The City Clerk will then refer the complaint to the Board of Aldermen. Said complaint shall set forth the particulars thereof and contain such other information as may be required by the City Clerk of the City of Elsberry, Missouri.

2. Alternatively" the Board of Aldermen may issue, in like manner, a verified complaint of an alleged unlawful discriminatory housing practice.

3. Any complaint filed under this Chapter must be filed within thirty (30) days after the date of the alleged incident.

4. In the event of a complaint being filed pursuant to this Section, a true copy of such complaint shall forthwith be transmitted by certified United States mail, postage prepaid, addressed to the person complained against.

5. Every complaint of a violation of this Chapter shall be referred to the City Clerk of the

City of Elsberry; and the Board of Aldermen shall forthwith notify the person against whom the complaint is made. The identity of the aggrieved person shall be made known to the person against whom the complaint is made at that time. If the Board of Aldermen, after investigation, finds there is no merit to this complaint, the same shall be dismissed. If the City Council finds that there is merit to the complaint, in its opinion, then and in that event, it will endeavor to eliminate the alleged discriminatory practice by conference and conciliation.

6. If the City Council, within thirty (30) days from the receipt of such complaint, is unable to eliminate the alleged discriminatory practice by a conference or conferences and conciliation, then and in the event, the City Clerk of the City of Elsberry shall return the complaint to the City Attorney for handling; and, after the final determination of whether or not to prosecute on said complaint, the City Attorney may commence a proceeding in the Municipal Court for the prosecution of said complaint as permitted by law.

(Ord. 10-1-1988)

§46.060 PENALTIES

1. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined in an amount not to exceed $100.00 or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

2. Any person making false, malicious or unfounded accusations against any person under oath and under the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined in an amount not to exceed $100.00 or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

(Ord. 10-1-1988)

§46.070

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Chapter which will remain in full force and effect.

(Ord. 10-1-1988)

§46.080

This chapter shall be in force and take effect from and after its passage by the Board of Aldermen of the City of Elsberry, Missouri and publication in the official City paper.
(Ord. 10-1-1988)

APPENDIX - SUBSEQUENT UNCODIFIED HOUSING POLICY ORDINANCES

ORDINANCE 6-1-1989

BILL No. 6-1-89 ORDINANCE NO. 6-1-89

AN ORDINANCE PROVIDING "FAIR HOUSING" FOR THE CITY OF ELSBERRY , MISSOURI. DEFINING DISCRIMINATORY HOUSING PRACTICES, AND CREATING A FAIR HOUSING COMMITTEE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ELSBERRY, MISSOURI, AS FOLLOWS:

SECTION 1. - Declaration of Policy

The BOARD OF ALDERMEN OF THE CITY OF ELSBERRY, MO hereby declares it to be the public policy of the city to eliminate discrimination and safeguard the right of any person to sell, purchase, lease, rent or obtain real property without regard to race, sex, color, religion, national origin or ancestry. This ordinance shall be deemed an exercise of the police powers of the City of ELSBERRY, Missouri, for the protection of the public welfare, prosperity, health and peace of the people of the city of ELSBERRY, MISSOURI.

SECTION 2. - Definitions

For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein unless the context otherwise indicates.

a. Person shall include any individual, form, partnership or corporation.

b. Aggrieved Person shall include any person who is attempting to provide bousing for himself and/or his family in the City of ELSBERRY , Missouri.

c. Discriminate shall mean distinctions in treatment because of race, sex, color, religion or national origin of any person.

SECTION 3. - Discriminatory Practices

It shall be a discriminatory practice and a violation of this ordinance tor any person to:

a. Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale of, or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, sex, color, religion or national origin of any person.

b. Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, sex, color, religion, or national origin.

c. Make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, sex, color, religion or national origin, or an intention to make any such preference, limitation, or discrimination.

d. Represent to any person because of race, sex, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

e. For profit to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood or a person or persons of a particular race, sex, color, religion, or national origin.

f. Bars discrimination in the sale or rental of housing on the basis of a handicap, and requires the design and construction of new multifamily dwelling with four (4) or more units to meet certain adaptability and accessibility requirements.

g. Bars discrimination in the sale or rental of housing because a family has children, but exempts certain types of buildings that older persons, e.g. Section 202 housing.

SECTION 4. - Discrimination in the Financing of a House

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consist in whole or in part in the making of commercial real estate loans, to deny a loan to a person applying therefore for the purpose of purchasing, constructing, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount or conditions of such loan, because of the race, sex, color, religion, or national origin of such person or of any person associated with him in connection with such financing.

SECTION 5. - Exemptions

The provisions of this ordinance, and particularly Section 3 hereof, shall not apply to the following:

a. A rental or leasing of a dwelling unit in a building which contains housing accommodations for not more then two (2) families living independently of each other, if the owner or members of his family reside in such dwelling unit.

b. A rental or leasing to less than five (5) persons living in a dwelling unit by the

owner if the owner or members of his family reside therein.

c. Any single family house sold or rented by an owner provided that such house is sold or rented:

(1) without the use of sale or rental facilities or services of real estate brokers, agents, salesmen, or persons in the business of selling or renting dwelling, and

(2) without the publication, posting or mailing of any advertisement in violation of Section 3 (c) of this ordinance.

provided however, that:

(1) nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, and

(2) that any such private individual owner does not own any interest in, nor is there owed or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single family houses at the same time.

d. For the purpose of subsection d. a person shall be in the business of selling or renting dwelling if:

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed, or intended, for occupancy, by or occupied by five or more families.

SECTION 6. - Administration

a. There is hereby created a Fair Housing Committee whose memberships shall consist of five members, who shall be appointed by the Mayor of the City with the approval of the BOARD OF ALDERMEN.

b. Every complaint of a violation of this ordinance shall be referred to the Fair Housing

Committee. The Fair Housing Committee shall forthwith notify the person against whom the complaint is made. The identity of the aggrieved person shall be made known to the person against whom the complaint is made at that time. If the Fair Housing Committee, after investigation, finds that there is no merit in the complaint the same shall be dismissed. If the Fair Housing Committee finds that there is merit in the complaint, in their opinion, then and in that event, the Fair Housing Committee will endeavor to eliminate the alleged discriminatory practice by conference and conciliation.

c. If the Fair Housing Committee is unable to eliminate the alleged discriminatory practice by a conference and conciliation, then and in that event, the Fair Housing Committee shall forward said complaint to the City Attorney for handling. The final determination of whether or not to prosecute on said complaint shall be left to the City Attorney.

SECTION 7. - Enforcement

a. Any person convicted of a violation of this ordinance shall be punished by a fine of not more than Two Hundred Dollars ($200.00) or by confinement in the city jail for not more than thirty (30) days, or by both such fine and imprisonment.

b. The City Attorney, instead of filing a complaint in the Municipal Court of said city, may, as an alternative remedy, seek to have the alleged discriminatory practices abated by an action for an injunction to be maintained in the appropriate Circuit Court of the State of Missouri.

SECTION 8. - Severability

If any section, subsection 1 paragraph, sentence, clause, or phrase of these standards shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect. To this end the provisions of this ordinance are hereby declared to be severable.

SECTION 9. - Savings Clause

This ordinance shall not affect violations of any other ordinance, code or regulation of the City of Elsberry, Missouri existing prior to this effective date hereof. Any such violations shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

FIRST READING 6-13-89 SECOND READING 6-13-89 THIRD READING 6-13-89

Passed and approved this 13th day of June, 1989.

(SEAL)

William L. Brown, Jr.
Mayor

Attest:
Jo Ann Cordsiemon, City Clerk

ORDINANCE 4-2-98

BILL No. 4-2-98 ORDINANCE NO. 4-2-98

AN ORDINANCE PROVIDING "FAIR HOUSING" FOR THE **CITY OF ELSBERRY, MISSOURI**, DEFINES DISCRIMINATORY HOUSING PRACTICES, AND CREATES A FAIR HOUSING COMMITTEE.

BE IT ORDAINED BY THE COUNCIL OF THE **CITY OF ELSBERRY, MISSOURI**, AS FOLLOWS:

SECTION 1. - Declaration of Policy

The Council of the **City of Elsberry** hereby declares it to be the public policy of the City to eliminate discrimination and safeguard the right of any person to sell, purchase, lease, rent, or obtain real property without regard to race, sex, color, national origin, ancestry, religion or religious affiliation, handicap, and without regard to whether a family has children. This ordinance shall be deemed an exercise of the police powers of the **City Elsberry, Missouri** for the protection of the public welfare, prosperity, health, and peace of the people of **City of Elsberry, Missouri**.

SECTION 2. - Definitions

For the purpose of this ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein unless the context otherwise indicates.

a. Person shall include any individual, firm, partnership, or corporation.

b. Aggrieved Person shall include any person who is attempting to provide housing for himself and/or his family in the City of Elsberry, Missouri.

c. Discriminate shall mean distinctions in treatment because of race, sex, color, national origin, ancestry, religion or religious affiliation, handicap, or familial status of any person.

SECTION 3. - Discriminatory Practices

It shall be a discriminatory practice and a violation of this ordinance for any person to:

a: Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any

person because of race, sex, color, national origin, religion or religious affiliation, or handicap status of any person.

b: Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, sex, color, national origin, religion or religious affiliation, or handicap status of any person.

c: Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, sex, color, national origin, religion or religious affiliation, handicap status of any person, or an intention to make any such preference, limitation, or discrimination.

d: Represent to any person because of race, sex, color, national origin, ancestry, religion or religious affiliation, or handicap status of any person, that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

e: For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood or a person or persons of a particular race, sex, color, national origin, ancestry, religion or religious affiliation, or handicap status of any person.

f: Bars discrimination in the sale or rental of housing on the basis of a handicap and requires the design and construction of new multi-family dwellings with four (4) or more units to meet certain adaptability and accessibility requirements.

g: Bars discrimination in the sale or rental of housing because a family has children, but exempts certain types of buildings that house older persons, e.g. Section 202 housing.

SECTION 4. - Discrimination in the Financing House

It shall be unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan to a person applying therefore for the purpose of purchasing, construction, repairing, or maintaining a dwelling, or to discriminate against any person in the fixing of the amount or conditions of such loan, because of the race, sex, color, national origin, ancestry, religion or religious affiliation, handicap, familial status, of such person or of any person therein associated in connection with such financing. .

SECTION 5. - Administration

a: There is hereby created a fair housing Committee whose membership shall consist

of five members, who shall be appointed by the Mayor of the City with the approval of the Board of Aldermen.

b: Every complaint of a violation of this ordinance shall be referred to a Fair Housing Committee. The Fair Housing Committee shall forthwith notify the person against whom the complaint is made. The identity of the aggrieved person shall be made known to the person against whom the complaint is made at that time. If the Fair Housing Committee, after investigation, finds there is no merit of the complaint, the same shall be dismissed. If the Fair Housing Committee finds that there is merit in the complaint, in their opinion, then and in that event, the Fair Housing Committee will endeavor to eliminate the alleged discriminatory practice by conference and conciliation.

c: If the Fair Housing Committee is unable to eliminate the alleged discriminatory practice by conference and conciliation, then and in that event, the Fair Housing Committee shall forward said complaint to the City Attorney for handling. The final determination of whether or not to prosecute on said complaint shall be left to the City Attorney.

SECTION 6. - Enforcement

a: Any person convicted of a violation of this ordinance shall be punished by a fine of not more than two hundred dollars ($200.00), or by confinement in the County jail for not more than thirty (30) days, or both such fine and imprisonment.

b: The City Attorney, instead of filing a complaint in Municipal Court of said City, may as an alternative remedy, seek to have the alleged discriminatory practices abated by an action for an injunction to be maintained in the appropriate Circuit Court of the State of Missouri.

SECTION 7. - Severability

If any section, subsection, paragraph, sentence, clause, or phrase of these standards shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect. To this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 8. - SAVINGS CLAUSE

This ordinance shall not affect violations of any other ordinance, code, or regulation of the City of Elsberry, existing prior to the effective date hereof. Any such violations shall be governed

and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes, or regulations in effect at the time the violation was committed.

Read the third time and passed, approved, and adopted by the Council of the **City of Elsberry, Missouri**, this 14th day of April, 1998.

WILLIAM B. WAGGONER, MAYOR

SEAL

ATTEST:

JO ANN CORDSIEMON, CITY CLERK

CHAPTER 48 -- PRIVATE CONSTRUCTION OF PUBLIC WORKS

§48.010. TITLE.

This Chapter shall be known by the title Elsberry, Missouri Chapter Regulating The Private Construction of Public Works Projects.

§48.020. REGULATIONS AND APPLICATION.

Any person, firm, partnership, corporation, association, copartnership or trust, prior to commencing any private work on public works projects in the City shall comply with the following regulations and provisions:

1. Plans and specifications for the private construction of public works projects, including but not limited to streets, sidewalks, drainage systems, sewers or thoroughfares to be dedicated to and maintained by the City or to be maintained by the City, shall be submitted to the city sewer superintendent (by whatever title he may be called) for approval.

2. A permit shall be obtained from the city collector authorizing the construction mentioned and set forth in the plans and specifications submitted.

3. No permit shall be issued by the city collector unless the applicant shall deposit with the city collector an amount equal to 2% of the estimated cost of project for sewers and 3% of the estimated cost for street projects, such funds to be payable to the city treasurer. For purposes of this Chapter the following schedule of construction costs shall be used to determine the estimated cost of the project:

Roadway (Min. City Spec's)	$10.00 Per. Lin. Ft.

Sanitary Sewer Lines		
	8"	$ 6.00 Per. Lin. Ft.
	10"	$ 6.50 Per. Lin. Ft.
	12"	$ 7.00 Per. Lin. Ft.
Storm Sewer		
	12"	$ 8.00 Per. Lin. Ft.
	15"	$ 9.00 Per. Lin. Ft.
	18"	$10.00 Per. Lin. Ft.
	24"	$11.00 Per. Lin. Ft.
	30"	$12.00 Per. Lin. Ft.
	36"	$13.00 Per. Lin. Ft.
	42"	$14.00 Per. Lin. Ft.
Water Lines		
	8"	$ 5.50 Per. Lin. Ft.
	10"	$ 7.00 Per. Lin. Ft.
	12"	$ 8.50 Per. Lin. Ft.

4. Following the issuance of the permit provided for herein, construction shall not be started until the city sewer superintendent has been notified as to the time, location and scope of the construction.

5. No construction shall be accomplished and the permit provided for herein shall not be issued until a performance and maintenance bond in an amount equal to one-half (½) the cost of construction and satisfactory to the city attorney shall be posted with the city sewer superintendent, guaranteeing against defects in construction of sewers fora period of one (1) year and guaranteeing against defects in the construction of streets for a period of one (1) year, as well as guaranteeing the complete performance of the contemplated construction for which the permit herein provided for is issued, and further guaranteeing and insuring that such construction shall be accomplished in a workmanlike manner, and further protecting the City and insuring said City from any loss or damage.

6. No construction work shall be commenced until the permit provided for has been issued and a written notice to proceed shall have been issued by the city sewer superintendent.

7. All construction work may be stopped at anytime by the city sewer superintendent or his agent, when in the opinion of the city sewer superintendent the workmanship, materials used, or procedures of work do not meet the requirements or comply with the city codes, ordinances, specifications and procedures for such work.

8. All work, accomplished by means of a permit issued under this Chapter, shall be subject to final inspection for city maintenance by the city sewer superintendent and his recommendation shall be made to and action taken thereon by the mayor and board of

aldermen.

§48.030. MINIMUM STANDARDS FOR STREET CONSTRUCTION AND STORM DRAINAGE.

1. Curbs and gutters. All curbs and gutters shall be twenty-four (24) inches wide, Portland cement concrete and constructed as specified in Section 2209 APWA Street Specifications and Standards, 1966. Integral curbs and gutters shall be used in Portland cement concrete. (Sec. 2208 APWA) Street Specifications and Standards, 1966.

2. Base course and surface.

   a. Class I Street (Arterial) shall be a minimum of forty (40) feet wide back to back of curb, and shall be constructed of a seven (7) inch compacted Bituminous treated concrete base with a three (3) inch compacted Bituminous treated concrete wearing surface. (Section 2205.9 through 2205.33 APWA, 1966) Street. Alternate eight (8) inches of Portland cement concrete with integral curbs. (Section 2208 APWA Street Specifications, 1966). Minimum70 foot R/W.

   b. Class II Street (Collector) shall be a minimum of thirty-six (36) feet wide, back to back of curb and constructed of six (6) inches of Bituminous treated compacted concrete base with a two (2) inch compacted Bituminous wearing surface. Alternate six (6) inches Portland cement concrete with integral curb and gutter. (Section 2208 APWA Street Specifications and Standards, 1966). Minimum 60 foot R/W.

   c. Class III Streets (Residential) shall be a minimum of twenty-eight (28) feet wide back to back of curb and constructed with five (5) inches of compacted Bituminous treated aggregate, with two (2) inches of compacted Bituminous treated wearing surface. (Section 2205 AWPA Street Specifications and Standards, 1966). Alternate six (6) inches of Portland cement concrete. (Section 2200 APWA Street Specifications and Standards.) Minimum right~of-way of 50 feet.

3. Grading and sub-grade preparation.

   a. Grading shall be done in accordance with Section 2102 APWA Street Specifications and Standards, 1966.

   b. Sub-grade preparation shall be done in accordance with Section 2200 APWA Street Specifications and Standards, 1966.

4. Sidewalks. Sidewalks shall be constructed in accordance with Section 2300 APWA Street Specifications and Standards, 1966. Expansion joints shall be placed at one hundred (100) foot centers. Contraction joints shall be placed at. four (4) foot centers.

5. Storm sewers. All design and construction of storm sewers and appurtenances shall

conform to Storm Sewer Specifications and Standards of APWA, 1966.

CHAPTER 50 -- BEER AND LIQUOR

§50.001: DEFINITIONS.

When used in this Chapter, the following words shall have the following meanings:

CLOSED PLACE: A place where all doors are locked and where no patrons are in the place or about the premises.

INTOXICATING LIQUOR: Alcohol for beverage purposes, including 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 (0.5%) by volume. All beverages having an alcoholic content of less than one-half of one percent (0.5%) by volume shall be exempt from the provisions of this Chapter.

LIGHT WINES: An intoxicating liquor consisting of wine containing not in excess of fourteen percent (14%) of alcohol by weight made exclusively from grapes, berries and other fruits and vegetables.

MALT LIQUOR: An intoxicating liquor containing alcohol in excess of three and two-tenths percent (3.2%) by weight and not in excess of five percent (5%) by weight manufactured from pure hops or pure extract of hops, or pure barley malt, or wholesome grains or cereals, and wholesome yeast, and pure water.

ORIGINAL PACKAGE: Any package sealed or otherwise closed by the manufacturer so as to consist of a self-contained unit, and consisting of one (1) or more bottles or other containers of intoxicating liquor or non-intoxicating beer, where the package and/or container(s) describes the contents thereof as intoxicating liquor or non-intoxicating beer. "Original package" shall also be construed and held to refer to any package containing three (3) or more standard bottles of beer.

PERSON: An individual, association, firm, joint stock company, syndicate, partnership, corporation, receiver, trustee, conservator, or any other officer appointed by any State or Federal court.

PREMISES: The place where intoxicating liquor or nonintoxicating beer is sold and it may be one (1) room, a building comprising several rooms, or a building with adjacent or surrounding land such as a lot or garden.

RESTAURANT BAR: Any establishment having a restaurant or similar facility on the premises at least fifty percent (50%) of the gross income of which is derived from the sale of prepared meals or food consumed on such premises or which has an annual gross

income of at least two hundred thousand dollars ($200,000.00) from the sale of prepared meals or food consumed on such premises.

RESTAURANT WITHOUT BAR: The term "restaurant without bar" as used in this Chapter shall mean any establishment or facility operated for sale of prepared meals or food for consumption on the premises where sold and which does not include an area commonly known as a bar or lounge, which does not display in any area open or visible to the customers any containers of intoxicating liquor, and from which mixtures for beverage purposes containing intoxicating liquor are not prepared at or served from any area open or visible to the customers

WEEKDAY: Any day from Monday through Saturday.

(Ord. 01-2010-002, 2/9/2010)

§50.005: QUANTITIES LESS THAN 50 MILLILITERS DEEMED SALE BY THE DRINK

The sale of any intoxicating liquor except malt liquor, in the original package, in any quantity less than fifty milliliters shall be deemed "sale by the drink", and may be made only by a holder of a retail liquor dealer's license and when so made, the container in every case shall be emptied and the contents thereof served as other intoxicating liquors sold by the drink are served.

(Ord. 01-2010-002, 2/9/2010)

§50.010: NO SALE OF INTOXICATING LIQUOR WITHOUT A LICENSE OR PERMIT

No person shall sell or offer for sale intoxicating liquor in the City without a currently valid liquor license or permit issued by the City. A separate liquor license or permit shall be required for each of the categories and subcategories of liquor sales in which the licensee desires to engage as set forth in this Chapter. No person shall sell or offer for sale intoxicating liquor in the City beyond the terms and conditions of any currently valid liquor license or permit issued by the City to that person. The fee for each such license or permit is set forth in Municipal Code §50.070.

(Ord. 01-2010-002, 2/9/2010)

§50.015. RESTRICTIONS AS TO TIME FOR SALE.

Except as provided herein below, no person having a license under the provisions of this Chapter shall sell, give away, or otherwise dispose of or suffer the same to be done upon or about his premises any intoxicating liquor or nonintoxicating beer in any quantity between the hours of 1:30 A.M. and 6:00 A.M. on any day of the week, nor at any time other than that designated in the license held by such person. Notwithstanding the provisions of this Section, sales of intoxicating liquor or nonintoxicating beer may be made between the hours of 6:00 a.m. on Sundays and 1:30 a.m. on Mondays if the person holds a license specifically allowing such sales during that time.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.020. RESTRICTIONS AS TO PLACE OF SALE – EXTENSION PERMIT.

No person shall sell intoxicating liquor or nonintoxicating beer at any premises or place other than that designated in the license held by such person. Unless otherwise specifically provided for in the particular type of license obtained, a license shall only allow for sale at one building at such premises or place.

(Ord. 01-2010-002, 2/9/2010)

§50.025. LICENSE; QUALIFICATION OF APPLICANT.

No person shall be granted a license under this Chapter:

1. Unless such person is of good moral character, a native born or naturalized citizen of the United States of America, and a qualified legal voter of the State of Missouri.

2. Whose previous license as such has been revoked, who has been convicted since the ratification of the Twenty-first Amendment to the Constitution of the United States of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor or nonintoxicating beer, or who employs or has employed in his business any person whose license has been revoked or who has been convicted of violating the provisions of any such law.

3. Who does not hold a current valid business license.

(Ord. 01-2010-002, 2/9/2010)

§50.030 APPLICATION FOR LICENSE.

1. All applications for licenses under the provisions of this Chapter shall be made in writing to the Board of Aldermen and shall be initially delivered to and filed by the City Clerk.

2. All applications for licenses shall contain the following minimum information:

    1. Designation of the kind of license desired.

    2. Description of the premises to which such license is to apply and the location or address of the premises.

    3. Name, place of residence, mailing address, and telephone numbers of the person, individual, association, partnership, and names of partners, or corporation and managing officer thereof, for whom a license is sought.

4. Dates and places of all revocation of liquor and non-intoxicating beer licenses and all convictions of any law applicable to the manufacture or sale of intoxicating liquor or non-intoxicating beer since the ratification of the 21st Amendment to the Constitution of the United States, if any.

5. If the applicant is a corporation, the application shall set forth all of the above information with respect to the managing officer or officers, identifying such officer or officers. The application shall further state the full name of the corporation, its date of incorporation, its registered agent and registered address, the names and addresses of all shareholders of the corporation holding ten percent or more of the outstanding shares, and whether the corporation operates any other business or controls or is controlled by any other corporation or business. If so, the application shall further state the name of such controlled or controlling corporation or business, its registered agent and registered address, and the location of all businesses operated by it and the name and address of any such businesses with a liquor license, whether within or without the City; and the application shall also state if such controlling corporation or any controlled corporation is doing business under a fictitious name, and the address where the business is located.

6. Term of license.

7. Signature of applicant.

3. All applications for sale of intoxicating liquor and nonintoxicating beer in the original package shall be accompanied by an inventory and appraised valuation of stock of goods at the place of business proposed in said application of a value of at least $1,000.00, not including the value of business fixtures and intoxicating liquors and/or nonintoxicating beer, which inventory and appraisal shall be under oath; said inventory and appraised valuation aforesaid shall be the value according to invoice at the time of making the application for said license.

4. If the particular license or permit sought contains conditions for its issuance, the application shall contain sufficient information and documentation to show that the conditions have been met. The City Clerk or the Board of Aldermen may request such additional information or documentation as they may deem necessary to confirm that all such conditions have been met.

5. No application shall be approved by the Board of Aldermen unless said application contains all the information required to be included by this Chapter, the license applied for is available, the applicant is otherwise qualified, and the requirements this Chapter have been met.

6. At the time of filing application, the applicant shall place in the hands of the City Clerk the amount of license fee for the license applied for, either in cash, or bank draft, money order, certified check or cashier's check, made payable to the City or the City Collector. No

license shall be granted by the City Council unless such deposit of the license fee has been made. If the license is not granted, the amount of license fee shall be refunded to the applicant. If the license is granted, such amount deposited with the application shall be turned over to the City Collector whose receipt therefor shall be given to the applicant, together with the license issued.

7. No license shall be considered for any premises located within two hundred (200) feet of any business or residence until the applicant shall first notify in writing all land owners within a distance of two hundred (200) feet of a proposed premises at least seven (7) days prior to being considered by the Board of Aldermen. The notice shall state the date the Board of Aldermen shall consider the application.

8. The applicant shall execute a release for criminal background checks and submit fingerprint impressions to assist in that background check. Any criminal background check conducted on applicants shall include any and all law enforcement agencies or divisions of the Federal, State or any municipal governments as the Liquor Commission determines to be necessary and appropriate. The applicant shall pay the fee for the background check.

9. Applications for licenses shall be considered by the Board of Aldermen in the order received and filed by the City Clerk, except as otherwise provided below.

10. If the holder of a license shall propose to sell or lease a business for which the license is currently being used to a purchaser or tenant who will conduct at the same premises a business for which the same license will be required, or if a person who owns premises that are leased to a person holding a license and running a business on said premises for which the license is currently being used, shall propose to sell or relet said premises to another person who will conduct at the same premises business for which the same license will be required, then said proposed purchaser or tenant may apply to the Board of Aldermen for such a license, and such application shall be reviewed and acted upon by the Board of Aldermen before their review of, and action upon, any other applications for a like license, notwithstanding the order in which said applications have been received and filed by the City Clerk. Provided, further, that if said application contains all the information required to be included by this Chapter, the license applied for is available, the applicant is otherwise qualified, and the requirements of this Chapter have been met, then the Board of Aldermen shall grant tentative approval of said application, and if within forty five days of said tentative approval, the applicant shall present evidence satisfactory to the City Clerk that said sale or lease has been completed and applicant is now the owner or lessee, then upon payment of the license fee herein provided for, the City Clerk shall grant applicant a license in accordance with the provisions of this Chapter.

(Ord. 01-2010-002, 2/9/2010)

§50.035 CONSIDERATION OF THE APPLICATION FOR LICENSE.

1. The Board of Aldermen shall have the power and duty to determine whether each application for a license under the provisions of this Chapter shall be approved or disapproved.

2. Each properly filed and documented application shall be considered and acted upon by the Board of Aldermen at the regularly scheduled meeting of said Board immediately following the receipt and filing of said application, unless it is tabled to the next meeting.

3. The Board of Aldermen may consider the following, among other factors, when making a determination of approval or disapproval of an application:

    1. Appropriate zoning exists for the proposed licensed premises;

    2. The record of the owner and managers of the proposed licensed premises as law abiding persons;

    3. The provisions of ordinances of the City with regard to the proximity of the proposed licensed premises to schools, provided however, the Commission is not empowered to extend the prohibited distance from schools;

    4. The nature, amount and frequency of complaints and incidents at the proposed licensed premises requiring intervention by the Commissioner, the Police Department of the City and all law enforcement agencies, or others;

    5. Compliance of the proposed licensed premises with City Building Codes;

    6. Compliance of the premises with all Fire Codes applicable to the proposed licensed premises;

    7. Prior violations of Federal, State of Missouri and City of St. Peters Statutes and ordinances pertaining to the regulation of the sale of alcoholic beverages;

    8. The effect on the surrounding neighborhood;

    9. The moral character of the manager and owner of the proposed licensed premises; and

    10. The moral character of any employee at the proposed licensed premises.

4. If an application is not approved by the Board of Aldermen, it shall thereafter be considered null and void. If the applicant shall desire to again make application for a license, the applicant must make a new application, which for priority purposes, shall date from its receipt and filing by the City Clerk.

(Ord. 01-2010-002, 2/9/2010)

§50.040. GRANTING OF LICENSE.

1. On approval of the application by the Board of Aldermen and payment of the applicable license fee, the City Clerk shall issue applicant a license to conduct business in the City from date of issuance of said license to the 30th day of June immediately following the date of issuance of said license.

2. Except as otherwise provided in this Chapter, a separate license shall be required for each place of business.

3. Every license issued under the provisions of this Chapter shall particularly describe the premises at which intoxicating liquor or nonintoxicating beer may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of intoxicating liquor or nonintoxicating beer at any place other than that described therein. Provided, however, that a person holding a license in good standing may, without making a new application for a license, move said business to another or different location or premises if, within ten days prior to said change of location, said person shall give written notice to the City Clerk of the proposed move and new location and the new location meets the requirements of this Chapter and the applicant otherwise continues to meet said requirements. If said holder shall fail to give said written notice and meet the requirements set out herein, then said license shall not be deemed to authorize or permit the sale of intoxicating liquor or nonintoxicating beer at any premises other than that described in said license.

4. The City Clerk shall not issue or deliver to any person a license under the provisions of this Chapter until such person shall produce the receipt of the City Collector showing that the Elsberry City taxes levied on the same have been paid.

(Ord. 01-2010-002, 2/9/2010)

§50.045. RENEWAL OF LICENSE.

Applications for renewal of licenses must be filed on or before the first (1st) day of May of each calendar year. Such renewal application shall be reviewed by the Board of Aldermen at its next meeting. Upon approval of the majority of the Board and payment of the applicable license fee, the Clerk shall renew the license.

(Ord. 01-2010-002, 2/9/2010)

§50.050. REVOCATION OF LICENSE.

1. Automatic Revocation/Suspension. A license shall be revoked automatically if the licensee's State liquor license is revoked or if the licensee is convicted in any court of any violation of RSMo. Chapter 311, or of any felony violation of Chapter 195, RSMo., in the course of business. A license shall be suspended automatically if the licensee's State liquor license is suspended, and the suspension shall be for a term not less than that

imposed by the State.

2. Effect Of Suspension. No person whose license shall have been suspended by order of the Board shall sell or give away any intoxicating liquor or non-intoxicating beer during the time such suspension is in effect. Any licensee desiring to keep premises open for the sale of food or merchandise during the period of suspension shall display the Board's order of suspension in a conspicuous place on the premises so that all persons visiting the premises may readily see the same.

3. The Board of Aldermen of the City of Elsberry, Missouri, may, after holding a hearing, revoke any license or permit issued under the provisions of this Chapter for good cause shown. A license may be suspended or revoked for any of the following reasons:

    1. Violating any of the provisions of either this Chapter, Chapters 311 or 312, RSMo., or any ordinance of the City;

    2. Failing to obtain or keep a license from the State Supervisor of Alcohol and Tobacco Control;

    3. Making a false affidavit in an application for a license under this Chapter;

    4. Failing to keep an orderly place or house;

    5. Selling, offering for sale, possessing or knowingly permitting the consumption on the licensed premises of any kind of intoxicating liquors, the sale, possession or consumption of which is not authorized under the license;

    6. Selling, offering for sale, possessing or knowingly permitting the consumption of any intoxicating liquor which has not been inspected and labeled according to the laws of the State of Missouri; or

    7. Selling, giving, or otherwise supplying intoxicating liquor to:

        a. Any person under the age of twenty-one (21) years,

        b. Any person during unauthorized hours on the licensed premises,

        c. A habitual drunkard or to any person who is under or apparently under the influence of intoxicating liquor, or

        d. Any person on the licensed premises during a term of suspension as ordered by the Board.

4. Before a license or permit may be revoked or suspended, the City shall first give the licensee not less then ten (10) days prior notice in writing of the time and place of the

hearing. The notice shall contain the ground(s) for such revocation and command the licensee to show cause, if any, why such license should not be revoked. The notice of revocation hearing shall be served upon the licensee by leaving a copy of the notice with the licensee or any person or employee in charge at the place of business of the licensee.

5. The licensee shall have full right to be represented by counsel at such hearing, and may produce witnesses and evidence in his behalf at such hearing.

6. No license shall be revoked or suspended except upon vote in favor of revocation by a majority of the members elected to the City board of Aldermen.

7. In case of revocation or forfeiture of any license or permit granted and issued under the provisions of this Chapter for cause or otherwise, the City shall in no event return any part of the license or permit fee paid for the license.

(Ord. 01-2010-002, 2/9/2010)

§50.055. LIMIT TO NUMBER OF LICENSES ISSUED.

The Board of Aldermen of the City of Elsberry, Missouri, shall approve and grant no more than one license for sale of intoxicating liquor by the drink for consumption on the premises where sold per 500 population (or major fraction thereof) of the City of Elsberry, Missouri, at the last decennial census or special census certified to by the Missouri Secretary of State. The Board of Aldermen of the City of Elsberry, Missouri, shall approve and grant no more than one license for sale of intoxicating liquor by the drink for consumption at a restaurant without bar per 500 population (or major fraction thereof) of the City of Elsberry, Missouri, at the last decennial census or special census certified to by the Missouri Secretary of State.

(Ord. 01-2010-002, 2/9/2010)

§50.060. LICENSE NON-TRANSFERABLE.

Except as elsewhere provided in this Chapter, no license issued under this Chapter shall be transferable or assignable.

(Ord. 01-2010-002, 2/9/2010)

§50.065. DURATION OF LICENSE.

Unless specifically stated otherwise, each license issued under this Chapter shall expire on the 30th day of June immediately following the date of the issuance of the license. Licenses shall be renewed on or before the 30th day of June or the license will be deemed to have expired and can be issued again to the former holder person only upon application for the license pursuant to procedures set out in this Chapter for initial qualifications established in this Chapter, and subject to availability. Unless specifically stated otherwise, all license fees shall be for the full amount of

fee regardless of date the license is issued.

(Ord. 01-2010-002, 2/9/2010)

§50.070: CLASSES OF LICENSES AND PERMITS AND FEES

Any person possessing the qualifications and meeting the requirements of this Chapter may apply for, and the City may issue, the following licenses concerning the sale, manufacture or consumption of intoxicating liquor as provided in the referenced sections of the Municipal Code:

Type	Fee	Municipal Code	RSMo	Requires Primary License
Liquor By the Drink	$225.00	§50.075	§311.200.5	No
Liquor By the Drink By Exempt Organizations	$150.00	§50.080	§311.090.2	No
Liquor By the Drink – Sunday	$150.00	§50.085	§311.090 §311.096	Yes
Malt Liquor By the Drink (includes Sunday Sales)	$37.50	§50.090	§311.200.3	No
Light Wine and Malt Liquor By the Drink	$37.50	§50.095	§311.200.4	No
Original Package Liquor – Retail Merchandise Store	$100.00	§50.100	§311.200.1	No
Original Package Liquor – Sunday	$150.00	§50.105	§311.293	Yes
Liquor By Drink or Picnic By Certain Organizations (7 days)	$25.00	§50.110	§311.482	No
5% Beer by Drink Wine Independence Day Picnic (7 days)	$100.00	§50.115	§311.218	No
Liquor By Drink Caterer Temporary Permit (per day)	$7.50	§50.120	§311.485	Yes
Liquor by Drink Caterer – 50 Day Special License	$500.00	§50.125	§311.486.1	Yes
Liquor by Drink Caterer – Unlimited	$750.00	§50.130	§311.486.2	Yes
Consumption of Intoxicating Liquor with Sale of Food, Beverages or	$35.00	§50.135	§311.480	No

Type	Fee	Municipal Code	RSMo	Requires Primary License
Entertainment.				
Original Package – Tasting Permit	$20.00	§50.140	§311.294	Yes
By the Drink by Restaurant Bar or Hotel -- Sunday Sales	$150.00	§50.145	§311.097	Yes
By the Drink by Restaurant Bar -- Sunday Sales – temporary	$150 prorated	§50.150	§311.097.3	Yes
Missouri Wine By Drink By Winery	$225.00	§50.155	§311.070.11 §311.070.12	Yes
Domestic Missouri Wine (per 500 gallon)	$5.00	§50.160	§311.190	No
Microbrewery	$5.00 per 100 gal. $250.00 maximum	§50.165	§311.195	No
By the Drink by Amusement Place -- Sunday Sales	$150.00	§50.170	§311.098	Yes
By the Drink by Amusement Place -- Sunday Sales – temporary	$150.00 prorated	§50.175	§311.098.3	Yes
By the Drink Outdoors Location Extension	$75.00	§50.180	§311.485	Yes

(Ord. 01-2010-002, 2/9/2010)

§50.075: LIQUOR BY THE DRINK

A qualified person may apply for, and the City may issue, an annual license for the sale of all kinds of intoxicating liquor, at retail by the drink for consumption on the premises of the licensee.

(Ord. 01-2010-002, 2/9/2010)

§50.080: LIQUOR BY THE DRINK BY EXEMPT ORGANIZATIONS

1. Notwithstanding any other provisions of this Chapter to the contrary, any charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4),

501(c)(5), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended, may apply for, and the City may issue, a license to sell intoxicating liquor, as defined in this chapter, between the hours of 6:00 a.m. on Sundays and 1:30 a.m. on Mondays by the drink at retail for consumption on the premises described in the application.

2. If any charitable, fraternal, religious, service, or veterans' organization has a license to sell intoxicating liquor on its premises pursuant to this section, and such premises includes two or more buildings in close proximity, such permit shall be valid for the sale of intoxicating liquor at any such building.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.085 LIQUOR BY THE DRINK – SUNDAY

A qualified person may apply for, and the City may issue, an annual license for the sale of all kinds of intoxicating liquor, at retail by the drink for consumption on the premises of the licensee described in the license, between the hours of 6:00 a.m. on Sundays and 1:30 a.m. on Mondays. An applicant must hold a retail liquor by the drink license under Municipal Code §50.080 to receive a license under this section.

(Ord. 01-2010-002, 2/9/10; 2021-09-00; 2021-09-002)

§50.090 MALT LIQUOR BY THE DRINK (INCLUDES SUNDAY SALES)

A qualified person may apply for, and the City may issue, an annual license for the sale of malt liquor at retail by drink for consumption on the premises where sold as described in the license. Any person licensed pursuant to this subsection may also sell malt liquor at retail between the hours of 6:00 a.m. on Sundays and 1:30 a.m. on Mondays at the licensed premises.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.095 LIGHT WINE AND MALT LIQUOR BY THE DRINK

A qualified person may apply for, and the City may issue, an annual license for the sale of the following intoxicating liquors at retail by the drink for consumption on the premises where sold as described in the license

(1) malt liquor; and

(2) light wines containing not in excess of fourteen percent of alcohol by weight made exclusively from grapes, berries and other fruits and vegetables.

(Ord. 01-2010-002, 2/9/2010)

§50.100 ORIGINAL PACKAGE LIQUOR – RETAIL MERCHANDISE STORE

1. A qualified person may apply for, and the City may issue, an annual license for the sale of intoxicating liquor in the original package, not to be consumed upon the premises where sold.

2. Such licenses shall only be issued to a person engaged in, and to be used in connection with, the operation of one or more of the following businesses: a drug store, a cigar and tobacco store, a grocery store, a general merchandise store, a confectionery or delicatessen store.

3. Such stores shall have and keep in the store a stock of goods having a value according to invoices of at least one thousand dollars, exclusive of fixtures and intoxicating liquors.

4. Under such license, no intoxicating liquor shall be consumed on the premises where sold, nor shall any original package be opened on the premises of the vendor except as otherwise provided in this Chapter.

(Ord. 01-2010-002, 2/9/2010)

§50.105: ORIGINAL PACKAGE LIQUOR – SUNDAY

1. A qualified person may apply for, and the City may issue, an annual license to sell intoxicating liquor in the original package at retail between the hours of 6:00 a.m. on Sundays and 1:30 a.m. on Mondays.

2. Such a license may only be issued to a person who is licensed to sell intoxicating liquor in the original package at retail pursuant to Municipal Code §50.100.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.110: LIQUOR BY DRINK FOR PICNIC BY CERTAIN ORGANIZATIONS (7 DAYS)

1. Any church, school, civic, service, fraternal, veteran, political or charitable club or organization may apply for, and the City may issue, a temporary permit for the sale of intoxicating liquor for consumption on premises where sold at a picnic, bazaar, fair, or similar gathering as described in the permit.

2. This permit shall be issued only for the day or days named in the permit and it shall not authorize the sale of intoxicating liquor for more than seven days by any such club or organization.

3. If the event will be held on a Sunday, the permit shall authorize the sale of intoxicating

liquor on that day beginning at 11:00 a.m.

(Ord. 01-2010-002, 2/9/2010)

§50.115: MALT LIQUOR AND WINE INDEPENDENCE DAY PICNIC (7 DAYS)

1. Any church, school, civic, service, fraternal, veteran, political, or charitable club or organization may apply for, and the City may issue, a temporary permit for the sale of wine and malt liquor for consumption on the premises where sold at any picnic, bazaar, fair, festival or similar gathering or event held to commemorate the annual anniversary of the signing of the Declaration of Independence of the United States.

2. Such permit shall be issued only during the period from June fifteenth to July fifteenth annually and only for the day or days named therein and it shall not authorize the sale of wine and malt liquor except between the hours of 10:00 a.m. and midnight and for not more than seven days by any such organization.

3. The permit may be issued to cover more than one place of sale within the general confines of the place where the gathering or event is held.

4. No permit shall be issued under this section to any organization which selects or restricts the membership thereof on the basis of race, religion, color, creed, or place of national origin.

5. As used in this section the term "wine" means a beverage containing not in excess of fourteen percent of alcohol by weight.

(Ord. 01-2010-002, 2/9/2010)

§50.120: LIQUOR BY DRINK CATERER TEMPORARY PERMIT

1. For purposes of this section, the term “caterer” shall mean any caterer or other person holding a license to sell intoxicating liquor by the drink at retail for consumption on the premises pursuant to the provisions of this Chapter and who furnishes provisions and services for use at a particular function, occasion or event at a particular location other than the person’s licensed premises.

2. Any caterer may apply for, and the City may issue, a temporary permit to sell intoxicating liquor by the drink for use at a particular function, occasion or event at a particular location other than the caterer’s licensed premises.

3. The permit issue under this section shall be effective for a period not to exceed one hundred sixty-eight consecutive hours, and shall authorize the service of alcoholic beverages at such function, occasion or event specified in the permit during the hours at which alcoholic beverages may lawfully be sold or served upon the caterer’s licensed

premises.

4. No permit under this section may be issued for but not including a festival as defined in RSMo. §316.150.

5. All provisions of this Chapter shall extend to such premises where the function, occasion or event is held, and shall be in force and enforceable during all the time that the permittee, its agents, servants, employees, or stock are in such premises.

6. Except for Missouri-produced wines in the original package, the provisions of this section shall not include the sale of packaged goods covered by this temporary permit.

(Ord. 01-2010-002, 2/9/2010)

§50.125: LIQUOR BY DRINK CATERER – 50 DAY SPECIAL LICENSE

1. For purposes of this section, the term "caterer" shall mean any caterer or other person holding a license to sell intoxicating liquor by the drink at retail for consumption on the premises pursuant to the provisions of this Chapter and who furnishes provisions and services for use at a particular function, occasion or event at a particular location other than the person's licensed premises.

2. Any caterer may apply for, and the City may issue, a special license to sell intoxicating liquor by the drink for use at a particular function, occasion or event at a particular location other than the caterer's annual licensed premises.

3. The special license issued under this section shall be effective for a maximum of fifty days during any year, and shall authorize the service of alcoholic beverages at such function, occasion, or event during the hours at which alcoholic beverages may lawfully be sold or served upon the caterer's annual licensed premises.

4. No special license issued under this section may be issued for but not including a festival as defined in RSMo. §316.150.

5. All provisions of this Chapter shall extend to such premises where the function, occasion or event is held, and shall be in force and enforceable during all the time that the special licensee, its agents, servants, employees, or stock are in such premises.

6. Except for Missouri-produced wines in the original package, the provisions of this section shall not include the sale of packaged goods covered by this special license.

(Ord. 01-2010-002, 2/9/2010)

§50.130: LIQUOR BY DRINK CATERER – UNLIMITED SPECIAL LICENSE

1. For purposes of this section, the term "caterer" shall mean any caterer or other person holding a license to sell intoxicating liquor by the drink at retail for consumption on the premises pursuant to the provisions of this Chapter and who furnishes provisions and services for use at a particular function, occasion or event at a particular location other than the person's licensed premises.

2. Any caterer may apply for, and the City may issue, a special license to sell intoxicating liquor by the drink for use at a particular function, occasion or event at a particular location other than the caterer's annual licensed premises.

3. The special license issued under this section shall be effective for an unlimited number of functions during the year, and shall authorize the service of alcoholic beverages at such function, occasion, or event during the hours at which alcoholic beverages may lawfully be sold or served upon the caterer's annual licensed premises.

4. No special license under this section may be issued for but not including a festival as defined in RSMo. §316.150.

5. All provisions of this Chapter shall extend to such premises where the function, occasion or event is held, and shall be in force and enforceable during all the time that the special licensee, its agents, servants, employees, or stock are in such premises.

6. Except for Missouri-produced wines in the original package, the provisions of this section shall not include the sale of packaged goods covered by this special license.

(Ord. 01-2010-002, 2/9/2010)

§50.135: CONSUMPTION OF INTOXICATING LIQUOR WITH SALE OF FOOD, BEVERAGES OR ENTERTAINMENT.

1. It shall be unlawful for any person operating any premises where food, beverages or entertainment are sold or provided for compensation, who does not possess a license for the sale of intoxicating liquor, to permit the drinking or consumption of intoxicating liquor in the premises, without having a license as provided in this section.

2. Any person operating any premises where food, beverages or entertainment are sold or provided for compensation may apply for, and the City may issue, a license to permit the drinking or consumption (but not the sale) of intoxicating liquor in the premises described in the license.

3. The drinking or consumption of intoxicating liquor shall not be permitted in, or upon, the licensed premises by any person under twenty-one years of age, or by any other person between the hours of 1:30 a.m. and 6:00 a.m. on any weekday, and between the hours of 1:30 a.m. Sunday and 6:00 a.m. Monday.

4. Licenses issued under this section shall be conditioned upon the observance of the provisions of this Chapter governing the conduct of premises licensed for the sale of intoxicating liquor by the drink.

5. No person shall be granted a license under this section unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the City, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the City.

6. Any premises operated in violation of the provisions of this section, or where intoxicating liquor is consumed in violation of this section, is hereby declared to be a public and common nuisance.

7. No intoxicating liquor may be served or sold on any premises used as a polling place on election day.

(Ord. 01-2010-002, 2/9/2010)

§50.140: ORIGINAL PACKAGE – TASTING PERMIT

Any person who is licensed to sell intoxicating liquor in the original package at retail under Municipal Code §50.100 may apply for, and the City may issue, a special permit to conduct wine, malt beverage and distilled spirit tastings on the licensed premises. Nothing in this section shall be construed to permit the licensee to sell wine, malt beverages or distilled spirits for on-premises consumption.

(Ord. 01-2010-002, 2/9/2010)

§50.145: BY THE DRINK BY RESTAURANT BAR OR HOTEL -- SUNDAY SALES

1. As used in this section, the term "restaurant bar" means any establishment having a restaurant or similar facility on the premises at least fifty percent of the gross income of which is derived from the sale of prepared meals or food consumed on such premises or which has an annual gross income of at least two hundred thousand dollars from the sale of prepared meals or food consumed on such premises.

2. As used in this section, the term "hotel" means any establishment having at least forty rooms for the overnight accommodations of transient guests.

3. Any person operating a restaurant bar may apply for, and the City may issue, a license to sell intoxicating liquor by the drink at retail for consumption on the premises of the restaurant bar between the hours of 6:00 a.m. on Sunday and 1:30 a.m. on Mondays by the drink at retail for consumption on the premises of any restaurant bar as described in the application or on the premises of any establishment having at least forty rooms for the overnight accommodations of transient guests.

4. Licenses issued under this section shall be conditioned upon the observance of the provisions of this Chapter governing the conduct of premises licensed for the sale of intoxicating liquor by the drink.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.150: BY THE DRINK BY RESTAURANT BAR -- SUNDAY SALES – TEMPORARY

1. As used in this section, the term "restaurant bar" means any establishment having a restaurant or similar facility on the premises at least fifty percent of the gross income of which is derived from the sale of prepared meals or food consumed on such premises or which has an annual gross income of at least two hundred thousand dollars from the sale of prepared meals or food consumed on such premises.

2. Any person operating a new restaurant bar having been in operation for less than ninety days may apply for, and the City may issue, a temporary license to sell intoxicating liquor by the drink at retail for consumption on the new restaurant bar premises between the hours of 6:00 a.m. and 1:30 a.m. on Mondays for a period not to exceed ninety days if the restaurant bar can show a projection of annual business from prepared meals or food consumed on the premises of at least fifty percent of the total gross income of the restaurant bar for the year or can show a projection of annual business from prepared meals or food consumed on the premises which would exceed not less than two hundred thousand dollars.

3. The license fee shall be prorated for the period of the temporary license based on the cost of the annual license for the establishment.

4. Licenses issued under this section shall be conditioned upon the observance of the provisions of this Chapter governing the conduct of premises licensed for the sale of intoxicating liquor by the drink.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.155: MISSOURI WINE BY DRINK BY WINERY

1. For the purpose of the promotion of tourism, a wine manufacturer, its employees, officers or agents located within this state may apply for, and the City may issue, a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for consumption on the premises where sold, if the premises so licensed is in close proximity to the winery. Such premises may remain open between the hours of 9:00 a.m. and midnight on Sunday.

2. For the purpose of the promotion of tourism, a person may apply for, and the City may issue, a license to sell intoxicating liquor by the drink at retail for consumption on the premises where sold, but seventy-five percent or more of the intoxicating liquor sold by such licensed person shall be Missouri-produced wines received from manufacturers

licensed under RSM0. §311.190. Such premises may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday, and between the hours of 6:00 a.m. and 1:30 a.m. on Mondays.

3. Licenses issued under this section shall be conditioned upon the observance of the provisions of this Chapter governing the conduct of premises licensed for the sale of intoxicating liquor by the drink.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.160: DOMESTIC MISSOURI WINE (PER 500 GALLON)

1. Any person may apply for, and the City may issue, a license to manufacture wine or brandy, which manufacture shall be in accordance with all provisions of applicable federal law, in quantities not to exceed five hundred thousand gallons, not in excess of eighteen percent of alcohol by weight for wine, or not in excess of thirty-four percent of alcohol by weight for brandy, from grapes, berries, other fruits, fruit products, honey, and vegetables produced or grown in the state of Missouri, exclusive of sugar, water and spirits.

2. Notwithstanding the provisions of subsection 1 of this section, a manufacturer licensed under this section may use in any calendar year such wine- and brandy-making material produced or grown outside the state of Missouri in a quantity not exceeding fifteen percent of the manufacturer's wine entered into fermentation in the prior calendar year.

3. In any year when a natural disaster causes substantial loss to the Missouri crop of grapes, berries, other fruits, fruit products, honey or vegetables from which wines are made, a certain additional percent of out-of-Missouri wineries' materials, may be used, based on the prior calendar year's production of such products, as determined by the Director of the Missouri Department of Agriculture.

4. A manufacturer licensed under this section may offer samples of wine, and may sell wine and brandy in its original package directly to consumers at the winery, and may open wine so purchased by customers so that it may be consumed on the winery premises on Monday through Saturday between 6:00 a.m. and midnight and on Sunday between 9:00 a.m. and 10:00 p.m.

(Ord. 01-2010-002, 2/9/2010)

§50.165: MICROBREWERY

1. As used in this section, the term "microbrewery" means a business whose primary activity is the brewing and selling of beer, with an annual production of ten thousand barrels or less.

2. Any person may apply for, and the City may issue, a license to operate a microbrewery to

manufacture beer and malt liquor in quantities not to exceed ten thousand barrels per annum.

3. The microbrewery may only sell intoxicating liquor by the drink at retail for consumption on the microbrewery premises if a separate liquor by the drink license is obtained as provided in this Chapter.

4. The holder of a microbrewer's license may also sell beer and malt liquor produced on the brewery premises to duly licensed wholesalers. However, holders of a microbrewer's license shall not, under any circumstances, directly or indirectly, have any financial interest in any wholesaler's business, and all such sales to wholesalers shall be subject to the restrictions of RSMo. §§ 311.181 and 311.182.

(Ord. 01-2010-002, 2/9/2010)

§50.170: BY THE DRINK BY AMUSEMENT PLACE -- SUNDAY SALES

1. As used in this section the term "amusement place" means any establishment whose business building contains a square footage of at least six thousand square feet, and where games of skill commonly known as billiards, volleyball, indoor golf, bowling or soccer are usually played, or has a dance floor of at least two thousand five hundred square feet, or any outdoor golf course with a minimum of nine holes, and which has annual gross receipts of at least one hundred thousand dollars of which at least fifty thousand dollars of such gross receipts is in nonalcoholic sales.

2. Any person may apply for, and the City may issue, a license to sell intoxicating liquor between the hours of 6:00 a.m. on Sunday and 1:30 a.m. on Mondays by the drink at retail for consumption on the premises of any amusement place described in the license.

3. Any new amusement place having been in operation for less than ninety days may be issued a temporary license to sell intoxicating liquor by the drink at retail for consumption on the premises between the hours of 6:00 a.m. on Sunday and 1:30 a.m. on Mondays for a period not to exceed ninety days if the amusement place can show a projection of gross receipts of at least one hundred thousand dollars of which at least fifty thousand dollars of such gross receipts are in nonalcoholic sales for the first year of operation. The license fee shall be prorated for the period of the temporary license based on the cost of the annual license for the establishment.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.175: BY THE DRINK BY AMUSEMENT PLACE -- SUNDAY SALES – TEMPORARY

1. As used in this section the term "amusement place" means any establishment whose business building contains a square footage of at least six thousand square feet, and where games of skill commonly known as billiards, volleyball, indoor golf, bowling or soccer are

usually played, or has a dance floor of at least two thousand five hundred square feet, or any outdoor golf course with a minimum of nine holes, and which has annual gross receipts of at least one hundred thousand dollars of which at least fifty thousand dollars of such gross receipts is in nonalcoholic sales.

2. Any person operating a new amusement place having been in operation for less than ninety days may apply for, and the City may issue, a temporary license to sell intoxicating liquor by the drink at retail for consumption on the premises between the hours of 6:00 a.m. on Sunday and 1:30 a.m. on Mondays for a period not to exceed ninety days if the amusement place can show a projection of gross receipts of at least one hundred thousand dollars of which at least fifty thousand dollars of such gross receipts are in nonalcoholic sales for the first year of operation.

3. The license fee shall be prorated for the period of the temporary license based on the cost of the annual license for the amusement place establishment.

(Ord. 01-2010-002, 2/9/10; 2021-09-002)

§50.180 BY THE DRINK OUTDOOR EXTENSION TEMPORARY PERMIT.

Those persons holding a license for the retail sale of intoxicating liquor for consumption on the premises may apply for, and the City may issue, a temporary permit to sell intoxicating liquor for consumption at special events to be held in the outdoor areas on the real estate parcel that the premises are located, provided that the area is limited to the area adjacent to and within fifty feet of the front door of the establishment only. The temporary permit shall be effective for a period not to exceed forty-eight (48) consecutive hours, and shall authorize the sale and service of alcoholic beverages at a specific function, occasion or event during the hours at which alcoholic beverages may lawfully be sold or served upon the premises licensed to sell alcoholic beverages for on-premises consumption. The licensee shall provide temporary barricades to limit patrons to the fifty foot area. The City may impose such other conditions on the license as the nature of the event and location may require. Patrons consuming alcohol within the barricaded area during the licensed period shall not be deemed to be consuming alcohol in public or possessing an open container in public.

(Ord. 01-2010-002, 2/9/2010)

§50.185 GENERAL LICENSE REGULATIONS.

1. Each license issued hereunder shall be conspicuously posted on the premises for which the license has been issued.

2. A separate license shall be required for each place of business. Every license issued under the provisions of this Chapter shall particularly describe the premises at which intoxicating liquor may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of intoxicating liquor at any place other than that described therein.

3. No license issued under this Chapter shall be transferable or assignable except as herein provided. In the event of the death of the licensee, the widow or widower or the next of kin of such deceased licensee, who shall meet the other requirements of this Chapter, may make application and the Clerk may transfer such license to permit the operation of the business of the deceased for the remainder of the period for which a license fee has been paid by the deceased. Whenever one (1) or more members of a partnership withdraws from the partnership, the Clerk, upon being requested, shall permit the remaining partner or partners originally licensed to continue to operate for the remainder of the period for which the license fee has been paid without obtaining a new license.

4. In the event any licensee desires to change the location of his/her place of business in the City, it shall be necessary for him/her to file an application in the same manner as herein provided for an original application, except that no additional fee shall be charged and the amended license, describing the new location, shall be issued immediately upon the approval of the application by the Board. Any change of location of the enterprise prior to issuance of such an amended license shall constitute a violation of this Section.

(Ord. 01-2010-002, 2/9/2010)

§50.190 MECHANICAL, SELF-SERVICE DISPENSING DEVICES PROHIBITED

No person licensed under this Chapter shall permit to be used upon the licensed premises any self-service, coin-operated, mechanical devices for the purpose of selling or dispensing intoxicating liquor.

(Ord. 01-2010-002, 2/9/2010)

§50.195 LICENSEES RESPONSIBLE FOR CONDUCT OF THEIR BUSINESSES

1. At no time, under any circumstances, shall any licensee or the licensee's employees immediately fail to prevent or suppress any violent quarrel, disorder, brawl, fight or other improper or unlawful conduct of any person upon the licensed premises, nor shall any licensee or his/her employees allow any indecent, profane or obscene language, song, entertainment, literature or advertising material upon the licensed premises.

2. In the event that a licensee or the licensee's employees knows or should have known that an illegal or violent act has been committed on or about the licensed premises, they immediately shall report the occurrence to the City Police Department and shall cooperate with the City Police Department during the course of any investigation into any occurrence on the licensed premises.

3. Licensees at all times are responsible for the conduct of their business and at all times are directly responsible for any act or conduct of any employee on the premises which is in violation of any of the provisions of this Chapter.

4. All licensees shall allow the licensed premises and all portions of the buildings of the premises, including all rooms, cellars, outbuildings, passageways, closets, vaults, yards, attics and all buildings used in connection with the operations carried on under the license and which are in their possession or under their control, and all places where they keep or have liquor stored to be inspected by the City Police. Licensees shall cooperate fully with the City police during the inspection.

(Ord. 01-2010-002, 2/9/2010)

§50.200 PERSONS EIGHTEEN YEARS OF AGE OR OLDER MAY SELL OR HANDLE LIQUOR OR BEER UNDER CERTAIN CIRCUMSTANCES

1. Except as provided in Subsections 2 and 3 of this Section, no person under the age of twenty-one (21) years shall sell or assist in the sale or dispensing of intoxicating liquor or non-intoxicating beer.

2. In any place of business licensed for the sale of intoxicating liquor in the original package in accordance with this Chapter, persons at least eighteen (18) years of age may stock, arrange displays, operate the cash register or scanner connected to a cash register and accept payment for, and sack for carryout, intoxicating liquor or non-intoxicating beer. Delivery of intoxicating liquor or non-intoxicating beer away from the licensed business premises cannot be performed by anyone under the age of twenty-one (21) years. Any licensee who employs any person under the age of twenty-one (21) years, as authorized by this Subsection, shall, when at least fifty percent (50%) of the licensee's gross sales does not consist of non-alcoholic sales, have an employee twenty-one (21) years of age or older on the licensed premises during all hours of operation.

3. In any distillery, warehouse, wholesale distributorship, or similar place of business which stores or distributes intoxicating liquor or non-intoxicating beer but which does not sell intoxicating liquor or non-intoxicating beer at retail, persons at least eighteen (18) years of age may be employed and their duties may include the handling of intoxicating liquor or non-intoxicating beer for all purposes except consumption, sale at retail, or dispensing for consumption or sale at retail.

4. Persons eighteen (18) years of age or older may, when acting in the capacity of a waiter or waitress, accept payment for or serve intoxicating liquor or non-intoxicating beer in places of business which sell food for consumption on the premises if at least fifty percent (50%) of all sales in those places consists of food; provided that nothing in this Section shall authorize persons under twenty-one (21) years of age to mix or serve across the bar intoxicating beverages or non-intoxicating beer.

(Ord. 01-2010-002, 2/9/2010)

§50.205. SALES OF LIQUOR PROHIBITED NEAR SCHOOLS AND CHURCHES

A. No license shall be granted for the sale of intoxicating liquor, as defined in this Chapter, within three hundred (300) feet of any school, church or other building regularly used as a place of religious worship, unless the applicant for the license shall first obtain the consent in writing of the Board of Aldermen, except that when a school, church or place of worship shall hereafter be established within three hundred (300) feet of any place of business licensed to sell intoxicating liquor, the license shall not be denied for this reason. Such consent shall not be granted until at least ten (10) days' written notice has been provided to all owners of property within three hundred (300) feet of the proposed licensed premises.

B. Subsection (A) of this Section shall not apply to a license issued to any church, school, civic, service, fraternal, veteran, political, or charitable club or organization which has obtained an exemption from the payment of federal taxes.

(Ord. 01-2010-002, 2/9/2010)

§50.210. ABANDONMENT, FORFEITURE OF LICENSE FOR NON-USE

In the event the operation of a duly licensed premises shall be discontinued or abandoned for a period of ninety (90) days or more, the Board of Aldermen, first having given five (5) days' written notice to the licensee of said establishment by causing same to be served upon him/her or left at his/her last known address by a City Police Officer, may declare such license abandoned and forfeited.

(Ord. 01-2010-002, 2/9/2010)

§50.215. POSSESSION OF INTOXICATING LIQUOR AND NONINTOXICATING BEER RESTRICTED.

No person shall possess intoxicating liquor or nonintoxicating beer within the City of Elsberry, Missouri, unless the same has been acquired from some person holding a duly authorized license to sell the same under this Chapter, or unless the said intoxicating liquor or nonintoxicating beer is had or kept with the written or printed permission of the State Supervisor of Liquor Control, and the package in which intoxicating liquor or nonintoxicating beer is contained and from which it is taken for consumption has, while containing intoxicating liquor or nonintoxicating beer, been labeled and sealed with the official seal prescribed under the state law and the regulations made thereunder. Provided, further, that nothing in this Chapter shall be so construed as to prevent the natural fermentation of fruit juices in the home for the exclusive use of the occupants of the home and their guests.

(Ord. 01-2010-002, 2/9/2010)

§50.220. REGULATION AS TO PHARMACISTS AND PHYSICIANS.

Any pharmacist may have in his possession intoxicating liquor purchased by him from a licensed

vendor under a license issued pursuant to this Chapter, or intoxicating liquor lawfully acquired at the place of acquisition and legally transported into this state and lawfully inspected, gauged labeled as provided for in the "Liquor Control Act" of the State of Missouri; such intoxicating liquor to be used in the business of a pharmacist in compounded medicines or as a solvent or preservant. Provided that nothing in this Chapter shall prevent a regularly licensed pharmacist, after he procures a license therefor in compliance with this Chapter, from selling intoxicating liquor in the original package, but not to be drunk or the package opened on the premises where sold. Provided, further, that nothing in this Chapter shall be construed as limiting the right of a physician to prescribe intoxicating liquor in accordance with his professional judgment for any patient at any time or prevent a pharmacist from selling intoxicating liquor to a person on prescription from a regularly licensed physician as above provided.

(Ord. 01-2010-002, 2/9/2010)

§50.225. PROHIBITIONS CONCERNING INTOXICATED PERSONS AND MINORS.

No person shall sell or supply intoxicating liquor or nonintoxicating beer or permit same to be sold or supplied to an habitual drunkard or to any person who is under or apparently under the influence of intoxicating liquor or nonintoxicating beer. Intoxicating liquor and nonintoxicating beer shall not be given, sold or otherwise supplied to any person under the age of 21 years, but this shall not apply to supplying of intoxicating liquor to a person under said age for medicinal purposes only, or by the parent or guardian of such person, or to administering of said intoxicating liquor to said person by a physician.

(Ord. 01-2010-002, 2/9/2010)

§50.230. MINORS.

1. No person under the age of twenty-one years, may purchase or attempt to purchase, or have in his or her possession, any intoxicating liquor.

2. No person under the age of twenty-one (21) years shall use a reproduced, modified or altered chauffeur's license, motor vehicle operator's license, identification card issued by any uniformed service of the United States, passport or identification card established in RSMo. §302.181, for the purpose of purchasing, asking for or in any way receiving any intoxicating liquor.

3. No person under the age of twenty-one (21) years shall reproduce, modify or alter any chauffeur's license, motor vehicle operator's license, identification card issued by any uniformed service of the United States, passport or identification card established in RSMo. §302.181, for the purpose of purchasing, asking for or in any way receiving any intoxicating liquor.

4. No person under the age of twenty-one (21) years shall have in his or her possession any reproduced, modified or altered chauffeur's license, motor vehicle operator's license,

identification card issued by any uniformed service of the United States, passport or identification card established in RSMo. §302.181, for the purpose of purchasing, asking for or in any way receiving any intoxicating liquor.

(Ord. 01-2010-002, 2/9/2010)

§50.235. UNLAWFUL FOR LICENSED RETAILER TO PURCHASE FROM OTHER THAN LICENSED WHOLESALER

It shall be unlawful for any licensee to purchase any intoxicating liquor except from, by or through a duly licensed wholesale liquor dealer in this State. It shall be unlawful for such retail liquor dealer to sell or offer for sale any intoxicating liquor purchased in violation of the provisions of this Section.

(Ord. 01-2010-002, 2/9/2010)

§50.240. SALE IN ORIGINAL PACKAGE NOT TO BE CONSUMED ON PREMISES, EXCEPTIONS PROVIDED.

No intoxicating liquor or nonintoxicating beer purchased in the original package shall be consumed or permitted to be consumed upon any premises where intoxicating liquor or nonintoxicating beer by the drink for consumption on the premises where sold is permitted, except as follows:

1. The licensed premises are rented to a third party for the exclusive use by the third party and its guests for a specific private event lasting less than twenty-four (24) hours,

2. The third-party lessee does not sell any intoxicating liquor or nonintoxicating beer at the event or on the premises,

3. The third-party lessee does not charge an admission fee or cover charge to the event, or the third party licensee is a not-for-profit organization,

4. The third-party lessee does not charge a "set up" fee for the use of glasses, mixes, appetizers, soft drinks, condiments, or other items ancillary or complimentary to the consumption of intoxicating liquor or nonintoxicating beer,

5. The third-party lessee does not rent licensed premises on more than ten (10) occasions in any one calendar year, and

6. the licensee does not sell any intoxicating liquor and nonintoxicating beer on the premises during such event.

(Ord. 01-2010-002, 2/9/2010)

§50.241. RETAIL SALES OF ALCOHOLIC BEVERAGES BY THE DRINK FOR ON-PREMISES CONSUMPTION – EXCEPTIONS FOR CERTAIN SALES OF RETAILER-PACKAGED ALCOHOLIC BEVERAGES TO CUSTOMERS IN CONTAINERS FILLED ON SUCH PREMISES FOR OFF-PREMISES CONSUMPTION.

1. Notwithstanding any provision of this Chapter to the contrary, any person who is licensed to sell intoxicating liquor at retail by the drink for on-premises consumption may sell retailer-packaged alcoholic beverages to customers in containers, filled on such premises by any employee of the retailer who is twenty-one years of age or older, for off-premises consumption if all the following requirements are met:

(1) The container of the alcoholic beverage is rigid, durable, leak-proof, sealable, and designed to prevent consumption without removal of the tamper-proof cap or seal. A "sealable" container does not include a container with a lid with sipping holes or openings for straws;

(2) The contents of each container do not exceed one hundred twenty eight ounces;

(3) The patron orders and purchases a meal from the licensee simultaneous with the alcoholic beverage purchase. For purposes of this subsection, a "meal" is defined as food that has been prepared on-premises;

(4) The number of alcoholic beverages sold under this section by a licensee for off-premises consumption is limited to twice the number of meal servings sold by the licensee for off-premises consumption;

(5) The licensee provides the patron with a dated receipt or an electronic record for the meal and alcohol beverages; and

(6) The container is either:

(a) Placed in a one-time-use, tamper-proof, transparent bag that is securely sealed; or

(b) The container opening is sealed with tamper-proof tape.

For purposes of this Section, "tamper-proof" means that a lid, cap, or seal visibly demonstrates when a bag or container has been opened.

2. Containers that are filled under subsection 1 of this section shall be affixed with a label or a tag that contains the name and address of the business that filled the container, in type not smaller than three millimeters in height and not more than twelve characters per inch, and states, "THIS BEVERAGE CONTAINS ALCOHOL.".

3. The filling of a container under this section shall be in compliance with Section 3-304.17© of the 2009 Food and Drug Administration Food Code.

4. No wholesaler, distributor, or manufacturer of intoxicating liquor to furnish containers that are filled under subsection 1 of this section to any person who is licensed to sell intoxicating liquor at retail.

(Ord. 2021-09-002)

§50.245. DRINKING IN PUBLIC PLACES PROHIBITED.

1. For purposes of this Section, the term *"public place"* shall mean any public street, highway, alley, sidewalk, thoroughfare or other public way of the City, or any parking lot.

2. No person shall drink or ingest any intoxicating liquor or non-intoxicating beer in or on any public place.

3. No person shall possess or have under his/her control any unsealed glass, bottle, can or other open container of any type containing any intoxicating liquor or non-intoxicating beer while in or upon any public place.

4. No person shall possess or have under his/her control any unsealed glass, bottle, can or other open container of any type containing any intoxicating liquor or non-intoxicating beer while within or on any motor vehicle while the same is being operated upon, or parked or standing in or upon, any public place. Any person operating a motor vehicle shall be deemed to be in possession of an open container contained within the motor vehicle he/she has control of whether or not he/she has actual physical possession of the open container.

5. It shall be unlawful for any person to be in possession of an alcoholic beverage in an open container when upon or in a public highway, street, alley, public park, public place or public square.

(Ord. 01-2010-002, 2/9/2010)

§50.250. VIOLATION, PENALTY.

Any person violating any of the provisions of this Chapter, except where some penalty is otherwise provided, shall upon conviction thereof be adjudged guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars ($500.00), provided that upon final conviction of any person for a violation of any of the provisions of this Chapter, said conviction shall automatically operate to revoke the license hereunder issued to such person. Provided further, that the term "conviction" as herein used shall mean conviction upon final determination

of any prosecution of any violation of this Chapter. Provided further, that no person having been convicted of the violation of any of the provisions of this Chapter shall be issued a license or a renewal thereof for a period of one year from the date of said conviction.

(Ord. 01-2010-002, 2/9/2010)

§50.255. REPORT OF CONVICTION.

Upon conviction of any person under the provisions of this Chapter in the Elsberry Municipal Court, it shall be the duty of the Municipal Clerk of said Court to report such conviction to the Board of Aldermen.

(Ord. 01-2010-002, 2/9/2010)

Previous Chapters:

(Ord. 11-2-1985; 12-1-1987; 1-1-1989;12-1-1989; 2-1-1990; 6-1-1993; 10-1-94; 11-1-2001 amended in entirety)

CHAPTER 51 -- JUNK YARDS AND JUNK AUTOS

SUBCHAPTER A -- JUNK YARDS

§51.010. SUBCHAPTER DEFINITIONS.

Except where otherwise indicated by the context, the following definitions shall apply in the interpretation and enforcement of this subchapter:

1. **"Junk"** means any old iron, steel, brass, copper, tin, lead, or other base metals; old cordage, ropes, rags, fibers, or fabrics; old rubber; old bottles or other glass; bones; wastepaper and other waste or discarded material which might be prepared to be used again in some form; and any or all of the foregoing; and motor vehicles, no longer used as such, to be used for scrap metal or stripping of parts; but "junk" shall not include materials or objects accumulated by a person as by-products, waste, or scraps from the operation of his own business, or materials or objects held and used by a manufacturer as an integral part of his own manufacturing processes.

2. **"Junkyard"** shall mean a yard, lot, or place, covered or uncovered, outdoors or in an enclosed building, containing junk as defined above, upon which occurs one or more acts of buying, keeping, dismantling, processing, selling or offering for sale any such junk, in whole units or by parts, for a business or commercial purpose, whether or not the proceeds from such act or acts are to be used for charity.

3. **"Junk dealer"** shall mean a person who operates a junkyard, as defined above, within the city.

4. **"Itinerant junk dealer"** shall mean an individual (natural person) who buys, sells, collects, or delivers junk within the city as a business or employment within the city, but who is not an operator of a junkyard within the city or an employee of such an operator.

5. **"Business premises"** or **"premises"** shall mean the area of a junkyard as described in a, junk dealer's license or application for license, as provided for in this subchapter.

§51.020. LICENSE REQUIRED.

It shall be unlawful for any person to act as a junk dealer or itinerant junk dealer in the city, whether personally, by agents or employees, singly, or along with some other business or enterprise, without first having obtained a license therefor from the city clerk in accordance with the provisions of this subchapter.

§51.030. APPLICATION.

An applicant for license under this ordinance shall file with the city clerk a written application upon forms provided by the city clerk, and pay a fee as hereinafter prescribed.

1. Said application shall include the junk dealer or itinerant junk dealer's name, residence address, and telephone number of applicant; the exact address or location of the place where the. business is or is proposed to be carried on; and such other information as the city clerk may reasonably require.

§51.040. LICENSE FEE.

The fees for licenses required under this Chapter shall be as established from time to time by ordinance of the board of aldermen and on file in the office of the city clerk.

§51.050. INVESTIGATION; APPROVAL AND ISSUANCE OF LICENSE.

Upon receipt of an application for a junk dealer's license as provided for herein, the chief of police shall cause an investigation to be made of the applicant's business responsibility and moral character.

1. If the findings of said investigation are favorable to the applicant, the city clerk shall within thirty days after the filing of the application and payment of the fee, issue a junk dealer's license to the applicant.

§51.060. LICENSE NOT TRANSFERABLE.

No license issued under this subchapter shall be transferred or assigned or used in any way by any person other than the one to whom it was issued.

§51.070. DURATION; PRORATION AND REFUND OF FEES.

All licenses issued under the provisions of this Chapter shall expire on the thirtieth day of June following the issuance thereof. For a partial year license, the fee shall be prorated quarterly. No license fee shall be returned to the holder upon sale, transfer or dissolution of the business for which the license was issued.

§51.080. GENERAL OPERATING REQUIREMENTS.

The following general operating requirements shall apply to all junk dealers licensed in accordance with the provisions of this ordinance:

1. The license issued pursuant to this ordinance shall be plainly displayed on the business premises.

2. The junkyard, together with things kept therein, shall at all times be maintained in a sanitary condition.

3. No space not covered by the license shall be used in the licensed business.

4. No water shall be allowed to stand in any place on the premises in such manner as to afford a breeding place for mosquitoes.

5. Weeds and vegetation on the premises, other than trees, shall be kept at a height of not more than four inches.

6. No garbage or other waste liable to give off a foul odor or attract vermin shall be kept on the premises; nor shall any refuse of any kind be kept on the premises, unless such refuse is junk as described herein and is in use in the licensed business.

7. No junk shall be allowed to rest upon or protrude over any public property, street, alley, walkway, or curb or become scattered or blown off the business premises.

8. Junk shall be stored in piles not exceeding ten feet in height and shall be arranged so as to permit easy access to all such junk for fire fighting purposes.

9. No combustible material of any kind not necessary or beneficial to the licensed business shall he kept on the premises; nor shall the premises he allowed to become a fire hazard.

10. Gasoline and oil shall be removed from any scrapped, engines or vehicles on the premises.

11. No junk or other material shall be burned on the premises in any incinerator not meeting the approval of the chief of the fire department, which approval shall not be unreasonably denied.

12. No noisy processing of junk or other noisy activity shall be carried on in connection with the licensed business on Sunday, Christmas, Thanksgiving, or at any time between the

hours of 6:00 p.m. and 7:00 a.m.

13. The area on the premises where junk is kept (other than indoors) shall be enclosed, except for entrances and exits, with a solid vertical wall or fence of a minimum height of eight (8) feet measured from ground level. Entrances and exits shall not be wider or more numerous than reasonably necessary for the conduct of the licensed business.

§51.090. OPERATION OUTSIDE CITY LIMITS.

Section 51.080 shall not apply to the operation of junk yards outside of the city limits, even though the owner thereof be licensed in accordance with this subchapter.

§51.100. NONCONFORMING JUNKYARDS.

All junkyards in violation of this Chapter are hereby declared to be public nuisances. However, to allow flexibility and prevent undue hardship, the board of aldermen may consent to a schedule by which nonconforming junkyards existing as of January 1, 1975, are brought in compliance within 2 years, with one quarter of the work required for compliance done each six months.

SUBCHAPTER B -- JUNK AUTOS

§51.500. SUBCHAPTER DEFINITIONS.

Except where otherwise indicated by the context, the following definitions shall apply in the interpretation and enforcement of this subchapter:

1. **"Junk"** shall have the same meaning as defined in Section 51.010.(1) of this Code.

2. **"Vehicle"** is any machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners, or slides, including but not limited to automobiles, trucks, trailers, motorcycles, tractors, buggies, and wagons, or any part thereof.

3. **"Damaged or disabled vehicle"** is any vehicle which is not registered or is improperly registered with the State of Missouri; has been inoperable for more than 72 hours or is in such a state of repair as to be inoperable, except those on the premises of a duly licensed automobile repair or sales business; or in a duly licensed automobile junking yard.

§51.510. DAMAGED OR DISABLED VEHICLES ARE NUISANCES.

Any damaged or disabled vehicle, part thereof, or junk, located on any property, street, or highway which presents a hazard to children, or harbors tall grass, weeds, or other vegetation, or creates fire hazard, or affords a breeding place or nesting place for mosquitoes, flies, rodents, rats, or other vermin; or any vehicle, part thereof, or junk allowed to remain unmoved on any street or highway for 48 hours, is a public nuisance.

§51.520. UNLAWFUL TO MAINTAIN.

It shall be unlawful for any person to create or maintain a nuisance as defined in Section 51.510.

§51.530. NOTICE.

Whenever the Chief of Police or his duly authorized representative determines that any vehicle or junk is a nuisance as defined herein, he shall cause written notice to be served upon the owner of the vehicle or junk if he can be located, or the person in custody of such vehicle or junk, by registered mail or by personal service. The notice shall state that the vehicle or junk is deemed to be a nuisance within the provisions of Section 51.510 hereof, and shall briefly state facts deemed to constitute such vehicle or junk a nuisance within the terms of this ordinance, and state that the nuisance shall be abated within forty-eight hours from receipt of such notice.

§51.540. PROCEEDINGS WHEN OWNER OR CUSTODIAN CANNOT BE LOCATED.

When the owner or custodian of any nuisance as defined in Section 51.510 cannot be located by reasonable search, the notice shall be attached to the property, briefly stating facts deemed to constitute the property a nuisance and stating that the nuisance shall be abated within seven days of the date notice was posted, or if the vehicle is on public property, within two days of the date notice was posted.

§51.550. DUTY OF THE OWNER OR CUSTODIAN.

Any person receiving the notice provided for above shall comply with the provisions of the notice requiring abatement.

§51.560. DISPOSITION.

If not removed within the times specified in the notice (provided for by Sections 51.530 and 51.540), the vehicle or junk shall be transported to a storage area by or at the direction of the Chief of Police or his duly authorized representative at the expense of the owner or person in custody thereof. It shall then be stored for a period of at least 90 days, and the person entitled to possession thereof may redeem the property by payment to the city of the actual cost of its removal and a reasonable storage fee of $1.00 per day. If the vehicle or junk is unredeemed after the expiration of the 90-day period, the Chief of Police may sell it to the highest bidder or, if it has no sale value, may otherwise dispose of it. Any money received from disposal of any vehicle or junk shall be applied to the expenses charged to the owner or person in charge thereof, and any excess held in escrow or returned to him. After another 90-day period, if the excess be unclaimed, it shall be paid over to the general fund of the city.

§51. 570. NOTICE OF SALE.

Prior to the sale of any such property, the Chief of Police shall cause to be posted in the city hall, place of storage and at least one other public place in the city, a notice of sale stating:

1. that the city is selling abandoned property

2. the color, make, year, motor number, and serial number, if available, and any other information necessary for an accurate identification of the property

3. the terms of the sale

4. the date, time and place of the sale.

This notice shall be published not less than ten nor more than twenty days prior to the date of the sale.

§51.580. ENTRY ONTO PRIVATE PROPERTY.

The Chief of Police or his duly authorized representative may enter upon private property for inspection or for the purpose of removing any vehicle or junk in accordance with this ordinance. If any person refuses to allow entry onto his private property, the Chief of Police may obtain a warrant from the proper official and proceed in accordance therewith.

CHAPTER 52 -- PEDDLERS AND SOLICITORS

§52.010. PERMIT REQUIRED.

It shall be unlawful for any person, corporation or organization to solicit funds for charitable or non-charitable purposes, or any person to sell merchandise door-to-door, or any person to sell merchandise as an itinerant peddler with no established permanent place of business within the city limits unless such person, corporation or organization shall obtain a solicitation and sales permit from the city collector.

§52.020. INFORMATION REQUIRED.

Prior to the issuance of a solicitation or sales permit, the applicant for such permit shall provide the following information to the city collector.

1. The name and address of the applicant or if application is made by an organization or corporation, the name, address, managing officer of the organization or corporation and the registered agent of the corporation as shown by the records of the Secretary of State.

2. If the applicant intends to merely solicit funds, the applicant shall provide to the city collector information on whether those funds are solicited for charitable or for profit reasons.

3. If merchandise is to be sold by the applicant, whether sold on a door-to-door sale or on sale by an itinerant peddler, the name and address of the person to contact regarding complaints concerning the merchandise.

§52.030. ISSUED WHEN.

Upon receipt of the information required by this ordinance, the city collector shall issue a solicitation or sale permit which shall be valid for a period of six months from the date of issuance. The permit shall remain with the city collector and open to the public for inspection at the city collector's office in City Hall. If the solicitation or sales permit is issued to a person, corporation or organization who is soliciting or selling merchandise for a charitable, educational or not-for-profit organization, then the city collector shall receive the sum of $1.00 for his services. If the solicitation or sale permit is issued to a person, corporation or organization who is soliciting or selling merchandise for profit, then the collector shall receive the sum of $25.00 for issuance of the permit to a non-resident and $10.00 for the issuance of the permit to a resident.

§52.040. PENALTY.

Any person found to be in violation of the provision, of this section shall be subject to a fine of up to $100.00, per violation.

CHAPTER 54 -- BUSINESS LICENSES

§54.010. SHORT TITLE.

This Chapter shall be known and may be cited as the "General Licensing Ordinance" of the City of Elsberry.

§54.020. SCOPE.

It is not intended by this Chapter to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this Chapter. Further this Chapter imposes a greater restriction upon persons, premises or personal property than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this Chapter shall control.

§54.030. DEFINITIONS.

For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. **"Business"** is meant to include all kinds of vocations, occupations, professions, enterprises, establishments, and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit or benefit, either directly or indirectly, on any premises in this City, or anywhere else within its jurisdiction, all as defined in RSMo. §94.270.1.

2. **"City"** is the City of Elsberry.

3. **"City Council"** is the board of aldermen of the City of Elsberry.

4. **"City License Officer"** or **"License Officer"** is the city collector of the City of Elsberry.

5. **"Insignia"** or its singular number **"insigne"** is any tag, plate badge, emblem, sticker, or any other kind of device which may be required for any use in connection with any license.

6. **"License"** or **"Licensee"**, as used generally herein, shall include respectively the words **"permit"** or **"permittee"**, or the holder for any use or period of time of any similar privilege, wherever relevant to any provision of this Chapter or other law or ordinance.

7. **"Person"** is meant to include individual natural persons, partnerships, joint adventures, societies, associations, clubs, trustees, trusts, or corporations; or any officers, agents employees, factors, or any kind of personal representatives of any thereof, in any capacity, acting either for himself, or for any other person, under either personal appointment or pursuant to law.

8. **"Premises"** is meant to include all lands, structures, places and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to, or is otherwise used in connection with any such business conducted on such premises.

(Amend. Ord. 2010-07-002)

§54.040. APPLICATION OF REGULATIONS.

1. Compliance required. It shall be unlawful for any person, either directly or indirectly, to conduct any business or nonprofit enterprise, or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license, or permit, is required by any law or ordinance of this City, without a license, or permit therefor being first procured and kept in effect at all times as required by this Chapter or other law or ordinance of this City.

2. Special sales. This Chapter shall apply to all business in the nature of special sales for which a license is required by any law or ordinance of this City and it shall be unlawful for any person, either directly or indirectly, to conduct any such sale except in conformity with the provisions of this Chapter.

    a. One act constitutes doing business. For the purpose of this Chapter, any person shall be deemed to be in business or engaging in nonprofit enterprise, and thus subject to the requirements of subsections 1 and 2 of this Section, when he does one act of:

(1) Selling any goods or service

(2) Soliciting business or offering goods or services for sale or hire

(3) Acquiring or using any vehicle or any premises in the City for business purposes.

b. Agents responsible for obtaining license. The agents or other representatives of nonresidents who are doing business in this City shall be personally responsible for the compliance of their principals and of .the businesses they represent with this Chapter.

c. Separate license for branch establishments. A license shall be obtained in the manner prescribed herein for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this Chapter shall not be deemed to be separate places of business or branch establishments.

(1) Rental real property. Each rental real property shall be deemed a branch establishment or separate place of business for the purposes of this Chapter when there is a representative of the owner or the owner's agent on the premises who is authorized to transact business for such owner or owner's agent or there is a regular employee of the owner or of the owner's agent working on the premises.

d. Joint license. A person engaged in two or more businesses at the same location shall not be required to obtain separate licenses for conducting each of such businesses but when eligible. shall be issued one license which shall specify on its face all such businesses.

e. No license required for mere delivery. No license shall be required of any person for any mere delivery in the City of any property purchased or acquired in good faith from such person at his regular place of business outside the City where no intent by such person is shown to exist to evade the provisions of this Chapter.

f. Special permits to nonprofit enterprise. The City license officer may issue special permits without the payment of my license fees or other charges therefor to any person or organization for the conduct or operation of a nonprofit enterprise either regularly or temporarily when he finds that the applicant operates without private profit, for a public, charitable, educational, literary, fraternal or religious purpose.

(l) Application for special permit. An applicant for a special permit shall submit an application therefor to the city license officer upon forms prescribed by the license officer, and shall furnish such additional

information and make such affidavits as the license officer shall require.

(2) Special permittees must conform. A person or organization operating under a special permit shall operate his nonprofit enterprise in compliance with this Chapter and all other applicable rules and regulations except as provided herein.

§54.045 CERTAIN PERSONS NOT TO BE CHARGED FOR LICENSES

1. No minister of the gospel, duly accredited Christian Science practitioner, teacher, professor in a college, priest, lawyer, certified public accountant, dentist, chiropractor, optometrist, chiropodist, physician, surgeon, insurance agent or broker, veterinarian, architect, professional engineer, land surveyor, auctioneer, or real estate broker or salesman, or other person exempted in RSMo. §71.620 shall be required to obtain a license or permit under this Chapter to conduct such profession within the City.

2. No farmer, or producer or producers, for the sale of produce raised by him, her or them, when sold from his, her or their wagon, cart or vehicle, or from any person or persons in the employ of such farmer or producer in any such city, town or village, or other person exempted in RSMo. §71.630 shall be required to obtain a license or permit under this Chapter to conduct such profession within the City.

3. No investment funds service corporation, as defined in RSMo. § 143.451, may be required to pay any business license fee in excess of twenty-five thousand dollars ($25,000.00) annually.

(Ord. 2010-07-002).

§54.050. CITY LICENSE OFFICER TO ISSUE LICENSE.

The city license officer shall collect all license fees and shall issue licenses in the name of the City to all persons qualified under the provisions of this Chapter and shall:

1. Make rules. Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this Chapter.

2. Adopt forms. Adopt all forms and prescribe the information to be given therein as to character and other relevant matters for all necessary papers.

3. Require affidavits. Require applicants to submit all affidavits and oaths necessary to the administration of this Chapter.

4. Obtain endorsement. Submit all applications, in proper form, to interested City officials for their endorsement thereon as to compliance by the applicant with all City regulations which they have the duty of enforcing.

5. Investigate. Investigate and determine the eligibility of any applicant for a license as prescribed herein.

6. Examine records. Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this Chapter.

7. Give notice. Notify any applicant of the acceptance or rejection of his application and shall, upon his refusal of any license or permit, at the applicant' s request, state in writing the reasons therefor and deliver them to the applicant.

§54.060. LICENSE TERM AND DEADLINE FOR RENEWAL APPLICATIONS.

1. Except as stated below, all business licenses shall be valid for a term of one year, unless sooner revoked or surrendered.

