



ST. LOUIS COUNTY
MUNICIPAL

NEWSLETTER

October, 2002

121 S. Meramec Ave., 4th Floor Clayton, Missouri 63105 — (314) 726-4747 Staff@stlmuni.org Stephen Ables, Editor

ST. LOUIS COUNTY MUNICIPAL LEAGUE October Membership Meeting

THURSDAY, OCTOBER 24, 2002

*Hosted by St. Louis County at the
County Administration Building*

41 S. Central Avenue, Clayton

in the

Council Chambers - 1ST FLOOR (UP THE ESCALATOR)

SOCIAL HOUR & LIGHT BUFFET - 6:30 PM TO 7:30 PM

PROGRAM - 7:30 PM

Come Visit, Break Bread, and Hear From

- County Executive Buzz Westfall
- County Councilmembers
- County Department Heads

Stroll Through the New St. Louis County Memorial Park

Take Home a Packet of Information about County Services

DON'T MISS THIS UNIQUE OPPORTUNITY TO INCREASE PARTNERSHIPS, COMMUNICATION AND COOPERATION BETWEEN YOUR MUNICIPALITY AND ST. LOUIS COUNTY GOVERNMENT.

ALL OFFICIALS FROM YOUR MUNICIPALITY ARE INVITED.

Prior to the County Program, the membership will be asked to consider adopting the 2002-2003 Report of the Legislative Affairs Committee. This will be mailed to mayors and staff prior to the meeting.

(Directions to the County Government Center: From I-170, exit at Forest Parkway eastbound. Take the 2nd exit, Central Avenue northbound. Go three blocks to the parking lot at Carondelet Avenue, directly across from the Administration Building. Parking is free in the lot or on the street after 6:00)

September Meeting Synopsis

At the September 26 League meeting the membership voted to endorse three November ballot issues and oppose one. Those receiving support are:

- Amendment 1, relating to home rule for St. Louis City
- Amendment 4, relating to joint utility contracts for municipalities with utility service
- Proposition A, proposed cigarette tax increase to fund statewide health services. (See related article)

Following a presentation from municipal personnel attorney Ivan Schraeder about the potential ramifications of collective bargaining for firefighter, EMTs and dispatchers, the League opposed Amendment 2. (See related article.) The main concern is the loss of local control and poor service that would result due to the inclusion of binding arbitration.



Webster Groves Mayor Gerry Welch presides over her first meeting as League President at the Chesterfield City Hall. On the right is Executive Director Tim Fischesser.

Mike Schoedel, City Manager of Richmond Heights, along with City Manager Scott Randall of Clayton and Marty Corcoran, City Manager of Maplewood, then discussed an ongoing study of municipal services provided by the three cities. The elected officials have authorized the study and will review the recommendations for service improvements. The city managers formed seven committees led by department heads and asked for a thorough review of current services and to develop a model for an optimum level of city services that could be presented to the elected officials. This model could include full or partial consolidation of services within the three cities.

The study has led to several service delivery changes already (in addition to the creating of a joint dispatching agreements involving five cities) including:

- Joint street contract bids;
- Clayton enforcing parking meter laws in Richmond Heights, with both cities sharing the new revenue;
- The combining of the Maplewood and Richmond Heights Parks and Recreation Departments;
- The formation of a safety committee to provide inspections of municipal facilities;

- An employee wellness fair;
- Oxygen tank/mask maintenance; and
- Coordinated youth sports leagues.

Mr. Schoedel noted that a key to success is to keep municipal employees apprised of the situation. They need to know that if department consolidations do occur, job losses would be concentrated at the department head level, but would likely result in more personnel on the street at a cost savings to the city. He also indicated that the study could include a recommendation for a full or partial consolidation of all three cities. Consolidation would require voter approval.

The three cities like what they see so far. The City Councils of all three do meet together occasionally to review the accomplishments.

We appreciate the warm welcome from Mayor John Nations and the officials and staff of the City of Chesterfield, who offered tours and hosted the meeting at their very impressive new City Hall.



Richmond Heights City Manager Mike Schoedel, discusses the ongoing service study with Clayton and Maplewood.

Park Grant Applications Due October 25

The Municipal Park Grant Commission has begun the application process for Round 2 Grants. The Funds may be used for park improvements, land purchases, or park and recreation programs. All grant funds must be utilized for new improvements or programs that would not be funded under the current municipal budget.

