



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

ST. LOUIS ASSOCIATION OF REALTORS,	)	No. ED109207
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable Stanley J. Wallach
CITY OF FLORISSANT, and	)	
TODD HUGHES,	)	
	)	
Respondents.	)	Filed: June 29, 2021

Introduction

The St. Louis Association of Realtors (“Appellant”) appeals the entry of summary judgment in its declaratory judgment action against the City of Florissant (“the City”) and its Director of Public Works, Todd Hughes (“the Director”).¹ Appellant alleges regulations governing residential rental property licensure in Chapter 605, Article XVII of the City’s Municipal Code (“the Ordinance”) violate the Missouri Constitution and are preempted by state law.²

Appellant raises four points on appeal. In Point I, Appellant argues the trial court erred by finding the Ordinance is not unconstitutionally vague. In Point II, Appellant argues the trial

¹ We will refer to the City and the Director together as “Respondents” where appropriate.

² All Code references are to the Florissant Municipal Code (2020) unless otherwise indicated. Chapter 605 is entitled “Business Regulations” and contains twenty-one articles. Article XVII regulates residential rental real estate.

court erred by finding the Ordinance provides adequate procedural due process. In Point III, Appellant argues the trial court erred by finding the Ordinance does not violate the takings clause of the Missouri Constitution. In Point IV, Appellant argues the trial court erred by finding the Ordinance is not preempted by Mo. Rev. Stat. §§ 441.020, 441.040, or 441.710.³

We affirm.

Factual and Procedural Background

The City enacted the Ordinance on July 8, 2019 and amended it to its current version on March 9, 2020. The Ordinance requires residential rental property owners to apply for and receive a license before renting to tenants. Each license costs \$50 per year and must be renewed annually. License holders must earn and maintain a “crime free housing certificate” from the City. Licenses will not be renewed unless the license holder completes the annual application, submits all necessary accompanying documents, and pays all outstanding fees and fines.

Licenses may be suspended or revoked for City Code violations. Section 605.461 of the Ordinance provides a license may be suspended if a license holder (1) failed to comply with property maintenance codes more than three times in six months and failed to make corrections in a reasonable period, (2) made materially false statements on their license application, or (3) failed to report a change of occupancy. A license may be revoked if the license holder had more than two suspensions in a twelve-month period. A license may be suspended *or* revoked if (1) a license holder and tenant have been notified of three or more acts by the tenant or occupant constituting disturbance or public nuisance to neighbors or the neighborhood, destruction of property, or a danger to public health, safety, or welfare within one year; (2) a resident, guest, or other person under the resident’s control engages in certain criminal activities; or (3) a utility

³ All statutory references are to RSMo (2020), unless otherwise indicated.

provider halts service and the license holder fails to restore service within fourteen days of receiving notice.

License holders may appeal suspension or revocation by filing a written appeal within ten days of receiving notice of suspension or revocation. Appeals are heard by three-member panels appointed by the Mayor of Florissant. Adverse panel decisions may be appealed to a court. If a suspension or revocation is upheld, the property owner may apply for reinstatement. To achieve reinstatement, the property must be re-inspected for full compliance with all applicable codes and the basis for suspension or revocation must have been reasonably resolved.

Appellant alleges the Ordinance's suspension and revocation provisions are unconstitutionally vague; violate procedural due process requirements; constitute an unlawful taking; and are preempted by state law. The trial court heard oral argument on the parties' cross-motions for summary judgment on February 21, 2020. The City amended the Ordinance on March 9, 2020 and supplemented the summary judgment record to reflect the March 9 amendment on April 24, 2020. The trial court granted summary judgment to Respondents on August 22, 2020, finding the Ordinance is constitutional and not preempted by state law. This appeal follows. Additional factual and procedural history will be provided below as necessary to address Appellant's claims.

Jurisdiction and Standard of Review

Although the issue of this Court's jurisdiction has not been raised by either party, we have a duty to address our jurisdiction *sua sponte*. *City of Pagedale v. Murphy*, 142 S.W.3d 775, 777-78 (Mo. App. E.D. 2004). "The [Missouri] Supreme Court has determined that the initial review of the constitutionality of municipal ordinances is proper in the Court of Appeals, noting that 'claims that municipal ordinances are constitutionally invalid are not within the exclusive

appellate jurisdiction of this Court.” *Damon v. City of Kansas City*, 419 S.W.3d 162, 174 (Mo. App. W.D. 2013) (quoting *Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907, 912 (Mo. banc 1997)).