2. All business licenses shall expire on the first June 30th that occurs after the application is submitted.

3. All applications for a renewal of a business license shall be submitted no later than May 30th of the year in which the license is to expire.

4. Any business license that shall expire within six months of its issuance may have its fee prorated based on the number of calendar days for which the license is issued.

4. The provisions of subparagraphs 2 and 3 shall begin with licenses issued on and after September 1, 2010. Any business license renewals that are issued from September 1, 2010 through June 29, 2011 may be issued for a period in excess of one year so that the termination date is June 30, 2012. Any business license renewals that are issued from June 30, 2011 through September 1, 2011 may be issued for a period less than one year so that the termination date is June 30, 2012. If a business license that is issued from September 1, 2010 through September 1, 2011 is for a period of time greater or lesser than one year, the license fee shall be prorated based on the number of calendar days for which the license is issued.

(Amend. 2010-007-002).

§54.070. QUALIFICATIONS OF APPLICANTS; GENERAL STANDARD TO BE APPLIED.

The general standards herein set out relative to the qualifications of every applicant for a City license shall be considered and applied by the city license officer. The applicant shall:

1. Citizenship. Be a citizen of the United States, or a declarant therefor as authorized by law.

2. Good moral character. Be of good moral character. In making such determination the city

license officer shall consider:

a. Penal history. All convictions, the reasons therefor, and the demeanor of the applicant subsequent to his release.

b. License history. The license history of the applicant; whether such person, in previously operating in this or another state under a license, has had such license revoked or suspended; the reasons therefor; and the demeanor of the applicant subsequent to such action.

c. General personal history. Such other facts relevant to the general personal history of the applicant as he shall find necessary to a fair determination of the eligibility of the applicant.

3. No obligations to City. Not be in default under the provisions of this Chapter nor indebted or obligated in any manner to the City except for current taxes.

§54.080. PROCEDURE FOR ISSUANCE OF LICENSE.

Every person required to procure a license under the provisions of any ordinance or law of the City shall submit an application for such license to the city license officer. The application shall:

l. Form of application. Be a written statement upon forms provided by the city license officer; such form shall include an affidavit, to be sworn to by the applicant before a notary public of this State.

2. Contents of application. Require the disclosure of all information necessary to compliance with Section 54.070 and any other information which the city license officer shall find to be reasonably necessary to the fair administration of this Chapter.

3. Payment of fees. Be accompanied by the full amount of the fees chargeable for such license. Whenever a license cannot be issued at the time the application for the same is made, the city license officer shall issue a receipt to the applicant for the money paid in advance, subject to the following condition: such receipt shall not be construed as the approval of the city license officer for the issuance of a license; nor shall it entitle or authorize the applicant to open or maintain any business contrary to the provisions of this Chapter.

4. Construction Contractor Workers' Compensation insurance. An applicant who is a contractor in the construction industry shall provide a certificate of insurance for workers' compensation coverage or an affidavit, the form of which shall be developed by the Missouri Department of Labor, signed by the applicant attesting that the contractor is exempt from the statutory requirement to provide workers' compensation insurance coverage.

5. If the application is for any business where goods are sold at retail, no business license can be issued or renewed unless the applicant has in the applicant's possession of a state of Missouri retail sales license and a statement from the Missouri Department of Revenue that the applicant owes no tax due under RSMo. §§ 144.010 to 144.510 or 143.191 to 143.265. The date of issuance on the statement that the licensee owes no tax due shall be no more than ninety days before the date of business license application.

(Amend. 2010-07-002).

§54.090. REVOCATION OF STATE LICENSE RENDERS CITY LICENSE VOID

The revocation of a business' Missouri retail sales tax license by the Missouri Director of the Department of Revenue shall render the City's business license null and void. The City's business license may be reinstated when the business provides the City with a valid statement from the Missouri Department of Revenue that the applicant owes no tax due under RSMo. §§ 144.010 to 144.510 or 143.191 to 143.265, that is dated after the date of revocation.

(Amend. 2010-07-002).

§54.100. DUPLICATE LICENSE PROCEDURE.

A duplicate license or special permit shall be issued by the license officer to replace any license previously issued, which has been lost, stolen, defaced, or destroyed, without any wilful misconduct on the part of the licensee, upon the filing by the licensee of an affidavit sworn to before a Notary Public of this state attesting to such fact and the paying to the license officer of a fee of $1.00. This section shall not apply to city auto stickers.

§54.110. SUPPLEMENTAL LICENSE PROCEDURE.

When a licensee places himself in a new status as provided in section 54.l30.2(a) of this chapter, the license officer shall issue a supplemental license and such additional insignia as may be required.

§54.120. NON-APPROVAL OF LICENSE.

The license officer shall, upon disapproving any application submitted under the provisions of this chapter, refund all fees paid in advance to the applicant, provided the applicant is not otherwise indebted to the city.

1. Compliance pending legal action. When the issuance of a license is denied and any action is instituted by the applicant to compel its issuance, such applicant shall not engage in the business for which the license was refused unless a license be issued to him pursuant to a judgment authorizing the same.

§54.130. DETERMINATION OF LICENSE FEE.

1. Fee established. License fees shall be in the amounts established in the governing ordinance, and as further determined under this chapter.

2. Adjustment of fee. The license officer shall:

   a. Change in license status. Require the payment of an additional or higher license fee, to be prorated for the balance of the license period, when a licensee places himself in such status under this ordinance by:

      1) making any other lawful and material change of any kind in his business.

      2) increasing the number of size of his vehicles.

3. Rebate of fee.

   a. General prohibition. Except as herein provided, as rebate or refund of any license fee or part thereof shall be made by reason of the non-use of such license or by reason of a change of location or business rendering the use of such license ineffective.

   b. Authorized in special cases. The license officer shall have the authority to refund a license fee or prorated portion thereof where:

      1) the license fee was collected through an error.

§54.140. CONTENTS OF LICENSE.

1. Information required. Each license issued hereunder shall be signed by the mayor and the city clerk, and countersigned by the collector and the clerk shall affix the corporate seal thereto, and each license shall state upon its face the following:

   a. the name of the licensee and any other name under which business is to be conducted.

   b. the kind and address of each business so licensed

   c. the amount of license fee therefore

   d. the dates of issuance and expiration thereof

   e. such other information as the state law or City ordinance shall determine.

§54.150. GENERAL STANDARDS OF CONDUCT.

Every licensee under this Chapter shall:

1. Permit inspection. Permit all reasonable inspections of his business and examinations of his books by public authorities maintained so as to be plainly visible from such public entrance.

2. Vehicles.

   a. Effect of this Chapter. Any general or special license fees required for any kind of vehicle, for the privilege of being operated upon the public highways, by any statute or ordinance shall not abrogate, limit or affect any further requirements of this ordinance, or , of other ordinances or laws, for additional and separate licenses, permits and insignia and fees for such vehicles, or other uses, for and relating to the privilege of using the same in the business so licensed.

   b. Motor vehicles.

   c. Insignia. Affix any insignia delivered for use in connection with a licensed motor vehicle on the inside of the windshield of the vehicle or as may be otherwise prescribed by the license officer with the advice and consent of the board of aldermen or by law.

   d. Motor-less vehicles. Insignia. Affix any metal or other durable type of insignia delivered for use in connection with a wagon or other vehicle not operated by motor power securely on the outside of such vehicle.

3. Persons. Carry such license on his person when he has no licensed business premises.

4. Machines. Affix any insignia delivered for use in connection therewith upon the outside of any coin, vending, or other business machine or device, so that it may be seen at all times.

5. Inoperative licenses, special permits and insignia. Not allow any license, special permit or insignia to remain posted, or displayed, or used, after the period for which it was issued has expired; or when it has been suspended 'or revoked, or for any other reason become ineffective. The licensee shall promptly return such inoperative license, special permit or insignia to the license officer.

6. Unlawful possession. Not loan, sell, give or assign, to any other person, or~allow any other person to use or display, or to destroy, damage or remove, or to have in his possession, except as authorized by the license officer or by law, any license, or insignia which has been issued to said licensee.

7. New location desired. A licensee shall have the right to change the location of the licensed business provided he shall:

   a. Approval of license officer. Obtain written permission from the license officer for

such change of location.

8. Keep records. Keep all records and books necessary to the computation of his license fee and to the endorsement of this Chapter.

9. Where applicant fails to record. The license officer shall make his own determination as to the financial statement for any business where the licensee has failed to keep books and records as required herein.

§54.160. BUSINESS LICENSE FEE.

The annual City business license fee for City resident is Twenty Dollars ($20.00). The annual City business license fee for non residents of the City is Thirty-five Dollars ($35.00).

(Amend. Ord. 2010-07-002).

§54.170. ENFORCEMENT, INSPECTIONS.

1. Persons authorized. The following persons authorized to conduct inspections in the manner prescribed herein.

   a. License officer. The license officer shall make all investigations reasonably necessary to the enforcement of this Chapter.

   b. Officials having duties. The license officer shall have the authority to order the inspection of licensees, their businesses and premises, by all city officials having duties to perform with reference to such licenses or businesses.

   c. Police officers. All police officers shall inspect and examine businesses located within their respective jurisdictions or beats to enforce compliance with this Chapter.

2. Authority of inspectors. All persons authorized herein to inspect licensees and businesses shall have the authority to enter, with or without search warrant, at all reasonable times, the public portion of the following premises:

   a. Those for which a license is required.

   b. Those for which a license was issued and which at the time of inspection, are operating under such license

   c. Those for which the license has been revoked or suspended.

3. Reports by inspectors. Persons inspecting licenses, their businesses, or premises as herein authorized shall report all violations of this Chapter or of any other laws or ordinances to

the license officer and shall submit such other reports as the license officer shall order.

a. Provisional order. When an inspector has reported the violation of this ordinance or of any law or ordinance the license officer shall issue to the affected person a provisional order to comply.

1) Nature of notice. The provisional order, and all other notices issued in compliance with this ordinance shall be in writing, shall be personally served if practicable and shall apprise the person affected of his specific violations. In the absence of the person affected or his agent or employee, a copy of such notice shall be affixed to some structure on the premises. Depositing such notice in the United States mail shall constitute service thereof, addressed to the last known address of such party unavailable for personal service.

2) Period of compliance. The provisional order shall require compliance within 30 days of service on the affected person.

3) Hearing. Upon written application by the person affected before the expiration of the 30 day period of compliance, the license officer shall order a hearing. Notice of such hearing shall be given the affected person in the manner prescribed herein.

b. Modifying authority of license officer. Upon written application or on his own motion, the license officer shall have the authority, in a proper case, to extend the time for compliance, to grant a new hearing date and to change, modify or rescind any provisional recommendation or order, prior to its becoming final.

c. Final order. Upon the failure or refusal of the violator to comply with the provisional order or with any order made after hearing the license officer shall then declare and make the provisional order final.

1) Authority to license officer. The license officer shall have the authority to suspend or revoke licensees upon making and declaring a provisional order-final.

2) Effect of revocation or suspension. Upon revocation or suspension no refund of any portion of the license fee shall be made to the licensee and he shall immediately cease all business at all places under such license in the city.

d. Summary action. When the conduct of any licensee, agent or employee is so inimical to the public health, safety and general welfare as to constitute a nuisance and thus give rise to an emergency the license officer shall have the authority to summarily order the cessation of business and the close of premises or to suspend

or revoke the license.

1) Special hearing. Unless waived in writing, within five days after he has acted summarily, the license officer shall conduct a special hearing for such action in respect to the summary order as may be therein determined. Notice of such hearing shall be given the affected person in the manner prescribed herein.

e. Right of appeal. Any person aggrieved by any decision of the license officer after hearing shall have the right to appeal to the city board of aldermen by filing a written appeal with such City's board of aldermen's presiding officer and a copy thereof with said licensing officer within ten days following the effective date of the action or decision complained of.

1) Contents of appeal. Such appeal shall set out generally the order or decision appealed from and shall include a statement of the facts and/or law relied upon to avoid such order.

2) Notification of license officer. At the time of filing any such appeal, a copy thereof shall be filed by the appellant with the license officer as provided aforesaid.

3) Hearing. The board of aldermen shall fix a time and place for hearing the appeal and shall serve a written notice, as provided herein upon the appellant informing him thereof. The board of aldermen shall also give such notice to the license officer and such officer shall be entitled to appear and defend such order.

4) Effect of decision. The findings of the board of aldermen shall be final and conclusive and shall be personally served upon the appellant as required herein.

f. Liability of violator.

1) Unpaid fee constitutes debt. The amount of any unpaid fee the payment of which is required hereunder, shall constitute a debt due the city.

2) Action by city attorney. The city attorney shall at the direction of the license officer, institute civil suit in the name of the city to recover any such unpaid fee.

3) Civil judgment no bar. No civil judgment, or any set by the city attorney, the license bar or the violator shall bar or prevent a criminal prosecution for each and every violation of this Chapter when otherwise permitted by law.

§54.180. PENALTIES.

Any person, firm or corporation violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction for such violation shall be fined in an amount not exceeding $100.00 or be imprisoned for nonpayment thereof for a period not exceeding three months. Each day such violation is committed or permitted to continue, shall constitute a separate offense and shall be punishable as such hereunder.

§54.190. SEPARABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

§54.200. ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SUBCHAPTER B -- TATTOO AND BODY PIERCING PARLORS

§54.300. SUBCHAPTER DEFINITIONS.

Except where otherwise indicated by the context, the following definitions shall apply in the interpretation and enforcement of this Subchapter:

Body-piercing: Puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting jewelry or other objects in or through the human body, except puncturing the external lobe of the human ear shall not be included in this definition.

Body-piercing Facility: Any room, or any part thereof, where body-piercing is practiced or where the business of body-piercing is conducted.

Operator: An operator means any individual, firm company, corporation, partnership, or association that owns or operates a tattoo/body-piercing parlor and any individual who performs or practices the art of tattooing or body-piercing on the person of another.

Tattoo Artist: This is a person who practices tattooing or permanent color, technology, or both, pursuant to this Subchapter.

Permanent Color Technology: The process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

Tattoo, Tattooed, Tattooing: Any method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the subcutaneous portion of the skin of a human being with ink or any other substance resulting in the coloration of the skin by the aid of needles or any other instruments designed to touch or puncture the skin.

Tattoo/Body-piercing Studio or Parlor: Any place where persons are tattooed or body pierced for consideration where tattooing or body-piercing is regularly conducted whether or not it is in exchange for compensation.

(Ord. 2010-08-004).

§54.305 BUSINESS LICENSE REQUIRED

1. No person shall operate or conduct a tattoo or body piercing business, studio, or parlor within the corporate limits of the City without first obtaining a Business License from the City.

2. No Business License may be issued to a tattoo or body piercing studio or parlor without the operator providing to the City proof of a current and valid tattoo or body piercing certification from Director of the Missouri Division of Professional Registration.

3. The operator shall comply with the City Municipal Code and all rules and regulations of the City.

4. Operators and tattoo artists must comply, and show proof of compliance, with all State Statutes regulating such work.

5. All City Business Licenses and State certifications shall be posted in public view on the premises.

6. The operator shall meet the health license standards, and other applicable regulations, as set from time to time by the County and State.

7. It is unlawful for any person to conduct tattoo or body piercing studio or parlor business unless the City Business License and State certification is current, unrevoked, and not suspended.

(Ord. 2010-08-004).

§54.310 SCOPE

These provisions shall not apply to veterinarians and other persons or businesses placing tattoos on animals. Further, these provisions shall also not apply to State licensed physicians and registered professional nurses performing cosmetic and reconstructive surgery.

(Ord. 2010-08-004).

§54.315 INSPECTION REPORTS

The operator shall immediately post all inspection reports from the County or State at all times in a conspicuous place on the premises. The operator shall also immediately forward to the City Clerk a copy of all inspection reports from the County or State.

(Ord. 2010-08-004).

§54.320 PREMISES

1. Tattoo/body-piercing studio or parlor premises and equipment must be maintained in a sanitary manner. This includes physical cleanliness as well as antiseptic precautions.

2. All tattoo/body-piercing studios or parlors shall be equipped with hot and cold running water, and adequate toilet facilities with soap and towels properly installed.

3. All tattoo/body-piercing studios or parlors shall be well lit in all cleaning and working areas.

4. All tattoo/body-piercing studios or parlors shall be of sufficient size to accommodate required equipment and business done therein.

5. All tattoo/body-piercing studios or parlors floors, walls and ceilings shall be clean and in good repair and maintained in a clean condition.

(Ord. 2010-08-004).

§54.325 ALCOHOLIC BEVERAGES

1. No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept any alcoholic beverage on the premises of any tattoo/body piercing studio or parlor.

2. No tattooing or body-piercing shall be performed on a person whom the operator suspects is under the influence of alcohol or drugs.

(Ord. 2010-08-004).

§54.330 MINORS

No person shall knowingly tattoo, brand or perform body piercing on a minor unless such person is a licensed practitioner and has first obtained prior written consent of the minor's parent(s) or legal guardian. The minor's parent(s) or legal guardian shall execute the written information

required by this Section in the presence of the licensed practitioner 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 their self as a parent or guardian of such minor is guilty of an ordinance violation.

(Ord. 2010-08-004).

§54.335 HOURS OF OPERATION

Business shall only be conducted at a tattoo/body piercing studio or parlor between the hours of 8:00 A.M. and 11:00 P.M.

(Ord. 2010-08-004).

§54.340 REVOCATION OF TATTOO/BODY-PIERCING STUDIO BUSINESS LICENSES

1. Any license for the operation of a tattoo/body-piercing studio may be revoked by the City Clerk at any time for:

    a. Violations of this Subchapter; or

    b. Revocation or lapse of State tattoo or body piercing certifications.

2. An operator may ask for a review of the revocation by the Board of Aldermen. Upon receipt of an application for a hearing the City Clerk shall notify the applicant of the date and place of the review. The Board of Aldermen, after taking into account all of the facts, shall thereupon take such action as it deems appropriate including reinstatement, revocation, or suspension of the license.

(Ord. 2010-08-004).

§54.345 PENALTY

1. Any person who violates the provisions of this subchapter shall be guilty of a class B misdemeanor. In addition, any violation of this Chapter shall be grounds for the City to revoke any or all licenses or permits issued by the City.

2. Each violation of this Subchapter shall be considered a separate offense and any violation continuing more than one (1) day shall be considered a separate offense for each day of violation.

3. The conduct of any business within the City in violation of any of the terms of this Subchapter is hereby found and declared to be a public nuisance and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or proceeding for the abatement, removal and enjoinment thereof in the manner

provided by law and shall take other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate or remove such establishment and restrain and enjoin any person from conducting, operating or maintaining a tattooing and body piercing establishment contrary to the provisions of this Subchapter."

(Ord. 2010-08-004).

CHAPTER 55 -- DECEPTIVE TRADE PRACTICES

§55.010. DEFINITIONS.

As used in this Chapter, the following words and terms shall mean:

1. **"Advertisement"** includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

2. **"Merchandise"** includes any objects, wares, goods, commodities, intangibles, real estate or services.

3. **"Sale"** includes any sale, offer for sale, or attempt to sell merchandise for cash or on credit.

§55.020. UNLAWFUL PRACTICES, EXCEPTION.

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise, is declared to be an unlawful practice; provided, however, that:

1. Nothing herein contained shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; and provided, further, that nothing herein contained shall apply to any advertisement which is subject to and complies with the rules and regulations of and the statutes administered by the Federal Trade Commission. That such an advertisement complies with the regulations of and the statutes administered by the Federal Trade Commission shall be a defense which must be proven by one charged with violating this Section.

§55.030. DECEPTIVE BUSINESS PRACTICES.

A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession, he recklessly:

1. Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity.

2. Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service.

3. Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure.

4. Sells, offers or exposes for sale adulterated, or mislabeled commodities.

5. Makes a false or misleading statement for the purpose of obtaining property or credit.

§55.040. SAME, DEFINITIONS.

In the construction of the preceding Section:

l. **"Adulterated"** means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulations of the United States of America or of this State lawfully filed, or if none, as set by commercial usage.

2. **"Mislabeled"** means varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulations of the United States of America or of this State lawfully filed, or if none, as set by commercial usage; or represented as being another person's product, though otherwise accurately labeled as to quality and quantity.

§55.050. ALTERING MILEAGE REGISTERING DEVICES.

A person commits the offense of altering a mileage registering device if, with the purpose of misrepresenting to a prospective or eventual purchaser the number of miles traveled by a motor vehicle, he disconnects, changes or causes to be disconnected or changed, any mileage registering device on a motor vehicle so as to thereby indicate a different mileage than such motor vehicle has actually traveled. For the purpose of this Section "motor vehicle" means any self-propelled vehicle not operated exclusively upon tracks.

§55.060. FALSE ADVERTISING.

A person commits the offense of false advertising if, in connection with the promotion of the sale of, or to increase the consumption of, property and services, he recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

§55.070. BAIT ADVERTISING.

A person commits the offense of bait advertising if he advertises in any manner the sale of property or services with the purpose not to sell or provide the property or services:

1. At the price which he offered them.

2. In a quantity sufficient to meet the reasonably expected public demand, unless the quantity is specifically stated in the advertisement.

3. At all.

§55.080. INCLUDED OFFENSES.

The offense described in Sections 55.030 through 55.070 shall be included offenses in the unlawful practices prohibited by Section 55.020. No person shall be convicted of a violation of both Section 55.020 and of one or more of Sections 55.030 through 55.070, as a result of the same act by him.

CHAPTER 56 –BUSINESS REGULATION

§56.010. CONVENIENCE BUSINESS SECURITY

1. As used in this [Section], the term "convenience business" means any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and is open for business at any time between the hours of 11:00 p.m. and 5:00 a.m. The term "convenience business" does not include a business that is solely or primarily a restaurant or a business that has at least ten thousand square feet of retail floor space.

2. Prior to January 1, 1997, for the protection of employees and the consumer public at late-night convenience businesses, every owner of a convenience business shall ensure that such owner's convenience business is equipped with the following:

    (1) A security camera system, within the business, capable of recording and retrieving an image to assist law enforcement officials in the identification and apprehension of a criminal offender;

    (2) A drop safe or cash-management device for restricted access to cash receipts;

    (3) Lighting for parking areas and entrances at an intensity to provide clear visibility under normal conditions, which can be satisfied by canopy lighting within ten feet of the building;

    (4) A conspicuous notice at the entrance which states that the cash register contains limited funds;

    (5) Height markers at the entrance of the convenience business which display height

measures;

(6) A cash management policy to limit the cash on hand at all times after 11:00 p.m. and before 5:00 a.m.; and

(7) A telephone, located away from the cash register, that is accessible to employees at all times.

3. After January 1, 1997, for the protection of employees and the consumer public at late-night convenience businesses, every owner of a convenience business shall ensure that:

(1) No window signs shall be located so as to obstruct the view from outside the building to the cash register and sales transaction area; and

(2) No window tinting that significantly reduces exterior or interior view in a normal line of sight.

4. Any violation of the terms of this [Section] shall be punishable by a fine of $1,000.00; imposition of sentence may be suspended upon proof of compliance with the provisions of this Section.

(Ord. 9-01-96)

§56.100. COMMERCIAL USE OF PUBLIC RIGHTS-OF-WAY AND SPACES

1. No person, firm, corporation or other entity shall occupy any portion of the public street, alley, park, City property, levee, sidewalk or other public right-of-way area for displaying or offering for sale, by auction or otherwise, any new or used merchandise or goods; or selling or serving any food, horticultural products or services; or performing repair work, service, vending or selling except during a festival or similar event at a specific location approved by the Board of Aldermen in advance.

2. Any person, firm, corporation or other entity, having obtained Board approval under subsection 1 above, shall not encroach into the public right-of-way beyond the area approved by the Board.

3. In any instance where a driving entrance into the front of a business structure in the Central Business District serves only one business, then the single business using that driving entrance may temporarily place unregistered vehicles in that driving entrance during regular business hours, but such vehicles shall not: (1) extend into the road beyond fifteen feet from the sidewalk, (2) be placed during or immediately after a snow weather event to allow for snow removal, (3) encroach on the travel lanes of the right-of-way, or (4) be used to display merchandise for sale.

4. Any object or objects found illegally encroaching into the public right-of-way in violation of this section shall be subject to removal by the City.

5. Each day's violation shall constitute a separate offense.

(Ord. 2012-06-002)

CHAPTER 60 -- SOLID WASTE

§60.010. DEFINITIONS.

For the purposes of this Chapter, the following terms shall be deemed to have the meaning indicated below:

"Approved incinerator" is an incinerator which complies with all current regulations of the Missouri Air Conservation Commission.

"Bulky rubbish" is non-putrescible solid wastes consisting of combustible and/or noncombustible waste materials from dwelling units, commercial, industrial, institutional, or agricultural establishments which are either too large or too heavy to be safely and conveniently loaded in solid waste collection vehicles by solid waste collectors, with the equipment available therefor.

"City" is the City of Elsberry, Missouri.

"Collection" is removal and transportation of solid waste from its place of storage to its place of processing or disposal.

"Compostables" means yard waste such as grass clippings, leaves, vines, hedge and shrub trimmings, tree trimming and tree limbs less than one (1) inch in diameter that will fit in a lidded trash can. Tree limbs larger than one (1) inch in diameter and larger than four (4) feet are considered bulk rubbish.

"Demolition or construction waste" is waste materials from the construction or destruction of residential, industrial or commercial structures.

"Director" is the director of the solid waste management program of the City or his authorized representative.

"Disposable solid waste container" is disposable plastic or paper sacks with a capacity of 20 to 35 gallons, specifically designed for storage of solid waste.

"Dwelling unit" is any room or group of rooms located within a structure and forming a single habitable unit with facilities which are used, or intended to be used, for living,

sleeping, cooking and eating, excluding, however, any motel or hotel.

"Garbage" is putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, serving or consumption of food.

"Hazardous wastes" is including but not limited to: pathological wastes, explosive wastes, pesticides, pesticide containers, toxic or radioactive materials.

"**Large Household Items**" means those items, other than normal household trash, including, but not limited to: appliances, furniture, and any other items which cannot be safely and conveniently loaded into a normal residential solid waste collection vehicle. Specifically excluded are concrete and bricks, vehicle parts, hazardous materials, tires, abandoned cars and car parts, whole trees, and construction materials.

"Major appliances" means washers and dryers, water heaters, trash compactors, dishwashers, microwave ovens, conventional ovens, ranges, stoves, wood stoves, air conditioners, refrigerators, freezers, dehumidifiers and humidifiers.

"Multiple housing facility" is a housing facility containing more than one dwelling unit under one roof.

"Occupant" is any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or of any other improved real property, either as owner or as tenant.

"Person" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision or organization of any kind, or their legal representative, agent or assigns.

"Processing" is incinerating, composting, baling, shredding, salvaging, compacting and other processes whereby solid waste characteristics are modified or solid waste quantity is reduced.

"Recyclables" means the following

Containers:

Glass bottles and jars - (clear, brown, green) does not include window glass, dinnerware or ceramics .
Aluminum and metal food cans .
Aluminum trays and foil .
Aseptic packaging and gable top containers (milk and juice cartons) .
Steel cans and tins

Plastics:

PET soda, milk, water, and flavored beverage bottles (#1 clear and green

plastic resin) .
HDPE detergent and fabric softener containers (#2 colored plastic resin) .
PVC narrow neck containers only (#3 plastic resin); examples include health and beauty aid products, household cleaners .
LDPE grocery containers (#4 plastic resin); examples include margarine tubs, frozen dessert cups, six and twelve pack rings) .
PP grocery containers (#5 plastic resin); examples include yogurt cups, narrow neck syrup and ketchup bottles .
#7 plastic resin grocery - narrow neck containers only

Paper:

Newspaper, including inserts (remove plastic sleeve) .
Magazines, catalogues and telephone books .
Kraft (brown paper) bags .
Office, computer, notebook and gift wrap paper .
Chipboard (cereal, cake and food mix boxes, gift boxes, etc.) .
Carrier stock (soda and beer can carrying cases) .
Junk mail and envelopes .
Paper back books (does not include hard cover books) .
Cardboard (no waxed cardboard), all rinsed and reasonably free of food, dirt and other contaminants.

Also included as a recyclable is any other material that the City and the solid waste collector may hereafter mutually agree to collect as a recyclable. For the purpose of this Chapter, recyclables shall not include other solid waste, bulk rubbish or special waste as defined in this chapter.

“Recyclables container” means a container furnished by the solid waste collector for storage of recyclables.

"Refuse" is solid waste.

"Solid waste" is unwanted or discarded waste materials in a solid or semi-solid state, including but not limited to garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, special wastes, industrial wastes, and demolition and construction wastes.

a. **"Commercial solid waste"** is solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment, in multiple housing facilities with more than two dwelling units.

b. **"Residential solid waste"** is solid waste resulting from the maintenance and operation of dwelling units, excluding multiple housing facilities with more than one dwelling unit.

"**Solid waste collector"** means the City or the City's solid waste contractor.

"Solid waste container" is a receptacle used by any person to store solid waste during the interval between solid waste collections.

"Solid waste disposal" is the process of discarding or getting rid of unwanted material. In particular, the final disposition of solid wastes by man.

"Solid waste management" is the entire solid waste system of storage, collection, transportation, processing and disposal.

"Storage" is the containment of solid wastes in individual containers at residential units or commercial establishments.

"Yard wastes" is grass clippings, leaves, tree trimmings.

(Ord. 12-03-2007)

§60.020. CONTAINERS.

1. The occupant of every dwelling unit and of every institutional, commercial or business, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate containers for the storage of all solid waste, except bulky rubbish and demolition and construction waste, to serve each such dwelling unit and/or establishment; and to maintain such solid waste containers at all times in good repair.

2. The occupant of every dwelling unit and of every institutional, commercial, industrial, agricultural or business establishment shall place all solid waste to be collected in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat and sanitary condition at all times.

3. Residential solid waste for collection by the City shall be stored in containers of not more than ninety-six (96) gallons supplied by the solid waste collector. The City reserves the right to specify other storage methods. The City shall not collect solid waste from any containers other than those supplied by the solid waste collector. All containers shall be maintained as leakproof, waterproof and fitted with a fly-tight lid and shall be properly covered at all times except when depositing waste therein or removing the contents thereof.

4. Commercial solid waste shall be stored in solid waste containers as approved by the City. The containers shall be water-proof, leakproof and shall be covered at all times except when depositing waste therein or removing the contents thereof.

5. Solid waste that has been separated for recycling shall be placed in recyclables containers as provided in §60.050 and shall be secured so that the contents are not scattered by winds or animals

6. It shall be unlawful for any person, firm or corporation to deposit in a container from which garbage or rubbish is to be removed by the City, or by a licensed and authorized hauler, any material other than solid waste as defined in this Chapter. If any container contains any material other than solid waste, neither the City, nor its authorized collector shall be obligated to remove the contents of such container.

(Ord. 12-03-2007)

§60.030. SAME; DUTY TO USE.

The occupant of every dwelling unit and of every institutional, commercial, industrial, agricultural or business establishment shall place all solid waste to be collected in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat and sanitary condition at all times.

§60.040. PLACEMENT OF CONTAINERS FOR COLLECTION.

1. On the designated collection day for the residential dwelling, the owner or occupant shall place the solid waste container supplied by the solid waste collector at the curb of the street in front of the residence, (4) feet from any obstacle including but not limited to, any mailbox, pole, landscaping or parked vehicle. unless otherwise directed by the City. The solid waste container shall not be placed in the street.

2. No container or containers shall be placed at the curb collection point prior to 3:00 P.M. the day before collection and must be removed from curb collection point no later than 11:59 midnight on the day of collection.

3. The owner or user of containers and the solid waste collector shall be careful to avoid spillage of contents and, if it occurs, they shall clean it up promptly and restore the premises to a clean and sanitary condition.

(Ord. 8-1-1989; 12-03-2007; 2018-02-001).

§60.045. COLLECTION FOR PHYSICALLY DISABLED OR HANDICAPPED RESIDENTS.

Any occupant of residential property who, due to a physical disability or handicap, is unable to transport a standard City solid waste container to the curbline may request a special City solid waste container and/or non-curbside collection at the same service charge as curbside collection. A request for this service must be submitted in writing to the City Collector. This request must include certification of the applicant's physical disability or handicap.

(Ord. 2018-02-001).

§60.050. RECYCLING.

1. **Purpose.**

The purpose of this section is to provide for separation of recyclable items to aid and promote their collection and disposal other than by burning or placement in a sanitary landfill.

2. Recycling is Voluntary.

(1) Every resident of any residential premises may choose to recycle recyclables under this Chapter. However, any residential customer who chooses to participate in City Recycling under this Section shall comply with all provisions of this Section. All residential customers under this Chapter will pay the same base fee whether or not they choose to participate in City recycling. Residential customers that are senior citizens may apply for a discount.

(2) Every owner or operator of a commercial or industrial lot within the City may choose to recycle recyclables under this Chapter. Any commercial customer under this Chapter who chooses to participate in City recycling will pay an additional fee as determined by the City and the solid waste collector.

3. Separation and storage of recyclables.

(1) Every Resident choosing to participate in recycling shall separate the recyclables from their respective premises from all other refuse, garbage, rubbish, waste matter, and compostables and shall store the recyclables in a recyclable container furnished by the solid waste collector. Except for additional containers purchased by residents, recyclables containers shall be the property of the solid waste collector and shall remain on the premises when residents relocate. Residents who need additional recyclables containers may purchase or rent the same from the solid waste collector.

(2) All recyclables containers must be washed and cleaned after each pick-up.

(3) On the designated collection day, the owner or occupant shall place the recyclables container supplied by the solid waste collector at the curb of the street in front of the residence, unless otherwise directed by the City. The recyclables container shall not be placed in the street.

(4) The deposit of unauthorized materials into a recyclables container or bin, or removal of another person's recyclables from a recyclables container or bin, or conversion of a recyclables container, or removal of a recyclables container from

another person's premises for the deposit of compostables into any container containing refuse, recyclables, garbage, rubbish or waste material, shall be deemed a violation of this section.

(5) All containers for recyclables stored out of doors shall be stored behind any building located on the tract of land.

4. Collection of recyclables.

(1) Collection of recyclables from premises shall be by the solid waste collector. Such collection shall be done in compliance with all other applicable ordinances of the City, now or hereafter in effect. The recyclables shall be collected from the premises on terms and conditions set out in such contract.

(2) The collection of recyclables by any private hauler not authorized by the City is expressly prohibited.

(3) The solid waste collector shall collect all recyclables on the same day once each week in accordance with schedules of and routes for collection as determined by the City.

(4) Neither the foregoing provisions of this section nor any other provisions of this section shall prevent any resident from discarding that resident's recyclables by personally delivering them to a recycling plant, centralized collection site, manufacturer, or other vendor, or donating the same to non-profit civic, charitable, or service organizations.

5. **Disposal of recyclables.**

(1) Recyclables shall not be deposited in any landfill; burned in any incinerator; or deposited or distributed in any way or manner which is contrary to the then applicable law, statute, ordinance, rule or regulation, unless specific prior written approval is granted by the city.

(2) Residents shall take such action as is reasonable under the circumstances to determine that recyclables are not disposed of contrary to the provisions of this section.

6. Ownership of recyclables.

All recyclable and compostable materials shall be owned by and be the responsibility of the residents of premises until they are collected by the solid waste collector. Upon collection of the recyclable materials by the solid waste collector, the recyclable materials, with the exception of recyclables containers which are reusable, become the property and responsibility of the City’s solid waste contractor.

7. Care of recyclables containers.

Each resident shall be responsible for the cleanliness and proper care of each recyclables container in his/her possession. Abuse of the container will cause the forfeit of a resident's right to a free replacement container when necessary.

8. Replacement of recyclables containers.

The solid waste collector shall evaluate the condition of recyclables containers for possible reuse. If reusable, they will be left with the resident for the next week's collection. In the event the recyclables container is determined to be unserviceable, due to usual wear and tear, for another week, a new recyclables container furnished by the City's solid waste contractor will be left with the resident and the old recyclables container will be collected and recycled. Recyclables containers will be exchanged on a one-for-one basis as determined by condition at collection time.

9. D

isposal of recyclables.

The contractor shall dispose of recyclables at a local recycling and/or composting facility, if available; otherwise, contractor may sell recyclables to any purchaser of City's solid waste contractor's choosing, unless otherwise directed by the City. The City's solid waste contractor shall be entitled to retain the proceeds of any sale thereof.

10. M

ajor appliance and Large Household Item collection.

Major appliances and Large Household items as defined in this Chapter can be picked up by the solid waste collector, with prior notification, for an additional fee.

11. Commercial Customers Recycling Plans

Commercial customers wishing to participate in City recycling may either:

(1) submit a request to follow the residential recycling provisions of this Section, or

(2) submit a detailed plan showing:

(A) which recyclable materials comprise 5% or more by weight of the customer's waste stream;

(B) the process to be used to segregate the recyclable items from the waste, including what materials are to be separated;

(C) how the recyclables will be collected and transported to market;

(D) how the recyclables will be stored during the intervals between collection

of such recyclable materials.

The City and the City's solid waste collector shall meet and confer to review the request or plan; and to implement appropriate recycling rules, fees, and regulations to be followed by the commercial customer before such recycling shall begin.

(Ord. 8-1-1989; 12-03-2007)

§60.060. TREE LIMBS.

Tree limbs less than 4" in diameter and brush shall be securely tied in bundles not larger than 48" long and 18" in. diameter when not placed in storage containers. The 'weight of any individual bundle shall not exceed 75 pounds.

§60.070. YARD WASTES.

Yard wastes shall be stored in containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon ,the premises served, upon adjacent premises, or upon.,adjacent public rights-of-way. The weight of any individual container and contents shall not exceed 75 pounds.

§60.080. UNAPPROVED CONTAINERS.

Solid waste containers which are not approved will be collected together with their contents and disposed of.

§60.090. COLLECTION OF SOLID WASTE.

The City shall provide for the collection of solid waste as follows:

1. The City shall provide for the collection of all residential and institutional, commercial, business, industrial, and agricultural solid waste in the City; provided, however, that the City may provide the collection service by contracting with a person, county, or other city or a combination thereof, for the entire City or portions thereof, as deemed to be in the best interests of the City.

(Ord. 8-1-1989)

2. The City may, at its discretion, provide commercial solid waste collection services upon specific application of the owners or persons in charge thereof. However, in the event that such application is not made or approved, it shall be the duty of such establishment to provide for collection of all solid waste produced upon any such premises.

(Ord. 12-03-2007)

§60.100. SAME; WHAT COLLECTED; BECOMES PROPERTY OF COLLECTION AGENCY.

All solid waste from premises to which collection services are provided by the City shall be collected, except bulky rubbish as defined herein, provided, however, that bulky rubbish will be collected if tied securely in bundles not exceeding reasonable limitations of weight and bulk to be fixed by regulations to be made and promulgated by the mayor and board of aldermen as hereinafter provided. All solid waste collected shall, upon being loaded into collection equipment, become the property of the collection agency.

§60.110. TREE LIMBS AND YARD WASTES COLLECTED.

Tree limbs and yard wastes, as described in section 60.060 and 60.070 respectively, shall be placed at the curb for collection. Solid waste containers as required by this Chapter for the storage of other residential solid waste shall be placed at the curb for collection. Any solid waste containers, tree limbs, yard wastes, or other solid waste permitted by this Chapter to be placed at the curb for collection shall not be so placed until the regularly scheduled collection day. Solid waste containers as required by this Chapter for the storage of institutional, commercial, business, industrial, and agricultural solid waste shall be placed at points agreed upon by the occupant and person providing collection services under contract with the City, subject to approval by the mayor.
(Ord. 8-1-1989)

§60.120. MAY ENTER PRIVATE PROPERTY.

Solid waste collectors, employed by the City or solid waste collection agency operation under contract with the City, are hereby authorized to enter upon private property for the purpose of collecting solid waste therefrom as required by this Chapter. Solid waste collectors shall not enter dwelling units or other residential buildings for the purpose of collecting residential solid waste. Commercial solid waste may be removed from within commercial establishments upon written request of the owner and approval by the mayor and board of aldermen. .

§60.130. COLLECTION FREQUENCY.

The following collection frequencies shall apply to collections of solid waste within the City:

1. All residential solid waste, other than bulky rubbish, shall be collected at least once weekly.

2. All commercial solid waste shall be collected at least once weekly and collected at lesser intervals as may be necessary for any commercial establishment for the purpose of aesthetic health, safety and general welfare of the City. Said lesser intervals of collection shall be fixed by the City or City and contractor.

§60.140. STORE CONTAINERS ON PRIVATE PROPERTY.

1. Solid waste, which under the terms of this Chapter are eligible in type and the amount for collection by the City solid waste collector, shall not be stored on the inside or outside premises for a period longer than the time interval between two collection cycles prescribed by the City. Solid waste which on account of type or amount require the services of a private solid waste collector shall not be stored on the inside or outside of premises for more than ninety-six (96) hours pending collection.

2. Residential solid waste containers shall be stored upon the residential premises.

3. Commercial solid waste containers shall be stored upon private property, unless the owner shall have been granted written permission from the City to use public property for such purposes. All Commercial solid waste storage sites shall be well drained; fully accessible to collection equipment, public health personnel and fire inspection personnel.

4. Solid waste containers shall be kept at all times at a point on the premises which is not visible from the street in the front of the building or within fifteen feet of the main building structure, except at times of collection.

5. The level of the contents of standard containers shall be kept at least four (4) inches from the top. Solid waste shall be secured in order to keep it from blowing out of the solid waste container.

(Ord. 2018-02-001).

§60.145. UNLAWFUL TO DEPOSIT CERTAIN SOLID WASTES FOR CITY COLLECTION.

It shall be unlawful for any person to deposit in a City solid waste container or otherwise deposit for regular collection, special collection or contract collection the following:

1. Hazardous wastes or any other material the collection or disposal of which is prohibited by the State or Federal government as a hazardous substance.

2. Any material or object which the Mayor by regulation has determined to pose an undue threat of harm to the citizens or employees of the City or to any public property or equipment.

3. Any material which is prohibited by State or Federal law from being disposed of in a solid waste disposal area;

4. Hot ashes, dead animals, solvents, flammable liquids, and dirt.

5. Major appliances, waste oil, lead-acid batteries, and tires or waste tires.

(ORD. 2018-02-001)

§60.150. COLLECTION VEHICLES.

All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle, or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting solid waste, or as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No solid waste shall be transported in the loading hoppers.

§60.160. EARTH AND ROCK FROM EXCAVATION.

Permits shall not be required for the removal, hauling or disposal of earth and rock material from grading or excavation activities, however, all such material shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained that none of the material being transported shall spill upon the public rights-of-way.

1. Transportation and disposal of demolition and construction wastes shall be in accordance with Sections 60.170 and 60.190.

§60.170. DISPOSAL OF SOLID WASTE.

Solid wastes shall be disposed of at a processing facility or disposal area approved by the City and complying with all requirements of the Missouri Division of Health.

§60.180. DISPOSAL OF HAZARDOUS WASTES.

The mayor and board of aldermen may classify certain wastes as hazardous wastes which will require special handling and shall be disposed of only in a manner acceptable to the mayor and the board of aldermen and which will meet all local, state and federal regulations.

(ORD. 2018-02-001).

§60.190. RULES AND REGULATIONS.

1. The Mayor shall make, amend, revoke and enforce reasonable and necessary rules and regulations governing, but not limited to:

    a. Preparation, drainage and wrapping of garbage deposited in solid waste containers.

    b. Specifications for solid waste containers, including the type, composition, equipment, size and shape thereof.

    c. Identification of solid waste containers and of the covers thereof, and of equipment

thereto appertaining, if any.

d. Weight limitations on the combined weight of solid waste containers and the contents thereof, and weight and size limitations on bundles of solid waste too large for solid waste containers.

e. Storage of solid waste in solid waste containers.

f. Sanitation, maintenance and replacement of solid waste containers.

g. Schedules of and routes for collection of solid waste.

h. Collection points of solid waste containers.

i. Collection and disposal of solid waste.

j. Processing facilities and fees for the use thereof.

k. Disposal facilities and fees for the use thereof.

1. Records of quantity and type of wastes received at processing and/or disposal facilities.

m. Handling of special wastes such as toxic wastes, sludge, ashes, agriculture, construction, bulky items, tires, automobiles, oils, greases, etc.

n. Recycling

2. The City Clerk or such other City official who is responsible for preparing utility and other service charge billings for the City, is hereby authorized to make and promulgate reasonable and necessary rules and regulations for the billing and collection of solid waste collection and/or disposal service charges, as hereinafter provided for.

3. A copy of any and all rules and regulations made and promulgated under the provisions hereof shall be filed in the office of the City Clerk.

(Ord. 12-03-2007)

§60.200. PROHIBITED PRACTICES.

It shall be unlawful for any person to:

1. Deposit solid waste in any solid waste container other than his own, without the written consent of the owner of such container and/or with the intent of avoiding payment of the service charge hereinafter provided for solid waste collection and disposal;

2. Interfere in any manner with solid waste collection equipment or with solid waste collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City, or those of a solid waste collection agency operating under contract with the city;

3. Burn solid waste unless an approved incinerator is provided or unless a variance has been obtained from the appropriate air pollution control agency;

4. Dispose of solid waste at any facility or location which is not approved by the City and the Missouri Division of Health;

5. Engage in the business of collecting, transporting, processing or disposing of solid waste within the corporate limits of the City without a permit from the City, or operate under an expired permit, or operate after a permit has been suspended or revoked.

§60.205. ACCOUNT HOLDER, OWNER, AND OCCUPANT, JOINTLY LIABLE FOR VIOLATIONS.

The person in whose name the customer account is maintained and the occupant of the residential property on which the solid waste is placed or allowed to remain, shall each be prima facie responsible for any violation of this Chapter on or originating from any residential or commercial premises.

(Ord. 2018-02-001).

§60.210. SERVICE CHARGES.

There is hereby imposed, for the collection and disposal of solid waste, a service charge for each dwelling unit and each institutional, commercial, business, industrial and agricultural establishment to which such service shall be provided under the provisions of this Chapter. The service charge for collection of solid waste shall be in accordance with the prevailing existing contract with the disposal company which said agreement shall be incorporated herein as part and parcel of this Chapter.

1. The service and service charge shall be terminated upon presentation of satisfactory proof to the mayor and board of aldermen that any such dwelling unit or institutional, commercial, business, industrial or agricultural establishment is unoccupied and shall be commenced upon renewed occupancy thereof.

2. The system of services established by the provisions of this Chapter hereof is designed as an integral part of the City's system for providing potable water and the City's system for providing sewerage disposal. The City may enforce collection of such charges by bringing proper legal action against the occupant of any premises which has received such services, and/or the person who applied or contracted for such service.

3. The service charge herein provided for is hereby imposed upon the occupant of each dwelling unit and institutional, commercial, business, industrial and agricultural establishment receiving such service under the provisions of this Chapter and billing therefor shall be made to the person contracting for, or receiving, City water and/or sewerage service or for other water service or otherwise providing water service to each such dwelling unit or institutional, commercial, business, industrial or agricultural establishment. In the absence of information that such person is either the owner or the tenant of such dwelling unit or institutional, commercial, business, industrial or agricultural establishment, billing therefor shall be made to the owner. Service charges shall be payable to the department empowered to collect service charges imposed by the City; provided, however, that with regard to institutional, commercial, business, industrial or agricultural collection, charges may be billed directly by the entity providing such collection if the Board of Aldermen shall so elect.

4. If payment of past due and current amounts are not received within ten (10) days of date of past due notice or the occupant has not made suitable payment arrangements approved by the City, collection of solid waste shall be discontinued and shall not be restored until after payment in full of all outstanding amounts due.

5. Collection of solid waste shall be deemed to be furnished to both the occupant and owner of all dwelling units receiving service, and the occupant and owner of such establishments shall be severally and jointly liable to the City for payments of the charges.

6. The service and service charge shall be terminated upon presentation of satisfactory proof to the City Collector that any such dwelling unit or establishment is unoccupied and shall be commenced upon renewed occupancy thereof.

7. If any charges for the collection of solid waste remain unpaid after twenty (20) days from the date of the bill, a delayed payment charge of ten percent (10%) of the outstanding balance shall be added thereto and collected.

8. Any solid waste collection service charge of the City shall be subject to payment of all costs of collection including, but not limited to, reasonable attorney's fees and court costs regardless of whether or not suit is actually instituted. The City may submit to a collection agency for collection or may direct the attorney for the City to file suit against any customer whose account is delinquent for longer than ninety (90) days or is delinquent in amounts exceeding two hundred fifty dollars ($250.00).

(Ord. 8-1-89; 12-03-2007)

§60.250 ANTI-SCAVENGER

It shall be unlawful for any person, firm or corporation not licensed by the City and not under contract with the owner or occupant, to remove any item including but not limited to recyclables, major appliances, or large household items, that are placed in or adjacent to house-side recycling

or solid waste containers. Any person, firm or corporation violating any of the provisions of this Section shall, upon conviction, be subject to a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for each offense.

(12-03-2007)

§60.260 PLACING TRASH IN ANOTHER'S TRASH RECEPTACLE

No person shall place solid waste, as defined in section 260.200, RSMo, in any receptacle owned or used by any other person for the storage of solid waste prior to pickup and disposal in a solid waste disposal area or sanitary landfill without the permission of the owner or user of such receptacle or unless the receptacle is for public use.

(12-03-2007)

§60.270 DEMOLITION WASTE

1. A person commits the offense of criminal disposition of demolition waste if the person purposely or knowingly disposes of or causes the disposal of more than two thousand pounds or four hundred cubic feet of such waste on property in this state other than in a solid waste processing facility or solid waste disposal area having a permit as required by RSM0 § 260.205. Provided however that this subsection shall not prohibit the use or require a solid waste permit for the use of solid wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect public health and shall not prohibit the disposal of or require a solid waste permit for the disposal by an individual of solid wastes resulting from his or her own residential activities on property owned or lawfully occupied by him and such wastes do not thereby create a public nuisance or adversely affect the public health.

2. Demolition waste shall not include clean fill or vegetation.

3. In addition to other penalties prescribed by law, a person convicted of violation of this section is subject to a fine not less than two hundred fifty dollars ($250.00), nor more than five hundred dollars ($500.00). The magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation

4. The court shall order any person convicted of violating this section to clean up such waste and, if the person fails to clean up the waste or if the person is unable to clean up the waste, the court may notify the county recorder of the county containing the illegal disposal site. The notice shall be designed to be recorded on the record.

5. The court may order restitution by requiring any person convicted under this section to clean up any demolition waste the person illegally dumped and the court may require any such person to perform additional community service by cleaning up and properly

disposing of demolition waste illegally dumped by other persons.

6. Any person shall be guilty of conspiracy if he or she knows or should have known that his or her agent or employee has committed the acts described in this sections while engaged in the course of employment.

(12-03-2007)

§60.300 PERMITS

1. No person shall engage in the business of collecting, transporting, processing or disposing of solid waste, including construction waste and demolition waste, within the City limits, without first obtaining an annual permit therefor from the City; provided however, that this provision shall not be deemed to apply to the City's solid waste contractor while providing services under contract to the City.

2. No such permit shall be issued unless the applicant therefore, in addition to all other requirements set forth, shall file and maintain with the City evidence of a satisfactory public liability insurance policy, covering all operations of such applicant pertaining to such business and all vehicles to be operated in the conduct thereof. All applicants, their sub-contractors, and their sub-subcontractors shall be required to furnish to the City certification of insurance covering public liability, auto liability, and workmen's compensation. The certificate of insurance shall be issued by an insurance company that is acceptable to the City. The minimum limits of insurance for public liability and auto liability shall be: one hundred thousand dollars ($100,000.00) for bodily injury for each person; three hundred thousand dollars ($300,000.00) for bodily injury for each occurrence and one hundred thousand dollars ($100,000.00) for property damage for each occurrence. The minimum limits for workmen's compensation shall be statutory, whatever is required by law. Should any policy be canceled, the Director shall be notified of such cancellation by the insurance carrier in writing not less than ten (10) days prior to the effective date of such cancellation, and provisions to that effect shall be incorporated in such policy which shall also place upon the company writing such policy the duty to give such notice.

3. Each applicant for any such permit shall state in his/her application therefor:

    1. The nature of the permit desired, as to collect, transport, process, or dispose of solid waste or any combination thereof;

    2. The characteristics of solid waste to be collected, transported, processed, or disposed;

    3. The number of solid waste transportation vehicles to be operated thereunder;

    4. The precise location or locations of solid waste processing or disposal facilities to be used;

5. Boundaries of the collection area; and

6. Such other information as required by the City Clerk.

4. If the application shows that the applicant will collect, transport, process or dispose of solid wastes without hazard to the public health or damage to the environment and in conformity with the laws of the State of Missouri and this Chapter, the City Clerk shall issue the permit authorized by this Chapter. The permit shall be issued for a seventy-five dollar ($75.00) fee or two dollars fifty cents ($2.50) for each transportation vehicle to be used. If in the opinion of the City Clerk, modifications can be made to the application regarding service, equipment, or mode of operation, so as to bring the application within the intent of this Chapter the City Clerk shall notify the applicant in writing setting forth the modification to be made and the time in which it shall be done.

5. If the applicant does not make the modification pursuant to the notice in Subsection (4) within the time limit specified therein or if the application does not clearly show that the collection, transportation, processing or disposal of solid wastes will create no public health hazard or be without harmful effects on the environment, the application shall be denied and the applicant notified by the City Clerk, in writing, stating the reason for such denial. Nothing in this Section shall prejudice the right of the applicant to reapply after the rejection of his/her application provided that all aspects of the reapplication comply with the provisions of this Chapter.

6. The annual permit may be renewed simply upon payment of the fee or fees as designated herein if the business has not been modified. If modifications have been made, the applicant shall reapply for a permit as set forth in Subsections (2 and 3). No permits authorized by this Chapter shall be transferrable from person to person.

7. In order to insure compliance with the laws of this State, this Chapter and the rules and regulations authorized herein, the City Clerk or the Chief of Police, or their designee, is authorized to inspect all phases of solid waste management within the City. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspections reveal violation of this Chapter the rules and regulations authorized herein for the storage, collection, transportation, processing or disposal of solid waste or the laws of the State of Missouri, the City Clerk or Chief of Police, or their designee, shall issue notice for each such violation stating therein the violation or violations found, the time and date and the corrective measure to be taken, together with the time in which such corrections shall be made.

8. In all cases, when the corrective measures have not been taken within the time specified, the City Clerk shall suspend or revoke the permit or permits involved in the violations, however, in those cases where an extension of time will permit correction and there is no public health hazard created by the delay, one extension of time not to exceed the original time period may be given.

9. Any person who feels aggrieved by any notice of violation or order issued pursuant thereto of the City Clerk may, within thirty (30) days of the act for which redress is sought appeal directly to the Board of Aldermen in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

10. All motor vehicles operating under any permit required by this Chapter shall display the number or numbers, such numbers to be clearly legible and not less than four (4) inches high.

(12-03-2007)

§60.310 MANAGEMENT OF CONTAINERS BY SOLID WASTE COLLECTORS.

Solid waste collectors shall perform their duties in a quiet, orderly and sanitary manner. After emptying the containers, the collector shall replace each container's lid and shall return the covered containers to the designated collection point on the premises. In case of spillage during collection, the solid waste collector shall pick up the spillage and restore the premises to a clean and sanitary condition. In the event the City solid waste collector damages a container or its lid to an extent that it is subject to condemnation by the City, it shall be the responsibility of the City solid waste collector to replace the containers or lid with a new container or lid of the same type, quality and size.

(Ord. 2018-02-001).

CHAPTER 61 -- HEALTH CODE

§61.010. BOARD OF PUBLIC HEALTH; CREATED.

There is hereby created a Board of Public Health for the City of Elsberry, Missouri. The Board of Public Health shall be composed of the members of the board of aldermen, the city marshal, the fire chief and the mayor.

§61.020. POWERS.

The Board of Public Health shall have the powers and perform the duties assigned to it by this or any other ordinance. It shall be the duty of the Board of Public Health to enforce all ordinances of the city which relate to public health or to nuisances. The Board of Public Health shall make all necessary rules and regulations for the protection of the health of the inhabitants of the city and to guard against the spread of disease, nuisance and filth and to prevent by necessary rules and orders the induction of disease, nuisance and filth into the corporate limits of the City of Elsberry. The Board of Public Health shall have the authority to provide for inspections and to enforce the provisions of this ordinance and other ordinances of the city relative to health and sanitation.

§61.030. DEFINITIONS.

The term nuisance which is detrimental to the health, safety, or welfare as used in this ordinance is hereby defined as, and declared to be injurious and dangerous to the public health and safety;

1. acid manufacture

2. distillation of bones

3. explosives, manufacture or storage

4. fat rendering

5. garbage, offal or dead animal reduction or dumping either on public or private property.

6. glue manufacture

7. stockyards or slaughter of animals

8. storage of gasoline, propane, fuel oil, petroleum products, chemicals, toxic, dangerous, combustible, or inflammable substances either in liquid, solid or gaseous form in containers, tanks or structures either above or below the surface; provided however that upon application to the Board of Public Health a permit may be issued to allow for one or more such storage facilities if upon a hearing before said board, it is determined not to be of such-a nature as to constitute a hazard to the health, safety and welfare.

9. permitting the running at large of cattle, hogs, horses, mules, sheep, goats and all other domestic animals, also geese, ducks, chickens, turkeys and all other domestic fowls.

10. keeping of hogs, pigs, sheep, chickens, poultry, cattle, other livestock, or other animals that are maintained so as to create offensive odors. Such animals lawfully kept within an agricultural zoning district within the City under a valid license or permit shall not be deemed a nuisance so long as such disposal complies strictly with the agricultural zoning district maintenance standards and regulations.

11. open sewers or sewerage that emits offensive odors.

12. any and all other uses emitting or likely to emit substantial amounts of dust, odor, gas, smoke, noise or which would create a real or potential danger to the health and welfare, or any similar use that would be hazardous to the public health, safety or welfare to the citizens of Elsberry.

(Ord. 11-2-2008)

§61.040. PROHIBITION.

Any use or uses detrimental to the health, safety and welfare of the citizens of Elsberry, as defined

in this section, or determined by the board of public health are hereby declared to be a nuisance and are prohibited. It shall be unlawful to maintain, create, build, permit, or allow by act or deed the existence of any such nuisance in the city, and it shall be unlawful for the owner, or person in custody to allow such nuisances to be and remain as such.

§61.050. ABATEMENT OF NUISANCE.

Whenever a majority of the Board of Public Health shall be of the opinion that any nuisance as provided in this or any other ordinance exists, they shall file a written statement to this effect with the city clerk. The clerk shall thereupon cause written notice to be served upon the owner thereof and upon the occupant thereof, if any, lessee, mortgage, agent, and all other interested persons. Such notice shall state the nuisance, the specific causes of the nuisance and shall specify the manner in which said nuisance shall be abated, and, the time limit specified for such abatement. If the parties receiving the notice fail to commence abatement within the time specified or fail to proceed continuously without necessary delay, the Board of Public Health shall call and have a full and adequate hearing upon the matter, giving the affected parties at least ten days written notice of the hearing. Any party may be represented by counsel and all parties shall have the opportunity to be heard. After the hearings, if evidence supports a finding that a nuisance or a detriment to the health, safety, or welfare of the residents or the city exists the board shall issue an order stating the specific nuisance, the manner in which nuisance shall be abated, and that the nuisance shall be abated (or the order appealed to circuit court under the Administrative Procedure Act) within 30 days.

§61.060. PENALTY FOR VIOLATION.

Failure to comply with the order of the Board of Public Health within the time specified, shall be punishable in the city court by a fine of not more than $500.00 or by imprisonment in the city jail not exceeding 90 days or by both such fine and imprisonment. Each day of non-compliance with the order shall be considered a separate offense.

CHAPTER 64 -- LITTER

§64.010. LITTER IN PUBLIC PLACES.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the City except in public receptacles or authorized private receptacles.

§64.020. MANNER OF DEPOSITING LITTER.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

§64.030. SWEEPING LITTER INTO PUBLIC PLACES.

No person shall sweep into or deposit in any gutter, street, or other public place within the City the accumulation of litter from any building or lot or from any public or private sidewalk or driveway.

1. Within the meaning of this Section the word "litter" shall include, without excluding other substances, fallen leaves, cut weeds, grass clippings, branches and twigs that may accumulate on any building, lot or premises.

§64.040. BURNING LITTER, LEAVES, ETC., PROHIBITED.

No person shall burn any litter as defined in Section 64.030(1), in any street, gutter, or other public place within the City.

§64.050. SIDEWALKS TO BE KEPT FREE OF LITTER.

Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter. Persons owning or occupying places of business within the City shall keep the front of their business premises free of litter.

§64.060. LITTERING BY PERSONS IN VEHICLES.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the City, or upon private property.

1. No driver of any vehicle shall allow any passenger in that vehicle to throw or deposit litter upon any street or other public place within the City, or upon private property.

§64.070. TRANSPORTATION OF LITTER.

No person shall drive or move any truck or other vehicle hauling or transporting litter within or about the City, unless such vehicle is so constructed and the load secured so as to prevent any of the contents therein being blown, dropped or deposited upon any street, alley or other public place.

§64.080. LITTERING ON ANY PRIVATE PREMISES.

No person shall throw or deposit litter on any private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property owned by another.

§64.090. LITTERING PUBLIC PROPERTY.

No person or persons shall throw or place, or cause to be thrown or placed, any glass, glass

bottles, wire, nails, tacks, hedge, cans, garbage, trash, refuse, or rubbish of any kind, nature, or description on the streets, alleyways or any public property within the City of Elsberry, Missouri with the exception, that by public notice such items may be placed in containers on specified days for public cleanup.

CHAPTER 66 -- FIREWORKS

§66.010. DEFINITIONS.

The following words shall have the following meanings when used in this Chapter:

"American Pyrotechnics Association (APA), Standard 87-1 (2004)" is a standard for manufacturers, importers and distributors of fireworks to assist them in accordance with applicable federal laws.

"City Permit" means the City of Elsberry, Missouri seasonal retail fireworks permit required by this Chapter.

"Consumer fireworks" means explosive devices designed primarily to produce visible or audible effects by combustion and includes aerial devices and ground devices, all of which are classified as fireworks, UN0336, 1.4G by regulation of the United States Department of Transportation, Title 49 CFR (2003), and which were formerly classified as class C common fireworks by regulation of the United States Department of Transportation.

"Display fireworks" means explosive devices designed primarily to produce visible or audible effects by combustion, deflagration or detonation. This term includes devices containing more than two (2) grains (130 mg) of explosive composition intended for public display. These devices are classified as fireworks, UN0335, 1.3G by regulation of the United States Department of Transportation, as amended from time-to-time, and which were formerly classified as class B display fireworks by regulation of the United States Department of Transportation.

"Distributor" means any person engaged in the business of selling fireworks to wholesalers, jobbers, seasonal retailers, other persons, or governmental bodies that possess the necessary permits as specified in sections 320.106 to 320.161, RSMo including any person that imports any fireworks of any kind in any manner into the state of Missouri.

"Fireworks" means any composition or device for producing a visible, audible, or both visible and audible effect by combustion, deflagration, or detonation and that meets the definition of consumer, proximate, or display fireworks as set forth by 49 CFR part 171 to end, United States Department of Transportation hazardous materials regulations, and American Pyrotechnics Association, Standard 87-1.

"Fireworks season" means the period beginning on the twentieth day of June and continuing through the tenth day of July of the same year which shall be the only periods of time that seasonal retailers may be permitted to sell consumer fireworks.

"Illegal fireworks" means fireworks whose explosive composition exceeds the limits for consumer fireworks or display fireworks, UN0336, 1.4G, UN0335, 1.3G and UN0431, 1.4G or UN0432, 1.4S by the United States Department of Transportation, and American Pyrotechnics Association, Standard 87-1 including ground salutes commonly known as cherry bombs, M-80's, M-100's, M-1000's or other fireworks designated with an "M" prefix whose explosive composition exceeds the limits for consumer fireworks by the United States Department of Transportation.

"Jobber" means any person engaged in the business of making sales of consumer fireworks at wholesale or retail, within the state of Missouri to nonlicensed buyers for use and distribution outside the state of Missouri during a calendar year from the first day of January through the thirty-first day of December.

"Manufacturer" means any person engaged in the making, manufacture, assembly or construction of fireworks of any kind within the state of Missouri.

"Permanent structure" means buildings and structures with permanent foundations other than tents, stands, mobile homes, and trailers.

"Person" means any corporation, association, partnership, individual, or group thereof.

"State Permit" means the written authority of the state fire marshal issued pursuant to sections 320.106 to 320.161, RSMo, to sell, possess, manufacture, discharge, or distribute fireworks;

"Sale" means an exchange of articles of fireworks for money, including barter, exchange, gift or offer thereof, and each such transaction made by any person, whether as a principal proprietor, salesman, agent, association, copartnership or one or more individuals.

"Seasonal retail location" means the physical place where any person within the City of Elsberry engages in sales of consumer fireworks in Missouri only during a fireworks season as defined by this Chapter. For the purpose of determining required distances, support ropes and guy wires shall be considered as part of the retail sales location. Parking areas shall not be considered as part of the retail sales location.

"Seasonal retailer" means any person engaged in the business of making sales of consumer fireworks in the City of Elsberry only during a fireworks season as defined by this Chapter.

"Wholesaler" means any person engaged in the business of making sales of consumer fireworks to any other person engaged in the business of making sales of consumer fireworks at retail within the state of Missouri.

(Ord. 6-01-2008)

§66.020. DISCHARGE LIMITED.

No person shall fire or explode with the City of Elsberry, any firecrackers, rockets, roman candles, electric sparklers, colored fires, fire torches or any other fireworks at any time except such persons as have a permit from the board of aldermen to do so.

§66.030. PERMIT.

Any person desiring to fire or explode any such fireworks within the City of Elsberry may appear before the board of aldermen at any meeting and make application for a permit so to do. The board of aldermen shall consider such application and shall have authority to grant or refuse such permit. When such permit is authorized the city clerk shall issue the permit in writing, specifically mentioning the time and place when and where such fireworks may be fired or exploded within the City of Elsberry.

§66.040. SEASONAL RETAIL SALES REQUIREMENTS.

1. A separate City Permit from the City of Elsberry shall be required for the sale of fireworks at each retail sales location. This City permit is in addition the business license required by Chapter 54 of this Code.

2. Consumer fireworks shall be sold to the general public only from seasonal retail fireworks sites holding a valid City Permit and only during the fireworks season between the hours of 9:00 A.M. and 10:00 P.M.

3. No person shall attempt to sell or to sell any fireworks to children under the age of fourteen (14) years except when such child is in the presence of a parent or guardian.

4. No person under the age of sixteen (16) shall sell fireworks, or work in a facility where fireworks are stored, sold, or offered for sale unless under the supervision of an individual at least twenty-one (21) years of age.

5. Seasonal retail locations shall be in compliance with all applicable building and fire regulations and may be subject to a fire safety inspection by City, the Fire Protection District, and/or the Missouri Fire Marshal.

6. A seasonal retailer shall acquire and present the City the appropriate State Permit before applying for a City Permit.

7. Fireworks shall not be sold within permanent structures that have mixed or multiple occupancy.

(Ord. 6-01-2008)

§66.050. FIREWORKS SAFETY AND AUTHORITY TO INSPECT.

1. Fireworks shall not be stored, kept, or sold within fifty feet (50') of any gasoline pump, gasoline filling station, gasoline bulk station, or any building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon.

2. Fireworks shall not be manufactured, stored, kept or sold within one hundred feet (100') of any dispensing unit for ignitable liquids or gases.

3. No person holding a City permit shall allow anyone to explode or ignite consumer fireworks:

    a. within the City Limits;
    b. within six hundred feet (600') of any church, hospital, mental health facility, or school;
    c. within five hundred feet (500') of any location where fireworks are stored, sold, or offered for sale; or
    d. within three hundred feet (300') of any permanent storage of ignitable liquid, gases, gasoline pump, and gasoline filling station,

    whichever is a greater distance.

4. All person(s) selling or offering fireworks for sale will permit the City, the Fire Protection District, and/or the Missouri Fire Marshal and their designees to conduct inspections of the business premises or any location where fireworks are stored or kept and will cooperate with any inspection or investigation. Failure to cooperate or refusal to allow an inspection shall result in suspension or revocation of the City Permit or refusal of a City Permit to be issued.

(Ord. 6-01-2008)

§66.060. SAFETY INSPECTION—RETAIL SALES.

1. Portable Fire Extinguishers.

    a. Seasonal retail locations shall have not less than two (2) portable fire extinguishers with a minimum 2A rating, at least one (1) of which shall be a pressurized water type.

    b. Temporary seasonal retail sales locations less than two hundred (200) square feet in area shall be required to have at least one (1) portable fire extinguisher with a minimum 2A rating.

    c. The maximum travel distance to a fire extinguisher in any seasonal retail location shall be no greater than thirty-five feet (35').

d. All fire extinguishers in any seasonal retail location shall be inspected annually by a fire extinguisher company and have documentation to this effect attached to them.

e. All fire extinguishers in any seasonal retail location shall be located in a location easily visible and accessible to the retail sale location staff.

f. All employees at a seasonal retail location shall be trained to operate fire-extinguishing equipment and shall be required to exhibit their skill when requested by the City, the Fire Protection District, and/or the Missouri Fire Marshal, or their designees.

2. Seasonal Retail Site Requirements.

a. The seasonal retailer shall present a certificate, or other evidence of acceptance by an organization or laboratory of recognized standing, or manufacturer verifying that the tent fabric material used a t a seasonal retail location has been treated with a flame resistant material.

b. No hay, straw, shavings, or similar combustible materials that have not been treated to make them flame retardant shall be permitted within any seasonal retail location.

c. The area located within thirty feet (30') of a seasonal retail location shall be kept free of accumulated dry grass, dry brush, and combustible debris.

d. Fireworks shall not be displayed or stored behind glass through which direct sunlight will shine on the fireworks except for where the fireworks are in their original package.

e. Fireworks shall be kept in a location out of the reach of the public when an attendant is not on duty.

f. Smoking shall not be permitted inside or within twenty-five feet (25') of the seasonal retail sales area.

g. When the seasonal retail location is unoccupied and not open for business, it shall be secured to the satisfaction of the City, the Fire Protection District, and/or the Missouri Fire Marshal, or their designees.

3. Signs

a. Each seasonal retail location shall have at least one (1) sign that reads as follows, in letters at least four inches (4") high on a contrasting background, shall be conspicuously posted at each entrance of seasonal retail sales locations:

NO FIREWORKS MAY BE DISCHARGED WITHIN THE CITY OF ELSBERRY

b. Each seasonal retail location shall have one (1) or more signs reading, “FIREWORKS—NO SMOKING” , which shall be displayed at each entrance of seasonal retail sales locations in letters not less than four inches (4") in height on a contrasting background.

4. Separation Distances.

a. No motor vehicle shall be parked within ten feet (10') of a seasonal retail location.

b. No trailer used for the storage of fireworks shall be parked within ten feet (10') of a seasonal retail location.

c. Seasonal retail locations and trailers used to store fireworks shall not be located within fifty feet (50') of the following:

1. Another building;
2. Another seasonal retail location;
3. Cooking equipment of any type.
4. Any gasoline pump, gasoline filling station, gasoline bulk station, or any building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon;
5. Compressed natural gas dispensing facilities;
6. Retail propane dispensing station;
7. Aboveground storage tanks for flammable or combustible liquid, flammable gas or flammable liquefied gas;
8. Any type of open flame cooking equipment.

d. Portable generators shall be located not less than twenty feet (20') from a seasonal retail sales location.

e. Trash, rubbish and empty boxes shall be stored a minimum of twenty-five (25) feet from the seasonal retail operation (tent or stand).

f. All seasonal retail location stands and tents shall be located no closer than twenty (20) feet from the right-of-way of all roads, streets, alleys and property lot lines.

5. Means of Egress.

a. All means of egress from any seasonal retail location shall remain clear and free of obstructions.

b. A minimum of two (2) remote means of egress shall be located in a seasonal retail

location.

c. Exit openings from seasonal retail locations shall be not less than forty-four inches (44") in width..

d. Exits provided for seasonal retail locations shall be arranged so that the maximum egress travel distance measured from the most remote point to an exit along the natural and unobstructed path of egress travel, does not exceed seventy-five feet (75').

e. Aisles within a seasonal retail locations where the interior is accessible to the public, the minimum clear width shall be permitted to be not less than forty-eight inches (48").

f. Aisles within a seasonal retail locations, where the interior is not accessible to the public, the minimum clear width shall be permitted to be not less than twenty-eight inches (28").

g. The required width of aisles shall be maintained unobstructed at all times the facility is occupied by the public.

h. Dead end aisles are prohibited.

i. Egress doors in seasonal retail location where the interior is accessible to the public shall be permitted to be not less than thirty-six inches (36") in width.

6. Exit Signs and Emergency Lighting.

a. Exit signs shall be required to be self-luminous or internally or externally illuminated.

b. Exit signs shall not be required to be illuminated in seasonal retail location tents or stands that are not open for business after dusk or in seasonal retail location where the interior is not accessible to the public.

c. Emergency lighting shall not be required in seasonal retail location tents or stands that are not open for business after dusk or for seasonal retail location where the interior is not accessible to the public.

d. Emergency lighting shall be required in seasonal retail sales locations when the retail sales area is eight hundred (800) square feet or greater.

7. Electrical Equipment.

a. The electrical system and equipment at a seasonal retail location shall be isolated

from the public by proper elevation or guarding, and all electrical fuses and switches shall be enclosed in approved enclosures.

b. Electrical cables, including extension cords on the ground in areas traversed by the public shall be placed in trenches or protected by approved covers.

c. All extension cords shall be a minimum fourteen (14) gauge and multi-outlet power strips shall be UL approved and of the grounding type.

d. All multi-outlet power strips shall be UL approved and of the type with a circuit breaker for overload protection.

e. All electrical wiring, equipment, and devices shall be UL approved, installed and maintained to prevent electrical hazards.

f. All electrical lighting shall be UL approved, mounted and installed in a safe manner.

g. Branch circuits for receptacles, lighting and other uses shall be protected by ground fault circuit interrupters if susceptible to water exposure.

h. The power distribution panel shall be properly grounded with a minimum #6 solid copper wire connected to a copper clad ground rod. The ground wire must be connected to the ground rod using a UL approved ground rod clamp with the clamp being visible.

8. Prohibited Activities and Items.

a. The retail sales of pest control devices, including their related storage and display shall be prohibited.

b. No electronic pest control device(s) shall be located inside a seasonal retail sales location.

c. The consumption or possession of alcoholic beverages in any seasonal retail sales location is prohibited during business hours.

d. Any person selling fireworks shall not knowingly sell fireworks to any person who is visibly under the influence of alcohol or drugs.

(Ord. 6-01-2008)

§66.070. CITY PERMIT APPLICATION

1. Any person desiring to sell or offer for sale permitted fireworks within City limits must

complete and submit a City Permit application to the City Clerk.

2. Beginning in 2009, City Permit applications must be completed and submitted to the City Clerk on or before May 15th of the year in which the seasonal retail location will be open for business.

3. A City Permit application shall contain the following:

   a. The name and address of the person making application; and the name and address of firm, agency or organization for which the person is acting.

   b. The location of the seasonal retail location, the dimensions of the tent or stand, and any other information required by this Chapter.

   c. Each application shall be accompanied by the payment of a fee of two hundred seventy-five dollars ($275.00) for each location that a permit is sought. If the application is not approved by the City, the two hundred twenty-five dollars ($225.00) fee shall be returned to the applicant. If such application is approved, then the total fee shall be two hundred seventy-five dollars ($275.00) which shall be retained by the City.

   d. A valid, current, and fully paid certificate of insurance showing general liability coverage of no less than one million dollars ($1,000,000.00) must be submitted and naming the City as additional insured. The certificate must also state that the coverage may not be cancelled unless the City is notified at least twenty days in advance. The City permit shall only be valid when the insurance coverage is in effect. The City Clerk shall retain a copy of the certificate on file.

   e. A valid State Permit.

   f. All applicants shall indicate on their application that they shall adhere to the laws of the State of Missouri regulating the sale of fireworks, indemnifying and holding the City not liable in any way for action or damages resulting from the operation of their fireworks stand or from the sale of their fireworks.

4. All City Permits issued and approved by the City are personal to the applicant and are non-transferable. The sale of fireworks or operation of a facility for the sale of fireworks by someone other than the license holder shall void the permit and cause forfeiture of the permit fee.

5. All City Permits will be valid for the one immediate succeeding fireworks season after it is issued.

6. After preliminary approval by the City Clerk, the City Code Enforcement Officer will inspect and approve the seasonal retail location for use before the City Clerk issues the

permit.

7. In the event of a denial of an application by the City Clerk, the applicant may file an appeal to City Board of Aldermen to review the decision of the City Clerk in denying the application for issuance of the City permit. Such appeal shall be heard by the City Board of Aldermen following public hearing within thirty (30) days of receipt of the denial of the application and recommendation by the City Clerk. The City Board of Aldermen shall make the decision by motion and shall set forth the grounds for granting or denial of the license.

(Ord. 6-01-2008)

CHAPTER 68 - PUBLIC NUISANCES

SUBCHAPTER A – GENERAL PROVISIONS

68.010 DEFINITIONS

As used in this Chapter, the following terms shall have the following meanings:

"C**hemical Used in the Manufacture of Methamphetamine"** means a chemical or substance which is commonly used in the manufacture of methamphetamine or related drugs and is an immediate chemical intermediary used or likely to be used in the manufacture of methamphetamine and related drugs including, but not limited to: Anthranilic acid, its esters and its salts; Benzyl cyanide; Ergotamine and its salts; Ergonovine and its salts; N-Acetylanthranilic acid, its esters and its salts; Phenylacetic acid, its esters and its salts; Piperidine and its salts; 3,4,-Methylenedioxyphenyl-2-propanone; Acetic anhydride; Acetone; Benzyl Chloride; Ethyl ether; Hydriodic acid; Potassium permanganate; 2-Butanone (or Methyl Ethyl Ketone or MEK); Thluene; Ephedrine, its salts, optical isomers, and salts of optical isomers; Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers; Phenyipropanolamine, its salts, optical isomers, and salts of optical isomers; Pseudoephedrine, its salts, optical isomers, and salts of optical isomers; Methylamine and its salts; Ethylamine and its salts; Propionic anhydride; Isosafrole; Safrole; Piperonal; N-Methylephedrine, its salts, optical isomers and salts of optical isomers; N-Methylpseudoephedrine, its salts, optical isomers and salts of optical isomers; Benzaldehyde; Nitroethane; Methyl Isobutyl Ketone (MIBIO); Sulfuric acid; Iodine; Red phosphorous; Gamma butyrolactone; 1,4 Butanediol.

"Controlled Substance" means any substance so classified under Section 102(6) of the Controlled Substances Act, 21 U.S.C. Section 802W and includes all substances listed in Schedules I through V of 21 CFR Part 1308 as they may be revised from time to time; and any controlled substance as defined in Chapter 195, RSMo., in effect upon the passage of or as amended and any controlled substance defined as such in this Code.

"Derelict vehicle" means any motor vehicle , trailer, all-terrain vehicle, outboard motor or vessel possessing one or any combination of the following attributes:

(1) Shattered or missing windows, headlights, or tail lights.

(2) Unsecured or missing exterior parts, including, but not limited to, bumpers, grills, doors, and hoods, but excluding hubcaps.

(3) An estimated 50 percent or more of the vehicle's exterior paint is rusted, oxidized, or removed.

(4) Observable amounts of vehicle fluids leaking from the vehicle resulting in a street discoloration or fluid streak not less than three inches in diameter or three inches in length.

(5) Does not have displayed thereon a permanent license plate or set of license plates issued for that vehicle indicating current registration by one of the states of the United States of America, when such is required.

(6) Is partially dismantled, inoperable, wrecked, junked.

(7) The engine, wheels or other parts have been removed for a period of at least thirty (30) consecutive days;

(8) The engine, wheels or other parts have been altered, damaged or otherwise so treated that the motor vehicle or vessel is incapable of being driven under its own motor power for a period of at least thirty (30) consecutive days.

(9) Affords a breeding place, harbor, or nesting place for mosquitoes, flies, rodents, rats, mice, or other vermin.

(10) Hazardous chemicals are leaking from the motor vehicle or vessel.

(11) Presents a hazard or attractive nuisance to minors.

(12) Harbors tall grass, weeds, or other vegetation in, on, or through it.

(13) Creates a fire hazard.

"Inhabitable Structure" means any structure or portion of a structure, regardless of whether any person is actually present, in which:

1. Any person lives or carries on business or other calling;

2. People assemble for purposes of business, government, education, religion, entertainment or public transportation; or

3. Persons are accommodated overnight.

"Junk" means any old iron, steel, brass, copper, tin, lead, or other base metals; old cordage, ropes, rags, fibers, or fabrics; old rubber; old bottles or other glass; bones; demotion waste, wastepaper, and other waste or discarded material which may, or may not, be prepared to be used again in some form; and any or all of the foregoing. "Junk" shall also mean and vehicles, no longer used as such, to be used for scrap metal or stripping of parts; but "junk" shall not include materials or objects accumulated by a person as by-products, waste, or scraps from the operation of his own business, or materials or objects held and used by a manufacturer as an integral part of his own manufacturing processes.

"Junkyard" shall mean a yard, lot, or place, covered or uncovered, outdoors or in an enclosed building, containing junk as defined above, upon which occurs one or more acts of buying, keeping, dismantling, processing, storage, selling, or offering for sale any such junk, in whole units or by parts.

"**Manufacture of Methamphetamine"** means the production, preparation, propagation, compounding or processing of methamphetamine and/or related drugs by way of either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. The possession of more than twenty-four (24) grams of any methamphetamine precursor drug or combination of methamphetamine precursor drugs shall be prima facie evidence of the manufacturing or production of methamphetamine.

"**Methamphetamine Precursor Drug"** means any drug containing ephedrine, pseudoephedrine, phenylpropanolamine or any of their salts, optical isomers or salts of optical isomers.

"**Minor Repairs**" means repairs such as changing oil; spark plugs, tires or air/oil filters; adjusting brakes; replacing carburetors; repairing or switching tires; replacing the alternator; and repairs of a similar nature that occur over less than eight consecutive (8) hours.

"Motor vehicle", means any self-propelled vehicle not operated exclusively upon tracks.

"**Nuisance"** means any act done or committed or suffered to be done or committed by any person, or any substance or thing kept, maintained, placed, or found in or upon any public or private place, which may be injurious to or dangerous to the public health, and is hereby declared a nuisance. "Nuisance" shall also mean any other condition or activity that is declared to be a nuisance under this Code.

"**Production**" means the manufacture of a substance or material.

"Substantial Repairs" means all repairs other than minor repairs.

"**Vehicle**" means any mechanical device:

on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped person,; and

boats, personal water crafts, all-terrain vehicle. Off road recreational vehicles, and motorcycles .

(Ord. 6-1-2001; amend. 2020-07-006).

68.015. PUBLIC NUISANCES.

In addition to any other act declared to be a nuisance by this Code or other ordinances of the City, nuisances are hereby defined and declared to be as follows:

1. The existence of graffiti that is visible to any person utilizing any public or private right-of-way. Graffiti means any of the following, as the context requires:

   (1) The intentional act of defacing, damaging or destroying any public or private building, structure, place, or personal property affixed to real property, within the city, by spraying or marking with paint, ink, chalk, dye, or other similar substance any drawing, inscription, figure or mark of the type commonly known and referred to as graffiti; or

   (2) Any such drawing, inscription, figure or mark so sprayed or marked.

2. Any dwelling, building, premises, or structure of whatever type kept or maintained, or which is permitted by any person owning or having control of such structure to be kept or maintained, in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.

3. Acid manufacture

4. Any building where hazardous materials or materials used for explosives are stored, which is not maintained in compliance with federal law, state statute, county ordinance, or this Code;

5. Any factory or business place permitted by the person owning or having charge of the same to operate or be in such condition as to become offensive, annoying or injurious to the public;

6. Any animal pen or cage permitted by the person owning or controlling the same to be in such condition as to be offensive, annoying or injurious to the public or harmful to the animal confined;

7. The keeping or harboring of any animal in a manner that is prohibited by Elsberry Municipal Code.

8. Any swimming pool, open containers of water, or pool of water kept, maintained or allowed to remain stagnant, or which enables the breeding of mosquitoes, and any foul or dirty water or liquid discharged through any pipe, or thrown into or upon any public right-of-way or private property to the injury or annoyance of the public;

9. Any privy, open sewer, toilet, private sewer, vault or basement kept in such a condition as to emit an offensive odor; and any urine, liquid waste, or substance emitting an offensive, noxious, unhealthy or disagreeable odor in any public place;

10. Any condition which is conducive to the feeding or harborage of rats or other vermin;

11. Any junk, garbage, refuse, debris, litter, or other similar materials stored or allowed to remain on any premises except as permitted in Chapters 51 or 60 the City Municipal Code.

12. Any animal or vegetable matter upon any premises liable to become putrid, offensive, or unhealthy, except manure deposits which are promptly incorporated into cultivated soil;

13. Any obstruction caused or permitted on any street or sidewalk to the danger or annoyance of the public, and any rock, dirt, garbage, refuse or debris thrown or placed by any person on any street, alley, sidewalk or other public place or on any premises or in any stream of water within the city which in any way may cause or is liable to cause injury or annoyance to the public;

14. Any sidewalk, gutter or curb permitted to remain in an unsafe condition or out of repair by any person required to keep the sidewalk, gutter or curb in good condition or repair;

15. The disposal of garbage, rubbish or other type of refuse by burying it under a shallow layer of ground is declared to be a public nuisance. Provided, that a sanitary land fill as defined herein shall be exempt from this provision if licensed by the City and the State of Missouri. A "sanitary land fill" for the purposes of this Chapter is defined as a type of operation in which refuse and earth or other suitable cover material is deposited in alternate layers of specified depth in accordance with a definite plan on a specified portion of open land, with each layer being compacted by force applied by mechanical equipment..

16. Distillation of bones

17. Manufacture or storage of explosives, except as permitted under Chapter 66 of this Code.

18. Fat rendering

19. Garbage, offal or dead animal reduction or dumping either on public or private property.

20. Storage of gasoline, propane, fuel oil, petroleum products, chemicals, toxic, dangerous, combustible, or inflammable substances either in liquid, solid or gaseous form in containers, tanks or structures either above or below the surface; provided however that this provision shall not apply to any business licensed to store or keep such materials.

21. Any and all other uses emitting or likely to emit substantial amounts of dust, odor, gas, smoke, noise or which would create a real or potential danger to the health and welfare, or any similar use that would be hazardous to the public health, safety or welfare to the citizens of Elsberry.

22. It shall be unlawful and deemed a public nuisance for the owner or occupant of any dwelling to permit temporary, portable storage pods to remain on or in the front yard, driveway or any other location on the dwelling's lot or parcel which is visible from any public right-of-way for a period of time exceeding ten (10) days, in the aggregate, in any thirty (30) day period.

23. It is deemed a nuisance for any person to erect, maintain, or keep any privies, except temporary portable privies, within the City.

24. Any and all infestation of flies, fleas, roaches, lice, ticks, rats, mice, fly maggots, mosquito larvae and hookworm larvae.

25. Dead or dying trees.

26. The shining of artificial light onto public or private property as to be an annoyance, hurt, injury or inconvenience to other persons.

27. Any land disturbance activity or area where vegetation has been cleared or has not been maintained or other condition which results in the runoff of mud, dirt, rocks or any other material onto sidewalks, streets or other rights-of-way or into creeks, streams, drainage ditch or any stormwater system or facility.

28. Any buildings or structures that are uninhabited, but which remain open or unlocked or have openings in any door, window, wall or roof, so that the same may be entered by animals, children or unauthorized persons are declared to be detrimental to the health safety and welfare of City residents and nuisances. Such buildings or structures shall be required to be secured.

29. Any Building defined as a "dangerous building" by this Municipal Code.

30. Any partially constructed building upon which no substantial work shall have been performed for ninety (90) days.

31. Any building or structure in the process of demolition upon which no substantial work shall have been performed for a period of fourteen (14) days.

(Ord. 2020-07-006)

§68.020. DISCARDING UNHEALTHY SUBSTANCES.

It is deemed a nuisance for any person to put, throw, or cause to be put or thrown into any street, alley, thoroughfare or public place or upon any private property belonging to or in the possession of another within the City any garbage, litter, ashes, foul, nauseous or unclean water, animal or vegetable waste, or other substance whatsoever, which is or may become putrid, offensive, or unhealthy. The disposal of animal waste from livestock lawfully kept within an agricultural zoning district within the City by permit or license shall not be deemed a nuisance so long as such disposal complies strictly with the agricultural zoning district maintenance standards and regulations.

(Ord. 6-1-2001; 11-2-2008))

§68.030. DANGEROUS OR DETRIMENTAL BUSINESSES.

It is deemed a nuisance for any person to carry on or operate any business in the City or within one-half (½) mile thereof which may be dangerous or detrimental to the public health, or to manufacture or sell articles dangerous or detrimental to the health of the inhabitants of the City.

(Ord. 6-1-2001)

§68.040. DISPOSAL OF UNCLEAN WATER.

It is deemed a nuisance for any person to conduct, cast, throw, or suffer to escape into any highway, thoroughfare, alley, or other public place or upon any private property in the City any filthy or unclean water.

(Ord. 6-1-2001)

§68.050. KEEPING OF CATTLE WITHIN THE CITY.