Grant application meetings were held in early September and all municipalities were notified of these sessions. Application packets were distributed at the meeting. They are also available on-line on the League's website, stlmuni.org, under the Park Grant Commission category. Applications can also be mailed. They are due to the League office by Friday, October

League Members on Regional Boards

As a representative of municipalities in the County, the League is often asked to name members to serve on important boards and commissions. We have been very fortunate in the past to have well-qualified members serve in these positions. At the current time, League members have volunteered to represent your interests.

Mayor Bert Gates of Shrewsbury, League past President and Board member, has agreed to serve on the MSD Stormwater Bond Issue Committee. Bryan Pearl, Public Works Director for Maryland Heights, also serves on this Committee. It is charged with recommending municipal applications for State stormwater funding that is channeled through MSD. Mayor Gates replaces former Glendale Mayor Tony Monaco, who died last year.

Doug Harms, City Administrator of Des Peres, has been nominated by the League to serve on the Emergency Communications Commission. This new group will plan for the development of a countywide system that will allow emergency service providers to communicate during crisis situations. Other members represent county and municipal police departments and municipal fire departments and fire districts. They are:

- County Police Chief Ron Battelle
- Brentwood Police Chief Bill Karabas
- Frontenac Fire Chief John Trout
- West Overland Fire Chief Wally Dawson.

County Executive Buzz Westfall also will name two members.

Mike Schoedel, City Manager of Richmond Heights, is representing the League on the MSD Rate Commission. They are charged with evaluating MSD staff proposals for rate increases to determine what rates can best meet the needs of the District without being overly burdensome on ratepayers. Mr. Schoedel replaces former Town & Country Mayor Skip Mange, who was elected to the County Council and, therefore, ineligible to serve on such a commission.

We appreciate their volunteer service!

Legislature Modifies Court Costs

The General Assembly passed HB 1270 and 2032, which remove the authority of municipal courts to collect two important judgments. The bill amends RSMo 302.137 deleting the provision for the collection of the \$5 judgment for the motorcycle safety trust fund for traffic violations involving motorcycles. The bill also amends RSMo 302.027 deleting the provision for the collection of a \$25 judgment for the spinal cord injury fund for DWI offenses. Collections of these funds now will come through judgments on all criminal cases but only in state courts. As of August 28, 2002, municipal courts should no longer collect any fee for the motorcycle safety trust fund or the spinal cord injury fund.

Cities Continue Park Facility Upgrades

Over the last several years, many municipalities in St. Louis County have upgraded and expanded services and equipment to provide additional recreational opportunities for citizens. Some of the most recent changes are highlighted below.

- The City of Crestwood opened a new water recreation park this summer. This is being coupled with improvements to the City's major recreation facility, Whitecliff Park.
- The City of Town & Country recently dedicated Longview Farm Park, the City's first recreation facil-



ity.

Town & Country Mayor Thomas Tener reads a plaque presented to volunteers at the dedication of the City's Longview Farm Park in late September.

- The City of Creve Coeur has opened the new Millennium Park.
- Ferguson has completed a major upgrade to Forestwood Park, adding new lighting for ball fields and other amenities.
- Manchester opened a new aquatic center that will serve the recently annexed area along with the established areas of the City.
- Florissant has opened the first municipal skateboard park in St. Louis County.
- The Village of Mackenzie completed the first project funded by the Municipal Park Grant Commission by providing landscaping at the municipal park.
- The City of Country Club Hills, also using park Grant Commission funds, has completed a new walking path for residents.

These are just a few examples of cities enhancing their facilities for the benefit of residents. The League is interested in continuing to publicize these positive developments. If your municipality has recently upgraded or built new facilities, please let us know. And keep up the

Evidence of Traffic, Noise and Negative Aesthetic Impact Was Competent Evidence to Deny Conditional Use Permit

The following article was provided by Dudley McCarter, City Attorney for Creve Coeur.

Moto Mart applied to the City of St. Louis for a Conditional Use Permit to operate a 24 hour tractor-trailer fueling station and restaurant. Moto Mart's parcel was at the first exit in Missouri for motorists crossing over the Mississippi River from Illinois on I-270. This area is largely undeveloped and contains many nature areas open to the public, including the confluence of the Missouri and Mississippi Rivers, Columbia Bottoms Conservation Area, Riverfront Trail, Lewis & Clark Monument and the historic old Chain of Rocks Bridge. The area has also been considered for numerous scenic developments and visitors centers to highlight the confluence of the Rivers in conjunction with the Lewis & Clark Bicentennial. Moto Mart's application was denied by the Board of Adjustment of the City of St. Louis after conducting a hearing. At the hearing, numerous witnesses testified in opposition to the application on the basis of the increased noise and traffic and lack of compatibility with both existing and proposed uses of surrounding areas. The trial court reversed the Board of Adjustment, but the Court of Appeals upheld the Board's denial of the CUP to Moto Mart in Moto, Inc. v. Board of Adjustment of the City of St. Louis, No. E.D. 80346 (Mo.App. E.D. 2002).