We review the trial court’s grant of summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). The constitutional validity of an ordinance is a question of law this Court reviews *de novo*. *City of Sullivan v. Sites*, 329 S.W.3d 691, 693 (Mo. banc 2010). We presume ordinances are valid and lawful. *Bennett v. St. Louis Cty.*, 542 S.W.3d 392, 397 (Mo. App. E.D. 2017). The “interpretation of municipal ordinances and determination of whether they conflict with state law are [also] questions of law and reviewed *de novo*.” *City of St. Peters v. Roeder*, 466 S.W.3d 538, 543 (Mo. banc 2015). “The rules governing interpretation of a statute are employed when interpreting an ordinance. Accordingly, the Court will ascertain the intent of the municipality, give effect to that intent, if possible, and consider the plain and ordinary meaning of the language used.” *Id.* (internal citations omitted).

Discussion

Point I: The Ordinance is not Void for Vagueness

In Point I, Appellant argues the trial court failed to apply the correct standard to its facial vagueness challenge and incorrectly found the Ordinance was not unconstitutionally vague.

1. The Trial Court’s Standard of Review

Before reaching its vagueness arguments, Appellant asserts the trial court relied on two faulty premises in its analysis.

First, Appellant claims the trial court failed to distinguish between facial vagueness and vagueness as applied to specific facts. Appellant emphasizes its challenge to the Ordinance is

facial only, “not as applied.” “The distinction between a facial challenge and an as-applied challenge lies both in the remedy the parties seek and the analysis of the Court. A facial challenge to the constitutionality of an ordinance is more challenging than an as-applied challenge.” *Bennett*, 542 S.W.3d at 397. Appellant argues the trial court acknowledged Appellant raised a facial challenge only, yet used the as-applied standard of review to rule against Appellant. Appellant asserts the trial court used Appellant’s failure to establish specific instances of confusion to justify its judgment.

Appellant’s argument is meritless. To establish facial unconstitutionality, Appellant must establish “no set of circumstances exists under which the [Ordinance] would be valid.” *State v. Perry*, 275 S.W.3d 237, 243 (Mo. banc 2009) (internal citations omitted). The trial court’s judgment indicates the court found Appellant failed to establish the Ordinance is never valid as required by *Perry*. The breadth of the trial court’s analysis was therefore correct.

Second, Appellant claims the trial court erroneously limited its analysis to whether a person of ordinary intelligence could understand the Ordinance and failed to consider if it is susceptible to arbitrary and discriminatory enforcement. We disagree. The test for vagueness is “whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.” *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999). The trial court accurately noted the vagueness doctrine “protects against arbitrary and discriminatory enforcement” by giving fair and adequate notice of proscribed conduct. *Id.* Nothing in the trial court’s judgment suggests the court applied the wrong test or failed to consider whether the Ordinance could be arbitrarily or discriminatorily applied.

2. Appellant's Vagueness Allegations

a. Section 605.459 of the Ordinance is not Vague

Appellant first argues section 605.459 of the Ordinance is vague because it is unclear whether violations are punishable by both criminal and civil penalties. Section 605.459 provides failure to maintain or loss of a residential rental license “*shall* constitute grounds for the revocation or cancellation of all outstanding occupancy permits issued for any parcels of residential rental property of such owner associated with said rental license” (emphasis added). Appellant argues this language means residential license revocation triggers mandatory occupancy permit revocation. Because failure to maintain occupancy permits is a misdemeanor under sections 405.465 and 405.480 of the Zoning Code, Appellant reasons the Ordinance is vague because it purports to carry only civil or administrative penalties, but also subjects violators to fines or imprisonment.⁴

Respondents argue Appellant's emphasis on the interplay between section 605.459 and the Zoning Code is misplaced. Respondents note no penalties in the Ordinance are criminal and argue penalties elsewhere in the Code do not make the Ordinance vague. Respondents assert Appellant makes an “illogical connection” between the provisions permitting occupancy permit revocation in section 605.459 and the criminal consequences of losing an occupancy permit in section 405. Respondents rely on *Ross v. Dir. of Revenue* for the proposition civil license revocation proceedings are unrelated to collateral criminal consequences of revocation in the

⁴ Section 405.465 of the Zoning Code provides “no land shall be occupied or used . . . for any purpose whatsoever, other than farming, until a Certificate of Occupancy is issued by the Building Commissioner.” Section 405.480 provides, “The owner or agent of a building or premises in or upon which a violation of any provision of this Chapter has been committed or shall exist . . . shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00) for each and every day that such violation continues; but if the offense be willful, on conviction thereof, the punishment shall be a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100.00) for each and every day that such violation shall continue or by imprisonment for not more than ten (10) days for each and every day such violation shall continue or by both such fine and imprisonment in the discretion of the court”

DWI context. 311 S.W.3d 732 (Mo. banc 2010). In *Ross*, the Missouri Supreme Court held “civil license-revocation proceedings under the revocation statute are unrelated to the criminal provisions of the DWI arrest statute.” *Id.* at 736.