Except as provided in §§41.121 - 41.128, it is deemed a nuisance for any person to own, keep, or use any stockyard, pen, place, or premises in, or upon, which any number of cattle are kept within the City.

(Ord. 6-1-2001; 11-2-2008))

§68.060. KEEPING OF SWINE PROHIBITED.

Except as provided in §§41.121 - 41.128, it is deemed a nuisance for any person to keep or maintain any hog, sheep, cattle, goats, chickens, ducks, turkeys, or other livestock within the City.

(Ord. 6-1-2001; 3-1-2007; 11-2-2008))

§68.070 MAINTAINING A PUBLIC HEALTH NUISANCE.

It is deemed a nuisance for any person to cause or maintain any condition defined as a nuisance by the laws of this State or the Code of the City within the City or within one-half (½) mile of the City limits.

(Ord. 4-1-1988; 6-1-2001)

§68.080. PONDING OF UNWHOLESOME WATER.

It is deemed a nuisance for any person to keep or maintain upon any lot or piece of ground within the City a pond or pool of unwholesome, impure, or offensive water.

(Ord. 6-1-2001)

68.090. JUNK OR DERELICT VEHICLES AND REPAIRS

1. It is deemed a nuisance for any person to place, maintain, or keep in or upon any area in the City any derelict vehicle, unless same is stored in a building out of sight of the public, or it is lawfully stored by a business licensed for such use.

2. It is deemed a nuisance for any person to make substantial repairs to any vehicle, or to dismantle any vehicle upon a public street or upon private property in any residentially or commercially zoned district unless said repairs or dismantling is conducted in an enclosed area, the interior of which cannot be viewed from any surrounding residential property. Any repairs or dismantling as authorized in this Subsection 2 shall only be lawful if the owner of or person controlling the residential property is performing the repairs or dismantling a vehicle owned by a member of the household.

3. Nothing in this section shall prohibit minor repairs be performed on a vehicle owned by a member of the household on which the repairs are made. Such minor repairs can be conducted in an enclosed area or if performed outside must be completed within an eight (8) hour period.

4. The repair of a vehicle under this Section shall not create a nuisance by excessive noise, early or late work, fire hazard, offensive odors, or debris accumulation.

(Ord. 2020-07-006)

§68.100. REFUSE OF ANY NATURE CONSIDERED A NUISANCE.

It is deemed a nuisance for any person to maintain or keep any vegetable waste, litter, garbage, filth, or refuse of any nature, kind, or description whatsoever in or upon any outdoor area in the City, except that same may be placed outdoors in solid waste containers complying with the requirements of Chapter 60 of this Code on scheduled garbage pickup days only. The disposal of

animal refuse from animals lawfully kept within an agricultural zoning district within the City pursuant to a valid permit or license shall not be deemed a nuisance so long as such disposal complies strictly with the agricultural zoning district maintenance standards and regulations.

(Ord. 6-1-2001; 11-2-2008)

§68.110. REMOVAL OF DEAD ANIMALS.

The owner or possessor of any animal which dies within the City shall, within twelve (12) hours after the death of such animal, remove the same beyond the City limits, any if such animal is not so removed within twelve (12) hours, then it shall be the duty of the City Marshall to cause the same to be removed at the cost of the owner or possessor thereof, and such failure by the owner or possessor to so remove the animal is deemed a nuisance.
(Ord. 6-1-2001)

§68.120. SLAUGHTERHOUSE AS A NUISANCE.

It is deemed a nuisance for any person to own, keep, maintain, or operate any slaughterhouse in the City, or within one-half (½) mile from the limits thereof, in such condition as to become offensive, annoying, or injurious to the public health.

(Ord. 6-1-2001)

§68.130 STAGNANT WATER AS A NUISANCE.

It is deemed a nuisance for any person to suffer, maintain, keep, or permit within the City any cellar, vault, private drain, pool, sewer, or sink which is nauseous, foul, offensive, or injurious or detrimental to the public health, as well as any stagnant water liable to become putrid, offensive, or unhealthy.

(Ord. 6-1-2001)

§68.140. PUBLIC NUISANCE FROM UNLAWFUL ACTIVITIES.

In addition to any other act declared to be a nuisance by this Code or other ordinances of the City, the following is hereby defined and declared to be a nuisance:

1. Every person who owns, resides in, uses or is responsible for an inhabitable structure shall take all possible action to prevent said inhabitable structure from being the site of any illegal use, production, possession, or selling of a controlled substance ; or the site of the possession of methamphetamine precursors and/or chemicals used in the manufacture of methamphetamine and related substances; or the site where any controlled substance is manufactured illegally. Any inhabitable structure which is the site of such activity is hereby declared to be a public nuisance.

2. Any premises upon which any of the following acts or conditions have occurred or continue to occur, whether by the owner, occupants, or persons frequenting or congregating about the property are declared to be a public nuisance:

   a. Commission of acts which are prohibited by federal law or state statute committed within the premises, or on the property thereof, or within the immediate vicinity of the property, and which have resulted in arrests that are classified as felonies occurring two or more times within a period of 90 days which acts affect the safety, convenience and tranquility of persons residing, making use or conducting business within the adjacent area;

   b. Manufacture, distribution, sale or use of illegal drugs prohibited by federal law, state statute or city ordinance within the premises, or on the property, or within the immediate vicinity of the premises;

   c. More than two instances committed within a 90-day period of acts which are prohibited by criminal state statute or city ordinance committed within the premises, or on the property thereof, or within the immediate vicinity of the property and which affect the safety, convenience and tranquility of persons residing, making use or conducting business within the adjacent area; and that result in convictions or guilty pleas.

   d. More than two instances within a 180-day period of consumption of alcoholic beverages on the public right-of-way adjacent to the premises or on the parking lot of the premises as prohibited in section 34-169, pertaining to drinking in public; and that result in convictions or guilty pleas

   e. More than two instances within a 180-day period of incidents of the following that result in convictions or guilty pleas:

      1. Indecent conduct as prohibited by section 34-66; or

      2. Public urination;

      3. Peace disturbance or assault;

      4. Behavior that intimidates the public committed by unsupervised juveniles;

      5. Harassing or intimidating behavior, such as by blocking the path of persons passing by, making rude comments, or comments intended to frighten nearby inhabitants or persons passing by the property;

   f. More than two instances within a 180-day period of failure by the property owner to comply with an order to abate a violation of the Property maintenance Code.

h. More than two instances within a 180-day period of incidents of loud noise emitted from electronic equipment of any type including radios and televisions on the premises or any parked vehicles belonging to the owner, occupants or persons frequenting the premises plainly audible at a distance of 50 feet outdoors, or which disturbs the peace of persons residing within the same building or an adjacent building.

i. Each act or thing done or made, or any condition or use of property, permitted, allowed or continued to exist, on any property, public or private, by any persons or corporation, their agents or employees, which is injurious or dangerous to any person or to the public health and safety.

3. However, no enforcement action or abatement will be ordered against an individual who was a victim in whole or in part of the incidents that formed the basis of the nuisance enforcement action under subsection 2. No occupancy permit revocation or other abatement measure against an individual will be predicated upon the fact that such individual called for police or emergency services. The notice of a nuisance hearing given under this subsection shall include notice of this subsection 3. Any decision or related order in a nuisance proceeding imposing enforcement or abatement action with respect to an individual under this section shall make a finding whether that individual is a victim and may be the subject of such enforcement or abatement action under this subsection 3.

(Ord. 2020-07-006)

§68.150. UNHEALTHY BUILDINGS.

It is deemed a nuisance for any person to own, keep, maintain, or control within the City any building of whatever character which is in a condition unhealthy and/or unsafe to the public.

(Ord. 6-1-2001)

§68.160. DEBRIS AS NUISANCE.

It is deemed a nuisance for any person to suffer, permit, keep, cause, or maintain in or upon any lot or land in the City debris of any kind. Debris shall include, but is not limited to, weed cuttings, cut and fallen trees and shrubs, rubbish and trash, lumber not piled or stacked twelve inches off the ground, any flammable material which may endanger public safety, rocks, broken bricks, tin, steel, parts of derelict vehicles or water craft, hazardous materials, broken furniture. The word "debris" also includes any other material that is unhealthy or unsafe, provided that it is described in detail in the notice that is required in Section 68.200 below.

(Ord.6-1-2001; 6-5-2006)

§68.165. OVERGROWN GRASS AND VEGETATION.

It is deemed a nuisance for any person to suffer, permit, keep, cause, or maintain in or upon any lot or land in the City any overgrown grass, vegetation, or noxious weeds that are seven inches or more in height; or any vegetation that by direct contact or by proximity thereto can cause irritation or lesion to the skin of any person.

(Ord. 6-1-2001; 6-5-2006).

§68.170. OBSTRUCTIONS AS NUISANCE.

It is deemed a nuisance for the owner or occupant of any lot or land in the City located at the intersection of any street to have or to permit any fences, wall, sign, signboard, or billboard to be erected nearer than thirty (30) feet to the curb of such street or to erect such structure to a height greater than three (3) feet above the crown of the street at the point of intersection. Every person owning any lot located alongside any street in the City shall keep all trees trimmed of limbs, branches, and leaves which hang down or obstruct the vision between a point six (6) feet above the crown of any such street and a point three (3) feet above the crown of any such street where such trees are located nearer than eight (8) feet from the curb of any such street, and the failure to so maintain said trees in such condition is deemed a nuisance. It is deemed a nuisance for the owner or occupant of any such lot or land to keep or maintain any plants, flowers, shrubs, or bushes, other then trees, on any such lot or land at a point nearer than eight (8) feet to the curb of any street at a greater height than three (3) feet above the crown of such street, unless the same are trimmed of limbs, branches and leaves between a point six (6) feet above the crown of such street and a point three (3) feet above the crown of such street.

(Ord. 6-1-2001)

§68.180. INOPERABLE AUTOMOBILES AS NUISANCE.

It is deemed a nuisance for any person to place, maintain, or keep in or upon any area in the City for a period in excess of ten (10) days any inoperable and/or unlicensed motor vehicle of any sort, unless same is stored in a building out of sight of the public.

(Ord. 6-1-2001)

§68.190. MAINTENANCE OF AREA BETWEEN STREETS AND SIDEWALKS.

The owner of a lot in the City, as well as any other person in possession of said lot, shall be responsible for maintaining the area adjoining said lot between the street and sidewalk, and maintenance in said area between the street and sidewalk of any of the conditions defined as a nuisance by Sections 68.010 through and including 68.180 of this Chapter shall be deemed a nuisance..

(Ord. 6-1-2001)

§68.195. MAINTENANCE OF ALLEYS.

The owner of a lot in the City, as well as any other person in possession of said lot, shall be responsible for maintaining any alley or easement area adjoining said lot such that it is free of any of the conditions defined as a nuisance by Sections 68.010 through and including 68.180 of this Chapter; and failing to do so shall itself be deemed a nuisance.

(Ord. 12-04-2007)

§68.200. ABATEMENT OF NUISANCE.

1. *Emergencies.* In cases in which an immediate threat to the public health, welfare or safety is apparent, the City may immediately abate or cause the abatement of the nuisance by any suitable means that the emergency conditions allow. When such summary abatement is authorized, notice to the owner, agent or occupant of the property is not required. However, following the summary abatement measures, the City Building Inspector or other designated City official shall cause a notice describing the action taken to abate the nuisance to be served on the owner by personal service, United States mail at the last known address of the owner, or by posting on the property.

2. *Non-Emergency Abatement.* Upon the discovery of a nuisance or other Property maintenance Code violation that does not pose an immediate danger to the public health, welfare or safety, the City may abate or cause the abatement of the nuisance as follows:

    a. The City Building Inspector or other designated City official shall give the owner and non-owner occupants a hearing to determine whether a violation continues to exist .

    b The City Building Inspector or other designated City official shall give written notice of the hearing at least ten (10) days' in advance of the hearing.

    c. The notice to both the owner and the occupant at the property address, and at the last known address of the owner if it is different. shall be served by personal service, by United States mail, or by posting on the premises.

    d. The notice must specifically describe each condition that is a nuisance, and what action will remedy it.

    e. Within ten (10) days after the posting and mailing of a notice to abate a nuisance, the owner or individual in possession of the affected property shall remove and abate such nuisance or show that actions for abating the nuisance have commenced. Such showing shall be made by filing a written statement or other proof of such actions with the City Clerk.

    f. If, after the hearing, it is found that a nuisance exists and that it must be abated, the City Building Inspector or other designated City official may order the owner or occupant of the premises on which the nuisance exists or the person other than the owner or occupant who caused or maintains the nuisance, to abate the nuisance within a reasonable time of

no less than ten days.

g. If, after the time specified in the Order, it is found that a nuisance exists and that it must be abated, the City Building Inspector or other designated City official may effect the abatement of the nuisance by any measures necessary to cause its cessation and the prevention of its recurrence. In abating such nuisance, the City may go to whatever extent may be necessary to complete the abatement of the nuisance or other violation. If it is practicable to salvage any material derived in the abatement, the City may sell the salvaged material at private or public sale and shall keep an accounting of the proceeds.

h. If the owner or occupants do not voluntarily permit the City's abatement of the nuisances or other violations, the City Building Inspector or other designated City official may apply to the Elsberry Municipal Court for an administrative warrant to enter the premises to effectuate the abatement. The costs of obtaining the warrant, including the City's attorneys' fees, shall be included in the costs of abatement.

I. The City Building Inspector or other designated City official may also order the revocation of occupancy permits or business licenses for the persons owning or occupying the property where the nuisance has occurred. The revocation and denial of an occupancy permit or business license, or closure of the premises, for failing to abate the nuisance shall be for a period of up to six months, or the date that the nuisance is fully and finally abated, whichever is less.

J. If the revocation of occupancy permits or the closure of the property is ordered, the City Building Inspector or other designated City official shall direct the Chief of Police to set a time period within which the property shall be vacated. The owner of the property, person in charge of the property and the occupant shall be notified to vacate the premises within the time period ordered by the Chief of Police. It shall become the duty upon such notice of both the owner and the occupant of such premises to comply by vacating the premises within the time period ordered by the Chief of Police. It shall be considered a violation of this Code if such premises are not vacated within the time period ordered by the Chief of Police. The Chief of Police is authorized to remove persons from the premises that have not been vacated within the time period ordered. The Chief of Police shall have the premises secured to prevent unlawful entry.

k. No person shall fail to comply with the lawful order of the City Building Inspector or other designated City official under the provision of this section shall be sufficient to subject a person to the penalties prescribed for violations of a provision of this Code.

l. No person shall deny entry to any person authorized to abate a nuisance to the property on which the nuisance to be abated exists, nor shall any person interfere with or hinder in any way the efforts of such authorized person or persons to abate the nuisance.

(Ord. 6-1-2001; 6-5-2006; 04-03-2008; 2020-07-006)).

§68.205 COSTS OF ABATEMENT.

1. Whenever a nuisance is abated by the City, the City Building Inspector or other designated City official in charge of any abatement shall, after completing the removal and abatement, file a statement of costs with the City Clerk.

2. The City Clerk shall keep an accurate account of all expenses incurred. The abatement costs shall include an overhead charge of twenty-five percent (25%) of the abatement costs, or $100,00, whichever is greater, to defray the costs of administering the abatement, plus any attorneys' fees incurred by the City in obtaining the abatement.

3. The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of public nuisance by the City shall be deposited to the General Fund of the City and any deficit between the amount so received and the cost of the abatement shall be filed with the City Clerk. Should the proceeds of the sale of the salvaged material exceed the cost of the abatement, the surplus, if any, shall be paid to the owner of the property that was abated when a proper claim to the excess is established.

4. The City Clerk shall certify the notices sent to the owner and occupants of the property, along with the costs of the abatement, including all administrative costs.

5. The City Clerk who shall cause a special tax bill for the abatement costs to be prepared and assessed against the property.

6. If the certified cost is not paid, the tax bill shall be considered delinquent, and the collection of the delinquent bill shall be governed by the laws governing delinquent and back taxes. The City Collector shall collect such abatement costs with other taxes assessed against the property.

7. The tax bill from date of its issuance shall be deemed a personal debt against the property owners and shall also be a lien on the property until paid. Each owner and occupant shall be jointly and severally liable to the City for the costs of such abatement.

8. Each special tax bill shall be issued by the City Clerk and delivered to the collector on or before the first (1st) day of June of each year.

9. Such tax bills if not paid when due shall bear interest at the rate of eight percent (8%) per annum.

(Ord. 2020-07-006)

§68.210 ENTRY FOR INSPECTION AND ABATEMENT

1. The City Building Inspector, Code Enforcement Officer, or other designated City official, are

authorized to enter and inspect all buildings, structures, dwellings, and premises in the City for the purpose of enforcing the provisions of Chapters 44, 51, and 68 of this Code; and to perform any authorized abatement.

2. The City Building Inspector, Code Enforcement Officer, or other designated City official, are authorized to inspect property from any adjoining public property or from adjoining private property if the owner of the neighboring private property has given consent to such entry.

3. The City Building Inspector, Code Enforcement Officer, or other designated City official, are authorized to enter and inspect all property, buildings and parts of buildings and other premises, and to perform any authorized abatement, pursuant to lawful authority which shall include: (1) consent of the owner of the property, (2) valid administrative or other search warrant, or (3) in areas where the owner of the property has no expectation of privacy.

2. Whenever the person in possession of a building, structure or other premises refuses admittance to any person named in this section who requests admittance for the purpose of fulfilling his duties under the provisions this Chapter, then the City official to whom admittance has been refused may obtain a warrant to enter, upon probable cause shown to the Elsberry Municipal Court Judge, magistrate, or other person authorized to issue such warrants.

(Ord.6-1-2001; 6-5-2006; 04-03-2008; 2020-07-006).

§68.215. PROHIBITION.

1. Any use or uses of property that are detrimental to the health, safety and welfare of the citizens of Elsberry, or are defined as nuisances in this Municipal Code, are hereby declared to be a nuisance and are prohibited.

2. It shall be unlawful to maintain, create, build, permit, or allow by act or deed the existence of any such nuisance.

3. It shall be unlawful for the owner, or person in custody of such property to allow such nuisances to be and remain as such.

4. It shall be unlawful to use or occupy, or to permit the use or occupancy of, any inhabitable structure ordered closed by the City pursuant to this Chapter.

(Ord. 2020-07-006)

§68.220. MAINTAINING A NUISANCE IS AN OFFENSE.

Any person who maintains a nuisance shall be guilty of an offense. Such an offense is a class B misdemeanor and conviction for such offense shall not require issuing or receiving an abatement notice.

(Ord. 04-01-1988; 04-01-1999; 06-01-2001;08-01-2001; Ord. 04-03-2008)

§68.230. FAILURE TO ABATE NUISANCE IS A SEPARATE OFFENSE.

Any person maintaining a nuisance to whom notice was provided pursuant to §68.200 is provided who fails to remove a nuisance within seven (7) days of receipt of such notice, shall be guilty of a separate offense and may (at the option of the City) be charged in municipal court with the offense of "failure to abate a nuisance.

(Ord. 04-03-2008)

§68.235 DISPOSITION.

1, If any material constituting the nuisance not removed within the times specified in the notice, those nuisance materials may be transported to a storage area by or at the direction of the Building Inspector, Code Enforcement officer, or other duly authorized person at the expense of the owner or person in custody thereof. It shall then be stored for a period of at least 90 days, and the person entitled to possession thereof may redeem the property by payment to the City of the actual cost of its removal, a reasonable storage fee, and an administration fee of $100.00. If the nuisance material is unredeemed after the expiration of the 90-day period, the City may sell it to the highest bidder or, if it has no sale value, may otherwise dispose of it. Any money received from disposal of any vehicle or junk shall be applied to the expenses charged to the owner or person in charge thereof, and any excess held in escrow or returned to him. After another 90-day period, if the excess be unclaimed, it shall be paid over to the general fund of the City.

2. Prior to the sale of any such property, the Building Inspector, Code Enforcement officer, or other duly authorized person shall cause to be posted in the City Hall, place of storage, and at least one other public place in the City, a notice of sale stating:

    a. that the city is selling abandoned property

    b. An accurate identification of the property

    c. the terms of the sale

    d. the date, time and place of the sale.

This notice shall also be published not less than ten, nor more than twenty, days prior to the date of the sale.

(Ord. 2020-07-006)

§68.240. CODE ENFORCEMENT OFFICER.

The City may hire an employee or engage a contractor who shall serve as the City Code Enforcement Officer. The Code Enforcement Officer shall perform inspections for, negotiate compliance with, and enforce the City's ordinances and regulations related to zoning, property usage, property occupancy, property maintenance, health violations, nuisance violations, abatement of nuisances, abandoned vehicles, housing, building and similar codes and performs other duties as assigned.

(Ord. 04-03-2008)

§68.245 EQUITABLE AND OTHER RELIEF

In addition to the other remedies provided in this Municipal Code, if a person has violated or continues to violate the provisions of this Chapter, the City may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation. In addition, the City may utilize any other remedy, at law or in equity, in order to enforce the provisions of this Chapter. The City shall recover all attorneys' fees, court costs, and other expenses associated with enforcement of Chapters 44, 51, 61, and 68 of the Elsberry Municipal Code.

(Ord. 2020-07-006)

SUBCHAPTER B – DANGEROUS BUILDINGS

§68.300. PURPOSE AND SCOPE.

It is the purpose of this ordinance to provide a just, equitable and practicable method for the repair, vacation or demolition of buildings or structures that may endanger the life, limb, health, property, safety or welfare of the occupants of such buildings or the general public, and this ordinance shall apply to all dangerous buildings, as herein defined, that now are in existence or that may hereafter exist in the City of Elsberry, Missouri.

(Ord. 11-1-2003; 2014-12-002)

§68.305. DANGEROUS BUILDINGS DEFINED.

All buildings that are detrimental to the health, safety or welfare of the residents of the City of Elsberry, Missouri, and that have any or all of the following defects shall be deemed "dangerous buildings":

1) Those with interior walls or other vertical structural members that list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle third of its base.

2) Those that, exclusive of the foundation, show thirty-three (33) percent or more damage or deterioration of the supporting member or members, or fifty (50) percent damage or

deterioration of the non-supporting enclosing or outside walls or covering.

3) Those that have improperly distributed loads upon the floors or roofs, or in which the same are overloaded or that have insufficient strength to be reasonably safe for the purpose for which they are being used or were last used if not being currently used.

4) Those that have been damaged by fire, wind, the elements, or other causes so as to become dangerous to life, safety or the general health and welfare of the occupants or the people of the City of Elsberry, Missouri.

5) Those that are so dilapidated, decayed, unsafe, unsanitary or that so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease so as to work injury to the health, safety or welfare of those occupying such building.

6) Those having light, air and sanitation facilities that are inadequate to protect the health, safety or general welfare of human beings who live or may live therein.

7) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other adequate means of evacuation.

8) Those that have parts thereof that are so attached that they may fall and injure members of the public or property.

9) Those that because of their condition are unsafe, unsanitary or dangerous to the health, safety or general welfare of the people of the City of Elsberry, Missouri.

(Ord. 11-1-2003; 2014-12-002)

§68.310. DANGEROUS BUILDINGS DECLARED NUISANCE.

All dangerous buildings, as defined by Section 68.305, are hereby declared to be public nuisances, and shall be repaired, vacated or demolished as provided herein.

(Ord. 11-1-2003; 2014-12-002)

§68.315. STANDARDS FOR REPAIR, VACATION OR DEMOLITION.

The following standards shall be followed in substance by the building inspector and the building commissioner in ordering repair, vacation or demolition of any dangerous building:

1) If the dangerous building reasonably can be repaired so that it no longer will exist in violation of the terms of this ordinance, it shall be ordered repaired.

2) If the dangerous building is in such condition as to make it dangerous to the health, safety

or general welfare of its occupants, it shall be ordered to be vacated and repaired.

3) In all cases where a building cannot be repaired so that it no longer will exist in violation of the terms of this ordinance, it shall be demolished.

4) In all cases where a dangerous building is a fire hazard existing or erected in violation of the terms of this ordinance or any ordinance of the City of Elsberry, Missouri, or statute of the State of Missouri, it shall be repaired or demolished

(Ord. 11-1-2003; 2014-12-002)

§68.320. BUILDING INSPECTOR.

The Mayor shall appoint, with the approval of the Board of Aldermen, a person to serve as the building inspector within the meaning of this ordinance. An employee of the City of Elsberry, Missouri, may serve in the position of building inspector.

(Ord. 11-1-2003; 2014-12-002)

§68.325. DUTIES OF BUILDING INSPECTOR; PROCEDURE AND NOTICE.

The building inspector shall have the duty under this ordinance to:

1) Inspect, or cause to be inspected, as often as may be necessary, all residential, institutional, assembly, commercial, industrial, garage, special or miscellaneous occupancy buildings for the purpose of determining whether any conditions exist that render such places a dangerous building when the building inspector has reasonable grounds to believe that any such building is dangerous.

2) Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of this ordinance, and the building inspector determines that there are reasonable grounds to believe that such building is dangerous.

3) Inspect any building, wall or structure reported by the fire or police departments of this City of Elsberry, Missouri, as probably existing in violation of this ordinance.

4) Notify in writing, either by personal service or by certified mail, return receipt requested, or if service cannot be had by either of these modes of service, then service may be had by publication in a newspaper qualified to publish legal notices once a week for two (2) successive weeks, the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in said building as shown by the land records of the Recorder of Deeds of Lincoln County, Missouri of any building found by the building inspector to be a dangerous building within the standards set forth in Section 68.305.

The notice required shall state:

a) That the owner must vacate, vacate and repair, vacate and demolish, repair, or demolish said building and clean up the lot or property on which the building is located in accordance with the terms of the notice and this ordinance;

b) That the occupant or lessee must vacate said building or have it repaired in accordance with the notice and remain in possession;

c) That the mortgagee, agent or other persons having an interest in said building as shown by the land records of the Recorder of Deeds of Lincoln County, Missouri, may, at his/her/its own risk, repair, vacate, or demolish the building and clean up the property or have such work done, provided that any person notified under this subsection to repair, vacate or demolish any building, or clean up the property shall be given such reasonable time not exceeding thirty (30) days to commence the required work;

d) A description of the building or structure deemed dangerous, a statement of the particulars that make the building or structure dangerous and an order requiring the designated work to be commenced within a reasonable time not exceeding thirty (30) days.

5) Report in writing to the city building commissioner the noncompliance with any notice to vacate, repair, demolish, and/or clean up the property or upon the failure to proceed continuously with the work without unnecessary delay;

6) Appear at all hearings conducted by the building commissioner and testify as to the condition of dangerous buildings.

7) Immediately report to the building commissioner concerning any building found by said building inspector to be inherently dangerous. Provided, further, that if based on said report, the building commissioner determines said building to be a nuisance per se, the building commissioner may order that such building be marked or posted with a written notice reading substantially as follows:

"This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building and/or property until it is repaired, vacated, or demolished and the property is cleaned up in accordance with the notice that has been given the owner, occupant, lessee, mortgagee or agent of this building, and all other persons having an interest in said building as shown by the land records of the Recorder of Deeds of Lincoln County, Missouri. It is unlawful to remove this notice until such notice is complied with."

Provided, however, that the order by the building commissioner and the posting of said notice

shall not be construed to deprive all persons entitled thereto by this ordinance to the notice and hearing prescribed herein.

(Ord. 11-1-2003; 2014-12-002)

§68.330. BUILDING COMMISSIONER.

The Mayor shall act as building commissioner under this ordinance.

(Ord. 11-1-2003; 2014-12-002)

§68.335. DUTIES OF THE BUILDING COMMISSIONER.

1) The building commissioner shall have the power to supervise all inspections required by this ordinance and cause the building inspector to make inspections and perform all the duties required of said building inspector by this ordinance. Upon receiving a complaint or report from any source that a dangerous building exists in the City of Elsberry, Missouri, the building commissioner shall cause an inspection to be made forthwith. If the building commissioner deems it necessary to the performance of his duties and responsibilities imposed herein, the building commissioner may request an inspection and report be made by any other city department or retain the services of an expert whenever the building commissioner deems such service necessary

2) Upon receipt of a report from the building inspector indicating failure by the owner, lessee, occupant, mortgagee, agent or other person(s) having interest in said building to vacate, and/or commence the work of repair or demolition within the time specified by this ordinance or upon failure to proceed continuously with such work without unnecessary delay, the building commissioner shall hold a hearing giving the affected parties a full and adequate right to be heard on the matter. Any party may be represented by counsel and all parties shall have an opportunity to be heard. Written notice, either by personal service or by certified mail, return receipt requested, or by publication once a week for two (2) successive weeks, in a newspaper qualified to publish legal notices, at least ten (10) days in advance of a hearing date, to the owner, occupant, mortgagee, lessee, agent and all other persons having an interest in said building as shown by the land records of the Recorder of Deeds of Lincoln County, Missouri, to appear before the building commissioner on the date specified in the notice to show cause why the building or structure reported to be a dangerous building should not be repaired, vacated or demolished in accordance with the statement of particulars set forth in the building inspector's notice as provided herein.

3) The building commissioner shall make written findings of fact from the evidence offered at said hearing as to whether or not the building in question is a dangerous building within the terms of Section 2.

4) If the evidence supports a finding based upon competent and substantial evidence that the building or structure is a dangerous building, the building commissioner shall issue an order

based upon its findings of fact commanding the owner, occupant, mortgagee, lessee, agent or other person(s) having an interest in said building as shown by the land records of Lincoln County, Missouri, to vacate and/or repair or demolish said building and to clean up the property, provided that any person so notified shall have the privilege of either repairing or vacating and repairing said building, if such repair will comply with the ordinances of the City of Elsberry, Missouri, or the owner or any person having an interest in said building as shown by the land records of Lincoln County, Missouri, may vacate and demolish said dangerous building at his own risk to prevent the City of Elsberry, Missouri, from acquiring a lien against the land where the dangerous building stands as provided for in subsection 5 of this section. If the evidence does not support a finding that a building or structure is a dangerous building, no order shall be issued.

5) If the owner, occupant, mortgagee or lessee fails to comply with the building commissioner's order within thirty (30) days, the building commissioner shall cause such building or structure to be vacated, and/or repaired or demolished and the property cleaned up as the facts may warrant, and the building commissioner shall certify the cost of the work borne by the City of Elsberry, Missouri, for such vacation, and/or repair or demolition and/or clean up to the City Clerk as a special assessment represented by a special tax bill against the real property affected. Said tax bill shall be a lien upon said property and shall be deemed a personal debt against the property owner(s) unless the building or structure is demolished, secured or repaired by a contractor pursuant to an order issued by the City of Elsberry, Missouri, and such contractor files a mechanic's lien against the property where the dangerous building is located. The contractor may enforce this lien as provided under Missouri law. At the request of the tax payer this special tax bill may be paid in instalments over a period of not more than ten (10) years. Said assessment shall bear interest at the rate of nine percent (9%) per annum until paid.

(Ord. 11-1-2003; 2014-12-002)

§68.340. INSURANCE PROCEDURES AND PROCEDURES

If there are proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure caused by or arising out of any fire, explosion or other casualty loss, the following procedure is established for the payment of up to twenty five (25) percent of the insurance proceeds, as set forth in subparagraph 2 and 3 of this Section. This Section shall apply only to a covered claim payment that is in excess of fifty (50) percent of the face value of the policy covering a building or other structure.

1. The insurer shall withhold from the covered claim payment up to twenty-five (25) percent of the covered claim payment, and shall pay such moneys to the City to deposit into an interest - bearing account. Any named mortgagee on the insurance policy shall maintain priority over any obligation under this ordinance.

2. The City shall release the proceeds and any interest that has accrued on such proceeds received under subparagraph 1 of this Section to the insured or as the terms of the policy

and endorsements thereto provide within thirty (30) days after receipt of such insurance moneys, unless the City has instituted legal proceedings under the provisions of §68.355 (5). If the City has proceeded under the provisions of §68.355 (5), all moneys in excess of that necessary to comply with the provisions of subsection (5) of this section for the removal of the building or structure, less salvage value, shall be paid to the insured.

3. If there are no proceeds of any insurance policy as set forth in this subsection, at the request of the taxpayer, the tax bill may be paid in installments over a period of not more than ten (10) years. The tax bill from date of its issuance shall be a lien on the property and a personal debt against the property owner(s) until paid.

4. This subsection shall apply to fire, explosion or other casualty loss claims arising on all buildings and structures.

5. This subsection does not make the City a party to any insurance contract, and the insurer is not liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

6. The building commissioner may certify in lieu of payment of all or part of the covered claim under this section that the City has obtained satisfactory proof that the insured has removed or will remove the debris and repair, rebuild or otherwise make the premises safe and secure. In this event, the building commissioner shall issue a certificate within thirty (30) days after receipt of proof to permit the covered claim payment to the insured without the deduction pursuant to this subsection. It shall be the obligation of the insured or other person making the claim to provide the insurance company with the written certificate provided from this subsection.

(Ord. 2014-12-002)

§68.345. APPEAL.

Any owner, occupant, lessee, mortgagee, agent, or any other person(s) having an interest in a dangerous building as shown by the land records of the Recorder of Deeds of Lincoln County, Missouri, may within thirty (30) days from the receipt of the order of the building commissioner, appeal such decision to the Circuit Court of Lincoln County, Missouri, pursuant to the procedure established in Chapter 536 of the Revised Statutes of Missouri.

(Ord. 11-1-2003; 2014-12-002 [renumbered])

§68.350. EMERGENCIES.

In cases where it reasonably appears that there is immediate danger to the health, life or safety of any person unless a dangerous building, as defined herein, is immediately vacated, and/or repaired or demolished and the property is cleaned up, the building inspector shall report such facts to the building commissioner, and the building commissioner may cause the immediate vacation, and/or

repair or demolition of such dangerous building and clean up of the property.
The costs of such emergency vacation, and/or repair or demolition of such dangerous building shall be collected in the same manner as provided in Section 68.335(5).

(Ord. 11-1-2003; 2014-12-002 [renumbered])

§68.355. VIOLATIONS; DISREGARDING NOTICES OR ORDERS.

1) The owner, occupant, or lessee in possession of any dangerous building who shall fail to comply with the order to vacate, and/or repair or demolish said building given by the building commissioner shall be guilty of a misdemeanor and upon conviction shall be punishable as set forth in Section 68.355.

2) Any person removing any notices provided for in this ordinance shall be guilty of a misdemeanor and upon conviction shall be punishable as set forth in Section 12.

(Ord. 11-1-2003; 2014-12-002 [renumbered])

§68.360. PENALTIES.

Any person violating the provisions of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500). Each day that a person fails to comply with an order of the building commissioner may be deemed a separate offense. A notice of abatement does not need to issue to be found in violation of §§68.305 or 68.310.

(Ord. 11-1-2003; 2014-12-002 [renumbered])

SUBCHAPTER C – BURNING

§68.400: BONFIRES AND RUBBISH

A. It shall be unlawful for any person, firm or corporation to burn leaves, yard waste, solid waste, refuse or rubbish within the City limits unless a valid Department of Natural Resources burn permit is obtained, displayed on-site and complied with. Said permit shall contain location, date and conditions of burning.

B. It shall be unlawful for any person, firm or corporation to burn leaves, yard waste, solid waste, refuse or rubbish within the City limits in violation of a Missouri Department of Natural Resources burn permit or applicable Missouri Department of Natural Resources open burning regulations.

B. It shall be unlawful for any person, firm or corporation to accumulate or pile yard waste, solid waste, refuse or rubbish which may cause bad odors, unsanitary conditions or fire hazards within the City limits.

(Ord. 08-01-2007)

§68.410: OPEN BURNING

A. It shall be unlawful to burn commercial waste, trade waste, industrial waste, tires, waste oil, construction waste, salvage operation waste, demolition project waste, household trash, paper products, food waste, asbestos-containing material, hazardous material, styrofoam, plastics, petroleum-based products, treated wood and other refuse within the City limits of Elsberry, Missouri.

B. Open burning of yard waste is allowed from September first (1st) through May thirty-first (31st) as long as it is burned on the premises on which it originated; provided however that yard waste caused by storm damage during these months may be burned during these months. Burning may not occur on City right-of-way.

C. Open burning of construction waste is allowed if the appropriate permit from the Missouri Department of Natural Resources is obtained and presented to the Building Department of the City of Elsberry, and the Fire Chief of the Elsberry Fire Protection District, or if the activity is exempt from State regulations.

D. For any open burning that is permitted under this City Code, the following procedures and requirements must be met and satisfied:

1. The distance from the open burning site to the nearest inhabited residence or commercial business, is at a distance that would not constitute a nuisance or hazard as determined by the Fire Chief of the Elsberry Fire Protection District, the City Chief of Police, or the Elsberry Fire District ordinances.

2. The open burning will not hinder the operation of the installation itself, ignite material other than that which is permitted to be burned openly under this City Code or otherwise create a fire hazard

3. The Fire Chief of the Elsberry Fire Protection District has approved the method and site of the open burning in advance.

4. The owner of the property on which the burning occurs, and the operator of the burning, comply with all applicable laws, rules and ordinances regulating the open burning.

5. The owner of the property on which the burning occurs, and the operator of the burning, comply with all conditions by the Fire Chief of the Elsberry Fire Protection District.

6. Open burn fires for yard waste may not be ignited prior to 9:00 a.m. and must be completely extinguished by 7:30 p.m. All other permissible open burning may not be ignited prior to 10:00 a.m. and must be completely extinguished by 5:00 p.m.

7. The owner of the property on which the burning occurs, and the operator of the burning, must have an adequate source of water or other fire suppressants within twenty (20) feet of the fire while it is ignited, and for two hours thereafter. The extinguishing equipment and water supply at the burning site must be sufficient to completely extinguish the fire in a reasonable period of time. The extinguishing agent must be capable of causing the fire to immediately start to go out upon application of such agent. Water hoses shall be equipped with nozzles, and the hose shall be maintained charged during the period of such burning.

8. A competent responsible person, over the age of 16, must constantly attend to the fire and be present at the fire at all times that it is ignited, and until it is completely extinguished.

9. The owner of the property on which the burning occurs, and the operator of the burning, must notify the Fire Chief of the Elsberry Fire Protection District of the date, time, and location of the open burning at least 12 hours in advance of the burning.

10. If a problem arise from the burning, such as a public health hazard, nuisance, or a hazard to vehicular or air traffic, the owner of the property on which the burning occurs, and the operator of the burning, must correct the problem immediately.

11. The open burning area shall be limited in size to an area of no more than twenty-four (24) feet in diameter and shall not exceed six (6) feet in height or in compliance with the applicable DNR permit..

12. The Fire Chief of the Elsberry Fire Protection District, or the Fire Chief's designate, may issue an order to immediately extinguish any open burning, if the Fire Chief or the Fire Chief's designate determines that weather or other conditions make such open burning dangerous to life or property.

E. The following activities are exempt from the requirements of subsections B and D.

1. Fires set on cropland in connection with agricultural or forestry operations related to the growing or harvesting of crops.

2. Fires set for the purpose of training fire fighters and industrial employees in fire fighting methods provided that 1) the training is conducted in strict accordance with National Fire Protection Association NFPA standards on live fire training for fire fighters.

3. Camp fires and other fires used solely for recreational purposes, or for ceremonial occasions. However, no such fire shall be of a height, diameter, and distance from a structure that would constitute a nuisance or hazard as determined by the Fire Chief of the Elsberry Fire Protection District, the City Chief of Police, or the Elsberry Fire District ordinances.

4. Fires for outdoor noncommercial preparation of food. However, no such fire shall be of a height, diameter, and distance from a structure that would constitute a nuisance or hazard as determined by the Fire Chief of the Elsberry Fire Protection District, the City Chief of Police,

or the Elsberry Fire District ordinances. Fuel for such fires may only be charcoal and seasoned untreated fire wood.

5. Prescribed burning for natural resource management purposes limited to authorized agencies.

F. Nothing in the City Code may be construed to permit open burning which causes or constitutes a public health hazard, nuisance, or a hazard to vehicular or air traffic, nor which violates any other rule or statute.

G. The Fire Chief of the Elsberry Fire Protection District, or the Fire Chief's designee, may order any person igniting, maintaining, or occupying any property on which, any burning that violates the provisions of §68.400 and 68.410. If such person fails to obey such order, or no responsible person can be found immediately to give such an order to, then the Fire Chief or his designee may take any action necessary to extinguish the burning. The cost of responding to the burning, extinguishing burning, and monitoring the area for rekindling, shall be paid by the violator or the person who owns the property on which the burning takes place .

H. Any burning in violation of this Subchapter shall be deemed a violation subject to Chapter 13 of this Code; and shall be deemed a nuisance, subject to the provisions of Chapter 122 of this Code.

(Ord. 08-01-2007; Ord. 2020-01-00__)

CHAPTER 70 -- FIRE DEPARTMENT

Subchapter A -- Organization

§70.010. DEPARTMENT ESTABLISHED.

A fire department for the City of Elsberry, Missouri consisting of a minimum of 12 citizens above the age of 18 years is hereby authorized for the City of Elsberry, Missouri.

§70.020. OFFICERS.

The officers of such fire department shall consist of a fire chief, assistant fire chief and secretary. The mayor shall appoint (subject to the approval of the board of aldermen) the fire chief for the city, for a one year term. Other officers of the fire department shall be elected by the members of the fire department by ballot, at the first regularly scheduled meeting of such department of each calendar year. Officers shall hold office for a one year term, commencing January 15, and until their successor assumes office.

1. An officer may be removed from his office by the Board of Aldermen, in accordance with Chapter 21, Subchapter K of this code (Section 21. 900, et seq.)

2. Upon a vacancy in an office, his successor shall be selected (for the remainder of the original term) in the same manner as set forth above for selection of the specific office. (That is, the assistant fire chief does not automatically become fire chief upon a vacancy in that office. A new fire chief must be appointed by the mayor and approved by the board for the remainder of the term.)

§70.030. DUTIES OF MEMBERSHIP.

It shall be the duty of every member of the fire department to attend every regular meeting of the fire department or any called meeting; and any member failing to attend any two consecutive meetings without a satisfactory cause, shall be dismissed from such department, and another suitable person selected by the fire chief to fill the vacancy.

§70.040. DUTIES OF FIRE CHIEF.

The fire chief shall have supervision over the fire department and shall see that all fire plugs are opened, and flushed out at least once every thirty days; and note the condition of the same, and make a report thereon at once to the board of aldermen if any of them are in a defective condition.

§70.050. FIRE PRACTICE DRILLS.

The fire chief shall callout the members of the fire department at least twice each month for practice, running with the hose cart, connecting with fire plugs, and throwing water and all and any other fire drills to promote greater prevention and protection of the City against fires, and noting the time used in making the runs and conducting the fire drills at such practice sessions.

§70.060. SECRETARY TO REPORT.

The secretary of the fire department shall make a report in writing each month to the board of aldermen at its first regular meeting each month, giving the names of all members of the fire department who may have been absent from any regular meeting of the same or who have failed to respond promptly to any fire alarm; and he shall also report any fire plugs which are in anyway defective or which may need any repairs.

§70.070. FIRE CHIEF TO ATTEND BOARD OF ALDERMEN MEETING.

It shall be the duty of the fire chief to attend the first meeting of the Board of Aldermen each month, and confer with them on any matters of interest concerning the fire department and he shall receive for such attendance the sum of $2.00 for each meeting.

§70.080. COMPENSATION.

Each member of the fire department shall receive for his services for each fire or fire alarm to which he responds and makes a run $5.00 per fire call.

§70.090. FIRE CHIEF TO BE IN CHARGE.

The fire chief shall have control of the fire department at any fire, or at any practice meeting, and shall have charge of the details of fire practice and control of all fire apparatus belonging to the City and shall keep the same under his control, and keep a record of the same in a book to be kept by the fire department, and nothing belonging to the fire department shall at any time be loaned to anyone and he shall not permit any person to have any connections made with any fire plug at any time, unless his personal charge.

§70.100. CITY POLICE, DUTIES AT FIRE.

It shall be the duty of the City police to attend all fires in the City, and preserve order and act ,under the direction of the fire chief in managing anything concerning the subjection of the fire, or the control of the crowd of on-lookers who may be present at such fire.

§70.110. ACT TO SAVE PROPERTY.

The fire chief is directed to appoint a suitable person of his fire department who shall organize with about three members of such department whose special duty and efforts shall be directed at any fires to save all goods, wares, or any personal property from being destroyed by such fire, and to see that the same is protected after it is saved, whether such personal property is known to be insured or not.

§70.120. EQUIPMENT TO REMAIN IN CITY, EXCEPTION.

City fire fighting equipment shall not leave the city limits, except in accordance with a cooperative agreement (subchapter B of this chapter).

SUBCHAPTER B -- COOPERATIVE AGREEMENT

§70.500. COOPERATIVE AGREEMENTS.

The City of Elsberry hereby contracts with the Cities of Troy, Louisiana, Clarksville and Winfield-Foley, effective upon the passage and approval of a like ordinance by the city councils of Troy, Louisiana, Clarksville and Winfield-Foley for the interchange of service of the fire departments of the parties hereto upon the conditions and provisions hereinafter contained.

§70.510. RESPOND TO ALARMS IN OTHER CITIES.

The fire department of the City of Elsberry shall respond to fire alarms on call in any part of the Cities of _____ and the fire departments of _____ shall respond to fire alarms on call in any part of the City of Elsberry.

§70.520. TERM OF CONTRACT.

This contract shall take effect and be in force commencing on the adoption of this Ordinance and continuing until repealed.

§70.530. TERMINATION OF CONTRACT.

This contract may be terminated at any time during its term on the passage of an ordinance to that effect by the legislative body of either municipality and written notice thereof given to the other party hereto by serving on the city clerk of such other municipality a certified copy of such ordinance terminating this agreement. The termination shall take effect sixty days from the date of service of such written notice.

§70.540. CONSIDERATION.

The consideration for the service of the fire department of each municipality shall be the service given for the protection of the lives and property in such municipality by the service of the fire department of the other party hereto, and no compensation shall accrue or be paid by either party for the service of the fire department of the other party hereto.

§70.550. LIABILITY.

1. No municipality shall be liable to the others for failure to respond to any call by the order of such municipalities, or for delay or negligence or mistake in receiving or responding to any call, nor shall this contract be interpreted as being an agreement for the benefit of any third person.

2. No municipality shall be liable by reason of this contract to any fireman, official or employee of the other, nor shall any fireman, official or employee of either municipality be considered for any purpose a fireman, official or employee of any municipality other than the one by which he is regularly employed.

§70.560. LOST OR DAMAGED PROPERTY.

In case of loss or damage to the equipment or property of either municipality while responding to fire alarms, such loss or damage shall be borne by the city owning such equipment or property.

§70.570. JOINT FIRE LINES.

In effectuating the purpose of this contract, the parries hereto may maintain direct telephone lines between the fire stations of each of them to be used exclusively for fire calls. In such event, the expense of such lines shall be shared equally by the parties hereto.

CHAPTER 71 -- POLICE DEPARTMENT

SUBCHAPTER A -- POLICE, GENERAL

§71. 010. GENERALLY.

This Chapter consists of the rules and regulations for the operation of the Police Department of this City. To the extent that this Chapter conflicts with the provisions of Chapter 23 (relating to Personnel), this Chapter shall prevail. To the extent that regulations promulgated by the Mayor or by the Chief of Police, under the authority of this Chapter, conflict with the provisions of Chapter 23 (relating to Personnel), then Chapter 23 shall prevail.

§71.020. CHIEF OF POLICE, AUTHORITY.

The Chief of Police is the director of the Police Department. He shall have immediate and direct control of the department, subject to the supervision of the Mayor, and subject to such other rules, regulations and orders as the Board of Aldermen may prescribe. He shall promulgate and enforce orders, rules and regulations (consistent with this Code and with the rules, regulations and orders of the Board of Aldermen) for the efficient operation of the Police Department.

(Amend. Ord. 10-03-2007)

§71.021. CHIEF OF POLICE, REPORTS.

The Chief of Police shall meet and confer with the Chair of the Emergency Services Committee of the Board of Aldermen, or the Chair's designee, at least once a month and no later than one week prior to the regular monthly Board of Aldermen meeting. During such meeting the Chief of Police shall:

1. Submit any requests that the Chief of Police may wish to submit to the Board of Aldermen,
2. Submit any recommendations for hiring or firing Police Department personnel,
3. Report on the operations of the Police Department, and
4. Address any concerns, complaints, recommendations, or other matters relating to the efficient and effective operation of the Police Department .

(Amend. Ord. 10-03-2007)

§71.030. SAME, DUTIES.

The Chief of Police shall devote his entire time to the discharge of his official duties.

§71.040. PATROLMEN, ASSIGNMENTS.

Assignment of a patrolman is at the discretion of the Chief of Police. For the purpose of this Chapter, all police (including the Chief) are considered patrolmen.

§71.050 PATROLMEN, DUTIES.

Each patrolman shall:

1. be familiar with every part of town, observing any thing unusual to assist in the prevention of crime.

2. examine all doors and windows of commercial and industrial buildings at night and report any that are not properly secured to the owner thereof.

3. report whenever he has reasonable grounds to suspect that any building or part thereof is being used in violation of the law or is the resort for persons of known bad character and be prepared to give information relative to the nature of business conducted by firms on his beat.

4. not-leave the City limits while on duty except in case of emergency and in such cases must file a written report of the same with the City Clerk who shall make the report available to the Mayor. if same is requested in writing by the Mayor.

5. enforce all traffic ordinances in addition to his other duties.

6. observe and report all violations of City ordinances and state law.

7. be responsible for the care and operation of the vehicle assigned to him.

§71.060. STANDARD OF CONDUCT.

Any of the following is sufficient cause for the suspension or discharge of any member of the Police Department:

1. For drinking intoxicating liquor while on duty or in uniform.

2. For intoxication while either on or off duty.

3. For willful disobedience to any order lawfully issued.

4. For disrespect shown to the Mayor or an Alderman.

5. For incompetency in the performance of his duties.

6. For any neglect of duty.

7. For making known any investigation or proposed movement of the department to any person not a member of the department or the Board of Aldermen, or for discussing the affairs of the department, in a manner likely to disrupt the movement or discipline of the department, with any person not a member of the department or the Board of Aldermen.

8. For unnecessary and unwarranted violence toward a prisoner.

9. For cowardice or for lack of energy which may be construed as either incompetency or gross neglect of duty.

10. For sleeping while on duty.

11. For violating any of the rules, regulations, or orders of the department or of the Mayor, if same be in writing.

12. For indecent, profane or harsh language while on duty or in uniform.

13. For absence without leave.

14. For conduct unbecoming an officer or a gentleman, whether on duty or off duty.

15. For conduct detrimental to the good order and discipline of the department.

16. For careless handling of City property, either fixed or movable.

17. For conviction of any felony or misdemeanor.

18. For repeated violation of City ordinances.

19. For failure to cooperate with the City prosecutor in the preparation or trial of any case, or for providing assistance to a defendant or defense counsel in any legal action brought by the City.

20. For loss of firearm or other weapon while on duty.

§71.070. RIGHT OF APPEAL.

The right of appeal granted City employees by Section 23.150(7) *et seq.* is expressly preserved for members of the department.

[Note: §23.150(7) was repealed].

§71.080. CONDUCT AND DEPORTMENT.

All members of the department shall be quiet, civil, and orderly in their conduct and deportment, and shall at all times be attentive and zealous in the discharge of their duty, controlling their temper and exercising the utmost patience and discretion. They shall answer any questions put to them with all possible correctness and courtesy (not in a short or careless manner), avoiding at all times unnecessary conversation or argument.

§71.090. DISTURBANCES.

Any member of the department shall go instantly to the scene of any disturbance or breach of the peace occurring within his vicinity, use his best effort to restore peace and quiet, making such arrests as may be necessary, and notify and make necessary reports to the Police Department.

§71.100. TRUTHFULNESS OF MEMBERS.

All members of the department are required to speak the truth at all times, and under all circumstances, whether under oath or not. If forbidden by the rules of the department to divulge information, they will state "No Comment."

§71.110. MEMBERS TO GIVE NAME.

Any member of the department, when called upon to do so by any person under any circumstances, shall give his name in a respectful and courteous manner.

§71.120. COOPERATION.

Every member of the department is expected to discharge his duties with coolness and firmness in all cases; and in times of extreme peril all available officers shall act together and assist and protect each other in restoring peace and order. Anyone shirking his duty in case of danger or responsibility in an emergency shall be considered unworthy of a place in the department, and may be discharged.

§71.130. MEMBERS TO USE JUDGMENT.

All members of the department shall be particularly careful not to interfere officiously or unnecessarily in the private business of any person, but when required to act in the discharge of their duty they shall do so with energy and decision, and in the proper exercise of their authority they will receive the fullest support of the department.

§71.140. TESTIMONY.

Officers shall appear in court on any case in which they are witnesses. If duty demands their absence from the Municipal Court (Police Court), they shall report the matter to the Chief of Police in order that the case may be continued. Officers on the witness stand, in response to questions asked, will state in clear and distinct words, truthfully, all they know regarding a matter, without fear or reservation and without any desire or design to influence the result.

§71.150. MEMBERS WILL BE FAMILIAR WITH RULES, ETC.

Each member of the department will be furnished with a copy of any rules, regulations. and orders issued by the Chief of Police or the Mayor, which he shall keep in his possession, and with which he shall be familiar at all times.

§71.160. UNIFORM.

Every member of the department shall wear the uniform as the Chief of Police may from time to time prescribe. The uniforms will be furnished and remain the property of the City, to be surrendered upon leaving the service. They shall, when on duty, carry such equipment as the Chief of Police may prescribe or adopt and when in uniform, keep their badge always in sight. No member of the department shall ever appear for duty in civilian clothing without special permission of the Chief of Police.

§71.170. SAME, WHEN OFF DUTY.

No member of the department shall ever wear his uniform or any part of it when off duty, except with the express permission of the Chief of Police.

§71.180. SAME, CARE OF UNIFORM AND EQUIPMENT.

All members of the department will be required to be neat in appearance and keep their uniforms and equipment in good condition and in perfect order and repair.

§71.190. RESTRICTIONS APPLYING TO SUSPENDED OFFICERS.

No member of the department shall wear his uniform or carry a pistol while under suspension for any cause; and such member shall immediately surrender his badge and police identification to the chief of police when notified of his suspension.

§71.200. DUTY HOURS.

Although certain hours are required for the performance of duty on ordinary occasions, members must be prepared at all times to act immediately on notice that their service is required. Members of the department shall be considered as always on duty for the purpose of discipline. The hours of duty will be regulated by the chief of police.

§71.210. POLICE VEHICLES.

Police officers are not to use police vehicles except in the discharge of their duties. Police vehicles are not available for personal use.

§71.220. DUTY TO PRESERVE PEACE.

Although regular hours of duty shall be assigned to all members of the department, it shall be the duty of every officer of the department, at all times, day or night, within. the City, to preserve the public peace, protect the rights of persons and property, guard the public health, preserve order at all elections and public assemblies; prevent and remove, if possible, nuisances on and in all streets, highways, areas, alleys, and other places, and enforce the criminal law of the State of Missouri and the ordinances of the City.

§71.230. USE OF UNNECESSARY VIOLENCE TOWARD PRISONERS.

No officer shall willfully mistreat or use unnecessary violence toward any person, prisoner or otherwise. He shall not strike any prisoner except as a last resort in an effort to overcome resistance or prevent escape. An officer shall not shoot at a fleeing person or any escaping prisoner unless he has probable cause to believe that such person has committed a felony.

§71.240. QUALIFICATIONS FOR POLICE OFFICERS.

All full-time police officers employed by the City shall be between the ages of twenty-one years of age and sixty-five years of age. They shall be of good moral character and shall not have been convicted of any misdemeanor or felony. They shall be able to write legibly and shall furnish at least three good character references. A written examination for any applicant for police officer for the City shall be discretionary with the board of aldermen. Any police officer so employed shall reside within the City. Any of these qualifications may be waived by the board of aldermen by resolution.

§71.250 RECOVERY OF COSTS FOR PROCESSING DEFENDANTS ARRESTED ON CHARGES ISSUED BY OTHER JURISDICTIONS.

Whenever a defendant is arrested by the Elsberry Police on charges or warrants issued by another jurisdiction, the City may charge that other jurisdiction for the following costs:

1. Actual costs for apprehension, transportation, medical treatment, or confinement of the defendant.

2. Any other reasonable cost as may be otherwise provided by ordinance or statute, including but not limited to medical costs incurred by the City while a defendant is in custody, and costs related to the arrest and testing of any person for any intoxication-related traffic offense.

(Ord. 2012-04-005)

SUBCHAPTER B -- AUXILIARY POLICE

§71.500. DEFINITIONS.

"Reserve Police Officer". A peace officer properly appointed by and serving the City of Elsberry on a voluntary basis who is certified as by the State of Missouri to possess the duty and power to enforce, and make arrests for violations of, the general criminal laws of Missouri or the ordinances of any political subdivision of Missouri.

(Amend 2023-03-001)

§71.510. RESERVE POLICE OFFICER PROGRAM

1. There is hereby created a Reserve Police Officer program, the membership of which shall consist of Missouri P.O.S.T (Peace Officer Standards and Training Program) certified Law Enforcement Officers who shall serve as volunteers. Reserve Police Officers with P.O.S.T Certification will be held to the same standards as full-time sworn Police Officers. Reserve Police Officers shall, at all times while in uniform and on duty, be subordinate to any and all members of the regular Police Force.

2. The Chief of Police is responsible for all aspects of the Reserve Police Officer program.

(Amend 2023-03-001)

§71 .520. HOW APPOINTED.

1. Only persons who are Missouri Department of Public Safety and P.O.S.T certified peace officers, and are willing to volunteer their service, may be appointed as a Reserve Police Officer. Reserve Police Officers shall be appointed upon the recommendation of the Chief of Police as set forth in §21.330 of the Elsberry City Code. The Board may approve or reject any recommended candidate.

2. No person shall be deemed a Reserve Police Officer until he has been registered as such in a roster to be kept by the Chief of Police; has taken an oath that he or she will observe and obey the Constitution of the United States, the constitution of the state, the laws of the nation and state, and the ordinances of the City; and that he or she will carry out the duties of a member of the Elsberry Reserve Police Officer program to the best of his ability.

3. Each Reserve Police Officer shall be issued a Reserve Police Officer identification card which shall be carried by the member while he or she is on duty with the Elsberry Police Department.

(Amend 2023-03-001)

§71.530. VOLUNTEER SERVICE

All service of a Reserve Police Officer shall be on a volunteer basis. No Reserve Police Officer shall be entitled to any right or privilege of compensation, pension, employment benefits, or any other similar right or privilege of members of the regularly constituted Police Department.

(Amend 2023-03-001)

§71 .540. MINIMUM SERVICE DUTY COMMITMENT

To continue in service as a Reserve Police Officer, the Reserve Police Officer must work on duty in the City of Elsberry a minimum of 24 hours per calendar month. Any Reserve Police Officer shall be subject to summary expulsion for failing to meet this requirement, and shall no longer be commissioned as an Elsberry Reserve Police Officer. Such Reserve Police Officer may reapply

for Reserve Police Officer appointment if such person can commit to the minimum service duty requirement.

(Amend 2023-03-001)

§71.550. SERVICE

1. Reserve Police Officers shall have all the powers and authority, and shall be subject to all the duties, of members of the regularly constituted Elsberry Police Department and shall be subject to the Ordinances, rules, and regulations governing Elsberry police officers and the Elsberry Police Department (excluding provisions pertaining to compensation and benefits).

2. Reserve Police Officers, when on duty, shall have power to serve and execute all warrants, subpoenas, writs or other process, and to make arrests, with proper process, for any offense against the local laws of the City or of the State of Missouri. Reserve Police Officers shall also have the power to make arrests without process in all cases where any offense against an Ordinance of the City or of a law of the State of Missouri shall be committed in their presence; and they shall perform such other duties and have such other powers as may be provided for by law or by ordinance of the City of Elsberry.

3. Reserve Police Officers shall be furnished their own uniforms and other necessary equipment by the City, except to the extent, if any, specifically provided for in the annual appropriation ordinance of the City. Such uniforms and equipment must be returned to the City in the same good condition as the Officer received them when the Officer ends service as a Reserve Police Officer.

4. All weapons used by Reserve Police Officers to include off-duty and back-up weapons shall be provided by the Reserve Police Officer as approved by the Chief of Police or his designee.

5. Any Reserve Police Officer member may be discharged at any time (without cause and without a hearing) by the Chief of Police with the advice and consent of the Board of Aldermen.

(Amend 2023-03-001)

SUBCHAPTER C -- COOPERATIVE AGREEMENT

§71.700. AGREEMENT AUTHORIZED.

The police department of the City of Elsberry is hereby authorized and directed to enter into an intergovernmental cooperative police agreement with the cities of Bowling Green, Clarksville, Louisiana and Winfield, Missouri.

§71.710. TERMS AND CONDITIONS.

The terms and conditions of such cooperative agreement shall be as follows:

1. There shall be a joint police committee consisting of the chief of police of each participating city;

2. The joint committee shall have the power to arrange for a pool of police equipment and personnel as may be safely spared by each city to respond to a call for assistance from any participating city in case of major disorder, disaster or other emergency;

3. The chief of each respective department shall be the sole judge as to whether any part of his equipment and personnel can be safely spared in response to a call for assistance;

4. The joint committee may establish standards for equipment and personnel-and any-city, after notice, who fails to meet such standards may be eliminated from the mutual agreement.

5. All losses or damages to equipment while responding to a call for assistance shall be borne by the city owning such equipment.

6. While police officers are responding to a call for assistance from another city, they shall be considered to be on duty with their own department, but shall have all rights, authorities, privileges and powers of the officers requesting assistance.

CHAPTER 71A –UNCLAIMED PROPERTY

§71A. 010. CATALOGING AND KEEPING BY POLICE DEPARTMENT

All unclaimed property other than money or cash coming into the possession of the police department from any source whatever and having any value shall be properly marked or cataloged so as to show its source and date of its receipt and shall be kept and disposed of as provided in this article.

(Ord. 04-01-1997 [see City Clerk's certification])

§71A. 020. DISPOSITION OF UNCLAIMED OR ABANDONED PERSONAL PROPERTY THROUGH PUBLIC SALE

(a) This section applies to personal property in the possession of the Elsberry Police Department, other than motor vehicles and weapons, the owner of which is unknown and cannot be located through reasonable efforts.
The City Marshal shall make reasonable efforts to locate owners of personal property in the possession of the police department.

(b) When unclaimed and abandoned personal property has been in the possession of the Elsberry Police Department for ninety (90) consecutive days, it may be sold at public sale. Public sales shall be called from time to time as may be necessary by the City Marshal on authorization of the Mayor. There shall be a minimum of one public sale per

year, with all proceeds going into the general revenue fund of the City. Ten days' notice of such sale shall be published in a newspaper of general circulation in the city. Such notice shall be published not more than three weeks prior to date of the sale.

(Ord. 04-01-1997 [see City Clerk's certification])

§71A. 030. DISPOSITION OF REVENUE FROM SALE: DESTRUCTION OF UNSOLD ITEMS

(a) All money received from the sale of unclaimed property shall be turned over to the city treasurer to be deposited in the general revenue fund of the city.

(b) The City Marshal shall dispose of all unclaimed, abandoned, or forfeited firearms and dangerous and deadly weapons, and all firearms and dangerous and deadly weapons turned in by individuals, in the following manner:

(1) If the firearm or dangerous and deadly weapon is of the type designated as regulation equipment for the police department, then the firearm or dangerous and deadly weapon may be utilized as police equipment.
(2) If the firearm, or dangerous and deadly weapon is of historical value, or of an unusual nature, the firearm or dangerous and deadly weapon may be placed in the police department's display case for exhibition purposes only.
(3) All other firearms, or dangerous and deadly weapons shall be destroyed in such a manner as to render them irreparable and or disposed of in any lawful manner.

(c) All property for which no bid is received at such sale shall be destroyed by the City Marshal in the presence of at least two other members of the department and a certificate of such destruction, signed by the officers present, shall be filed with the city clerk.

(d) The City Marshal shall report to the Mayor periodically on all non regulation firearms and dangerous and deadly weapons in the possession of the police department and shall, in addition, keep a current inventory of all such items.

(e) No firearm shall be considered to be unclaimed or abandoned unless the firearm is in the possession of the police department for at least ninety (90) consecutive days. An individual may reclaim his firearm or dangerous and deadly weapon only upon a reasonable showing of ownership. No firearm or dangerous and deadly weapon shall be sold.

(Ord. 04-01-1997 [see City Clerk's certification])

§71A. 040. DISPOSITION OF UNCLAIMED MONEY

All money or cash coming into the possession of the police department from any source whatever which has remained unclaimed and the owner unknown for a period of at least ninety (90) days shall be turned over to the city treasurer and a record thereof kept by him. Should the ownership of the money or cash be established within a period of one year from the date of its receipt, then the treasurer shall turn the same over to the owner. After a period of one year it

shall become a part of the general revenue fund of the city.

(Ord. 04-01-1997 [see City Clerk's certification])

CHAPTER 72 – MUNICIPAL COURT

§72.010 ESTABLISHED.

There is hereby established in this city a municipal court, to be known as the "Elsberry Municipal Court, a Division of the 45th Judicial Circuit Court of the State of Missouri."

(Ord. 9-3 -98)

§72.020 JURISDICTION.

The jurisdiction of the municipal court shall extend to all cases involving alleged violations of the ordinances of the city.

(Ord. 9-3-98)

§72.030 SELECTION OF JUDGE.

The judge of the city's municipal court shall be known as a municipal judge of the 45th Judicial Circuit Court, and he shall be appointed to his position by the Mayor, subject to the confirmation of the Board of Aldermen, and he shall hold office at the pleasure of the Mayor.

(Ord. 9-3 -98)

§72.040 QUALIFICATIONS FOR OFFICE.

The municipal judge shall possess the following qualifications before he shall take office:

(1) He must be a licensed attorney, qualified to practice law within the state;

(2) He must be a resident of the state;

(3) He must be between the ages of twenty-one (21) and seventy (70) years;

(4) The Municipal Judge may serve as municipal judge for any other municipality, but for no more than four other municipalities in total;

(5) He may not hold any other office within the city government;

(6) The municipal judge shall be considered holding a part-time position, and as such may accept (within the requirements of the Code of Judicial Conduct, Missouri Supreme Court Rule 2)

other employment.

(Ord. 9-3 -98; 2020-10-001)

§72.050 VACATION OF OFFICE.

The municipal judge shall vacate his office under the following circumstances:

(1) Upon removal from office by the state commission on the retirement, removal and discipline of judges, as provided in Missouri Supreme Court Rule 12;

(2) Upon attaining his 70th birthday;

(3) Upon dismissal by the Mayor; or

(4) If he should lose his license to practice law within the state.

(Ord. 9-3 -98)

§72.060 SUPERINTENDING AUTHORITY.

The municipal court of the city shall be subject to the rules of the circuit court of which it is a part, and to the rules of the state supreme court. The municipal court shall be subject to the general administrative authority of the presiding judge of the circuit court, and the judge and court personnel of the court shall obey his directives.

(Ord. 9-3 -98)

§72.070 REPORT TO THE MAYOR.

The municipal judge shall cause to be prepared within the first ten (10) days of every month a report indicating the following:

(1) A list of all cases heard and tried before the court during the preceding month, giving each case, the name of the defendant, the fine imposed, if any, the amount of cost, the names of the defendants committed and in the cases where there was an application for trial de novo.

(2) The same shall be prepared under oath by the municipal court clerk or the municipal judge. This report will be filed with the city clerk, who shall forward the same to the Mayor for examination.

(3) The municipal court shall, within the ten (10) days after the first of the month, pay to the municipal treasurer the full amount of all fines collected during the preceding month if they have not previously been paid.

(Ord. 9-3 -98)

§72.080 DOCKET AND COURT RECORDS.

The municipal judge shall be a conservator of the peace. He shall keep a docket in which he shall enter every case commenced before him and the proceedings therein and he shall keep such other records as may be required. Such docket and records shall be records of the county circuit court. The municipal judge shall deliver the docket and records of the municipal court, and all books and papers pertaining to his office, to his successor in office or to the presiding judge of the circuit.

(Ord. 9-3 -98)

§**72.090 MUNICIPAL JUDGE; POWERS AND DUTIES GENERALLY.**

The municipal judge shall be and is hereby authorized to:

(1) Establish a traffic violations bureau as provided for in the Missouri Rules of Practice and Procedure in Municipal and Traffic Courts and RSMo 479.050,

(2) Administer oaths and enforce due obedience to all orders, rules and judgments made by him, and he may fine and imprison for contempt committed before him while holding court, in the same manner and to the same extent as a circuit judge.

(3) Commute the term on any sentence, stay execution of any fine or sentence, suspend any fine or sentence, and make such other orders as the municipal judge deems necessary relative to any matter that may be pending in the municipal court.

(4) Make and adopt such rules of practice and procedure as are necessary to implement and carry out the provisions of this chapter, and to make and adopt such rules of practice and procedure as are necessary to hear and decide matters pending before the municipal court and to implement and carry out the provisions of the Missouri Rules of Practice and Procedure in Municipal and Traffic Courts. Any and all rules made or adopted hereunder may be annulled or amended by an ordinance limited to such purpose, provided that such ordinance does not viol ate, or conflict with, the provisions of the Missouri Rules of Practice and Procedure in Municipal and Traffic Courts, or state statutes.

(5) The municipal judge shall have such other powers, duties and privileges as are or may be prescribed by the laws of this state, th is Code or other ordinances of this city.

(Ord. 9-3 -98)

§72.100 TRAFFIC VIOLATIONS BUREAU.

Should the municipal judge determine that there shall be a traffic violations bureau, the city shall

provide all expenses incident to the operation of the same. The Mayor shall designate the traffic violations clerk for the bureau, if established.

(Ord. 9-3-98)

§72.110 ISSUANCE AND EXECUTION OF WARRANTS.

All warrants issued by a municipal judge shall be directed to the county sheriff. The warrant shall be executed by the sheriff at any place within the limits of the county, and not elsewhere, unless the warrants are endorsed in the manner provided for warrants in criminal cases, and, when so endorsed, shall be served in other counties, as provided for in warrants in criminal cases,

(Ord. 9-3-98)

§72.120 ARREST WITHOUT WARRANT.

The City Marshall or his designee may, without a warrant, make an arrest of any person who commits an offense in his presence, or who he has reasonable grounds to believe has committed an offense, but such officer shall, before the trial, file a written complaint with the judge hearing violations of municipal ordinances.

(Ord. 9-3-98)

§72.130 JURY TRIALS.

Any person charged with a violation of a municipal ordinance of this city shall be entitled to a trial by jury, as in prosecutions for misdemeanors before an associate circuit judge.
Whenever a defendant accused of a violation of a municipal ordinance demands a trial by jury, the municipal court shall certify the case to the presiding judge of the circuit court for reassignment, as provided in RSMo section 478.255.

(Ord. 9-3-98)

§72.140 DUTIES OF CITY'S PROSECUTING ATTORNEY.

It shall be the duty of an attorney designated by the municipality to prosecute the violations of the city's ordinances before the municipal judge or before any circuit judge hearing violations of the city's ordinances. The salary or fees of the attorney, and his necessary expenses incurred in such prosecutions, shall be paid by the city. The compensation of such attorney shall not be contingent upon the result of any case.

(Ord. 9-3-98)

§72.150 SUMMONING OF WITNESSES.

It shall be the duty of the municipal judge to summon all persons whose testimony may be deemed essential as witnesses at the trial, and to enforce their attendance by attachment, if necessary. The fees of witnesses shall be the same as those fixed for witnesses in trials before associate circuit judges and shall be taxed as other costs in the case. When a trial shall be continued by a municipal judge, it shall not be necessary to summon any witnesses who may be present at the continuance, but the municipal judge shall orally notify such witnesses as either party may require to attend before him on the day set for trial to testify in the case, and enter the names of such witnesses on his docket, which oral notice shall be valid as a summons.

(Ord. 9-3-98)

§72.160 TRANSFER OF COMPLAINT TO ASSOCIATE CIRCUIT JUDGE.

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.

(Ord. 9-3-98)

§72.170 JAILING OF DEFENDANTS.

If in the opinion of the municipal judge, the city has no suitable and safe place of confinement, the municipal judge may commit the defendant to the county jail, and it shall be the duty of the sheriff, if space for the prisoner is available in the county jail, upon receipt of a warrant of commitment from the judge to receive and safely keep such prisoner until discharged by due process of law. The municipality shall pay the board of such prisoner at the same rate as may now or hereafter be allowed by law to such sheriff for the keeping of other prisoners in his custody. The same shall be taxed as cost.

(Ord. 9-3-98)

§72.175 PAYMENT PLANS

1. The Elsberry Municipal Court is authorized to establish written payment plan agreements for defendants who are found guilty of ordinance violations and who are sentenced to a fine and court costs; but who do not have the means to make full payment upon assessment of the fines and court costs.

(Ord. 2015-09-001; 2020-10-001)

§72.180 PAROLE AND PROBATION.

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 that judge..

2. The Judge shall have the power to suspend the imposition of sentence on persons convicted of a violation of any of the ordinances of the City or to pronounce sentence and suspend the execution thereof and to grant probation or parole to such persons, and in any such event to impose such terms and conditions upon the grant of probation or parole or the suspension of sentence or imposition thereof as the Judge may, in his discretion, deem reasonable and proper. Without limiting the generality of the foregoing, the Judge may, in his discretion, impose as a condition of probation, parole or suspended imposition of sentence, the payment of a fee for the supervision of the probation or parole.

(Ord. 9-3-98; Amended 2012-06-001; 2020-10-001).

§72.185. ALTERNATIVE COMMUNITY SERVICE

1. The Elsberry Municipal Court is authorized to utilize community service as an alternative sentencing option and as a condition of probation or in lieu of a fine or imprisonment or both as authorized by state law. The Court will set the conditions of community service, including the amount of hours, credit amount per hour worked, and the date that community service must be completed. The defendant must agree to, and sign, a written community service order.

2. Community service must be for a public or charitable purpose for, and supervised by, a governmental entity or not-for-profit organization that is exempt from federal income taxes ("the Recipient'). The Recipient must agree to, and sign, a written community service agreement. If the Court does not select the community service Recipient, the defendant will be obligated to locate a willing and qualified Recipient. Proof of the Recipient's status must be submitted by the Recipient to the Elsberry Municipal Court with a letter on the Recipient's official letterhead. The letter must identify the defendant performing the community service, and also the name, address, and telephone number of the person who will be the Recipient's authorized representative. The Recipient must be approved by the Elsberry Municipal Court Judge or Clerk before the community service begins. The defendant is ultimately responsible for ensuring that the Recipient submits proper proof of the fulfillment of the community service prior to the compliance deadline.

(Ord. 2015-09-001; 2020-10-001)

§72.190 RIGHT OF APPEAL.

In all cases tried before the municipal court, except where there has been a plea of guilty or where the case has been tried with a jury, the defendant shall have a right of trial de novo before a circuit judge or on assignment before an associate circuit judge. An application for a trial de novo shall be filed within ten (10) days after judgment and shall be filed in such form and perfected in such manner as provided by state supreme court rules.

(Ord. 9-3-98)

§72.220 DISQUALIFICATION OF MUNICIPAL JUDGE FROM HEARING PARTICULAR CASE.

Disqualification of the municipal judge shall be pursuant to current Rule 37.53, Missouri Supreme Court Rules, or as hereafter amended by said Missouri Supreme Court Rules.

(Ord. 9-3-98)

§72.230 TEMPORARY MUNICIPAL JUDGE.

If a municipal judge be absent, sick or disqualified from acting, the Mayor subject to approval of the Board of Alderman, may designate some competent, eligible person to act as municipal judge until such absence or disqualification shall cease. In no event for a period of more than three (3) months. Then a new judge shall be appointed pursuant to section 72.030.

(Ord. 9-3-98)

§72.240 CLERK OF MUNICIPAL COURT.

The Mayor shall designate the clerk of the municipal court. The duties of the clerk shall be as follows:

(1) To collect such fines for violations of such offenses as may be described, and the court costs thereof;

(2) To take oaths and affirmations;

(3) To accept signed complaints, and allow the same to be signed and sworn to or affirmed before him; a notary public or designee may also perform the functions;

(4) Sign and issue subpoenas requiring that attendance of witnesses and sign and issue subpoenas duces tecum; or the municipal judge may perform these functions;

(5) Accept the appearance, waiver of trial and plea of guilty and payment of fine and court costs in traffic violations bureau cases or as directed by the municipal judge; generally act as violation clerk of the traffic violation bureau;

(6) Perform all other duties as provided for by ordinance, by rules of practice and procedure in municipal and traffic court and by statute;

(7) Maintain, properly certified by the city clerk, a complete copy of the ordinances of the city of the municipality which shall constitute prima facie evidence of such ordinance before the

court. Further, to maintain a similar certified copy on file with the clerk serving the circuit court of this county.

(Ord. 9-3-98)

§72.250. COURT COSTS.

A. In all cases which is brought before the Judge of the Municipal Court for violation of any of the ordinances of the City and a conviction is had, the following costs shall be taxed In addition to any fine that may be imposed by the Municipal Judge:

1. $12.00: Court costs;

2. $2.00: Costs for the training of Police Officers:;

3. $1.00 Costs for training Law Enforcement Officers, the Peace Officers Standards and Training Commission Fund:;

4. $7.50 Crime Victims Compensation Fund:;

5. $3.00 Sheriff's retirement system as required pursuant to RSMo. §57.955, RSMo.: ;

6. $7.00 State Court Automation Fund, pursuant to RSMo. §488.012.3(5) and §488.027.2;

7. $2.00 Surcharge for shelters for victims of domestic violence per RSMo. §488.607;

8. $2.00 In all cases, an additional court cost surcharge of two dollars ($2.00) pursuant to RSMo. §488.5026 for each municipal ordinance violation case. The moneys collected pursuant to this subsection shall be collected and disbursed in accordance with RSMo. § 488.010 to 488.020, and shall be payable to the Elsberry Treasurer. The Elsberry Treasurer shall deposit funds generated by the surcharge into the "Inmate Prisoner Detainee Security Fund". Funds deposited shall be utilized to acquire and develop biometric verification systems and information sharing to ensure that inmates, prisoners, or detainees in a holding cell facility or other detention facility or area which hold persons detained only for a shorter period of time after arrest or after being formally charged can be properly identified upon booking and tracked within the local law enforcement administration system, criminal justice administration system, or the local jail system. Upon the installation of the information sharing or biometric verification system, funds in the inmate prisoner detainee security fund may also be used for the maintenance, repair, and replacement of the information sharing or biometric verification system, and also to pay for any expenses related to detention, custody, and housing and other expenses for inmates, prisoners, and detainees.

9. Witness fees per RSMo. §491.280.1, §33.095, and §488.035.

10. Alcohol- Or Drug-Related Traffic Offenses. The Court may, in addition to imposition of any penalties provided by law, order the person to reimburse the Police Department for the costs associated with such arrest; such costs shall include the reasonable costs of making arrest, and including the costs of any chemical tests to determine the alcohol or blood content of the person's blood, and the costs of processing, charging, booking and holding such person in custody. The Police Department may establish a schedule of such costs, however, the Court may order the costs reduced if it determines the costs are excessive.

11. If the defendant is charged and found guilty of an offense where a victim has incurred medical expenses or property damage as a result of the acts of the defendant, then the Court may order the defendant to make restitution to the victim or victims in an amount as specified by the Court.

B. In most Court cases, the standard Court costs as detailed above shall be thirty-six dollars fifty cents ($36.50). Nothing in this Section shall be construed to prohibit or limit the authority of the Municipal Judge to waive Court costs and surcharges in whole or in part.

C. The Court shall not order costs under the following circumstances:

1. When a case or defendant has been dismissed by the Court;

2. When the judge declares the defendant indigent and/or the costs are otherwise waived by the judge; or

3. When costs are to be paid by the municipality or other governmental entity.

D. In all cases where a conviction is had, the cost accruing in each case shall, to the extent allowable by law, be taxed against the defendant and shall be collected along with the judgment and fine assessed by the Court. Such costs collected shall be deposited by the Court Clerk as provided by law or Supreme Court Rule.

(Ord. 9-3-1998;11-1-1998; 12-3-1999; 1-3-2002; 1-2-2005; 2-1-2005; 2012-04-005; 2016-02-002; 2020-10-001; 2021-04-002).

§72.255. JUDICIAL EDUCATION AND APPOINTED COUNSEL FUNDS

1. Pursuant to RSMo. §479.260, there is hereby established a judicial education fund and an appointed counsel fund, each in separate accounts under the control of the municipal court. These two funds will be funded through the retention of one dollar of the fees collected on each municipal court case. The fees collected shall be allocated between the two funds as determined by the Municipal Court.

2. The judicial education fund shall be used only to pay for:

   (1) The continuing education and certification required of the municipal judges by law or supreme court rule; and

   (2) Judicial education and training for the court administrator and clerks of the municipal court.

3. The appointed counsel fund shall be used only to pay the reasonable fees approved by the Municipal Court for the appointment of an attorney to represent any defendant found by the Municipal Judge to be indigent and unable to pay for legal representation, and where the Missouri Supreme Court rules or the law prescribes such appointment.

4. The judicial education fund shall retain no more than one thousand five hundred dollars for each judge, administrator or clerk of the municipal court. The appointed counsel fund shall retain no more than five thousand dollars. Any excess funds shall be transmitted quarterly to the City's general revenue fund.

(Ord. 2015-09-001).

§72.260 COSTS, ASSESSED AGAINST PROSECUTING WITNESS.

The costs of any action may be assessed against the prosecuting witness and judgment be rendered against him that he pay the same and stand committed until paid in any case where it appears to the satisfaction of the municipal judge that the prosecution was commenced without probable cause and from malicious motives.

(Ord. 9-3-98)

§72.270 INSTALLMENT PAYMENT OF FINE.

When a fine is assessed for violating an ordinance, it shall be within the discretion of the judge assessing the fine to provide for the payment of the fine on an installment basis under such terms and conditions as he may deem appropriate.

(Ord. 9-3-98)

§72.280 FINES AND COSTS.

1. Fines and costs for ordinance violations for which a specific fine is not provided by ordinance, shall be determined by the Municipal Court Judge through the issuance of a Traffic Violations Bureau Order pursuant to Elsberry Municipal Code § 76.040.

2. The punishment of a "minor traffic violation", as defined by RSMo. 479.350, shall be limited as follows::

(1) The maximum fine and court costs that can be imposed for the violation of any minor traffic violation shall be $300.00.

(2) Minor traffic violations shall not be punishable by imprisonment, unless the violation (i) involved alcohol or controlled substances, (ii) endangered the health or welfare of others, or (iii) involved eluding or giving false information to a law enforcement officer.

(3) A person convicted of a minor traffic violation shall not be placed in confinement for failure to pay a fine unless such nonpayment violates the terms of the person's probation.

(4) Court costs shall be assessed against such person unless the court finds that the defendant is indigent.

(Ord. 9-3-1998; 5-01-2004; 2015-09-001).

§72.290. AUTHORIZATION FOR AND ISSUANCE OF ADMINISTRATIVE SEARCH WARRANTS.

A. Search Warrant Defined -- Who May Issue, Execute

1. An administrative search warrant is a written order of the Municipal Judge commanding the search or inspection of any property, place, or thing, and the seizure, photographing, copying, or recording of property or physical conditions found thereon or therein, to determine or prove the existence of any violations of any ordinance or code section of the City of Elsberry, Missouri, the "City" hereinafter, relating to the use, condition, or occupancy of property or structures located within the City, or to enforce the provisions of any such ordinance or code section.

2. The Municipal Judge having original and exclusive jurisdiction to determine violations against the ordinances of the City may issue an administrative search warrant when (I) the property or place to be searched or inspected or the thing to be seized is located within the City at the time of the making of the application, and (ii) the owner or occupant of the property or place to be searched or inspected or the thing to be seized has refused to allow same after official request by the City.

3. Any such warrant shall be directed to any police officer of the City and shall be executed by any police officer of the City within the City limits, and not elsewhere.

B. Who May Apply For Warrant--Contents Of Application

1. Any police officer or attorney of the City may make application to the Municipal Judge for the issuance of an administrative search warrant.

2. The application shall:

a. Be in writing;

b. State the time and date of the making of the application;

c. Identify the property or places to be entered, searched, inspected, or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

d. State that the owner or occupant of the property or places to be entered, searched, inspected, or seized has been requested by the City to allow such action and has refused to allow such action;

e. State facts sufficient to show probable cause for the issuance of a search warrant, as provided in subsection (C)(1) hereof, to (I) search or inspect for violations of an ordinance or code section specified in the application or (ii) show that entry or seizure is authorized and necessary to enforce an ordinance or code section specified in the application and that any due process has been afforded prior to the entry or seizure;

f. Be verified by the oath or affirmation of the applicant; and

g. Be signed by the applicant and filed in the Municipal Court.

3. The application may be supplemented by a written affidavit verified by oath or affirmation. Such affidavit shall be considered in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the property or place to be searched or inspected. Oral testimony shall not be considered.

C. Hearing and Procedure--Contents Of Warrant--Execution And Return

1. Hearing and Procedure.

a. The Municipal Judge shall hold a non-adversary hearing to determine whether probable cause exists to inspect or search for violations of any City ordinance or code section, or to enforce any such ordinance or code section.

b. In doing so, the Municipal Judge shall determine whether the action to be taken by the City is reasonable in light of the facts stated. The Municipal Judge shall consider the goals of the ordinance of code section sought to be enforced and such other factors as may be appropriate, including, but not limited to, the physical condition of the specified property, the age and nature of the property, the condition of the area in which the property is located, the known violation of any relevant City ordinance or code section, and the passage of time since the property's last inspection. The standard for issuing a warrant need not be limited to actual

knowledge of an existing violation of a City ordinance or code section.

c. If it appears from the application and any supporting affidavit that there is probable cause to inspect or search for violations of any City ordinance or code section, or to enforce any such ordinance or code section, a search warranty shall immediately be issued.

d. The warrant shall issue in the form of an original and two copies, and the application, any supporting affidavit, and one copy of the warrant as issued shall be retained in the records of the Municipal Court.

2. Contents of Search Warrant.

The search warrant shall:

a. Be in writing and in the name of the City;

b. Be directed to any police officer of the City;

c. State the time and date the warrant was issued;

d. Identify the property or places to be searched, inspected, or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

e. Command that the described property or places be searched or entered upon, and that any evidence of any City ordinance or code violations found therein or thereon, or any property seized pursuant thereto, or a description of such property seized, be returned, within ten (10) days after the issuance of the warrant, to the Municipal Judge who issued the warrant, to be dealt with according to law;

f. Be signed by the Municipal Judge with his/her title of office indicated.

3. Execution and Return

a. A search warrant issued under this ordinance shall be executed only by a City police officer; provided, however, that one or more designated City officials, employees, or hired experts may accompany the police officer, and the warrant shall be executed in the following manner:

(1) The warrant shall be executed by conducting the search, inspection, entry, or seizure as commanded and shall be executed in a reasonable manner and within the time limits provided herein.

(2) The officer shall give the owner or occupant of the property searched,

inspection, or entered upon a copy of the warrant if the owner or occupant is then present.

(3) (a) If any property is seized incident to the search, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place.

(b) A copy of the itemized receipt of any property taken shall be delivered to an attorney for the City within two (2) working days of the search.

(c) The disposition of property seized pursuant to a search warrant under this section shall be in accordance with an applicable City ordinance or code section, but in the absence of same, then with Section 542.301, RSMo.

(4) The officer may summon as many persons as he deems necessary to assist him in executing the warranty, and such persons shall not be held liable as a result of any illegality of the search and seizure.

(5) An officer making a search pursuant to an invalid warrant, the invalidity of which is not apparent on its face, may use such force as he would be justified in using if the warrant were valid.

(6) A search warrant shall expire if it is not executed and the required return made within ten (10) days after the date of its issuance.

b. After execution of the search warrant, said warrant, with the return thereon signed by the officer making the search, shall be delivered to the Municipal Court.

c. The return shall show the date and manner of execution and the name of the occupant and of the owner, when not the same person, if known, of the property or places searched or seized.

d. The return shall be accompanied by any photographs, copies, or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this section; provided, however, that seized property may be disposed of as provided herein, and in such a case a description of the property seized shall accompany the return.

e. The Municipal Court Clerk, upon request, shall deliver a copy of the return to the occupant and the owner, when not the same person, of the property searched or seized.

D. Warrant Invalid, When

A search warrant shall be deemed invalid if:

1. It is not issued by the Municipal Judge;

2. It is issued without a written application having been filed and verified;

3. It is issued without sufficient probable cause in light of the goals of the ordinance or code section to be enforced and such other factors as provided in subsection (C)(l)(b) hereof;

4. It is not issued with respect to property or places in the City;

5. It does not describe the property or places to be searched, inspected, entered upon, or seized with sufficient certainty;

6. It is not signed by the Municipal Judge who issues it; or

7. It is not executed and required return made within ten (10) days after the date of its issuance.

(Ord. 9-3-1998; 1-4-2005)

§72.310. BAIL BONDS ON ARREST WARRANTS FROM OTHER JURISDICTIONS

When a person is arrested by Elsberry City Police on warrants from other jurisdictions, the Elsberry Police Officer or Municipal Court Clerk shall have the authority, in the absence of the Municipal Judge, to take proper bail bonds from the arrested person only if the bail bond and bond amount are endorsed on the arrest warrant. Such Police Officer shall give such persons posting a bond a receipt therefor; and shall make a prompt accounting and surrender of those funds and a copy of the receipt to the Clerk of the Elsberry Municipal Court in a sealed envelope. When the sealed envelope is received by the Elsberry Municipal Court Clerk, the money will be counted and verified by the person turning in the bond. The Police Officer shall sign a form acknowledging the amount of the bond turned into the Court Clerk. The Clerk of the Elsberry Municipal Court shall then account and surrender such bail bond to the jurisdiction issuing the warrant. The Clerk of the Elsberry Municipal Court shall charge the jurisdiction issuing the warrant a bond fee of twenty-five dollars ($25) for processing the defendant and the bond.