The Court's review is limited to determining whether the Board's decision is supported by competent and substantial evidence on the whole record or is arbitrary, capricious, unreasonable, unlawful or in excess of its jurisdiction. When determining whether substantial evidence exists to support the Board's decision, the Court views the evidence and all reasonable inferences therefrom in the light most favorable to the decision. Much of the testimony presented in opposition to Moto Mart centered on the use being incompatible with the surrounding areas and the negative impact the facility would have on adjacent properties. Opponents of the development were collectively concerned that if Moto Mart's conditional use was approved, a tractor-trailer fueling station would drastically change the aesthetics of the area. There was competent and substantial evidence to support a finding that the proposed use would not complement or be compatible with surrounding uses and that the proposed use would create a noticeable increase and traffic and noise. Numerous witnesses testified about the character of the surrounding area, as well as current and proposed developments. Although many of the plans for a visitor's center, historical site, conservation area and hiking and biking trails were in the early

that these plans would not or could not be completed. The construction of a tractor-trailer fueling station does not complement, nor is it compatible with, the area as it currently exists, or the proposed development plans.

Moreover, numerous witnesses testified regarding the increase in traffic and noise that would be generated by this development. There was also testimony from area residents about their concerns that this facility would exacerbate an existing traffic problem. There was substantial and competent evidence before the Board to prove that Moto Mart's proposed use would create a noticeable increase in traffic and noise. Since there was evidence supporting the Board's denial of the CUP, the Court need not consider Moto Mart's contention that it presented sufficient and competent evidence to support the issuance of a Conditional Use Permit. The Court will not substitute its discretion, even if different factual findings could have been made in reaching the opposite result.

Election Dates and Deadlines

This reminder was published in the October issue of the MML Newsletter.

The first date for filing for municipal offices to be filled in the April 2003 elections is December 24, 2002 (except for cities with primary election). If your city does not maintain regular office hours on December 24, you should notify citizens in the election notice. At the very least, you should be open on December 24 from 8 a.m. to 10 a.m. or noon in order to accept filings. The closing date for filing for that election is January 21, 2003 at 5 p.m. The final day to certify candidates to the Election Board is January 28.

In addition, state law provides that "no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot . . . who shall be in arrears for any unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office." Although not required to do so, city clerks are encouraged to remind all candidates of this new law when they file for elective office.

Congratulations To . . .

Mayor Mike Swoboda of Kirkwood who was elected President of the Missouri Municipal League at the recent Conference held in St. Louis. Mayor Swoboda is a past president of the County League as well.

Elected to the MML Board of Directors were Alderman Greg Carter of St. Louis, City Administrator Michael Herring of Chesterfield and Mayor Rick Lahr of Des Peres.

Also, Mayor Joe Adams of University City received the MML Distinguished Service Award.

Communications Law Update

FCC Issues Competitive Franchising Decision

In the case of CTC Telecom v. the City of Rice Lake, Wisconsin, DA 02-1720, 2002 WL 1576927 (F.C.C. July 17, 2002), the FCC establishes guidelines for how municipalities negotiate with competitive cable providers when attempting to address ongoing public, educational, and governmental (PEG) contributions by the incumbent cable operator. Municipalities around the country often face similar questions from competitive cable television operators either pursuing traditional cable television franchises or open video system (OVS) franchises.

8th Circuit Overturns FCC Decision — Municipalities Can Provide Telecommunications Service

The 8th Circuit vacated the FCC's order and remanded the case back to the FCC for further proceedings consistent with the 8th Circuit decision. The case is a significant victory for cities and comes on the heels of a similar victory in Virginia in City of Bristol V. Earley, 145 F.Supp. 2d 741 (W.D.Va 2001). Taken together these cases provide a strong precedent that any state statutory prohibitions on municipal authority to provide telcom services and facilities will likely be preempted under 47 USC Section 253.

Cable Rates

According to the Consumer's Union, cable rates have shot up nearly 45% since the Telecommunications Act of 1996 was adopted, while inflation has risen only 16.5% during the same period. Cable operators have argued that increased programming costs and capital expenditures necessary to improve their systems have resulted in rate increases.

