



MUNICIPAL ISSUE REPORT

REPORT NO. 2017-03

September 2017

Court Upholds Licensing Ordinance for Twin Oaks Park

The 8th Circuit Court of Appeals recently ruled in favor of Twin Oaks, Missouri in a lawsuit (*Havlack v. Village of Twin Oaks*, (8th Cir. July 26, 2017)) that challenged Twin Oaks’ ordinance requiring a license for commercial activity in the city park. The Twin Oaks park has many photogenic features, including a gazebo, waterfall, bridge, and other garden structures. The park became an attraction for commercial photographers. To protect the park from excessive commercial activity and its effects, and to balance the interests of all park patrons, Twin Oaks passed an ordinance prohibiting all commercial activity in the park without a permit. The ordinance required a \$100 fee for the permit, and an application period of either 48 hours or 14 days (depending on the size and duration) in advance of the activity. The plaintiff, a commercial photographer, filed a lawsuit claiming the ordinance violated her First Amendment rights. The Court rejected the photographer’s claim and found that even if plaintiff’s photography was protected speech, the ordinance was a reasonable regulation. In rejecting the plaintiff’s



challenge, the Court explained that the demonstrated intent behind the licensing ordinance was not to burden speech, but to address legitimate concerns, including safety. The Court also disagreed with the photographer’s contention that the application periods “chilled” artistic expression and that the \$100 fee was too high. The advance application periods enabled the Board to adequately review and process permit applications, and the \$100 fee offset administrative costs and the cost of having a police officer present in the park during the commercial activities. The Court also noted that the ordinance did not allow Twin Oaks unlimited discretion in reviewing the permits, because it contained standards and objective factors to be considered.

Upcoming Dates & Deadlines for Missouri Municipalities*

Mid-late Sept. – Conduct public hearing on property tax rate with 7-day newspaper notice (cities in charter counties).

Oct. 1 – Set property tax levy (cities in charter counties).

Mid-Nov. – TIF Annual reports due to DOR. Penalty for failing to file report is loss of ability to implement new TIFs for 5 years.

Early Dec. – Publish newspaper notice of opening filing date for municipal office, the offices to be filled, the proper place for filing, and the closing filing date of the election.

*This list is not exhaustive. For a more complete **Calendar of Procedural Deadlines for Missouri Municipalities**, click below

[Jan. 1–Dec. 31 Fiscal Year](#)
[July 1–June 30 Fiscal Year](#)

Also see CVR’s [Annual Requirements for Missouri Municipal Special Purpose Entities](#)

Declaration of Candidacy Forms for Municipal Elections May Require Revision

Due to the enactment of [SB 111](#) this year, cities should review their Declaration of Candidacy forms for the upcoming municipal elections. SB 111 amended [Section 115.306 RSMo.](#), which no longer prohibits persons who have pled or been found guilty of a federal misdemeanor from qualifying for elective public office. If your City has a Declaration of Candidacy form that lists the requirements of Section 115.306, it may require revision.



Challenge to St. Louis City Smoking Ban Rejected

St. Louis City’s [ordinance](#) banning smoking in all “enclosed public places,” recently withstood a legal challenge claiming the ordinance was unlawful and unconstitutional in [The Trophy Room v. City of St. Louis](#), [ED104714 \(Mo. App. E.D. Sept. 19, 2017\)](#). The ordinance applies to bars

and restaurants, among other public places, with limited exceptions. The Trophy Room, a St. Louis bar, has always permitted smoking. It qualified under an exemption for small 21+ bars, which was set to expire in January 2016. In anticipation of that expiration, the Trophy Room sought to qualify as a “casino gaming area,” another type of exempt property. The Trophy Room obtained a license from the Missouri State Lottery Commission to operate Club Keno machines. The bar then filed suit to establish its right to continue to permit smoking and to challenge the constitutionality of the smoking-ban ordinance. The Missouri Court of

Appeals held that merely possessing a license from the Missouri State Lottery Commission did not qualify the bar as a casino. The Court also rejected the Trophy Room’s argument that the smoking ban was an unconstitutional special law, and that it was unlawfully vague. The Court held that even if a portion of the law were unconstitutional, the ordinance contained a severability clause, and thus the entire ordinance would not be found unlawful. Furthermore, as the City had not yet enforced the ordinance against the Trophy Room, the Court held that the Trophy Room’s suit was premature and was properly dismissed.



8th Circuit Upholds Municipal Policy Prohibiting Leaflet Distribution Outside City-Owned Arena

In [Ball v. City of Lincoln, Nebraska](#), (8th Cir., Aug. 29, 2017), the Eighth Circuit upheld the City of Lincoln, Nebraska’s policy designating a City-owned plaza area outside of an arena as a nonpublic forum and prohibiting leaflet distribution on the plaza. The plaintiff, Mr. Ball, sued the City after he was arrested for trespassing while handing out leaflets on the plaza. Ball claimed that the City violated his First Amendment free-speech rights. Typically, restrictions on speech in traditional “public forums,” like sidewalks and parks, are subject to much higher scrutiny than restrictions on speech in “nonpublic” forums. Although the plaza area was City-owned and adjacent to a public sidewalk, the Eighth Circuit rejected Ball’s claims, held that the plaza area was a nonpublic forum, and that the City could prohibit leaflet distribution there. The Court reasoned that because the plaza area was physically distinct from the adjacent public sidewalks



(marble vs. concrete), the designed and actual use was primarily commercial, and the evidence showed that the City’s primary intent with respect to the plaza area was to facilitate safe and efficient commercial events at the Arena, the area was not a traditional public forum. The simple fact that members of the public “are permitted to come and go at will” does not mean that the area was a “public forum,” and thus, the City’s policy of prohibiting leaflet distribution was sufficiently reasonable.

Municipal Links

- [Missouri Municipal League](#)
- [Municipal League of Metro St. Louis](#)
- [Mid-America Regional Council \(KC Area\)](#)
- [East-West Gateway Council of Governments](#)

For more, visit CVR’s [Resources Page](#)

Presentations by CVR Attorneys

- *Telecom Update: Wireless Facilities in the Rights-of-Way* (MMAA Summer Seminar) – [Erin Seele](#)
- *Fundamentals of Municipal Contracting* (MML Annual Conference) – [Nathan Nickolaus](#)
- *Municipal Contracts and Purchasing: Best Practices* (Municipal Officials Training Academy)— [Nathan Nickolaus](#)
- *Keeping Yourself and Your Employer Out of Hot Water*, (APA/APWA)— [Nathan Nickolaus](#)
- *Regulatory Takings and Exactions* (Municipal Officials Training Academy) – [Steven Lucas](#)
- **UPCOMING** – *Ballot Issues* (Municipal Officials Training Academy) – [Joe Bond](#)
- **UPCOMING** – *Legalities of Planning and Zoning* (APA/UMSL Chancellor’s Certificate Program in Planning and Zoning) – [Dan Vogel](#)



Feedback – Your comments are greatly appreciated. If you have suggestions for improving these Municipal Issue Reports, please let us know at the contacts below

If you need further assistance on any of these matters, please consult your City Attorney or Legal Department for particularized guidance or contact us at:

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