(Ord. 2012-04-004)

CHAPTER 73 -- ANIMALS

SUBCHAPTER A -- RESTRAINT AND CONFINEMENT REQUIRED

§73.010. DEFINITIONS.

As used in this Subchapter unless the context otherwise indicates:

1. "Dog" shall mean both male and female members of the canine family.

2. "Cat" shall mean both male and female members of the feline family.

3. "Owner" shall mean any person, company, firm, association, corporation, or other entity owning, keeping, harboring, possessing, or having management, control, or care of a dog, cat, or other animal within the City of Elsberry, Missouri, and the parent or legal guardian of any minor person owning, keeping, harboring, possessing, or having management, control, or care of a dog, cat, or other animal within the City of Elsberry, Missouri.

4. "Running at large" shall mean being off the premises occupied by or under the charge or control of the owner and not on a sturdy and non-extendable leash no greater than six (6) feet in length that is held by a competent person.

5. "Competent person" shall mean a human being that by age and size is capable of controlling and governing the animal in question; provided, however, that notwithstanding the foregoing, with respect to vicious animals, no one under age eighteen (18) years shall be considered a competent person.

6. "Affected with rabies" shall mean having rabies and/or manifesting any of the characteristic symptoms or indications of rabies as described in any standard medical or veterinarian text book.

7. "Exposed to rabies" shall mean having been bitten by or having come in contact with an animal affected with rabies.

8. "Animal" shall mean any living animal, domestic or wild, excepting birds, fish, amphibians and farm animals.

9. "Vicious animal" shall mean any of the following:

    A. Any animal, whether or not running at large, that without provocation has bitten or clawed any person, except when said person is a willful trespasser or tortfeasor on premises occupied by or under the charge or control of the animal's owner;

    B. Any animal, whether or not running at large, that without provocation has attempted to bite or claw any person, or that has jumped on, charged toward, approached in a menacing fashion or apparent attitude of attack, or otherwise threatened any such person so as to place that person in reasonable fear of immediate physical injury, except when said person is a willful trespasser or tortfeasor on premises occupied by or under the charge or control of the animal's owner;

    C. Any animal that has killed another domestic animal without provocation; or

D. Any pit bull dog, which for the purposes of this Chapter is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of anyone or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club (A.K.C.) or United Kennel Club (U.K.C.) for any of the above breeds.

10. "Provocation" shall mean the teasing, tormenting, abusing, or assaulting of the animal.

11. "Kennel" shall mean an area totally surrounded by a fence at least five (5) feet in height, with a top securely attached in all places to the sides of the fence and a bottom securely attached in all places to the sides of the fence, or in lieu of a bottom, embedment of the fence in the ground to a depth of not less than two (2) feet.

(Ord. 4-1-2006).

§73.020 . LEASHING, INOCULATION, AND TAGGING OF ANIMALS REQUIRED – NO RUNNING AT LARGE.

1. **Running at Large and Leashing**. It shall be unlawful for the owner of any dog, cat, or other animal to permit such dog, cat, or other animal to run at large within the City of Elsberry, Missouri or to be unconfined on the owner's premises within the City of Elsberry, Missouri so as to allow said animal to stray from said premises or hinder, obstruct, or interfere with access to utility meters, poles, or mailboxes on said premises by any authorized employee of the utility or postal service.

2. **Inoculation and tagging**. The owner of any dog, cat, or other animal within the City of Elsberry, Missouri, shall annually inoculate said dog, cat, or other animal against the disease known as rabies and shall at all times maintain securely fastened to a collar about the neck of any such animal an identification tag containing the name and address of said owner and a tag reflecting that such animal is currently inoculated against rabies.

3. **Confining animals in estrus.** It shall be unlawful for the owner of any female dog, cat, or other animal within the City of Elsberry, Missouri, to not securely confine said dog, cat, or other animal in an enclosed place while said dog, cat, or other animal is in estrus (commonly referred to as “in heat”).

(Ord. 4-1-2006; 2014-05-001).

§73.025 . VICIOUS ANIMALS.

Keeping Vicious Animals. Not withstanding any provisions to the contrary contained elsewhere in this Chapter, no owner shall keep, harbor, possess, or have management, control, or care of a vicious animal within the City of Elsberry, Missouri, except in accordance with the following provisions:

A. **Leash and Muzzle.** No vicious animal shall be outside its kennel or outside its indoor confinement unless such animal is secured by a sturdy and nonextendable leash no greater than six (6) feet in length held by a competent person. Further, in addition to the above-mentioned leashing requirement, any animal outside its kennel or indoor confinement must be muzzled by a restraining device made of metal, plastic, leather, cloth, or a combination of these materials, such that when fitted and fastened over the snout, mouth, and/or head of such animal it prevents him from biting but allows the animal room to breath, pant, and see, so that its vision and/or respiration is not interfered with.

B. **No Tethering.** No vicious animal shall be tied to inanimate objects such as trees, posts, anchors, or buildings.

C. **Proper Confinement.** Except when leashed and muzzled as provided for herein above, any vicious animal shall otherwise be confined indoors or in a securely locked kennel. Such kennel must allow adequate light and ventilation and be kept in a clean and sanitary condition. Confinement indoors shall be construed to require that said animal be kept in a residence or garage that the animal cannot exit on its own and which has all doors and windows closed and locked, or if open, obstructed by reinforced security bars which prevent the animal from exiting on its own.

C. **Warning Signs.** The owner of any vicious animal shall display in a prominent place on the premises and also on the animal's kennel a sign easily readable imparting notice to the public of the presence of a vicious animal on the premises. In the case of a vicious dog, the legend on the signs shall read "Beware Of Dangerous Dog.

(Ord. 4-1-2006; 2014-05-001).

§73.030. ENFORCEMENT OFFICIALS.

The board of aldermen does hereby create the office of impounding officer, to which said position the mayor may appoint a suitable person; provided, however, that the board of aldermen may, in its discretion and in lieu of the creation of the office of the city impounding officer, enter into a contract with any person, firm, corporation, organization or agency for the control, pick up, disposition, and/or destruction of any animals which are found in violation of this Chapter within the City of Elsberry. Such contract shall be in writing and shall fix the compensation to be paid and shall be for such period and upon such terms and conditions as the board of aldermen may impose. The person, firm, corporation, organization, or agency so selected shall perform all the duties and be subject to all of the requirements of this Chapter applicable to the city impounding officer in addition to the duties imposed by such contract. The mayor may in addition, authorize the police department to pick up and restrain animals found within the City in violation of this Chapter. The impounding officer, any city police officer, or anyone with whom the board of aldermen has contracted pursuant to this Section shall be hereinafter referred to as "enforcement official(s)".

(Ord. 4-1-2006).

§73.040. IMPOUNDING

1. **Generally.** Enforcement officials shall have the power to catch, confine, and impound the following animals:

   A. Dogs, cats, or other animals which are running at large within the City of Elsberry, Missouri.

   B. Female dogs, cats, or other animals within the City of Elsberry, Missouri not securely confined in an enclosed place while in heat.

   C. Dogs, cats, or other animals within the City of Elsberry, Missouri affected with or exposed to rabies, or which have bitten a person.

   D. Vicious animals within the City of Elsberry, Missouri not restrained and/or confined as provided for under the provisions of Section 73.020(2).

   E. Dogs, cats, or other animals owned, kept, harbored, possessed, managed, or controlled in violation of the terms of this Chapter.

2. **Place of impoundment.** Dogs, cats, and other animals impounded in accordance with this Chapter shall be impounded in a place designated by the board of aldermen.

3. **Notice of impoundment**. Enforcement officials shall post a notice within 24 hours after impounding in the lobby of the City Hall describing every dog, cat, and other animal caught and impounded. Like notice shall be given to the city collector and chief of police.

(Ord. 4-1-2006).

§73.050. RIGHT OF ENTRY.

Enforcement officials when in pursuit of a dog, cat, or other animal running at large, shall have right to enter any private premises within the City of Elsberry, Missouri for the purpose of catching any dog, cat, or other animal. Further, said enforcement officials may apply to the Elsberry Municipal Division of the Circuit Court of Lincoln County, Missouri to obtain any necessary warrants to enter upon private premises to investigate reported violations of this Chapter. Inclusion of Elsberry police officers as enforcement officials herein shall not in any respect limit the powers said officers otherwise have in their capacity as such police officer to enforce the terms of this Chapter.

(Ord. 4-1-2006).

§73.060. INTERFERENCE WITH ENFORCEMENT OFFICIALS.

It shall be unlawful for any person to interfere with or obstruct any enforcement official in the

reasonable performance of his or her duties in catching any dog, cat, or other animal within the City of Elsberry, Missouri, for impounding or investigation under this Chapter. It shall further be unlawful for the owner to refuse to deliver up said dog, cat, or other animal, upon request by any enforcement official when any such official has reasonable cause to believe that such dog, cat, or other animal is not currently inoculated against rabies, has been affected with or exposed to rabies, has bitten a person, or is being maintained in violation of this Chapter.

(Ord. 4-1-2006).

§73.070. UNSAFE ANIMALS.

Enforcement officials may destroy any dog, cat, or other animal that is subject to impoundment under this Chapter but that cannot be safely caught and/or impounded without danger to said official or the general public.

(Ord. 4-1-2006).

§73.080. DISPOSITION OF RABID DOGS, CATS, AND OTHER ANIMALS.

The owner of any dog, cat, or other animal within the City of Elsberry, Missouri that is affected with or exposed to rabies, or which has bitten a person, shall immediately confine said animal so as to prevent its leaving the owner's premises and immediately report said incident to the City's chief of police. The City may impound such dog, cat or other animal in a facility designated by the City of Elsberry. If the animal so impounded has been exposed to rabies or has bitten a person, but shows no signs of having been affected with rabies, said animal shall be kept for observation for the period of time necessary to insure that said animal is not affected with rabies so as to infect the person bitten or be a danger to the public. In the event the animal so impounded is affected with rabies or becomes so affected, an enforcement official may humanely destroy said animal and it shall remain securely confined until so destroyed.

(Ord. 4-1-2006).

§73.090. ORDER OF QUARANTINE GENERALLY.

The board of aldermen, the mayor, or the mayor pro-tempore, shall have the power and authority at any time it shall deem necessary for the protection of the public against the disease known as rabies to issue an order to quarantine any animal within the City of Elsberry, Missouri that is affected with or exposed to rabies, which order may specify the type of confinement to be undertaken by the owner of any such animal, and said owner shall strictly comply with such quarantine order. Notice of such quarantine order shall be posted in a least six (6) public places within the City and shall be published in a newspaper published within the City qualified to publish legal notices. The board of aldermen, the mayor, or the mayor pro-tempore shall have power and authority at any time to cancel and recall such quarantine order.

(Ord. 4-1-2006).

§73.100. REPORTING ANIMAL BITES.

Every physician shall report to the chief of police pertinent information concerning any person who has been bitten within the City of Elsberry, Missouri, by an animal suspected of being uninoculated against, affected by, or exposed to rabies, and every veterinarian shall likewise report all such information concerning animals under his care.

(Ord. 4-1-2006).

§73.110. REDEMPTION OF NON-RABID ANIMALS.

Except as provided in Section 73.070 and 73.150, any dog, cat or other animal captured and impounded as authorized by this Chapter and determined not to be affected with rabies may be redeemed by the owner of such animal upon payment of a redemption fee of twenty-five dollars ($25.00), plus any expense of taking, impounding, and keeping said animal. If the animal is not redeemed in the manner provided herein within five (5) days (excluding Sundays and holidays) after its capture, such animal may be humanely destroyed at the direction of an enforcement officer. In case any impounded animal is determined to be uninoculated against rabies, the owner thereof may redeem such animal by paying the redemption fee and depositing the sum of twenty-five dollars ($25.00) with the city collector. Such owner shall thereafter furnish an inoculation certificate within five (5) days, and upon furnishing such certificate, the deposit shall be returned. Failure to exhibit such certificate within the required time shall constitute a violation of this Chapter.

(Ord. 4-1-2006).

§73.120 INCREASED REDEMPTION FEES.

Notwithstanding the redemption fee provided for by Section 73.110, said fee shall be increased to fifty dollars ($50.00) for the second time any such dog, cat, or other anima1 is impounded, and to seventy-five dollars ($75.00) for each time thereafter that any such dog, cat, or other animal is impounded. This schedule of fees is to apply to anyone calendar year.

(Ord. 4-2-2000; 4-1-2006).

§73.130. CARE OF ANIMALS.

The owner of a dog, cat or other animal within the City of Elsberry, Missouri, shall provide humane shelter from heat, cold, rain, snow or other conditions that could be harmful to the animal and shall provide the animal with adequate food and water to maintain the animal in good health, and sha1l not treat such animal in a cruel and inhumane manner.

(Ord. 4-1-2006).

§73.140. BARKING DOGS.

The owner of any dog shall not permit said dog to frequent1y and habitua1ly bark, yelp, or howl within the City of Elsberry, Missouri, so as to annoy persons living in the neighborhood.

(Ord. 4-1-2006).

§73.150. AUTHORITY TO ORDER ANIMAL DESTROYED.

In any proceeding before the Elsberry Municipal Division of the Circuit Court of Lincoln County, Missouri, wherein an owner is convicted of failure to comply with any of the provisions of Section 73.025 pertaining to vicious animals, in addition to the usual judgment on the conviction, the Court may, if it sha1l find that protection of the public so requires, order that any such vicious anima1 be humanely destroyed under the direction of an enforcement official.

(Ord. 4-1-2006; amend. Ord. 2024-06-001).

§73.160. DOGS PROHIBITED IN ELSBERRY CITY PARK UPON CERTAIN OCCASIONS.

No dog sha1l be permitted or a1lowed to be present in the Elsberry City Park, even if otherwise in compliance with the terms of this Chapter, from 6:00 A.M. to Midnight upon the following days, unless said dog is present to assist a visua1ly impaired or otherwise disabled person or is present for law enforcement purposes and is accompanied by a police officer:

1. The Fourth of July.

2. The day upon which the Elsberry vintage car show, "Classic On Wheels", is held.

3. The day upon which the Elsberry "Fall Festival" is held.

(Ord. 6-1-2005; 4-1-2006).

ARTICLE V: MISCELLANEOUS ANIMALS

§73.300: DEFINITIONS

Exotic Animal: Any live non-human primate, alligator, crocodile, cayman, raccoon, skunk, fox, bear, sea mammal, emu, ostrich, poisonous snake, member of the feline species other than domestic cat (felis domesticus), member of the canine species other than full blooded domestic dog (canis familiaris), lion, tiger, leopard, ocelot, jaguar, cheetah, margay, mountain lion, Canada lynx, bobcat, jaguarundi, hyena, wolf, bear, nonhuman primate, coyote, any deadly, dangerous, or poisonous reptile, any deadly or dangerous reptile over eight feet long, any animal for which the owner is required to obtain a permit from the Missouri Department of Conservation, or any other animal that would require a standard of care and control greater than that required for customary household pets sold by commercial pet shops or domestic farm animals. The term "exotic animal" excludes any large carnivores as defined by RSMo. § 576.600.6.

(Ord. 2016-05-02)

§73.310: **REGULATING THE KEEPING OF EXOTIC AND OTHER ANIMALS**

1. No person may possess, keep, harbor nor publicly exhibit any exotic animals within the City Limits; except by a City issued permit in a properly maintained zoological park, circus, scientific, or educational institution, research laboratory, veterinary hospital, or animal refuge

2. No person shall possess or keep any animal for which a state or federal permit is required without first obtaining and maintaining the applicable valid state or federal permit.

3. No person shall possess or keep any animal which may not be possessed or kept under state or federal law.

4. Any person possessing or keeping an exotic animal within the City limits shall keep the exotic animal confined in an enclosure sufficient to contain the exotic animal at all times.

5. No person shall allow the exotic animal to come into physical contact with any person other than the keeper of the exotic animal operating under a permit issued by the City.

6. No person shall allow any exotic animal or livestock to leave the owner's or keeper's premises unless they are being transported in a safe, secure, and sanitary vehicle.

7. No person shall keep any vicious animal in the City limits.

(Ord. 2016-05-02)

§73.320: **PERMITS**

1. An application for an exotic animal permit shall be submitted to the City Clerk. The application fee shall be $50.00 for each exotic animal.

2. No permit for keeping an exotic wild animal shall be issued unless the person keeping or harboring the exotic wild animal shall first provide documentary evidence of his/her holding all required State and Federal permits and of the existence of public liability insurance covering any liability of the keeper and the City with limits of not less than five hundred thousand dollars ($500,000.00) per any one (1) person injured as a result of the escape or injury by the exotic animal.

3. No permit for keeping an exotic wild animal shall be issued unless the person keeping or harboring the exotic wild animal shall first provide documentary evidence of his her ability and plan to meet the standards of Elsberry Municipal Code §73.330, and that keeping the exotic animal will not be a danger, nuisance, or health threat to any

neighboring person or property or to the community at large.

4. An application for a permit to possess or keep an exotic animal shall contain:

   (a) Name and address of applicant;
   (b) Legal description of property upon which the exotic animal is to be kept;
   (c) Complete description of facilities on the premises.
   (d) A Plan of Intent stating the types and number of animals to be kept and how the applicant will meet the requirements of Elsberry Municipal Code §73.330.
   (e) A site plan, drawn to scale, showing dwellings, barns, sheds, pens, enclosures, and structures including those proposed or intended and dimensions thereof.
   (f) The site plan shall also show the neighboring dwellings and distances thereto; distances from barns, sheds, pens, and structures to property lines; and calculation of total available/suitable area in which animals are to be kept.
   (g) The name, address, and telephone number of the individual who will be responsible for the exotic animal, and telephone number of the individual who will be able to respond to emergencies.

5. If the application is approved, the person receiving the permit shall pay an annual permit fee of Seventy-five Dollars ($75.00) for each exotic animal, which shall be payable on each anniversary date of the issuance of the permit.

6. Before any permit or license to possess or keep an exotic animal within the City is granted by the City, the City Board of Aldermen shall hold a public hearing with advance notice to all property owners within 300 feet of the subject property. The applicant shall pay the cost of providing that notice.

7. Before any permit or license to possess or keep an exotic animal within the City is granted by the City, the City Code enforcement Officer or Animal Control Officer shall inspect the premises and issue a report to the City Board of Aldermen stating whether the property and the applicant's Plan of Intent complies with this Article and applicable state and federal law. The applicant shall pay the cost of the inspection.

8. By applying for a permit or license to possess or keep an exotic animal the applicant agrees to allow the City's representatives to inspect the premises where the animal is kept.

9. As a condition to maintain a permit, to possess or keep an exotic animal, the permittee shall allow periodic inspections by the City to determine if the permittee is in compliance with this Code.

10. The City may order the revocation of the permit, and/or the immediate cleaning and disinfecting of all or any part of any premises where animals are kept, at the permittee's sole cost, upon finding a violation of this Article, if such violation is not corrected with 72 hours after written or oral notice to the licensee.

(Ord. 2016-05-02)

§73.330: **MINIMUM HEALTH STANDARDS.**

Exotic animals and areas where exotic animals are kept on the permitted premises, shall meet all state wildlife confinement standards and shall be kept clean at all times. At a minimum, the following standards shall be met for all exotic animals and livestock possessed within the City limits. Additional standards may be imposed by the Animal Control Officer or Code Enforcement Officer as specific conditions dictate.

1. Any structure, pen, coop, or yard wherein exotic animals are kept or permitted, shall be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odors. The enclosed area of all such structures shall be constructed in such a way as to be dry at all times on the inside.

2. No offensive, disagreeable or noxious smell or odor shall be allowed to injure, annoy, or inconvenience any inhabitants of the surrounding properties.

3. All manure accumulations in the area where exotic animals and other animals are kept in pens shall be removed daily and shall be stored or disposed of in such a manner as to prevent the breeding of flies and the spread of disease, and to reduce odors.

4. All animal feed shall be stored in a secure, fly-tight, and rat-proof containers.

(Ord. 2016-05-02)

§73.340: **PENALTIES**

Any person violating any provision of this Article shall be deemed guilty of a violation of this Section and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500.00). Each day that a violation thereof shall continue shall be considered a separate offense of violation.

(Ord. 2016-05-02)

SUBCHAPTER B -- CRUELTY TO ANIMALS

§73.400. CRUELTY TO ANIMALS PROHIBITED.

No person in this City shall overdrive, overwork, torture, cruelly beat, needlessly wound or kill, or carry or transport in any vehicle or other conveyance in an inhumane manner any animal, or cause any of these acts to be done.

§73.410. MOLESTATION OF BIRDS AND FOWL.

It shall be unlawful for any person to molest, injure or disturb any small birds or fowl of the nest, young or brood of any such birds or fowl within the City.

§73.420. CUSTODIAN TO PROVIDE FOOD, SHELTER.

No person in the City shall fail to provide any animal or fowl in his charge or custody with necessary sustenance, drink, and protection from the elements, or cause any of these omissions to be done. Any such shelter so provided shall be kept clean and inoffensive insofar as is reasonably possible, and filth, offal, etc., shall not be allowed to unduly accumulate therein.

§73.430. ABANDONMENT OF ANIMALS PROHIBITED.

No person in the city shall abandon any animal or cause any animal to be abandoned.

§73.440. ANIMAL FIGHTS PROHIBITED.

No person in the City shall maintain any place where fowl or animals are suffered to fight upon exhibition or for sport or upon any wager.

§73.450. WANTON POISONING OF ANIMALS PROHIBITED.

No person in the City shall poison any dog or cat, or any other animal if known to belong to another person, or distribute poison in any manner whatsoever with the intent or for the purpose of poisoning any dog or cat, or any other animal known to belong to another person.

SUBCHAPTER C -- DOMESTIC ANIMALS AND FOWL

§73.600. HEALTH AND SAFETY RESTRICTIONS ON KEEPING HORSES

No person shall possess, keep, regularly feed, board, or harbor any horse on any lot within the City limits that has less than two acres of open ground. No person shall possess, keep, regularly feed, board, or harbor more than six horses on any contiguous lots within the City limits. If a person possesses, keeps, feeds, boards, or harbors more than one horse on the person's property within the City limits, then that person must provide one additional contiguous acre of open ground for each horse beyond the first horse. The City has determined that such open space is the minimum size necessary for the proper health and safety of such animals, as well as the health, safety, and peace of the public and neighboring property owners.

(Ord. 2-2-2007)

§73.610. VIOLATIONS ARE A NUISANCE.

Any violation of §73.600 is hereby declared to be a public nuisance subject to the enforcement provisions of Chapter 68 of the Elsberry City Code.

(Ord. 2-2-2007)

§73.700 KENNELS

1. Any person or entity keeping, harboring, sheltering, boarding, or protecting more than three (3) dogs or more than three (3) cats, over the age of nine (9) months of age, for any fee or other compensation for such service, or who is not the owner of one or more of such dogs or cats, shall be classified as operating a commercial kennel. Commercial kennels must obtain a variance to be located within Residential Districts.

2. Any person or entity keeping, harboring, sheltering, boarding, or protecting a combined total of eight (8) or more animals (exclusive of fish or other small pets that are kept in enclosed habitats), shall be classified as operating a commercial kennel.

3. Any person or entity keeping, harboring, sheltering, boarding, or protecting more than three (3) dogs or more than three (3) cats, over the age of nine (9) months of age, without charging or receiving a fee or other compensation for such services, shall be classified as operating a private kennel.

4. Any person, firm, partnership or corporation desiring to operate a commercial or private kennel within the City shall first procure a license therefor by applying to the City Clerk for said license.

5. Commercial kennels shall pay a fee of thirty-five dollars ($35.00), plus the Animal Control Officer's inspection fee. Private kennels shall pay a fee of five dollars ($5.00), plus the Animal Control Officer's inspection fee. The Animal Control Officer shall inspect the proposed location of the commercial or private kennel to make sure that such location will not be a nuisance to the neighborhood, and while provide a clean and humane environment for the animals. If at a later date, the Animal Control Officer shall find that the operation of said kennel has become a nuisance to the neighborhood, or does not provide a clean and humane environment for the animals, said kennel license shall be revoked.

6. All dogs and/or cats within a commercial or private kennel which are over the age of six (6) months shall have a rabies inoculation.

7. Nothing in this Section shall be construed to mean that any person, firm, partnership or corporation so operating a commercial or private kennel shall be permitted at any time to allow any animal in said kennel to run at large within the City without the payment of a registration certificate, check or tag as provided for in this Article.

8. Any person, firm, partnership or corporation having or conducting a private or commercial kennel shall keep the same and maintain the same in a clean and humane manner and keep the same free from offensive odors. Failure to comply with this Subsection shall subject said person, firm, partnership or corporation to the loss of said kennel license.

(Ord. 7-1-2006)

CHAPTER 74 ABANDONED, ILLEGALLY PARKED, NUISANCE, OR DERELICT VEHICLES AND PROPERTY

§74.010 DEFINITIONS.

The following terms have the following meanings as used in this Chapter:

"**Abandoned Property**" means any unattended motor vehicle, trailer, all-terrain vehicle, outboard motor or vessel removed or subject to removal from public or private property as provided in this Chapter, whether or not operational. the following whether or not it is operational

"Derelict vehicle" means any motor vehicle , trailer, all-terrain vehicle, outboard motor or vessel possessing one or any combination of the following attributes:

(1) Shattered or missing windows, headlights, or tail lights.

(2) Unsecured or missing exterior parts, including, but not limited to, bumpers, grills, doors, and hoods, but excluding hubcaps.

(3) An estimated 50 percent or more of the vehicle's exterior paint is rusted, oxidized, or removed.

(4) Observable amounts of vehicle fluids leaking from the vehicle resulting in a street discoloration or fluid streak not less than three inches in diameter or three inches in length.

(5) Does not have displayed thereon a permanent license plate or set of license plates issued for that vehicle indicating current registration by one of the states of the United States of America, when such is required.

(6) Is partially dismantled, inoperable, wrecked, junked.

(7) The engine, wheels or other parts have been removed for a period of at least thirty (30) consecutive days;

(8) The engine, wheels or other parts have been altered, damaged or otherwise so treated that the motor vehicle or vessel is incapable of being driven under its own motor power for a period of at least thirty (30) consecutive days.

(9) Affords a breeding place, harbor, or nesting place for mosquitoes, flies, rodents, rats, mice, or other vermin.

(10) Hazardous chemicals are leaking from the motor vehicle or vessel.

(11) Presents a hazard or attractive nuisance to minors.

(12) Harbors tall grass, weeds, or other vegetation in, on, or through it.

(13) Creates a fire hazard.

“Motor vehicle", means any self-propelled vehicle not operated exclusively upon tracks.

“Person” means any natural person, corporation or other legal entity.

“Public Road” means any road or street used by the general public for the passage of vehicles of all kinds, whether privately owned and maintained or owned and maintained by the United States, State of Missouri, a local government, or any subdivision thereof.

“**Right-of-way**” means the entire width of land between the boundary lines of a public road or State highway, including any roadway.

“**Roadway**” means that portion of a public road or State highway ordinarily used for vehicular travel, exclusive of the berm or shoulder.

“State Highway” means a highway constructed or maintained by the Missouri State Highways and Transportation Commission with the aid of State funds or United States government funds, or any highway included by authority of law in the State highway system, including all rights-of-way.

“**Towing company**", any person or entity which tows, removes or stores abandoned property

“**Vehicle**” means any mechanical device:

on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped person,; and

boats, personal water crafts, all-terrain vehicle. Off road recreational vehicles, and motorcycles .

(Ord. 2020-07-005)

§74.020 ABANDONED AND DERELICT VEHICLES PROHIBITED

1. No person shall place any abandoned property or derelict vehicle:

a. On the right-of-way of any public road;

b. On a State highway;

c. On any real property owned by another without the owner's consent;

d. On or in any of the waters in this State or on the banks of any stream, on any land or water owned, operated or leased by the State, any board, department, agency or commission thereof, or any political subdivision thereof.

2. For purposes of this Section, the last owner of record of abandoned property not shown to be transferred pursuant to RSMo. §§301.196 and 301.197, shall be deemed prima facie to have been the owner of such motor vehicle, vessel or trailer at the time it was abandoned and to have been the person who abandoned the motor vehicle, vessel or trailer or caused or procured its abandonment. The registered owner of the abandoned motor vehicle, vessel or trailer shall not be subject to the penalties provided by this Section if the motor vehicle, vessel or trailer was in the care, custody or control of another person at the time of the violation. In such instance, the owner shall submit such evidence in an affidavit permitted by the court setting forth the name, address and other pertinent information of the person who leased, rented or otherwise had care, custody or control of the motor vehicle, vessel or trailer at the time of the alleged violation. The affidavit submitted pursuant to this Subsection shall be admissible in a court proceeding adjudicating the alleged violation and shall raise a rebuttable presumption that the person identified in the affidavit was in actual control of the motor vehicle, vessel or trailer. In such case, the court has the authority to terminate the prosecution of the summons issued to the owner and issue a summons to the person identified in the affidavit as the operator. If the motor vehicle, vessel or trailer is alleged to have been stolen, the owner of the motor vehicle, vessel or trailer shall submit proof that a police report was filed in a timely manner indicating that the vehicle or vessel was stolen at the time of the alleged violation.

4. Any person convicted pursuant to this Section shall be civilly liable for all reasonable towing, storage and administrative costs associated with the abandonment of the motor vehicle, vessel or trailer. Any reasonable towing, storage and administrative costs in excess of the value of the abandoned motor vehicle, vessel or trailer that exist at the time the motor vehicle or vessel is transferred pursuant to RSMo.§304.156,, shall remain the liability of the person convicted pursuant to this Section so long as the towing company, provided the title owner and lienholders, as ascertained by the Missouri Department of Revenue records, a notice within the time frame and in the form as described in RSMo. §304.156(1).

(Ord. 2020-07-005)

§74.030 OBSTRUCTING THE FLOW OF TRAFFIC PROHIBITED

Except in the case of an accident resulting in the injury or death of any person, the driver of a vehicle shall not obstruct the regular flow of traffic on the roadway of any public road or State

highway, or any pedestrian traffic on adjacent walkways. Such driver shall make every reasonable effort to move the vehicle or have it moved so as not to block the regular flow of such traffic.

(Ord. 2020-07-005)

§74.040. OPEN STORAGE OF DERELICT, INOPERABLE, OR UNLICENSED VEHICLES; OR PUBLIC SAFETY HAZARDS PROHIBITED.

The open storage of derelict, inoperable, or unlicensed vehicles to include recreational vehicles, recreational equipment and trailers, or other vehicles deemed by the City to constitute a public safety hazard is prohibited and declared to be a nuisance. Nothing in this Section shall apply to such vehicles (1) that are completely enclosed within a locked and fully enclosed building; (2) sit on top of a hard, impervious surface and are not visible from adjacent public or private property, or (3) are upon the property of a business properly licensed and zoned as salvage, swap, junk dealer, towing, repair, or storage facility so long as the business is operated in compliance with its business license and the property is in compliance with applicable zoning ordinances.

(Ord. 2020-07-005)

§74.050 TOWING OF ABANDONED OR DERELICT VEHICLES ON PUBLIC PROPERTY OR RIGHTS-OF-WAY.

1. Any City law enforcement officer, or an official of the City where the City's real property is concerned, may authorize a towing company to remove to a place of safety:

    A. Any abandoned property on the right-of-way of any public road or State highway in the City, left unattended for twenty four (24) hours; provided that any commercial motor vehicle not hauling waste designated as hazardous under 49 U.S.C. 5103(a) may only be removed under this section to a place of safety until the owner or owner's representative has had a reasonable opportunity to contact a towing company of choice.

    B. Any unattended abandoned property illegally left standing upon any public road, State highway, or bridge if the abandoned property is left in a position or under such circumstances as to obstruct the normal movement of traffic where there is no reasonable indication that the person in control of the property is arranging for its immediate control or removal.

    C. Any abandoned property vehicle which has been abandoned under RSMo. §378.020 or §577.080,

    D. Any abandoned property that has been reported as stolen or taken without consent of the owner.

    E. Any abandoned property for which the person operating such property is arrested for an

alleged offense for which the officer is required to take the person into custody and where such person is unable to arrange for the property's timely removal.

F. Any abandoned property that, due to any other State law or City ordinance, is subject to towing because of the owner's outstanding traffic or parking violations.

G. Any abandoned property left unattended in violation of a State law or City ordinance where signs have been posted giving notice of the law or where the violation causes a safety hazard.

H. Any abandoned property illegally left standing on the waters of this state as defined in RSMo. §306.010 where the abandoned property is obstructing the normal movement of traffic, or where the abandoned property has been unattended for more than ten hours or is floating loose on the water; or

I. Any abandoned property for which the person operating such property or vehicle eludes arrest for an alleged offense for which the officer would have taken the offender into custody.

K. Any abandoned, unattended, wrecked, burned or partially dismantled property, spilled cargo or other personal property from the right-of-way of any public road or State highway if the abandoned property, cargo or personal property is creating a traffic hazard because of its position in relation to the public road or State highway. In the event the property creating a traffic hazard is a commercial motor vehicle, as defined in RSMo. §302.700, the City's authority under this subsection shall be limited to authorizing a towing company to remove the commercial motor vehicle to a place of safety, except that the owner of the commercial motor vehicle or the owner's designated representative shall have a reasonable opportunity to contact a towing company of choice. The provisions of this subsection shall not apply to vehicles transporting any material which has been designated as hazardous under Section 5103(a) of Title 49, U.S.C.

L. Any vehicle or other personal property that is parked illegally.

M. Any vehicle that is found being driven on the streets and is not in proper condition to be driven.

N. Any vehicle or personal property that is directly interfering with the maintenance and care or the emergency use of the streets by any proper department of the City.

O. Any vehicle that is parked on the streets or any public place without valid license plates or current registration; with license plates reported stolen.

P. Any vehicle whose removal is necessary in the interest of public safety because of fire, flood, storm, or other emergency reason.

Q. Any vehicle or any part of a vehicle or property, the owner of which has indicated in some way his intention to leave the vehicle or property and that he no longer claims ownership of it.

2. **Reporting.**

A. When the City Police Department authorizes a tow pursuant to this Section in which the abandoned vehicle is moved from the immediate vicinity, it shall complete a crime inquiry and inspection report.

B. Any City agency other than the City Police Department authorizing a tow under this Section where property is towed away from the immediate vicinity shall report the tow to the City Police Department within two (2) hours of the tow, along with a crime inquiry and inspection report.

3. **Limitation Of Liability.** Neither the City Police Officer, City nor anyone having custody of abandoned property under his or her direction shall be liable for any damage to such abandoned property occasioned by a removal authorized by this Section other than damages occasioned by negligence or by willful or wanton acts or omissions.

4. **Responsibility for Towing Charges**. The owner of abandoned property removed as provided in this Section shall be responsible for payment of all reasonable charges for towing and storage of such abandoned property.

5. **Reporting.** If a City law enforcement officer authorizes a tow under this Section, the City Police department shall promptly make an inquiry with the national crime information center and any statewide Missouri law enforcement computer system to determine if the abandoned property has been reported as stolen and shall enter the information pertaining to the towed property into the statewide law enforcement computer system.

6. **Unclaimed Property.** If the abandoned property is not claimed within ten working days of the towing, the towing company who has online access to the Missouri Department of Revenue's records shall make an inquiry to determine the abandoned property owner and lienholder, if any, of record. In the event that the records of the Department of Revenue fail to disclose the name of the owner or any lienholder of record, the towing company shall comply with the requirements of RSMo. §304.156. A towing company that does not have online access to the department's records and that is in possession of abandoned property after ten working days shall report such fact to the City Police Department.

7. **Crime inquiry and inspection report.** If the towing company does not have online access , the City Police Department shall submit a crime inquiry and inspection report to the Missouri Director of Revenue. The crime inquiry and inspection report shall be designed by the Director of Revenue and shall include the following:

(1) The year, model, make and property identification number of the property and the

owner and any lienholders, if known;

(2) A description of any damage to the property noted by the officer authorizing the tow;

(3) The license plate or registration number and the state of issuance, if available;

(4) The storage location of the towed property;

(5) The name, telephone number and address of the towing company;

(6) The date, place and reason for the towing of the abandoned property;

(7) The date of the inquiry of the national crime information center, any statewide Missouri law enforcement computer system and any other similar system which has titling and registration information to determine if the abandoned property had been stolen. This information shall be entered only by the law enforcement agency making the inquiry;

(8) The signature and printed name of the officer authorizing the tow;

(9) The name of the towing company, the signature and printed name of the towing operator, and an indicator disclosing whether the tower has online access to the department's records; and

(10) Any additional information the director of revenue deems appropriate.

One copy of the crime inquiry and inspection report shall remain with the agency which authorized the tow. One copy shall be provided to and retained by the storage facility and one copy shall be retained by the towing facility in an accessible format in the business records for a period of three years from the date of the tow or removal.

(Ord. 2020-07-005)

§74.060 TOWING AUTHORIZED BY THE CITY ON PRIVATE PROPERTY.

1. If a person abandons property, as defined in this Chapter, on any real property owned by another without the consent of the owner or person in possession of the real property, at the request of the person in possession of the real property, any City Police Officer may authorize a towing company to remove such abandoned property from the property in the following circumstances:

   (A) The abandoned property is left unattended for more than forty-eight (48) hours; or

   (B) In the judgment of a City Police Officer, the abandoned property constitutes a safety hazard or unreasonably interferes with the use of the real property by the person in

possession.

2. The City, including the City Police Department, may provide for the towing of motor vehicles or vessels from real property that are derelict, junk, scrapped, disassembled or otherwise harmful to the public health and declared to be a public nuisance under this Code. The City shall authorize such tow pursuant to the terms of this Chapter. When a City agency other than the Police Department authorizes a tow under this Subsection, it shall report the tow to the Police Department within two (2) hours with a crime inquiry and inspection report.

3. Neither the law enforcement officer, local government agency nor anyone having custody of abandoned property under his or her direction shall be liable for any damage to such abandoned property occasioned by a removal authorized by this section other than damages occasioned by negligence or by willful or wanton acts or omissions.

(Ord. 2020-07-005)

§74.070 TOWING AUTHORIZED BY REAL PROPERTY OWNER, LESSEE OR PROPERTY OR SECURITY MANAGER ON PRIVATE PROPERTY.

1. The owner of real property or lessee in lawful possession of the real property or the property or security manager of the real property may authorize a towing company to remove abandoned vehicle or property parked in a restricted or assigned area without authorization by a Law Enforcement Officer only when the owner, lessee or property or security manager of the real property is present. A property or security manager must be a full-time employee of a business entity. An authorization to tow pursuant to this Subsection may be made only under any of the following circumstances:

   A. **Sign**. There is displayed, in plain view at all entrances to the property, a sign not less than seventeen (17) by twenty-two (22) inches in size, with lettering not less than one (1) inch in height, prohibiting public parking and indicating that unauthorized abandoned vehicle or property parked in a restricted or assigned area will be removed at the owner's expense, disclosing the maximum fee for all charges related to towing and storage, and containing the telephone number of the local traffic law enforcement agency where information can be obtained or a twenty-four (24) hour staffed emergency information telephone number by which the owner of the abandoned vehicle or property parked in a restricted or assigned area may call to receive information regarding the location of such owner's property.

   B. **Unattended on owner-occupied residential property.** The abandoned vehicle is left unattended on owner-occupied residential property with four (4) residential units or less and the owner, lessee or agent of the real property in lawful possession has notified the City Police Department, and ten (10) hours have elapsed since that notification.

   C. **Unattended on other private real property.** The abandoned vehicle is left unattended on private real property, and the owner, lessee or agent of the real property in lawful

possession of real property has notified the City Police Department, and ninety-six (96) hours have elapsed since that notification.

2. Pursuant to this Section, any owner or lessee in lawful possession of real property that requests a towing company to tow abandoned vehicle without authorization from a City Police Officer shall at that time complete an abandoned vehicle report which shall be considered a legal declaration subject to criminal penalty pursuant to RSMo. §575.060. The report shall be in the form designed, printed, and distributed by the Missouri Director of Revenue and shall contain the following:

   a. The year, model, make and abandoned vehicle identification number of the property, and the owner and any lienholders, if known;

   b. A description of any damage to the abandoned vehicle noted by owner, lessee or property or security manager in possession of the real property;

   c. The license plate or registration number and the State of issuance, if available;

   d. The physical location of the property and the reason for requesting the property to be towed;

   e. The date the report is completed;

   f. The printed name, address and telephone number of the owner, lessee or property or security manager in possession of the real property;

   g The towing company's name and address;

   h. The signature of the towing operator;

   i. The signature of the owner, lessee or property or security manager attesting to the facts that the property has been abandoned for the time required by this Section and that all statements on the report are true and correct to the best of the person's knowledge and belief and that the person is subject to the penalties for making false statements;

   j. Space for the name of the law enforcement agency notified of the abandoned vehicle and for the signature of the Law Enforcement Official receiving the report; and

   k. Any additional information the Missouri Director of Revenue deems appropriate.

3. Any towing company which tows abandoned vehicle without authorization from the City Police Department pursuant to this Section shall deliver a copy of the abandoned vehicle report to the City Police Department. The copy may be produced and sent by facsimile machine or other device which produces a near exact likeness of the print and signatures required, but only if the City Police Department has the technological capability of receiving

such copy and has registered the towing company for such purpose. The report shall be delivered within two (2) hours if the tow was made from a signed location pursuant to this Section, otherwise the report shall be delivered within twenty-four (24) hours.

4. The City Police Department, after receiving such abandoned vehicle report, shall record the date on which the abandoned vehicle report is filed with the Police Department and shall promptly make an inquiry into the national crime information center (NCIC) and any statewide Missouri law enforcement computer system to determine if the abandoned vehicle has been reported as stolen. The Police Department shall enter the information pertaining to the towed property into the statewide law enforcement computer system and a Police Officer shall sign the abandoned vehicle report and provide the towing company with a signed copy.

5. The City Police Department, after receiving notification that abandoned vehicle has been towed by a towing company, shall search the records of the Missouri Department of Revenue and provide the towing company with the latest owner and lienholder information on the abandoned vehicle. If the abandoned vehicle is not claimed within ten (10) working days, the towing company shall send a copy of the abandoned vehicle report signed by a Law Enforcement Officer to the Department of Revenue.

6. No owner, lessee, or property or security manager of real property shall knowingly authorize the removal of abandoned vehicle in violation of this Section.

7. A towing company shall not remove or commence the removal of abandoned vehicle from private real property without first obtaining written authorization from the real property owner. All written authorizations shall be maintained for at least one (1) year by the towing company.

8. Any towing company that lawfully removes abandoned property from private property with the written authorization of the property owner or the property owner's agent who is present at the time of removal shall not be held responsible in any situation relating to the validity of the removal.

9. Any towing company that removes abandoned property at the direction of the landowner shall be responsible for:

    a. Any damage caused by the towing company to the property in the transit and subsequent storage of the property; and

    b. The removal of property other than the property specified by the owner of the private real property from which the abandoned property was removed.

(Ord. 2020-07-005)

§74.080 NOTICE TO OWNER OF ABANDONED PROPERTY.

1. Notice as to the removal of any abandoned property pursuant to this Chapter shall be made in writing within five (5) working days to the registered owner of the abandoned property, and any lienholder thereof, of the fact of the removal, the grounds for the removal, and the place to which the property has been removed by either:

    a. The City Police Department, if the City Police Department authorized the removal; or

    b. The towing company, where authorization was made by an owner or lessee of real property.

2. If the abandoned property is stored in any storage facility, a copy of the notice shall be given to the operator of the storage facility. The notice provided for in this Section shall include the amount of mileage, if available, shown on the abandoned property at the time of removal.

3. Any owner of any private real property causing the removal of abandoned property from that real property shall state the grounds for the removal of the abandoned property if requested by the registered owner of that abandoned property.

(Ord. 2020-07-005)

§74.090 GENERAL PROVISIONS AND PROCEDURES

1. The owner of abandoned vehicle removed as provided in this Chapter shall be responsible for payment of all reasonable charges for towing and storage of such abandoned vehicle.

2. Any towing company which tows abandoned property for hire shall have the towing company's name, city and State clearly printed in letters at least three (3) inches in height on the sides of the truck, wrecker or other vehicle used in the towing.

3. A towing company may impose a charge of not more than one-half (½) of the regular towing charge for the towing of abandoned property at the request of the owner of private real property or that owner's agent pursuant to this Chapter if the owner of the abandoned property or the owner's agent returns to the abandoned property before it is removed from the private real property. The regular towing charge may only be imposed after the abandoned property has been removed from the private real property and is in transit.

4. The owner of such abandoned property, or the holder of a valid security interest of record, may reclaim it from the towing company upon proof of ownership or valid security interest of record and payment of all reasonable charges for the towing and storage of the abandoned property.

5. Any person who removes abandoned property at the direction of a law enforcement officer or an officer of a government agency where that agency's real property is concerned as provided in this section shall have a lien for all reasonable charges for the towing and storage of the abandoned property until possession of the abandoned property is voluntarily relinquished to

the owner of the abandoned property or to the holder of a valid security interest of record. Any personal property within the abandoned property need not be released to the owner thereof until the reasonable or agreed charges for such recovery, transportation or safekeeping have been paid or satisfactory arrangements for payment have been made, except that any medication prescribed by a physician shall be released to the owner thereof upon request. The company holding or storing the abandoned property shall either release the personal property to the owner of the abandoned property or allow the owner to inspect the property and provide an itemized receipt for the contents. The company holding or storing the property shall be strictly liable for the condition and safe return of the personal property. Such lien shall be enforced in the manner provided under RSMo. §304.156.

6. Towing companies shall keep a record for three years on any abandoned property towed and not reclaimed by the owner of the abandoned property. Such record shall contain information regarding the authorization to tow, copies of all correspondence with the department of revenue concerning the abandoned property, including copies of any online records of the towing company accessed and information concerning the final disposition of the possession of the abandoned property.

7. If a lienholders repossesses any motor vehicle, trailer, all-terrain vehicle, outboard motor or vessel without the knowledge or cooperation of the owner, then the repossessor shall notify the City Police department within two hours of the repossession and shall further provide the City Police department with any additional information the City Police department deems appropriate. The City Police department shall make an inquiry with the national crime information center and the Missouri statewide law enforcement computer system and shall enter the repossessed vehicle into the statewide law enforcement computer system.

8. Any towing company who has complied with the notification provisions in this Chapter and RSMo. §304.156, including notice that any property remaining unredeemed after thirty days may be sold as scrap property may then dispose of such property as provided in RSMo. §304.156.

(Ord. 2020-07-005)

§74.100 SALE OF ABANDONED PROPERTY BY THE CITY

When the City has physical possession of the abandoned property or other personal property, it may sell the abandoned property or other personal property in accordance with its established provisions and regulations and may transfer ownership by means of a bill of sale signed by the City Clerk and sealed with the official City Seal. Such bill of sale shall contain the make and model of the abandoned property or other personal property, the complete abandoned property or other personal property identification number, and the odometer reading of the abandoned property or other personal property, if available, and shall be lawful proof of ownership for any dealer registered under the provisions of Section 301.218, RSMo., or Section 301.560, RSMo., or for any other person.

(Ord. 2020-07-005)

CHAPTER 75 -- OFFENSES

§75.010. TAMPERING.

A person commits the offense of tampering if he:

1. Tampers with the property of another for the purpose of causing substantial inconvenience to that person or to another.

2. Unlawfully operates or rides in or upon another's automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle.

3. Tampers or makes connection with property of a utility.

4. Tampers with the property or facilities of an institution providing health or safety protection.

5. Tampers with, or causes to be tampered with, any meter, line, pump, or other property of a private or public electric, gas, steam or water utility service, the effect of which tampering is to either:

    a. Prevent the proper measuring of electric, gas, steam or water service;

    b. Permit the diversion of any electric, gas, steam or water service;

    c. Make an unauthorized connection; or

    d. To restore disconnected electric, gas, steam or water service without authorization**.**

    [Leg. Auth. RSMo. §569.090**]**

(Ord. 2-2-2009)

§75.015 INFERENCE OF TAMPERING

In any prosecution under Elsberry Mun. Code § 75.010.3 and § 75.010.5, proof that a meter, line, pump, or any other property of a public or private utility service has been tampered with, and the person or persons accused received the use or direct benefit of the electric, gas, steam or water service with one or more of the effects described in §75.010.5, shall be sufficient to support an inference that the trial court may submit to the trier of fact, and from which the trier of fact may conclude, that there has been a violation of § 75.010.3 or § 75.010.5 by the person or persons who use or receive the direct benefit of the electric, gas, steam, or water service.

[Leg. Auth. RSMo. §569.090**]**

(Ord. 2-2-2009)

§75.020. PROPERTY DAMAGE.

A person commits the offense of property damage if he knowingly damages property of another or he damages property for the purpose of defrauding an insurer.

§75.030. TRESPASS.

A person commits the offense of trespass if he enters unlawfully upon real property of another, without license or privilege.

§75.035. PROTECTION OF LEVEE, FLOOD CONTROL, AND DRAINAGE STRUCTURES

1. It shall be unlawful for any unauthorized person, firm, corporation, partnership, association, or other entity to enter upon, damage, obstruct, render dangerous, or in any way interfere with any temporary or permanent public or private levee, flood control, stream, drainage, ditch, or flood protection structures or equipment located within the boundaries of the City.

2. It shall be unlawful for any unauthorized person, firm, corporation, partnership, association, or other entity to operate a bicycle, operate any motorized vehicle or equipment, walk, or otherwise travel upon any temporary or permanent public or private levee, flood control, stream, drainage, ditch, or flood protection structures or equipment located within the boundaries of the City.

3. To be "authorized" under this section, a person, firm, corporation, partnership, association, or other entity must have received permission, and be able to present immediate proof of such permission, to engage in the above activities by: (1) the City, (2) another governmental entity having authority over the temporary or permanent public or private levee, flood control, stream, drainage, ditch, or flood protection structures or equipment; or (3) the Owner of the temporary or permanent public or private levee, flood control, stream, drainage, ditch, or flood protection structures or equipment.

(Ord. 2011-11-001)

§75.040 UNLAWFUL INTERNET AND SOCIAL MEDIA POSTS

1. No person shall knowingly post the name, home address, Social Security number, or telephone number of any other person on the internet, cellular service, or other digital telecommunications social media posts, intending to cause great bodily harm or death, or threatening to cause great bodily harm or death to such other person.

2. The term "knowingly", when used with respect to:

    (a) Conduct or attendant circumstances, means a person is aware of the nature of his or

her conduct or that those circumstances exist; or

(b) A result of conduct, means a person is aware that his or her conduct is practically certain to cause that result.

(Ord. 2019-07-002)

§75.041 HARASSMENT.

1. No person shall, without good cause, engage in any act with the purpose to cause emotional distress to another person.

2. The term "emotional distress" means something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living.

2. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violations of federal, state, county, or municipal law."

(Ord. 2019-07-002)

§75.042 STALKING

1. No person shall purposely, through his or her course of conduct, disturb, or follow with the intent to disturb, another person.

2. The term "conduct", includes any act or omission.

3. The term "course of conduct", means a pattern of conduct composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. Such constitutionally protected activity includes picketing or other organized protests.

4. The term "disturbs" shall mean to engage in a course of conduct directed at a specific person that serves no legitimate purpose and that would cause a reasonable person under the circumstances to be frightened, intimidated, or emotionally distressed.

5. The term "emotional distress" means something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living

6. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of any violation of federal, state, county, or

municipal law."

(Ord. 2019-07-002)

§75.043 PEACE DISTURBANCE

1. No person shall:

    (1) Unreasonably and knowingly disturbs or alarms another person or persons by:

        (a) Loud noise; or

        (b) Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient; or

        (c) Threatening to commit a felonious act against any person under circumstances which are likely to cause a reasonable person to fear that such threat may be carried out; or

        (d) Fighting; or

        (e) Creating a noxious and offensive odor;

    (2) Is in a public place or on private property of another without consent and purposely causes inconvenience to another person or persons by unreasonably and physically obstructing:

        (a) Vehicular or pedestrian traffic; or

        (b) The free ingress or egress to or from a public or private place.

2. "The term "public place" means any place which at the time is open to the public. It includes property which is owned publicly or privately.

3. The term "private property" means any place which at the time of the offense is not open to the public. It includes property which is owned publicly or privately.

4. The term "Property of another" means any property in which the person does not have a possessory interest.

5. For purposes of this section, if a building or structure is divided into separately occupied units, such units are separate premises.

(Ord. 2019-07-002)

§75.044 PRIVATE PEACE DISTURBANCE

1. No person while on private property shall unreasonably and purposely cause alarm to another person or persons on the same premises by:

    (1) Threatening to commit an offense against any person; or

    (2) Fighting.

2. The term "private property" means any place which at the time of the offense is not open to the public. It includes property which is owned publicly or privately.

3. For purposes of this section, if a building or structure is divided into separately occupied units, such units are separate premises.

(Ord. 2019-07-002)

§75.045. URINATION OR DEFECATION IN PUBLIC.

1. It shall be unlawful for any person to urinate or defecate in a public place within the city limits of Elsberry, Missouri or to urinate or defecate in a private place within the view of members of the general public.

2. Violation of this Chapter shall carry with it a fine not to exceed $150.00, or a jail term not to exceed ten days, or both.

§75.046. PEEPING TOMS.

1. No person shall during the nighttime, except in the discharge or execution of an official duty, loiter about or upon the premises of a place where people reside; nor shall any person, during the nighttime peep or gaze through windows, doors or other openings of a place wherein people reside.

2. No person shall during the nighttime, engage in an indecent or perverted conduct, commonly called that of a "Peeping Tom."

§75.048. LEWD AND LASCIVIOUS BEHAVIOR.

It shall be unlawful for any person to be guilty of any open, gross lewdness or lascivious behavior, or of any open and notorious act of public indecency, grossly scandalous; or of any disorderly conduct against the public peace or public morals.

§75.050. DAMAGE TO PUBLIC PROPERTY AND ACCOMMODATIONS

No unauthorized person shall maliciously, willfully, or negligently break, damage, misuse, destroy, uncover, deface or tamper with any structure, appurtenance or equipment that is owned by the City, or is placed in public areas for public accommodation, such as public trash receptacles, public benches, etc. Any person violating this provision shall be subject guilty of a misdemeanor and shall be subject to immediate arrest.

(Ord. 6-7-06)

§75.055 REIMBURSEMENT OF COST FOR ALCOHOL AND DRUG-RELATED OFFENSES

1. Upon a plea of guilty, finding of guilt or conviction for violation of an alcohol or drug related offense in violation of the City of Elsberry Ordinances, the court may, in addition to imposition of any penalties provided by law, order the person to reimburse law enforcement authorities for the cost associated with such arrest.

2. Such costs shall include the reasonable cost of making the arrest, including the cost of any chemical tests to determine the alcohol or drug content of the persons's blood, and the costs of processing, charging, booking and holding such person in custody.

3. Law enforcement authorities may establish a schedule of such costs for submission to the court; however, the court may order the costs reduced if it determines that the schedule of costs is excessive given the circumstances of the case or for good cause shown.

4. These fees shall be calculated as additional costs by the municipal court and shall be collected by the court in the same manner as other costs and fees are collected and remitted to the City Treasurer.

5. The City Treasurer shall retain these fees in a separate fund known as the "DWI/Drug Enforcement Fund." Monies within the DWI/Drug Enforcement Fund shall be appropriated by the City Council to law enforcement authorities from such fund in amounts equal to those costs so incurred and shall be specifically used to enhance and support the enforcement and prosecution of alcohol-and drug related traffic laws within the city, and Drug and Alcohol Education.

(Amd. Ord. 5-1-93)

§75.060. USE OF INTOXICATING SUBSTANCE IN PUBLIC PLACE.

It is unlawful for a person to drink or otherwise consume any alcoholic beverage, intoxicating liquor; or to use any controlled substance or narcotic drug without a valid prescription in any street, the public park, or other public place, except that alcohol may be consumed in Page Branch Park by the holder or beneficiary of a City issued permit for such consumption.

(Ord. 2011-02-001)

§75.062. OPEN BEER OR LIQUOR CONTAINER.

A person commits the offense of transporting an open beer or liquor container if a container of nonintoxicating beer, malt liquor or intoxicating liquor (as those terms are defined in Section 50.010 of this Code) is found to be open (that is available for ready consumption) within a vehicle which that person has under his control or in which that person is a passenger.

§75.064. MINOR IN POSSESSION OF ALCOHOL.

1. No person under the age of 21 years shall purchase, attempt to purchase or possess any intoxicating liquor or nonintoxicating beer.

2. No person under the age of 21 years shall represent that he has attained the age of 21 years in order to purchase, request, obtain or receive any intoxicating liquor or nonintoxicating beer.

3. No person under the age of 21 years shall sell or assist in the sale or dispensation of intoxicating liquor or nonintoxicating beer.

4. No person nor his employee shall sell, give or supply any intoxicating liquor or nonintoxicating beer to any person under the age of 21 years; provided, however, that this Section shall not apply to a parent or guardian who supplies intoxicating liquor or nonintoxicating beer to his child or ward under the age of 21 years within the confines of a private dwelling, nor to a duly licensed physician who administers intoxicating liquor or nonintoxicating beer to a person under the age of 21 years, nor to any person who supplies intoxicating liquor or nonintoxicating beer to a person under the age of 21 years solely for medical purposes.

5. Any person under the age of twenty-one years, who is visibly intoxicated as defined in section 577.001, RSMo, or has a detectable blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol in such person's blood is guilty of a misdemeanor.

6. For purposes of prosecution under this section or any other provision of this chapter involving an alleged illegal sale or transfer of intoxicating liquor to a person under twenty-one years of age, a manufacturer-sealed container describing that there is intoxicating liquor therein need not be opened or the contents therein tested to verify that there is intoxicating liquor in such container. The alleged violator may allege that there was not intoxicating liquor in such container, but the burden of proof of such allegation is on such person, as it shall be presumed that such a sealed container describing that there is intoxicating liquor therein contains intoxicating liquor.

(Ord. 6-6-06)

§75.066. MISREPRESENT AGE TO OBTAIN BEER OR LIQUOR.

No person under the age of 21 years shall represent that he or she has attained the age of 21 years

for the purpose of purchasing, asking for, or in any manner receiving any intoxicating liquor or nonintoxicating beer. No person under the age of 21 years shall purchase or attempt to purchase or have in his possession any intoxicating beer or liquor or nonintoxicating beer.

§75.067. MINORS AND TOBACCO PRODUCTS – DEFINITIONS.

As used in sections 75.068 and 75.069, the following terms mean:

1. "Center of youth activities", any playground, school or other facility, when such facility is being used primarily by persons under the age of eighteen for recreational, educational or other purposes;

2. "Distribute", a conveyance to the public by sale, barter, gift or sample;

3. "Minor", a person under the age of eighteen;

4. "Municipality", the city, village or town within which tobacco products are sold or distributed or, in the case of tobacco products that are not sold or distributed within a city, village or town, the county in which they are sold or distributed;

5. "Person", an individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government, or any other legal entity which is recognized by law as the subject of rights and duties;

6. "Proof of age", a driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid;

7. "Rolling papers", paper designed, manufactured, marketed, or sold for use primarily as a wrapping or enclosure for tobacco, which enables a person to roll loose tobacco into a smokable cigarette;

8. "Sample", a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotional purposes;

9. "Sampling", the distribution to members of the general public of tobacco product samples;

10. "Tobacco products", any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, as well as alternative nicotine products, or vapor products. Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any vapor product, tobacco product or any product

regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act. "Vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

11. "Vending machine", any mechanical electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

(Ord. 2011-09-008; 2019-07-004).

§75.068. MINOR IN POSSESSION OF TOBACCO PRODUCTS

1. No person less than eighteen years of age shall purchase, attempt to purchase or possess cigarettes or other tobacco products unless such person is an employee of a seller of cigarettes or tobacco products and is in such possession to effect a sale in the course of employment, or an employee of the division of liquor control for enforcement purposes.

2. Any person less than eighteen years of age shall not misrepresent his or her age to purchase cigarettes or tobacco products.

3. Any person who shall, without authorization from the Missouri Department of Revenue, reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's license or identification card shall be deemed guilty of a misdemeanor.

4. Any person who violates the provisions of subsections 1 and 2 shall be penalized as follows:

   (1) For the first violation, the person is guilty of an infraction and shall have any cigarettes or tobacco products confiscated;

   (2) For a second violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes or tobacco products confiscated and shall complete a tobacco education or smoking cessation program, if available.

(Ord. 2011-09-008).

§75.069. NO TOBACCO TO MINORS

1. No person or entity shall sell, provide or distribute any tobacco product or rolling papers to any minor, or sell any individual cigarettes to any person in this state. This subsection shall not apply to the distribution by family members on property that is not open to the public.

2. All vending machines that dispense tobacco products shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than eighteen years of age from purchasing any tobacco product from such machine or shall be equipped with a lock-out device to prevent the machines from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking device shall be of a design that prevents it from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required on machines that are located in areas where persons less than eighteen years of age are not permitted or prohibited by law. A determination of noncompliance may be made by a local law enforcement agency or the division of liquor control. Nothing in this section shall apply to a vending machine if located in a factory, private club or other location not generally accessible to the general public..

3. A person or entity selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen.

4. The operator's or chauffeur's license issued pursuant to the provisions of RSMo. §302.177, or the operator's or chauffeur's license issued pursuant to the laws of any state or possession of the United States to residents of those states or possessions, or an identification card as provided for in RSMo. §302.181, or the identification card issued by any uniformed service of the United States, or a valid passport shall be presented by the holder thereof upon request of any agent of the division of liquor control or any owner or employee of an establishment that sells tobacco, for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least eighteen years of age when such person desires to purchase or possess tobacco products procured from a registrant. Upon such presentation, the owner or employee of the establishment shall compare the photograph and physical characteristics noted on the license, identification card or passport with the physical characteristics of the person presenting the license, identification card or passport.

5. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of subsections 1, 2 and 3 of section 407.931.

6. If the sale or distribution is made by an entity, then all of the following shall be guilty of the violation: (1) the entity; (2) the employee, agent, or representative who made the sale or distribution; and (3) the owner(s) of the entity.

7. Any owner of the establishment where tobacco products are available for sale who violates

subsection 1 of this section shall not be penalized pursuant to this section if such person documents the following:

(1) An in-house or other tobacco compliance employee training program was in place to provide the employee with information on the state and federal regulations regarding tobacco sales to minors. Such training program must be attended by all employees who sell tobacco products to the general public;

(2) A signed statement by the employee stating that the employee has been trained and understands the state laws and federal regulations regarding the sale of tobacco to minors; and

(3) Such in-house or other tobacco compliance training meets the minimum training criteria, which shall not exceed a total of ninety minutes in length, established by the Missouri division of liquor control.

8. The exemption in subsection 7 of this section shall not apply to any person who is considered the general owner or operator of the outlet where tobacco products are available for sale if:

(1) Four or more violations per location of subsection 1 of this section occur within a one-year period; or

(2) Such person knowingly violates or knowingly allows his or her employees to violate subsection 1 of this section.

(Ord. 2011-09-008).

§75.070. SHOPLIFTING, STEALING.

A person commits the offense of stealing if he appropriates property or services of another with the purpose to deprive him thereof, either without his consent or by means of deceit or coercion.

§75.072. RECEIVING STOLEN PROPERTY.

No person shall buy or in any way receive any goods, money, personal property or any valuable thing whatsoever that shall have been embezzled, converted, taken or secreted, contrary to the laws of the State of Missouri and this Chapter or other ordinances of the City, or that shall have been stolen from another, knowing the same to have been embezzled, taken, secreted or stolen.

§75.075 LIBRARY THEFT

1. A person commits the crime of library theft if such person:

(1) Knowingly removes any library material from the premises of a library without authorization; or

(2) Borrows or attempts to borrow any library material from a library by use of a library card:

(a) Without the consent of the person to whom it was issued; or
(b) Knowing that the library card is revoked, canceled or expired; or
(c) Knowing that the library card is falsely made, counterfeit or materially altered; or

(3) Borrows library material from any library pursuant to an agreement or procedure established by the library which requires the return of such library material and, with the purpose to deprive the library of the library material, fails to return the library material to the library; or

(4) Knowingly writes on, injures, defaces, tears, cuts, mutilates, or destroys a book, document, or other library material belonging to, on loan to, or otherwise in the custody of a library;

all with the purpose of depriving the library of the use of such materials.

2. It shall be prima facie evidence of the person's purpose to deprive the library of the use of the library materials if, within ten days after notice in writing deposited as certified mail from the library demanding the return of such library material, such person without good cause shown fails to return the library material. A person is presumed to have received the notice required by this subsection if the library mails such notice to the last address provided to the library by such person. Payment to the library, in an amount equal to the fair market value of an item of no historical significance shall be considered returning the item for purposes of this subsection.
3. The crime of library theft is a misdemeanor. If the value of the library materials is less than five hundred dollars, the minimum fine shall be fifty dollars. If the value of the library material is over five hundred dollars, the minimum fine shall be one hundred dollars. The court shall also require the offender to pay restitution to the library at the replacement cost of the materials at issue.

4. The term “library” as used in this section shall include any institution or not-for-profit organization that maintains a collection of more than five thousand books and periodicals for use by the public or the members of the institution; and includes the Palmer Family Memorial Library.

(Ord. 2010-11-001)

§75.080. MARIJUANA

1. The definitions used in this Section shall be the same as used in Missouri Constitution Section 2 Amendment XIV.

2, It shall be unlawful to:

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

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

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

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

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

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

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

(h) Smoke or burn marijuana in a location where smoking tobacco is prohibited;

(i) Consume, smoke, or burn marijuana in a public place or public building, other than in an area licensed by the Board of Aldermen;

(j) Undertake any task while under the influence of marijuana, if doing so would constitute negligence, recklessness, or professional malpractice or would endangers others; or

(k) Perform solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food-grade ethanol, unless licensed for this activity by the State of Missouri.

(l) Possess or consume marijuana, or possess marijuana accessories, on the grounds of any City owned property, park, or building.

(m) Consume, smoke, or burn marijuana in a restaurant, an establishment holding any liquor license, or any place of public accommodation.

(n) Cultivate flowering marijuana plants, nonflowering marijuana plants (over fourteen

inches tall), or clones for private use without a valid Missouri private cultivation registration card authorizing such cultivation.

(o) Cultivate flowering marijuana plants, nonflowering marijuana plants (over fourteen inches tall), or clones (plants under fourteen inches tall) for private use in excess of the amounts permitted authorized by a a valid Missouri private cultivation registration card.

(p) Keeping twelve or more flowering marijuana plants, twelve or more nonflowering marijuana plants (over fourteen inches tall), or twelve or more clones (plants under fourteen inches tall) in or on the grounds of a private residence at one time.

(q) Keeping in, or on, the grounds of a private residence an excess of three ounces of marijuana produced by privately cultivated plants, in an unlocked space, or that is visible by normal, unaided vision from a public place.

(r) Purchasing, possessing, consuming, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration dried, unprocessed marijuana, or its equivalent in excess of three ounces (except as may be permitted by a person validly licensed by the State of Missouri to do so).

(s) Cultivating marijuana plants that are visible by normal, unaided vision from a public place.

(t) Violating the terms of any marijuana license issued by the State of Missouri.

(u) Conducting any activities, or engaging in any conduct involving or relating to marijuana that requires a license from the State of Missouri, without a valid license for such conduct or activity.

(Ord. 2011-09-004; Amend 202212-00 __).

§75.085. HASHISH AND SYNTHETIC CANNABINOIDS.

1. It shall be unlawful to possess, sell, distribute, lend, rent, lease, give, exchange, display for sale, or transfer the following substances in the following quantities:

    a. Hashish in the amount of 5 grams or less;

    b. Synthetic Cannabinoids;

    c. MDPV.

2. It shall be an affirmative defense to any violation of subsection 1 if the possession, sale,

distribution, or transfer, is in usual course of business or practice, or in the performance of their official duties by the following persons:

a. Persons licensed under the provisions of RSMo. Chapters 330, 332, 334, 335, 338 and 340 .

b. Persons who procure controlled substances:

I. For handling by or under the supervision of persons employed by them, who are licensed under the provisions of RSMo. Chapters 330, 332, 334, 335, 338 and 340.

ii. For the purpose of lawful research, teaching or testing and not for resale.

c. Hospitals and other institutions which procure controlled substances for lawful administration by persons described in Subsection 1.

d. Officers or employees or appropriate enforcement agencies of federal, state or local governments, pursuant to their duties in enforcing the provisions of this Chapter.

e. Lawfully licensed manufacturers and wholesalers of controlled substances.

f. Carriers and warehousemen lawfully handling or distributing lawful controlled substances or drugs.

4. Definitions

"MDPV" means any substance containing the following, regardless of whether the substance is marketed as bath salts or otherwise:

3.4-Methylenedioxyprovalerone;

Methylone;

Mephedrone;

4-methoxymethcathinone;

4-Fluoromethcathinone; or

3-Fluoromethcathinone;

MDPV is commonly known by a number of names including, but not limited to, White Rush, Cloud 9, Ivory Wave, Ocean, Charge, Plus, White Lightening, Scarface, Hurricane Charlie, red Dove or White Dove

"Synthetic cannabinoid" means any natural or synthetic material, compound, mixture, or preparation, whether described as tobacco, herbs, incense, “Spice,” “K2” or any blend thereof, that contains any quantity of a substance that is a cannabinoid receptor agonist, including but not limited to any substance listed in RSMo. §195.017 .2(4)(ll) and any analogues, homologues; isomers, whether optical, positional, or geometric; esters; ethers; salts; and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, or salts is possible within the specific chemical designation, including

2-[(1R,3S)-3-hydroxycyclohexyl]-5-(20methyloctan-2-yl)phenol (also known as CP47,497) and homologues;

(6aS,10aS)-9-(hydroxmethyl)-6,6-dimethy1-3-(2-methyloctan-2-y1)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol)(also known as HY-211 or Dexanabinol);

1-Pentyl-3-(l-naphthoyl)indole (also known as Jwh-018); or

Butyl-3-(1-naphthoyl)indole (also known as JWH-073).

(Ord. 2011-09-004; Ord. 202212-00 __)

§75.090. INDECENT EXPOSURE.

A person commits the offense of indecent exposure if he knowingly exposes his genitals under circumstances in which he knows that his conduct is likely to cause affront or alarm.

§75.100. FIREARMS DEFINITIONS.

1. **Firearm**. The term "firearm” means

   a. a shotgun having a barrel or barrels of less than 18 inches in length;

   b. a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length;

   c. a rifle having a barrel or barrels of less than 16 inches in length;

   d. a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; any other weapon, as defined in Subsection 5;

   e. a machine gun;

   f. a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and

g. a destructive device.

h. The term "firearm" shall not include an antique firearm or any device (other than a machine gun. or destructive device) which, although designed as a weapon; by reason of the date of its manufacture, value, design and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

i. The term “firearm” includes any weapon that is designed or adapted to expel a projectile by the action of an explosive.

2. **Machine gun**. The term "machine gun" means any weapon which shoots, is designed to shoot or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for the use in converting a weapon into a machine gun and any combination of part& from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

3. **Rifle**. The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull. of the trigger and shall include any such weapon which may be readily restored to fire a fixed cartridge.

4. **Shotgun**. The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

5. **Any other weapon**. The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of any explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell weapons with the combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire, such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made or intended to be fired from the shoulder and not capable of firing fixed ammunition.

6. **Destructive device**. The term destructive device means:

a. any explosive, incendiary or poison gas,

1) bomb,

2) grenade,

3) rocket having a propellant charge of more than four ounces,

4) missile having an explosive or incendiary charge of more than one quarter ounce,

5) mine, or

6) similar device;

b. any type of weapon by whatsoever name known which will, or which may readily be converted to, expel a projectile by the action of any explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which is generally recognized as particularly suitable for sporting purposes; and

c. any combination of parts either designed or intended for use in converting any device into a destructive device as defined in Section 75.100(1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon; which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned or given by the secretary of the army, pursuant to the provisions of Section 4684, (2) 4685, or 4686 of Title 10 of the United States code; or any other device which the Secretary of the Treasury or his delegate finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

7. **Antique firearms**. The term "antique firearms" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

8. **Unserviceable firearm**. The term "unserviceable firearm" means a firearm which is capable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

9. **Make**. The term "make" and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this Chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

10. **Transfer**. The term "transfer" and the various derivatives of such word shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

11. **Dealer**. The term "dealer"means any person, not a manufacturer or importer, engaged in the

business of selling, renting, leasing or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

12. Peace Officer. The term "Peace Officer" means any state, county and municipal peace officers who have completed the training required by the police officer standards and training commission pursuant to sections RSMo.§§590.030 to 590.050, and possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, whether such officers are on or off duty, and whether such officers are within or outside of the law enforcement agency's jurisdiction, or all Qualified Retired Peace Officers or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer.

13. Qualified Retired Peace Officers. The term "Qualified Retired Peace Officers" means any means an individual who:

1. Retired in good standing from service with a public agency as a peace officer, other than for reasons of mental instability.

2. Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest.

3. Before such retirement, was regularly employed as a peace officer for an aggregate of fifteen years or more, or retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency.

4. Has a nonforfeitable right to benefits under the retirement plan of the agency if such a plan is available.

5. During the most recent twelve-month period, has met, at the expense of the individual, the standards for training and qualification for active peace officers to carry firearms.

6. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

7. Is not prohibited by federal law from receiving a firearm; and

8. Carries:

    A. A photographic identification issued by the agency from which the individual retired from service as a peace officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the

standards established by the agency for training and qualification for active peace officers to carry a firearm of the same type as the concealed firearm; or

B. A photographic identification issued by the agency from which the individual retired from service as a peace officer; and

C. A certification issued by the state in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state to meet the standards established by the state for training and qualification for active peace officers to carry a firearm of the same type as the concealed firearm.

14. Judicial Officer. Those persons vested by article V, section 1 of the Constitution of Missouri with the judicial power of the state and those persons vested by Article III of the Constitution of the United States with the judicial power of the United States, the members of the federal judiciary.

15. Corrections Officer. The term "Corrections Officer" means any warden, superintendent and keeper of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime.

(Amend. Ord. 05-2010-02)

§75.105. CONCEALED FIREARMS AND WEAPONS

1. A person commits the offense of unlawful use of weapons if he/she knowingly carries concealed upon or about his/her person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use.

2. Subsection 1 shall not apply to:

    1. All Peace Officers

    2. All Corrections Officers;

    3. Members of the Armed Forces or National Guard while performing their official duty;

    4. All Judicial Officers;

    5. Any Federal Probation Officer or Federal Flight Deck Officer as defined under the Federal Flight Deck Officer Program, 49 U.S.C. Section 44921;

    6. Any State Probation or Parole Officer, including supervisors and members of the

Board of Probation and Parole;

7. Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the Board of Police Commissioners under Section 84.340, RSMo.; and

8. Any coroner, deputy coroner, medical examiner or assistant medical examiner.

9. Any person whose bona fide duty is to execute process, civil or criminal.

10. Any person twenty-one (21) years of age or older transporting a concealable firearm in the passenger compartment of a motor vehicle, so long as such concealable firearm is otherwise lawfully possessed.

3. Subsection 1 shall not apply when:

1. The actor is transporting such weapons in a non-functioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible.

2. The actor is in possession of an exposed firearm in his/her dwelling unit or upon premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this State from a point outside this State to a point outside this State.

(Ord. 05-2010-02)

§75.110 CONCEALED CARRY ENDORSEMENTS

1. Notwithstanding subsection any thing in City Code §75.105 [75.110] to the contrary, a concealed carry endorsement issued pursuant to sections RSMo. §§571.101 to 571.121 or a concealed carry endorsement or permit issued by another state or political subdivision of another state shall authorize the person in whose name the permit or endorsement is issued to carry concealed firearms on or about his or her person or vehicle throughout the state in accordance with applicable law.

2. No driver's license or nondriver's license containing a concealed carry endorsement issued pursuant to RSMo. §§571.101 to 571.121, or a concealed carry endorsement or permit issued by another state or political subdivision of another state, shall authorize any person to carry concealed firearms into:

1. Any police, sheriff, or highway patrol office or station without the consent of the chief law enforcement officer in charge of that office or station. Possession of a firearm in a vehicle on the premises of the office or station 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.

2. Within twenty-five feet of any polling place on any election day. Possession of a firearm in a vehicle on the premises of the polling place 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.

3. The facility of any adult or juvenile detention or correctional institution, prison or jail. Possession of a firearm in a vehicle on the premises of any adult, juvenile detention, or correctional institution, prison or jail 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.

4. Any courthouse solely occupied by the circuit, appellate or supreme court, or any courtrooms, administrative offices, libraries or other rooms of any such court whether or not such court solely occupies the building in question. This subdivision shall also include, but not be limited to, any juvenile, family, drug, or other court offices, any room or office wherein any of the courts or offices listed in this subdivision are temporarily conducting any business within the jurisdiction of such courts or offices, and such other locations in such manner as may be specified by supreme court rule pursuant to subdivision (6) of this subsection. Nothing in this subdivision shall preclude any Peace Officer while within their jurisdiction and on duty, any Corrections Officer or Judicial Officer, or such other persons who serve in a law enforcement capacity for a court as may be specified by supreme court rule pursuant to subdivision (6) of this subsection from carrying a concealed firearm within any of the areas described in this subdivision. 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.

5. Any meeting of the governing body of the City or other a unit of local government; or any meeting of the general assembly or a committee of the general assembly, except that nothing in this subdivision shall preclude a member of the body holding a valid concealed carry endorsement from carrying a concealed firearm at a meeting of the body which he or she is a member. Possession of a firearm in a vehicle on the premises 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.

6. Those portions of any building owned, leased or controlled by the City. Any portion of a building in which the carrying of concealed firearms is prohibited or limited shall be clearly identified by signs posted at the entrance to the restricted area. Any building used for public housing by private persons, highways or rest areas, firing ranges, and private dwellings owned, leased, or controlled by the City is exempt from this restriction on the carrying or possession of a firearm. There shall be no criminal penalty for violation of this prohibition, provided however, that persons

violating this prohibition shall be denied entrance to the building, ordered to leave the building and such person shall be deemed to be trespassing upon City property and shall be subject to the penalties for trespassing described in the City Code in addition to being issued a citation for violation of this Section as provided for herein. Any employees of the City who violate this section may be subjected to disciplinary measures.

7. Any establishment licensed to dispense intoxicating liquor for consumption on the premises, which portion is primarily devoted to that purpose, without the consent of the owner or manager. The provisions of this subdivision shall not apply to the licensee of said establishment. The provisions of this subdivision shall not apply to any bona fide restaurant open to the general public having dining facilities for not less than fifty persons and that receives at least fifty-one percent of its gross annual income from the dining facilities by the sale of food. This subdivision does not prohibit the possession of a firearm in a vehicle on the premises of the establishment and 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. Nothing in this subdivision authorizes any individual who has been issued a concealed carry endorsement to possess any firearm while intoxicated.

8. Any place where the carrying of a firearm is prohibited by federal law.

9. Any higher education institution or elementary or secondary school facility without the consent of the governing body of the higher education institution or a school official or the district school board. Possession of a firearm in a vehicle on the premises of any higher education institution or elementary or secondary school facility 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.

10. Any portion of a building used as a child-care facility without the consent of the manager. Nothing in this subdivision shall prevent the operator of a child-care facility in a family home from owning or possessing a firearm or a driver's license or nondriver's license containing a concealed carry endorsement.

11. Any gated area of an amusement park. Possession of a firearm in a vehicle on the premises of the amusement park 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.

12. Any church or other place of religious worship without the consent of the minister or person or persons representing the religious organization that exercises control over the place of religious worship. Possession of a firearm in a vehicle on the premises 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.

13. Any private property whose owner has posted the premises as being off-limits to concealed firearms by means of one or more signs displayed in a conspicuous place of a minimum size of eleven inches by fourteen inches with the writing thereon in letters of not less than one inch. The owner, business or commercial lessee, manager of a private business enterprise, or any other organization, entity, or person may prohibit persons holding a concealed carry endorsement from carrying concealed firearms on the premises and may prohibit employees, not authorized by the employer, holding a concealed carry endorsement from carrying concealed firearms on the property of the employer. If the building or the premises are open to the public, the employer of the business enterprise shall post signs on or about the premises if carrying a concealed firearm is prohibited. Possession of a firearm in a vehicle on the premises 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. An employer may prohibit employees or other persons holding a concealed carry endorsement from carrying a concealed firearm in vehicles owned by the employer.

14. Any hospital accessible by the public. Possession of a firearm in a vehicle on the premises of a hospital 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.

3. Carrying of a concealed firearm in a location specified in subsections 2.1 to 2.14 of this section by any individual who holds a concealed carry endorsement issued pursuant to sections RSMo. §§571.101 to 571.121 shall not be a criminal act but may subject the person to denial to the premises or removal from the premises. If such person refuses to leave the premises and a peace officer is summoned, such person may be issued a citation for an amount not to exceed one hundred dollars for the first offense. If a second citation for a similar violation occurs within a six-month period, such person shall be fined an amount not to exceed two hundred dollars and his or her endorsement to carry concealed firearms shall be suspended for a period of one year. If a third citation for a similar violation is issued within one year of the first citation, such person shall be fined an amount not to exceed five hundred dollars and shall have his or her concealed carry endorsement revoked and such person shall not be eligible for a concealed carry endorsement for a period of three years. Upon conviction of charges arising from a citation issued pursuant to this subsection, the court shall notify the sheriff of the county which issued the certificate of qualification for a concealed carry endorsement and the department of revenue.

(Ord. 05-2010-02)

§75.120. SALES TO INTOXICATED PERSONS.

No pawnbroker, secondhand dealer or other person engaged in business shall purchase from or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant or to any person in a condition of agitation and excitability.

§75.135. WEAPONS, POSSESSING WHILE INTOXICATED, PROHIBITED.

It shall be unlawful for any person to possess a firearm while intoxicated, and for purposes of this section, intoxicated shall mean substantially impaired mental or physical capacity resulting from introduction of any substance into the body.

(Amd. Ord. 12-2-86)

§75.140. DISCHARGE AND USE OF, PROHIBITED.

It shall be unlawful for any person, firm or corporation to, within the City, use, discharge or explode any shells or cartridges, blank or otherwise, pistols, toy or otherwise, cannon, toy or otherwise, rifle, toy or otherwise, or any other gun.

§75.145. SHOOTING MATCH.

1. **Definitions**.

    a. **Shooting match**. Any event open to members of the general public wherein individuals compete for sport, money, prizes or other consideration by possessing, displaying, carrying, firing, discharging or otherwise using any deadly weapon including, but not limited to, a revolver, or pistol of any description, shotgun or rifle which may be used for the explosion of cartridges or any airgun, "BB gun", gas operated gun or spring. gun, or any instrument, toy or weapon. commonly known as a "pea shooter, "slingshot" or "beany" or any bow made for the purpose of throwing or projecting arrows or missiles of any kind by any means whatsoever, whether such instrument is called by any name set forth above or by any other name.

    b. **City**. The City of Elsberry, Missouri.

    c. **Organization**. Any civic, fraternal, benevolent, or other not-for-profit organization.

2. **Application**. Any organization desiring to organize, sponsor, and/or otherwise hold a shooting match within the City of Elsberry, Missouri, shall at least ten days before the last regular meeting of the Elsberry Board of Aldermen prior to the date upon which the shooting match is proposed to be held, submit to the city clerk a written application for the permit to hold such shooting match, which application shall contain the following:

    a. Specific location where match is to take place.

    b. Time of day during which match is to take place.

    c. Name of organization sponsoring and/or holding match.

    d. Type of weapon to be possessed, displayed, carried, fired, discharged or otherwise used

or allowed in the match.

e. Statement by organization sponsoring and/or holding match that no intoxicating liquor or non-intoxicating beer will be allowed to be served; or consumed on the premises where the match is held.

f. Statement of safety precautions to be taken to avoid injury.

g. Statement of willingness of organization sponsoring and/or holding match to allow city police officers to be present on the premises during match.

3. **Permit**. Upon timely receipt of the written application described in Section 75.145(2), the Board of Aldermen shall approve said application and issue a permit for said match to be held if the written application reflects all the information required by Section 75.145 (2), and if based upon the information contained in the written application, the Board of Aldermen determine that from the information submitted, it appears that the match can be held without endangering the pub1ic peace and safety.

4. **Denial**. If the application submitted to the Board of Aldermen should fail to comply with the provisions of Section 75.145(2) or Section 75.145(3), then the Board of Aldermen shall deny said application and refuse to issue a permit, and all city ordinances concerning deadly weapons shall be applicable, and no such match shall be held, the penalties contained in other City ordinances concerning carrying, concealing and/or possession of deadly weapons being fully applicable.

5. **Revocation**. If a permit for the match is granted pursuant to the powers of the board of aldermen granted under Section 75.145(3), and the organization sponsoring and/or holding the match shall fail to comply with the statements made in the application pursuant to Section 75.145(2) or shall otherwise fail to comply with the provisions of Section 74.145(2) and/or Section 75.145(3), then the permit shall be immediately withdrawn and no further right shall exist to hold said match, and all City ordinances concerning deadly weapons shall immediately be applicable to all activities, and no such match shall be further had or continued, the penalties contained in other city ordinances concerning carrying, concealing, and/or possession of deadly weapons being fully applicable.

§75.150. SALE OF FIREARMS TO MINORS.

No person shall directly or indirectly, sell or deliver, loan or barter to any person under eighteen (18) years of age, without the consent of the parent or guardian of such minor, any kind of firearm, gun, revolver, pistol, starter pistol or starter pistol with automatic ejector or firearm of any description, casing or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons or devices enumerated or described herein.

§75.160. GUNS.

1. **Possession prohibited**. Every person who, within the City, possesses any firearm of the kind commonly known as a machine gun, as hereinafter defined, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed ninety (90) days or by a fine not to exceed five hundred dollars ($500.00) or by both such fine and imprisonment.

2. **Applicability to police**. Nothing in this Section shall prohibit the police department and the members thereof, sheriffs or the members of the military or Naval forces of this State or of the United States from possessing such firearms for official use in the discharge of their duties.

§75.170. EXPLOSIVE OR FLAMMABLE DEVICES.

It shall be unlawful for any person to make, use or possess on his person, or have under his control, any explosive device, including a Molotov cocktail, containing flammable, combustible or explosive material or substance which can be used as a fire bomb either by igniting the fuse or breaking the device; provided, however, any person who can show that he is engaged in any lawful activity, business, calling, employment or occupation requiring him to have such a device or such material or substance in his possession or under his control is hereby exempt from the operation of this Section. .

§75.180. SEIZURE AND FORFEITURE.

Any firearm or ammunition involved in or used or .intended to be used in, any violation or provisions of this Chapter or in violation of any other criminal law of the City, shall be subject to seizure and forfeiture.

§75.200. LOITERING DEFINITIONS.

1. **"Loitering"** shall mean remaining idle in essentially one location and shall include the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; to stand around and shall also include the colloquial expression "hanging around".

2. **"Public place"** shall mean any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

§75.201. LOITERING, POLICE ORDER TO DISPERSE, PENALTY.

1. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such manner so as to:

    a. Obstruct any public street, public highway, public sidewalk or any other public place or

building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

b. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon or thereto.

2. When any person causes or commits any of the conditions enumerated in Subsection 1 herein, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of the Chapter.

§75.202. DISORDERLY CONDUCT DEFINITIONS.

1. **"Public place**" shall mean any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

2. **"Riot"** shall mean a public disturbance involving:

   a. An act or acts of violence by one or more persons part of an assemblage of three or more persons., which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual.

   b. A threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons .having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

3. **"Incite a riot"** shall mean, but is not limited to, urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written:

   a. Advocacy of ideas.

   b. Expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts.

§75.203. DISORDERLY CONDUCT PROHIBITED.

A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place:

1. Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of his life, injury to his limb or health.

2. Commits an act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged.

3. Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another.

4. Interferes with another' s pursuit of a lawful occupation by acts of violence.

5. Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by the city police or other lawful authority known to be such.

6. Is in a public place under the influence of an intoxicating liquor or drug in such condition as to be unable to exercise care for his own safety or the safety of others.

7. Resists or obstructs the performance of duties by city police or any other authorized official of the City, when known to be such an official.

8. Incites, attempts to incite, or is involved in attempting to incite a riot.

9. Addresses abusive language or threats to any member of the police department, any other authorized official of the City who is engaged in lawful performance of his duties, or any other person when such words have a tendency to cause acts of violence. Words merely causing displeasure, annoyance or resentment are not prohibited.

10. Damages, befouls or disturbs public property or the property of another so as to. create a hazardous, unhealthy or physically offensive condition.

11. Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby or near to any public highway, road, street, lane, alley, park, square or common, whereby the public peace is broken or disturbed or the traveling public annoyed.

12. Fails to obey a lawful order to disperse by a police officer when known to be such an official, where one or more persons are committing acts of disorderly conduct in the immediate vicinity and the public health and safety is imminently threatened.

13. Uses abusive or obscene language or makes an obscene gesture.

§75.204. EXEMPTIONS.

Sections 75.200 through 75.204 shall not be construed to suppress the right to lawful assembly, picketing, public speaking or other lawful means of expressing public opinion not in contravention of other laws.