We agree. In *Ross*, the Missouri Department of Revenue filed a civil action to revoke a driver’s license under section 577.041. *Id.* at 734. Section 577.041 provides the Department of Revenue may revoke a driver’s license after a hearing if a court determines these elements are met: (1) the driver was arrested or stopped; (2) the officer had reasonable grounds to believe the person was driving a motor vehicle while in an intoxicated or drugged condition; and (3) the person refused to submit to a drug test. *Id.* The driver challenged the legality of her arrest for the first time in the revocation proceeding, arguing her sobriety was not tested within one and one-half hours of encountering the arresting officer as required by Missouri’s implied consent statute, section 577.039.⁵ *Id.* at 734-35. The driver reasoned an unlawful arrest does not satisfy the “arrest” element of section 577.041. *Id.* The Missouri Supreme Court upheld the civil license revocation, finding nothing in section 577.039 “compels application of its 90-minute time limitation to the revocation statute, section 577.041.” *Id.* at 736. The *Ross* Court reminds us “there is no need to refer to other similar statutes where a statute’s own language is clear.” *Id.* at 735. The Supreme Court held section 577.039 is applicable to criminal matters, but the civil license revocations proceedings under section 577.041 are unrelated to criminal provisions. *Id.* at 736. Where, as here, “statutes are remedial, because they are intended to protect the public” they “are construed so they provide the public protection intended by [lawmakers].” *Id.* at 735.

Here, the Ordinance alerts property owners to the civil consequences of rental license revocation or suspension. The Ordinance contains no criminal provisions. Like in *Ross*, civil

⁵ Section 577.039 provides drivers suspected of DWI impliedly consent to sobriety tests if the arresting officer has “reasonable grounds to believe that the person to be arrested has violated the section, . . . when such arrest without warrant is made within one and one-half hours after such claimed violation occurred”

revocation consequences stand alone, unrelated to criminal punishment for the failure to maintain a license. Appellant cites no authority establishing criminal punishment for failure to maintain a license after its revocation in a civil proceeding transforms the civil penalty into a criminal penalty.

Appellant has not met its burden of establishing “vagueness permeates the text of [the] law.” *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999). “It is not enough to show that, under some conceivable circumstances, the statute might operate unconstitutionally.” *Donaldson v. Missouri State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. banc 2020). Appellant had to establish “no set of circumstances exists under which the [Ordinance] would be valid.” *Perry*, 275 S.W.3d at 243. *Ross* held laws carrying civil penalties are not vague simply because conduct underlying the civil penalty also is punishable under a separate, criminal provision of the law. 311 S.W.3d at 736. Appellant has therefore failed to establish “no set of circumstances exist under which” section 605.459 can be valid. *Perry*, 275 S.W.3d at 243.

b. The Ordinance’s Use of Categorical Terms is not Vague

Appellant asserts the Ordinance is vague because it fails to define certain terms and phrases in section 605.461(A)(4) (the “Criminal Activity Provision”). The Criminal Activity Provision states:

A. The residential rental license applicable to the residential rental property may be suspended or revoked by the Director of Public Works or designee following written notice to the owner and occupant(s) under the following conditions:

....

4. A license may be suspended or revoked if any member of the household, guest or another person under the resident's control commits any of the following

criminal activities, if it is determined that the household member, guest or another person under the resident's control has committed such activities, regardless of whether such person has been convicted of any such activity, . . . :

(a.) A felony crime under Federal or State laws on or in the immediate vicinity of the residence; (b.) A Class A misdemeanor under Federal, State or local laws or in the immediate vicinity of the premises; (c.) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by other residents; (d.) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residents or persons residing in the immediate vicinity of the premises; (e.) Any violent criminal activity at or in the immediate vicinity of the premises; (f.) Any drug-related criminal activity on or in the immediate vicinity of the premises; (g.) Any abuse of drugs or alcohol that threatens health, safety or right to peaceful enjoyment of other residents on the premises or persons residing in the immediate vicinity of the premises; (h.) Violation(s) of the offenses set forth in Chapter 210 of the Florissant Municipal Code; or (i.) Violation(s) of nuisance provisions set forth in Chapter 213 of the Florissant Municipal Code.