The FCC has also initiated a rulemaking proceeding seeking comment on revisions to the FCC's cable television rate regulations. The FCC proceeding has been commenced as a result of the elimination of regulation of the cable programming services tier (i.e. expanded basic cable service) which had a sunset in March 1999. While many municipalities continue to regulate the rates for basic service tier, many smaller municipalities have found the process to be over complex and costly. The FCC's proceeding will consider modifications to the existing rate regulation process and will also consider broader changes, taking into consideration issues such as systems subject to effective competition and procedures for Commission review of local rate decisions.

Cable Modem Dispute Continues on Two Fronts

The FCC's Declaratory Ruling that cable modems are an intrastate information service and not a cable service has resulted in two separate rulings. First, the FCC is conducting a Notice of Proposed Rulemak-

Barnett submitted comments in the proceeding in June of 2002 and reply comments were due in August of 2002. A number of national municipal organizations submitted joint comments in this proceeding and the FCC is expected to issue its decision by year end. At the same time, the FCC's Declaratory Ruling has been appealed to the 9th Circuit and initial briefs are due later this fall. No decision in this case is expected until mid to late 2003.

Information for this article was provided by Brian Grogan, Esq., with the law firm of Moss and Barnett in Minneapolis, MN.

Cigarette Tax to Fund Trauma Service

The Missouri Secretary of State has certified a statewide petition to increase Missouri's cigarette tax by 55 cents per pack and add a 20% tax increase on other tobacco products. The proposal would raise an estimated \$342 million per year to fund several health related services.

Among the most important of these for St. Louis County would be additional funding for trauma services. This is particularly important for DePaul Hospital which serves as the trauma center for North County and was recently threatened with the loss of its trauma center designation prior to a short term infusion of funds from the County and the State.

Other hospitals have indicated that the loss of DePaul's service would result in overcrowding, causing others to cut back service. Ambulances would have to travel longer distances and may find more and more emergency rooms full. Specialized doctors who rush to the hospital to assist with severe cases are also finding it difficult to both operate a practice, cover the E.R. and find affordable malpractice insurance.

The League strongly supports high quality, immediate trauma care and sees the cigarette tax as the right mechanism to keep the emergency rooms open.

Missouri One Call May Apply to Cities

According to Chapter 319 RSMo, any municipality in a first class county which owns underground facilities, such as utility lines, sewers or phone lines must belong to Missouri One Call by January 1, 2003. The fee is \$20 per month plus \$1.05 per notification.

Some municipalities view the service provided by MOCS as very worthwhile, while others view the requirement for membership as an unfunded state mandate. In either case, your staff or attorney should review the statutes and the types of facilities your city owns to determine if your city should join MOCS.

For more information about MOCS, call 573-635-1818 or 1-800-Dig-Rite. The e-mail address is

Firefighter Collective Bargaining on November Ballot

More info from the MML Newsletter

On September 16, the Cole County Circuit Court placed on the November ballot proposed constitutional Amendment #2, which provides for collective bargaining/binding arbitration for firefighters, EMTs and dispatchers. The September *Missouri Municipal Review* has a detailed article on the proposal and the reasons it should be rejected by voters.

Some of the main arguments against collective bargaining in a government setting include:

- Binding arbitration places an outside arbitrator in charge of salaries, benefits, and policies, taking these powers away from the people elected by taxpayers. Citizens are then stuck with the arbitrator's decision.
- This particular proposal only applies to firefighters/EMTs/dispatchers, splintering the team at city hall.
- Firefighters are some of the highest paid employees, with excellent benefits and retirement plans already in place.

A sample resolution opposing amend #2 is available on the MML website, www.mocities.com. Also, the Resolution the County League adopted in opposition is available by calling our office at 314-726-4747.

Construction Inspection Course Offered

The St. Louis Metro Branch Missouri Chapter of the American Public Works Association (APWA) will be offering a course on Construction Inspection to help local public works staff and other interested attendees in this increasingly complicated field. It is designed as an introduction and orientation to the broad scope of public works construction inspection issues for new employees.

The course will be held on Wednesdays from February 19 to March 26, 2003 at the Maryland Heights Community Centre, 2344 McKelvey Rd. Session will run from 8:00 a.m. to 3:30 p.m. The cost is \$95 per person. The deadline for registration is November 30, 2002.

For a copy of the registration brochure, contact the League office at 314-726-4747. For additional information about the course, contact Vijay Bhasin, P.E., Director of Public Works of Creve Coeur at 314-872-2533.

Upcoming League Meetings

- Thursday, October 24, 7:30 pm, Membership Meeting, County Government Center
- Saturday, November 16, 9:00 am, Legislative Breakfast, Junior League of St. Louis
- Thursday, November 21, 7:30 pm, Membership Meeting hosted by the City of Normandy