§75.205. LOUD MECHANICAL NOISE

1. No person shall use, cause to be used, or operate any mechanical device, engine, generator or pneumatic tool in such a manner as to create an unreasonably loud noise that annoys others on residential property or on public streets, or so as to be plainly audible at a distance of twenty-five (25) or more feet from the sound source by another person located on a residential property other than the property from which the sound is made, before 7:00 A.M. or after 10:00 P.M. of any day.

2. No person shall use or operate an electric generator engine that may be heard on residential property other than the property on which the generator is located, for more than four hours in any 24 hour period.

3. The provisions of Subsection 1 above, shall not apply:

    a. To snow plow operators during a snow event;

    b. During any public electric utility outages;

    c. To persons engaged in special events approved by the City for no longer than three days;

    d. To public school district personnel idling buses on public school property for no longer than forty-five minutes;

    e. To emergency service personnel in the performance of their official duties

    f. To activities necessitated by a declared federal or state disaster in the City; or

    g. To diesel powered motor vehicles being driven or idling not more than twenty minutes.

4. The provisions of this Section concerning electric generators shall not apply:

    a. To public electric utilities regulated by the Missouri Public Service Commission;

    b. During any public electric utility outages;

c. To persons engaged in special events approved by the City for no longer than three days;

d. To persons engaged in construction work on properties for which public utility electric service is unavailable, provided that they have obtained a permit from the City and the duration of its use is no longer than ten days;

e. To governmental or emergency service personnel in the performance of their official duties;

f. To activities necessitated by a declared federal or state disaster in the City.

(Ord. 2012-06-002).

§75.210. COMMON ASSAULT.

It shall be unlawful for any person to assault or beat or wound another person without just cause and any person found guilty of such an action shall be deemed guilty of a misdemeanor.

§75.220. OBSTRUCT POLICE.

It shall be unlawful for any person to obstruct, resist or oppose any chief of police, police officer, auxiliary policeman or other peace office or any ministerial officer of the City in the service or attempt to serve or execute any writ, warrant or process, original or judicial, or in the discharge of any other duty in any case, or in the service, or attempt to serve, any order or rule of court in any case.

§75.230. STRIKE POLICE OFFICER.

It shall be unlawful for any person to strike, beat or wound any chief of police, police officer, auxiliary policeman or any other peace officer of the City while such officer is actively engaged in the performance of duties imposed upon him by law and every person who shall aid and assist in so doing shall be guilty of the same offense.

§75.235 DISTURBING JUDICIAL PROCEEDINGS

No person shall, with the purpose to intimidate a judge, attorney, juror, party or witness and thereby influence a judicial proceeding, he or she disrupts or disturbs a judicial proceeding by participating in an assembly and calling aloud, shouting, or holding or displaying a placard or sign containing written or printed matter, concerning the conduct of the judicial proceeding, or the character of a judge, attorney, juror, party or witness engaged in such proceeding, or calling for or demanding any specified action or determination by such judge, attorney, juror, party, or witness in connection with such proceeding.

(Ord 2019-07-003)

§75.240. ESCAPE FROM JAILOR CUSTODY.

If any person confined in any city or county jail upon conviction for violation of any ordinance of the City or held in custody going to such jail, shall break such jailor custody and escape therefrom, he shall, upon conviction, be guilty of a misdemeanor.

§75.245 OBSTRUCTING GOVERNMENT OPERATIONS

No person shall purposely obstruct, impair, hinder or pervert the performance of a governmental function by the use or threat of violence, force, or other physical interference or obstacle.

(Ord 2019-07-003).

§75.250. CONTRIBUTING TO DELINQUENCY OF CHILD, PENALTY.

When in all cases where any child shall be a delinquent child as defined by the statutes of this State, the parent or parents, legal guardian, or person having the custody of such-child or any other person responsible for or by any act encouraging, causing or contributing to the delinquency of such child shall be guilty of a misdemeanor and upon trial and conviction thereof, shall be fined a sum not exceeding $500.00 or imprisoned for a period not exceeding ninety (90) days or by both such fine and imprisonment. The court may impose conditions upon any person found guilty under this Section and so long as such person shall comply therewith to the satisfaction of the court, the sentence imposed may be suspended. Delinquent child is one who is under the age of 18 years.

§75.255 PARENTAL RESPONSIBILITY

1. Notice: Whenever an unemanicipated minor shall be stopped or taken into custody for the commission of any criminal act or City ordinance violation within the City, the Police Department or City Clerk shall notify such minor's parent or legal guardian of such fact and make the minor's parent or legal guardian aware of his/her responsibility under this Section. The notice shall be in such a form as to be signed by the notified parent or legal guardian signifying receipt of the notice. If the parent or legal guardian refuses to sign the notice, the notifying Police Officer or Clerk shall indicate such refusal on the notice.

2. Parental Neglect: It shall be an ordinance violation for any parent or legal guardian who fails to exercise customary and effective control over a minor so as to contribute to, cause, fail to prevent, or tend to cause a minor to commit any criminal act or ordinance violation.

3. Rebuttable Presumption: Written notice as provided in Subsection 1 of this Section shall be prima facie evidence and a rebuttable presumption of parental neglect as defined in Subsection 2 of this Section if the minor commits a second (2nd) or successive criminal act or violation of any City ordinance.

4. Restitution. In addition to any penalty imposed for parental neglect as provided in Subsection

2 of this Section , the court may order the defendant to make restitution to any person or entity who has been damaged by the misconduct of the minor in an amount not to exceed two thousand dollars ($2,000.00). This provision shall not apply to a foster parent of such minor. Restitution shall only be ordered if the parent or legal guardian has been given written notice of the possible restitution, and has also been afforded an opportunity to be heard by the judge of the Municipal Court concerning liability for the possible restitution. The liability provided in this Subsection shall not be a bar to any action or proceeding against the unemanicipated minor or for damages not paid by the parent or legal guardian.

(Ord. 2013-07-001).

§75.260 POSTING HANDBILLS.

It shall be unlawful for any person to place, post, attach or in any way deposit or cause to be placed, posted, or attached any sign, poster, handbill, paper, or similar article or thing at any time upon any utility pole or official traffic control device, or cause the same to be done within the public right-of-way so as to obstruct the vision of the operator of any motor vehicle.

(Amd. Ord. 10-1-00)

§75.270. NO GAME OR SPORTS ACTIVITIES TO BE ENGAGED IN ON CITY STREETS.

1. The following words and phrases when used in this Section mean:

    a. **Streets**: The paved or hard surfaced portion of all rights-of-way within the City of Elsberry, Missouri, used by the public for vehicular traffic. This shall not include those rights-of-way commonly known as alleys.

    b. **Games or Sport Activities**: Any activity engaged in by a pedestrian(s) which is recreational in nature, including, but not limited to, basketball, football, baseball, softball, stick ball, tennis, badminton, field hockey, soccer, frisbee throwing, dodge ball, and kick ball. This shall not include walking or jogging when said walking or jogging is not incidental to any other recreational activity.

2. No person shall engage in any game or sports activity upon any streets within the City of Elsberry, Missouri.

(Amd. Ord. 1-2-04).

§75.275 OBSTRUCTING STREETS AND PUBLIC PLACES

1. No person shall interfere with, obstruct, endanger, barricade, or place anything to interfere with, obstruct, or endanger the free and uninterrupted passage on, or the proper use of, any public street, sidewalk, alley, public building, or public place; except: (1) as may be

necessary in the process of any construction work as permitted by the Board of Alderman; (2) if temporary permission has been granted by the Board of Aldermen, or (3) such use is permitted by Elsberry Municipal Code §56.100.

2. No owner or resident of any property shall permit any vegetation, structure, material, or object to be so close to the street line as to constitute a traffic hazard in obstructing the vision of an operator of a motor vehicle on a street or exiting from a driveway or in any operation of a motor vehicle.

3. No abandoned, inoperable, or unregistered motor vehicle may be parked on any public street or in a public parking space, except as permitted by Elsberry Municipal Code §56.100.

(Ord. 2012-06-002)

§75.280. POSSESSION, MANUFACTURE, DELIVERY, AND/OR ADVERTISING OF DRUG PARAPHERNALIA PROHIBITED.

1. **Definitions**: Under Section 75.280, the following words shall have the following meanings:

   a. **"Controlled substance**" means a drug, substance, or immediate precursor in Schedules I through V, listed or enumerated in Section 195.017 RSMo., or adopted by the state division of health pursuant thereto, or any subsequent amendments or revisions thereof.

   b. **"Drug paraphernalia"** means and includes all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

      (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

      (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

      (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

      (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.

      (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances.

(9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Smoking and carburetion masks.

(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

(f) Miniature cocaine spoons and cocaine vials.

(g) Chamber pipes.

(h) Carburetor pipes.

(I) Electric pipes.

(j) Air-driven pipes.

(k) Cgukkyos.

(1) Bongs.

(m) Ice pipes or chillers.

c. **"Marijuana"** means all parts of the plant genus Cannabis in any species or form thereof, including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

2. **Factors in Determination**. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

a. Statements by an owner or by anyone in control of the object concerning its use.

b. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.

c. The proximity of the object, in time and space, to a direct violation of this section.

d. The proximity of the object to controlled substance.

e. The existence of any residue of controlled substance on the object.

f. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this section; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.

g. Instructions, oral or written, provided with the object concerning its use.

h. Descriptive materials accompanying the object which explain or depict its use.

I. National and local advertising concerning its use.

j. The manner in which the object is displayed for sale.

k. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

l. Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise.

m. The existence and scope of legitimate uses for the object in the community.

n. Expert testimony concerning its use.

3. **Possession, manufacture, delivery and/or advertising of drug paraphernalia unlawful**. No person shall use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. No person shall deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance. No person shall place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(Amd. Ord. 4-2-05)

§75.296. BICYCLES, IN-LINE SKATES, ROLLER SKATES, SKATEBOARDS, NON-MOTORIZED SCOOTERS OR ANY OTHER SIMILAR TWO- OR FOUR-WHEELED RECREATIONAL DEVICES -- HELMET REQUIRED

A. Every person fifteen years of age or younger, who operates or is a passenger on a bicycle or uses in-line skates, roller skates, skateboards, scooters, or any other similar two- or four-wheeled recreational devices upon any highway, roadway, alleyway or public right-of-way within the City limits of the City of Elsberry, shall properly wear a bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

B. "Bicycle helmet" shall be defined as a piece of headgear which meets or exceeds the impact standard for protective bicycle helmets set by the U.S. Consumer Products Safety Commission Federal safety standards, those developed by the American National Standards Institute (ANSI), the Snell Memorial Foundation or the American Society of Testing and Materials (ASTM).

C. No person operating a bicycle upon any highway, roadway, alleyway or public right-of-way within the City limits of the City of Elsberry shall allow anyone who is four (4) years old or younger to ride as a passenger on the bicycle other than in a seat which shall adequately retain the passenger in place and protect the passenger from the bicycle's moving parts.

D. No parent, custodian, or legal guardian of a person age fifteen (15) years or under shall allow or permit said person to be in violation of this Section. This is an offense of absolute liability.

E. Any operator, passenger, parent, custodian, or guardian, found to be in violation of this Section may be issued an equipment violation notice as prescribed on a Missouri Uniform Complaint and Summons. Every violation of any provision of this Section shall be punishable by a fine of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00); provided however, that any person responsible for payment of the violation of this Section may have the violation dismissed, if the person submits a receipt for a proof of ownership (or purchase) of a bicycle helmet along with the helmet to the Elsberry Police Department within fourteen (14) calendar days of the date of the violation notice. The right to a dismissal as stated herein shall be applicable only to those persons who receive or are responsible for a first (1st) violation of this Section. If the proper proof of ownership is presented, and the violator's bicycle, in-line skates, roller skates, skateboards, scooters, or any other similar two- or four-wheeled recreational devices were impounded, they shall be promptly released to the violator's parent, custodian, or guardian.

(9-01-2006)

§75.299. PENALTY FOR VIOLATION

A. Any person seventeen (17) years of age or older who violates any provision of §§ 76.295, 76.297, and 76.298 of this Code is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00). Such an infraction does not constitute a crime and conviction shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

B. If any person under seventeen (17) years of age violates any provision of §§ 76.295 through 76.298, in the presence of a Peace Officer possessing the duty and power of arrest for violation of the general criminal laws of the State or for violation of ordinances of Counties or municipalities of the State, that officer may impound the bicycle, in-line skates, roller skates, skateboards, motorized bicycle, or scooters or any other similar two- or four-wheeled recreational devices being used in violation of §§ 76.295 through 76.298. The impoundment shall be for a period not to exceed five (5) days. The officer shall issue receipt to the owner or child riding the bicycle, in-line skates, roller skates, skateboards, motorized bicycle, or scooters or any other similar two- or four-wheeled recreational devices. .

C. Fines assessed to juvenile violators (age seventeen (17) and under) will be the legal responsibility of the violator's parent, custodian, or legal guardian; and therefore any

summons issued as a result of a violation committed by such a juvenile shall be issued to said violator's parent, custodian, or legal guardian.

(9-01-2006)

§75.300. OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.

No person shall knowingly fail or refuse to comply with any lawful order or direction of a police officer or fire department official.

(6-6-06).

§75.301. FALSE REPORTS TO OFFICIALS

It shall be a violation for any person to knowingly give false information, or cause to be made a false report, to any law enforcement officer, fire service officer, City official, or any emergency services personnel when such information is given to such officer or personnel in the discharge of their official duties within the City limits.

(9-02-2007)

§75.310 ENDANGERING THE WELFARE OF A CHILD

1. No person shall:

   (1) With criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years of age; or

   (2) Knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which causes or tends to cause the child to come within the provisions of RSMo, §211.031.1(2)(d) or RSMo, §211.031.1(3); or

   (3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years of age, recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him or her from coming within the provisions of RSMo, §211.031.1(1)(c) or RSMo, §211.031.1(2)(d) or RSMo, §211.031.1(3); or

   (4) Knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in this Code or RSMo. §579.105.

2. The term “knowingly", when used with respect to:

(a) Conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or

(b) A result of conduct, means a person is aware that his or her conduct is practically certain to cause that result.

3. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he or she is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

(Ord, 2019-07-004)

§75.311. UNLAWFUL TRANSACTIONS WITH A CHILD.

1. No person shall:

(1) Being a pawnbroker, junk dealer, dealer in secondhand goods, or any employee of such person, with criminal negligence buys or receives any personal property other than agricultural products from an unemancipated minor, unless the child's custodial parent or guardian has consented in writing to the transaction; or

(2) Knowingly permits a minor child to enter or remain in a place where illegal activity in controlled substances, as defined in chapter 579, is maintained or conducted; or

(3) With criminal negligence sells blasting caps, bulk gunpowder, or explosives to a child under the age of seventeen, or fireworks as defined in RSMo. § 320.106, to a child under the age of fourteen, unless the child's custodial parent or guardian has consented in writing to the transaction. Criminal negligence as to the age of the child is not an element of this crime.

2. The term "criminal negligence" means failure to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

3. The term “knowingly", when used with respect to:

(a) Conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or

(b) A result of conduct, means a person is aware that his or her conduct is practically

certain to cause that result.

(Ord. 2019-07-004)

§75.312 ABANDONMENT OF AIRTIGHT OR SEMI-AIRTIGHT CONTAINERS

1. No person shall knowingly abandon, discard, or permit to remain on premises under his or her control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other airtight or semiairtight container which has a capacity of one and one-half cubic feet or more and an opening of fifty square inches or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein.

2. Subsection 1 of this section does not apply to an icebox, refrigerator or other airtight or semiairtight container located in that part of a building occupied by a dealer, warehouse operator or repair person.

3. The defendant shall have the burden of injecting the issue under subsection 2 of this section.

4. The term “knowingly", when used with respect to:

   (a) Conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or

   (b) A result of conduct, means a person is aware that his or her conduct is practically certain to cause that result.

(Ord. 2019-07-004)

CHAPTER 76 -- TRAFFIC CODE

SUBCHAPTER A -- MOTOR VEHICLES

§76.010 DEFINITIONS.

The following words and phrases when used in this ordinance mean:

"**Alley" or "alleyway**", any street with a roadway of less than twenty feet in width;

"**All-terrain vehicle**", any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of six hundred pounds or less, traveling on three, four or more low pressure tires, with a seat designed to be straddled by the operator, and handlebars for steering control;

"**Authorized emergency vehicle**", a vehicle publicly owned and operated as an ambulance, or a vehicle publicly owned and operated by the state highway patrol, police or fire department, sheriff or constable or deputy sheriff, traffic officer or any privately owned vehicle operated as an ambulance when responding to emergency calls;

"**Bicycle**" means every vehicle propelled solely by human power upon which any person may ride, having two tandem wheels, or two parallel wheels and one or two forward or rear wheels, all of which are more than fourteen inches in diameter, except scooters and similar devices.
"**Business district**", the territory contiguous to and including a highway when within any six hundred feet along the highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

"**Central business (or traffic) district**", all streets and portions of streets within the area described by city ordinance as such;

"**Commercial vehicle**", every vehicle designed, maintained, or used primarily for the transportation of property;

"**Controlled access highway**", every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over the highway, street or roadway;

"**Crosswalk**", (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway; and/or (b) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface;

"**Curb loading zone**", a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials;

"**Driver**", every person who drives or is in actual physical control of a vehicle;

Electric Personal Assistive Mobility Device or "EPAMD": A self-balancing, two (2) non-tandem wheeled device, designed to transport only one (1) person,(handicapped or otherwise) with an electric propulsion system with an average power of seven hundred fifty (750) watts (one (1) horsepower), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy (170) pounds, is less than twenty (20) miles per hour.

"**Freight curb loading zone**", a space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight (or passengers);

Gator: Any utility vehicle manufactured for off-highway use that is sixty-three (63) inches or less in width, with an unladen dry weight of one thousand eight hundred fifty (1,850) pounds or less, traveling on four (4) or six (6) wheels, to be used primarily for landscaping, lawn care, or maintenance purposes.

Golf Cart: Any motorized conveyance or vehicle that has three (3) or more low-pressure tires in contact with the ground, designed primarily to transport persons and equipment while playing golf at not more than twenty-five (25) miles per hour. Golf carts are typically sixty (60) inches or less in width.

("**Highway**", the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

"**Intersection**", (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; and/or (b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

"**Laned roadway**", a roadway which is divided into two or more clearly marked lanes for vehicular traffic;

Low Speed Vehicle: Any golf cart, gator, Motorized Play Vehicle, Motorized Bicycle, or Motorized Skateboard.

"**Motor vehicle**", any self-propelled vehicle not operated exclusively upon tracks, except farm tractors and motorized bicycles;

"**Motorcycle**", every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor;

"**Motorized bicycle**", any two-wheeled or three-wheeled device having an automatic transmission and a motor with a cylinder capacity of not more than fifty cubic centimeters, which produces less than three gross brake horsepower, and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground;

Motorized Play Vehicle: Any self-propelled device such as a pocket rocket, pocket bike, mini moto, mini motorcycle, mini bike, quad bike, go-cart, mini-chopper, that, when unmodified, has a seat height of thirty (30) inches or less; and

1. If equipped with a gasoline motor, the motor cylinder capacity shall not be more than fifty (50) cubic centimeters, which produces less than three (3) gross brake

horsepower; or

2. If equipped with an electric motor, the motor shall produce less than 2,237.1 watts of power.

Motorized Skateboard: A self-propelled device such as a standup-scooter, motorized skateboard, or powerboard that has a deck on which a person may stand while the device is in operation and at least two (2) tandem wheels in contact with the ground; and

1. If equipped with a gasoline motor, the motor cylinder capacity shall not be more than fifty (50) cubic centimeters, which produces less than three (3) gross brake horsepower; or

2. If equipped with an electric motor, the motor shall produce less than 2,237.1 watts of power.

Motorized wheelchair." Any self-propelled conveyance primarily designed for use by a physically disabled or handicapped person and that is incapable of a speed in excess of twenty miles per hour.

"**Official time standard**", whenever certain hours are named herein they shall mean standard time or daylight-saving time as may be in current use in the city;

"**Official traffic control devices**", all signs, signals, markings and devices not inconsistent with this ordinance placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic;

"**Park**" or "**parking**", the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;

"**Passenger curb loading zone**", a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers;

"**Pedestrian**", any person afoot;

"**Person**", every natural person, firm, copartnership, association or corporation;

Physically Disabled". Any person who, because of physical disability, (a) cannot walk without sufficient risk of falling; (b) cannot walk 200 feet without stopping to rest; (c) cannot walk without the aid of another person, walker, cane, crutches, braces, prosthetic devices, and/or wheelchair; (d) is restricted by respiratory disease to an extent that the person's forced (respiratory) expiratory volume for one second when measured by Spirometry is less than one liter; (e) has an arterial oxygen tension (PAO_2) of less than 60 mm/hg; (f) uses portable oxygen; (g) has a cardiac condition to the extent that the person's functional limitations are verified by

their personal physician as requiring assistance for transportation purposes; (h) has lost an arm or a leg and does not have or cannot use an artificial limb; (I) has a disability that would be aggravated by walking 200 feet or more under normal environmental conditions, all as verified by their personal physician.

"**Police officer**", every officer of the municipal police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations;

"**Private road**" or "**driveway**", every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons;

"**Railroad**", a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails;

"**Railroad train**", a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars;

"Recreational off-highway vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is more than fifty inches but no more than sixty-seven inches in width, with an unladen dry weight of two thousand pounds or less, traveling on four or more non-highway tires and which may have access to ATV trails.

"**Residence district**", the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business;

"**Right-of-way**", the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other;

"**Roadway**", that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively;

"**Safety zone**", the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

"**Sidewalk**", that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians;

"**Stand**" or "**standing**", the halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers;

"**Stop**", when required, complete cessation from movement;

"**Stop**" or "**stopping**", when prohibited, any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal;

"**Street**" or "**highway**", the entire width between the lines of every way publicly maintained when any part thereof is open to the uses of the public for purposes of vehicular travel. "**State highway**", a highway maintained by the state of Missouri as a part of the state highway system;

"**Through highway**", every highway or portion thereof on which vehicular traffic is given preferential rights-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield rights-of-way to vehicles on such through highway in obedience to either a stop sign or a yield sign, when such signs are erected as provided in this ordinance;

"**Traffic**", pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel;

"**Traffic control signal**", any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

"**Traffic division**", the traffic division of the police department of the city, or in the event a traffic division is not established, then said term whenever used herein shall be deemed to refer to the police department of the city;

"**Vehicle**", any mechanical device on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, cotton trailers or motorized wheelchairs operated by handicapped persons.

(Ord. 6-2-2006; Amnd 2012-11-004; 2012-11-005; 2019-06-11).

§76.020. CITY TRAFFIC ENGINEER

Whenever the authority is given to the City Traffic Engineer to act, the City Police Chief may exercise that authority if the office of City Traffic Engineer is vacant.

(Ord. 2013-01-002)

§76.040. TRAFFIC VIOLATIONS BUREAU.

The municipal court shall establish a traffic violations bureau to assist the court with the clerical

work of traffic cases. The bureau shall be in charge of such person or persons and shall be open at such hours as the municipal judge may designate. The judge of the municipal court who hears traffic cases shall designate the specified offenses under this law or under the traffic ordinances of the City and the state traffic laws in accordance with Supreme Court Rule No. 37.50 in respect to which payments of fines may be accepted by the traffic violations bureau in satisfaction thereof, and shall specify suitable schedules the amount of such fines for first, second and subsequent offenses, provided such fines are within the limits declared by law or ordinance, and shall further specify what number of such offenses shall require appearance before the court.

(Amend. Ord. 05-01-1998).

§76.050. ONE-WAY STREETS AND ALLEYS.

In accordance with Section 300.245 of the Model Traffic Ordinance adopted by reference in Section 76.010 of this Code, and when properly sign-posted, traffic shall move only in the direction indicated upon the following streets:

1. 700 block of Brooksher Street and intersection with Sanderson and signs reading "One Way Do Not Enter" in eastbound direction.

2. Washington Street between Sixth Street and Fifth Street shall be designated as an east bound street, and vehicles making a right turn off of Sixth Street onto Washington Street shall travel in an easterly direction only, and no vehicles will be allowed to travel this portion of Washington Street in a westerly direction at any time. Directional arrows designating the proper direction of traffic flow shall be installed and maintained at the intersections of Sixth Street and Washington Street and a sign reading "One Way Do Not Enter" shall be installed at the intersection of Fifth Street and Washington Street proper position to be easily read from any vehicle traveling north or south on Fifth Street. (Amend. Ord. 07-01-1996).

(Ord. 05-01-1998; Amend Ord. 2023-10-001).

§76.055. LIMITATIONS ON TURNING TO PARK AND BACKING FROM PARKING SPACES.

1. Drivers of any vehicle making a turn from a traffic lane into a parking lot or space shall yield to any vehicle that is backing out of a designated parking space.

2. Drivers of any parked vehicle shall be permitted to move that vehicle from its parking space or parked position only when:

   A. Prior to making the movement, the driver gives the appropriate turn signal; and

   B. Such movement can be made in safety and without interfering with traffic or other vehicles other that are parking.

(Ord. 01-04-2007).

§76.060. STOP SIGNS.

In accordance with the provisions of Section 300.255 of the Model Traffic Ordinance adopted by reference in Section 76.010 of this Code, and when signs are erected giving notice thereof, drivers of vehicles shall stop at every intersection before entering any of the following streets or parts of streets:

Stop east bound and west bound on Ellis at Fifth
Stop east bound and west bound on Powell at Fourth
Stop east bound and west bound on Powell at Third
Stop west bound on Powell at Fifth
Stop west bound on Commerce at Fifth
Stop east bound and west bound on Commerce at Fourth
Stop east bound and west bound on Commerce at Third
Stop east bound on Commerce at Second
Stop east bound and west bound on Lincoln at Sixth
Stop east bound and west bound on Lincoln at Fifth
Stop east bound and west bound on Lincoln at Fourth
Stop east bound and west bound on Lincoln at Third
Stop east bound and west bound on Lincoln at Second
Stop east bound on Lincoln at Hwy. 79
Stop west bound on Lincoln at Seventh
Stop west bound on Dubois at Seventh
Stop east bound and west bound on DuBois at Sixth
Stop east bound and west bound on DuBois at Fifth
Stop east bound and west bound on DuBois at Fourth
Stop east bound and west bound on DuBois at Third
Stop east bound and west bound on DuBois at Second
Stop east bound on DuBois at Hwy. 79
Stop east bound and west bound on Griffin at Sixth
Stop east bound and west bound on Griffin at Fifth
Stop east bound and west bound on Griffin at Fourth
Stop east bound and west bound on Griffin at Third
Stop east bound and west bound on Griffin at Second
Stop west bound on Griffin at Seventh
Stop east bound on Griffin at Hwy. 79
Stop east bound and west bound on Hurricane at Fourth
Stop east bound and west bound on Hurricane at Second
Stop east bound and west bound on Hurricane at Third
Stop west bound on Hurricane at Fifth
Stop east bound on Auburn at Hwy. 79
Stop east bound and west bound on Auburn at Third

Stop east bound and west bound on Auburn at Second
Stop west bound on Auburn at Fifth
Stop east bound and west bound on Auburn at Fourth
Stop north bound and south bound on Fifth at Broadway
Stop north bound and south bound on Fourth at Broadway
Stop north bound and south bound on Third at Broadway (Amend Ord 2024-04-002)
Stop north bound on Sanderson at Lincoln
Stop north bound on Welch at Lincoln
Stop east bound and west bound on Lincoln at Welch
Stop north bound and south bound on Seventh at Broadway
Stop east bound on Broadway at State Route B
Stop east bound on New Hope Road at Welch
Stop south bound on Sanderson at New Hope Road
Stop west bound on Brooksher at Welch
Stop south bound on Beaumaye at Lincoln
Stop south bound and north bound on David at Lincoln
Stop north bound on David at Browns Mill Road
Stop north bound and south bound on Fourth at Browns Mill Road
Stop north bound on Fourth at Bailey
Stop east bound on Browns Mill Road at Hwy. 79
Stop north bound on Seventh at Lincoln
Stop north bound on Catholic Church Drive at Lincoln
Stop south bound on Lincoln at Brooksher
Stop south bound on Welch at Hwy. B
Stop west bound on New Hope at Tomahawk Drive
Stop south bound on Black St. at New Hope
Stop south bound on Black at Hwy. B
Stop east bound on New Hope at Hwy. B
Stop east bound on (Lovelace Road) at Hwy. 79
Stop west bound on (Lovelace Road) at Old Toll Gate Road
Stop east bound on Scenic Drive at Hwy. 79
Stop north and south bound on Scenic Drive at Hillcrest Drive
Stop north and south bound on Apple Drive at Hillcrest Drive
Stop east bound on Redwood at Hwy. 79
Stop east bound on Taylor Terrace Drive at Old Toll Gate Road
Stop east bound on Hurricane at Hwy. 79
Stop west bound on Hillcrest Drive at Old Toll Gate Road
Stop south bound on Baskett Drive at Lincoln Street. (Amend. Ord. 09-01-1991).
Stop north bound on North Third Street at Bailey. (Amend. Ord. 12-02-1992).
Stop east bound and west bound on Powell at Second. (Amend. Ord. 06-04-1990)
Stop east bound on Tomahawk at Sanderson. (Amend. Ord. 03-01-2000)
Stop west bound on New Hope at Tomahawk. (Amend. Ord. 03-01-2000)
Stop south bound on Tara at Lovelace Lane (Amend. Ord. 06-02-2000)
Stop south bound on Shelley Blvd. at Lovelace Lane (Amend. Ord. 06-02-2000)
Stop north bound on Shelley Blvd. at Tammy (Amend. Ord. 06-02-2000)

Stop west bound on Tammy at Tollgate Road (Amend. Ord. 06-02-2000)
Stop south bound on Briscoe Blvd. at Lincoln (Amend. Ord. 06-02-2000)
Stop south bound on Mayes at Ellis (Amend. Ord. 09-01-2001)
Stop east bound on Pin Oak at South Fifth (Amend. Ord. 09-01-2001)
Stop south bound on Briscoe Blvd. at Lincoln (Amend. Ord. 01-01-2003)
Stop west bound on Waggoner Blvd. at Briscoe Blvd. (Amend. Ord. 01-01-2003)
Stop north bound on Briscoe Blvd. at Baskett Drive (Amend. Ord. 01-01-2003)
Stop east bound on Baskett Drive at Waggoner Blvd. (Amend. Ord. 01-01-2003)
Stop north bound on Waggoner Blvd. at Brownsmill Road (Amend. Ord. 01-01-2003)
Stop west bound on Green at David (Amend. Ord. 01-01-2003)

The following streets shall have four way stops:

Fifth and Bailey
Browns Mill Road and Fifth Street
Browns Mill Road and Third Street
Broadway and Main
Sanderson and Broadway Extension (Amend. Ord. 03-02-2000)
Brooksher and Sanderson (Amend. Ord. 10-04-2004)
Lincoln and North Seventh Street (Amend. Ord. 08-05-2008)
Hillcrest Drive and Apple Street (Amend. Ord. 2016-12-002).

(Ord. . 06-01-1988; 05-01-1998; 10-02-2004).

§76.070. STOPPING OR PARKING PROHIBITED.

In accordance with Section 300.540 of the Model Traffic Ordinance adopted by reference in Section 76.010 of this Code, and when signs are erected giving notice thereof, no person shall stop or park a vehicle upon any of the streets or parts of streets as follows:

A. Areas where stopping or parking a vehicle is prohibited at all times:

1. South side of 700 Block of Brooksher.

2. West side of North Fifth from a point where a westerly prolongation of the south side of Commerce intersects the west side of North Fifth northerly to a point on the west side of North Fifth 300 feet north of the point where a westerly prolongation of the north side of Powell intersects the west side of North Fifth.

3. North side of Lincoln from the point where a northerly prolongation of the east side of Welch intersects the north side of Lincoln easterly to the point where a northerly prolongation of the west side of Sanderson intersects the north side of Lincoln.

4 East side of Sanderson from a point where the north line of New Hope intersects the east line of Sanderson northerly 100 feet.

5. South side of Broadway Extension from its intersection with the north side of State Highway B westerly to a point on the south side of Broadway Extension 100 feet west of the intersection of the west side of Sanderson with the south side of Broadway Extension.

6. West side of Welch from its intersection with the south side of Lincoln southerly 50 feet.

7. East side of Welch from its intersection with the south side of Lincoln southerly 50 feet.

8. West side of Sanderson from its intersection with the south side of Lincoln southerly 100 feet.

9. North side of Powell between North Second and Harris.

10. North side of DuBois between Third and Fourth.

11. East side of Second along west line of City owned old jail property.

12. West side of State Highway 79 (being referred to hereinafter as "Main") between State Highway B (being referred to hereinafter as "Broadway") and DuBois.

13. West side of Main from its intersection with the south side of Broadway southerly 90 feet.

14. North side of Broadway between Main and the alley running in a northerly and southerly direction through Block 3 of the Original Town of Elsberry.

15. South side of Broadway between Main and the alley running in a northerly and southerly direction through Block 4 of the Original Town of Elsberry.

16. North side of Broadway from its intersection with the east side of North Second easterly 31 feet.

17. South side of Broadway from its intersection with the east side of South Second easterly 29 feet.

18. West side of South Second from its intersection with the south side of Broadway southerly 30 feet.

19. North side of Broadway from its intersection with the west side of North Second westerly 33 feet.

20. South side of Broadway from its intersection with the west side of South Second

westerly 34 feet.

21. South side of Broadway from its intersection with the east side of South Third easterly 22 feet.

22. South side of Broadway from its intersection with the east side of South Fourth easterly 27 feet.

23. East side of North Fourth from its intersection with the north side of Broadway northerly 30 feet.

24. East side of South Fourth from its intersection with the south side of Broadway southerly 17 feet.

25. West side of North Fourth from its intersection with the north side of Broadway northerly 30 feet.

26. West side of South Fourth from its intersection with the south side of Broadway southerly 31 feet.

27. North side of Broadway from its intersection with the west side of North Fourth westerly 27 feet.

28. South side of Broadway from its intersection with the west side of North Fourth westerly 17 feet.

29. North side of Broadway from its intersection with the east side of North Fifth easterly 15 feet.

30. South side of Broadway from its intersection with the east side of South Fifth easterly 30 feet.

31. The East and West sides of North Fourth Street, starting at the intersection at DuBois Street and continuing north on North Fourth Street for 165 feet.

32. East side of North Fifth between Broadway and DuBois.

33. The East and West sides of North Fifth Street, starting at a point on the East side of North Fifth Street that is 100 feet north of the south boundary line of Lot 14 of Block 2 of the A. Brown Addition to the City of Elsberry as recorded in Plat Book 1 Page 77 of the Lincoln County Recorder's Office (now known as 512 North Fifth Street), and continuing south on North Fifth Street to a point on the East side of North Fifth Street at the south boundary line of Lot 4 of Block 1 of the A. Brown Addition to the City of Elsberry as recorded in Plat Book 1 Page 77 of the Lincoln County Recorder's Office (now known as 406 North Fifth Street).

34. East side of South Fifth from its intersection with the south side of Broadway southerly 30 feet.

35. West side of North Fifth from its intersection with the north side of Broadway northerly 68 feet.

36. North side of Broadway from its intersection with the west side of North Fifth westerly 30 feet.

37. South side of Broadway from its intersection with the west side of South Fifth westerly 30 feet.

38. North side of Broadway from its intersection with the east side of North Sixth easterly 25 feet.

39. South side of Broadway from its intersection with the east side of South Sixth easterly 25 feet.

40. East side of North Sixth from it intersection with the north side of Broadway northerly 42 feet.

41. East side of South Sixth from its intersection with the south side of Broadway southerly 42 feet.

42. West side of North Sixth from its intersection with the north side of Broadway northerly 42 feet.

43. West side of South Sixth from its intersection with the south side of Broadway southerly 42 feet.

44. North side of Broadway from its intersection with the west side of North Sixth westerly 26 feet.

45. South side of Broadway from its intersection with the west side of South Sixth westerly 26 feet.

46. East side of North Seventh between Broadway and DuBois.

47. East side of South Seventh from its intersection with the south side of Broadway southerly 30 feet.

48. West side of North Seventh from its intersection with the north side of Broadway northerly 43 feet.

49. West side of South Seventh from its intersection with the south side of Broadway

southerly 30 feet.

50. North side of Broadway from its intersection with the west side of North Seventh westerly 30 feet.

51. South side of Broadway from its intersection with the west side of South Seventh westerly 30 feet.

52. East side of Main from its intersection with the north line of Broadway northerly to the intersection of the east line of Main with an easterly prolongation of the south line of Lincoln.

53. West side of Main from its intersection with the north side of DuBois northerly 140 feet.

54. West side of Main from its intersection with the north side of Lincoln northerly 40 feet.

55. South side of Lincoln from the west bank of Town Branch easterly to the intersection of the south side of Lincoln with the west side of North Seventh.

56. West side of North Second from its intersection with the North side of Broadway northerly 100 feet.

57. The East side of South Third Street

B. Areas where stopping or parking a vehicle is limited as to time:

1. Repealed. by Ord. 09-02-2005.

2. Repealed. by Ord. 09-02-2005.

3. North side of Lincoln from its intersection with the west side of Main westerly 120 feet - 1 hour.

C. Areas where stopping or parking a vehicle is prohibited except in cases where said vehicle is temporarily stopped or parked for the purpose of unloading goods:

1. South side of Broadway from its intersection with the east line of South Seventh easterly 30 feet.

2. North side of Broadway from its intersection with the east side of North Seventh easterly 30 feet.

(Ord 06-01-1985; 07-02-1985; 12-01-1985; 06-02-1986; 03-02-1987; 09-01-1988; 04-1-1990; 06-

03-1990; 05-02-1991; 05-01-1998; 10-01-1998; 10-01-2006; 03- -2015; Amend 2022-12-001).

§76.075 HANDICAP PARKING.

A. It shall be unlawful for any person to park or stand any vehicle in any stall or space designated or reserved for handicapped persons by means of an upright sign whether on a pole or attached to a building which is inscribed with the international symbol of accessibility and/or the word "Handicapped" whether upon public or private property open to public use, unless the vehicle bears the State or Missouri license plate or placard for the disabled as provided for in Section 301.142 or Revised Statutes of Missouri, as amended. Said sign may or may not contain additional language indicating that the stall or space is designated or reserved for "handicapped persons. "

B. Any vehicle operator who is not physically disabled shall not use the handicapped parking space unless there is a physically disabled person in the vehicle, or while the vehicle is being used to transport a physically disabled person.

(Ord 05-01-1998).

§76.080. SPEED LIMITS.

1. It is hereby determined that the speed permitted by State law outside business and residential districts as applicable on the following streets is greater than is reasonable or safe under conditions found to exist upon such streets and it is hereby declared that the speed limits shall be as herein set forth on those streets or parts of streets herein designated at the times herein specified when signs are erected giving notice thereof.

Name of Street	Speed Limit	At All Times
Broadway from Highway 79 West to Seventh Street	25 mph	At all times
Fifth Street between Page Branch Road and Ellis	25 mph	At all times
Broadway between Black and Sanderson	20 mph	At all times
New Hope Rd. Between Sanderson and Tomahawk Drive.	20 mph	At all times
Welch between State Highway B and Lincoln	20 mph	At all times
North and South Sanderson Streets	15 mph	At all times

David between Brown Mill Road and Lincoln	20 mph	At all times
Lincoln between David and Welch	20 mph	At all times
Highway 79	As posted	At all times
Highway B from West City Limits East to Tomahawk Dr.	45 mph	At all times
Highway B from Tomahawk Dr. East to Black Street	35 mph	At all times
Highway B from Black Street East to Seventh Street	25 mph	At all times
All other City Streets	25 mph	At all times

(Ord. 03-04-1985; 9-1-1986; 09-02-1990; 05-01-1998; 11-03-06; Ord 12-04-2009; 2012-10-00_)

2. For the purposes of enforcing the speed limit laws of this state, it is a rebuttable presumption that the posted speed limit is the legal speed limit.

   (Ord. 11-03-06)

3. Except as provided in §§76.080(1) and (2), the speed limit on all other streets, roadways, and alleys within the City of Elsberry shall be twenty five (25) miles per hour.

   (Ord. 11-03-06)

4. Notwithstanding any other provision of §76.080, no person shall operate a motor vehicle in such a manner that its speed greater than what is reasonable and prudent for the conditions of the road or visibility existing at the time.

   (Ord. 11-03-06)

5. It shall be unlawful for any person to drive a vehicle within the City of Elsberry in excess of the speed limitations stated in subsections 1 through 4 above.

   (Ord. 11-03-06)

§76.081 SPECIAL ENFORCEMENT ZONES

1. For the purposes of this Section, a special enforcement zone shall be defined as any public or

private street or roadway which is a route within 1,800 feet of a public school or public emergency services facility and is posted as a special enforcement zone.

2. The Board of Aldermen shall establish the particular areas or roadways that shall constitute special enforcement zones.

3. Conviction of a traffic violation within a special enforcement zone is punishable by a fine of up to five hundred dollars ($500.00) and such fine shall be set at a rate double the standard fine for such violation.

4. The City shall erect appropriate signs on the following street segments that warn motorists to exercise caution because of the presence of children in the area.

    North and South Sanderson Street

(Ord. 11-03-06; Ord 12-04-2009)

§76.082 CARELESS AND IMPRUDENT DRIVING.

Every person operating a motor vehicle or other conveyance on the streets of the City shall operate or drive the same in a careful and prudent manner, and in the exercise of the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person, taking into consideration the time of day, the amount of vehicular and pedestrian traffic, the condition of the street or highway, the atmospheric conditions and the location with reference to intersecting streets or highways, curves, residences or schools. Nothing in this subsection shall be construed to authorize any person to operate a motor vehicle in excess of specified speed limits established by law or ordinance.

(Ord 05-01-1998).

§76.084. OBSTRUCTING FLOW OF TRAFFIC.

It shall be unlawful for any person unnecessarily to drive at such a slow speed or in such position on the roadway as to impede or block the normal and reasonable movement of traffic.

§76.090. SAME, SPEED LIMIT SIGNS.

1. Whenever a zone in which the maximum speed at which a vehicle may be driven shall have been prescribed by ordinance, the city engineer shall cause appropriate signs to be placed in conspicuous positions on the street or part thereof embraced by such zone.

2. Every such sign shall show such maximum speed in letters and numerals against a contrasting background, and each of the numerals shall be at least five inches high. Such signs shall be

placed at such intervals from the beginning to the end of the zone as to be reasonably sufficient to inform drivers of vehicles of the speed limit. An appropriate sign calling a driver's attention to the fact that he is approaching a limited speed zone may be placed in an appropriate place or places.

3. Nothing in this section shall be so construed as to prevent the enforcement of speed limitations prescribed for specified, general districts of the City, whether or not maximum speed signs are placed or maintained in such districts.

(Ord 05-01-1998).

§76.100 RAILROAD TRAINS NOT TO BLOCK CROSSINGS

No person or government agency shall operate any train in such a manner as to prevent vehicular use of any roadway for a period of time in excess of fifteen consecutive minutes except:

When necessary to comply with signals affecting the safety of the movement of trains;
When necessary to avoid striking any object or person on the track;
When the train is disabled;
When the train is in motion except while engaged in switching operations; or
When necessary to comply with a governmental safety regulation.

(Ord. 08-05-06).

§76.110. INTERFERING WITH A FUNERAL PROCESSION.

1. When an organized funeral procession is proceeding through a red signal light or stop sign as permitted in RSMo. §194.503, a vehicle not in the organized funeral procession shall not enter the intersection unless such vehicle may do so without crossing the path of the funeral procession.

2. Any person who is not an operator of a vehicle in an organized funeral procession shall not:

   a. Drive between the vehicles comprising an organized funeral procession while such vehicles are in motion and have the flashing emergency lights lighted , except when required to do so by a law enforcement officer or when such person is operating an emergency vehicle giving an audible or visual signal.

   b. Drive a motor vehicle so as to join a funeral procession for the purpose of securing the right-of-way granted in RSMo. §194.506.

   c. Drive a motor vehicle to pass any vehicle in an organized funeral procession, except where a passing lane has been specifically provided.

5. No motor vehicle, except authorized emergency vehicles, shall be driven through a funeral

procession.

(Ord. 05-01-1998; 2011-02-002).
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§76.120. HINDER EMERGENCY VEHICLE.

No vehicle shall be so driven or operated as to interfere, obstruct or hinder any authorized emergency vehicle when the same is being used in an emergency, and the driver of a vehicle shall, upon the approach of an authorized emergency vehicle, immediately turn his vehicle as near as practicable to the right hand curb and stop the same.

(Ord. 05-01-1998).

§76.130. FOLLOW FIRE TRUCK.

The driver of any vehicle, other than one on official business, shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet, or drive into a block where fire apparatus has stopped in answer to a fire alarm.

1. It shall be unlawful for the operator of a vehicle, other than one on official business, to park such vehicle within five hundred (500) feet of the place where fire apparatus has stopped in answer to a fire alarm.

(Ord. 05-01-1998).

§76.140. DRIVE OVER FIRE HOSE.

No vehicle shall be driven over any fire hose of the fire department when laid down on or across any street, alley or driveway to be used at any fire, without the consent of the fire department official in command, or in compliance with the direction of a police officer.

(Ord. 05-01-1998).

§76.150. DRIVING RIGHT OF STREET OR ROADWAY

l. All vehicles not in motion shall be placed with their right side as near the right-hand side of the city street or roadway as practicable, except on streets or roadways where vehicles are obliged to move in one direction only or parking of motor vehicles is regulated by ordinance.

2. Upon all city streets or roadways of sufficient width a vehicle shall be driven upon the right half of the street or roadway, except as follows:

    a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

b. When placing a vehicle in position for, and when such vehicle is lawfully making, a left turn in compliance with the provisions of sections 304.014 to 304.026 RSMo. or traffic regulations thereunder or of city ordinances;

c. When the right half of a street or roadway is closed to traffic while under construction or repair;

d. Upon a street or roadway designated by city ordinance as a one-way street and marked or signed for one-way traffic.

3. All vehicles in motion upon a highway having two (2) or more lanes of traffic proceeding in the same direction shall be driven in the single, right-hand-most lane except when overtaking and passing another vehicle or when preparing to make a proper left turn or when otherwise directed by traffic markings, signs or signals. (RSMo. §304.015)

(Ord. 4-4-1985; 05-01-1998; 6-1-06).

§ 76.155: PASSING REGULATIONS

A. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to the limitations and exceptions hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

2. Except when overtaking and passing on the right is specifically permitted in this Municipal Code, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of such driver's vehicle until completely passed by the overtaking vehicle.

B. The driver of a motor vehicle may overtake and pass to the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;

2. Upon a City street with unobstructed pavement of sufficient width for two (2) or more lines of vehicles in each direction; or

3. Upon a one-way street.

The driver of a motor vehicle may overtake and pass another vehicle upon the right only under the foregoing conditions when such movement may be made in safety. In no event shall such movement be made by driving off the paved or main traveled portion of the roadway. The provisions of this Subsection shall not relieve the driver of a slow-moving

vehicle from the duty to drive as closely as practicable to the right-hand edge of the roadway.

C. Except when a roadway has been divided into three (3) traffic lanes, no vehicle shall be driven to the left side of the centerline of a highway or public road in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken.

D. No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve of the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

2. When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct, tunnel or when approaching within one hundred (100) feet of or at any intersection or railroad grade crossing. (RSMo. §304.016).

E. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

F. The driver of a vehicle upon a highway upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children and has given the signal to stop, that driver shall stop the vehicle before reaching such school bus and shall not proceed until such school bus resumes motion, or until signaled by the scho0l bus driver to proceed.

1. If any vehicle is witnessed by a peace officer or the driver of a school bus to have violated the provisions of subsection F and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person in whose name such vehicle is registered committed the violation. In the event that charges are filed against multiple owners of a motor vehicle, only one of the owners may be convicted and court costs may be assessed against only one of the owners. If the vehicle which is involved in the violation is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time of the violation, the rental or leasing company may rebut the presumption by providing the peace officer or prosecuting authority with a copy of the rental or lease agreement in effect at the time of the violation. No prosecuting authority may bring any legal proceedings against a rental or leasing company under this section unless prior written notice of the violation has been given to that rental or leasing company by registered mail at the address appearing on the registration and the rental or leasing company has failed to provide the rental or lease agreement copy within fifteen days of receipt of such notice.

G. The driver of a motor vehicle may not overtake or pass another motor vehicle within a work zone or construction zone when highway workers or equipment are working or when appropriate signs or traffic control devices have been erected .

H. No vehicle shall at any time pass another vehicle under the following conditions:

1. When approaching the crest of a grade or upon a curve of the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

2. When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, tunnel.

3. When approaching within one hundred feet of or at any intersection or railroad grade crossing.

(Ord. 6-1-2006; 2011-02-002).

§76.160 REQUIRED EQUIPMENT FOR MOTOR VEHICLES

1. **Definitions**: As used in this section, the following words shall have the following meanings unless the context requires another or different construction:

(1) Approved means approved by the Missouri Director of Revenue and when applied to lamps and other illuminating devices means that such lamps and devices must be in good working order;

(2) Headlamp means a major lighting device capable of providing general illumination ahead of a vehicle;

(3) Mounting height means the distance from the center of the lamp to the surface on which the vehicle stands;

(4) Vehicle means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;

(5) When lighted lamps are required means at any time from a half hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernable persons and vehicles on the highway at a distance of five hundred feet ahead. Lighted lamps shall also be required any time the weather conditions require usage of the motor vehicle's windshield wipers to operate the vehicle in a careful and prudent manner as defined in section 304.012, RSMo. The provisions of this section shall be interpreted to require lighted lamps during periods of fog even if usage of the windshield wipers is not necessary to operate the vehicle in a careful and prudent manner.

(6) Multiple-beam headlamps means headlamps or similar devices arranged so as to permit the driver of the vehicle to use one of two or more distributions of light on the road.

2. **Exemptions.** The subsequent provision of this section with respect to equipment and lights on vehicles shall not apply to agricultural machinery and implements, road machinery, road rollers, traction engines or farm tractors except as in this section made applicable.

3. **Headlamps on motor vehicles.** Except as in this section provided, every motor vehicle, other than a motor-drawn vehicle and other than a motorcycle) which is driven or operated upon the streets, alleys, and roadways of the City of Elsberry, Missouri shall be equipped with at least two approved headlamps mounted at the same level with at least one on each side of the front of the vehicle. Every motorcycle operated upon the city's streets, alleys and roadways shall be equipped with at least one and not more than two approved headlamps. Every motor cycle equipped with a sidecar or other attachment shall be equipped with a lamp on the outside limit of such attachment capable of displaying a white light to the front.

4. **Tail lamps.** Every motor vehicle and every motor-drawn vehicle operated or driven upon the streets, alleys and roadways of the City of Elsberry, Missouri shall be equipped with at least two rear lamps, not less than fifteen inches or more than seventy-two inches above the ground upon which the vehicle stands, which when lighted will exhibit a red light plainly visible from a distance of five hundred feet to the rear. Either such rear lamps or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration marker and render it clearly legible from a distance of fifty feet to the rear. When the rear registration marker is illuminated by an electric lamp other than the required rear lamps, all such lamps shall be turned on or off only by the same control switch at all times. Provided further, that every motorcycle registered in the State of Missouri, when operated on a street, alley, or roadway in the City of Elsberry, Missouri shall also carry at the rear, either as part of the rear lamp or separately, at least one approved red reflector, which shall be of such size any characteristic and so maintained as to be visible during the times when lighted lamps are required from all distances within three hundred feet to fifty feet from such vehicle when directly in front of a motor vehicle displaying lawful undimmed headlamps.

5. **When lights required.** No person shall drive, move, park, or be in custody of any vehicle or combination of vehicles upon the street, alleys, and roadways of the City of Elsberry, Missouri, during the times when lighted lamps are required, unless such vehicle or combination of vehicles display lighted lamps and illuminating devices as required elsewhere in this section.

6. **Multiple-beam headlamps - arrangement.** Except as hereinafter provided, the headlamps on motor vehicles, other than motorcycles, shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

   (a) There shall be an uppermost distribution of light, or composite beam, so aimed and of

such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead of all conditions of loading.

(b) There shall be lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading, none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

7. **Dimming of lights -_when.** Whenever the driver of a motor vehicle equipped with multiple-beam headlamps approaches an on-coming vehicle upon the streets, alleys, and roadways of the City of Elsberry, Missouri, within 500 feet, or is within 300 feet to the rear of another vehicle traveling in the same direction upon said streets, alleys, and roadways, the driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the other driver, and in no case shall the high-intensity portion which is projected to the left of the prolongation of the extreme left side of the vehicle be aimed higher than the center of the lamp from which it comes at a distance of 25 feet ahead, and in no case higher than the level of forty-two (42) inches above the level upon which the vehicle stands at a distance of seventy-five (75) feet ahead.

8. **Colors of various lamps.** Headlamps, when lighted, shall exhibit light substantially white in color. No person shall drive or move any vehicle or equipment upon the streets, alleys, and roadways of the City of Elsberry, Missouri, except a school bus when used for school purposes or an emergency upon any street, alley, and roadway, with any lamp or device thereon displaying a red light visible from directly in front thereof.

9. **Signaling devices.** Every motor vehicle driven or operated upon the street, alleys, and roadways of the City of Elsberry, Missouri, shall be equipped with a horn, in good working order, capable of emitting a sound adequate in quantity and volume to give warning of the approach of such vehicle to other users of the roadway and to pedestrians. Such signaling devise shall not be used for making any unnecessary noise, and no other sound-producing signaling device shall be used at any time.

10. **Muffler Cutouts**. Muffler cutouts shall not be used on a motor vehicle driven or operated upon the streets, alleys, and roadways of the City of Elsberry, Missouri, nor shall any motor vehicle be driven or operated there in such a manner or condition that excessive and unnecessary noises shall be made by its machinery, motor, signaling device, or other parts, or by any improperly loaded cargo. The motors of all motor vehicles so driven or operated shall be fitted with properly attached mufflers of such capacity or construction as to quiet the maximum possible exhaust noise as completely as is done in modern gas engine passenger motor vehicles. Any cutout or opening in the exhaust pipe between the motor and the muffler on any motor vehicle shall be completely closed and disconnected from its operating lever, and shall be so arranged that it cannot automatically open, or be opened or operated while such vehicle is in motion.

11. **Projections on vehicles.** All vehicles operated or driven upon the streets, alleys, and

roadways of the City of Elsberry, Missouri, and which are carrying poles or other objects which project more than five feet from the rear of such vehicle, shall, during the period when lights are required by the section, carry a red light at or near the rear end of the pole or other object so projecting. At other times a red flag or cloth not less than sixteen inches square shall be displayed at the end of such projection.

12. **Towlines**. When one vehicle is being towed by another vehicle upon the street, alleys and roadways of the City of Elsberry, Missouri, they shall be coupled by a line so that the two vehicles will be separated not more than fifteen feet and there shall be displayed on the towline a white cloth or paper so that the same will be clearly visible to other users of the roadway. During the time lights are required by this section the required lights shall be displayed by both vehicles.

13. Any equipment, light, or signal required by this Section must be in proper working order at all times that the vehicle or trailer is being operated on the streets within the corporate limits of the City of Elsberry, Missouri.

14. No person shall operate any motor vehicle upon any street or highway within the corporate limits of the City of Elsberry, Missouri between the first day of April and the first day of November while the motor vehicle is equipped with tires containing metal or carbide studs.

(Ord. 08-01-1985; 12-04-1986; 05-01-1998; 6-1-2006).

§ 76.165 HAND AND MECHANICAL SIGNALS

No person shall stop or suddenly decrease the speed of or turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided below:

1. An operator or driver when stopping, or when checking the speed of the operator's vehicle if the movement of other vehicles may reasonably be affected by such checking of speed, shall extend such operator's arm at an angle below horizontal so that the same may be seen in the rear of the vehicle.

2. An operator or driver intending to turn the vehicle to the right shall extend such operator's arm at an angle above horizontal so that the same may be seen in front of and in the rear of the vehicle and shall slow down and approach the intersecting highway as near as practicable to the right side of the highway along which such operator is proceeding before turning.

3. An operator or driver intending to turn the vehicle to the left shall extend such operator's arm in a horizontal position so that the same may be seen in the rear of the vehicle and shall slow down and approach the intersecting highway so that the left side of the vehicle shall be as near as practicable to the centerline of the highway along which the operator is proceeding before turning.

4. The signals herein required shall be given either by means of the hand and arm or by a signal light or signal device in good mechanical condition of a type approved by the State Highway Patrol; however, when a vehicle is so constructed or loaded that a hand and arm signal would not be visible both to the front and rear of such vehicle, then such signals shall be given by such light or device. A vehicle shall be considered as so constructed or loaded that a hand and arm signal would not be visible both to the front and rear when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load exceeds twenty-four (24) inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereon exceeds fourteen (14) feet, which limit of fourteen (14) feet shall apply to single vehicles or combinations of vehicles. The provisions of this Subsection shall not apply to any trailer which does not interfere with a clear view of the hand signals of the operator or of the signaling device upon the vehicle pulling such trailer; provided further, that the provisions of this Section as far as mechanical devices on vehicles so constructed that a hand and arm signal would not be visible both to the front and rear of such vehicle as above provided shall only be applicable to new vehicles registered within this State after the first (1st) day of January 1954. (RSMo. §304.019)

(Ord. 6-1-2006)

§76.170 U-TURNS

1. When signs are erected giving notice thereof, drivers of vehicles shall not make a U-Turn at the following intersections;

   Broadway and North Second
   Broadway and North Third
   Broadway and South Third
   Broadway and North Fourth
   Broadway and South Fourth
   Broadway and North Fifth
   Broadway and South Fifth
   Broadway and North Sixth
   Broadway and South Sixth
   Broadway and North Seventh
   Broadway and South Seventh
   Highway B and Broadway extension. (Amend. Ord.)

2. Drivers of vehicles are prohibited from making any U-Turns on Broadway at points other than intersections.

(Ord. 05-01-1986; 07-01-1992; 05-01-1998).

§76.180. VISION-REDUCING MATERIAL APPLIED TO WINDSHIELD OR WINDOWS WITHOUT PERMIT PROHIBITED.

No person shall operate without a permit granted because of physical disorder, any motor vehicle upon the streets, alleys, and roadways of the City of Elsberry, Missouri with any manufactured vision-reducing material applied to any portion of the motor vehicle's windshield, side windows, or windows located immediately to the left and right of the driver which reduces visibility from within or without the motor vehicle. This section shall not prohibit labels, stickers, decalcomania, or informational signs on motor vehicles or the application of tinted or solar screening material to recreational vehicles as defined in section 700.010, Revised Statutes of Missouri, provided that such material does not interfere with the driver's normal view of the road. This section shall not prohibit factory installed tinted glass, the equivalent replacement thereof, or tinting material applied to the upper portion of the motor vehicle's windshield which is normally tinted by the manufacturer of motor vehicle safety glass.

(Ord. 12-01-1986; 05-01-1998)

§76.200 SEAT BELTS

1. As used in this section, the term "passenger car" means every motor vehicle designed for carrying ten persons or less and used for the transportation of persons; except that, the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and trucks with a licensed gross weight of twelve thousand pounds or more.

2. Each driver, except persons employed by the United States Postal Service while performing duties for that federal agency which require the operator to service postal boxes from their vehicles, or which require frequent entry into and exit from their vehicles, and front seat passenger of a passenger car manufactured after January I, 1968, operated on a street or highway in this city, and persons less than eighteen years of age operating or riding in a truck, as defined in section 301.010, RSMo, on a street or highway of this state shall wear a properly adjusted and fastened safety belt that meets federal National Highway, Transportation and Safety Act requirements; except that, a child less than four years of age shall be protected as required in section 210.104, RSMo. No person shall be stopped, inspected, or detained solely to determine compliance with this subsection. The provisions of this section shall not be applicable to persons who have a medical reason tor failing to have a seat belt fastened about their body, nor shall the provisions of this section be applicable to persons while operating or riding a motor vehicle being used in agricultural work-related activities. Noncompliance with this subsection shall not constitute probable cause for violation of any other provision of law.

3. Each driver who violates the provisions of subsection 2 of this section is subject to a fine not to exceed ten dollars ($10.00). All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section. In no case shall points be assessed against any person, pursuant to section 302.302, RSMo, for a violation of this section.

4. If there are more persons than there are seat belts in the enclosed area of a motor vehicle, then the driver and passengers are not in violation of this section.

5. The provisions of this section shall not apply to any public carrier for hire.

(Ord. 12-01-1993; 10-02-1994; 05-01-1998; 08-04-06).

§76.210 CHILD PASSENGER RESTRAINTS

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

   (1) "Child booster seat", a seating system which meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213, as amended, that is designed to elevate a child to properly sit in a federally approved safety belt system;

   (2) "Child passenger restraint system", a seating system which meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213, as amended, and which is either permanently affixed to a motor vehicle, or is affixed to such vehicle by a safety belt or a universal attachment system;

   (3) "Driver", a person who is in actual physical control of a motor vehicle.

2. Every driver transporting a child under the age of sixteen years shall be responsible, when transporting such child in a motor vehicle operated by that driver on the streets or highways of this state, for providing for the protection of such child as follows:

   (1) Children less than four years of age, regardless of weight, shall be secured in a child passenger restraint system appropriate for that child;

   (2) Children weighing less than forty pounds, regardless of age, shall be secured in a child passenger restraint system appropriate for that child;

   (3) Children at least four years of age but less than eight years of age, who also weigh at least forty pounds but less than eighty pounds, and who are also less than four feet, nine inches tall, shall be secured in a child passenger restraint system or booster seat appropriate for that child;

   (4) Children at least eighty pounds or children more than four feet, nine inches in height shall be secured by a vehicle safety belt or booster seat appropriate for that child.

   (5) A child who otherwise would be required to be secured in a booster seat may be transported in the back seat of a motor vehicle while wearing only a lap belt if the back seat of the motor vehicle is not equipped with a combination lap and shoulder belt for booster seat installation.

   (6) When transporting children in the immediate family when there are more children than there are seating positions in the enclosed area of a motor vehicle, the children who are not able to be restrained by a child safety restraint device appropriate for the child shall

sit in the area behind the front seat of the motor vehicle unless the motor vehicle is designed only for a front seat area. The driver transporting children referred to in this subsection is not in violation of this section. This subsection shall only apply to the use of a child passenger restraint system or vehicle safety belt for children less than sixteen years of age being transported in a motor vehicle.

3. Any driver who violates subdivision (1), (2), or (3) of subsection 2 of this section is guilty of an infraction and, upon conviction, may be punished by a fine of not more than fifty dollars and court costs.

4. Any driver who violates subdivision (4) of subsection 2 of this section shall be guilty of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section. In no case shall points be assessed against any person, pursuant to section 302.302, RSMo, for a violation of this section.

5. If a driver receives a citation for violating subdivision (1), (2), or (3) of subsection 2 of this section, the charges may be dismissed or withdrawn if the driver prior to, or at his or her hearing, provides evidence of acquisition of a child passenger restraint system or child booster seat that is satisfactory to the court or the party responsible for prosecuting the driver's citation.

6. The provisions of this section shall not apply to any public carrier for hire. The provisions of this section shall not apply to students four years of age or older who are passengers on a school bus designed for carrying eleven passengers or more and which is manufactured or equipped pursuant to Missouri Minimum Standards for School Buses as school buses are defined in section 301.010, RSMo.

(Ord. 08-04-2006)

§76.220. MOTOR VEHICLE INSURANCE AND PRODUCTION OF PROOF OF VALID INSURANCE REQUIRED.

1. All motor vehicles, licensed by the State of Missouri, shall be required to have the minimum amount of motor vehicle insurance as determined by the Missouri Department of Revenue when operating within the corporate limits of the City of Elsberry.

2. An insurance identification card meeting the requirements of this section shall be carried in the insured motor vehicle at all times. The operator of a motor vehicle shall exhibit a valid current insurance identification card on the demand of any peace officer, commercial vehicle enforcement officer or commercial vehicle inspector who lawfully stops such operator or investigates an accident while that officer or inspector is engaged in the performance of the officer's or inspector's duties. If the motor vehicle operator fails to exhibit such insurance identification card, the officer or inspector shall issue a citation to the operator for a violation of this section. This subsection is a separate and independent violation from failure to

maintain valid insurance under subsection 1. Production of a valid then-current proof of insurance after the failure to produce such proof on demand is not a defense to the violation of this subsection.

3. A motor vehicle liability insurance policy, a motor vehicle liability insurance binder, receipt, or a photocopy or an image displayed on a mobile electronic device which contains the policy information required in this shall be satisfactory evidence of insurance in lieu of an insurance identification card. As used in this section, the term "mobile electronic device" means any small handheld computing or communications device that has a display screen with a touch input or a miniature keyboard. Whenever a person presents a mobile electronic device as proof of financial responsibility to any peace officer, commercial vehicle enforcement officer, or commercial vehicle inspector pursuant to this section, that person shall assume all liability for any damage to the mobile electronic device, except for damage willfully or maliciously caused by a peace officer, commercial vehicle enforcement officer, or commercial vehicle inspector.

4. The insurance identification card must include all of the following information:

   (1) The name , telephone number, and address of the insurer (the name, telephone number, and address of the insurance broker is acceptable in lieu of the telephone number of the insurer);

   (2) The name of the named insured;

   (3) The policy number;

   (4) The effective dates of the policy, including month, day and year;

   (5) A description of the insured motor vehicle, including year and make or at least five digits of the vehicle identification number or the word Fleet if the insurance policy covers five or more motor vehicles; and

   (6) The statement "THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND" prominently displayed on the card.

5. No person shall knowingly or intentionally possess, use, produce, manufacture, sell, or distribute a fraudulent document, photocopy, or image displayed on a mobile electronic device intended to serve as an insurance identification card. No person shall display evidence of insurance to a law enforcement officer knowing there is no valid liability insurance in effect on the motor vehicle as required pursuant to this chapter, or knowing the evidence of insurance is illegally altered, counterfeit or otherwise invalid as evidence of insurance. If the law enforcement officer issues a citation to a motor vehicle operator for displaying invalid evidence of insurance, the officer shall confiscate the evidence for presentation in court.

6. Violation of this section shall result, upon conviction, in assessment of a fine of not less than

one hundred dollars ($100.00) or more than five hundred dollars ($500.00), imprisonment for a term not exceeding ninety (90) days, or both such fine and imprisonment.

(Ord. 05-01-1998; Ord 2013-12-005).

§76.230. DISTANCE AT WHICH VEHICLE MUST FOLLOW.

1. The driver of a vehicle shall not follow another vehicle more closely than is reasonably safe and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the roadway. Vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated, except in a funeral procession or in a duly authorized parade, so as to allow sufficient space between each such vehicle or combination of vehicles as to enable any other vehicle to overtake or pass such vehicles in safety.

(Ord. 05-01-1998).

§76.240 RIDING IN OPEN BED OF TRUCK PROHIBITED. WHEN EXCEPTIONS:

1. No person shall operate any truck, as defined in Section 301.010, RSMo, with a licensed gross weight of less than twelve thousand pounds within the corporate limits of Elsberry, Missouri, when any person under eighteen years of age is riding in the unenclosed bed of such truck. No person under eighteen years of age shall ride in the unenclosed bed of such truck when the truck is in operation.

2. The provisions of this section shall only apply when a truck described in subsection 1 of this section is operated within the corporate limits of Elsberry, Missouri. The provisions of this section shall not apply to:

   (1) An employee engaged in the necessary discharge of the employee's duties where it is necessary to ride in the unenclosed bed of the truck;

   (2) Any person while engaged in agricultural activities where it is necessary to ride in the unenclosed bed of the truck;

   (3) Any person riding in the unenclosed bed of a truck while such truck is being operated in a parade, caravan or exhibition which is authorized by law;

   (4) Any person riding in the unenclosed bed of a truck if such truck has installed a means of preventing such person from being discharged or such person is secured to the truck in a manner which will prevent the person from being thrown, falling or jumping from the truck;

   (5) Any person riding in the unenclosed bed of a truck if such truck is being operated solely for the purposes of participating in a special event and it is necessary that the person ride

in such unenclosed bed due to a lack of available seating. "Special event", for the purposes of this section, is a specific social activity of a definable duration which is participated in by the person riding in the unenclosed bed;

(6) Any person riding in the unenclosed bed of a truck if such truck is being operated solely for the purposes of providing assistance to, or ensuring the safety of other persons engaged in a recreational activity; or

(7) Any person riding in the unenclosed bed of a truck if such truck is the only legally titled, licensed and insured vehicle owned by the family of the person riding in the unenclosed bed and there is insufl1cient room in the passenger cab of the truck to accommodate all passengers in such truck. For the purposes of this subdivision the term "family" shall mean any persons related within the first degree of consanguinity.

(Ord. 05-01-1998).

§76.244. RECREATIONAL OFF-HIGHWAY VEHICLE.

1. No person shall operate a recreational off-highway vehicle, as defined in this Code, upon the streets, alleys, or highways of this City, except as follows:

    (1) Recreational off-highway vehicles owned and operated by a governmental entity for official use;

    (2) Recreational off-highway vehicles operated for agricultural purposes or industrial on-premises purposes;

    (3) Recreational off-highway vehicles operated within one mile of the operator's primary residence with a permit from the City;

    (4) Recreational off-highway vehicles operated by handicapped persons for short distances occasionally only on the state's secondary roads;

2. The operator of a recreational off-highway vehicle wishing to drive it on City roads, streets, alleys, or highways shall first obtain a valid golf cart permit from the City pursuant to Elsberry Code §§76.246 through 76.248 for a fee of fifteen dollars ($15.00). The operator of a recreational off-highway vehicle shall be subject to, and comply with, all of the regulations, rules, and requirements of Elsberry Code §§76.246 through 76.248 (except that the permit fee will be $15.00).

3. No person shall operate a recreational off-highway vehicle within any stream or river in this City, except that recreational off-highway vehicles may be operated within waterways which flow within the boundaries of land which a recreational off-highway vehicle operator owns, or for agricultural purposes within the boundaries of land which a recreational off-highway vehicle operator owns or has permission to be upon, or for the purpose of fording such stream

or river at such road crossings as are customary or part of the highway system.

4. A person operating a recreational off-highway vehicle on a highway pursuant to an exception covered in this section shall have a valid operator's or chauffeur's license, except that a handicapped person operating such vehicle pursuant to subdivision (4) of subsection 1 of this section, but shall not be required to have passed an examination for the operation of a motorcycle. An individual shall not operate a recreational off-highway vehicle upon a highway in this City without displaying a lighted headlamp and a lighted tail lamp. A person may not operate a recreational off-highway vehicle upon a road, street, alley, or highway of this City unless such person wears a seat belt. When operated on a road, street, alley, or highway, a recreational off-highway vehicle shall be equipped with a roll bar or roll cage construction to reduce the risk of injury to an occupant of the vehicle in case of the vehicle's rollover.

(Ord. 2019-06-11)

§76.245. MOTORIZED WHEELCHAIRS

A. *Use.* No person shall operate a motorized wheelchair or EPAMD, upon any street, alley, highway, or roadway in the City, unless the operator is a physically disabled person over the age of 16, who has obtained a valid permit from the City Police Department.

B. *Operation*. A person lawfully operating a motorized wheelchair or EPAMD pursuant to an exception covered in this Section shall:

1. Operate such vehicle at a speed of less than fifteen (15) miles per hour.

2. Display the MoDOT approved "slow-moving vehicle" emblem on the rear of the wheelchair or EPAMD with reflective material, and the City permit emblem, both on the rear of the wheelchair or EPAMD. If the City issues a specific slow-moving vehicle emblem, it shall be displayed instead of a generic slow-moving vehicle emblem.

3. Operate such vehicle only between the hours of thirty (30) minutes after sunrise and thirty (30) minutes prior to sunset unless equipped with functioning headlights and taillights meeting MoDOT standards that are turned on.

4. Comply with all traffic and signage rules and ordinances as the same would apply to motorized vehicles and drivers of motorized vehicles.

5. Operate such vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

6. Not operate such vehicle under the influence of alcohol or any controlled substance.

7. Not transport in such vehicle an open container of an intoxicating alcoholic beverage.

8. Operate such vehicle only on the shoulder of the roadway, in the absence of an improved shoulder, on the right-hand-most portion of the roadway and in the same direction as the street traffic on the nearest lane of the roadway adjacent thereto.

9. Not operate such vehicle at any time on any state or federal highway (unless it is the only route to a public accommodation), but may be operated upon such highway only to cross a portion of the state highway system which intersects a municipal street; provided however, that such vehicle shall not cross any highway at an intersection where the highway being crossed has a posted speed limit of more than forty-five miles per hour.

10. Not carry any passengers on such vehicle unless the vehicle is designed to carry passengers safely. If the vehicle is designed for passengers, it shall not carry more passengers than the vehicle is designed to safely carry.

C. *Revocation of Right to Use on City Streets*. A person's privilege to use a motorized wheelchair or EPAMD on City streets shall be revoked automatically if the person has been convicted, or pled guilty to three or more violations of this Section during the proceeding thirty-six (36) months. The revocation shall be for twelve months, at the expiration of which time the person may apply for a new permit.

D. *Permit.* The person who wants to obtain a permit for use of a motorized wheelchair or EPAMD on City streets shall submit a written application to the City's Chief of Police. The application shall include the applicant's name, address, telephone numbers, date of birth, and description of the motorized wheelchair or EPAMD to be used, including the make model, year of manufacture, and serial number. The application shall also be accompanied by a letter from the applicant's licensed physician stating the applicant meets the definition of a disabled person under this Code. Upon presentation of a completed application, signed by the applicant, and accompanied by the physician's letter, the Police Department shall issue the permit. There is no fee for the permit.

(Ord. 2012-11-004).

§76.246. LOW SPEED VEHICLES

A. *Use.* No person shall operate a low-speed vehicle, as defined in this Chapter, upon any street, alley, highway, or roadway in the City, except that:

1. Persons with a valid driver's license may operate a golf cart that has obtained a valid permit from the City Police Department: (a) on City streets, alleys, highways, or roadways that have a speed limit of twenty-five (25) miles per hour or less, or (2) to cross a street, alley, highway, or roadway with a speed limit less than forty five (45) miles per

hour.

2. Golf cart or gator owned and operated by a governmental entity may be used for official purposes on any street, alley, highway, or roadway in the City.

B. *Operation*. A person lawfully operating a golf cart pursuant to an exception covered in this Section shall:

1. Have a valid operator's or chauffeur's license.

2. Operate such golf cart at a speed of less than twenty-five (25) miles per hour.

3. Display the MoDOT approved "slow-moving vehicle" emblem with reflective material, and the City permit emblem, both on the rear of the golf cart. If the City issues a specific slow-moving vehicle emblem, it shall be displayed instead of a generic slow-moving vehicle emblem.

4. Operate such golf cart only between the hours of thirty (30) minutes after sunrise and thirty (30) minutes prior to sunset unless equipped with functioning headlights and taillights meeting MoDOT standards, and that are turned on.

5. Comply with all traffic and signage rules and ordinances as the same would apply to motorized vehicles and drivers of motorized vehicles.

6. Not operate such golf cart in inclement weather or when visibility is impaired by weather, smoke, fog or other conditions impeding visibility, or at any time when there is insufficient light to clearly see persons and vehicles at a distance of five hundred (500) feet on the designated roadways.

7. Operate such golf cart in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

8. Not operate such golf cart under the influence of alcohol or any controlled substance.

9. Not transport in such golf cart an open container of an intoxicating alcoholic beverage.

10. Operate such golf cart only on the shoulder of the roadway or, in the absence of an improved shoulder, on the right-hand-most portion of the roadway and in the same direction as the street traffic on the nearest lane of the roadway adjacent thereto.

11. Not operate such golf cart at any time on any state or federal highway, but may be operated upon such highway only to cross a portion of the state highway system

which intersects a municipal street; provided however, that such golf cart shall not cross any highway at an intersection where the highway being crossed has a posted speed limit of more than forty-five miles per hour.

12. Not carry any passengers on such golf cart unless the golf cart is designed to carry passengers safely. If the golf cart is designed for passengers, it shall not carry more passengers than the golf cart is designed to safely carry.

C. *Revocation of Right to Use on City Streets*. A person's privilege to operate a golf cart on City Streets shall be automatically revoked if the person has been convicted, or pled guilty to three or more violations of this Section during the proceeding thirty-six (36) months. The revocation shall be for twelve months, at the expiration of which time the person may apply for a golf cart permit.

(Ord. 2012-11-005).

§76.247. PERMITS FOR GOLF CARTS

1. Application. Only the owner of a golf cart may apply for a golf cart permit for that golf cart. The application for a golf cart permit shall be filed with the City Chief of Police. The application shall state:

a. The name, address, telephone numbers, and date of birth of the applicant.

b. A description of the golf cart including the year, make, model, serial number, manufacturer's rated passenger capacity, and type of engine.

c. A copy of proof of liability insurance for the golf cart's use on City streets in the minimum amount required by the Missouri Department of Revenue for motor vehicles.

2. Fee. The fee for the permit is $25.00 plus the City's cost for City issued permit emblem, including a combination slow moving vehicle warning sign and City permit emblem. The Fee must be posted with the application.

3. Standards for Issuance. The City Chief of Police shall issue a golf cart permit when the City Chief of Police finds:

a. The applicant meets all requirements of the City Code for issuance of the permit and operation of the golf cart on City streets.

b. The golf cart passes a visual safety inspection by the City Police. The applicant shall make the golf cart available for inspection at a location determined by the City Chief of Police within the City Limits.

(Ord. 2012-11-005).

§76.248. ACTION ON PERMITS FOR GOLF CARTS, MOTORIZED WHEELCHAIRS OR EPAMDS

1. **Response.** Within thirty calendar days after receipt of a valid and complete application for a permit for a golf cart, motorized wheelchair, or EPAMD; the City Chief of Police shall apprise the applicant, in writing, of the City Chief of Police's decision to either grant the application, request additional information, or deny the application. If the application is denied, the City Chief of Police shall also state the reasons for the denial at the time the denial is made.

2. **Revocation**. The Chief of Police may revoke a permit a permit for a golf cart, motorized wheelchair, or EPAMD for the reasons specified in the City Code, if the person's permit had been revoked on two prior occasions, or if the Chief of Police deems that the vehicle is not in a safe condition to be used on City streets

3. **Appeal**. Any person aggrieved by the City Chief of Police's decision concerning a permit application for a golf cart, motorized wheelchair, or EPAMD; or the revocation of a permit for a golf cart, motorized wheelchair, or EPAMD, shall have the right of appeal. The appeal must be in writing and filed with the City Clerk within five (5) days of the Chief of Police's decision. The Board of Aldermen shall consider the application under the standards set forth in the City Code. The decision of the Board of Aldermen shall be final.

4. **Not Transferable**. A permit for a golf cart, motorized wheelchair, or EPAMD is not transferable from one owner to another, or one vehicle to another.

(Ord. 2012-11-005).

§ 76.250 UNSAFE OR DANGEROUS VEHICLES

It shall be unlawful for any person to operate or for an owner to permit to be operated a motor vehicle upon any public street within the City while such vehicle is unsafe and in a dangerous condition.

(Ord. 6-1-2006).

§ 76.255 STOPPING FOR SCHOOL BUS

A. The driver of a vehicle upon a highway upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children and whose driver has in the manner prescribed by law given the signal to stop shall stop the vehicle before reaching such school bus and shall not proceed until such school

bus resumes motion or until signaled by its driver to proceed.

B. Every bus used for the transportation of school children shall bear upon the front and rear thereon a plainly visible sign containing the words *"School Bus"* in letters not less than eight (8) inches in height. Each bus shall have lettered on the rear in plain and distinct type the following: *"State Law: Stop While Bus is Loading and Unloading"*. Each school bus subject to the provisions of Sections 304.050 to 304.070, RSMo., shall be equipped with a mechanical and electrical signaling device approved by the State Board of Education which will display a signal plainly visible from the front and rear and indicating intention to stop.

C. Every school bus operated to transport students in the public school system which has a gross vehicle weight rating of more than ten thousand (10,000) pounds, which has the engine mounted entirely in front of the windshield and the entrance door behind the front wheels, and which is used for the transportation of school children shall be equipped with a crossing control arm. The crossing control arm, when activated, shall extend a minimum of five (5) feet six (6) inches from the face of the front bumper. The crossing control arm shall be attached on the right side of the front bumper and shall be activated by the same controls which activate the mechanical and electrical signaling devices described in Subsection (B) of this Section.

D. Except as otherwise provided in this Section, the driver of a school bus in the process of loading or unloading students upon a street or highway shall activate the mechanical and electrical signaling devices, in the manner prescribed by the State Board of Education, to communicate to drivers of other vehicles that students are loading or unloading. A public school district has the authority pursuant to Section 304.050, RSMo., to adopt a policy which provides that the driver of a school bus in the process of loading or unloading students upon a divided highway of four (4) or more lanes may pull off of the main roadway and load or unload students without activating the mechanical and electrical signaling devices in a manner which gives the signal for other drivers to stop and may use the amber signaling devices to alert motorists that the school bus is slowing to a stop; provided that the passengers are not required to cross any traffic lanes and also provided that the emergency flashing signal lights are activated in a manner which indicates that drivers should proceed with caution and, in such case, the driver of a vehicle may proceed past the school bus with due caution. No driver of a school bus shall take on or discharge passengers at any location upon a highway consisting of four (4) or more lanes of traffic, whether or not divided by a median or barrier, in such manner as to require the passengers to cross more than two (2) lanes of traffic; nor shall any passengers be taken on or discharged while the vehicle is upon the road or highway proper unless the vehicle so stopped is plainly visible for at least five hundred (500) feet in each direction to drivers of other vehicles in the case of a highway with no shoulder and a speed limit greater than sixty (60) miles per hour and at least three hundred (300) feet in each direction to drivers of other vehicles upon other highways, and on all highways, only for such time as is actually necessary to take on and discharge passengers.

E. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or overtaking a school bus which is on a different roadway, which is proceeding in the

opposite direction on a highway containing four (4) or more lanes of traffic, or which is stopped in a loading zone constituting a part of, or adjacent to, a limited or controlled access highway at a point where pedestrians are not permitted to cross the roadway. (RSMo. §304.050).

(Ord. 6-1-2006).

§ 76.260 RIGHT-OF-WAY AT INTERSECTION – SIGNS AT INTERSECTIONS

1. The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different street or highway, provided however, there is no form of traffic control at such intersection.

2. When two (2) vehicles enter an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the driver of the vehicle on the right. This Subsection shall not apply to vehicles approaching each other from opposite directions when the driver of one (1) of such vehicles is attempting to or is making a left turn.

3. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

4. The driver of a vehicle intending to make a left turn into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction when the making of such left turn would create a traffic hazard.

5. The City may, on any section of road where construction, special events, or major maintenance operations are being affected, fix a temporary speed limit in such areas by posting of appropriate signs, and the operation of a motor vehicle in excess of such speed limit in the area so posted shall be deemed prima facie evidence of careless and imprudent driving and a violation of Municipal Code § 76.160. (RSMo. §304.351).

(Ord. 6-1-2006).

§ 76.265 AGGRESSIVE/EXHIBITION DRIVING

A. It shall be unlawful for any person to operate a motor vehicle upon any public street or private parking lot within the City in any of the following manners:

   1. Races the motor of the vehicle causing a loud sound.

   2. Rapidly accelerates or decelerates the vehicle such that the exhaust system emits a loud, cracking, or chattering noise.

3. Causes the tires of the vehicle to emit a loud, “chirping”, or squealing noise; or leaves tire marks on the roadway.

4. Causes the vehicle to lose traction or skid.

5. Causes the vehicle to slide, sway, throw sand, or throw gravel.

6. Simulates racing activity.

7. Irregularly or erratically changes the vehicle’s speed.

8. Causes any of the vehicles wheels to leave the ground.

9. Rapidly accelerates to follow another vehicle too closely.

B. It shall be an affirmative defense to any of the offenses listed in Subsection 76.265A if the actions were done in a safe and prudent manner and were the result of an emergency or other lawful exigency.

(Ord. 6-1-2006).

§ 76.270 REMOVAL OF DEBRIS FROM STREET

Any person who has purposely, accidentally, or by reason of an accident, dropped any tacks, nails, wire, scrap metal, glass, crockery, sharp stones, or other substances injurious to the feet of persons or animals, or to the tires or wheels of vehicles, including motor vehicles, upon any highway shall immediately make all reasonable efforts to clear the highway of the substances.

(Ord. 6-1-2006).

§76.280. DRIVING WHILE LICENSE SUSPENDED OR REVOKED.

It is unlawful for any person who drives any motor vehicle upon the highways of this City while the person’s operator's or chauffeur's license, permit, or driving privileges as a resident or nonresident has been canceled, suspended or revoked under the provisions of RSMo. Chapter 302 or Chapter 577 and an official reinstatement notice has been issued by the Director of Revenue of the State of Missouri.

(Ord. 6-4-2006; 1-2-2009; Ord. 2020-05-004)

§76.285 OPERATION OF MOTOR VEHICLE WITHOUT PROPER LICENSE PROHIBITED.

1. Unless otherwise provided for by law, it shall be unlawful for any person to:

1. Operate any vehicle upon any street or highway in this City unless the person has a

valid license, a valid temporary instruction permit, or a valid intermediate driver's license as may be required by RSMo. Chapter 302.

2. Operate a motorcycle or motortricycle upon any street or highway of this City unless such person has a valid license that shows the person has successfully passed an examination for the operation of a motorcycle or motortricycle as prescribed by the Missouri Director of Revenue.

3. Authorize or knowingly permit a motorcycle or motortricycle owned by such person or under such person's control to be driven upon any highway by any person whose license does not indicate that the person has passed the examination for the operation of a motorcycle or motortricycle or has been issued an instruction permit for operation of the motorcycle or motortricycle.

4. Operate a motor vehicle with an instruction permit, intermediate driver's license, or license issued to another person;

5. Operate a motor vehicle in violation of any restrictions placed upon the operator's license or permit.

6. Operate any commercial vehicle upon any street or highway of this City unless such person has procured the applicable commercial driver's license, with applicable endorsements valid for the type of vehicle being operated.

2. The license or permit issued to the operator shall be carried at all times by the holder of the license or permit while driving a motor vehicle and shall be displayed upon demand of any law enforcement officer, or any other duly authorized person for inspection when demand is made therefor. Failure of any operator of a motor vehicle to exhibit his/her license to any duly authorized officer shall be presumptive evidence that such person is not a duly licensed operator.

(Ord. 6-4-2006; Ord. 2020-05-004)

§76.286 PROHIBITED USES OF LICENSE.

1. It shall be unlawful for any person to:

1. Display or to permit to be displayed, or to have in his/her possession, any license knowing the same to be fictitious or to have been canceled, suspended, revoked, disqualified or altered;

2. Lend to or knowingly permit the use of by another any license or permit issued to the person so lending or permitting the use thereof;

3. Display or to represent as one's own any license or permit not issued to the person

so displaying the same;

4. Fail or refuse to surrender to the Clerk of any Division of the Circuit Court any license or permit that has been suspended, canceled, disqualified or revoked, as provided by law.

5. Authorize or consent to any motor vehicle owned by him/her or under his/her control to be driven by any person, when he/she has knowledge that such person has no legal right to do so.

6. Employ a person to operate a motor vehicle in the transportation of persons or property, with knowledge that such person has not complied with the provisions of RSMo. §§ 302.010 to 302.780, or whose license has been revoked, suspended, canceled or disqualified; or who fails to produce his/her license upon demand of any person or persons authorized to make such demand; or

7. Operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license.

(Ord. 2020-05-004)

§76.287 CHILDREN FORBIDDEN TO OPERATE MOTOR VEHICLE.

No person shall cause or knowingly permit his child or ward less than the age of sixteen (16) years to drive a motor vehicle or motorized bicycle upon any highway when such minor is not authorized under RSMo. Chapter 302.

(Ord. 2020-05-004)

§76.288 PERMITTING AN UNLICENSED DRIVER TO OPERATE A MOTOR VEHICLE

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street or highway by any person who is not authorized hereunder or in violation of any of the provisions of RSMo. Chapter 302.

(Ord. 2020-05-004)

§76.289 EXEMPTIONS FROM LICENSE LAW.

The following persons are exempt from license hereunder:

1. Any person while operating any farm tractor or implement of husbandry temporarily operated or moved on a highway;

2. A nonresident who is at least sixteen years of age and who has in his immediate

possession a valid license issued to him in his home state or country;

3. A nonresident who is at least eighteen years of age and who has in his immediate possession a valid license issued to him in his home state or country which allows such person to operate a motor vehicle in the transportation of persons or property as classified in RSMo. Chapter 302.

4. Convicted offenders of the department of corrections who have not been convicted of a motor vehicle felony as follows driving while intoxicated, failing to stop after an accident and disclosing his or her identity, or driving a motor vehicle without the owner's consent may operate state-owned trucks for the benefit of the correctional facilities, provided that such offender shall be accompanied by a correctional officer or other staff person in such truck.

(Ord. 2020-05-004)

§76.290. OPERATING A MOTOR VEHICLE OR MOTORCYCLE WITHOUT DISPLAY OF VALID LICENSE PLATES AND CERTIFICATE OF INSPECTION.

1. No persons shall operate a motor vehicle or trailer within the corporate limits of the City of Elsberry, Missouri unless such vehicle or motorcycle is properly licensed and registered with the appropriate state authority and has been properly inspected by the appropriate state authority.

2. No persons shall operate a motor vehicle or trailer shall be operated on any street within the corporate limits of the City of Elsberry, Missouri 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 in a manner so that all parts thereof shall be plainly visible and reasonably clean so that the reflective qualities thereof 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, with the letters and numbers thereon right side up. 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, displayed in the same manner on the front and rear of such vehicles.