Specifically, Appellant objects to the phrases: “criminal activity . . . regardless of whether such person has been convicted;” “criminal activity that threatens the health or safety, or the right to peaceful enjoyment of the premises of other residents;” “vicinity of the premises;” and “abuse of drugs or alcohol that threatens health, safety, or right to peaceful enjoyment.” Appellant argues further the phrase “abuse of drugs or alcohol” is also overbroad because it prohibits legal conduct under *State v. Beine*, 162 S.W.3d 483, 486 (Mo. banc 2005).

We disagree. Respondents correctly note each of the complained-of terms are permissible categorical phrases “of common usage[,] understandable by persons of ordinary intelligence.” *New Life Evangelistic Ctr. v. City of St. Louis*, 564 S.W.3d 665, 675 (Mo. App. E.D. 2018). The Missouri Supreme Court has held the public can be expected to understand descriptive or categorical terms such as “intoxicated condition;” “under the influence;” “chronic offender;” “close proximity;” and “immediate vicinity.” *Id.*; *State v. Schroeder*, 330 S.W.3d 468 (Mo. banc 2011); *Feldhaus v. Sate*, 311 S.W.3d 802 (Mo. banc 2010); *State ex rel. Cook v. Saynes*, 713 S.W.2d 258 (Mo. banc 1986). Appellant does not explain how the phrases used in the Criminal Activity Provision differ from the phrases in *New Life Evangelistic Ctr.*, *Schroeder*, *Feldhaus*, and *Cook*. We presume the public understands certain behavior is criminal and knows the law. *State v. Edwards*, 433 S.W.3d 494, 497 (Mo. App. S.D. 2014); *Strosnider v. Replogle*, 502 S.W.3d 756, 760 (Mo. App. S.D. 2016). Moreover, “the vagueness doctrine does not invalidate every ordinance which a reviewing court believes could have been drafted with greater precision, especially in light of the inherent vagueness of many English words.” *Bennett*, 542 S.W.3d at 406.

We disagree with Appellant’s assertion the phrase “abuse of drugs or alcohol” is vague. The Missouri Supreme Court has held “abuse” is a readily understandable term and not vague. *See State ex rel. Zobel v. Burrell*, 167 S.W.3d 688, 692 (Mo. banc 2005) (holding “animal abuse” is not a vague term) and *Prokopf v. Whaley*, 592 S.W.2d 819, 823-24 (Mo. banc 1980) (holding an administrative rule prohibiting “abuse of prisoners, either by word or act” is not vague). Laws need not meet impossible standards of specificity; “the test is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common

understanding and practices.” *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991) (internal citations omitted).

Appellant’s claim the phrase “abuse of drugs or alcohol” is overbroad is baseless. Appellant relies on the Missouri Supreme Court’s observation in *Beine* a law can be overbroad if it prohibits “conduct a person has no right to engage in and conduct a person has a right to engage in.” 162 S.W.3d at 486. Appellant’s argument overlooks the Court’s subsequent clarifications in *State v. Jeffrey*, 400 S.W.3d 303 (Mo. banc 2013). In *Jeffrey*, the Court rejected *Beine*’s applicability outside the First Amendment context, stating “not only is *Beine*’s expansion of the overbreadth doctrine dicta, but it is bad dicta To the extent that [*Beine* relies] on *Papachristou* for the proposition that overbreadth applies outside of the First Amendment, those cases are incorrect.” 400 S.W.3d 303, 309 (Mo. banc 2013). *Beine* does not support Appellant’s position because the First Amendment is not at issue. *Id.*

C. The License Suspension and Revocation Requirements are not Vague

Appellant claims section 605.461 of the Ordinance is vague because it fails to provide sufficiently definite standards for when Respondents should suspend or revoke a license. Appellant argues further section 605.461 is ripe for discriminatory or arbitrary enforcement because it gives Respondents discretion to choose between suspension or revocation if (1) the license holder and occupant have been notified of three or more acts constituting a disturbance, public nuisance, destruction of property, or danger to public health, safety or welfare within twelve months; (2) the Criminal Activity Provision is violated; or (3) the landlord, property owner, or tenant has their water, gas, electric, sanitary sewer service, or solid waste collection service halted by the service provider and fails to restore service within fourteen days of receiving notice. Appellant argues these provisions are vague because “there are no standards or

guidelines” controlling whether suspension or revocation is appropriate. Appellant notes the standards and costs associated with reinstating a license vary depending on whether the license was suspended or revoked, and concludes Respondents could unfairly revoke some licenses while suspending others for similar offenses.