§76.295. ROLLER SKATES, SKATE BOARDS, COASTER TOYS PROHIBITED ON SIDEWALKS IN BUSINESS DISTRICT.

1. The following words and phrases when used in this ordinance mean:

   A. **Business district**: The territory contiguous to and including a highway when within any six hundred feet along the highway there are buildings in use for business or industrial purposes, including but not 1imited to hotels, banks, or office building, railroad stations and public buildings which occupy at least three-hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

   B. **Sidewalk**: That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

2. No person on roller skates or riding in or by means of a skate board or any coaster, toy vehicle, scooter, or similar device shall be or operate said roller skates, skate board, coaster, toy vehicle, scooter, or similar device upon any sidewalk within a business district."

(Ord. 11-01-1989; 05-01-1998; 6-4-2006).

§76.300. RIGHTS AND DUTIES OF BICYCLE AND MOTORIZED BICYCLE RIDERS.

Every person riding a bicycle or motorized bicycle upon a street or highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle as provided by chapter 304, except as to special regulations in sections 307.180 to 307.193 and except as to those provisions of chapter 304 which by their nature can have no application.

(Ord. 2020-06-00)

§76.301. RIDING TO RIGHT, REQUIRED FOR BICYCLES AND MOTORIZED BICYCLES.

Every person operating a bicycle or motorized bicycle at less than the posted speed or slower than the flow of traffic upon a street or highway shall ride as near to the right side of the roadway as safe, exercising due care when passing a standing vehicle or one proceeding in the same direction, except when making a left turn, when avoiding hazardous conditions, when the lane is too narrow to share with another vehicle, or when on a one-way street. Bicyclists may ride abreast when not impeding other vehicles.

(Ord. 2020-06-00)

§76.302. BICYCLE TO OPERATE ON THE SHOULDER ADJACENT TO ROADWAY WHEN OPERATING LESS THAN POSTED SPEED LIMIT OR FLOW OF TRAFFIC.

1. A person operating a bicycle at less than the posted speed or slower than the flow of traffic upon a street or highway may operate as described in §76.301 or may operate on the shoulder adjacent to the roadway.

2. A bicycle operated on a roadway, or on the shoulder adjacent to a roadway, shall be operated in the same direction as vehicles are required to be driven upon the roadway.

3. For purposes of this section and §76.301, "roadway" is defined as and means that portion of a street or highway ordinarily used for vehicular travel, exclusive of the berm or shoulder.

(Ord. 2020-06-00)

§76.303. BICYCLE OPERATOR REQUIRED TO GIVE HAND OR MECHANICAL SIGNALS.

The operator of a bicycle shall signal as required in §76.165, except that a signal by the hand and arm need not be given continuously if the hand is needed in the control or operation of or to control or operate the bicycle. An operator of a bicycle intending to turn the bicycle to the right shall signal as indicated in §76.165 or by extending such operator's right arm in a horizontal position so that the same may be seen in front of and in the rear of the bicycle.

(Ord. 2020-06-00)

§76.304. RIDING BICYCLES, SLEDS, ROLLER SKATES, BY ATTACHING TO ANOTHER VEHICLE, PROHIBITED – PULLING A RIDER BEHIND VEHICLE PROHIBITED.

No person riding upon any bicycle, motorized bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway. Neither shall the driver of a vehicle knowingly pull a rider behind a vehicle.

(Ord. 2020-06-00)

§76.305. RIDING BICYCLE ON SIDEWALKS, LIMITATIONS – MOTORIZED BICYCLES PROHIBITED.

1. No person shall ride a bicycle upon a sidewalk within a business district.

2. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

3. No person shall ride a motorized bicycle upon a sidewalk.

(Ord. 6-2-2006)(Ord. 2020-06-00)

§76.306. BRAKES REQUIRED ON BICYCLES AND MOTORIZED BICYCLES

A. Every bicycle and motorized bicycle shall be equipped with a brake or brakes which will enable its driver to stop the bicycle or motorized bicycle within twenty-five (25) feet from

a speed of ten (10) miles per hour on dry, level, clean pavement.

B. No parent, custodian, or guardian of a minor shall allow or permit such minor to operate a bicycle without the proper brakes stated in this Section. This is an offense of absolute liability.

(9-01-2006)(Ord. 2020-06-00)

§76.307. LIGHTS AND REFLECTORS, WHEN REQUIRED–STANDARDS TO BE MET

A. Every bicycle and motorized bicycle when in use on a street or highway during the period from one-half (½) hour after sunset to one-half (½) hour before sunrise shall be equipped with the following:

1. A front-facing lamp on the front or carried by the rider which shall emit a white light visible at night under normal atmospheric conditions on a straight, level, unlighted roadway at five hundred (500) feet;

2. A rear-facing red reflector, at least two (2) square inches in reflective surface area, or a rear-facing red lamp on the rear which shall be visible at night under normal atmospheric conditions on a straight, level, unlighted roadway when viewed by a vehicle driver under the lower beams of vehicle headlights at six hundred (600) feet;

3. Reflective material and/or lights on any part of the bicyclist's pedals, crank arms, shoes or lower leg visible from the front and the rear at night under normal atmospheric conditions on a straight, level, unlighted roadway when viewed by a vehicle driver under the lawful lower beams of vehicle headlights at two hundred (200) feet; and

4. Reflective material and/or lights visible on each side of the bicycle or bicyclist and visible at night under normal atmospheric conditions on a straight, level, unlighted roadway when viewed by a vehicle driver under the lawful lower beams of vehicle headlights at three hundred (300) feet. The provisions of this Subdivision shall not apply to motorized bicycles which comply with National Highway Traffic and Safety Administration regulations relating to reflectors on motorized bicycles.

B. No parent, custodian, or guardian of a minor shall allow or permit such minor to operate a bicycle without the equipment stated in this Section. This is an offense of absolute liability.

(9-01-2006) (Ord. 2020-06-00)

§76.310. PENALTY FOR VIOLATION

A. Any person seventeen (17) years of age or older who violates any provision of §§ 76.300 to 76.303, 76.306, and 76.307 of this Code is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00). Such an infraction does not constitute a crime and conviction shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

B. If any person under seventeen (17) years of age violates any provision of §§76.300 to 76.303, 76.306, and 76.307, in the presence of a Peace Officer possessing the duty and power of arrest for violation of the general criminal laws of the State or for violation of ordinances of Counties or municipalities of the State, that officer may impound the bicycle, in-line skates, roller skates, skateboards, motorized bicycle, or scooters or any other similar two- or four-wheeled recreational devices being used in violation of §§ §§ 76.295, 76.300 to 76.303, 76.306, and 76.307. The impoundment shall be for a period not to exceed five (5) days. The officer shall issue receipt to the owner or child riding the bicycle, in-line skates, roller skates, skateboards, motorized bicycle, or scooters or any other similar two- or four-wheeled recreational devices. .

C. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of seventeen (17) years to knowingly permit or cause such minor to violate §§76.300 to 76.307.

D. A “Parent” for purposes of this Chapter means any person who is over the age of eighteen (18) years and is either the natural or adoptive parent (whose parental rights have not been terminated) of a minor or the legal guardian or foster parent of a minor. Except as may be otherwise applicable, if the minor is illegitimate, "parent" shall mean the natural mother. As used herein, "parent" does not include any sibling or other relative, regardless of age, or relation, unless such person is the adoptive parent, foster parent or legal guardian of such minor.

(Ord. 2020-06-00)

§76.311. LICENSE REQUIRED TO OPERATE MOTORIZED BICYCLE

1. No person shall operate a motorized bicycle on any highway or street in this state unless the person has a valid license to operate a motor vehicle.

2. No parent, custodian, or guardian of a minor shall allow or permit such minor to operate a motorized bicycle without a license as stated in this Section. This is an offense of absolute liability.

(Ord. 2020-06-00)

§76.312. EQUIPMENT REQUIRED FOR MOTORIZED BICYCLE.

1. No person shall operate a motorized bicycle on any street or highway in this state unless it is equipped in accordance with the minimum requirements for construction and equipment of MOPEDS, Regulation VESC-17, approved July, 1977, as promulgated by the Vehicle Equipment Safety Commission.

2. No parent, custodian, or guardian of a minor shall allow or permit such minor to operate a motorized bicycle without a license as stated in this Section. This is an offense of absolute liability.

(Ord. 2020-06-00)

SUBCHAPTER B – MODEL CODE TRAFFIC OFFENSES

§76.315. POLICE ADMINISTRATION.

There is hereby established a traffic division that shall be coextensive with the police department of this City. Each officer of the police department shall have the duties and responsibilities of an officer of the traffic division. The Chief of Police shall be the officer in charge of the traffic division.

(Ord. 05-01-1998; 6-2-2006).

§76.320. DUTY OF TRAFFIC DIVISION.

The traffic division with such aid as may be rendered by other members of the police department shall enforce the street traffic regulations of the city and all of the state vehicle laws applicable to street traffic in the city, to make arrests for traffic violations, to investigate accidents and to cooperate with the city traffic engineer and other officers of the city in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed upon the division by this ordinance and the traffic ordinances of the city.

(Ord. 6-2-2006)

§76.325. RECORDS OF TRAFFIC VIOLATIONS.

1. The police department or the traffic division thereof shall keep a record of all violations of the traffic ordinances of the city or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and the total of each. Said record shall accumulate during at least a five-year period and from that time on the record shall be maintained complete for at least the most recent five-year period.

2. All forms for records of violations and notices of violations shall be serially numbered. For each month and year a written record shall be kept available to the public showing the disposal of all such forms.

3. All such records and reports shall be public records.

(Ord. 6-2-2006)

§76.330. TRAFFIC DIVISION TO INVESTIGATE ACCIDENTS.

It shall be the duty of the traffic division, assisted by other police officers of the department, to investigate traffic accidents, to arrest and to assist in the prosecution of those persons charged with violations of law causing or contributing to such accidents.

(Ord. 6-2-2006)

§76.335. TRAFFIC ACCIDENT STUDIES.

Whenever the accidents at any particular location become numerous, the traffic division shall cooperate with the city traffic engineer in conducting studies of such accidents and determining remedial measures.

(Ord. 6-2-2006)

§76.340. TRAFFIC ACCIDENT REPORTS.

The traffic division shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location. Such reports shall be available for the use and information of the city traffic engineer.

(Ord. 6-2-2006)

§76.345. DRIVER FILES TO BE MAINTAINED.

The police department or the traffic division thereof shall maintain a suitable record of all traffic accidents, warnings, arrests, convictions, and complaints reported for each driver, which shall be filed alphabetically under the name of the driver concerned.

(Ord. 6-2-2006)

§76.350. TRAFFIC DIVISION TO SUBMIT ANNUAL TRAFFIC SAFETY REPORT.

The traffic division shall annually prepare a traffic report which shall be filed with the mayor. Such report shall contain information on traffic matters in the city as follows:

(1) The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data;

(2) The number of traffic accidents investigated and other pertinent data on the safety activities of the police;

(3) The plans and recommendations of the division for future traffic safety activities.

(Ord. 6-2-2006)

§76.355. TRAFFIC DIVISION TO DESIGNATE METHOD OF IDENTIFYING FUNERAL PROCESSIONS.

The traffic division shall designate a type of pennant or other identifying insignia to be displayed upon, or other method to be employed to identify, the vehicles in funeral processions.

(Ord. 6-2-2006)

ENFORCEMENT AND OBEDIENCE OF TRAFFIC REGULATIONS

§76.375. AUTHORITY OF POLICE AND FIRE DEPARTMENT OFFICIALS.

1. It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all traffic laws of the city and all of the state vehicle laws applicable to traffic in the city.

2. Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand, or signal in conformance with traffic laws; provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

3. Officers of the fire department, when at the scene of an incident, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

(Ord. 6-2-2006)

§76.380. OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.

No person shall knowingly fail or refuse to comply with any lawful order or direction of a police officer or fire department official.

(Ord. 6-2-2006)

§76.385. PERSONS PROPELLING PUSH CARTS OR RIDING ANIMALS TO OBEY TRAFFIC

REGULATIONS.

Every person propelling any push cart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this ordinance applicable to the driver of any vehicle, except those provisions of this ordinance which by their very nature can have no application.

(Ord. 6-2-2006)

§76.390. USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED.

No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized by ordinance of the city.

(Ord. 6-2-2006)

§76.395. PUBLIC EMPLOYEES TO OBEY TRAFFIC REGULATIONS.

The provisions of this ordinance shall apply to the driver of any vehicle owned by or used in the service of the United States government, this state, county, or city, and it shall be unlawful for any said driver to violate any of the provisions of this ordinance, except as otherwise permitted in this ordinance.

(Ord. 6-2-2006)

§76.400. AUTHORIZED EMERGENCY VEHICLES--PERMITTED ACTS OF DRIVERS.

1. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

2. The driver of an authorized emergency vehicle may:

    (1) Park or stand, irrespective of the provisions of this ordinance;
    (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
    (3) Exceed the maximum speed limits so long as he does not endanger life or property;
    (4) Disregard regulations governing direction of movement or turning in specified directions.

3. The exemptions herein granted to an authorized emergency vehicle shall apply only when

the driver of any said vehicle while in motion sounds audible signal by siren or while having at least one lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle or a flashing blue light authorized by section 307.175, RSMo.

4. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(Ord. 6-2-2006)

§76.405. OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES.

1. Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of the laws of this state, or of a police vehicle properly and lawfully making use of an audible signal only the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(Ord. 6-2-2006)

§76.410. IMMEDIATE NOTICE OF ACCIDENT WITHIN CITY.

The driver of a vehicle involved in an accident within the city resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars or more to one person shall give, or cause to be given, notice of such accident to the police department as soon as reasonably possible.

(Ord. 6-2-2006)

§76.415. WRITTEN REPORT OF ACCIDENT.

The driver of a vehicle which is in any manner involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of five hundred dollars or more to one person shall, within five days after such accident, forward a written report of such accident to the police department. The provisions of this section shall not be applicable when the accident has been investigated at the scene by a police officer while such driver was present thereat.

(Ord. 6-2-2006)

§76.420. WHEN DRIVER UNABLE TO REPORT.

1. Whenever the driver of a vehicle is physically incapable of giving immediate notice of an accident as required in section76.410 and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall give, or cause to be given, the notice not given by the driver.

2. Whenever the driver is physically incapable of making a written report of an accident as required in section76.415 and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within five days after the accident make such report not made by the driver.

(Ord. 6-2-2006)

SPEED REGULATIONS

§76.505. STATE SPEED LAWS APPLICABLE.

The state traffic laws regulating the speed of vehicles shall be applicable upon all streets within the city, except that the city may by ordinance declare and determine upon the basis of engineering and traffic investigation that certain speed regulations shall be applicable upon specified streets or in certain areas, in which event it shall be unlawful for any person to drive a vehicle at a speed in excess of any speed so declared when signs are in place giving notice thereof, but no city ordinance shall regulate the speed of vehicles upon controlled access highways of the state.

(Ord. 6-2-2006)

§76.510. REGULATION OF SPEED BY TRAFFIC SIGNALS.

The city traffic engineer is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections and shall erect appropriate signs giving notice thereof.

(Ord. 6-2-2006)

TURNING MOVEMENTS

§76.515. REQUIRED POSITION AND METHOD OF TURNING AT INTERSECTION.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Right turns: Both the approach for a right turn and a right turn shall be made as close as

practicable to the right-hand curb or edge of the roadway, except where multiple turn lanes have been established.

(2) Left turns on two-way roadways: At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) Left turns on other than two-road roadways: At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered, except where multiple turn lanes have been established.

(4) Designated two-way left turn lanes: Where a special lane for making left turns by drivers proceeding in opposite directions have been indicated by official traffic control devices:

(a) A left turn shall not be made from any other lane;
(b) A vehicle shall not be driven in the lane except when preparing for or making a left turn from or into the roadway or when preparing for or making a u-turn when otherwise permitted by law;
(c) A vehicle shall not be driven in the lane for a distance more than five hundred feet.

(Ord. 6-2-2006)

§76.520. AUTHORITY TO PLACE AND OBEDIENCE TO TURNING MARKERS.

1. The city traffic engineer is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law or ordinance.

2. When authorized markers, buttons, or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications.

(Ord. 6-2-2006)

§76.525. AUTHORITY TO PLACE RESTRICTED TURN SIGNS.

The city traffic engineer is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left or U-turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.

(Ord. 6-2-2006)

§76.530. OBEDIENCE TO NO-TURN SIGNS.

Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such sign.

(Ord. 6-2-2006)

§76.535. LIMITATIONS ON TURNING AROUND.

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

(Ord. 6-2-2006)

ONE-WAY STREETS AND ALLEYS

§76.540. AUTHORITY TO SIGN ONE-WAY STREETS AND ALLEYS.

Whenever any ordinance of the city designates any one-way street or alley the city traffic engineer shall place and maintain signs giving notice thereof, and no such regulation shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

(Ord. 6-2-2006)

§76.545. ONE-WAY STREETS AND ALLEYS.

Upon those streets and parts of streets and in those alleys described and designated by ordinance, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

(Ord. 6-2-2006)

§76.550. AUTHORITY TO RESTRICT DIRECTION OF MOVEMENT ON STREETS DURING CERTAIN PERIODS.

1. The city traffic engineer is hereby authorized to determine and designate streets, parts of streets or specific lanes thereon upon which vehicular traffic shall proceed in one direction during one period and the opposite direction during another period of the day and shall place and maintain appropriate markings, signs, barriers or other devices to give notice thereof. The city traffic engineer may erect signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the roadway.

2. It shall be unlawful for any person to operate any vehicle in violation of such markings, signs, barriers or other devices so placed in accordance with this section.

(Ord. 6-2-2006)

STOP AND YIELD INTERSECTIONS, RAILROAD CROSSINGS

§76.555. THROUGH STREETS DESIGNATED.

Those streets and parts of streets described by ordinances of the city are declared to be through streets for the purposes of sections 76.555 to76.595.

(Ord. 6-2-2006)

§76.560. SIGNS REQUIRED AT THROUGH STREETS.

Whenever any ordinance of the city designates and describes a through street it shall be the duty of the city traffic engineer to place and maintain a stop sign, or on the basis of an engineering and traffic investigation at any intersection a yield sign, on each and every street intersecting such through street unless traffic at any such intersection is controlled at all times by traffic control signals; provided, however, that at the intersection of two such through streets or at the intersection of a through street and a heavy traffic street not so designated, stop signs shall be erected at the approaches of either of said streets as may be determined by the city traffic engineer upon the basis of an engineering and traffic study.

(Ord. 6-2-2006)

§76.565. OTHER INTERSECTIONS WHERE STOP OR YIELD REQUIRED.

The city traffic engineer is hereby authorized to determine and designate intersections where particular hazard exists upon other than through streets and to determine whether vehicles shall stop at one or more entrances to any such intersection, in which event he shall cause to be erected a stop sign at every such place where a stop is required, or whether vehicles shall yield the right-of-way to vehicles on a different street, in which event he shall cause to be erected a yield sign at every place where obedience thereto is required.

(Ord. 6-2-2006)

§76.570. STOP AND YIELD SIGNS.

1. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

2. Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(Ord. 6-2-2006)

§76.575. VEHICLE ENTERING STOP INTERSECTION.

Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by subsection 2 of section 76.570, and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(Ord. 6-2-2006)

§76.580. VEHICLE ENTERING YIELD INTERSECTION.

The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection; provided, however, that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right-of-way.

(Ord. 6-2-2006)

§76.585. EMERGING FROM ALLEY, DRIVEWAY OR BUILDING.

The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian

as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(Ord. 6-2-2006)

§76.590. STOP WHEN TRAFFIC OBSTRUCTED.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(Ord. 6-2-2006)

§76.595. OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN.

1. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

    (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

    (2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

    (3) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

2. No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(Ord. 6-2-2006)

MISCELLANEOUS DRIVING RULES

§76.600. FOLLOWING EMERGENCY VEHICLE PROHIBITED.

The driver of any vehicle other than one on official business shall not follow any emergency vehicle traveling in response to an emergency call closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

(Ord. 6-2-2006)

§76.605. CROSSING FIRE HOSE.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

(Ord. 6-2-2006)

§76.610. DRIVING THROUGH FUNERAL OR OTHER PROCESSION.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this ordinance. This provision shall not apply at intersections where traffic is controlled by traffic control signals or police officers.

(Ord. 6-2-2006)

§76.615. DRIVING IN PROCESSION.

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practicable and shall follow the vehicle ahead as close as is practicable and safe.

(Ord. 6-2-2006)

§76.620. FUNERAL PROCESSION TO BE IDENTIFIED.

A funeral composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the traffic division.

(Ord. 6-2-2006)

§76.625. WHEN PERMITS REQUIRED FOR PARADES AND PROCESSIONS.

No funeral, procession or parade containing two hundred or more persons or fifty or more vehicles except the forces of the United States army or navy, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply.

(Ord. 6-2-2006)

§76.630. VEHICLE SHALL NOT BE DRIVEN ON A SIDEWALK--PROHIBITION ON OBSTRUCTION OF BICYCLE LANES--DRIVERS TO YIELD TO BICYCLES IN DESIGNATED BICYCLE LANES.

The driver of a motor vehicle shall not drive within any sidewalk area except as a permanent or temporary driveway. A designated bicycle lane shall not be obstructed by a parked or standing motor vehicle or other stationary object. A motor vehicle may be driven in a designated bicycle lane only for the purpose of a lawful maneuver to cross the lane or to provide for safe travel. In making an otherwise lawful maneuver that requires traveling in or crossing a designated bicycle lane, the driver of a motor vehicle shall yield to any bicycle in the lane. As used in this section, the term "designated bicycle lane" shall mean a portion of the roadway or highway that* has been designated by the governing body having jurisdiction over such roadway or highway by striping with signing or striping with pavement markings for the preferential or exclusive use of bicycles.

(Ord. 6-2-2006)

§76.635. LIMITATIONS ON BACKING.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

(Ord. 6-2-2006)

§76.640. OPENING AND CLOSING VEHICLE DOORS.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(Ord. 6-2-2006)

§76.645. RIDING ON MOTORCYCLES, ADDITIONAL PASSENGER, REQUIREMENTS.

1. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the operator.

2. The operator of a motorized bicycle shall ride only astride the permanent and regular seat attached thereto, and shall not permit more than one person to ride thereon at the same time, unless the motorized bicycle is designed to carry more than one person. Any motorized bicycle designed to carry more than one person must be equipped with a passenger seat and footrests for the use of a passenger.

3. It shall be unlawful for any person to operate or occupy as a passenger any motorcycle on any street, alley or other public place in the City unless such person is equipped with a helmet which conforms with the following specifications:

    a. The helmet shall be constructed essentially in the form of a shell around the head, and it

shall be constructed to absorb impact energy. The shell shall begin above the eyes, covering the forehead and be formed over and around the top of the head above a plane level with the base of the shell covering the forehead. It may be formed around the back and sides of the head.

b. The shell of the helmet shall have reasonably surface, and there shall be no external projections greater than one-eighth inch above the outer surface thereof, except a clip for goggles or face protector where provided for in the construction.

c. The helmet shall be made of materials heavy enough to withstand a serious impact and made of a heavy plastic or other durable material that will not deteriorate appreciably when exposed to rain, snow, sleet, sun, cold, dust, vibrations, contact with the skin, effects of sweat, or of products applied to the skin or hair, or with age. The helmet shall be equipped with a harness or chin strap for maintaining its position on the wearer's head. Such helmets shall provide such protective standards as may be approved by the Chief of Police of the City. In determining such protective standards for safety helmets or headgear, the Chief of Police may use the American Standards Association specifications for protective headgear for vehicular users as approved by the American Standards Association. A copy of such protective standards shall be currently maintained by the Chief of Police and made available at all times for inspection upon request.

(Subsection 3 Amend. Ord. 05-01-1998; 6-2-2006).

§76.648. ALL-TERRAIN VEHICLES, PROHIBITED--EXCEPTIONS, OPERATION OF ALL-TERRAIN VEHICLES UNDER AN EXCEPTION--PROHIBITED USES--PENALTY.

1. No person shall operate an all-terrain vehicle, as defined in section 76.010, upon the streets and highways of this city, except as follows:

   (1) All-terrain vehicles owned and operated by a governmental entity for official use;

   (2) All-terrain vehicles operated for agricultural purposes or industrial on-premises purposes between the official sunrise and sunset on the day of operation;

   (3) All-terrain vehicles whose operators carry a special permit issued by this city pursuant to section 304.013, RSMo.

2. No person shall operate an off-road vehicle, as defined in section 304.001, RSMo, within any stream or river in this city, except that off-road vehicles may be operated within waterways which flow within the boundaries of land which an off-road vehicle operator owns, or for agricultural purposes within the boundaries of land which an off-road vehicle operator owns or has permission to be upon, or for the purpose of fording such stream or river of this state at such road crossings as are customary or part of the highway system. All law enforcement officials or peace officers of this state and its political subdivisions shall enforce the provisions of this subsection within the geographic area of their jurisdiction.

3. A person operating an all-terrain vehicle on a street or highway pursuant to an exception covered in this section shall have a valid license issued by a state authorizing such person to operate a motor vehicle, but shall not be required to have passed an examination for the operation of a motorcycle, and the vehicle shall be operated at speeds of less than thirty miles per hour. When operated on a street or highway, an all-terrain vehicle shall have a bicycle safety flag, which extends not less than seven feet above the ground, attached to the rear of the vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

4. No person shall operate an all-terrain vehicle:

   (1) In any careless way so as to endanger the person or property of another;

   (2) While under the influence of alcohol or any controlled substance; or

   (3) Without a securely fastened safety helmet on the head of an individual who operates an all-terrain vehicle or who is being towed or otherwise propelled by an all-terrain vehicle, unless the individual is at least eighteen years of age.

5. No operator of an all-terrain vehicle shall carry a passenger, except for agricultural purposes.

6. A violation of this section shall be a class C misdemeanor.

(Ord. 6-2-2006)

§76.655. CONTROLLED ACCESS.

No person shall drive a vehicle onto or from any controlled access roadway except at such entrances and exits as are established by public authority.

(Ord. 6-2-2006)

PEDESTRIANS' RIGHTS AND DUTIES

§76.670. PEDESTRIANS SUBJECT TO TRAFFIC CONTROL DEVICES.

Pedestrians shall be subject to traffic control signals as heretofore declared in sections 76.455 and 76.460 of this ordinance, but at all other places pedestrians shall be granted those rights and be subject to the restrictions stated in sections 76.670 to 76.710.

(Ord. 6-2-2006)

§76.675. PEDESTRIANS' RIGHT-OF-WAY IN CROSSWALKS.

1. When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

2. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

3. Subsection 1 shall not apply under the conditions stated in subsection 2 of section 76.690.

4. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(Ord. 6-2-2006)

§76.680. PEDESTRIANS TO USE RIGHT HALF OF CROSSWALKS.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(Ord. 6-2-2006)

§76.690. WHEN PEDESTRIAN SHALL YIELD.

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(Ord. 6-2-2006)

§ 76.696. PEDESTRIANS SHALL NOT IMPEDE TRAFFIC.

Every pedestrian crossing a roadway, whether or not the pedestrian has the right-of-way, shall cross the roadway expeditiously, without delay, and in a manner that will not impede the normal flow of traffic. No pedestrian crossing a roadway, or walking in a roadway, shall take any action that is intended or calculated primarily to impede the progress of a particular vehicle. The minimum fine for violation of this Ordinance is $35.00.

(Ord. 6-2-2006)

§76.700. OBEDIENCE OF PEDESTRIANS TO BRIDGE AND RAILROAD SIGNALS.

1. No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

2. No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

(Ord. 6-2-2006)

§76.705. PEDESTRIANS WALKING ALONG ROADWAYS.

1. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

2. Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(Ord. 6-2-2006)

§76.710. DRIVERS TO EXERCISE HIGHEST DEGREE OF CARE.

Notwithstanding the foregoing provisions of sections 76.455 to 76.710, every driver of a vehicle shall exercise the highest degree of care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(Ord. 6-2-2006)

§76.711. DISTANCE TO BE MAINTAINED WHEN OVERTAKING A BICYCLE.

The operator of a motor vehicle overtaking a bicycle proceeding in the same direction on the roadway, as defined in section 76.010, shall leave a safe distance when passing the bicycle, and shall maintain clearance until safely past the overtaken bicycle.

(Ord. 6-2-2006)

METHOD OF PARKING

§76.715. STANDING OR PARKING CLOSE TO CURB.

Except as otherwise provided in sections 76.715 to 76.735, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

(Ord. 6-2-2006)

§76.720. SIGNS OR MARKINGS INDICATING ANGLE PARKING.

1. The city traffic engineer shall determine upon what streets angle parking shall be permitted and shall mark or sign such streets but such angle parking shall not be indicated upon any federal-aid or state highway within the city unless the state highways and transportation commission has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

2. Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive upon the left side of the street.

(Ord. 6-2-2006)

§76.725. OBEDIENCE TO ANGLE PARKING SIGNS OR MARKERS.

On those streets which have been signed or marked by the city traffic engineer for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

(Ord. 6-2-2006)

§76.730. PERMITS FOR LOADING OR UNLOADING AT AN ANGLE TO THE CURB.

1. The city traffic engineer is authorized to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privilege as therein stated and authorized herein.

2. It shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit.

(Ord. 6-2-2006)

§76.735. LAMPS ON PARKED VEHICLES.

1. Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway no lights need be displayed upon such parked vehicle.

2. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto,

whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closer to passing traffic. The foregoing provisions shall not apply to a motor driven cycle.

3. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

(Ord. 6-2-2006)

STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES

§76.740. STOPPING, STANDING OR PARKING PROHIBITED.

1. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

   (1) Stop, stand or park a vehicle:

      (a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
      (b) On a sidewalk;
      (c) Within an intersection;
      (d) On a crosswalk;
      (e) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless the (traffic authority) indicates a different length by signs or markings;
      (f) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
      (g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
      (h) On any railroad tracks;
      (i) At any place where official signs prohibit stopping
      (k) on the side of the street that the fire hydrant is located on streets whose paved portion is less than twenty-five (25) feet wide..

   (2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(a) In front of a public or private driveway;
(b) Within fifteen feet of a fire hydrant;
(c) Within twenty feet of a crosswalk at an intersection;
(d) Within thirty feet upon the approach to any flashing signal, stop sign, or traffic control signal located at the side of a roadway;
(e) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance (when properly signposted);
(f) At any place where official signs prohibit standing.

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

(a) Within fifty feet of the nearest rail of a railroad crossing;
(b) At any place where official signs prohibit parking.

2. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

(Ord. 6-2-2006; Ord. 2016-07-004)

§76.745. PARKING NOT TO OBSTRUCT TRAFFIC.

No person shall park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic.

(Ord. 6-2-2006)

§76.750. PARKING IN ALLEYS.

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand, or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property.

(Ord. 6-2-2006)

§ 76.751. NO PARKING ALLEYS DESIGNATED

No person shall park any vehicle, and no owner of any vehicle shall have his vehicle parked, in the following alley segments within the Elsberry City limits:

The city alley lying west of Main Street and east of Second Street, beginning at the northern boundary of DuBois Street and continuing northerly for One Hundred Fifty feet (150') to the southern boundary of Lot 26 of R.E. Blacks Northeast Addition to the Town

of Elsberry as recorded in Plat Book 1, page 71 of the Lincoln County, Missouri Recorder of Deeds.

(Ord. 2014-05-005)

§76.755. PARKING FOR CERTAIN PURPOSES PROHIBITED.

No person shall park a vehicle upon any roadway for the principal purpose of:

(1) Displaying such vehicle for sale; or

(2) Repair such vehicle except repairs necessitated by an emergency.

(Ord. 6-2-2006)

§76.760. PARKING ADJACENT TO SCHOOLS.

1. The city traffic engineer is hereby authorized to erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.

2. When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person shall park a vehicle in any such designated place.

(Ord. 6-2-2006)

§76.765. PARKING PROHIBITED ON NARROW STREETS.

1. The city traffic engineer is authorized to erect signs indicating no parking upon any street when the width of the roadway does not exceed twenty feet, or upon one side of a street as indicated by such signs when the width of the roadway does not exceed thirty feet.

2. When official signs prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any such street in violation of any such sign.

(Ord. 6-2-2006)

§76.770. STANDING OR PARKING ON ONE-WAY STREETS.

The city traffic engineer is authorized to erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place, no person shall stand or park a vehicle upon such left-hand side in violation of any such sign.

(Ord. 6-2-2006)

§76.775. STANDING OR PARKING ON ONE-WAY ROADWAYS.

In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. The city traffic engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof.

(Ord. 6-2-2006)

§76.780. NO STOPPING, STANDING OR PARKING NEAR HAZARDOUS OR CONGESTED PLACES.

1. The city traffic engineer is hereby authorized to determine and designate by proper signs places not exceeding one hundred feet in length in which the stopping, standing, or parking of vehicles would create an especially hazardous condition, would obstruct the immediate parking access and unobstructed ingress and egress by emergency vehicles, or would cause unusual delay to traffic.

2. When signs are erected at hazardous or congested places as authorized herein, no person shall stop, stand, or park a vehicle in any such designated place.

(Ord. 6-2-2006; Amd. 2013-01-002)

§76.781. FIRE LANES

1. *Definitions*.

   Fire Lanes are the unobstructed area of space officially set apart in any street, sidewalk, alley, highway or parking lot, whether public or private, so as to provide immediate and unobstructed access to adjacent buildings for Fire Department vehicles and other emergency vehicles.

   Emergency vehicles are a vehicle of any of the following types:

   a. A vehicle publicly owned and operated as an ambulance, or a vehicle publicly owned and operated by the State Highway Patrol, Police or Fire Department, Sheriff, Constable or Deputy Sheriff, Traffic Officer, or Coroner when responding to emergency calls.

   b. Any privately owned vehicle operated as an ambulance when responding to emergency calls.

   c. Any privately owned wrecker, or tow truck or a vehicle owned and operated by a

public utility or public service corporation while performing emergency service.

2. No person shall park a vehicle in a fire lane that has been designated as such by either a sign or paint on the curb or pavement except for Emergency Vehicles while performing emergency service.

3. The City Traffic Engineer, with the consent of the Board of Aldermen, is hereby empowered to establish fire lanes at such places as may be deemed necessary for adequate protection. Such fire lanes may include temporary fire lanes that are designated for certain established times or for events of limited duration.

4. Fire lanes may be marked and maintained by the owners of adjacent property as directed by the City Traffic Engineer. If the owner is directed by the City to post such signs, the signs, which shall either be erected on standards immediately adjacent to such fire lanes or be painted on the pavement of such fire lane. Such signs or markings shall be of sufficient size and clarity so as to be readily observed from a distance. The City Traffic Engineer or his designee shall determine the content, manner of posting, and number of such signs.

5. The following locations are designated as fire lanes for the times designated:

   The three parking spaces in front of the entrance to the Senate Theater during performances in the theater and for 45 minutes before and 45 minutes after the performance. The owner of the Senate Theater shall post suitable signs during such times at the designated location.

(Ord. 2013-01-002).

STOPPING FOR LOADING OR UNLOADING ONLY

§76.785. CITY TRAFFIC ENGINEER TO DESIGNATE CURB LOADING ZONES.

The city traffic engineer is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain appropriate signs indicating the same and stating the hours during which the provisions of this section are applicable.

(Ord. 6-2-2006)

§76.790. PERMITS FOR CURB LOADING ZONES.

The city traffic engineer shall not designate or sign any curb loading zone upon special request of any person unless such person makes application for a permit for such zone and for two signs to indicate the ends of each such zone. The city traffic engineer upon granting a permit and issuing such signs shall collect from the applicant and deposit in the city treasury a service fee of ten dollars per year or fraction thereof and may by general regulations impose conditions upon the use of such signs and for reimbursement of the city for the value thereof in the event of their loss or

damage and their return in the event of misuse or upon expiration of permit. Every such permit shall expire at the end of one year.

(Ord. 6-2-2006)

§76.795. STANDING IN PASSENGER CURB LOADING ZONE.

No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such curb loading zone are effective, and then only for a period not to exceed three minutes.

(Ord. 6-2-2006)

§76.800. STANDING IN FREIGHT CURB LOADING ZONES.

No person shall stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to such zones are in effect.

(Ord. 6-2-2006)

§76.805. CITY TRAFFIC ENGINEER TO DESIGNATE PUBLIC CARRIER STOPS AND STANDS.

The city traffic engineer is hereby authorized and required to establish bus stops, bus stands, taxicab stands and stands for other passenger common carrier motor vehicles on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every such bus stop, bus stand, taxicab stand, or other stand shall be designated by appropriate signs.

(Ord. 6-2-2006)

§76.810. STOPPING, STANDING AND PARKING OF BUSES AND TAXICABS REGULATED.

1. The operator of a bus shall not stand or park such vehicle upon any street at any place other than a bus stand so designated as provided herein.

2. The operator of a bus shall not stop such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in case of an emergency.

3. The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than

eighteen inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

4. The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated as provided herein. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

(Ord. 6-2-2006)

§76.815. RESTRICTED USE OF BUS AND TAXICAB STANDS.

No person shall stop, stand, or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

(Ord. 6-2-2006)

STOPPING, STANDING OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS

§76.820. APPLICATION OF ORDINANCE.

The provisions of this ordinance prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

(Ord. 6-2-2006)

§76.825. REGULATIONS NOT EXCLUSIVE.

The provisions of this ordinance imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing, or parking of vehicles in specified places or at specified times.

(Ord. 6-2-2006)

§76.830. PARKING PROHIBITED AT ALL TIMES ON CERTAIN STREETS.

When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets described by ordinance.

(Ord. 6-2-2006)

§76.835. PARKING PROHIBITED DURING CERTAIN HOURS ON CERTAIN STREETS.

When signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours specified by ordinance of any day except Sunday and public holidays within the district or upon any of the streets described by ordinance.

(Ord. 6-2-2006)

§76.840. STOPPING, STANDING OR PARKING PROHIBITED DURING CERTAIN HOURS ON CERTAIN STREETS.

When signs are erected in each block giving notice thereof, no person shall stop, stand, or park a vehicle between the hours specified by ordinance of any day except Sundays and public holidays within the district or upon any of the streets described by ordinance.

(Ord. 6-2-2006)

§76.845. PARKING SIGNS REQUIRED.

Whenever by this ordinance or any ordinance of the city any parking time limit is imposed or parking is prohibited on designated streets it shall be the duty of the city traffic engineer to erect appropriate signs giving notice thereof and no such regulations shall be effective unless said signs are erected and in place at the time of any alleged offense.

(Ord. 6-2-2006)

§76.850. COMMERCIAL VEHICLES PROHIBITED FROM USING CERTAIN STREETS.

In cases where an equally direct and convenient alternate route is provided, an ordinance may describe and signs may be erected giving notice thereof, that no persons shall operate any commercial vehicle upon streets or parts of streets so described except those commercial vehicles making deliveries thereon.

(Ord. 6-2-2006)

TRAFFIC VIOLATIONS BUREAU

§76.855. WHEN PERSON CHARGED MAY ELECT TO APPEAR AT BUREAU.

1. Any person charged with an offense for which payment of a fine may be made to the traffic violations bureau shall have the option of paying such fine within the time specified in the notice of arrest at the traffic violations bureau upon entering a plea of guilty and upon waiving appearance in court; or may have the option of depositing required lawful

bail, and upon a plea of not guilty shall be entitled to a trial as authorized by law.

2. The payment of a fine to the bureau shall be deemed an acknowledgment of conviction of the alleged offense, and the bureau, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof.

(Ord. 6-2-2006)

§76.860. DUTIES OF TRAFFIC VIOLATIONS BUREAU.

The following duties are hereby imposed upon the traffic violations bureau in reference to traffic offenses:

(1) It shall accept designated fines, issue receipts, and represent in court such violators as are permitted and desire to plead guilty, waive court appearance, and give power of attorney;

(2) It shall receive and issue receipts for cash bail from the persons who must or wish to be heard in court, enter the time of their appearance on the court docket, and notify the arresting officer and witnesses, if any, to be present.

(Ord. 6-2-2006)

§76.865. TRAFFIC VIOLATIONS BUREAU TO KEEP RECORDS.

The traffic violations bureau shall keep records and submit to the judges hearing violations of municipal ordinances summarized monthly reports of all notices issued and arrests made for violations of the traffic laws and ordinances in the city and of all the fines collected by the traffic violations bureau or the court, and of the final disposition or present status of every case of violation of the provisions of said laws and ordinances. Such records shall be so maintained as to show all types of violations and the totals of each. Said records shall be public records.

(Ord. 6-2-2006)

§76.870. ADDITIONAL DUTIES OF TRAFFIC VIOLATIONS BUREAU.

The traffic violations bureau shall follow such procedure as may be prescribed by the traffic ordinances of the city or as may be required by any laws of this state.

(Ord. 6-2-2006)

PROCEDURE ON ARREST

§76.875. FORMS AND RECORDS OF TRAFFIC CITATIONS AND ARRESTS.

1. The municipality shall provide books containing uniform traffic tickets as prescribed by

supreme court rule no. 37.46. Said books shall include serially numbered sets of citations in quadruplicate in the form prescribed by supreme court rule.

2. Such books shall be issued to the chief of police or his duly authorized agent, a record shall be maintained of every book so issued and a written receipt shall be required for every book. The judge or judges hearing municipal ordinance violation cases may require that a copy of such record and receipts be filed with the court.

3. The chief of police shall be responsible for the issuance of such books to individual members of the police department. The chief of police shall require a written receipt for every book so issued and shall maintain a record of every such book and each set of citations contained therein.

(Ord. 6-2-2006)

§76.880. PROCEDURE OF POLICE OFFICERS.

Except when authorized or directed under state law to immediately take a person before the municipal judge for the violation of any traffic laws, a police officer who halts a person for such violation other than for the purpose of giving him a warning or warning notice and does not take such person into custody under arrest, shall issue to him a uniform traffic ticket which shall be proceeded upon in accordance with supreme court rule no. 37.

(Ord. 6-2-2006)

§76.885. UNIFORM TRAFFIC TICKET TO BE ISSUED WHEN VEHICLE ILLEGALLY PARKED OR STOPPED.

Whenever any motor vehicle without driver is found parked or stopped in violation of any of the restrictions imposed by ordinance of the city or by state law, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a uniform traffic ticket or other citation for the driver to answer to the charge against him within seven days during the hours and at a place specified in the traffic ticket.

(Ord. 6-2-2006)

§76.890. WARNING OF ARREST SENT UPON FAILURE TO APPEAR.

If a violator of the restrictions on stopping, standing or parking under the traffic laws or ordinances does not appear in response to a uniform traffic ticket affixed to such motor vehicle within a period of five days, the traffic violations bureau shall send to the owner of the motor vehicle to which the traffic ticket was affixed a summons to appear in court and a letter informing him of the violation.

(Ord. 6-2-2006; 2015-09-001)

SUBCHAPTER C -- ALCOHOL AND DRUG RELATED TRAFFIC OFFENSES

§ 76.900: PERCENT BY WEIGHT OF ALCOHOL, DEFINED

"Percent by weight of alcohol" in the blood shall be based upon grams of alcohol per one hundred (100) milliliters of blood or two hundred ten (210) liters of breath and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this Section, the test shall be conducted in accordance with the provisions of Sections 577.020 to 577.041, RSMo. (RSMo. §577.012)

(6-3-2006)

§ 76.905 DRIVING WHILE INTOXICATED

A person commits the offense of *"driving while intoxicated"* if he/she operates a motor vehicle in this City while in an intoxicated condition. "Intoxicated Condition" as used in this Subchapter means: when a person is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.

(6-3-2006)

§ 76.910 DRIVING WITH EXCESSIVE BLOOD ALCOHOL CONTENT

A person commits the offense of *"driving with excessive blood alcohol content"* if such person operates a motor vehicle in this City with eight-hundredths of one percent (.08%) or more by weight of alcohol in such person's blood.

(Ord. 6-3-2006)

§ 76.915: CHEMICAL TEST FOR ALCOHOL OR DRUG CONTENT—CONSENT IMPLIED—ADMINISTERED—WHEN—HOW—VIDEOTAPING OF CHEMICAL OR FIELD SOBRIETY TEST ADMISSIBLE EVIDENCE-PRESUMPTION

A. Any person who operates a motor vehicle upon the public highways of this City shall be deemed to have given consent to, subject to the provisions of §§ 577.020 to 577.041, RSMo., a chemical test or tests of the person's breath, blood, saliva or urine for the purpose of determining the alcohol or drug content of the person's blood pursuant to the following circumstances:

1. If the person is arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was driving a motor vehicle while in an intoxicated or drugged condition;

2. If the person is under the age of twenty-one (21), has been stopped by a Law Enforcement Officer, and the Law Enforcement Officer has reasonable grounds to believe that such person was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent (.02%) or more by weight;

3. If the person is under the age of twenty-one (21), has been stopped by a Law Enforcement Officer, and the Law Enforcement Officer has reasonable grounds to believe that such person has committed a violation of the traffic laws of the State or any political subdivision of the State, and such officer has reasonable grounds to believe, after making such stop, that such person has a blood alcohol content of two-hundredths of one percent (.02%) or greater;

4. If the person is under the age of twenty-one (21), has been stopped at a sobriety checkpoint or roadblock, and the Law Enforcement Officer has reasonable grounds to believe that such person has a blood alcohol content of two-hundredths of one percent (.02%) or greater;

5. If the person, while operating a motor vehicle, has been involved in a motor vehicle collision which resulted in a readily apparent serious physical injury as defined in § 565.002, RSMo., and has been arrested as evidenced by the issuance of a uniform traffic ticket for the violation of any State law or County or municipal ordinance with the exception of equipment violations contained in Chapter 307, RSMo., or similar provisions contained in County or municipal ordinances; or

6. If the person, while operating a motor vehicle, has been involved in a motor vehicle collision which resulted in a fatality.

B. The test shall be administered at the direction of the Law Enforcement Officer whenever the person has been arrested or stopped for any reason.

C. The implied consent to submit to the chemical tests listed in subsection (A) of this Section shall be limited to not more than two (2) such tests of the same person arising from the same arrest, incident or charge.

D. The person tested may have a physician, or a qualified technician, chemist, registered nurse or other qualified person at the choosing and expense of the person to be tested, administer a test in addition to any administered at the direction of a Law Enforcement Officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test taken at the direction of a Law Enforcement Officer.

E. Upon the request of the person who is tested, full information concerning the test shall be made available to him/her.

F. Any person given a chemical test of the person's breath pursuant to Subsection (A) of this

Section or a field sobriety test may be videotaped during any such test at the direction of the Law Enforcement Officer. Any such video recording made during the chemical test pursuant to this Subsection or a field sobriety test shall be admissible as evidence for a violation of any municipal ordinance or any license revocation or suspension proceeding pursuant to the provisions of Chapter 302, RSMo. (RSMo. §577.020)

G. An arrest without a warrant by a law enforcement officer for a violation of this SubChapter is lawful whenever an arresting officer has reasonable grounds to believe that the person to be arrested has violated any provision of this SubChapter, whether or not the violation occurred in the presence of the arresting officer; provided, however, that any such arrest without warrant must be made within one and one-half hours after such claimed violation occurred.

H. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while operating or in actual physical control of a vehicle while under the influence of intoxicating liquor, if there was at that time eight one-hundredths (0.08) per cent or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance , it shall be presumed that the person was under the influence of intoxicating liquor at the time. Such a presumption is rebuttable by competent, admissible evidence.

(Ord. 6-3-2006)

§ 76.920: CONSUMPTION OF INTOXICANTS IN MOVING MOTOR VEHICLE – PROHIBITED WHEN

No person shall consume any alcoholic beverage, or other substance that will place the person in an intoxicated condition, while operating a moving motor vehicle upon the highways. Any person found guilty of violating the provisions of this Section is guilty of an infraction. Any infraction under this Section shall not reflect on any records with the Department of Revenue. (RSMo. §577.017).

(Ord. 6-3-2006)

§ 76.925: TRANSPORTING OPEN CONTAINER OF ALCOHOLIC BEVERAGES IN MOTOR VEHICLES

A. No person shall knowingly transport in a motor vehicle operating upon a public highway, street or alley any alcoholic beverage except in the original container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment or any outside compartment which is not accessible to the driver or any other person in such vehicle while it is in motion. In the case of a pickup truck, station wagon, hatchback, or other similar vehicle, the area behind the last upright seat shall not be considered

accessible to the driver or any other person.

B. No driver of a motor vehicle shall allow any alcoholic beverage to be consumed while in a moving motor vehicle, nor shall any person consume any alcoholic beverage while in a moving motor vehicle.

C. Nothing in this Section shall be construed as to prohibit the otherwise legal consumption of alcoholic beverages by passengers on a privately or publicly owned transit authority that has been chartered and is not being utilized for conveyance of the general public where the operation and control of such conveyance is by a person not in possession of or with ready access to such alcoholic beverage.

D. This Section shall not apply to the living quarters of a recreational motor vehicle as defined in the City Municipal Code.

(Ord. 6-3-2006)

§76.930 REIMBURSEMENT OF COSTS.

1. Upon a plea of guilty (including a plea of guilty when there is a suspended imposition of sentence), a finding of guilt, or a conviction of any offense in this Subchapter, the court shall order the defendant to pay the costs associated with the arrest or charges filed against the defendant.

2. Such costs shall include the reasonable cost of making the arrest, including the cost of any chemical tests to determine the alcohol or drug content of the persons's blood, and the costs of processing, charging, booking and holding such person in custody.

3. Law enforcement authorities may establish a schedule of such costs for submission to the court; however, the court may order the costs reduced if it determines that the schedule of costs is excessive given the circumstances of the case or for good cause shown.

4. These fees shall be calculated as additional costs by the municipal court and shall be collected by the court in the same manner as other costs and fees are collected and remitted to the City Treasurer.

5. The City Treasurer shall retain these fees in a separate fund known as the "DWI/Drug Enforcement Fund". Monies within the DWI/Drug Enforcement Fund shall be appropriated by the City Board of Aldermen to law enforcement authorities from such fund in amounts equal to those costs so incurred and shall be specifically used to enhance and support the enforcement and prosecution of alcohol and drug related traffic laws within the city, and Drug and Alcohol Education.

(Ord. 6-3-2006)

CHAPTER 77 - EMERGENCIES

SUBCHAPTER A -- CIVIL EMERGENCIES

§77.010. POLICY.

Because fire, flood, epidemic, civil disturbances, riots, or other emergencies may from time to time occur within the City of Elsberry, Missouri, the temporary powers and authorities provided in §77.025 are hereby granted to the Mayor of the City, subject to the limitations of this Subchapter. Such powers may be exercised only in the event of an emergency found, declared, and proclaimed to exist by the Mayor in writing; only for the purposes of addressing the emergency declared, and only for the duration of such emergency. Should the Mayor be absent, incapacitated, or be otherwise unavailable, the City's Mayor Pro Tem, or in the absence of the Mayor Pro tem, a simple majority of the City's Board of Aldermen, may declare a state of emergency. In such case, the declaration shall designate who shall exercise the emergency powers until the Mayor becomes available. The Board of Aldermen may override any such declaration or power exercised under that declaration, by a majority vote of the entire Board at a duly constituted meeting of the Board.

(Ord. 2020-05-002)

§77.015 APPLICABLE EMERGENCIES

The Mayor shall have the right to declare an emergency to exist when one or more of the following conditions exists.

1. Imminent danger of the destruction of life or property due to unusual extreme conditions, or dealing with the immediate aftermath of such unusual extreme conditions.

2. Imminent danger of unusual or extreme weather conditions, making use of City streets or areas difficult or impossible, or dealing with the immediate aftermath of such unusual or extreme weather conditions.

3. Imminent danger of dangerous wide spread civil commotion, insurrection, uprising, or riot; or dealing with the immediate aftermath of such commotion, uprising, or riot.

4. Stoppage or loss of electrical power affecting a major portion of or service to the City.

5. An epidemic, pandemic, or similar public health crises in, or effecting, the City.

6. A declaration of a State of Emergency encompassing the City has been issued by the Lincoln County Commission, the Governor of Missouri, a resolution of the Missouri General Assembly pursuant to RSMo. §§ 44.010 to 44.130, or the

President of the United States of America.

7. Disasters resulting from terrorism, foreign invasion, fire, wind, flood, earthquake, or other natural or man-made causes.

8. The occurrence of a natural or man-made disaster of major proportions within the City when the safety, health, and welfare of the inhabitants of this State are jeopardized.

(Ord. 2020-05-002)

§77.020 EMERGENCY DECLARATIONS

All declarations, orders, rules and regulations authorized by this Article shall be in writing and shall be available for public inspection, at City Hall or such places and during such hours as may be fixed by the Mayor. All orders, rules and regulations promulgated pursuant to the authority conferred by this Article shall be in force and effect from the time of the promulgation thereof until amended or revoked upon proclamation by the Mayor or resolution by the Board of Aldermen.

(Ord. 2020-05-002)

§77.025. EMERGENCY POWERS.

In addition to any and all powers now granted to, and exercised by, the Mayor of the City of Elsberry, Missouri, the Mayor, or those authorized by §77.010, are hereby granted the following emergency powers in order to protect life and property in the City and provide for the health, welfare, and safety of the City's inhabitants:

1. Alert the Civil Defense Organization and the inhabitants of the City when there is a threatening disaster, or whenever a state of emergency is declared by the proper Federal, State, or local authorities.

2. Make and issue temporary regulations; temporarily suspend the operation of certain specific ordinances; temporarily extend or delay deadlines or dates specified in City ordinances reasonably related to the protection of life, health, safety, livelihood, and property affected by such a disaster or emergency. The Mayor may not suspend any ordinance or regulation that would prevent oversight of the Mayor's actions by the Board of Aldermen. If the Mayor cancels any meeting of the Board of Aldermen or subcommittee thereof, the Board of Aldermen my convene that meeting, or a substitute meeting, by having four Aldermen submit such request to the Mayor and the City Clerk, or in their absence, the President of the Board of Aldermen. The written requests shall state suggested time and location for such meetings and the City Clerk shall schedule the meeting as soon as possible in accordance with state law.

3. Apply or adopt emergency orders and regulations issued by the State of Missouri or the Lincoln County Commission to City actions, ordinances, or regulations relating to that disaster or emergency.

4. When normal procurement is not possible in a timely fashion, obtain vital supplies, equipment and such other properties found lacking for the protection of the life and property of the people, and bind the City for the fair value thereof, and if required immediately, to commandeer the same for public use.

5. Require emergency services of any officials or employees of the City.

6. Delegate such duties as are herein authorized for the purpose of implementing and directing the Civil Defense Disaster Relief Program.

8. Use employees of the City of Elsberry to assist in the preservation of life, limb, health, safety, and property of the inhabitants of the City of Elsberry.

9. Close public use of streets and sidewalks.

10. To impose emergency curfew regulations, including prohibiting all persons (excluding emergency service workers, registered volunteers, or those individuals with official sanction) from entering or transiting designated restricted areas either by foot, bicycle, or motor vehicle.

11. To close or curtail operations of business establishments.

12. To close any municipally owned buildings and other facilities to the use of the general public.

13. Suspend routine governmental services for either the duration of an emergency or until the situation has stabilized to the point that resources may be safely diverted toward the resumption of normal services.

14. Order and conduct such evacuations as are consistent with the safety, health, and welfare of the general public.

15. Perform such other measures as are necessary to promote and secure the health, safety, and protection of the City's civilian population and property.

(Ord. 2020-05-002)

§77.030 PENALTIES FOR VIOLATING EMERGENCY ORDERS.

Whenever an emergency decree has been put into effect, any person who shall be found guilty of violating any provision of such order within the City limits shall be deemed guilty of a

misdemeanor.

(Ord. 2020-05-002)

SUBCHAPTER B -- LOCAL EMERGENCY PREPAREDNESS

§77 .110. ESTABLISHMENT.

There is hereby created within and for the territory of Elsberry, Missouri an emergency management organization to be known as the City of Elsberry, which is responsible for the preparation and implementation of emergency functions required to prevent injury and minimize and repair damage due to disasters, to include emergency management of resources and administration of such economic controls as may be needed to provide for the welfare of the people, and emergency activities (excluding functions for which military forces are primarily responsible) in accordance with Chapter 44, Revised Statutes of Missouri, 1978, and supplements thereto, and the Missouri Emergency Operations Plan adopted thereunder.

§77.120. ORGANIZATION.

This agency shall consist of a Director and other members appointed by the Mayor to conform to the State organization, and procedures for the conduct of emergency operations as outlined in the Missouri Emergency Operations Plan.

§77.130. FUNCTIONS.

The organization shall perform emergency management functions within the territorial limits of the City of Elsberry, Missouri and may conduct these functions outside the territorial limits as directed by the Governor during the time of emergency pursuant to the provisions of Chapter 44, Revised Statutes of Missouri, 1978, and supplements thereto.

§77.140. DIRECTOR.

1. The director will be appointed by the Mayor and shall serve during the pleasure of the Mayor.

2. The Director shall have direct responsibility for the organization, administration and operations of local emergency management activities.

3. The Director shall be responsible for maintaining records and accounting for the use and disposal of all items of equipment placed under the jurisdiction of the Emergency Management Agency.

§77.150. EXECUTIVE OFFICER.

The Mayor of the City of Elsberry, Missouri, and the Director in accordance with Chapter 44,

Revised Statutes of Missouri, 1978, and supplements thereto, may:

1. Appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons, including emergency assistance to victims of an enemy attack; the safety of property; and direct and coordinate the development of disaster plans and programs in accordance with the policies and plans of the federal and state disaster and emergency planning;

2. Appoint, provide, or remove rescue teams, auxiliary fire and police personnel and other emergency operations teams, units or personnel who may serve without compensation;

3. In the event of enemy attack, waive the provisions of statutes requiring advertisement for bids for the performance of public work or entering into contracts;

4. With the approval of the Governor and consistent with the Missouri Emergency Operations Plan, enter into mutual-aid agreements with other public and private agencies within and without the State for reciprocal emergency aid;

5. Accept services, materials, equipment, supplies or funds granted or loaned by the federal government for disaster planning and operations purposes.

§77.160. OATH.

No person shall be employed or associated in any capacity in any organization established under this act who advocates or has advocated a change by force or violence in the constitutional form of' the government of the United States or in this State or the overthrow of any government in the United States by force or violence, or has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

> "I, _____ do solemnly swear (or affirm} that I will support and defend the Constitution of the United States and the Constitution of the State of Missouri, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such a time as I am a member of the City of Elsberry, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence."

§77.170. OFFICE SPACE.

The Mayor is authorized to designate space in any City owned or leased building for the Elsberry Emergency Management Office.

SUBCHAPTER C -- CURFEW

§77.200. PROHIBITED ACTIVITY - MINORS.

No minor under the age of seventeen years shall be in any commercial place of amusement and entertainment or any unsupervised place between the hours of 10:30 p.m. of any Monday, Tuesday, Wednesday, Thursday and Sunday and 5:00 a.m. of the following day, official City time, and between the hours of 11:30 a.m. and 6:00 a.m. on Friday and Saturday official City time; provided however, that the provisions of this section shall not apply to a minor accompanied by his parent, guardian or other adult person having the care and custody of such minor.

(Ord. 2-1-1995)

§77.210. PARENTAL RESPONSIBILITY.

No parent, guardian or other adult person having the care and custody of a minor under the age of seventeen years shall knowingly permit such minor to be in or on or be driving in or on any street or park or to be in any commercial place of amusement and entertainment or any unsupervised place between the hours of 10: 30 p. m. of any Monday, Tuesday, Wednesday, Thursday and Sunday and 5:00 a.m. of the following day, and between the hours of 11:30 p.m. to 6:00 a.m. on Friday and Saturday provided, however, that the provisions of this section shall not apply when the parent, guardian or other adult person having the care and custody of such minor has sent such minor on an emergency errand or legitimate business.
(Ord. 2-1-1995)

§77.220. VIOLATION - WARNING

Any police officer finding a minor violating the provisions of Section 77.200 shall warn such minor desist immediatelyfrom such violation and shall promptly report the violation to his superior officer who shall cause a written notice to be served upon the parent, guardian or person having the care and custody of such minor, setting forth the manner in which Section 77.200 has been violated.

§77.230. SAME - TAKEN INTO CUSTODY.

Any minor under seventeen years of age who shall violate Section 77.200 after receipt of a first warning as provided in Section 77.220 shall be taken into custody of the apprehending officer and immediately turned over to the county juvenile officer and said juvenile shall thereafter be subject to the jurisdiction of the Juvenile Court. Any parent, guardian or person having the custody and care of a minor who knowingly permits such minor to violate the provisions of Section 77.200 after receipt of a notice of the first violation as provided in Section 77 .220 shall, on conviction,

be subject to a fine not to exceed one hundred ($100.00) dollars. Each violation of the provisions of Section 77.200 or Section 77.220 shall constitute a separate offense.

§77.240 PROHIBITED ACTIVITY - MINORS AND ADULTS.

No person shall be in the Elsberry City Park, which park is located in an area bound by Broadway, South Fourth Street, Griffin Street, and South Fifth Street, between sundown and sunrise, unless such person shall have a permit allowing such exception.
(Ord. 11-1-1988; 11-1-1991;11-1-1999)

§77.250. VIOLATION.

Any person who shall violate the provisions of Section 77.240, shall upon conviction, be subject to a five not to exceed One Hundred Dollars ($100.00). Each violation of the provisions of Section 77.240 shall constitute a separate offense.
(Ord. 11-1-1988)

CHAPTER 80 -- TAXATION

§80.010. TAX TO BE IMPOSED.

There shall be annually levied, assessed and collected on the assessed value of all real estate and personal property, and on the amount of merchants stock of goods in the City of Elsberry, subject to taxation by the laws of this state, such sums of money and taxes as may be necessary to defray the expenses of the government of said City, and to pay the interest and coupons as they become due on all bonds now issued and outstanding. But the value of property for City purposes shall not exceed the valuation of the same property for state and county purposes.

§80.020. RATE TO BE IMPOSED.

The board of aldermen shall within a reasonable time after the assessor's books of each year are returned, ascertain the amount of money to be raised thereon for general and other purposes and fix the annual rate therefor by ordinance.

§80.030. EXTEND BOOKS.

As soon as the levy has been ,made by the board of aldermen, the tax book shall be delivered to the city clerk who shall proceed to extend the tax so levied, and the taxes shall be extended therein as near as may be in the same manner that the taxes of the state and county extended.

§80.040. MAY RE-LEVY.

In case the board of aldermen has attempted to levy any tax or assessment for improvements or for

the payment of interest or coupons or bonds issued and outstanding or other evidences of debt, which tax or assessment may be informal, illegal or void in consequence of a failure to comply with the requirements of law, the board of aldermen shall have power to re-levy and reassess any such tax or assessment in manner provided by law, or ordinance of the City.

§80.050. CHARGE COLLECTOR.

The city clerk shall immediately after extending said taxes deliver the same to the city collector and charge him with the gross amount of the same and shall take the collector's receipt therefor, stating the amount of taxes, therein charged, which receipt shall be retained by the clerk. The clerk shall open an account with the collector and give him credit for all taxes paid by the collector as shown by the treasurer's receipt.

§80.060. NOTICE.

The city collector shall not later than the first day of October of any year after the tax books for any year are placed in his hands, give notice thereof and demand payment of such taxes by at least five printed notices posted up in as many places within each ward of the City and for at least two weeks in some newspaper published in the City, and it shall be the duty of the collector to attend his office during reasonable business hours and receive such taxes as may be paid.

§80.070. DELINQUENT.

Upon the first day of January of each year all unpaid taxes shall become delinquent, and the taxes upon real property are made a lien thereon.

§80.080. COLLECTOR TO BE DILIGENT.

The city collector shall diligently endeavor to use all lawful means to collect all taxes which he is required to collect by law; to that end he shall have the power to seize and sell the goods and chattels of the person liable for taxes, (in the same manner as the goods and chattels are sold under execution issued on judgment of law), both before and after said taxes shall become delinquent, but no such seizure and sale of goods shall be made until the collector has made demand of payment of the tax, either in person or by deputy to the party liable to pay the same, or by leaving a written or printed notice at his place of abode for that purpose with some member of the family over fifteen years of age. The collector shall not receive a credit for delinquent taxes until he shall have made an affidavit that he has been unable to find any personal property out of which to make the taxes in each case so returned delinquent.

§80.090. SEIZURE OF GOODS.

Whenever taxes shall be collected by seizure or sale of goods and chattels in addition to the amount of the tax and costs of failure to pay the collector as herein provided, the collector shall levy the necessary costs of the proceedings and the interests on the amount of the taxes and costs of said failure for his trouble. If the collector shall have reason to believe that any person charged

with the taxes is about to remove from the City without paying his taxes, he may at any time levy such taxes with costs and charges, by distress and sale; provided that in levying and selling personal property for taxes, the collector shall be governed by the same rules and be entitled to the same fees as sheriffs are, or may be, for like services upon execution.

§80.100. DELINQUENT TAX LIST.

It shall be the duty of the board of aldermen to require the collector, annually on the first meeting of the board of aldermen in April of each year, or as soon thereafter as may be, to make out under oath, a list of delinquent taxes remaining due and uncollected for each year to be known as the "Land and Lot Delinquent List", and the "Personal Delinquent List." It shall be the duty of the board of aldermen, at the meeting at which said delinquent lists are returned, or as soon as may be thereafter to carefully examine the same; and if it shall appear that all property and taxes contained in said lists are properly returned as delinquent, the board of aldermen shall approve the same and cause the amount thereof to be credited to the account of the city collector. The board of aldermen shall cause the land and lot delinquent list to be returned to the city collector, who shall be charged therewith, and who shall proceed to collect the same, in the same manner and under the same regulations as are or may be provided by law for the collection of the delinquent list of real and personal taxes for state and county purposes; provided that all suits for the collection of the City taxes shall be brought in the name of the State of Missouri at the relation and to the use of the city collector.

§80.110. SAME.

At the regular meeting of the board of aldermen in April of each year the city collector shall return the delinquent list and back tax books of the preceding year under oath of affirmation, to the board of aldermen and settle his accounts of all moneys received by him on account of taxes and other sources of revenue and the amount of such delinquent lists, or so much thereof as the board of aldermen shall find returned delinquent, shall be allowed and credited to him on his settlement. Before allowing the collector such credit for any delinquent list, the board of aldermen shall make inquiry and be fully satisfied that he has used due diligence to collect the same and that he could not find any personal property of the taxpayer out of which the taxes would have been made.

§80.120. ENTER IN RECORD.

The board of aldermen shall cause such settlement to be entered on record so as to show the amount due the city. The records shall show the amount of taxes collected on the current tax books, and the amount of such returned delinquent thereon. Also the amount collected on delinquent lists, amount of interest and penalty collected on delinquent lists, amount collected on forfeited land lists, amount of interest or penalty and costs collected on forfeited land lists, amount collected on all licenses and from all other sources.

§80.130. ENFORCE SETTLEMENT.

If the city collector shall fail to make settlement in time and manner prescribed by law, he may be

attached until he makes such settlement to the satisfaction of the board of aldermen.

§80.140. DELIVER LIST TO SUCCESSOR.

Each out-going collector shall deliver the personal delinquent list to his successor who shall proceed to collect the same and account for it as other moneys collected by him, and shall return said list to the city clerk to be delivered to the next succeeding collector and so on until the whole is collected. All such transfers of the uncollected personal delinquent list shall be upon the order of the board of aldermen, entered on record, and the clerk shall receive and file a receipt from the incoming collector for said delinquent list in each instance.

§80.150. CORRECT ERRORS.

At the meeting of the board of aldermen at which the several delinquent lists are required by this chapter to be returned and certified, the said board of aldermen shall examine and compare the lists of lands and town lots on which taxes remain due, and unpaid; and if any such land or town lots have been assessed more than once or if any of said lots are not subject to taxation, or if legal subdivision is incorrectly described, then in all such cases the board of aldermen shall correct all such errors by the best means in their power, and cause the list so corrected to be certified and filed in the office of the city clerk.

§80.160. ENFORCEMENT.

If any of the taxes on any tract of land or town lots contained in said tax book within the city, shall be and remain delinquent and unpaid for a period of one year, it shall be the duty of the collector to proceed to enforce the payment of the taxes charged against such tract or lot by suit in the circuit court of Lincoln County, which said court shall have jurisdiction regardless of the amount sued on, to enforce the lien of the city for the purpose of prosecuting suits for taxes. It shall be the duty of the collector when suit shall have been commenced against any tract of land or town lot on said back tax book to note opposite said tract or lot, such fact, also against whom suit has been commenced, and in all cases where suit is brought for the enforcement of the liens as above, where summons shall have been issued against defendant and the officer to whom it is directed shall make his return that defendant cannot be found, the court before whom the suit is pending, being first satisfied that the summons cannot be served, shall make an order of publication against non-resident defendants which order of publication shall be published in some newspaper published in the city of Elsberry; the publication shall be for four successive weeks, the last insertion to be at least fifteen days before the commencement of the term at which the defendant is required to appear. The proof of the publication of the order required by this section may be made by the affidavit of the publisher of the newspaper in which the order was published or by the affidavit of any person who would be a competent witness in said cause; and if the defendant or defendants fail to appear at the time and place required by said order and defend said cause of action; judgment by default may be rendered as prayed, which judgment shall be binding and effectual against the property on which the lien is sought to be enforced as if there had been personal service on the defendant.

(Amend. Ord. 11-01-06)

§80.170. SUIT, HOW BROUGHT.

All actions commenced under the provisions of this Chapter shall be prosecuted in the name of the State of Missouri, at the relation and to the use of the city collector and against the owner of the property and all lands owned by the same person may be included in one petition and in one count thereof for the taxes for all such years as taxes may be due thereon, and said petition shall show the different years for which said taxes are due, as well as the several taxes or funds to which they are due with the respective .amount due each' fund; all of which shall be set forth in a tax bill, so certified, which shall be prima facie evidence that the amount claimed in said suit is just and' correct: and all notices and process in suits under this Chapter shall be sued out and served in the same manner as in civil actions in circuit courts. In all suits under this Ordinance the general laws of the state as to practice and proceedings in civil cases shall apply, as far as applicable.

§80.180. MAY STILL CORRECT ERRORS.

In all cases where the City shall have assessed and levied taxes, general or special, on any real estate, according to law whether the same be delinquent or otherwise, and until the same are collected and paid with all costs and interest and penalties thereon, the Mayor and Board of Aldermen shall have full power to correct any errors that may appear in connection therewith whether of valuation, subject to the provisions of the Constitution of this State, or description of ownership double assessment, omission from the assessment books, or lists or otherwise and to make such valuation, assessment and levy to conform in all respects to the requirements of the law.

§80.190. INTEREST.

All taxes becoming delinquent shall bear ten percent interest per year from time they become delinquent until paid and shall also be subject to the same fees, commissions and charges as in this Chapter provided for delinquent taxes. In computing interest under this Chapter a fraction of a month shall be counted as a whole month.

§80.200. LIEN.

A lien such as is now provided for by law in favor of the state for taxes due and unpaid on real estate is hereby declared in favor of the City of Elsberry for taxes due thereon and for all interests and costs accrued thereon or incurred under this Chapter; all in conformity with the provisions of the state law.

§80.210. COMPROMISE TAXES, WHEN.

Whenever it shall appear to the board of aldermen that any tract of land or town lot contained in the back tax book is not worth the amount of taxes, interest and costs due thereon as charged in

said back tax book, or the same would not sell for the amount of such taxes, interest, and costs, it shall be lawful for said board of aldermen to compromise said taxes with the owner of said tract or lot, and upon payment to the collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the City which shall have the effect to release said land from the lien of the City and all taxes due thereon as charged in the back tax book; it shall be the duty of the board of aldermen to distribute the amount so paid to the various funds to which the said taxes. are due in proportion as the amount charged against such tract or lot; provided, that the board of aldermen may order that no suit be brought on any specified tract if in the judgment of such board of aldermen such tract is not worth or will not bring the taxes.

CHAPTER 81 -- DELINQUENT TAXES

§81.010. TAX BOOKS.

Between the first of January and the first of July in each year the city clerk and collector shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, describing such lands or lots as the same are described in the tax books and said delinquent returns, and charging them with the amount of delinquent taxes and naming the years delinquent, separately stated, and in addition thereto a penalty as herein provided, and shall certify the correctness thereof, with the date the same was recorded, and sign the same himself, or deputy, officially.

§81.020. WHO MAY REDEEM LAND.

The city clerk and collector shall proceed to collect the taxes contained in such back tax book or recorded list of delinquent lands and lots, and any person having an interest in said lands or lots may redeem such tract or any part thereof from the City's lien thereon by paying the taxes charged against said land in said "Back Tax Book" with interest on the same as herein provided.

§81.030. COMPROMISE ALLOWED, WHEN.

Whenever it shall appear to the board of aldermen that any tract of land in said back tax book is not worth the amount of taxes, interest and cost due thereon, or that the same would not sell for the amount so charged, it shall be lawful for the board of aldermen to compromise said taxes with the owner which shall have the effect to release said land from the city's lien; it shall be the duty of the collector to distribute to its various funds to which said taxes are due in proportion as the amount received bears to the whole amount charged against such tract or lot. Provided however such compromise shall only be made in cases where improvements have been destroyed , which materially lower the value of the property, after the assessment is made and before the taxes are collected.

§81.040. EXCESS FUNDS RECEIVED FROM SALE OF PROPERTY.

When real estate is sold by the city clerk and collector for taxes for a greater amount than the debt or taxes and all costs, the balance over shall be paid to the owner or owners of such land; if such

owner or owners cannot be found, then such surplus shall be paid into the treasury to be credited to the general fund, to be held in trust for twenty years for the owners or their legal representatives. At the end of twenty years, if such fund shall not be called for, then it shall become permanent funds of the City.
The board of aldermen shall require satisfactory proof of any claim before refunding the money, and the City shall pay no interest to the claimant for any such fund.

§81.050. CITY CLERK AND COLLECTOR'S FEE.

The city clerk and collector shall be allowed a fee of three percent of all sums collected which shall be taxed as costs and collected from the party redeeming the property.

§81.060. PENALTY.

If any taxpayer shall fail or neglect to pay such tax when it becomes due, then it shall be the duty of the city clerk and collector to collect and account for, as other taxes, an additional tax as penalty of eighteen percent on such tax delinquent for the preceding year and an additional annual ten percent for taxes for each prior year; provided however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to the sale thereof as in this Chapter provided, the percent of penalty shall not exceed two percent per month or fractional part thereof.

§81.070. TAX SALES.

All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this. Chapter on the first Monday in November of each year, and it shall not be necessary to include the name of the owner, mortgagee, or any other person or corporation claiming an interest in or to any of said lands or lots in the notice of sale; provided however, delinquent taxes, with penalty and interest and costs may be paid to the city clerk and collector at any time before property is sold therefor.

§81.080. PUBLICATION OF DELINQUENT LIST.

The city clerk and collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost by number, block, addition, etc.; provided however, that if a part or parts of any forty acre tract or other legal subdivision or lot is assessed on the tax books to two or more parties as owners thereof, then, as to such land or lots, such list shall be prepared and separated. To such list shall be attached and in like manner printed and published a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest and charges. which may be due thereon at the time of sale will be sold at public auction at the Courthouse door of Lincoln County, on the first Monday in August next thereafter, commencing at ten o'clock of said day and continuing from day to day until all are offered. The city clerk and collector shall, on or before the date of sale, insert at the

foot of such list on his record a copy of such notice the name of the newspaper of the county in which such notice was printed and published and the dates of insertion of such notice in such newspaper. The expense of such printing shall be paid by the purchaser or purchasers of the lands or lots sold and shall not exceed the legal rate as is fixed by Section 493.030 RSMo 1949, and shall be taxed as part of the costs of the sale of any land or lot contained in such list and disposed of at such sale, and the total cost of printing such notice shall be prorated against all such lands or lots so sold or redeemed prior to any such sale.

§81.090. PURCHASER AT TAX SALE, REQUIREMENTS.

On the day mentioned in the notice, the city clerk and collector shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes, interest, and charges thereon, or chargeable to such person in said county. The person offering at said sale to pay the required sum for the least quantity of any tract shall be considered the purchaser of such quantity; provided, no bid shall be received from any person not a resident of the State of Missouri, until such person shall file with the said clerk and collector an agreement in writing consenting to the jurisdiction of the Circuit Court of Lincoln County, and also filing with such clerk and collector an appointment of some citizen of said county as agent of said purchaser, and consenting that service of process on such agent shall give such court jurisdiction to try to determine any suit growing out of or connected with such sale for taxes. All such written consents to jurisdiction and selective appointments shall be preserved by the city clerk and collector and shall be binding upon any person or corporation claiming under the person consenting to jurisdiction and making the appointment herein referred to; providing further that in the event of death, disability or refusal to act of the person appointed agent of said nonresident purchaser the city clerk shall become the appointive agent of said nonresident purchaser.

§81.100. FAILURE TO SELL LANDS AND LOTS.

If at the first offering of sale on any tract of land or lot under the provisions of this Chapter no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the city clerk and collector of the sale shall note such fact in his record of sale and the city clerk and collector shall note a recital thereof in his record containing the list of delinquent lands and lots, and said tracts of land or lots shall be again offered for sale, at the next sale of delinquent land and lots as in this Chapter provided, if such lands or lots be at such time delinquent. If at the second offering for sale no person shall bid therefor a sum equal to the then delinquent taxes thereof with interest, penalty and costs, then the clerk of the sale shall note such fact upon his record of the sale and the city clerk and collector shall enter a recital of such fact in his record book containing the list, of delinquent lands and lots.

§81.110. THIRD OFFERING FOR SALE, EFFECT.

Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the clerk and collector of the City for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs

provided by ordinance, then such city clerk and collector shall at the next regular tax sale of land for delinquent taxes, sell same to the highest bidder, and there shall be no period for redemption from such sales. No certificates of purchase shall issue as to such sale, but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed. If any lands or lots are not sold at such third offering, then the clerk and collector, in his discretion, need not again advertise or offer such lands or lots for sale oftener than once every five years after the third offering of such lands or lots, and such offering shall toll the operation of any applicable statute of limitations. A purchaser at any sale subsequent to the third offering of any land or lots shall be entitled to this immediate issuance and delivery of a collector's deed and there shall be no period of redemption from such sales; provided however, before any purchaser at a sale to which this section is applicable shall be entitled to a collector's deed, it shall be the duty of the collector to demand, and the purchaser to pay, in addition to his bid, all taxes due and unpaid on such lands or lots that became due and payable on such lands or lots subsequent to the date of the taxes included in such advertisement and sale. In the event the real purchaser at any sale to which this section is applicable shall be the owner of the lands or lots purchased, or shall be obligated to pay the taxes for the nonpayment of which such lands or lots were sold, then no collector's deed shall issue to such purchaser, or to anyone acting for or on behalf of such purchaser, without payment to the clerk/collector of such additional amount as will discharge in full all delinquent taxes, penalty, interest and costs.

§81.120. PAYMENT FOR PURCHASE.

Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the clerk collector who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the city treasury to be held for the use and benefit of the person entitled thereto. In case the purchaser fails to pay his bid, the land shall again forthwith be for sale the same as if no sale had been made.

§81.130. CERTIFICATE OF PURCHASE, CONTENTS.

After payment has been made the clerk/collector shall give the purchaser a certificate in writing, to be designated as a certificate of purchase, which shall carry a numerical number and which shall describe the land so purchased each tract or lot separately stated, the total number of the tax, penalty, interest and costs, and the year or years delinquent for which said lands or lots were sold, separately stated, and the aggregate of all such taxes, penalty, interest and costs and the sum bid on each tract. If the purchaser bid for any tract or lot of land a sum in excess of the delinquent tax, penalty and interest and costs for which said tract or lot of land was sold, such excess sum shall also be noted in the certificate of purchase, in a separate column to be provided therefor. Such certificate of purchase shall also recite the name and address of the owner or reputed owner, if known, and if unknown then the party or parties to whom each tract or lots of land was assessed, together with the address of such party, if known, and shall also have incorporated therein the name and address of the purchaser. Such certificate of purchase shall also contain the true date of a deed for said land, if not redeemed as in this Chapter provided, and the rate of interest that such certificate of purchase shall bear, which rate of interest shall not exceed the sum of ten percent (10%) per annum. Such certificate shall be authenticated by the city clerk and

collector, who shall record the same in a permanent record book in his office before delivery to the purchaser. Such certificate shall be assignable, but no assignment thereof shall be valid unless endorsed on such certificate and acknowledged before some officer authorized to take acknowledgment of deeds and an entry of such assignment entered in the record of said certificate of purchase issued, including the recording of the same, the city clerk shall be entitled to receive and retain a fee of fifty cents (50¢), to be paid by the purchaser and treated as a part of the costs of the sale, and so noted in the certificate. For noting any assignment of any certificate the city clerk/collector shall be entitled to a fee of twenty-five cents (25¢), to be paid by the person requesting such recital of assignment and which shall not be treated as a part of the cost of sale.

§81.140. POSSESSION OF PROPERTY SOLD.

The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this Chapter, unless sooner redeemed; provided however, any owner or occupant of any tract of land purchased may retain possession of said premises by making a written assignment of, or agreement to pay, rent certain or estimated to accrue during such redemption period or so much thereof as shall be sufficient to discharge the bid of the purchaser with, interest thereon as provided in the certificate of purchase. Any rent collected by the purchaser, his heirs or assigns, shall operate as payment upon the amount due the holder of such certificate of purchase and such amount or amounts, together with date paid and by whom shall be taken as a credit upon said certificate, and which said sums shall be taken into consideration in the redemption of said land, as provided for in this Chapter.

§81.150. CLERK OF SALE.

The city clerk shall attend as clerk of the sale of such delinquent land and shall enter the same on a record book giving a description of the proper tract, showing how much of each lot or tract to be sold, to whom, and the price, or whether the same remains unsold. For such service the clerk shall receive twenty-five cents (25¢) to be added to costs.

§81.160. REDEEMING UNDIVIDED SHARE.

Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes, may redeem his undivided part by paying such proportion of the purchase price, interest, penalty and subsequent taxes as he claims of the land sold; and any person claiming a specific part of any lands sold for taxes may redeem his specific part by paying such proportion of the purchase money, interest, penalty and subsequent taxes as his quantity of ground shall bear to the quantity sold.

§81.170. PARTIAL REDEMPTION.

In every case where a partial redemption is asked for the city clerk/collector, upon the application of the redemptor, after notices to the holder of the certificate, shall determine the proportion to be paid by the party applying to redeem and his decision shall be final thereon. For his services in

stating the proportion. the redemptor shall pay him fifty cents (SOC); and every case of a partial redemption. pursuant to either of the said sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption and the city clerk/ collector shall convey accordingly.

§81.180. PERIOD OF REDEMPTION.

The owner or occupant of any land or lot sold for taxes, or any other person having an interest therein, may redeem the same at any time during the two years next ensuing. in the following manner: by paying to the city clerk/collector for the use of the purchaser, his heirs or assigns. the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate of eight percent (8%) per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the cost incident to entry of recital of such redemption. Upon deposit with the city clerk/collector of the amount necessary to redeem as herein provided, it shall be the duty of the city clerk to mail to the purchaser, his heir or assigns, at the last post office address, if known, if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In the case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years following next the date of sale, no interest shall be charged or collected from the redemptioner after that time.

§81.190. INFANTS, IDIOTS, ETC., PERIOD OF REDEMPTION.

Infants, idiots, insane persons and persons in confinement may redeem any lands belonging to them sold for taxes, within two years after the expiration of such disability, in the same manner as provided in the preceding section for redemption by other persons.

§81.200. RECORDING REDEMPTION.

When lands sold for taxes, or any portions thereof, shall be redeemed, the city clerk/collector shall insert a memorandum of such redemption on the record of the certificate or purchase applicable thereto stating the quantity or description of the portion redeemed if not the whole, the date thereof, and by whom made, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming. The person redeeming shall then have the clerk/collector enter on his record of sales of land for delinquent taxes the recital of such redemption, the date thereof, and the person redeeming.

§81.210. FAILURE TO REDEEM, EFFECT.

If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a surveyor description of such part, made by the city or county surveyor or engineer, the city clerk/collector shall execute to the purchaser, his heirs

or assigns, in the name of the City, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject however, to all claims therein for unpaid taxes except such unpaid taxes existing at the time of the purchase of said lands and the lien for which taxes was inferior to' the lien for taxes for which said tract or lots of land was sold. In making such conveyance when two or more parcels, tracts or lots of land are sold for the nonpayment of taxes to the same purchaser or purchasers, or the same person or persons shall in any wise become the owner of the certificate thereof, all such parcels shall be included in one deed.

§81.220. DEED, PRIMA FACIE EVIDENCE OF TITLE.

Such conveyance shall be executed by the city clerk/collector, under his hand and seal, witnessed by the city treasurer and acknowledged before some officer authorized to take acknowledgments and the same shall be recorded in the recorder's office before delivery; a fee for recording shall be paid by the purchaser and shall be included in the cost of sale. Such deed shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of the sale, of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, that said land or lot had not been redeemed and that the period therefor had elapsed, and prima facie evidence of good and valid title in fee simple in the grantee of said deed. The city clerk/collector shall be entitled to demand and receive from the person applying therefor for such tax deed, one dollar and fifty cents ($1.50) which shall include acknowledgment.

§81.230. SUBSEQUENT TAXES, PAYMENT REQUIRED.

Every holder of a certificate of purchase shall before being entitled to a deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deeds, and any purchaser that shall suffer a subsequent tax to become delinquent and subsequent certificate of purchase to issue on the same property included in this certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent. purchaser, and such subsequent purchaser shall be at the time of obtaining his certificate redeem said first certificate of purchase outstanding by depositing with the city clerk/collector the amount of the first certificate with the interest thereon to the date of the said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of purchase and draw interest at the rate specified in said first certificate but not to exceed ten percent (10%) per annum from the date' of payment. Said holder of a certificate of purchase permitting a subsequent certificate to issue on the same property, shall upon notice from the city clerk/collector surrender said certificate of purchase on payment co him of the redemption money paid by the subsequent purchaser.

§81.240. INVALID SALE, EFFECT.

Whenever the city clerk/ collector shall discover prior to the conveyance of any lands sold for taxes that the sale was for any cause whatever, invalid, he shall not convey such lands, but the purchase money and the interest thereon shall be refunded out of the city treasury to the purchaser,

his representatives or assigns, on the order of the board of aldermen. Such invalid sale shall suspend for the period intervening between the date of the sale and the discovery of this invalidity the running of the statute of limitations. In such cases the city clerk/collector shall make an entry opposite to such tracts or lots in the record of certificate of purchase issued or redemption record that the same was erroneously sold, and the cause of invalidity, and such entry shall be prima facie evidence of the facts therein stated. He shall notify the clerk of sale and same shall be entered upon the sale record.

§81.250. SAME, REPAYMENT OF MONEY.

No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or if liable, the taxes shall have been paid before the sale, or if the description is so imperfect as to fail to describe the land or lots with reasonable certainty and for the first two enumerated causes, the money paid shall be refunded to the purchaser at the said void sale, with interest out of the City treasury, on order of the board of aldermen.

§81.260. WRONG PARTIES.

The sale of land for taxes shall not be invalid on account of such land having been listed or charged on the tax books in any other name than that of the rightful owner.

§81.270. DEATH OF PURCHASER, EFFECT OF.

In all cases of sale of lands for taxes, if the purchaser or assigns shall die before a deed shall be executed for such sale, the deed may be executed by the clerk/collector, to his heirs at law or devisees.

§81.280. TRUSTEE APPOINTED BY MAYOR.

The mayor of this City shall appoint subject to the approval of the board of aldermen a suitable person or persons with discretionary authority to bid at all sales to which this Chapter is applicable, and to purchase at such sale all lands or lots necessary to protect the taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids. Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant to clerk/collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold. Such person or persons so designated shall not be required to pay the amount bid on any such purchase by the clerk/collector's deed issuing on such purchase, shall recite the delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and the grantee in such deed or deeds hold title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold. The costs of all collector's deeds, the recording of same and the advertisement of such lands or lots, shall be paid out of the City treasury. All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustee or trustees upon order of the board of aldermen of said City, and the proceeds of such sales shall be applied, first, to the payment of the costs incurred and advanced, and the balance

shall be distributed pro rata to the funds entitled to receive the taxes on the lands or lots so disposed of. Upon appointment of any such person or persons to act as trustee as herein designated, a certified copy of the order making such appointment shall be delivered to the collector. Compensation to such appointment or trustee as herein designated shall be payable solely from proceeds derived from the sale of lands purchased by them as such trustees and shall be ten percent (10%) of the price for which any such lands or lots are sold by the trustees; provided, that if at any such sale any person bid a sufficient amount to pay in full all delinquent taxes, penalties, interest and costs, then the trustee herein designated shall be without authority to further bid on any such land or lots.

CHAPTER 82 -- MOTOR VEHICLE LICENSES

§82.010. CITY MOTOR VEHICLE LICENSE REQUIRED.

All motor vehicles operated and owned by persons who are residents of Elsberry, Missouri, or by persons who maintain a living abode within this City, which vehicles are not used exclusively outside of the City, and all motor vehicles used for business purposes by businesses located within the City are required to have a City motor vehicle license, and violation of this requirement shall constitute an offense by either the operator or owner of such motor vehicle.

(Ord. 1-1-1987)

§82.020. PRIMA FACIE VIOLATION.

Parking of a vehicle on any Public street without the vehicle having the proper City license as required by Section 82.010 shall be considered as a violation of Section 82.010.

(Ord. 1-1-1987)

§82.030. TERM OF LICENSE.

City motor vehicle licenses shall be per annum and valid from the first of January each year to the 31st of December, at which time any City motor vehicle license issued during said calendar year shall expire and become void.

(Ord. 1-1-1987)

§82.040. FEES.

Per annum license fees for all motor vehicles shall be as follows:

Automobiles having six (6) cylinders or less	$2.50
Automobiles having more than six (6) cylinders	$3.50
Trucks	$4.50

Motorcycles or motortricycles $1.00
Replacement stickers $1.00

(Ord. 1-1-1987)

§82.050. PRORATE LICENSE.

The city collector is hereby authorized to issue City motor vehicle licenses and prorate the fee for the balance of the calendar year on the basis of one-half (½) year, beginning July first, and one-quarter (1/4) year, beginning October first. The prorating for new residents shall be based on the date the applicant becomes a resident of the City or at the time an applicant obtains a motor vehicle.

(Ord. 1-1-1987)

§82.060. TRANSFER LICENSE TO ANOTHER VEHICLE.

The city collector is authorized to transfer a city motor vehicle license for an owner from one vehicle to another upon payment of a one dollar ($1.00) transfer fee provided that the classification of the latter vehicle is the same as set out above herein as the former vehicle. In the event the motor vehicle to which the transfer is requested is in a different class than the presently registered motor vehicle, the transfer fee shall be one dollar ($1.00), and the owner shall be required to pay the difference between the cost of the original license and the cost of the new license. The additional cost of the new license is not to be prorated as outlined above herein.

(Ord. 1-1-1987)

§82.070. PENALTY FOR FAILURE TO PURCHASE LICENSE ON OR BEFORE FEBRUARY FIRST OR WITHIN 30 DAYS AFTER ESTABLISHING RESIDENCE IN CITY.

1. In addition to the license fee as provided above herein, a penalty shall be assessed for licenses purchased after March first (1st) of each calendar year providing the applicant was a resident of the City of Elsberry on January first (1st) of said calendar year, such penalty shall be one dollar ($1.00) per month for each calendar month or portion thereof following March first (1st) of each year.

2. For failure to license a motor vehicle within thirty (30) days after the owner thereof becomes a resident of the City of Elsberry there shall be a penalty of one dollar ($1.00) per month or portion thereof in addition to the fee prescribed above herein.

3. The penalty as herein provided shall attach and become applicable thirty (30) days after the time such motor vehicle is first used, purchased or owned, driven or operated in or upon the streets of the City of Elsberry, Missouri.

4. Nothing contained in this Section shall be deemed a waiver of the right of any court to

impose a fine or penalty for the violation of the Ordinances of the City respecting the time when the City motor vehicle license is due as provided herein.

5. The city collector is hereby authorized and directed to assess and collect the penalty as herein provided and to do all things necessary to implement the provisions of this Chapter.

(Ord. 1-1-1987)

§82.080. DISPLAY OF CITY MOTOR VEHICLE LICENSE.

All motor vehicles except motorcycles, motortricycles or other excepted motor vehicles, shall have the required City motor vehicle license displayed on the front corner thereof and shall be affixed on the inside of the glass part of the front window or windshield of such motor vehicle approximately one (1) inch from the right and lower section of the frame of such window or windshield. All such licenses shall be issued by the City through its city collector and shall, by the owner, be affixed to the motor vehicle described thereon, in such manner that the-reading matter thereon shall face forward and be readable through the glass. Every license referred to in this Section shall be attached by the adhesive agent on the license, and by no other means. All such licenses shall be affixed in this same manner to motorcycles and motortricycles on the inside of the metal shaft running perpendicular to the handlebars of same.

(Ord. 1-1-1987)

§82.090. ISSUANCE OF CITY MOTOR VEHICLE LICENSE.

1. Owners of motor vehicles requiring a City motor vehicle license shall present to the city collector such evidence of ownership and such other information as the city collector may require. No license shall be issued until all City personal and merchant's taxes, manufacturer's taxes, sewer charges, occupation license fees and all other charges, debts or obligations. of any kind or nature due to the City are paid in full.

2. Persons moving into the City shall be required by the city collector to produce in lieu of paid personal City tax bills satisfactory proof of residence at a location other than the City of Elsberry, Missouri, and upon presentation of satisfactory proof, the city collector. is hereby authorized to issue City motor vehicle licenses and prorate the fees in accordance with the above provisions herein.

(Ord. 1-1-1987)

§82.100. REMOVAL OR DESTRUCTION OF CITY MOTOR VEHICLE LICENSE BEFORE DISPOSING OF MOTOR VEHICLE.

It shall be unlawful for the owner of any motor vehicle to sell, trade, or dispose of such motor vehicle to which a license has been affixed as provided by this Chapter, until he or she has removed or destroyed such license.

(Ord. 1-1-1987)

§82.110. REPLACING LOST OR DESTROYED CITY MOTOR VEHICLE LICENSE.

Whenever a City motor vehicle license shall have been lost or destroyed, the city collector shall issue a new license. The city collector shall require an affidavit of loss or destruction and any other proof deemed necessary. A charge of one dollar ($1.00) shall be made for such service as provided in Section 82.040 herein.

(Ord. 1-1-1987)

§82.120. CITY MOTOR VEHICLE LICENSE NOT TRANSFERABLE.

No City motor vehicle license issued as provided for herein shall be transferred to any person, nor shall such license be used for any motor vehicle other than the motor vehicle for which it was issued and described in the license receipt issued therewith.

(Ord. 1-1-1987)

§82.130. COUNTERFEITING OR ALTERING CITY MOTOR VEHICLE LICENSE.

It shall be unlawful for any person to make a replica, facsimile, or counterfeit of any license tag or license sticker issued by the city collector, evidencing the payment of a license fee issued on account of any motor vehicle, or to erase or change the numbers of any such license tag or license sticker, or to knowingly use any replica, facsimile, or counterfeit of any such license tag or license sticker.

(Ord. 1-1-1987)

§82.140. UNLAWFUL USE OF CITY MOTOR VEHICLE LICENSE.

No person not having procured the right from the City to exhibit or use a City motor vehicle license shall exhibit or use the same, except as authorized by the ordinances of the City.

(Ord. 1-1-1987)

§82.150. WRONGFULLY OBTAINING LICENSE, ETC.

Any person who shall willfully and fraudulently, by means of any false representation, or by the use of any false or fictitious name or address, or by the use of any other deceptive means, obtain or induce, procure, or aid in procuring the issuance of any motor vehicle license, any occupational license, or any license or permit authorized to be issued by the City, or who shall knowingly and willfully use any such license or permit so obtained, without the payment of any tax, assessment, or license fee required by any ordinance of the City to be paid as a condition of the issuance of such license or permit, shall be deemed guilty of a misdemeanor.

(Ord. 1-1-1987)

CHAPTER 84 -- MERCHANTS AD VALOREM TAX

§84.010. TERM MERCHANT DEFINED.

Every person, corporation or copartnership of persons, who shall deal in the selling of goods, wares and merchandise, at any store, stand or place occupied for that purpose in this city is declared to be a merchant.

§84.020. TERM MERCHANT CONSTRUED.

The term "Merchant" as used in the following sections of this Ordinance, shall be construed to include all merchants, commission merchants, grocers, manufacturers, and dealers in drugs and medicines, except physicians for medicines used in their practice, whether trading at wholesale or retail.

§84.030. RATE OF TAX.

Merchants shall pay an ad valorem tax each year equal to that which is levied upon real estate for general revenue purposes on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at anyone time between the first Monday in March and the first Monday in June in each year; provided that no commission merchant shall be required to pay any tax on any unmanufactured article, the growth or produce of this or any other state, which may have been consigned for sale, and in which he has no ownership or interest other than his commission.

Manufacturers shall pay an ad valorem tax each year equal to that which is levied upon real estate for general revenue purposes on the greatest amount of raw material and finished products as well as all the tools, machinery and appliances used by him or them, which he or they may have had on hand at anyone time between the first Monday in March and the first Monday in June next preceding in each year.

§84.040. MANUFACTURER DEFINED.

Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining or by the combination of different materials, shall be held to be a manufacturer for the purposes of this Code.

§84.050. VERIFIED STATEMENT.

On the second Monday in June in each year it shall be the duty of each person, corporation or copartnership of persons, dealing as either merchants or manufacturers in this city, to file with the city clerk and collector a duly verified statement, if a merchant, of the greatest amount of goods, wares and merchandise owned by such merchant and all such as shall have been consigned to him

or them for sale, by other parties, which he or they may have had on hand at any one time between the first Monday in March and the first Monday in June next preceding of that year; and, if a manufacturer, such verified statement shall include the greatest amount of raw material and finished products owned by such manufacturer, as well as all the tools, machinery and appliances used by him or them, which he or they may have had on hand at anyone time between the first Monday in March and the first Monday in June next preceding of that year.

The city clerk and collector shall enter an abstract of such statements in a book to be provided for that purpose and as soon as the levy is made by the board of aldermen of the City on real estate for general revenue purposes for the current year, he shall extend the taxes on such book due from such merchants and manufacturers at the same rate as levied on real estate for the current year, and shall charge himself with the amount of such taxes, and it shall be the duty of the city clerk and collector to collect all such ad valorem taxes and enforce the payment of same by any process of law available to him; provided, that nothing in this Code be construed as to apply to manufacturers whose raw material, finished products, tools, machinery and appliances, in the aggregate amount, be less than one thousand ($1,000) dollars.

§84.060. STATEMENTS TO BE SWORN TO.

The statements required by Section 84.050 of this Chapter to be furnished and filed with the city clerk and collector by merchants and manufacturers shall be signed and sworn to by the owner, or the person, member of the firm or manager of the corporation, in charge of and conducting the business, to the effect that such statement is a full true and correct statement of the aggregate amount of all property made taxable by law and this Code.

§84.070. PENALTIES.

Every person, corporation or copartnership of persons failing and refusing to furnish the statement required by Section 84.050 of this Chapter or to pay the ad valorem tax required by this Code, and every manager or agent in charge of and conducting the business of any such corporation, copartnership of persons thus failing and refusing to furnish such statement or pay such ad valorem tax, shall on conviction thereof, be punished by a fine of not less than twenty-five ($25.00) dollars nor more than five hundred ($500.00) dollars.

CHAPTER 85 -- TELEPHONE GROSS RECEIPTS TAX

§85.010. FRANCHISE GRANTED.

The City of Elsberry, Lincoln County, Missouri, hereby grants to the Southwestern Bell Telephone Company and its successors and assigns authority to construct, operate and maintain a telephone system within the city limits of Elsberry, Missouri, and within said limits as the same from time to time may be extended; and the City of Elsberry hereby consents to and the Southwestern Bell Telephone Company its successors and assigns are hereby authorized to place its poles, piers, abutments, wire and cables, conduits, equipment and other fixtures, along, across, on, through, over and under the public streets, avenues, alleys, thoroughfares and public grounds

and places within the present limits of the City of Elsberry, Missouri and while said limits as the same from time to time may be extended, and to use said streets, avenues, alleys, thoroughfares, public grounds and places for the purpose of rendering telephone service, local and long distance.

§85.020. CITY REGULATION.

The placing of all poles, piers, abutments, wires, cables, conduits, equipment and other fixtures, along, across, on, through, over and under the public streets, alleys, avenues, thoroughfares, public grounds and places of said City shall be subject to the reasonable regulation of the board of aldermen of the City of Elsberry or of some official or officials to whom such system shall be under the supervision and jurisdiction of the Missouri Public Service Commission.

§85.030. MOVE WIRES OR LINES TEMPORARILY, WHEN.

The telephone company, on request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefitted party or parties and the telephone company may require such payment in advance. The telephone company will be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

§85.040. MAY TRIM TREES.

The right, license, privilege and permission is hereby granted to the telephone company, its successors and assigns, to trim trees upon and overhanging the streets, avenues, alleys, thoroughfares, sidewalks, and public grounds and places of the said City, so as to prevent the branches of such trees from coming in contact with the wires, cables, or equipment of the telephone company, all of the said trimmings to be done under the supervision and direction of the board of aldermen of the City or any city official or officials to whom said duties have been or may be delegated.

§85.050. SUCCESSORS AND ASSIGNS.

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and to their respective successors and assigns.

§85.070: DEFINITIONS.

(1) As used in this article, the term "gross receipts" means the aggregate amount of all sales and charges, exclusive of sales and charges for the commodities or services relative to the business of supplying telephone or telephone service for compensation in the City during the period, less credits, refunds, sales taxes, and uncollectible accounts actually charged off during the period.

(2) Effective July 1, 2006, to the extent required by Section 92.083 RSMo., as used in this article:

(a) the term "gross receipts" shall be construed to mean all receipts from the retail sale of telecommunications service taxable under Section 144.020 RSMo, and from any retail customer now or hereafter exempt from state sales tax; and

(b) the terms "telephone service", "telecommunications service", "telecommunications", "local exchange service", "local exchange telephone transmission service", "exchange telephone service", and similar terms shall be construed to mean telecommunications service as defined in Section 92.077 RSMo, which as of the date of adoption hereof provides that "telecommunications service" has the same meaning as such term is defined in Section 144.010 RSMo, which in turn as of the date of adoption hereof provides that "telecommunications service" means the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means, further provides that as used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols,

(c) the term "telecommunications service" does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

(1) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;

(2) Answering services and one-way paging services;

(3) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or

(4) Cable or satellite television or music services.

(3) The phrase “to the extent required by law” shall mean that the action is required or permitted by State law in order for the City to continue to receive municipal telecommunications tax revenues under this Article.

(Ord. 3-1-2006; 05-01-2006)

§85.071. TAX LEVIED.

(1) Every person now or hereafter engaged in the business of selling telephone or telegraph service, for compensation for any purpose in the City shall pay to the City, as a license or occupation tax, five percent (5%) of the gross receipts from such business in the City.

(2) *[See note below]*. Effective July 1, 2006, to the extent required by law, notwithstanding the provisions of any municipal business license tax (as defined in Section 92.077 RSMo)

ordinance, this tax shall be based solely and exclusively on those gross receipts of telecommunications companies (being any company doing business in the State of Missouri that provides telecommunications service) for the retail sale of telecommunications services which are subject to taxation under sections 144.010 and 144.020 RSMo. To the extent required or permitted by law, for bills rendered on and after July 1, 2006, the tax rate shall be two and nine tenths percent (2.9%).

[N.B. *City of Springfield v. Sprint Spectrum, L.P.*, ____ S.W.3d _____ (Mo. banc 2006) (No. SC87238, decided August 8, 2006) held that RSMo §§92.074 to 92.089 unconstitutional. Elsberry City Code 85.100 provides that if RSMo §§92.074 to 92.089 are found to be unconstitutional, unenforceable, or are enjoined by court action, then Elsberry City Code Sections 85.071(2) and (3), 85.072(2), and 85.074 shall be void.]

(3) *[See note below]* To the extent required by law, for bills rendered on and after July 1, 2007 the tax rate shall be adjusted as promulgated and published by the Director of the Department of Revenue for the State of Missouri pursuant to Section 92.086 RSMo. The City shall notify the Director of the Department of Revenue in writing within 30 days of any change in the tax rate to the extent required by Section 92.086 RSMo.

[N.B. *City of Springfield v. Sprint Spectrum, L.P.*, ____ S.W.3d _____ (Mo. banc 2006) (No. SC87238, decided August 8, 2006) held that RSMo §§92.074 to 92.089 unconstitutional. Elsberry City Code 85.100 provides that if RSMo §§92.074 to 92.089 are found to be unconstitutional, unenforceable, or are enjoined by court action, then Elsberry City Code Sections 85.071(2) and (3), 85.072(2), and 85.074 shall be void.]

(Ord. 05-01-2006)

§85.072. STATEMENT OF GROSS RECEIPTS REQUIRED; PAYMENT OF TAX; CREDIT FOR SERVICE RENDERED CITY.

(1) All persons engaged in the businesses described in sections 85.070 in the City are hereby required to file with the City Collector a sworn statement showing the gross receipts of such business within the City. For the business transacted and the gross receipts each month, a statement shall be due and filed by the last day of the following month. At the same time the statement is required to be filed, payment of the tax due on the gross receipts reported in the statement shall be made to the City of Elsberry at the rate set forth in Sec. 85.071. The payment shall be a license to operate for the month immediately succeeding the month in which the payment is made.

(2) *[See note below]* Effective July 1, 2006, to the extent required by law the Director of the Department of Revenue for the State of Missouri shall collect, administer, and distribute telecommunications business license tax revenues in accordance with the provisions of Sections 92.074 to 92.098 RSMo. and returns filed by telecommunications companies with the Director and tax payments made by such companies to the Director pursuant to such statutes shall take the place of the statements and payments described above.

[N.B. *City of Springfield v. Sprint Spectrum, L.P.*, ____ S.W.3d _____ (Mo. banc 2006) (No. SC87238, decided August 8, 2006) held that RSMo §§92.074 to 92.089 unconstitutional. Elsberry City Code 85.100 provides that if RSMo §§92.074 to 92.089 are found to be unconstitutional, unenforceable, or are enjoined by court action, then Elsberry City Code Sections 85.071(2) and (3), 85.072(2), and 85.074 shall be void.]

(Ord. 05-01-2006)

§85.073. TAX TO BE IN LIEU OF OTHER OCCUPATION TAXES.

The tax required to be paid under Section 85.071 shall be in lieu of any other occupation tax required of any person engaged in any of the businesses described in Section 85.070. Except as otherwise required by Sections 92.074 to 92.098 RSMo, nothing contained in this article shall be construed to exempt any person to which this article is applicable from payment to the City of any taxes, other than occupation license taxes, levied by the City upon such person or the real or personal property of such person.

(Ord. 05-01-2006)

§85.074. INVESTIGATION OF GROSS RECEIPTS STATEMENT.

(1) The City Collector and such other persons may be designated by the Board of Aldermen, from time to time, is and are hereby authorized to investigate the correctness and accuracy of any statement filed under the provisions of Section 620.070, and for that purpose shall have access at all reasonable times to the books, documents, papers and records of any person filing such statement.

(2) *[See note below]*. Effective July 1, 2006, any audit of a telecommunications company for purposes of sections 92.074 to 92.098 shall be conducted pursuant to such statutes and any rules promulgated thereunder.

[N.B. *City of Springfield v. Sprint Spectrum, L.P.*, ____ S.W.3d _____ (Mo. banc 2006) (No. SC87238, decided August 8, 2006) held that RSMo §§92.074 to 92.089 unconstitutional. Elsberry City Code 85.100 provides that if RSMo §§92.074 to 92.089 are found to be unconstitutional, unenforceable, or are enjoined by court action, then Elsberry City Code Sections 85.071(2) and (3), 85.072(2), and 85.074 shall be void.]

(Ord. 05-01-2006)

§85.080. EXEMPTION OF GOVERNMENT AND TAX-EXEMPT ORGANIZATIONS.

Said gross receipts tax shall be levied at the rate of 5% of the gross receipts collected for local service rates on all telephones, other than telephones for city, county, state and federal government agencies, churches and other tax-exempt organizations, installed within the city limits of the City of Elsberry, Missouri by said person.

§85.090 VIOLATIONS; PENALTIES.

(1) Any person engaged in any of the businesses described in Section 85.070 who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment as provided in this Code.

(2) Delinquent taxes under this article shall be subject to the penalties as provided for by other ordinances of the City, now or hereafter enacted, relating to penalties upon delinquent taxes.

(3) To the extent required by law, unless specifically stated otherwise in Sections 92.074 to 92.098 RSMo., taxpayer remedies, enforcement mechanisms, tax refunds, tax protests, assessments, and all other procedures regarding the tax imposed by this article shall be the same as those provided in Chapter 144 RSMo.

(Ord. 3-1-2006; 05-01-2006)

§85.100 CONSTRUCTION.

To the extent required by law, in all respects this article shall be interpreted, construed and applied consistent with the requirements of Sections 92.074 to 92.098 RSMo. However, to the extent that 92.074 to 92.098 RSMo. are found to be unconstitutional, unenforceable, or are enjoined by court action, then Sections 85.071(2) and (3), 85.072(2), and 85.074 shall be void. It is the intent and purpose of Code Sections 85.070 et seq to impose the highest gross receipts tax rate allowed by law.

(Ord. 3-1-2006; 05-01-2006).

CHAPTER 86 -- CABLE TELEVISION

§86.010. TITLE.

This Chapter shall be known, and may be cited as, "The Community Antenna Television Ordinance of the City of Elsberry, Missouri".

§86.020. DEFINITIONS.

For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. Where not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. **"City"** is the City of Elsberry, Missouri, a municipal corporation which, territorially, shall include all territory within the corporate limits of the City as such limits now exist or may

from time to time be extended or retracted.

2. **"Company"** is the Grantee of the rights under the license granted by this Chapter.

3. **"Council"** shall mean the board of aldermen, the governing body of the City of Elsberry, Missouri.

4. **"Grantee"** means Cablevision of Missouri II, Ltd., its successors and assigns, the Grantee of rights under this Chapter.

5. **"Person"** means any natural person, company or entity of any kind.

6. **"License area"** means that area within the corporate limits of the City as now or hereafter constituted.

7. **"Street"** means the surface of and the space above and below any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the license area.

8. **"Property of Grantee"** means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.

9. **"CATV"** means a cable television system.

10. **"Subscriber"** means any person or entity receiving and paying for CATV service.

11. **"Basic CATV Service"** means the distribution of broadcast and/or special satellite signals by the Grantee.

12. **"Expanded Basic CATV Service"** means the distribution of broadcast and/or certain satellite signals by Grantee for which there is an additional monthly charge paid by a subscriber.

13. **"Pay CATV Service"** or **"Premium CATV Service"** means the distribution of certain. satellite or microwave received signals for which there is an additional monthly charge paid by the subscriber.

14. **"Pay Per View CATV Service"** means the distribution of certain events, movies or specials by Grantee which are offered to subscriber on a per event basis for which there is an additional charge made.

15. **"Gross Revenues"** means all remuneration received directly by the company from its operations within the license area. This includes all revenues received from subscribers in payment for regularly furnished basic CATV service, expanded basic CATV service,

payor premium CATV service, pay per view CATV service, advertising revenues, installation charges, or any other services to be offered by Grantee during the term of this license. "Gross Revenues" shall not include any taxes on services furnished by Grantee imposed on any subscriber or user by any government or agency and collected by Grantee.

16. **"Cable Television System"** means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, convertors, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the license area.

§86.030. GRANT OF AUTHORITY.

There is hereby granted by the City to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the license area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, sd to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other Grantee licensed or permitted to do business in the City.

§86.040. NONEXCLUSIVE GRANT.

The right to use and occupy said streets for the purposes herein set forth, shall not be exclusive in the Grantee.

§86.050. TERM OF LICENSE.

The license and rights herein granted shall commence upon the. final passage hereof and shall continue in force and effect for twenty (20) years after said effective date. Upon application by the Grantee to the City, the license may be renewed for subsequent ten-year (10-year) periods.

§86.060. CONDITIONS OF STREET OCCUPANCY.

1. All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the license area shall be so located as to cause minimum interference with the property use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. The CATV system shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

2. In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such street or paved area in as good

condition as theretofore.

3. The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the Grantee shall in all cases have the right of abandonment of its property, subject to the City ordinances, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

4. The Grantee shall, at the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided:

   a. the expense of such temporary raising or lowering of wires is paid by said person, including, and required by the Grantee, making such payment in advance, and

   b. the Grantee is given not less than three business days advance notice to arrange for such temporary wire changes.

5. The Grantee shall have the authority to trim trees overhanging any streets in the license area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the Grantee's expense.

6. Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided:

   a. such use by the City does not interfere with the use by the Grantee; and

   b. the City holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and whatsoever arising out of such use of said poles or conduits.

§86.070. SAFETY REQUIREMENTS.

The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

§86.080. SYSTEM CONSTRUCTION AND EXTENSION.

1. The Grantee is hereby authorized to extend the system within the license area to the extent

that such extension is or may become technically and economically feasible.

2. Whenever the Grantee shall have received written requests for service from at least twelve (12) subscribers within twelve hundred (1200) cable feet of its aerial trunk cable, or from at least twenty (20) subscribers within twelve hundred (1200) cable feet of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible within not more than one year from date of application. The 1200 feet shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

3. No person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 200 cable feet or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

4. Grantee shall complete the CATV system construction on or before June 30, 1983. Such completion shall be subject to the conditions set forth in Section 86.090(2) of this Chapter.

§86.090. OPERATIONAL STANDARDS: FORCE MAJEURE.

1. The Grantee shall have no obligation to construct or extend, the system, nor to provide, repair, replace, maintain, or operate CATV service, for any cause beyond Grantee's control, including without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restriction, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or weather conditions incompatible with good quality workmanship.

§86.100. LOCAL OFFICE.

The Grantee shall maintain a local business office which subscribers may telephone during regular business hours without incurring added toll charges, so that any complaints regarding cable television operations may be reported to Grantee. Such local office shall be opened within ninety (90) days after final passage of this ordinance. Grantee further agrees to seek out and hire only local area residents for full-time. employment whenever possible.

§86.110. RATES.

The Grantee shall maintain on file with the city clerk a schedule setting forth all rates and charges

to be made to subscribers for basic CATV services, including connection and service charges. The schedule of basic television rates are attached as part of this Chapter and incorporated by reference herein. The basic CATV charges will not be changed without approval of the council. The council approval does not apply to the rates for expanded basic service, pay or premium CATV service, pay per view CATV service or any other optional services offered by Grantee.

§86.120. LICENSE PAYMENTS.

The Grantee shall pay the City, on or before April 1 of each year, a license fee of five percent (5%) of gross revenues received for cable television operations in the City for the preceding calendar year. Grantee further agrees that it shall pay to the City the first three (3) years estimated license fees in advance. Such estimate has been determined by Grantee to be in the sum of Fourteen Thousand Three Hundred Thirteen Dollars ($14,313.00) and shall be paid on or before March IS, 1983. Should the sum specified herein be higher than the actual earned license fee due from Grantee to the City, then Grantee shall receive a credit for. the difference towards Grantee' s future license fees which shall become due to the City and should the sum specified be lower than the actual earned license fee due from Grantee to the City, then Grantee shall pay to the City the additional fee due.

§86.130. INDEMNIFICATION OF CITY.

1. The Grantee shall at all times protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement., maintenance and operation of said cable television system, and by reason of any license, copyright. property right or patent of any article or system used in the construction or use of said system provided the City gives the Grantee prompt notice of any such claims, actions, and suits, without limitation, in writing. The Grantee shall maintain in full force and effect during the life of any license, public liability and property damage insurance for an amount of at least Three Hundred Thousand Dollars ($300,000.00) single limit liability from the time of commencement of construction of the CATV system.

2. All such insurance may contain reasonable deductible provisions not to exceed One Thousand Dollars ($1,000.00) for any type of coverage. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement, or otherwise, provided, however, the interests of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

§86.140. PROCEDURES.

1. Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of the Grantee's cable television system, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.

2. The notice required by this Section shall state clearly the action or proposed action to be taken, the time provided for response and the persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company shall be a necessary party to any hearing conducted in regard .to its operations.

§86.150. PROCEDURE UPON TERMINATION.

Upon expiration of the license, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets of other property of the City, for the purpose of removing therefrom any or all of its property or otherwise. In so removing said property, the Grantee shall refill, at its expense any excavation that it shall make and shall leave said streets in as good condition as that prevailing prior to Grantee's removal of its property.

§86.160. APPROVAL OF TRANSFER.

The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this license to another without council approval. No sale or transfer of the Grantee's assets used in the performance of this license shall be effective until the vendee, assignee or lessee has filed in the office of the city clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the license and agreeing to perform all the conditions thereof. Such council approval shall not be unreasonably withheld and neither this Section nor other Sections of this Chapter shall preclude the mortgaging, hypothecating, or assigning of rights in the system, or the pledge of stock by the Grantee for the purpose of financing.

§86.170. MISCELLANEOUS PROVISIONS.

1. Grantee's CATV system shall be constructed with 54 channel/2 way capability that can carry an additional 20 channels of programming. Upon completion of construction Grantee shall activate thirty-four (34) channels to be available for immediate use for the purpose for distribution of the programming specified in the proposed channel line-up attached hereto, and incorporated by reference herein.

2. Grantee shall provide video equipment to the local high school to use at the school's discretion. The equipment shall consist of at least: two (2) color TV cameras, one (1)

portable video cassette recorder, one (1) studio video cassette recorder, one (1) editor, two (2) microphones, two (2) color television sets or color monitors and associated cables and connectors. The cost of such equipment shall be at least Ten Thousand Dollars ($10,000.00). Grantee shall also donate Two Thousand Dollars ($2,000.00) to the school for the purpose of outfitting a studio facility to be used as a production facility. Grantee shall not be responsible for the maintenance or repair of any equipment specified above. Such equipment shall be provided on or before August 1, 1983.

3. Grantee shall, upon completion of its CATV system, make available one channel on its CATV system to be used exclusively by the local public schools. Programming content shall be the sole responsibility of the local public schools.

4. Grantee shall, upon completion of its CATV system, make available one channel on its CATV system to be used exclusively by the City government of Elsberry. A character generator and keyboard with at least 16 pages of memory shall be available for use by the city for the insertion of messages to be distributed by Grantee's CATV system.

5. Grantee shall, upon completion of its CATV system, install an "Emergency Alert" system with the capability of overriding all of Grantee's activated channels so that such emergency messages may be delivered over Grantee's CATV system by an authority designated by the City government of Elsberry, Missouri.

6. When not otherwise prescribed herein, all matters herein required to be filed with City shall be filed with the city clerk.

7. The Grantee shall assume the cost of publication of this license ordinance when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the city clerk.

8. The Grantee shall provide without charge one outlet of basic CATV service to each governmental office building, fire station, police station, and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

9. The Grantee shall on or before December 21, 1982, pay to the power company and telephone company the entire estimated make-ready costs necessary for cable television line attachments to the companies' poles.

10. The Grantee shall construct an "addressable" system that enables subscribers to add to or delete services by telephone without entry by Grantee's servicemen into subscriber's home to perform these functions.

11. Whenever possible, the Grantee agrees to hire and train local residents during the construction, marketing and installation phases of the CATV system.

12. Grantee shall make available to subscribers a variety of premium programming consisting of at least five premium services such as RBO, Showtime, Cinemax, The Movie Channel, and the Disney Channel.

§86.180. LINE SEVERING.

If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair will be paid by the party responsible for said damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The City will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damages to Grantee's property.

SUBCHAPTER B – VIDEO SERVICES PROVIDERS

§86.200 DEFINITIONS.

The words and phrases used in this Subchapter shall have the meaning as set forth in RSMo. §67.2677 or, if not defined in that statute, they shall have such meanings as established by the City Code.

(Ord. 05-03-2008)

§86.210 FRANCHISE FEE.

Pursuant to RSMo. § 67.2689, and as partial compensation for use of the City's public rights-of-way, each video service provider or other person providing cable services or video services within the City shall, to the extent permitted by law, pay to the City a fee of five percent (5%) of the gross revenues from such video services provider in the geographic area of the City. Such payment shall be made as required by RSMo. § 67.2689. The City shall have the right to audit any video service provider as authorized by RSMo. §67.2691. Late payments shall accrue interest due to the City compounded monthly at one and one-half percent (1.5%) or such other maximum rate as may be established by law.

(Ord. 05-03-2008)

§86.220 CUSTOMER SERVICE REQUIREMENTS.

All video service providers providing service within the City shall adopt and comply with the minimum customer service requirements set forth in RSMo. §67.2692. Notice or receipt of this Ordinance by the video service provider shall be deemed notice of the City invoking such customer service requirements.

(Ord. 05-03-2008)

§86.230 RIGHTS-OF-WAY REGULATION; INDEMNIFICATION; PERMITS AND COMPLIANCE

WITH OTHER LAWS.

Video service providers shall comply with the requirements of RSMo. §§67.2707, 67.2709, and all applicable ordinances and regulations consistent with RSMo. §§67.1830 to 67.1846 relating to use of the City rights-of-way. Each video service provider shall indemnify and hold harmless the City and its officers, employees and agents from any loss or damage, including , but not limited to attorneys' fees, as provided in such ordinances or regulations, but in no event less than the obligation on video service providers set forth in RSMo. § 67.2695. The City may require documentation of such indemnification by written agreement or other instrument to the extent permitted by law. In addition, video service providers shall be subject to and comply with such supplementary provisions relating to placement, screening and relocation of facilities as provided in City Code§§ 86.300 through 86.360, and such other applicable laws of the City, except as may be otherwise validly preempted. Notwithstanding any other ordinance to the contrary, no facilities to be used for video services shall be installed without obtaining a permit from the City authorizing the location and plans for such facilities; provided that this provision shall not apply to installation of otherwise lawful and authorized poles or wires.

(Ord. 05-03-2008)

§86.240 PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHANNELS.

Each video service provider shall designate a number of channels for public, educational, and governmental programming consistent with RSMo. § 67.2703; provided that any greater number of channels, as may be required in the incumbent cable franchise or franchise ordinance, shall be required pursuant to RSMo. § 67.2703.2. The City shall bear no cost relating to the transmission, availability or maintenance of such channels unless expressly authorized by the City in writing and approved by the governing body. Incumbent Cable operators and other video service providers shall provide support for such public, educational, and governmental channels consistent with RSMo. §67.2703.8.

(Ord. 05-03-2008)

§86.250 CONTINUED OBLIGATIONS.

The obligations of a cable service provider or video service provider as set forth in any existing cable services or video services franchise or ordinance shall also continue to apply to the full extent permitted by applicable law.

(Ord. 05-03-2008)

§86.260 RESERVATION OF RIGHTS.

The City retains all rights in RSMo. §§ 67.2675 through 67.2714, inclusive, and may take any and all actions permitted by law to exercise such rights or to enforce such obligations on providers of video service.

(Ord. 05-03-2008)

§86.270 NOTICE.

A copy of this Ordinance shall be delivered to each video service provider operating in the City after notice to the City that such provider is authorized to provide service within the City; provided that the provisions of this Ordinance shall, to the extent permitted by law, not be affected by any claimed or actual failure of a service provider to have received delivery of a copy of this Ordinance.

(Ord. 05-03-2008)

§86.280 Reserved

§86.290 Reserved

§86.300 ACCESSORY UTILITY FACILITIES; SUPPLEMENTARY REGULATIONS.

Every public utility, cable company, video service provider, and other users of the City rights-of-way or adjacent easements to provide services shall comply with the supplemental regulations in this Subchapter regarding the placement of accessory utility facilities on public or private property. For purposes of this Subchapter, "accessory utility facilities" shall mean such facilities, including pedestals, boxes, vaults, cabinets, or other ground-mounted or below-ground facilities that directly serve the property or local area in which the facility is placed, are not primarily for transmission or distribution to other locations, do not materially alter the character of the neighborhood or area, and otherwise are customarily found in such areas. Except where limited by other provisions of City ordinance, accessory utility facilities shall be subject to the supplementary regulations of City Code §86.310 through 86.360.

(Ord. 05-03-2008)

§86.310 APPROVAL; DESIGN; LOCATION; APPLICATION.

The design, location, and nature of all accessory utility facilities on private or public property shall require approval of the City, which approval shall be considered in a nondiscriminatory manner, in conformance with this Ordinance, and subject to reasonable permit conditions as may be necessary to meet the requirements of this Ordinance. In considering applications for individual or multiple locations, the City shall review the request to ensure the proposed facilities do not impair public safety, harm property values or significant sight-lines, or degrade the aesthetics of the adjoining properties or neighborhood, and taking into consideration reasonable alternatives. Any material changes or extensions to such facilities, or the construction of any additional structures, shall be subject to the requirements and approvals as set forth herein. Unless otherwise prohibited, utility facilities subject to this Subchapter may be located in minimum setback areas provided that all other requirements are met. To the extent permitted by RSMo. § 67.2707.3, the time, method, manner, or location of facilities to be located in the rights-of-way may be

established or conditioned by the City to protect the rights-of-way or to ensure public safety.

(Ord. 05-03-2008)

§86.315 INSPECTION FEE.

If no other inspection fees are applicable to the installation of the accessory utility facilities, the video service provider shall pay the City an inspection fee of $150.00 to reimburse the City for the costs of review and inspection of each accessory utility facilities installation. If the installation of such accessory utility facilities involve the excavation of City streets; the street excavation permit fees and bond requirements shall be met in addition to this inspection fee; subject to the provisions of RSMo. §67.1830(6).

(Ord. 05-03-2008)

§86.320 GENERAL REGULATIONS.

The following general regulations apply to all accessory utility facilities:

A. All such facilities shall be placed underground, except as otherwise provided in §86.330 and §86.340, or as approved by special use permit.

B. All such facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise.

C. All facilities and utility boxes that are abandoned or whose use is discontinued, shall be removed within thirty (30) days thereafter at the cost of the utility. All facilities and utility boxes shall be deemed abandoned after six (6) continuous months of non-use.

D. Unless otherwise restricted, utility poles for authorized above ground lines or facilities shall be permitted up to forty-five (45) feet in height where utilities are not otherwise required to be placed underground; provided that such poles shall be no higher than necessary, maintained so as to avoid leaning from upright position, and without use of guy wires crossing rights-of-way or pedestrian routes except where approved by the City as necessary due to the lack of feasible alternatives.

E. Utility facilities placed in designated historic areas shall require a special use permit and may be subject to additional requirements regarding the placement and appearance of facilities as may be necessary to reasonably avoid or reduce any negative impact of such placement.

F. Any damage to landscaping or vegetation on private or public property during installation or maintenance of facilities shall be promptly remedied by the facility owner.

G. At least 48 hours prior to any installation, replacement or expansion of any facility located on private property, the facility owner shall provide notice to all property owners within one hundred and eighty-five (185) feet from the site. The notice shall include a detailed description of work to be done, the exact location of work, the name address and phone number of the person to whom complaints about the work should be made, and the time and duration when the work will be undertaken.

H. No facilities may be located so as to interfere, or be likely to interfere, with any public facilities or use of public property.

I. All utility facilities not authorized by this section, or specifically addressed elsewhere in this Code, may only be authorized by a special use permit.

(Ord. 05-03-2008)

§86.330 RESIDENTIAL DISTRICTS.

In residential districts, accessory utility facilities less than three and one-half (3.5) feet in height, and covering less than eight (8) square feet in area, may be installed above ground with the prior approval of the City. Except as otherwise may be authorized herein, any larger utility facility shall be installed underground, or may be authorized to be installed above ground only by special use permit. All above ground facilities, where authorized, shall be placed in the rear yard wherever possible. If locating these facilities in the rear yard is not possible, then such facilities may be located in the side yard. Such facilities shall not be located in the front yard or within the public right-of-way unless a special use permit is issued after a determination that all other alternatives are not feasible.

(Ord. 05-03-2008)

§86.340 NON-RESIDENTIAL DISTRICTS.

In non-residential districts, accessory utility facilities with a height of less than five (5) feet and covering less than sixteen (16) square feet in area may be installed aboveground with the prior approval of the City. Except as otherwise may be authorized herein, any larger utility facility shall be installed underground, or may be authorized to be installed above ground only by special use permit. All above ground facilities, where authorized, shall be placed in the rear yard wherever possible. If locating these facilities in the rear yard is not possible, then such facilities may be located in the side yard. Such facilities shall not be located in the front yard or within the public right-of-way unless a special use permit is issued after a determination that all other alternatives are not feasible.

(Ord. 05-03-2008)

§86.350 LANDSCAPE SCREENING.

A sight-proof landscape screen shall be provided for all authorized aboveground facilities taller than three (3) feet in height or covering in excess of four (4) square feet in size. Such screen shall be required to sufficiently conceal the facility from view. A landscape plan identifying the size and species of landscaping materials shall be submitted by the utility and approved by the City prior to installation of any facility requiring landscape screening. The utility shall be responsible for the installation, repair, or replacement of screening materials. Alternative screening or concealment may be approved by the City to the extent it meets or exceeds the purposes of these requirements. Facilities located in rear yards may be exempted from screening where located so as not to be visible from: (1) any public property, and (2) more than two residential dwelling units.

(Ord. 05-03-2008)

§86.360 COMPLIANCE WITH OTHER LAWS.

All accessory utility facilities shall be subject to all other applicable regulations and standards as established as part of the City Code, including but not limited to building codes, zoning requirements, and rights-of-way management regulations in addition to the supplementary regulations herein. The provisions of §§86.300 through 86.350 shall not apply to any circumstance or entity in which application under such circumstances is preempted or otherwise precluded by superseding law.

(Ord. 05-03-2008)

THE CABLEVISION CORPORATIONS

* *Cablevision* MARKETING *Corporation*	**Cablevision* CONSTRUCTION *Corporation*	* *Cablevision* MANAGEMENT *Corporation*

1900 Swift, Suite 205-207, N. Kansas City, Mo. 64116 (816) 421-6295

E L S B ER R Y , M I S SOU R I

- SCHEDULE OF CABLE TELEVISION RATES-

TYPE	INSTALLATION	MONTHLY RATE
BASIC	$19.95	$8.95
EXPANDED BASIC	$ 5.00	$3.95
PAY OR PREMIUM 1	$19.95	$10.95
PAY OR PREMIUM 2	$ 5.00	$8.95
PAY OR PREMIUM 3	$ 5.00	$6.95
PAY OR PREMIUM 4	$ 5.00	$6.95
ADDITIONAL OUTLET - BASIC	$7.50	$2.45
ADDITIONAL OUTLET - PAY	$FREE	$1.95
RECONNECT CHARGE	$ 9.95	N/A
WALL FISH	$ 9.95	N/A
OTHER CHARGES:		
CONVERTER DEPOSIT	$15.00 EACH	
VIDEO GAMES CHANNEL (VIDEO GAMES CHANNEL TO BE OFFERED IN 1985)	$UNKNOWN	$11.95 MONTH
SECURITY SERVICES	$UNKNOWN	$19.00 MONTH

PAY-PER-VIEW – (INSTALLATION WILL BE FREE, RATES WILL BE ON A PER-EVENT BASIS)

*DURING THE INITIAL TURN-ON, ALL NEW SUBSCRIBERS WILL BE OFFERED A SPECIAL INSTALLATION CHARGE FOR BASIC SERVICE OF $9.95. ALL OTHER SERVICES OF EXPANDED BASIC AND PAY OR PREMIUM SERVICES WILL BE INSTALLED FREE, PROVIDED THEY ARE HOOKED UP AT THE SAME TIME AS THE BASIC SERVICE.

THE CABLEVISION CORPORATIONS

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1900 Swift, Suite 205-207, N. Kansas City, Mo. 64116 (816) 421-6295

E L S B ER R Y , M I S SOU R I

Proposed Channel Line-up

BASIC

1.	KTV - 2	ABC	St. Louis
2.	KMOX - 4	CBS	St. Louis
3.	KSDK - 5	NBC	St. Louis
4.	KETC - 9	PBS	St. Louis
5.	KDLR - 11	Independent	St. Louis
6.	KDNL - 30	Independent	St. Louis
7.	KHQA - 7	CBS	Hannibal
8.	KOMU - 8	NBC	Columbia
9.	KGBM - 10	ABC	Quincy
10.	KRCG - 13	CBS	Jefferson City
11.	NICKELODEON/ARTS	Children/Cultural	Satellite
12.	CBN	Family/Religious	Satellite
13.	MSN/DAYTIME	Variety/Women's Programs	Satellite
14.	WEATHER CHANNEL		Local
15.	CITY/GOVERNMENT	Public Information	Local
16.	SCHOOL CHANNEL	Sports/Local Programs	Local
17.	WGN - 9	Independent	Chicago
18.	C-SPAN	U.S. House of Represent.	Washington
19.	USA	Sports/Variety	Satellite

EXPANDED BASIC

20.	WTBS	Independent	Atlanta
21.	CNN - I	24 Hour News	Atlanta
22.	ESPN	24 Hour Sports	Satellite

23.	DOW JONES or UPI	News/Financial	Satellite
24.	NASHVILLE NETWORK	Country Music	Nashville
25.	CABLE HEALTH NETWORK	Health Programming	Satellite
26.	WOR	Independent	New York
27.	PTL	Religious Programming	Satellite
28.	MTV	Video Music/Stereo	Satellite
29.	SPN	Variety	Satellite
30.	RESERVED -		

OPTIONAL PREMIUM SERVICES

HBO	Movies, Sports, Specials	Satellite
SHOWTIME	Movies, Plays, Specials	Satellite
CINEMAX	Movies, 24 Hours	Satellite
TMC	Movies, 24 Hours	Satellite
DISNEY CHANNEL	Disney/Children's Movies	Satellite

CHAPTER 87 -- ELECTRIC GROSS RECEIPTS TAX

§87.010. FRANCHISE GRANTED.

In consideration of the acceptance hereof and the undertaking by Union Electric, its successors and assigns, to comply with the provisions hereinafter set forth, subject to ratification by a majority of the qualified voters of the City of E1sberry, Missouri, voting at an election held for such purpose, November, 1980, hereinafter called the "Cooperative," its successors and. assigns, is hereby granted a franchise.

1. To construct, operate and maintain electric transmission and distribution lines or system within the limits of the City of Elsberry, Missouri hereinafter known as the "Municipality" for the purpose of supplying electric energy for light, heat, power and other lawful purposes.

2. To furnish electricity for public and private use within the Municipality and to transmit electricity through and beyond the Municipality.

3. To use the streets, roads, alleys and other public places of the Municipality for the purpose of placing poles, anchors and all other appurtenances which may be necessary or useful in the construction, operation and maintenance of such lines or system, and to cut and trim all trees or shrubbery insofar as may be necessary to keep them clear of the electric lines.

4. To have access at all times to such lines or system for the purpose of maintaining it in a safe and proper condition.

§87.020. CONDITIONS.

This franchise is granted on the following terms and conditions:

1. Said lines or system shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public.

2. All poles, wires, anchors, transformers and other appurtenances which are located within, along or across the streets, roads and alleys on which said lines or system has been constructed shall be so placed as not to interfere with traffic on the traveled portion of such thoroughfares; and the Cooperative, after the construction of said lines or system will restore to their original condition the streets, roads and alleys on which said lines or system has been constructed insofar as this is practicable.

3. Whenever the municipality shall so require, the Cooperative at its own expense shall move its poles, wires and other appurtenances which may then be placed in the streets, roads, alleys and other public places to new locations as designated by the engineer of the Municipality in order to accommodate road widening and other improvements in the thoroughfares.

4. Service rendered by the Cooperative under this Chapter and the franchise herein granted shall be continuous except that the Cooperative shall not be held accountable by any party for failure of service which is caused by flood, acts of God, strike, or other causes beyond the control of the Cooperative.

5. The Cooperative will comply with all reasonable rules and regulations of the Municipality and with all ordinances now in effect or which may hereafter be passed insofar as they do not conflict with the terms or purposes of the franchise herein contained and granted.

6. The Cooperative shall have the right to make reasonable rules and regulations for the conduct of its business and to govern its relations with its consumers.

§87.030. TAX IMPOSED.

The Cooperative shall pay to the City of Elsberry, Missouri each year during the term of this franchise, as a license tax, five percent (5%) of the gross receipts for all electricity sold in the City of Elsberry, Missouri by the cooperative. The license tax herein required to be paid shall be in lieu of any other occupational license tax or merchandising tax but shall not be in lieu of any ad valorem tax. The license tax required to be paid shall be paid to the Collector of the City of Elsberry on or before the 15th day of each month following the calendar quarter ending March 31, June 30, September 30, and December 31, of each year that this Chapter is in force and effect and shall be an amount equal to five percent (5%) of the Cooperative's . gross receipts for the preceding three months, or parts thereof that this Chapter is in force and effect. This franchise shall be and continue in effect for a period of twenty (20) years from and after December, 1980.

§87.040. MAINTENANCE OF TAX RATE IMPOSED.

1. That the City of Elsberry, in order to maintain its sources of revenue at its historical level hereby determines to maintain the 5% percent gross receipt tax against the Union Electric Company.

2. The City Clerk is hereby directed to send a copy of this ordinance to Uni on Electric Company and to the Public Service Commission.

(Ord.10-1-1985; 8-1-1986)

§87.045. NO AUTOMATIC ADJUSTMENTS

Pursuant to RSMo. §393.275, and any and all other applicable authority, the City shall maintain the tax rate on the gross receipts of electric utilities without reduction notwithstanding any periodic fluctuations in the tariffs of such utility corporations or any notice thereof including, but not limited to, the tariff increases awarded by the PSC to Ameren Missouri effective on July 31, 2011 and effective on January 2, 2013.

(Ord. 2011-09-00_; 2013-02-001)

CHAPTER 88 -- NATURAL GAS GROSS RECEIPTS TAX

§88.010. PERSON, DEFINED.

The word "person" when used in this Chapter shall include any individual, firm, copartnership, joint partnership, joint adventure, association, corporation, estate, business trust, trustee, receiver, syndicate or any other group or combination acting as a unit, in the plural as well as the singular number.

§88.020. TAX IMPOSED.

Every person now or hereafter engaged in the business of supplying natural gas, for compensation for any purpose in the license tax, a sum equal to five person (5%) of the gross billings excluding municipal and industrial service.

§88.030. FILE REPORT, WHEN.

It is hereby made the duty of every person engaged in any of the businesses described in the foregoing section hereof to file with the clerk of the City of Elsberry, on the 15th day of each month following each calendar quarter ending March 31, June 30, September 30 and December 31, a sworn statement of the gross billings of such person from such business for the preceding calendar quarter. The clerk or his duly authorized deputy shall be and is hereby authorized to investigate the correctness and accuracy of the statement required and for that purpose shall have

access at all reasonable times to the books, documents, papers and records of any person making such statement in order to ascertain the accuracy thereof.

§88.040. PAYMENT OF TAX IMPOSED.

The tax imposed by section 88.020 shall be paid to the Collector of the City of Elsberry on or before the 15th day of each month following the calendar quarter ending March 31, June 30, September 30 and December 31, of each year that this Chapter is in force and effect, and shall be based upon the gross billings for the calendar quarter immediately preceding the payment due date.

§88.050. IN LIEU OF OTHER OCCUPATION TAX.

The tax herein required to be paid shall be in lieu of any other occupation tax required of any person engaged in any of the businesses described in Section 88.020 hereof, but nothing herein contained shall be so construed as to exempt any such person from the payment of the City of Elsberry of the tax which the City of Elsberry levies upon the real or personal property belonging to any such person, nor shall the tax herein required exempt any such person from the payment of any other tax which may be lawfully required other than occupation tax on any of the businesses described in Section 88.020.

§88.060. VIOLATION IS MISDEMEANOR.

Any person engaged in any of the businesses described in Section 88.020 who shall violate any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100.00 nor more that $500.00.

CHAPTER 89 -- SALES TAX

§89.010. SHORT TITLE.

This Chapter shall be known and may be cited and referred to as the "City Sales Tax Act" of the City of Elsberry, Missouri.

§89.020. DEFINITIONS.

For the purpose of this Chapter the following words shall have the following meanings unless a different meaning clearly appears from the context:

1. **"Director of Revenue"** shall mean the Director of Revenue of the State of Missouri.

2. **"Seller"** means an individual, corporation, partnership or other entity, engaged in the sale of retail of all tangible personal property or taxable services at retail within the City of Elsberry, Missouri, if such property and services are subject to taxation by the State of

Missouri under the provisions of Sections 144.010 to 144.510, RSMo.

§89.030. RATE OF TAX.

The sales tax authorized by this Chapter shall be imposed at the rate of one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the city limits of Elsberry, Missouri under the provisions of Section 144.010 to 144.510, RSMo.

§89.040. EFFECTIVE DATE.

The tax imposed herein shall become effective on the first day of October, 1976.

§89.050. SELLER RESPONSIBLE FOR TAX METHOD OF PAYMENT OF TAX.

The Chapter set forth herein shall impose upon all sellers a tax for the privilege of engaging in the business of selling intangible personal property or rending taxable services at retail to the extent and in the manner provided in Sections 144.010 to 144.510, RSMo, and the rules and regulations of the Director of Revenue issued pursuant thereto.

1. Every retailer shall add the tax imposed by Sections by the Sales Tax Law of the State of Missouri and the one percent city sales tax imposed herein to his sale price, and when added, the combined tax shall constitute a part of the price, and shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price.

2. The amount of tax reported and returned to the Director of Revenue by the seller shall be computed on the basis of the combined rate of the tax imposed by Sections 144.010 to 144.510, RSMo, and the one percent sales tax imposed herein.

§89.060. EXEMPTIONS - PERMITS SELLER MAY RETAIN DISCOUNTS, PENALTIES, DEFINITION OF PLACE OF SALE.

1. All applicable provisions contained in Sections 144.010 to 144.510, RSMo, governing the State sales tax shall apply to the collection of the tax imposed herein.

2. All exemptions granted to agencies of government, organizations, persons and to the sale of certain articles and items of tangible personal property and taxable services under the provisions of Sections 144.010 to 144.510, RSMo, are hereby made applicable to the imposition and collection of tax imposed herein.

3. The same sales tax permit, exemption certificate and retail certificate required by Sections 144.010 to 144.510, RSMo, for the administration and collection of the State sales tax shall satisfy the requirements of the City sales tax ordinance, and no additional permit or exemption certificate or retail certificate shall be required; except that the Director of Revenue may prescribe a form of exemption certificate for an, exemption from the sales

tax imposed herein.

4. All discounts allowed the retailer under the provisions of the State sales tax law for the collection of and for payment of taxes under that act are hereby allowed and made applicable to any taxes collected under' the City sales tax ordinance.

5. The penalties provided in Sections 144.010 to 144.510, RSMo, for a violation of that act are hereby made applicable to the violations of the City sales tax ordinance.

6. For the purposes of the sales tax imposed herein, all retail sales shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has more than one place of business in this State which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing a sale by a retailer's employee shall be deemed to be consummated at the place of business from which he works.

§89.070. TAX ON MOTOR VEHICLES TO BE COLLECTED BY STATE, PROCEDURE.

The one percent city sales tax imposed herein on the purchaser and sale of motor vehicles shall not be collected and remitted by the seller, but shall be collected by the Director of Revenue at the time application is made for a certificate of title, if the address of the applicant is within the city limits of Elsberry, Missouri. The amounts so collected shall be deposited in the City of Elsberry, Missouri City sales tax fund.

§89.080 STATE TAX HOLIDAY NOT APPLICABLE TO CITY SALES TAX

1. The City of Elsberry, Missouri, hereby determines that it will prohibit the provisions of Section 144.049 RSMo., 2005, from exempting sales of certain clothing, personal computers, certain computer software, and school supplies that occur within the boundaries of said City beginning at 12:01 A.M. on the first Friday in August and ending at midnight on the Sunday following from local sales taxes.

(Ord 2-1-06)

§89.090. COLLECTION OF DELINQUENT TAX, PROCEDURE, DUTIES OF DIRECTOR OF REVENUE, SUITS BY CITY, SALE OF SEIZED PROPERTY, APPLICATION OF PROCEEDS.

1. In the event that any seller is delinquent in the payment of the amount required to be paid by him pursuant to the provisions of the Chapter or in the event a determination has been made against him for taxes and penalty pursuant to this Chapter, 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, RSMo.

2. Where the Director of Revenue has determined that suit must be filed against any seller for the collection of delinquent taxes due the State under the State Sales Tax Law, and where such seller is also delinquent in payment of taxes provided for herein, the Director of Revenue shall notify the tax collector of the City of Elsberry, Missouri, by United States registered mail or certified mail at least ten days before turning the case over to the Attorney General. The City, acting through its attorney, may join in such suit as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such city. In the event any seller fails or refuses to pay the amount of the City sales tax due, the Director of Revenue shall promptly notify the tax collector of the City of Elsberry, Missouri so that appropriate action may be taken by the City.

3. Where property is seized by the Director of Revenue under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the State Sales Tax Law, and where such taxpayer is also delinquent in payment of the city sales tax imposed pursuant to this Chapter, the Director of Revenue shall permit the City to join in any sale of property to pay the delinquent taxes and penalties due the State and to the City. The proceeds from such sale shall first be applied to all sums due to the State, and the remainder, if any, shall be applied to all sums due the City of Elsberry, Missouri.

CHAPTER 90 -- USE TAX

§90.010. CITY USE TAX ESTABLISHED

1. Pursuant to the authority granted by, and subject to, the provisions of Sections 144.600 through 144.763 RSMo., a use tax for general revenue purposes is imposed for the privilege of storing, using or consuming within the City any article of tangible personal property.

2. This tax does not apply with respect to the storage, use or consumption of any article of tangible personal property purchased, produced or manufactured outside this state until the transportation of the article has finally come to rest within this City or until the article has become commingled with the general mass of property of this City.

§90.020. CITY USE TAX RATE

The rate of the [use] tax shall be one and one-half percent (1.5 %). If any City sales tax is repealed or the rate thereof is reduced or raised by voter approval, the City use tax rate shall also be deemed to be repealed, reduced or raised by the same action repealing, reducing or raising the City sales tax.

(Ord. 1-1-97)

CHAPTER 93 -- STREET EXCAVATION

§93.010. SHORT TITLE.

This ordinance shall be known and may be cited as the "Street Excavation Ordinance of the City of Elsberry."

§93.020. DEFINITIONS.

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1) **"Applicant"** is any person making written application to the City Clerk for an excavation permit hereunder.

2) **"City"** is the City of Elsberry.

3) **"City Council"** or **"Council"** is the Board of Aldermen of the City of Elsberry.

4) **"City Clerk"** is the city clerk of the City of Elsberry.

5) **"Excavation Work"** is the excavation and other work permitted under an excavation permit and required to be performed under this ordinance.

6) **"Permittee"** is any person who has been granted and has in full force and effect an excavation permit issued hereunder.

7) **"Person"** is any person, firm, partnership, association, corporation, company or organization of any kind.

8) **"Street"** is any street, highway, sidewalk, alley, avenue or other public way or public grounds in the city.

§93.030. EXCAVATION PERMIT.

It shall be unlawful for any person to. dig up, break, excavate, tunnel, bore, undermine or in any manner break up any street or to make or cause to be made any excavation in or under; the surface of any street for any purpose or to place, deposit or leave upon any street any earth or other excavated material obstructing or tending to interfere with the free use of the street, unless such person shall first have obtained an excavation permit therefor from the city clerk as herein provided.
(Ord. 5-1-2002)

§93.040. APPLICATION.

Upon compliance with all of the provisions of this Chapter 93, payment in advance of the permit fee and the surety-bond required by Sections 93.050 and 93.070, respectively, and completion and presentation of the following described application, an excavation permit shall be issued by the City: A written application for issuance of an excavation permit shall be submitted to the City Clerk. Said application shall state the name and address of the applicant, the nature, location, and purposes of the excavation and all other information as may be reasonably required by the City Clerk. Said application shall further be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to said excavation and of the proposed excavated surfaces, the location of the excavation work, the means by which the excavation will be made, and a description of an acceptable means by which the street shall be restored to its pre-excavation, original condition. Notwithstanding the foregoing, in the event said application shall propose excavation by means other than boring under the street, the City may in reviewing said application and its acceptability, determine that boring under said street is the sole means by which said excavation shall be allowed and said excavation permit issued. In the event boring beneath said street is the means allowed by any permit issued, the excavation permit fee otherwise required per Section 93.050 shall be $100.00, notwithstanding the fees so stated in Section 93.050. Provided, however, that should said boring result in damage to said street, the Permittee shall remain fully liable for said damage.
(Ord. 5-1-2002)

§93.050. EXCAVATION PERMIT FEES.

A permit fee shall be charged by the city clerk for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in an amount varying with the type of surface to be opened, dug or excavated under the permit issued, and except as otherwise provided in Section 93.040, shall be as follows:

a) On all unpaved streets $200.00

b) On streets paved with oil or water bound macadam $200.00

c) On streets paved with cement concrete base or cement concrete $350.00

d) On streets paved with asphalt concrete and bitumen on broken rock $350.00

e) For public utilities holding franchises with the City of Elsberry, the permit fees shall be those stated in §93.200 of the Elsberry City Code.

(Ord. 5-1-2002; 08-02-2008)

§93.070. SURETY-BOND.

Before an excavation permit as herein provided is issued, the applicant shall deposit with the city clerk a surety bond in the amount of $2,000 payable to the city. The required surety-bond must be:

a. With good and sufficient surety,

b. By a surety company authorized to transact business in the state,

c. Satisfactory to the city attorney in form and substance, and

d. Conditioned upon the permittee's compliance with the City ordinances and to secure and hold the City and its officers harmless against any and all claims, judgments, or other cost arising from the excavation and other work covered by the excavation permit or for which the City or the City's officers, agents, or contractors may be made liable by reason of any accident or injury to persons or property through the fault of the permittee or its agents and contractors, either in not properly guarding the excavation or for any other injury resulting from the actions of the permittee, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition, and to the satisfaction of the City Clerk, all opening and excavation made in streets, and to maintain any street where excavation is made in as good condition for the period of 24 months after said work shall have been done, usual wear and tear excepted, as it was in before said work shall have been done. Any settlement of the surface within said two-year period shall be deemed conclusive evidence of defective back-filling by the permittee. Nothing herein contained shall be construed to require the permittee to maintain any repairs to pavement made by the City if such repairs should prove defective. Recovery on such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the City by reason of the negligence or default of the permittee, the City's giving of written notice to the permittee of such suit or claim and final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety. An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above and in other respect as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from said date.

e. Any owner of real estate repairing or engaging another to repair his own sidewalk shall not be required to give such bond.

f. For public utilities holding franchises with the City of Elsberry, the surety bond shall be as stated in §93.200 of the Elsberry City Code.

(Ord. 9-3-2005; 08-02-2008; 2017-10-001)

§93.080. REMOVAL AND PROTECTION OF UTILITIES.

The permittee shall not interfere with any existing utility without the written consent of the city clerk and the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across said work. In case any of said pipes, cond~its, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittees, and his or its bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and its bond shall be liable therefor. The permittee shall inform itself as to the existence and location ,of all underground utilities and protect the same against damage. (amended 09-03-2005)

§93.090. DAMAGE TO EXISTING IMPROVEMENTS.

All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs, the city clerk shall have the authority to cause said necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee, and the permittee, shall also be liable therefor.

§93.100. CLEAN-UP.

As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the city clerk. From time to time as may be ordered by the city clerk and in any event immediately after completion of said work, the permittee shall at his or its own expense clean-up and remove all refuse and unused materials of any kind resulting from said work and upon failure to do so within 24 hours after having been notified to do so by the city clerk, said work may be done by the city clerk and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

§93.110. BACK-FILLING BY WATER SETTLING.

When back-filling is done by water settling, excavated materials above utility. installations shall be deposited uniformly in layers of. not more than five feet in thickness and shall be thoroughly flooded. During the flooding the water shall be allowed to flow slowly to the trench from high

points and shall be worked down to the full depth of the layer of back-filling with bars. All bars used shall be long enough to extend entirely through the layer being filled and shall be forced down through the loose back-fill material. As the bars are withdrawn, the water shall be allowed to flow downward around the bar. The channel or hole formed by the bar shall be kept open and the water kept running into it until the fill has settled. All work shall be done in such manner as to obtain a relative compaction through the entire depth of the. back-fill of not less than that existing adjacent to the excavation.

§93.120. DRY BACK-FILLING.

Back-filling up to the first 18 inches above the top of the utility pipes or similar installations shall be done with thin layers. Each layer is to be tamped by manual or mechanical means. Layers that are hand tamped shall not exceed 4 inches in thickness. Layers that are power tamped shall not exceed 6 inches in thickness. Tile same requirements. shall apply to the remainder of the backfilling if tamping is the method used for back-filling. Back-filling of all pipes of over 24 inches in diameter shall be carried up to the spring line of the pipe in three-inch layers, with each layer moistened and thoroughly tamped with suitable mechanical equipment. The backfill around all pipes 24 inches or less in diameter shall be flooded or tamped as specified above to a depth of 18 inches above the top of the pipe before any additional back-filling is placed thereon.

§93.130. BACK-FILL MATERIAL.

Whenever any excavation for the laying of pipe is made through rock, the pipe shall be laid 6 inches above the rock bottom of the trench and the space under, around and 6 inches above the pipe shall be back-filled with clean river sand, non-corrosive soil or one-quarter inch minus gravel. Broken pavement, large stones and debris shall not be used in the back-fill.

§93.140. BACK-FILLING AT THE SURFACE.

Back-filling shall be completed by placing the back-fill material well up over the top of the trench. For dry back-filling, the material shall be compacted with a roller of an approved type or with the rear of a truck carrying at least five tons until the surface is unyielding. The surface shall then be graded as required.

§93.150. CITY'S RIGHT TO RESTORE SURFACE.

If the permittee shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit, or shall otherwise have failed to complete the excavation work covered by such permit, the city clerk, if he deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and 25% of such cost in addition for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply in payment of the amount due if any funds of the permittee deposited as herein provided and the city shall also enforce its rights under the permittee's surety bond provided pursuant to this ordinance. It shall be

the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition.

§93.160. PROMPT COMPLETION OF WORK.

The permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified. in the excavation permit therefor.

§93.170. NOISE, DUST AND DEBRIS.

Each permittee shall conduct and carry out- the excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and during the hours of 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the city clerk or in case of emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of the neighboring property.

§93.180. PRESERVATION OF MONUMENTS.

The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the city clerk.

§93.190. INSPECTIONS.

The city clerk shall make such inspections as are reasonably necessary in the enforcement of this ordinance. The city clerk shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry on the intent of this ordinance.

§93.200. MAINTAIN DRAWINGS.

Users of sub-surface street space shall maintain accurate drawings, plans, and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the city clerk. within 60 days after new installations, changes or replacements are made.

§93.210. ORDINANCE NOT APPLICABLE TO CITY WORK.

The provisions of this ordinance shall not be applicable to any excavation work for the benefit of the City itself under the direction of competent city authorities by employees of the city or by any contractor of the city performing work for and in behalf of the city.
(Ord. 3-3-1990)

§93.220. PUBLIC SERVICE COMPANIES.

1. *Permits*.

   a. All persons operating public utilities in the City of Elsberry under franchises granted by the City and having the right either by general or special permission to enter upon streets and open and excavate pavements, sidewalks or disturb the surface thereof by excavation or other work, may apply for a blanket excavation permit instead of an individual permit.

   b. The cost of the blanket permit will be as follows:

For one to five street openings:	$200.00
For six to ten street openings:	$400.00
For eleven to fifteen street openings:	$800.00
For over fifteen street openings:	$1,600.00

   c. The blanket permit shall terminate one year from its issuance.

   d. The holder of a blanket permit shall notify the City Clerk in writing of the exact location of each street opening at least one business day prior to the commencement of the work. The notice shall also state (1) the blanket permit number being relied upon; (2) the nature and extent of the work; (3) the name and phone number of the utility's contact person in charge of the work; (4) the name address, and phone number of the contractor's on site person in charge of performing the work; and (5) the expected length of time the work will continue at that location.

   e. The public utility shall be required to comply with other requirements of the City's ordinances, shall employ an adequate competent standing force, and shall the work to completion as promptly as practicable.

2. *Deposit and Surety Bonds*

   a. All persons operating public utilities in the City of Elsberry under franchises granted by the City and having the right either by general or special permission to enter upon streets and open and excavate pavements, sidewalks or disturb the surface thereof by excavation or other work may supply their own corporate surety bond in lieu of the bond required by §93.070. The corporate bond must be from the utility and not the utility's contractor.

   b. The corporate surety bond shall be conditioned upon the permittee's compliance with the City ordinances and to secure and hold the City and its officers harmless against any and all claims, judgments, or other cost arising from the excavation and other work covered by the excavation permit or for which the City or the City's

officers, agents, or contractors may be made liable by reason of any accident or injury to persons or property through the fault of the permittee or its agents and contractors, either in not properly guarding the excavation or for any other injury resulting from the actions of the permittee, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition, and to the satisfaction of the City Clerk, all opening and excavation made in streets, and to maintain any street where excavation is made in as good condition for the period of 24 months after said work shall have been done, usual wear and tear excepted, as it was in before said work shall have been done. Any settlement of the surface within said two-year period shall be deemed conclusive evidence of defective back-filling by the permittee. Nothing herein contained shall be construed to require the permittee to maintain any repairs to pavement made by the City if such repairs should prove defective. Recovery on such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the City by reason of the negligence or default of the permittee, the City's giving of written notice to the permittee of such suit or claim and final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety. An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above and in other respect as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from said date.

c. The corporate bond shall be satisfactory to the city attorney in form and substance.

d. Public utilities that are specifically exempt from municipal bond requirements shall not be obligated to provide any bond.

(Amend. Ord. 08-02-2008)

§93.230. INSURANCE.

A permittee, prior to the commencement of excavation work hereunder, shall furnish the city clerk satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than $100,000 for anyone person and $300,000 for any one accident and property damage insurance of not less than $50,000 duly issued by an insurance company authorized to do business in this state.

§93.240. LIABILITY OF CITY.

This ordinance shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the city or any official or

employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work.

§93.250. APPLICATION FOR EXCAVATION.

Any person, wishing excavation 'or opening in a street, alley, sidewalk or other public ground as hereinbefore described may make application to the city collector of the City of Elsberry for permit and with a request that the city perform the work required. The appropriate fee determined by Section 93.050, shall accompany said application together with a detailed outline of the work requested. Thereupon with 5 working days the city shall give applicant an estimate of said work. The applicant shall then deposit an amount equal to the estimate plus 25%. Whereupon the city shall perform the work and at the conclusion thereof refund to the applicant any unused funds or if costs exceed the deposit bill him for the difference.

§93.260. PENALTIES.

Any person, firm or corporation violating any of the provisions of this ordinance shall be decreed' guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding $100 or for nonpayment be imprisoned for a period not exceeding 'three months. Each day such violation is committed or permitted to continue, shall constitute a separate offense and shall be punishable as such hereunder.

CHAPTER 94 -- STREET USE, ACCESS, AND CONSTRUCTION

§94.010. DEFINITIONS

As used in this Chapter of the Elsberry Municipal Code, the following terms shall have the following meanings:

> "Access Way" means a curb cut, ramp, driveway, structure, route, threshold, or improvement used to provide vehicular access from a City street or alley onto private property or from private property onto a public street or alley within.
>
> "Large Vehicles" means motor vehicles, trailers, or motorized equipment whose gross weight exceeds 36,000 pounds.
>
> In determining these thresholds, a trailer or equipment connected to a motor vehicle shall have the weights of the vehicle and the trailer combined.

(Ord 2013-06-001)

§94.020 ACCESS TO AND FROM PUBLIC STREETS BY LARGE VEHICLES.

Access to, and from, public streets and alleys to, and from, private or public property by Large Vehicles , shall be lawful only from permitted access ways complying with the Elsberry Municipal Code.

(Ord 2013-06-001)

§94.030 PERMIT REQUIRED FOR LARGE VEHICLE ACCESS WAYS TO AND FROM PUBLIC STREETS.

1. No person shall make, construct, modify, improve, or change an access way for use by Large Vehicles without a permit from the City of Elsberry.

2. Access ways for Large Vehicles in physical existence on the date that this Ordinance is adopted shall be deemed to be permitted. However, such access ways shall not be deemed to be permitted and shall require a new permit if:

    A. The access way is altered, improved, modified, relocated, enlarged, or otherwise changed; or

    B. The property using the access way is developed or platted to remove any existing buildings or to construct any new buildings.

(Ord 2013-06-001)

§94.040 LARGE VEHICLE ACCESS WAY PERMIT CRITERIA

Before the issuance of a Large Vehicle access way permit, the number and location of access ways onto a public street or highway shall be reviewed and must receive approval from the City. The permitted location and dimensions of all Large Vehicle access ways shall be determined by traffic flow patterns, surrounding access ways, sight lines and distances, road grades, traffic barriers, and traffic control devices. For Large Vehicle access ways in high volume traffic areas, the City may require a detailed traffic study to determine the approved location and dimensions of the access way.

(Ord 2013-06-001)

§94.050 LARGE VEHICLE ACCESS WAY PERMIT APPLICATION

1. Application for a Large Vehicle access way permit shall be made in writing to the City Clerk. The application shall contain information regarding the design, location, construction material, and size of the proposed access way and the approximate time when work thereon will be commenced and completed. A separate permit shall be required for each and every access way.

2. A fee of twenty-five dollars ($25.00) shall be paid by the applicant to the City of Elsberry for each such application submitted.

3. The application shall include a scaled site plan or sketch showing the subject property, all streets and alley ways adjoining the property; all traffic control devices, traffic barriers, water hydrants, and utilities within 100 feet of the subject property; the proposed location of the access way; the dimensions of the proposed access way; the grade of the access way; and the materials to be used to construct the access way.

4. The application shall contain a traffic pattern plan showing the intended or actual routes to be used by such Large Vehicles.

4. Each person, firm, board or corporation who seeks one or more access way permits from the City of Elsberry shall, prior to the issuance of any such permit, deposit and maintain with the City Collector a cash sum as required by this Chapter, as a standing deposit or performance bond to secure compliance with the provisions of this Article and to repair any damage or alteration to the City Street. This deposit, or the balance remaining therein, if any, shall be refunded to the person, firm, board or corporation making and maintaining such deposit upon such person, firm, board or corporation's certification that he/she or it no longer intends to engage in any activity involving Large Vehicle access ways within the City of Elsberry under the provisions of this Chapter and after deduction from said deposit of all amounts due to the City for permits issued or services performed by the City for such person, firm, board or corporation in securing compliance with the provisions of this Article.

4. If a permit is issued, the Large Vehicle access way may only be constructed in accordance with Design and Construction standards of this Chapter and the limitations and restrictions contained in the permit.

(Ord 2013-06-001)

§94.060 DESIGN AND CONSTRUCTION STANDARDS FOR LARGE VEHICLE ACCESS WAYS.

1. Each lot shall be provided with access to a public street or highway to assure convenient ingress and egress to and from such lot, and to provide adequately for the layout of utilities, garbage and waste removal, fire and police protection, and other services, and to protect and further the public health and safety generally.

2. The location of all curb cuts, driveways, entrances, or other street access points within City rights-of-way shall be as reviewed and approved by the Board of Aldermen, or other person designated by the Board of Aldermen. Proposed curb cuts, driveways, entrances, or other street access points shall be indicated on a site development plan or plot plan. If applicable, the fee for curb cuts, driveways, entrances, or other street access points review shall be paid to the City.

3. The curb section of access ways and aprons shall be designed so that excessive break over angle, and rear bumper and exhaust pipe dragging will be eliminated and the grade of the City Street or alley shall remain unchanged.

2. Access ways shall be designed, constructed, and located in a manner that will have the least interference with the movement of the adjoining street or alley traffic.

3. The width of an access way shall not exceed forty (40) feet for commercial or industrial uses or twenty-five feet (25) feet for residential uses, both measured at the right-of-way.

4. The minimum width of Large Vehicle access ways shall be sixteen (16) feet measured at the right-of-way.

5. No access way shall be placed such that it will interfere with any barricade, guardrail, or traffic control device or sign.

6. Access ways shall be separated by at least three (3) feet.

7. The grade, slope, or location of the City Street or alley shall not be changed as a result of the location or construction of the access way, unless the Board of Aldermen approves the change in advance.

8. On any corner lot, no access way shall be permitted to be closer than thirty (30) feet to the point of intersection of the right-of-way tangents unless the Board of Aldermen approves the location in advance due to exceptional circumstances.

11. Property shall not be accessed by Large Vehicles via a street that prohibits such vehicles unless special circumstances exist and special conditions are met for the improvement of those streets, as may be determined by the City.

(Ord 2013-06-001)

§94.070 IMPROVEMENTS TO EXISTING STREETS FOR LARGE VEHICLE ACCESS WAYS TO COMMERCIAL PROPERTIES.

If the City determines that the intended or probable route for Large Vehicle access to a commercial property is on a City street or alley that is subject to excessive or accelerated degradation from such use, the applicant for a Large Vehicle access way to that commercial property must bring all City Streets or alleys on that route adjacent to the commercial property to a condition that can accommodate that anticipated Large Vehicle traffic without excessive or accelerated degradation to the street or alley. The City shall make the final decision of the improvements required after review of the applicant's plan.

(Ord 2013-06-001)

§94.080 ACTION ON APPLICATIONS FOR LARGE VEHICLE ACCESS WAY PERMITS

The City will act on each application by either approving it, approving it with conditions, denying it, or returning it to the applicant with instructions for resubmission. Upon approval, the City Clerk shall issue the permit.

(Ord 2013-06-001)

§94.90 LARGE VEHICLES PROHIBITED FROM USING CERTAIN STREETS.

1. Large Vehicles are prohibited from using the following City Streets:

   Second Street from Broadway to its Northern terminus.
   DuBois Street from Main Street to 7th Street
   Lincoln Street from Main Street to 7th Street
   Commerce Street

2. The provisions of this Section shall not apply to:

   A. Emergency vehicles.
   B. Vehicles making a delivery, receiving mechanical servicing, or performing work on a property on the excluded street when there is no other access to that property from another permitted street.
   C. Vehicles making deliveries to a property holding a Large Vehicle access way permit from the City.

(Ord 2013-06-001)

CHAPTER 103 -- PARADES

§103.010. SHORT TITLE.

This Chapter shall be known and may be cited as the "Parade Ordinance" of the City of Elsberry, Missouri.

§103.020. DEFINITIONS.

1. **Parade** is any parade, march, ceremony, show, exhibition, pageant or procession of any kind, or any similar display, in or upon any street, park or other public place in the City.

2. **Parade permit** is a permit as required by this Chapter.

3. **Person** is any person, firm, partnership, association, corporation, company or organization of any kind.

§103.030. PERMIT REQUIRED.

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the chief of police.

§103.040. EXCEPTIONS.

This Chapter shall not apply to:

1. Funeral processions.

2. Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities.

3. A governmental agency acting within the scope of its functions.

§103.050. APPLICATION.

A person seeking issuance of a parade permit shall file an application with the chief of police on forms provided by such officer.

1. Filing period. An application for a parade permit shall be filed with the chief of police not less than ten (10) days nor more than thirty (30) days before the date on which it is proposed to conduct the parade.

2. Contents. The application for a parade permit shall set forth the following information:

    a. The name, address and telephone number of the person seeking to conduct such parade.

    b. If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorized and responsible heads of such organization.

    c. The name, address and telephone number of the person who will be the parade chairman and who will be responsible for its conduct.

    d. The date when the parade is to be conducted.

    e. The route to be traveled, the starting point and the termination point.

    f. The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals, and description of the vehicles.

g. The hours when such parade will start and terminate.

h. A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed.

I. The location by streets of any assembly areas for such parade.

j. The time at which units of the parade, will begin to assemble at any such assembly area or areas.

k. The interval of space to be maintained between units of such parade.

1. If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his behalf.

m. Any additional information which the chief of police shall find reasonably necessary to a fair determination as to whether a permit should be issued.

§103.060. STANDARDS FOR ISSUANCE.

The chief of police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

1. The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route.

2. The conduct of the parade will not require the diversion of so great a number of police officers of the City to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the City.

3. The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the City other than that to be occupied by the proposed line of march and areas contiguous thereto.

4. The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas.

5. The conduct of such parade will not interfere with the movement of fire-fighting equipment in en route to a fire.

6. The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance.

7. The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route.

8. The parade is not to be held for the sole purpose of advertising any product, goods or event, and is not designed to be held purely for private profit. .

§103.070. NOTICE OF REJECTION.

The chief of police shall act upon the application for a parade permit within five (5) days after the filing thereof. If the chief of police disapproves the application, he shall mail to the applicant within five (5) days after the date upon which the application was filed, a notice of his action, stating the reasons for his denial of the permit. .

§103.080. APPEAL PROCEDURE.

Any person aggrieved shall have the right to appeal the denial of a parade permit to the city council. The appeal shall be taken within thirty (30) days after notice. The city council shall act upon the appeal within thirty (30) days after its receipt.

§103.090. ALTERNATIVE PERMIT.

The chief of police, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within three (3) days after notice of the action of the chief of police, file a written notice of acceptance with the chief of police. An alternate parade permit shall conform to the requirements of and shall have the effect of a parade permit under this Chapter.

§103.100. NOTICE TO CITY AND OTHER OFFICIALS.

Immediately upon the issuance of a parade permit, the chief of police shall send a copy thereof to the following:

1. The mayor.

2. The city attorney.

3. The fire chief.

4. The director of the department of streets.

5. The postmaster.

6. The general manager or responsible head of each public transportation utility, the regular routes of those whose vehicles will be affected by the route of the proposed parade.

§103.110. CONTENTS OF PERMIT.

Each parade permit shall state the following information:

1. Starting time.

2. Minimum speed.

3. Maximum speed.

4. Maximum interval of space to be maintained between the units of the parade.

5. The portions of the streets to be traversed that may be occupied by the parade.

6. The maximum length of the parade in miles or fractions thereof.

7. Such other information as the chief of police shall find necessary to the enforcement of this Chapter.

§103.120. DUTIES OF PERMITTEE.

A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.

CHAPTER 110 -- UTILITIES IN GENERAL

§110.010 DEFINITIONS

As used in this Chapter, the following words shall have the following meanings.

“BOD” (denoting Biochemical oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 200C, expressed in milligrams per liter (mg/l).

“Business Unit” means each Unit that is occupied by a for- profit, or not-for-profit, enterprise. However, “business unit” shall not include apartments in an apartment house or complex, multi-unit housing, or mobile homes in a mobile home court or park.

“City” means the City of Elsberry, Missouri, a political subdivision of the State of Missouri.

“City User” shall mean any person, corporation, business entity, organization, association, or industrial, commercial, or institutional entity, or any other entity whatsoever, that is provided water or sewer services from the City's water or sewer system at a location within the Elsberry City limits.

“City utilities” shall consist of : (a) The City Water Utility; and (b) the City Sewer Utility.

“Connection” or “Connect” means allowing a Unit to be added to the City of Elsberry’s water and/or sewer City utility system.

“Consumer” means any person or entity who actually uses a City utility service.

“Contributor” means any person or entity who uses the City's wastewater treatment works; or who causes fluids or materials to be placed into the City's wastewater treatment system.

“Commercial Contributors” shall mean any contributor to the City's wastewater treatment works that is not a Residential Contributor.

“Existing Connection” means that a Unit has previously been added lawfully to the City utility system, and has lawfully received City utility services at that Unit through that lawful connection. To be considered an “Existing Connection,” the service must have been provided to that Unit in its present configuration. For example, if a building had one existing service connection, and then the building is converted to five condominium units, then that building only has one Existing Connection and the other four units would need new connections. Or, if a house with one Existing Connection is converted into a duplex, the house has one Existing Connection and will need one New Connection. Or, if the space in a commercial building with a single Existing Connection is divided into rental space for three businesses, then there is one Existing Connection and two new connections will be required.

“Lateral” means the entire length of pipe(s) and fittings connecting the Unit’s water and sewer service to the City utility service main water or sewer line (as the case may be).

“May”is permissive.

“Multiple Residence Structure” means a single building, structure, or mobile home park containing Residential Multi-Units.

“New Connection” means adding a Unit to a City utility service system, that has not been lawfully added to the City utility service previously.

“Non-City User" shall mean any person, corporation, business entity, organization, association, or industrial, commercial, or institutional entity, or any other entity whatsoever, that is provided water from the City's water system at a location outside the Elsberry City limits.

“Normal Domestic Wastewater” shall mean wastewater that has a BOD concentration of not more than 110 mg/l and a suspended solids concentration of not more than 235 mg/l.

“Operation and Maintenance”shall mean all expenditures during the useful life of the water or wastewater system (as the case may be) for materials, labor, utilities, debt retirement, and other items which are necessary for managing and maintaining the system to achieve the capacity and

performance for which the system was designed and constructed.

"Replacement" shall mean expenditures for obtaining, installing, and/or replacing equipment, accessories, or appurtenances which are necessary during the useful life of the water or wastewater system (as the case may be) to maintain the capacity and performance for which the system was designed and constructed.

"Residential Contributor" shall mean any user of the City's wastewater treatment works whose Unit or parcel of real estate is used for domestic dwelling purposes only.

"Residential Multi-Unit" means each separate dwelling or other Unit used by its occupants as living quarters or a residence that is not separately owned and either:(a) is contained together with other Units used for residential purposes in one building or structure; or (b) is a mobile home in a single mobile home park.

"Residential Single Unit" means each separate dwelling house or other Unit used by its occupants as living quarters or a residence, but does not include Residential Multi-Units.

"Shall"is mandatory;

"SS"(denoting Suspended Solids) shall mean solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

"Treatment Works" shall mean any devices and systems for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes.
These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process, or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated wastewater in land treatment systems before land applications); or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

"T.S.S." shall mean total suspended solids determined by laboratory testing as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater with the results expressed in units of milligrams per liter.

"Unit" means each separate lot, building, condominium unit, pad, bay, structure, suite, room, or other defined space that is used, designed, or intended to be occupied by only a single family, single separate enterprise, or a single separate business; whether or not the lot, building, structure, or space is owned together with others or by one owner. For example, a strip mall with four bays for four businesses contains four Units – even though it may be owned by a single owner and

some of the bays are not yet rented. A mobile home park with ten pads has ten Units, whether or not there are mobile homes on each pad. A condominium building with ten condominiums and one common facility has eleven units. An apartment building with twelve apartments has twelve units even if some are not rented. A lot containing a single family detached house with a work shed and garage all occupied and used by a single family for non-business purposes, is collectively a single Unit. If a structure or facility would be considered to be one Unit, but contains multiple utility meters, then the structure or facility will be considered to have the same number of Units as it has meters.

"Unit Owner" means all of the person(s) or entity(ies) that own the fee interest in the Unit's real estate property.

"Useful Life" shall mean the estimated period during which the water system or wastewater system (as the case may be), will be operated.

"User" shall mean any person, firm, corporation, partnership, or other entity, who is the principal occupant of a Unit at which City Water and/or City Sewer utility services are used.

"User Charge" shall mean the total City utility service charge which is levied for the cost of operation, maintenance, debt retirement, and replacement of the respective City Utility service and facilities.

"Water Meter" shall mean a water volume measuring and recording device, furnished and/or installed by the City of Elsberry or furnished and/or installed by a user and approved by the City of Elsberry, to register the number of gallons of water used by a User for billing by the City.

"Water System" shall mean any devices, structures, and systems for the production, storage, treatment, recycling, transmission, and distribution of water. These include water wells, transmission and distribution lines, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; and elements essential to provide a reliable water supply such as standby treatment units and any works, including site acquisition of land, that will be part of the treatment process.

(Ord. 4-1-2007)

§110.015. MAYOR TO SUPERVISE MUNICIPAL UTILITIES.

The Mayor shall supervise all City utilities, and shall be empowered directly, or by a designated employee or contractor, to conduct any meetings or hearings with Users, Contributors, or Consumers of City Utility services pursuant to this Chapter.

(Ord. 4-1-2007)

110.020. LIMITATION OF LIABILITY.

The City shall furnish City utility service to Users, prospective Users, Unit Owners, Contributors, and Consumers only upon the following express conditions precedent:

1. The City will not be liable to any Unit Owner, User, Contributor, Consumer, or other person for an inconvenience, delay, injury, loss or damage whatsoever, occurring by reason of derangements, stoppage, leak, fault or negligent construction or operation of any part of the City utility system, or by reason of the temporary shutting off of any City utility service for any purpose, or by reason of the scarcity or insufficiency of the particular City utility service supply, or the character or condition of the water supply, or by reason of the clogging or freezing of the mains or service pipes, or the disruptions of distribution due to weather or other acts of God.

2. The City shall not be liable for the expense of repairing any service, pipes, mains or lines not owned by the City.

3 The City reserves the right at any time to restrict the use of any City utility service for any and all purposes.

4 If the Mayor determines it necessary, the Mayor may ration or otherwise restrict the delivery of any, or all, City utility services to any Unit Owner, User, Contributor, consumer, or other person.

(Ord. 4-1-2007)

110.025. DUTIES OF CITY COLLECTOR, GENERALLY.

The City Collector shall receive and register all applications for the supply of any City utility service, keep a full and accurate account of all City utility services provided, promptly collect all City utility charges and fees, pay the same to the City treasurer, and report monthly to the City Board of Aldermen on all moneys received.

(Ord. 4-1-2007)

110.030 APPLICATIONS FOR CITY UTILITY CONNECTIONS AND SERVICE

1. Applications or deposit forms for any City utility service, shall be made in writing at the City Hall to the City Collector or a designated employee, upon an appropriate blank form furnished by the City. The form shall show the fees required. Such fees shall be paid in full by the applicant at the time the deposit is submitted.

2. Each Unit, in its configuration as a separate Unit, must have received written permission from the City to connect that Unit to the City utility services system in order to receive City utility services.

3. All applicants shall follow and meet requirements set forth in this Chapter. Failure to do

so may result in refusal of service, delay in service, disconnection of service, and other penalties as defined in this Chapter.

4. As consideration for the provision of City utility services, each User and Unit Owner shall agree to the requirements of this Chapter (including the City's limitation of liability in §110.020), and such requirements shall be made a part of the application and incorporated within the contract for such services. By accepting such service, each User has thereby expressed the User's consent to be bound by such requirements.

5. The applicant shall be furnished a copy of his deposit form, which shall serve as a receipt for the money paid by the applicant.

6. If the Applicant is not the Unit Owner, the Applicant must provide satisfactory proof that the Unit Owner authorizes the Applicant to submit the application.

7. Charges for connections to the City utility systems, and City utility services, shall be payable by the User or Unit Owner requesting the connection or service.

(Ord. 4-1-2007)

110.035. NEW CITY UTILITY SERVICE THROUGH EXISTING CONNECTIONS.

1. Any person desiring new service through an Existing Connection shall pay the City the applicable deposits and fees set out in this Chapter prior to the service being provided.

2. City utility service will not be established, or turned on, for an Existing Connection to a Unit until all prior balances owed by any User at that Unit have been paid in full.

(Ord. 4-1-2007)

110.040. NEW CONNECTIONS.

1. Any person desiring a New Connection shall pay to the City the applicable connection fee, meter installation fee, street excavation fee, and any other applicable fees set out in this Chapter prior to any such connection being made. Such applicant shall also meet all the requirements of the City's Code with respect to such connection prior to the connection being made.

2. If a line is connected prior to payment of any applicable fee, the City may disconnect the line. The Applicant, User, Contributor, Unit Owner, developer, contractor, plumber or other parties responsible for, permitting, or making the premature connection, shall promptly pay jointly or severally, all costs incurred for the disconnection and collection of such costs. These collection costs shall include, but are not limited to, reasonable attorney's fees, court costs, and interest from the date of disconnection.

3. Once a proper connection is made to the Unit, the Unit Owner or User for that Unit must apply for City utility services as per §110.035 and §110.060.

4. New Connections may only be made to Units that are:

   a. Within the City limits;

   b. Contiguous to the City limits by at least one common boundary and whose owners execute an irrevocable voluntary petition to annex the property into the City limits;

   c. Residential Units outside the City limits that were part of a Neighborhood Improvement District ("NID"established under RSMo. §67.453 *et seq.* prior to January 1, 2007, and such residential Units were in existence at the time the NID came into existence; or

   d. Residential Units outside of the City limits that gave required easements to a Neighborhood Improvement District that was in existence as of January 1, 2007, and such residential Units were in existence at the time the easement was granted.

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5. Notwithstanding any other provision of this Code, the City retains the right to refuse connections to any Unit that would be impractical to connect, would place undue demands on the City's Utility system, would adversely affect the City Utility system's capacity to serve the existing customers, would be uneconomical, or would be detrimental to the City Utility system.

6. Every Lot owner who applies for a connection to the City's Utility service, whose Lot is not within the City limits, shall execute and deliver to the City, in recordable form, an easement and restriction subjecting the Owner's Lot to the requirements and jurisdiction of the Elsberry City Code Chapters 110 through 113; and §§75.010.5, §75.010.5, and 75.015. The Lot Owner shall pay the costs of recording the easement with the County Recorder of Deeds.

(Ord. 4-1-2007; 10-05 -2007; 08-03-2008; 2-3-2009)

110.050 CONNECTION FEE AMOUNTS

The applicant for a New Connection to a City utility system shall pay the following connection fees that pertain to the type of connection to be made. The connection fee provided in this Section is paid solely for the right to have that Unit added to a City utility service system.

1. Each connection of a Residential Unit to provide water for residential use at a location within the City limits: $500.00

2. Each connection of a Residential Unit to provide sewer service for residential use at a location within the City limits: $500.00

3. Each connection of a Residential Unit to provide water for residential use at a location outside the City limits: $700.00

4. Each connection of a Residential Unit to provide sewer service for residential use at a location outside the City limits: $700.00

5. Each connection of a Business Unit to provide water for use at a location within the City limits: $700.00

6. Each connection of a Business Unit to provide sewer service for use at a location within the City limits: $700.00

7. Each connection of a Business Unit to provide water for use at a location outside the City limits: $900.00

8. Each connection of a Business Unit to provide sewer service for use at a location outside the City limits: $900.00

9. Each connection of a Multiple Residence Structure to provide water for residential use at a location within the City limits: $700.00, plus $200.00 for each Multi-Residential Unit in the Multiple Residence Structure.

10. Each connection of a Multiple Residence Structure to provide sewer service for residential use at a location within the City limits: $700.00, plus $200.00 for each Residential Multi-Unit in the Multiple Residence Structure.

11. Each connection of a Multiple Residence Structure to provide water for residential use at a location outside the City limits: $900.00, plus $250.00 for each Multi-Residential Unit in the Multiple Residence Structure.

12. Each connection of a Multiple Residence Structure to provide sewer service for residential use at a location outside the City limits: $900.00, plus $250.00 for each Multi-Residential Unit in the Multiple Residence Structure.

13. In addition to the applicable connection fee provided in Sections 1 through 12 above, the applicant shall also pay the actual cost to the City for the installation of any taps, water meters, meter wells, loops, laterals, line preparation or repair costs, and ancillary components required to be installed to connect or add a Unit to any City utility service system. The tap, meter, meter well, and meter loop that are installed, shall be the property of the City.

14. If it is necessary to dig into the surface of a street to make any connection or install any meter, the User and Unit Owner, jointly and severally, shall fully pay the fees, and comply with procedures, set out in Chapter 93 of this Code.

(Ord. 4-1-2007)

§110.055. LINE EXTENSION CONSTRUCTION COSTS

1. Line extensions and connections to the City utilities system, when made, shall be at the sole cost of the Unit Owner, User, and Contributor, joint and severally.

2. All connections shall be subject to the City's approved inspection.

3. Lines may be extended only to property that is within the City limits, has been annexed into the City limits, or is contiguous to the City limits by at least one common boundary of at least fifty feet.

(Ord. 4-1-2007)

110.060. DEPOSITS.

1. Before any City utility service is turned on, or furnished to any User, the User shall be required to make a cash deposit in the following amounts to guarantee the payment for all services as the bills for such service become due:

    a. If the User is the property owner, the amount of the deposit is One Hundred Fifty Dollars ($150.00).

    b. If the User is not the property owner, but has a 12 consecutive month history of timely payments of utility bills with the City, the amount of the deposit is One Hundred Fifty Dollars ($150.00).

    c. If the User is not the property owner, and does not have a 12 consecutive month history of timely payments of utility bills with the City, the amount of the deposit is Two Hundred Fifty Dollars ($250.00). After the non-owner User establishes a 12 consecutive month record of timely payments, $100.00 of the $250.00 deposit will be applied to such User's next utility bills with the City until the $100.00 is fully applied, leaving the deposit as $150.00..

2. Deposits shall be held by the City without interest.

3. In the event that any User who has applied for any City utility service has any outstanding delinquent bills from any prior City utility connections, the deposit for the new service shall be the minimum deposit plus thirty dollars ($30.00), plus payment of the prior balance in full.

4. At any time a User has a delinquent fee or charge, the City Collector may apply the User's deposit, in whole or in part, toward the delinquent fee or charge. The City Collector shall mail or deliver written notice to the User that the user's deposit is being applied to the

delinquent charges.

5. If upon examination, the City Collector at any time finds the amount deposited by any User is not sufficient to cover the City utility bills for any two (2) consecutive months such User, after forty-eight (48) hours written notice has been given, shall be required to make an additional deposit in an amount sufficient to cover the deficiency.

6. Whenever a User who shall have made a cash deposit for a Unit, lawfully and permanently ceases using City utilities service at that Unit for any reason, then upon such former User's compliance with all rules, regulations, and ordinances of the City governing the use of City utility services, and the payment in full of all bills and charges for such services, the former User may apply to have the cash deposit returned to the former User who paid the deposit, minus any charges, fines, expenses, costs, or other debts owed to the City by the former User. If an application for a deposit refund is not made within six (6) months of the date the service is ceased, thereafter the former User shall pay a monthly administrative service fee to the City of $4.00, which shall be deducted from the remaining deposit. Service shall be deemed to have "ceased" whenever the water or sewer service to the Unit is physically turned off; or the month after the final charge for water or sewer service is posted to the User's account for the subject Unit, whichever is earlier.

7. Any request for a refund of a deposit must be accompanied by an original receipt or other acceptable proof of payment of the deposit by the person requesting the refund. The original receipt shall be cancelled upon payment of the refund. If the User cannot produce the original receipt, and if the City has a file copy of the missing receipt, then the User shall be given the refund if the User otherwise has proof of payment and entitlement to the refund; provided the User first executes written acknowledgment stating that the original receipt is lost and that the User has received a full refund of the cash deposit..

8. All refunds shall be without interest.

9. Refunds shall only be for the amount of the deposit made, minus any amounts that were deducted from the deposit as provided in this Chapter.

(Ord. 4-1-2007; 11-02-2007; 2011-04-003; 2012-06-003; 2016-07-002).

§110.065. METERS REQUIRED.

1. No City water utility service shall be provided to any Unit without an approved water meter.

2. The number, size, and type of meter for each new connection of a Unit to the City's utility service system will be determined by the City. The presumption shall be that each Unit shall have a separate meter unless it is a Residential Multi-unit. It is preferred that each Residential Multi-unit have a separate meter unless it is not practical for the City to do so.

3. The number, size, and type of physical taps into the City's water or sewer lines for each New Connection of a Unit to the City's utility service system will be determined by the City.

4. Meters for City utility services shall be purchased directly from the City. All metered utility service installations shall be of the outdoor setting variety, and shall be located in approved meter wells at or near the property lines within City easements. Metered City utility services and connections shall be of the double yoke and touch read variety whenever possible and the meter well, meter setter, lid and frame, size and installation procedures shall be of the type approved by the City to reflect the then current standards for such installations as those standards change and improve from time to time.

5. Only City personnel or the City's contractors may set the meter. The Owner's or User's contractor may install other equipment or facilities necessary to establish a connection to the City's Utility services upon advance written permission from the City. The City may withhold such permission if it determines that granting such permission is not in the best interests of the City. If such permission is granted, the contractor shall give the City a written five year warranty in favor of the City covering any defective work or materials. In any event, the contractor shall purchase the meter from, or through, the City and the City shall set the meter. The meter shall belong to the City once it is set.

6. All charges for water supplied by any City utility service shall be calculated based on the volumes registered by the meters installed by the City to record the service, and based on the rates established under this Chapter.

7. The City may at any time, with or without the knowledge or consent of any User, Unit Owner, or consumer, install an additional meter at any location where such meter may be connected to any building, dwelling house or premises of any kind to which the City is furnishing utility service. When the additional meter shall register more City utility service than is registered by the existing meter, it shall be taken as evidence that the service being furnished by the City to such User, Unit Owner, or consumer is not being properly metered by the preexisting meter, and the User, Unit Owner, or consumer shall pay for all utilities registered over any period by the additional meter so installed, instead of the amount that has been improperly registered by the preexisting meter.

(Ord. 4-1-2007)

110.070 RIGHT TO INSPECT UTILITY METERS

Whenever deemed necessary by the City, the City shall have the right to inspect meters and all other fixtures and appliances used in conjunction with City utility services. The User, Unit Owner, or consumer shall allow the City access to their premises at reasonable times and intervals for such inspections. Should any User or Unit Owner refuse to allow such access, then upon order of the Mayor, the City utility service may be cut off and withheld until the City is permitted to conduct its inspection.

(Ord. 4-1-2007)

110.075. USER METER TESTS

1. Any User or Unit Owner, may challenge the accuracy of any meter supplied by the City for the Unit that he or she owns or occupies upon written request and on payment of an inspection fee equal to the actual cost of the inspection, plus ten dollars ($10.00) for administrative costs. Inspection fees shall be designed to cover all costs of testing the meter. Should the meter be found to be imperfect and fast in measurement of the service by more than 2%, the cost of the test shall be paid by the City and the inspection fee shall be refunded to the User or Unit Owner who paid the fee. Should the test show the meter is correct within the 2% margin of error, the cost of the excess amount of services shall not be adjusted, and the inspection fee shall be retained by the City. Should the inspection show that the meter is imperfect and slow in measurement of the service by more than 2%, there shall be no adjustment of prior billings, but the inspection fee will be retained by the City. Inspections shall be performed by the City or the City's contractors. Meter imprecision can only be determined by an actual test as provided for in this Chapter.

2. No User or Unit Owner shall require a test of any meter more often than once in six (6) months. At the written request of the User or Unit Owner, a written report showing the result of such test shall be given the to User or Unit Owner.

(Ord. 4-1-2007)

110.080. BILLING PROCEDURE.

1. The City Collector shall render a written monthly bill to each User for the User's City utility service supplied to that User's Unit.

2. There will be a separate User Charge for each Unit.

3. The City Collector shall determine the date of the month that the Utility Services monthly bills are sent to Users; provided that they are sent at least ten days before they are due. The City Collector may also determine how the various charges for the Utility Services

will be delineated or separated on those bills to comport with the requirements of the law and the City's funding agencies.

4. The monthly User charge bill for all utility services shall be presented to the User at least ten days before the payment date. Such written bill shall include the following information:

   a. A clear statement that the utility services will be terminated for non-payment of the bill if not made by a certain date.

   b. A clear statement of a procedure a User may use to complain about the utility bill and resolve any disputes that might exist as to whether or not the charges have been calculated accurately or the, User did in fact use the indicated amount of City utility service. Such a statement may be in the following form:

      "If you have any questions about this bill, please call the City Collector at 573-898-5588 prior to the due date."

5. The City Collector shall be empowered to address complaints concerning the accuracy of the monthly City utility service billing statement, and to make such adjustments as are warranted by the evidence presented. However, the Collector may only make adjustments concerning the accuracy of the monthly City utility service billing statement itself, and for no other reason.

6. Any User who does not pay the User's City utility service charge or charges by the due date or within 15 days thereafter shall be subject to the imposition of a 10% service charge each month (or part thereof) if any portion of the bill remains unpaid, including the month the bill was due. For example, if the original bill due date is the first of June , the service charge shall accrue if any portion of the bill is unpaid by the fifteenth (15^{th}) of June, stating with service charge for the month of January.

7. Any User who does not pay their City utility service charge or charges fully within 20 days after the original bill due date shall be subject to termination of all utilities and services. For example, if the original bill due date is the first of the month, the service charge shall accrue if the bill is unpaid by the fifteenth (15^{th}) of the month, and if still unpaid in whole or in part by the twentieth (20^{th}) of the month, the utility serves may be terminated.

(Ord. 4-1-2007; 2012-01-001; 2012-06-004; 2019-12-001)

110.085. TERMINATION OF UTILITY SERVICES.

Any or all City utility services may be discontinued without notice to the User or Unit Owner, for the following reasons:

1. Failure to pay City utility service charges, provided that notice of the City utility service charge and the right to protest or complain about the calculation of the charges has been given as provided in Section 110.080.4(b).

2. Upon the discovery of any unauthorized taps, connections, or diversions of utility service.

3. Upon the discovery that City utility service through one connection is being used by more than one Unit.

4. Upon violation of any provision in Chapters 110, 112, or 113 of the Elsberry Municipal Code.

(Ord. 4-1-2007)

110.090 DISCONNECTION AND RECONNECTION FEES AND COSTS.

1. The City Collector is authorized and empowered to levy and collect an administrative charge of One Hundred dollars ($100.00) from each User whose City utility service has been disconnected for violation of this Code or non payment of Utility charges. This fee shall be assessed and collected for each time the service is disconnected.

2. The costs incurred by the City to repair or replace any lock, equipment, or device used to secure, disconnect, meter, or block the service connection that was damaged by someone other than a City agent during the time the service was discontinued, shall be paid by the User who had the service disconnected.

3. In addition to the above, the User and the Lot Owner who has had service disconnected shall also pay the costs expended by the City to repair, remove, or replace any device that was tampered with as defined by Elsberry Mun. Code §75.010, including the removal of a meter to prevent the unauthorized use of water. The minimum charge for the removal and replacement of a meter shall be Two Hundred Dollars ($200.00).

4. In addition to the above, the User who has had service disconnected shall also pay the costs expended by the City to locate, excavate, block, and disconnect any sewer service for which the User does not also receive water service through a City meter. Upon reconnection, the User shall also the costs expended by the City to locate excavate, reconnect, and backfill the sewer service connection.

5. Any User who has City sewer service, but does not receive City water service, and who has received a disconnection notice for violation of this Code (including failure to pay for service), may not reconnect to the City sewer service until the User either:

    a. Has the City install, at the User's cost, a City water meter on the User's water supply; or

    b. Has the City connect the Unit to the City's water system, at the User's cost (including the cost of installing or extending any mains, laterals, connection fees, and meters).

7. All of the charges and costs stated above must be paid by the disconnected User or the effected Lot Owner before service is reconnected.

8. The charges listed in subsections 2 *[3]* through 6 above are in addition to the administrative fees stated in subsection*[s]* 1 *[and 2]*. If any reconnection or reconnection fees and costs are not paid within thirty days of the User's receipt of the City's billing statement, such charges shall become a lien against the disconnected property that may be foreclosed in the same manner as a tax lien under Elsberry Mun. Code Chapters 80 or 81.

9. In any administrative or court action to assess the costs stated in subsections 2 through 6

above, proof that a meter, line, pump, or any other property of a public or private utility service has been tampered with, and the person or persons accused received the use or direct benefit of the electric, gas, steam or water service, shall be sufficient to support an inference that the person or persons who use or receive the direct benefit of the electric, gas, steam, or water service caused the damage.

(Ord. 4-1-2007; 2-3-2009; 2011-12-001; 2016-07-001 *italicized materials were repealed due to renumbering*; Ord. 2022-03-001)

110.095. ESTIMATED BILLS.

All bills for City utility service charges may be estimated when the monthly bill of the User cannot be accurately determined. The City Collector shall make such estimate, considering the average consumption of the User over the previous three months period, considering the relative use of such City utility service as a whole for the period of time in question, and considering such other factors as the City Collector may seem appropriate. Such estimated bills shall be due and payable as are all other bills rendered under this Chapter.

(Ord. 4-1-2007)

§110.100. UTILITY CHARGE ABATEMENT.

1. If a Residential User believes that the User has been subject to extraordinary utility charges due to a water leak or faulty plumbing, the Residential User may petition the City to abate a portion of the User's utility charges. Waiver or reduction of the utility charges for Residential usage attributable to water leaks is subject to the following requirements:

    1. Water use charges may be abated only if the City determines that a water leak occurred between the water meter and the exterior of the residence or building receiving water service. Sewer use charges may be abated for leaks that occur within the building receiving the water service.

    2. The customer's water usage for the month exceeds that customer's normal usage by more than one hundred percent (100%) as a result of a water leak.

    3. No more than one (1) adjustment may be applied to any service connection or structure within any calendar year and shall not encompass charges for more than one (1) billing cycle.

    4. Abatements of City sewer service utility usage may be granted upon application of the User by the User strictly adhering to the following procedures:

        The User must request the abatement, and must also notify the City Collector and the City Clerk before the pool is filled with City water

to schedule the times for the City to read the User's water meter before and after the filling is performed. Both the request for abatement and the notice must be in writing and delivered to both the City Clerk and the City Collector. To qualify for the abatement, the City must read the User's City water meter immediately before the pool filling is begun, and then immediately after the pool filling is completed to get an accurate measurement of the amount of the sewer charges to abate. Without the before and after meter readings by the City, an abatement cannot be granted. City Collector shall make a recommendation to the Board of Aldermen whether to approve or deny the request for an abatement. The abatement must then be approved or denied by the Board of Aldermen.

5. Adjustments to sewer billing may be allowed only when, in the sole opinion of the City, the leakage did not enter the City's sanitary sewer system.

6. No water or sewer use charge adjustments will be made until the City is satisfied the repairs have been made. The Residential user, upon notification of the water leak, must make in good faith efforts to repair the leak. All repairs must have been made timely.

7. The user must have been vigilant in noticing any irregularities in water use, or signs of leaks, and reported such information to the City on a timely basis.

2. The Residential utility charge abatement shall be a maximum of:

    1. Fifty percent (50%) of one month's water use charge that is excess of the average prior three (3) months' water use charge without the water leak; and

    2. That portion of one month's sewer use charge that is in excess of the prior three (3) months' sewer use charge without the water leak.

3. The amount of the abatement must be recommended by the water plant operator and the City Collector, and approved by the Board of Aldermen.

4. The City Collector, subject to the approval of the Board of Aldermen, may correct, waive, or reduce water and sewerage charges for usage attributable to water billing process errors and/or meter discrepancies.

5. In extraordinary situations, the Board of Aldermen may grant a payment extension or delayed payment plan to any person who, by reason of extreme financial or other hardship, is unable to pay any City utility bill. Such payment plan shall not be more than six months in duration. Only one such extension shall be granted in any one year period.

(Ord. 4-1-2007; 2011-01-003; 2021-07-03; 2021-09-001; 202206-001).

§110.101. PROCEDURE FOR PETITIONING FOR ABATEMENTS

If any User of the City of Elsberry's water system or sanitary sewer system wishes to petition for an abatement or extension of payment of the User's City of Elsberry utility charges because the User believes that the amount charged on the utility bill is in error by reason of incorrect readings, disruption of service, miscalculation of bill or other similar reason allowed by the City's Municipal Code, the User must submit the petition in compliance with the following procedure.

1 Abatement or extension petitions must be submitted in writing and signed by the User and the Owner of the Property. Petitions must be submitted on the forms provided by the City Collector.

2. The written abatement or extension petition must be submitted to, and received by, the City Collector within 45 calendar days of the billing date of the bill being disputed or extended. Petitions received more than 45 days after the billing date are untimely submissions and will be returned without action.

3. The petition must fully state the reason(s) for the abatement or extension and the amount of abatement or the payment extension plan being requested. The reasons must be permissible grounds for the abatement or extension under the City's Municipal Code.

4. The burden of proof for the abatement or extension shall rest upon the petitioner. The abatement or extension petition must include adequate information that will support the petition. Some examples include previous utility bills indicating different meter readings, evidence of mathematical errors in computing charges, evidence of faulty meters, etc., good cause for the extension with adequate assurances of full payment within a reasonable time.

5. Abatement or extension petitions will be reviewed by the City Collector and the City Collector will make a written recommendation to the City Board of Aldermen for a resolution of the petition. The City Collector will notify the petitioner in writing of the Collector's recommendation.

6. The Petition and the Collector's recommendation will be placed on the next Board of Aldermen agenda after the Collector has issued the Collector's recommendation, provided that there is at least four business days between the recommendation date and the next meeting. If there is less than four business days, the petition and recommendation will be placed on the next following Board of Aldermen Agenda unless the Mayor or an Alderperson representing the Petitioner's Ward requests that the Petition be heard earlier, provided that there is sufficient time to place the Petition on the Agenda pursuant to applicable law. The City Collector shall notify the Petitioner of the date and time of the Board of Alderman meeting at which the

petition will be considered.

7. The petitioner must be present at the Board of Aldermen meeting in person or by the petitioner's legal counsel. This requirement is to allow the Board to ask the petitioner questions and obtain complete and first hand information needed to address the issues raised by the petition. If the petitioner cannot be at the meeting, the petitioner may request that the petition be heard at a subsequent meeting. Alternatively, the petitioner may file a written statement waiving the petitioner's presence at the meeting and allowing the petition to be resolved on the written petition and its attached exhibits, together with the City Collector's recommendation.

8. The Board of Aldermen will review the petition and render a decision by majority vote of a quorum of the Board. The Board of Aldermen may also table the matter to a future meeting should it require additional time or information to make a decision.

(Ord. 2022-02-001)

§110.102. PAYMENTS PENDING RESOLUTION OF AN ABATEMENT PETITION

To prevent the issuance of late notices and the assessment of interest charges, petitioners must make timely payment of their utility bills. It is not necessary for the abatement petitioner to pay the disputed amount pending the decision of the Board of Aldermen. However, any undisputed amount shall be paid when it is determined to be due.

(Ord. 2022-02-001)

110.105 REVIEW OF USER RATES

The City will review the City utility user charge system, and revise City utility user charge rates, as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance, retire the debt, and replace the equipment of the City utility system.

(Ord. 4-1-2007)

110.110. ACCESS TO PRIVATE PREMISES.

1. The Mayor and the various persons employed or contracted by the City in the line of duty shall have the right to have free access to all parts of any building, dwelling house or premises of any kind to which City utility service is furnished in order to install, inspect, examine or repair or remove any poles, wires, meter, pipes, filters, lines, or other material or appliances belonging to the City, or to read meters, turn on or discontinue service, or for any other purpose that may be deemed reasonably necessary for the preservation of such property, prevention of waste, proper function of the utility system, enforcement of this Code, or collection of revenue. Such access shall include the right to (1) locate utility

pipes, conduit, meters, and other equipment; (2) remove trees and landscaping; (3) and excavate, disconnect, reconnect, and backfill excavations in the process disconnecting or reconnecting utility service.

2. Every Lot Owner and User who applies for or accepts City sewer service without also obtaining City water service through an individual meter to that Owner's or User's Unit or Lot, shall be deemed to grant the City the easement, license, and right to disconnect and reconnect the sewer service to that Lot or Unit in response to the Owner's or User's violation of this Code (or subsequent correction of the violation). The City may do so by physically blocking the sewer line on the Owner's or User's property through any method reasonably necessary, including the excavation of the sewer lateral line on the owner's or User's property. Such disconnection and reconnection shall be at the Owner's and User's cost as provided in Elsberry Mun. Code §110.090.

(Ord. 4-1-2007; 2-3-2009)

110.115. VIOLATION.

1. Upon violation by a User, Unit Owner, Contributor, or consumer of any of the rules, regulations, and ordinances adopted, incorporated, or imposed by this Chapter (other than for non-payment of the utility bill), the City shall inform the User or Unit Owner, in writing of the particular violations and that service shall be terminated if the circumstances constituting the violation(s) are not rectified to the satisfaction of the Mayor within fifteen (15) days.

2. The notice shall also provide that if the affected User or Unit Owner believes the violations charged are erroneous or incorrect, the User or Unit Owner may submit a written request to meet with the Mayor, or an employer so designated by the Mayor, to discuss the charges informally. The meeting shall be held during the City's regular business hours unless waived by the City.

3. The Mayor, or his designated employee, shall be empowered to require the User, Unit Owner, Contributor, or consumer to comply with all the rules and regulations adopted and imposed by this Chapter, and may require the User, Contributor, or consumer to reasonably demonstrate such compliance in order to suspend the disconnection order at the end of the fifteen-day period. If the User, Contributor, and consumer do not comply with the rules and regulations of this Chapter within the fifteen (15) day period, the service shall be disconnected and the User, or Unit Owner, shall be informed in writing that service will be reconnected only upon demonstration to the satisfaction of the Mayor or his designated employee that the User, Unit Owner, Contributor, or consumer has complied with the rules and regulations of this Chapter, and upon payment of the disconnection fee, reconnection fee, and all charges for City services by the User, Unit Owner, Contributor, or consumer.

4. Notwithstanding the above, where dishonest or unauthorized violations of §§110.085.2

through 110.085.4 are found, the City may terminate the appropriate City utility service immediately and the City shall notify such person that the service will be reconnected only upon rectification of the circumstances causing the disconnection to the satisfaction of the Mayor, or his designated employee, and the payment of the disconnection fee, reconnection fees, and all charges for City services.

5. When any person after prior notice and a prior opportunity for hearing consistent with the provisions of this Section, has been denied City utility service and still owes the City for prior City utility service, moves into a Unit connected to City utility service, the City utility service shall be cut off immediately, and the City shall notify such person that service will be reconnected upon the payment of the amount due and the applicable disconnection and reconnection charges.

(Ord. 4-1-2007)

§110.120 RE-READ AND DATA LOG REQUESTS – FEES AND COSTS.

1. If a User of City water or sewer utility services believes that the User's City water meter is not accurately reading water usage, or suspects that the User's water lines may have a leak, that User may make a request to the City Collector to re-read the User's City water meter.

2. The User requesting a re-read service under Subsection 1 above, shall pay the City a fee of Fifty Dollars ($50.00) for the re-read service, with payment to be made to the City in advance of the re-read.

3. If a User of City water or sewer utility services believes that the User's City water meter is not accurately reading water usage, or suspects that the User's water lines may have a leak, that User may make a request to the City Collector to perform a data log summary of the User's City water meter.

4. The User requesting a data log service under Subsection 3 above, shall pay the City a fee of Fifty Dollars ($50.00) for the re-read service, with payment to be made to the City in advance of the re-read.

5. The fees charged pursuant to Subsections 2 and 4 above will be waived under the following conditions:

    a. The request is made for a Residential Unit;

    b. The User's is questioning the User's latest water bill which is at least One Thousand (1,000) gallons over the User's previous three months average for that Unit; and

    c. The User has not made a request for the re-read or data log in the previous three months

6. If it is determined that the water bill that the User is contesting is in error due to the City's error, the service fee for the re-read or data log for the erroneous bill will be refunded to the User.

(Ord. 2022-03-001)

ARTICLE II
RATES TO BE CHARGED FOR SEWER UTILITY SERVICE

110.200 PURPOSE

It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the City to collect charges from all Users who contribute wastewater to the City's wastewater treatment works. The user charge system shall be set so as to generate adequate annual revenues to pay costs of annual operation and maintenance, replacement costs, and costs associated with debt retirement of bonded capital associated with financing the treatment works. The proceeds of such charges so derived will be used for the purpose of operating and maintaining, retiring the debt, and replacing the equipment for such wastewater treatment works.

(Ord. 4-1-2007)

110.210 MEASUREMENT OF SEWER USE

1. Each City sewer User who is also supplied water by the City Water System shall pay for the City sewer services based on the User's use of City water as determined by water meter(s) acceptable to the City.

2. Each City sewer User who is not supplied water by the City water system, shall pay for the City sewer services on the following basis:

    A. For each such Residential Contributor, the monthly user charges shall be the average monthly charge of all other Residential Contributors within the City. Provided, however, that should the Residential Contributor have more than one Unit connected to the City treatment works, then so long as any sewer services are being provided to such Residential Contributor, a separate User charge for City sewer services shall be payable on each Unit, whether or not it is occupied at the time.

    B. For each such Commercia1 Contributor, the monthly user charges shall be based on the average charge of comparable type users (the comparable type user to be determined by the City Collector) during the current month. Provided, further, that should Commercial Contributor have more than one Business Unit connected to the City treatment works, then so long as any City sewer services are being provided to such Commercial Contributor, a separate charge shall be payable on

each such Business Unit, whether or not at the time in question a business enterprise actually is being operated in the Business Unit.

3. Any City sewer service User may elect to have the charge for use of the City sewer service based on his actual use of water if the User installs and maintains water meter(s) at his cost that are acceptable to the City to measure the water volume actually used by the User.

4. If any User has a consumptive use of water, or in some manner uses water which is not returned to the wastewater collection system, the User Charge for that User may be based on a wastewater meter(s) or separate water meter(s) installed and maintained at the User's expense, and in a manner acceptable to the City.

(Ord. 4-1-2007)

110.230 RATES TO BE CHARGED FOR SEWER UTILITY SERVICE

1. The User Charge for each Unit within the City limits at which City Utility sewer service is supplied shall be as follows:

   A base fee of $31.43 per month, or fraction thereof. The base fee includes the first 1,000 gallons of water provided to that Unit. An additional fee of $2.73 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

   From April 1, 2019 through March 31, 2020, the base fee shall be $37.86 per month, or fraction thereof. An additional fee of $2.73 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

   From April 1, 2020 through March 31, 2021, the base fee shall be $44.29 per month, or fraction thereof. An additional fee of $2.73 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

   From April 1, 2021 onward, the base fee shall be $50.72 per month, or fraction thereof. An additional fee of $2.73 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

2. The User Charge to each Unit outside the City limits at which City Utility sewer service is supplied shall be as follows:

   A base fee of $32.64 per month. The base fee includes the first 1,000 gallons of water provided to that Unit. An additional fee of $3.21 per month per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the

first 1,000 gallons.

From April 1, 2019 through March 31, 2020, the base fee shall be $39.10 per month, or fraction thereof. An additional fee of $3.25 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

From April 1, 2020 through March 31, 2021, the base fee shall be $45.50 per month, or fraction thereof. An additional fee of $3.25 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

From April 1, 2021 onward, the base fee shall be $52.00 per month, or fraction thereof. An additional fee of $3.25 per month, or fraction thereof, per 1,000 gallons or fraction thereof shall be charged for water supplied to that Unit after the first 1,000 gallons.

(Amend. Ord. 08-02-2007; 2010-08-003; 2016-12-001; 2019-03-002).

3 Any business establishment, industry or other user discharging an unusual amount of waste or fluid into the City's sewerage system, shall be charged such reasonable and proper amount as may be fixed from time to time by the Mayor or Board of Aldermen, taking into account such unusual burden.

4. Any User, Unit Owner, or Contributor who discharges any toxic pollutants of strength greater than normal domestic sewage; that places an unusual burden upon the City's sewerage treatment works or facilities; or discharges any substance that singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance or replacement of the treatment works, shall pay for such increased costs. The charge to each such User, Unit Owner, or Contributor shall be as determined by the responsible plant operating personnel and approved by the Board of Aldermen.

5. Any User, Unit Owner, or Contributor who discharges wastewater into the sanitary sewer system which contains more than two and one-half (2.5) pounds of BOD per one thousand (1,000) gallons and/or more than three (3) pounds of suspended solids per one thousand (1,000) gallons shall pay an additional charge of fifteen cents ($0.15) per pound for each pound of BOD in excess of two and one-half (2.5) pounds per one thousand (1,000) gallons and six cents ($0.06) per pound for each pound of suspended solids in excess of three (3) pounds per one thousand (1,000) gallons.

6. No sewerage services shall be furnished or rendered by the City's sewerage system free of charge to any User, Unit Owner, or Contributor, other than the City itself.

7. The User occupying the Unit, and the Unit Owner, are jointly and severally liable for all User Charges for the Unit during the time they either own or occupy the Unit.

8. User charges for sewer service shall not be prorated if the Unit is not occupied for a portion of the month.

(Ord. 4-1-2007)

ARTICLE III
RATES TO BE CHARGED FOR WATER UTILITY SERVICE

110.300. PURPOSE.

It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare, and convenience of the City to collect charges from all users who use the City's water system.

110.310 USE OF USER FEES

The User Charge system established by this Ordinance shall be set to generate adequate annual revenues to pay the costs of annual operation and maintenance of the water system, replacement costs, and costs of debt retirement associated with financing the City water system. The proceeds of such charges so derived will be used for the purpose of operating, maintaining, replacing, and retiring the debt for the City water system.

110.320 CITY WATER UTILITY ACCOUNTS.

The total User Charges collected for City water service are hereby designated for the operation, repair, maintenance, and replacement of the City water system. Such collected charges shall be deposited in a separate, non-lapsing, fund known as the Operation, Maintenance, and Replacement Fund and shall kept in two primary accounts as follows:

1. The Operation and Maintenance Account shall be an account designated for the specific purpose of defraying operation and maintenance costs (including debt retirement, but excluding replacement) of the water system. Deposits into the Operation and Maintenance Account shall be made monthly from the user charge revenue in the amount of at least $279,399.00 annually.

2. The Replacement Account shall be an account designated for the purpose of ensuring replacement needs over the useful life of the water system. Deposits into the Replacement Account shall be made monthly from the user charge revenue in the amount of at least $21,097.00 annually.

(Ord. 4-1-2007)

110.330 TRANSFER OF BALANCES.

Fiscal year-end balances in the Operation and Maintenance Account and the Replacement Account shall be carried over to the same accounts in each subsequent fiscal year, and shall be used for no other purposes than those designated for these accounts. Monies that have been transferred from other sources to meet temporary shortages in the Operation, Maintenance, and Replacement Fund shall be returned to their respective accounts upon appropriate adjustment of the user charge rates for operation, maintenance, and replacement. The user charge rate(s) shall be adjusted such that the transferred monies will be returned to their respective accounts within the fiscal year following the fiscal year in which the monies were borrowed.

(Ord. 4-1-2007)

110.340 MEASUREMENT OF WATER USE.

Each User of City water service shall pay for the water utility services based on a base fee and the volume of water supplied to the User's Unit as determined by water meter(s) acceptable to the City.

(Ord. 4-1-2007)

110.350 USER CHARGE RATES

1. The User Charge for each Unit within the City limits at which City Utility water service is supplied shall be as follows:

   A base fee of $17.06 per month. The base fee includes up to the first 1,000 gallons of water (or fraction thereof) provided to that Unit for that month. An additional usage fee of $8.20 per thousand gallons (or fraction thereof) shall be charged per month for water supplied over 1,000 gallons to that Unit for that month.

2. The User Charge to each Unit outside the City limits at which the water is supplied shall be as follows:

   A base fee of $20.56 per month. The base fee includes up to the first 1,000 gallons of water (or fraction thereof) provided to that Unit for that month. An additional usage fee of $9.20 per thousand gallons (or fraction thereof) shall be charged per month for water supplied over 1,000 gallons to that Unit for that month.

3. The User Charge for bulk sales of water at the City’s water plant facility shall be $1.50 per hundred gallons or fraction thereof.

4. On and after January, 1, 2011, the user charge (base fee and usage fee) provided in subparagraphs 1 through 3 above, shall be increased by three percent (3%) annually, effective as of January 1 of each year.

5. Beginning on the date of the closing on the water project bond(s) approved at the April 2010 election, the base fee for Units within the City limits shall be increased by an additional $9.33 per month; and for Units outside the City limits the base fee shall be increased by an additional $11.83 per month. The amounts stated in this subparagraph shall not be subject to the annual three percent increase. .

6 The User Charge rates established in this article apply to all Users of the City's system.

7. The User occupying the Unit and the Unit Owner are jointly and severally liable for all User Charges for the Unit during the time they either own or occupy the Unit.

8. Nothing contained herein shall be construed to require the City to provide water to any location outside the City limits where water is not currently being provided..

9. User charges for water service shall not be prorated if the Unit is not occupied for a portion of the month.

10. The 3% increase referred to in subsection 4 of Section 110.350 that was scheduled to go into effect on January 1, 2017 shall not be imposed.

11. The 3% increase referred to in subsection 4 of Section 110.350 that was scheduled to go into effect on January 1, 2020 for the 2020 year only, shall not be imposed.

12. The 3% increase referred to in subsection 4 of Section 110.350 that was scheduled to go into effect on January 1, 2025 for the 2025 year only, shall not be imposed.

(Ord. 4-1-2007; 6-1-2007; 1-1-2009; 07-2010-001; 2016-12-003; Ord. 2020-01-001; Ord 2025-01-001)

110.360 CALCULATION OF WATER RATES

1. A method to calculate a minimum water User Charge rate is attached as Appendix “A,” Appendix “B,” and Appendix “C.”

2. The City shall review the User Charge system annually and revise City water User Charge rates as necessary to ensure that the water system generates adequate revenues to pay the costs of operation and maintenance, repair, including replacement, and that the system continues to provide for the proportional distribution of operation and maintenance, including replacement costs, among users and user classes.

3. The City will notify each User at least annually, in conjunction with a regular bill, of the User rate being charged for operation, maintenance, repair, including replacement, of the water system.

(Ord. 4-1-2007)

110.370. APPLICABILITY OF WATER RATES

The User Charges set out in 110.350 shall take effect and be applied from and after their date of adoption, and shall remain in effect until amended or repealed by the Board of Aldermen.

(Ord. 4-1-2007)

APPENDIX "A" TO USER CHARGE ORDINANCE
(Actual Use Rate Structure)

This appendix presents the methodology to be used in calculating the user charge rate, and illustrates the calculations followed in arriving at the first year's user charges. The unit costs established in this appendix are based on estimates of expenses. The actual expenses that occur may differ from these estimates and certainly they will change as time passes. Therefore, the unit costs must be reestablished whenever necessary to reflect actual expenses. Once the system is in use, the expenses can be determined from operating records and the unit costs can be adjusted based on these figures.

1. Expenses: The total annual expenses associated with the water system, as defined in Article II, Section 7, are estimated as follows:

Item	Annual Expense
Billing and Collection Salaries Taxes/etc.	$12,552
Insurance	12,930
Water Billing Supplies & Postage	5,522
Power (included in Alliance Water's fees)	0
Meters, Fittings	4,153
Supplies	7,173
Replacement Costs (see Appendix B)	21,097
Debt Service (36050 new, 5960 existing)	42,010
Permits, Training	972
Misc./Reserve Expense	6,580

Alliance Water Resources	187,507
TOTAL	$300,496

2. Allocation of Expenses: The total operation and maintenance, including replacement expenses, is allocated in the following manner.

Total annual metered water = 100% annual cost allocated to produce water (total annual O&M budget minus billing, collection, administration, and debt)

= 100% ($300,496 -42,010 - 31,004)= $ 227,482

(NOTE: The billing, collection, administration, and debt expenses are deducted from the total O&M budget at this point because each user will pay the same for these expenses per billing period. See paragraph 5 below. In some situations other appropriate expenses may be handled in the same manner.)

3. Annual Water:

The initial water metered leaving the plant is estimated to be 70,189,000 gal/year.

Total metered water to customers is 50,542,171 gal/ year.

Number of users is 839.

4. Unit costs:

Initial unit cost in $/gallon = $ 227,482 annual $ to produce water / 50,542,171 metered gallons

$/gallon =	$0.0045/ gallon
$0.0045 x 100 =	$0.45/100 gallons
$0.0045 x 1000 =	$4.50/1000 gallons

This total user unit charge is to be inserted in Article IV, Section 3, of the ordinance.

5. Minimum Charge:

Billing and Collection Salaries	=	$12,552
Taxes/etc.		
Insurance	=	12,930

Water Billing Supplies & Postage	=	5.522
Annual debt service	=	42,010
Total Annual Minimum Cost	=	$73,014
Minimum Charge/User/Billing Period	=	$ 7.25

To calculate the minimum charge/user/billing period, divide annual minimum cost by number of users, then divide by number of billing periods (twelve in a year).

$73,014 / 839 = $87.03 then $87.03/12 = 7.25

The minimum charge/user billing period is to be inserted in Article N, Section 3, of the ordinance.

(NOTE: The above procedure allocates the cost of distributing and treating exfiltration to metered water volume. Other acceptable means of distributing this cost include allocating to the number of users.)

6. Residential User Charge: The residential user charge is calculated as follows:

The unit charge (determined in 4 above)	x	monthly metered volume, plus the minimum charge/user/month from # 5 above.

An example calculation of a residential user charge for a resident of the City of follows: Assume a monthly water usage of 5,000 gallons

$ 7.25 + [(5,000/1,000) x $ 4.50] = $ 29.75 per month

(Ord. 8-2-02)

APPENDIX B TO USER CHARGE ORDINANCE

This appendix contains a replacement schedule that was developed to determine the amount of revenue needed to fund the Replacement Account. The replacement schedule lists the equipment in the water system, the estimated dates when the equipment will have to be replaced, and the estimated cost of replacement (including an allowance for inflation) over the useful life of the water system. The replacement dates and costs shown are estimates; the actual replacement dates and costs could be significantly different from those shown. If the actual replacement expenses differ significantly from those listed in the replacement schedule, the funding of the Replacement Account shall be adjusted accordingly.

REPLACEMENT SCHEDULE

Years From Water System In Operation	Replacement Item	Cost Per Item	Yearly Total
1	annual, non budgeted exp.	$1,000	$1,000
2	annual, non budgeted exp.	$1,000	$1,000
3	annual, non budgeted exp.	$1,000	$1,000
4	Pump rebuild (4), painting, misc.	$6,400	$6,400
5	annual, non budgeted exp.	$1,000	$1,000
6	Motor rebuild (backwash and high serv.)(4)	$800	$3,200
7	metering pump repl. (3)	$1,500	$4,500
8	Pump rebuild (4), painting, misc.	$7,400	$7,400
9	annual, non budgeted exp.	$1,000	$1,000
10	Filter Media Replacement, Well Pump Replacement	$30,000	$30,000
11	Replace flow meters (2)	$1,500	$3,000
12	Pump rebuild/Motor rebuild (4), painting, misc.	$11,600	$11,600
13	annual, non budgeted expense	$1,000	$1,000
14	metering pump repl. (3)	$1,500	$4,500
15	annual, non budgeted exp., repaint tower	$111,000	$111,000
16	Pump rebuild (4), painting, misc.	$8,400	$8,400

Years From Water System In Operation	Replacement Item	Cost Per Item	Yearly Total
17	annual, non budgeted exp.	$2,000	$2,000
18	Motor rebuild (backwash and high serv.) (4)	$800	$3,200
19	annual, non budgeted exp.	$2,000	$2,000
20	annual, non budgeted exp., painting, misc,, well replacement	$102,000	$102,000
			$305,200.00

Inflation 3% Interest 2%

Based on this information, the annual deposit to the Replacement Account shall be $21,096.77.

(Ord. 8-2-02)

NOTE: A separate sheet showing what items are to be replaced, what year, and estimated replacement cost, should also be in today's dollars should accompany this calculation.

REPLACEMENT FUND CALCULATION

Inflation 3.00%
Interest 2.50%

Year	Estimated Replacement Costs	X	Compound Amount	3.00% = Future Factor (F/P)	X	Worth	Present Worth =	2.50% Present Factor (P/F)	Adjusted Fund	Interest On Fund Balance	Net Fund Balance
1	$ 1,000.00			1.030000	$ 1,030.00		0.975610		$ 1,004.88	$ 0.00	$ 21,096.77
2	1,000.00			1.060900	1,060.90		0.951814		$ 1,009.78	527.42	$ 41,660.06
3	1,000.00			1.092727	1,092.73		0.928599		$ 1,014.71	1,041.50	$ 62,705.60
4	6,400.00			1.125509	7,203.26		0.905951		$ 6,525.79	1,567.64	$ 78,166.76
5	1,000.00			1.159274	1,159.27		0.883854		$ 1,024.63	1,954.17	$100,058.43
6	3,200.00			1.194052	3,820.97		0.862297		$ 3,294.81	2,501.46	$119,835.69
7	4,500.00			1.229874	5,534.43		0.841265		$ 4,655.93	2,995.89	$138,393.92
8	7,400.00			1.266770	9,374.10		0.820747		$ 7,693.76	3,459.85	$153,576.44
9	1,000.00			1.304773	1,304.77		0.800728		$ 1,044.77	3,839.41	$177,207.85
10	30,000.00			1.343916	40,317.49		0.781198		$ 31,495.96	4,430.20	$162,417.33
11	3,000.00			1.384234	4,152.70		0.762145		$ 3,164.96	4,060.43	$183,421.83
12	11,600.00			1.425761	16,538.83		0.743556		$ 12,297.54	4,585.55	$192,565.33
13	1,000.00			1.468534	1,468.53		0.725420		$ 1,065.30	4,814.13	$217,007.70
14	4,500.00			1.512590	6,806.65		0.707727		$ 4,817.25	5,425.19	$236,723.01
15	111,000.00			1.557967	172,934.38		0.690466		$119,405.24	5,918.08	$ 90,803.48
16	8,400.00			1.604706	13,479.53		0.673625		$ 9,080.15	2,270.09	$100,690.81
17	2,000.00			1.652848	3,305.70		0.657195		$ 2,172.49	2,517.27	$120,999.16
18	3,200.00			1.702433	5,447.79		0.641166		$ 3,492.93	3,024.98	$139,673.13
19	2,000.00			1.753506	3,507.01		0.625528		$ 2,193.73	3,491.83	$160,754.72
20	102,000.00			1.806111	184,223.35		0.610271		$112,426.16	4,018.87	$ 1,647.02
	$305,200.00									$328,881.00	CLOSE
						Capital Recovery Factor		x		0.064147	
						Annual Annuity				$21,096.77	

(Ord. 8-2-02)

CHAPTER 112 -- WATER

§112.010. SERVICE INSTALLATIONS TO BE MADE BY WATER DEPARTMENT ONLY; RESPONSIBILITY FOR MAINTENANCE.

No water shall be furnished except through a service installed by the water department of the City. Such service installation shall include excavation, tapping the main, service line to the meter installation, but not beyond the property line, meter tile cover, five-eighths (5/8) inch through three-fourths (3/4) inch meter and meter connecting fittings and backfilling the installation. The cost of tapping the main shall be as provided for in Section 110.060, Chapter 110, Title XI of this Code, and the cost and procedures for excavation shall be as provided for in Chapter 93, Title IX of this Code, and shall be such fees and not a transaction in which the materials are purchased. The ownership of such service line and other appurtenances installed by the water department of the City shall remain with the water system of the City. The responsibility for maintenance and repairs to service lines installed as above will be that of the water department. The maintenance for any meter which is over five-eighths (5/8) inch through three-fourths (3/4) inch in size shall remain the responsibility of the property owner. If the service line is replaced by the water department and if the owner executes an assignment of such service line to the water department, then such service line shall be the property of the water department and shall be maintained by such department.

(Ord. 3-1-1990)

§112.030. STANDARDS USED IN TAPPING A MAIN.

In tapping, a main stopcock shall be inserted at the top and shall be known as the corporation cock, and to it will lay at a depth of three (3) feet or more below the surface of the ground. The service pipe to the meter and such service pipe shall conform to AWHA standards.

§112.040. CONTROL OF FLOW.

A suitable brass stopcock with round waterway must be placed in the service pipe, so that the T head will stand parallel with the curb when the water is off, to allow the City to control the flow of water through any such pipe, located inside the curbstone and as near thereto as practicable; with iron stop box of such pattern as may be approved by the Mayor. Should it become necessary to dig the box out for the purpose of turning the water on or off, it shall be at the expense of the water taker. No person other than the Mayor or one duly authorized by him shall turn on the water at any stopcock or meter or in any other manner take water from the water mains.

§112.050. USE OF SERVICE PIPES AND TAPS.

Along streets where water mains are laid, service pipes shall not be allowed to run across lots, that is, from one lot to another, but must be taken from the mains in front of the premises or Some point in the street adjacent to the same, except by special permit of the Mayor; provided, that one service pipe may be used to supply all the parties taking water within sixty (60) feet on either side of such service pipe, in which case such branch service must have a curb stop and box. No more than one house shall be supplied from one tap except by special permit of the Mayor.

§112.060. USE OF CORPORATION COCKS.

No corporation cock shall be inserted for any premises where one has been previously inserted for water conveyed, for the purpose of giving an increased supply, except in pursuance of a new application and permit. Nor shall any attachment be made to any premises previously supplied with water, until the corporation cock previously used shall be drawn and the opening securely stopped with a brass plug, at the expense of the owners of the premises. Nor shall any two (2) corporation cocks be inserted into any street main within less than ten (10) inches of one another.

§112.070. POSITIONING OF SOURCE AND USE.

No cross connection or connection between any pipe carrying water from the waterworks of the City and water from any other source of supply shall be made and no pipe or orifice or opening of any kind shall be installed or permitted in any pipe or conductor of water from such waterworks in any tank, vessel, reservoir or container of any kind, below the water level or possible water level.

§112.080. CERTAIN CONSUMERS TO KEEP RESERVE SUPPLY.

All persons using City water for steam engines or heating or refrigerating plants shall provide suitable tanks of capacity sufficient to afford a supply for at least ten (10) hours in case the water should be shut off.

§112.090. METERS REQUIRED.

All water supplied by the waterworks shall be charged and paid for by meter measurement, and no water will be supplied without such meter. Nothing in this Chapter shall be so construed as to mean that more than one meter will be furnished or allowed for anyone building or premises. Provided, further, that where there is more than one building or dwelling on a premise (premise meaning the whole parcel under one ownership) the Board of Aldermen shall have sole discretion in deciding whether more than one meter for the whole premise shall be allowed, and if only one meter is allowed for the premise, then all water used on said premise, regardless of the number of buildings or dwellings on said premise shall be metered through said one meter and paid for at the regular rates established by ordinance.
(Ord. 5-2-1989)

§112.100. SAME--INSTALLATION IN APPROVED METER BOX; MAINTENANCE.

All water meters measuring water furnished by the waterworks of the City shall be installed in an approved meter box, provided with inside lugs or bolts by which is secured an approved cast iron meter box cover with lid that can be locked or sealed and the dial of the meter shall be not less than eight (8) inches nor more than fourteen (14) inches from the lid of the box, and the lid shall not be lower than the surface of the ground nor more than one inch above the level of the ground, shall be provided with an approved fastening that can be securely locked or sealed, and all such water meter boxes shall be installed at the expense of the owner of the building or premises in a location provided by such owner or approved by the Mayor, and to be at all times easily accessible to City employees duly authorized by the Mayor to read, inspect or repair the meter, and shall insofar as shall be found possible or practical be located as near as possible to the line dividing the street or alley from the lot or in the space between the street pavement and the sidewalk, and where such meter box is not installed in such accessible location, such meter box may be installed under the direction and supervision of the Mayor and the owner of the building, premises or lot shall be charged for the labor and material required; provided, that where water meters are now installed in buildings or basements in locations safe from frost and accessible at all times to City employees, and where at the same time no other more suitable location can be found for such meter, there may be installed around such meter by the direction and supervision of the Mayor, an approved metal box or enclosure that can be securely locked or sealed.
No person other than one duly authorized by the Mayor shall open any meter box or lock or break any seal. The owner or water user shall keep safe from molestation meter boxes, locks and seals and where boxes or locks are found open or seals broken it shall be considered prima facie evidence that it has been done by the water user. Whenever water meters are furnished by the City, approved connections or yokes shall be furnished by the owner or water user.

§112.110. CONNECTION FOR BUILDING PURPOSES.

When a connection is made to supply water for building purposes the service pipe shall be carried at the expense of the party building to the inside of the curbstone line where a proper curb stop shall be placed with a pipe leading to the surface, the faucet of which shall be kept secured and locked when not in use. When the building is completed the faucet and pipe shall be taken up and the water shut off at the curb stop.

§112.120. DUTY OF PLUMBERS CONCERNING CONNECTION PERMITS.

Whenever extensions are desired or new connections are to be made in place of old ones to the City water supply, permits must be obtained in the usual manner. It shall be the duty of all

plumbers to make return in writing to the office of the Mayor before the water will be turned on, of all connections made by them, giving a description of the premises, location of the corporation cock, length of service pipe, number of feet from the northerly or easterly line of the lot or premises to the place where the tap in the main is located, together with the names of the occupants and the owner of the premises, and it shall be the duty of all plumbers to produce a special permit before making any change in connections that have been made with the water mains.

§112.130. TURN ON REQUIRES ORDER OF MAYOR.

No consumer or other person whose water service shall have been turned off for any reason shall turn on the water or reopen the service, or permit the same to be done by any person, except by order of the Mayor.

§112.140. SPECIAL PERMIT REQUIRED FOR USE OF PUBLIC HYDRANTS, HOSES, PIPES, ETC.

No person shall take water for private use from any public hydrant, plug, draw cock, hose, pipe or fountain furnished for fire purposes or other public use, without the consent of the Mayor, and a special permit therefor-having been paid for and received therefor. The Mayor shall determine the charge for said permit, which shall be his estimate as to the cost of any water used and extraordinary expenses incurred by the City in providing supervisory personnel or other extraordinary service.

§112.150. INTERFERENCE WITH WATERWORKS PROHIBITED.

No person shall hitch any horse or mule to any fire hydrant, or open fire hydrant, or remove or obstruct the stopcock cover of any fire hydrant, or paint, mark or deface any fire hydrant or any public or private stopcock, or place or deposit any dirt or other material in any such stop cock boxes or in any meter box, or turn any public or private stopcock, or commit any act tending to obstruct the use thereof, or in any manner tamper with or injure any building, meter box, valve box, valve, engine, motor, pump or other machinery, pipe, hose, tools, fixtures or apparatus of the waterworks.

§112.160. CONTAMINATION PROHIBITED.

No person shall bathe or fish in any reservoir belonging to the waterworks of the City or place anything whatever in any reservoir, well, aerator, filter or any opening of any kind in any pipe or hydrant belonging to the waterworks of the City or perform any other act which might contaminate the water.

§112.170 LEAD BAN - GENERAL POLICY.

A. Purpose. The purpose of this ordinance is:

1. To ban the use of lead materials in the public drinking water system and private plumbing connected to the public drinking water system; and

2. To protect City residents from lead contamination in the city's public drinking water system and their own private plumbing systems.

B. Application. This ordinance shall apply to all premises served by the public drinking water system of the City of Elsberry.

C. Policy. This ordinance will be reasonably interpreted by the water purveyor. It is the purveyors intent to ban the use of lead based material in the construction or modification of the City's drinking water system or private plumbing connected to the City system. The cooperation of all consumers is required to implement the lead ban.

If, in the judgement of the water purveyor or his authorized representative, lead base materials have been used in new construction or modifications after January 1, 1989, due notice shall be given to the consumer. The consumer shall immediately comply by having the lead base materials removed from the plumbing system and replaced with lead free materials. If the lead base materials are not removed from the plumbing system, the water purveyor shall have the right to discontinue water service to the premises.

(Ord. 8-1-1993)

§112.180. DEFINITIONS.

A. The following definitions shall apply in the interpretation and enforcement of this ordinance.

1. **"Consumer"** means the owner or person in control of any premises supplied by or in any manner connected to a public water system;

2. **"Lead base materials"** means any material containing lead in excess of the quantities specified in Section 112.180(A) 3;

3. **"Lead free"** means

   (A) When used with respect to solder and flux, refers to solders and flux containing not more than 0.2 percent (0.2%) lead; and

   (B) When used with respect to pipes and pipe fittings, refers to pipes and pipe fittings containing not more than eight percent (8.0%) lead.

4. **"Public drinking water system"** means any publicly or privately owned water system supplying water to the general public which is satisfactory for drinking, culinary and domestic purposes and meets the requirements of the Missouri Department of Natural Resources; and

5. **"Water purveyor"** means the owner, operator, or individual in responsible charge of a public water system.

(Ord. 8-1-1993)

§112.190 LEAD BANNED FROM DRINKING WATER PLUMBING.

A. No water service connection shall be installed or maintained to any premises where lead base materials where used in new construction or modification of the drinking water plumbing after January 1, 1989.

B. If a premises is found to be in violation of Section 112.190 A., water service shall be discontinued until such time that the drinking water plumbing is lead free.

(Ord. 8-1-1993)

§112.200 BACKFLOW PREVENTION.

1. Each water customer or user shall install an approved backflow prevention device on each service line to the water system serving the premises where, in the judgment of the City or the Missouri Department of Natural Resources, actual or potential hazards to the City potable water system exist. The type and degree of protection required shall be commensurate with the degree of hazard. Each water customer required by the City or the Missouri Department of Natural Resources shall follow the rules, regulations and requirements set forth in this Section and all other regulations that may be adopted from time to time by the United States Environmental Protection Agency, the Missouri Department of Natural Resources or by the City of Elsberry, Missouri.

2. Cross connections are prohibited and no water service connection shall be installed or maintained to any premises where actual or potential cross connections to the City's potable or customers' water system may exist unless such actual or potential cross connection(s) are abated or controlled to the satisfaction of the City and as required by the laws and regulations of the Missouri Department of Natural Resources.

3. No water service connection shall be installed or maintained whereby an auxiliary water supply may enter the City's potable or customers' water system unless the connection of such an auxiliary water supply and the method of connection and the use of such a supply shall have been approved by the City and the Missouri Department of Natural Resources.

4. No water service connection shall be installed or maintained to any premises in which the plumbing systems, facilities, point of use devices and water fixtures have not been constructed or installed using acceptable plumbing practices considered by the City necessary for the protection of the City water supply and for the protection of the health and safety of the City's customers or users.

5. On request by the City or its authorized representative(s), the customer or user shall furnish information regarding water use practices within his/her premises. The customer's or user's premises shall be open at all reasonable times to the City or its authorized representative(s), for the conduction of surveys and investigations of water use practices within the premises to determine whether there are actual or potential cross connections to the City's water system or the customer's water system through which contaminants or pollutants could backflow into the customer's water system or the City's water system.

6. The type of backflow protection required shall depend on the degree of hazard which exists and shall be as follows:

   A. An approved air-gap separation shall be installed where the City's potable water system may be contaminated with substances that could cause a system or health hazard.

   B. An approved air-gap separation or an approved reduced pressure principle backflow prevention device shall be installed where a public potable water system may be contaminated with a substance that could cause a system or health hazard.

C. An approved air-gap separation or an approved reduced pressure principle backflow prevention device or an approved double check valve assembly shall be installed where the public potable water system may be polluted with substances that could cause a pollutional hazard not dangerous to health.

7. An approved air-gap separation or reduced pressure principle backflow prevention device shall be installed after the metered flow of any service connection or within any premises where, in the judgment of the City or the Missouri Department of Natural Resources, the nature and extent of activities on or in the premises, or the materials used in connection with the activities, or materials stored on or in the premises, would represent an immediate and dangerous hazard to health should a cross connection occur, even though such a cross connection may not exist at the time the backflow prevention device is required to be installed. This includes but is not limited to the following situations:

A. Premises having an auxiliary water supply, unless the quality of the auxiliary water supply is acceptable to the City and the Missouri Department of Natural Resources.

B. Premises having internal cross connections that are not correctable or intricate plumbing arrangements which make it impractical to ascertain whether or not cross connections exist.

C. Premises where entry is restricted so that inspection for cross connection cannot be made with sufficient frequency or at sufficiently short notice to assure that cross connections do not exist.

D. Premises having a repeated history of cross connections being established or re-established.

E. Premises, which due to the nature of the enterprise therein, are subject to recurring modification or expansion.

F. Premises on which any substance is handled under pressure so as to permit entry into the City's or customers water supply system, or where a cross connection could reasonably be expected to occur. This shall include handling of process waters and cooling waters.

G. Premises where materials of a toxic or hazardous nature are handled such that if backsiphonage or backpressure should occur, a serious health hazard may result.

8. The following types of facilities fall into one (1) or more categories of premises where an approved air-gap separation or reduced pressure principle backflow prevention device is required by the City and/or the Missouri Department of Natural Resources to protect the public water supply and must be installed at these facilities unless all hazardous or potentially hazardous conditions have been eliminated or corrected by other methods to the satisfaction of the water supplier and the Missouri Department of Natural Resources:

1. Aircraft and missile plants
2. Automotive plants
3. Auxiliary water systems and water loading stations
4. Beverage bottling plants

5. Canneries, packing houses, reduction plants, stockyards
6. Car washing facilities
7. Chemical manufacturing, processing, compounding or treatment plants
8. Dairies, animal and veterinary clinics
9. Film laboratories
10. Fire protective systems
11. Hazardous waste and disposal sites
12. Hospitals, mortuaries, clinics and medical buildings
13. Industries using toxic substances
14. Irrigation and sprinkler systems, residential or commercial, any size
15. Laundries and dye works
16. Metal manufacturing, cleaning, processing and fabrication plants
17. Nursing and convalescent homes
18. Oil and gas production, storage and transmission facilities or properties
19. Paper and paper products plants
20. Plant nurseries, tree farms and fertilizer facilities
21. Plating plants of any kind
22. Power plants; printing and publishing facilities
23. Radioactive material processing plants or nuclear reactors
24. Research and analytical laboratories
25. Rubber plants, natural and synthetic
26. Sewage and storm drainage facilities
27. Pumping stations and treatment plants

28. Water front facilities and industries

29. Any customer using any type of booster pressure pump(s) for any purpose or reason.

9. The City may, at the City's discretion and in the City's sole opinion, require a backflow prevention device(s) at facilities and premises other than those above that the City deems may have a hazardous or potentially hazardous condition.

10. Any backflow prevention device required under this rule shall be of a type, model and construction approved by the City and the Missouri Department of Natural Resources as follows:

    A. Air-gap separation shall be at least twice the diameter of the supply pipe or supply line as measured vertically above the top rim of the vessel, but in no case less than three (3) inches.

    B. Double check valve assemblies or reduced pressure principle backflow prevention devices shall be of Watts manufacture series No. 709 or 909 or an approved equivalent.

11. Existing backflow prevention devices previously approved by the City at the time of installation and properly maintained shall, except for inspection and maintenance requirements, be excluded from the requirements of this rule so long as the City, in the City's sole opinion, is assured that said backflow prevention devices will satisfactorily protect the water system. Whenever the existing device is moved from its present location, or requires more than minimum maintenance or when the City finds that the

maintenance or lack of maintenance constitutes a hazard to health, the device shall be replaced by a backflow prevention device meeting the requirements of this rule and shall be subject to all requirements under this rule.

12. Backflow prevention devices required under this rule shall be installed at a location and in a manner approved by the City and shall be installed and maintained at the expense of the water customer or user.

13. Periodic inspection and testing schedules are hereby established by the City for all backflow prevention devices at the following intervals:

    A. Air-gap separations shall he inspected at the time of service connection or installation and every twelve (12) months thereafter.

    B. Double check valve assemblies shall be inspected and tested for tightness at the time of installation and at least every twelve (12) months thereafter. They shall be dismantled, inspected internally, cleaned and repaired whenever needed and at least every thirty (30) months.

    C. Reduced pressure principle backflow prevention devices shall be inspected and tested for tightness at the time of installation and at least every twelve (12) months thereafter. They shall be dismantled, inspected internally, cleaned and repaired whenever needed and at least every five (5) years.

14. All costs associated with inspections, cleaning, testing, repairing, overhaul and replacement of backflow prevention devices shall be the responsibility of the water customer or user. All inspections, cleaning, testing, repairing and overhaul of backflow prevention devices shall be performed by a State of Missouri certified backflow prevention service tester. It shall be the responsibility of the customer/user to provide the City with written inspection or repair documentation upon receipt.

15. Backflow prevention devices found to be defective shall be repaired or replaced at the expense of the water customer or user without delay and in no event later than thirty (30) days from the discovery of the defect. Backflow prevention devices shall not be bypassed, made inoperative, removed or otherwise made ineffective without specific written authorization from the City. Bypass piping around a backflow prevention assembly is allowed only if the bypass is equipped with an identical or better backflow prevention assembly.

16. The City shall maintain a complete record of each backflow prevention device. Records will include comprehensive listing of installation, testing, inspections, cleanings, repairs and overhauls and will generally be a complete history of each backflow prevention device from installation to retirement. It shall be the customer's and/or user's responsibility to provide the City with complete records of installations, testing, inspections, cleanings, repairs and overhauls upon receipt or upon request, whichever occurs first.

17. The City shall deny or discontinue, after reasonable notice to the customer/user thereof, the water service to any premises or facilities wherein any backflow prevention device required by this rule is not installed, tested or maintained in a manner acceptable to the

City, or if it is found that a backflow prevention device has been removed or by-passed, or if an unprotected cross connection exists on the premises. Water service to such facilities or premises shall not be restored until the customer/user has corrected or eliminated such conditions or defects in conformance with this rule to the satisfaction of the City.

(Ord. 8-2-2000; 1-1-2001)

§112.210 CONNECTION TO FACILITIES REQUIRED.

The owner of any land upon which is located one or more houses, buildings, or other structures used for human employment, recreation, residence, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located access to the City's water system within 100 feet of the property line is hereby required to connect to such facilities. Said connection shall be made no later than 60 days after the City shall give notice to said owner requiring the owner to make the connection.
(Ord. 8-4-2002)

§112.220 PERMIT TO CONSTRUCT REQUIRED.

The size, alignment, and material used in the construction of new or the replacement of the existing public water system, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the most recent addition of the Missouri Department Of Natural Resources (MDNR), Public Drinking Water Program Design Guide for Community Public Water Supplies. A Permit to Construct, issued by MDNR, shall be applied for and received prior to construction, alteration, or extension of the water system.

(Ord. 8-4-2002)

§112.230 RIGHT TO INSPECT.

Duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of Chapter 112, and to insure that the provisions of Chapter 112 are being complied with.

(Ord. 8-4-2002)

§112.240 VIOLATIONS OF CHAPTER 112.

Any person violating any of the provisions of Chapter 112 shall be subject to the penalties set out in Chapter 13 of this Code. Provided, however, if the violation is of a nature which can be cured by the violator taking certain corrective action or ceasing the conduct creating the violation, then in lieu of the penalties set out in Chapter 13 of this Code, the City may elect to serve the violator with written notice stating the nature of the violation and the action required to be taken or ceased and providing a reasonable time for the violator to cure said violation as provided in the notice. Any violator who shall thereafter fail to comply with said notice in the time prescribed shall then be subject to the penalties set out in Chapter 13 of this Code.

(Ord. 8-4-2002)

CHAPTER 113 -- SEWERS AND DRAINAGE

§113.010. DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as follows:

"**Applicant**" shall mean any individual, firm, partnership, corporation or other agency owning land within the Municipality applying for a sewer service.

"**Board**" shall mean the Board of Aldermen of the City of Elsberry, Missouri.

BOD (denoting biochemical oxygen demand). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter.

Building drain. The part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Building sewer. The extension from the building drain to the public sewer or other place of disposal.

Combined sewer. A sewer receiving both surface runoff and sewage.

Garbage. Solid waste from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

Industrial wastes. The liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

"**Inspector**" shall mean the person or persons duly authorized by the Mayor of the City to inspect and approve the installation of building sewers and their connection to the public sewer system.

"**Municipality**" shall mean the City of Elsberry, Missouri.

Natural outlet. Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground waters.

Person. Any individual, firm, company, association, society, corporation, or group.

9. **pH**. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

10. **Properly shredded garbage**. The wastes from the preparation, cooking, and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one half (½) inch (1. 27. centimeters) in any dimension.

Public sewer. A sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Sanitary sewer. A sewer which carries sewage and to which storm;. surface, and ground water are not intentionally admitted.

Sewage. A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

Sewage treatment plant. Any arrangement of devices and structures used for treating sewage.

"**Sewage Works**' shall mean all facilities for collecting, pumping, treating and disposing of sewage.

Sewer. A pipe or conduit for carrying sewage.

Shall is mandatory; **May** is permissive.

Slug. Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or if quantity of flow exceeds for any period or duration longer than fifteen (15) minutes more than five (5) times the average twenty-four hour concentration or flows during normal operation.

"**State Director**" shall mean the State Director of Rural Development for Missouri, United States Department of Agriculture, or his successor.

Storm drain (sometimes termed storm sewer). A sewer which carries storm and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Superintendent. The superintendent of sewage works and/or of water pollution control of the City of Elsberry, or his authorized deputy, agent or representative.

Suspended solids. Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

Watercourse. A channel in which a flow of water occurs, either continuously or intermittently.

(Amend. 2021-04-001)

§113.015. USE OF PUBLIC SEWER REQUIRED.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of Elsberry, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other objectionable waste.

§113.020. DISCHARGE OF POLLUTED WASTE PROHIBITED.

It shall be unlawful to discharge to any natural outlet within the City of Elsberry, or in any area under the jurisdiction of the City, any sewage or other polluted wastes, except where suitable treatment has been provided in accordance with subsequent provisions' of this Chapter.

§113.025. CONSTRUCTION OF SEPTIC TANKS, ETC., UNLAWFUL; CONNECTION TO PUBLIC SEWER REQUIRED.

1. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cess pool, or other facility intended or used for the disposal of sewage.

2. The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the City, is hereby required at his expense to install suitable toilet facilities. therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter within ninety (90) days after date of official notice to do so, provided that said public sewer is within one hundred (100) feet of the property line.

§113.030. PRIVATE SEWAGE DISPOSAL.

Where a public sanitary or combined sewer is not available under the provisions of Section 113 .025 the building sewer shall be connected to a private sewage disposal system the provisions of this Chapter.

§113.035. PERMIT REQUIRED; FEE.

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Inspector. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Inspector. A permit and inspection fee of ten dollars ($10.00) shall be paid to the City at the time the application is filed.

(2013-; 2021-04-001)

§113.040. INSPECTION OF INSTALLATION TO BE MADE BEFORE COVERING.

A permit for a private sewage disposal system shall not become effective until the installation is, completed to the satisfaction of the Inspector. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Inspector when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty eight (48) hours of the receipt of notice by the Inspector.

(2013-; 2021-04-001)

§113.045. INSTALLATION SHALL COMPLY WITH RECOMMENDATIONS.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of Missouri. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than fifteen thousand (15,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(2013-; 2021-04-001)

§113.050. CONNECTION REQUIRED UPON AVAILABILITY OF SEWER.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 113.030, a direct connection shall be made to the public sewer in compliance with this Chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

§113.055. SANITARY MAINTENANCE OF PRIVATE SEWAGE FACILITIES BY OWNER.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

§113.060. STATEMENTS NOT TO INTERFERE WITH ADDITIONAL REQUIREMENTS.

No statement contained in this Chapter shall be construed to interfere with any additional requirements that may be imposed by the Health Officer of the State or County.

(2013-; 2021-04-001)

§113.065. CLOSING OF PRIVATE DISPOSAL SYSTEM.

When a public sewer becomes available, the building sewer shall be connected to said sewer within sixty (60) days and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.

§113.070. PERMIT REQUIRED FOR BUILDING SEWERS AND CONNECTIONS.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit, from the superintendent.

§113.075. CLASSES OF BUILDING SEWER PERMITS; FEES.

There shall be two (2) classes of building sewer permits:

1. For residential service; and

2. For service to commercial or industrial establishments.

In either case, the owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee of fifteen dollars ($15.00) for a residential building sewer permit and thirty dollars ($30.00) for. an industrial or commercial building sewer permit shall be paid to the City at the time the application is filed.

§113.080. INSTALLATION AND CONNECTION COSTS TO BE BORNE BY OWNER.

All costs and expenses incident to the installation and connection of the building sewer shall be

borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

§113.085. SEPARATE SEWER FOR EACH BUILDING; EXCEPTION.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

§113.090. REQUIREMENTS FOR OLD BUILDING SEWERS.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this Chapter.

§113.095. CONSTRUCTION OF SEWER TO CONFORM TO BUILDING AND PLUMBING CODES.

The size, slope, alignment, material of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in application thereof, the material and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No.9 shall apply.

§113.100. ELEVATION OF BUILDING SEWER.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

§113.105. SURFACE RUNOFF AND GROUNDWATER PROHIBITED FROM DRAINING INTO SANITARY SEWER.

No person shall make connection of roof down spouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

§113.110. STANDARDS FOR CONNECTION INTO PUBLIC SEWER.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No.9. All such connections shall be made gas tight and watertight. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.

§113.115. CONNECTION TO BE MADE UNDER SUPERVISION OF SUPERINTENDENT.

The applicant for the building sewer permit shall notify the superintendent when the building

sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the superintendent or his representative.

§113.120. EXCAVATIONS TO BE GUARDED AND RESTORED.

All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

§113.125. WATERS PROHIBITED FROM BEING DISCHARGED INTO SANITARY SEWER.

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

§113.130. DISCHARGE INTO STORM SEWERS.

Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined or storm sewers, or to a natural outlet approved by the superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the superintendent to a storm sewer, combined sewer or natural outlet.

§113.135. SUBSTANCES PROHIBITED FROM ALL PUBLIC SEWERS.

No person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.

2. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant including but not limited to cyanides in excess of two (2) mg/l as CN in the wastes as discharged to the public sewer.

3. Any waters or wastes having a pH lower than five and five-tenths (5.5), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes,-cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, woods, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

5. Any waters or wastes having:

    a. A five-day BOD greater than three hundred (300) parts per million by weight, or

b. Containing more than three hundred fifty (350) parts per million by weight of suspended solids, or

c. Having an average daily flow greater than two (2) percent of the average sewage flow of the City, shall be subject to the review of the superintendent.

6. Where necessary in the opinion of the superintendent, the owner shall provide at his expense, such preliminary treatment as may be necessary to:

a. Reduce biochemical oxygen demand to three hundred (300) parts per million by weight, or

b. Reduce the suspended solids to three hundred fifty (350) parts per million by weight, or

c. Control the quantities and rates of discharge of such waters or wastes.

7. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the superintendent and no construction of such facilities shall be commenced until said approvals are obtained in writing.

§113.140. ADDITIONAL PROHIBITED SUBSTANCES.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, having an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the superintendent will give consideration to such facts as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers., nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

1. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (sixty-five [65] degrees centigrade).

2. Any water or waste containing fats, wax, grease, or oils, whether. emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32)' and one hundred fifty (150) degrees Fahrenheit (zero and sixty-five [65] degrees centigrade).

3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the superintendent.

4. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.

5. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree

that any such material received in the composite sewage at the sewage treatment works exceeds the 1imits established by the superintendent for such materials.

6. Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction for such discharge to the receiving waters.

7. Any radioactive wastes or isotopes of such ha1f- life or concentration as may. exceed limits established by the superintendent in compliance with applicable state or federal regulations.

8. Any waters or wastes having a pH in excess of nine and five-tenths (9.5).

9. Materials which exert or cause:

    a. Unusual concentrations of inert, suspended solids (such as, but .not limited to, Fuller's earth, lime slurries, and lime residues) or of diso1ved solids (such as, but not limited to, sodium chloride and sodium sulfate.)

    b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

    c. Unusual BOD, biochemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

    d. Unusual volume of flow or concentration of waters constituting "slugs" as defined herein.

10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amendable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

§113.145. REMEDIES FOR PROHIBITED DISCHARGES INTO SEWERS.

1. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Sections 113.135 and 113.140 of this Chapter and which in the judgment of the superintendent may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance the superintendent may:

    a. Reject the wastes;

    b. Require pretreatment to an acceptable condition for discharge to the public sewers;

    c. Require control over the quantities and rates of discharge; and/or

    d. Require payment to cover the added costs of handling and treating wastes not

covered by existing taxes or sewer charge under the provisions of Section 113.145(2) of this Chapter.

e. Terminate all utility services as provided in Section 110.110.

2. If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent, and subject to the requirements of all applicable codes, ordinances; and laws.

§113.150. INTERCEPTORS; SPECIFICATIONS.

Grease, oil, and sand interceptors shall be provided when in the opinion of the superintendent they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.

§113.155. MAINTENANCE REQUIREMENTS FOR PRELIMINARY TREATMENT FACILITIES.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

§113.160. REQUIREMENTS FOR MANHOLE; AND METERS, ETC.

When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the superintendent. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

§113.165. STANDARDS FOR ANALYSES; SAMPLING TECHNIQUES.

All measurements, tests, and analyses of the characteristics of water and wastes to which reference is made in this Chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards of life, limb, and property. (The particular analyses involved will determine whether a twenty-four hour composite of all out falls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls whereas pHs are determined from periodic grab samples.)

§113.170. AGREEMENTS BETWEEN CITY AND INDUSTRY CONCERNING ACCEPTANCE OF UNUSUAL WASTES.

No statement contained in this Chapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment, therefor, by the industrial concern.

§113.175. DESTRUCTION OR DAMAGE TO SYSTEM A VIOLATION.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of any sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

§113.180. POWERS AND AUTHORITY OF INSPECTORS.

The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Chapter. The superintendent or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having direct bearing on the kind, and source of discharge to the sewers or waterways or facilities for waste treatment.

§113.185. CITY EMPLOYEES TO OBSERVE SAFETY RULES.

While performing the necessary work on private properties referred to in Section 113.190, the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the owner and the owner shall be held harmless for injury or death to the City employees and the City shall indemnify the owner against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the owner and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the owner to maintain safe conditions.

§113.190. EASEMENT PERMITTING ENTRY FOR INSPECTION, ETC.

The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewer works lying within said easement. All entry and subsequent work, if any, on said easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

§113.195. LIABILITY FOR DAMAGE TO SYSTEM.

Any person violating any of the provisions of this Chapter shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.

CHAPTER 114 - STREET LIGHTS

§114.010. DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as follows:

1. **Streetlights**. Electrically illumined lights mounted on wood or metal utility poles.

2. **Alleys**. Any roadway in the city limits which is twenty feet or less in width, which is not otherwise designated as a street on the city plat or the plat of any addition thereto as on file in the Lincoln County Missouri Recorder of Deeds Office, and which is not maintained by the city as a public street, whether or not said roadway is on public or private property.

3. **Street**. Any roadway or thoroughfare in the city limits which is more than twenty feet in width, is not designated as an alley on the city plat or the plat of any addition thereto as on file in the Lincoln County Missouri Recorder of Deeds Office, and is maintained by the City as a public way or thoroughfare, except Highway 79 (otherwise known as Main Street) and State Highway B (part of which is otherwise known as Broadway).

4. **Intersection**. The area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways which join one another at, or approximately at, right angles.

5. **Person**. Shall have the same meaning given said term by the Statues of the State of Missouri.

§114.020 PLACEMENT OF STREET LIGHTS.

1. The City, acting at all times pertinent herein, by and through its Board of Aldermen, shall have placed and pay for the cost of operation of a streetlight immediately adjacent and as close as practicable to the intersection of every street within the City limits; provided, further, that if the placement of streetlights at each intersection shall result in the distance between streetlights being greater than five hundred (500) feet along any street, then the City shall have placed and pay for the cost of operation of such additional streetlights as are necessary to result in a distance of no greater than five hundred (500) feet between any two streetlights along any streets. Provided, further, that except as provided for in subsection 4 below, the City shall not be responsible for the placement and payment for the cost of operation of streetlights at points other than described above, and the City shall be no longer responsible for paying the cost of operation for any other streetlights located at any points other than described above even if such streetlights are located in place and in operation as of the date of the enactment of this Chapter.

2. As of the date of the enactment of this Chapter, streetlights, the cost of operation of which is being paid by the City, which streetlights are located in the City Limits along any alley, at the intersection of any alley with any street, or along any street at other than an intersection of two streets or within the distances set out in subsection 1 above, shall be removed unless any person shall meet the following conditions:

   (a) Said person shall contract in writing with the electric company providing

electrical power for said light to be responsible to said company for payment to all costs associated with the maintenance and operation of said streetlights.

(b) Said person shall provide to the City a copy of the written contract evidencing compliance with the condition immediately above.

(c) Said person shall agree in writing on forms provided and approved by the City to indemnify and hold City harmless from any and all claims on account of or arising out of the location, maintenance, operation or existence of said streetlight, and

(d) The City shall grant to said person an easement for the placement or continued location of said streetlight if its proposed or current location is on public property or property over which the City has control or responsibility, and provided, further, that the granting of said easement by the City shall be solely discretionary and shall not be mandatory in any instance.

3. As of the date of the enactment of this Chapter, streetlights, the cost of operation of which is being paid by the City, which streetlights are located in the City limits on private property shall no longer have their cost of operation Paid by the City, and the City shall no longer be responsible for said operation or the cost of any claim arising on account of or out of the location, maintenance, operation or existence of said streetlights, and the cost of the continuing operation of said streetlights and their continued location upon said private property shall be a matter between the property owner and the electric company providing the streetlight and the power for same.

4. Notwithstanding the provision of subsection 1 above providing for placement of streetlights, the City may place and pay for the cost of operation of as many streetlights as are deemed necessary along Highway 79 and State Highway B, including Main Street and Broadway respectively.

(Ord. 7-1-1985)

CHAPTER 120 -- VOTING DISTRICTS

§120.010. CITY SUBDIVIDED INTO THREE WARDS.

The City of Elsberry shall be and hereby is divided into three wards, which said wards shall be known and designated by the respective numbers, as hereinafter set out and described.

§120.020. FIRST WARD.

Ward number one (1) shall comprise all that part of said City bounded and described as follows, to-wit:

that portion of the city to the South of Ellis Avenue and to the East of Fifth Street.

§120.030. SECOND WARD.

Ward number two (2) shall comprise all that part of said City bounded and described as follows, to-wit:

that portion of the city to the South of Ellis Avenue and to the West of Fifth Street.

§120.040. THIRD WARD.

Ward number three (3) shall comprise all that part of said City bounded and described as follows, to-wit:

that portion of the city to the North of Ellis Avenue.

CHAPTER 121 -- GENERAL AND SPECIAL ELECTIONS

§121.010. DATE OF GENERAL ELECTION.

A general election for the elective officers of the City shall be held on the first Tuesday in April of each year.

1. On the first Tuesday in April of even numbered years an election shall be held by the qualified voters of each ward in the City for Mayor, Marshal, Collector, and one alderman from each ward, who shall hold their respective offices for the term of two years and until their successors shall be elected and qualified.

2. On the first Tuesday in April of odd numbered years an election shall be held by the qualified voters of each ward of this City for one alderman for each ward, who shall hold their respective offices for the term of two years and until their successors shall be elected and qualified.

§121.020 FILING OF CANDIDATES.

Any person desiring to seek election for an elective City office at any general City election may do so by filing his name and the office for which he seeks election with the City Clerk during the filing period (fifteen Tuesdays before the election date to eleven Tuesdays before the election date). The Clerk shall keep a permanent record of the names of the candidates, the offices for which they seek election and the date of their filing, and their names shall appear on the ballots in that order.
(Ord. 2-1-1997)

§121.030. SAME; QUALIFICATIONS CHALLENGED.

Any person who is not qualified for his office as provided by this Code or other ordinances shall not be entitled to have his name printed on the ballet. The qualifications of a candidate for office shall be determined by the City aldermen upon hearing given, and upon its own motion, or upon written affidavit by some person that a named candidate is not qualified as such for the office sought.

§121.040. WITHDRAWAL OF CANDIDACY.

A candidate may not withdraw his candidacy after the certification of the notice as set out in Section 121.035 by the city clerk to the election authority. A candidate's name may be removed after that time only upon death or order of court of record.

§121.050. CONFORMANCE OF CITY ELECTIONS WITH STATE LAW.

All city elections shall be conducted and held in conformance with the provisions of the Comprehensive Election Act of 1977 (hereinafter "the Act").

§121.060. CONDUCT OF ELECTION BY COUNTY CLERK, WHEN.

Whenever an overlapping political subdivision conducts an election on the same day as the City election, the County Clerk, as the designated election authority, shall conduct the City election.

§121.070 CONDUCT OF ELECTION.

If there is no other overlapping political subdivision conducting an election on the same day as the City election and if directed to do so by the City alderman by appropriate election ordinance passed prior to 8:00 a.m. on the Friday before the sixteenth Tuesday prior to the City election, and if the notification is timely received by the County Clerk, the City Clerk shall conduct the City election.
(Ord. 2-1-1997)

§121.080 NOTICE OF CITY ELECTION.

In City elections conducted by the County Clerk, the City Clerk shall notify the County Clerk no later than to 5:00 p.m. on the sixteenth Tuesday prior to any City election of the forthcoming City election. The notice shall be in writing, and shall specify that the City is calling the election, the purpose of the election, the date of the election, and shall include a certified copy of the legal notice to be published and the sample ballot.
(Ord. 2-1-1997)

§121.090. VOTERS, QUALIFICATIONS.

All residents of the City who are, qualified and timely and properly registered voters in accordance with the Act shall be entitled to vote at City elections. In order to vote at any City election a person must be registered no later than 5:00 p.m. on the fourth Wednesday prior to the election.

§121.100. DESIGNATION OF POLLING PLACES AND JUDGES; ELECTION COSTS.

The election authority shall designate the polling places in all City elections in accordance with the provisions of the Act. The election authority shall appoint all election judges in accordance with the provisions of the Act. The City shall pay all the election costs required by the Act to the election authority conducting its election.

§121.110. CITY POLICE OFFICERS, ASSISTANCE.

It shall be the duty of the City police officers to give any assistance or protection required by the election authority, any employee of the election authority, or any election judge, and to comply with all lawful requests and directions of the election authority relating to such assistance.

§121.120. SPECIAL ELECTION DATES.

Authorized dates for special City elections are the first Tuesday after the first Monday in June, August, October or November of each year.

§121.130. VACANCY IN ELECTED OFFICE, HOW FILLED.

All vacancies shall be filled by appointment until the next municipal election. The mayor or the person exercising the duties of the mayor shall call a special meeting of the board of aldermen to convene where a successor to the vacant office shall be selected.

§121.140. CERTIFICATION OF ELECTION RESULTS.

As soon as practicable after each City election, the election authority shall convene a verification board in accordance with the Act to verify the count and certify the results of the election. Not later than the second Tuesday after the election, the verification board shall issue a statement announcing the results of each election and shall certify the returns to the City Clerk. The City Clerk shall issue to each person elected a certificate of election.

§121.150. ELECTION ORDINANCE.

Prior to each City election the board of aldermen shall timely pass an election ordinance authorizing, establishing and providing the election procedure to be followed in the conduct of the City election.

§121.160. PRIMARY ELECTIONS.

In all cities except those in St. Louis County, the board of aldermen may provide for a primary election. See Section 79.035 RSMo for authority.

CHAPTER 122: CIVIL ENFORCEMENT

§122.010.

Violations of the City's Municipal Code or Ordinances are hereby declared to be nuisances that are, or may be, injurious to the health and welfare of the inhabitants of the City, or prejudicial to the morals thereof.

(Ord. 5-2-2006)

§122.020.

In addition to any other procedures, fines, or penalties stated in the City Municipal Code, the City is authorized to commence a civil action to obtain injunctive and other appropriate civil relief, or pursue any other remedy authorized by law to prevent, abate, or remedy any nuisance or violation of the City Municipal Code or Ordinances.

(Ord. 5-2-2006)

§122.020.

Such civil actions may include the equitable remedies of mandatory and prohibitive injunctions. The City may recover the cost of bringing the violator, or the violator's property, into compliance with the City's Municipal Code or Ordinances. If a business enterprise is in violation of the City's Municipal Code or Ordinances, the City may enjoin the business's operations until the

business is in compliance with the City's Municipal Code or Ordinances.

(Ord. 5-2-2006)

§122.030.

Such civil enforcement actions may be brought in any court of competent jurisdiction, including the Circuit Court of Lincoln County, Missouri.

(Ord. 5-2-2006)

§122.040.

The City Attorney is empowered to bring a civil enforcement action in the name of the City.

(Ord. 5-2-2006)

§122.050.

The civil remedies provided in this Chapter are cumulative and are in addition to any other enforcement procedures provided in the City Municipal Code or Ordinances. Seeking a civil enforcement does not supersede or limit any and all other remedies, civil or criminal provided n the City Municipal Code or Ordinances.

(Ord. 5-2-2006)

§122.060.

All costs and expenses incurred in the investigation and prosecution of the civil enforcement action, including attorneys fees, witness fees, duplication costs, court costs, expert fees, employee costs, and exhibit fees shall be awarded to the City, and against the party violating the City Municipal Code or Ordinances; provided that the City prevails to any extent.

(Ord. 5-2-2006)