Respondents argue the Ordinance is not vague because it gives the City discretion to choose between suspending or revoking a license only for fact-specific violations. Respondents argue the trial court correctly found “the determination of whether [a] license should be suspended or revoked must be evaluated by applying the language to the facts.”

We agree with Respondents. The Ordinance is clear: when the qualitative severity of a violation is irrelevant, Respondents have no discretion to choose between suspending or revoking a license. For example, suspension is the only punishment available for repeated violations of and failure to comply with maintenance codes over a six-month period. Such violations require no qualitative findings. When the qualitative severity of a violation relates to a suspension or revocation decision, section 605.461 permits Respondents to consider aggravating and mitigating facts. Unlike suspensions for outstanding maintenance code violations, disciplinary hearings for public nuisances, property destruction, or criminal activity may require Respondents to make detailed factual findings about the context and intent behind the violation before imposing punishment.

We “must endeavor, by every rule of construction, to give [the challenged law] effect.” *Duggar*, 806 S.W.2d at 407. Appellant had to establish “no set of circumstances exists under which the [Ordinance] would be valid.” *Perry*, 275 S.W.3d at 243. Appellant has not met its burden. Section 605.461 “does not fail to give those of ordinary intelligence reasonable

opportunity to know what is prohibited, nor does it fail to provide an acceptable standard for those who apply [the Ordinance].” *Duggar*, 806 S.W.2d at 408.

D. The License Reinstatement Requirements are not Vague

Sections 605.461(c)-(d) of the Ordinance provide license holders who have had their licenses suspended or revoked may apply for reinstatement if (1) the property is in full compliance with all applicable codes, (2) the circumstances causing the suspension or revocation have been reasonably resolved, and (3) the landlord pays for re-inspection of the property and reinstatement of the license.

Appellant argues the Ordinance does not adequately provide “guidance for how, once a license is suspended or revoked, an owner could reasonably resolve the suspension or revocation so as to be eligible for reinstatement.” Appellant asserts there are no “resources or references an owner could turn to in order to determine what steps he or she must take to reasonably resolve the circumstances.” Although Appellant concedes some bases for revocation or suspension are easily remedied, Appellant argues other violations cannot be reasonably resolved because the reason for revocation involves “past events that have ceased and cannot be abated.” Specifically, Appellant argues the Ordinance does not address how a license holder could reasonably resolve: (1) prior false statements during the license application or renewal process; (2) three or more acts of public disturbance; (3) bases for suspension or revocation in the Criminal Activity Provision; or (4) two or more suspensions in the prior twelve months.

Respondents argue the trial court correctly found the Ordinance did not have to outline specific procedures license holders must follow to achieve reinstatement. Respondents argue “reasonable resolution” cannot be defined because the facts and context underlying each

suspension and revocation are different and it would be impractical for the Ordinance to list every way a violation could be resolved.

We agree with Respondents. Ordinances need not meet a standard of “absolute certainty” or “impossible standards of specificity.” *Duggar*, 806 S.W.2d at 408. We will uphold ordinances when “the language . . . conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.” *Cocktail Fortune*, 994 S.W.2d at 957.

The requirement violations must be reasonably resolved before reinstatement is not vague. There are basic steps a license holder of ordinary intelligence could take to reasonably resolve each allegedly vague violation.⁶ For example, license holders could resolve suspensions for false statements during the license application or renewal process by correcting the false statements as provided in section 605.456(c). License holders could reasonably resolve suspensions or revocations for criminal activity or repeated public disturbances by evicting the offending party.⁷ License holders could reasonably resolve revocation for two or more suspensions in a twelve-month period by waiting for one suspension to fall outside the preceding twelve-month period and applying for reinstatement. The Ordinance’s requirements are not vague because persons of ordinary intelligence can understand the criteria for suspension, revocation, and reinstatement. *Cocktail Fortune*, 994 S.W.2d at 957.

Point I is denied.

⁶ The following remedies are illustrative of why the license reinstatement provisions of the Ordinance are not vague. We do not suggest they are the only – or best – ways to achieve reinstatement.

⁷ Appellant claims Respondents argued eviction would not reasonably resolve conduct-based suspensions and revocations. Appellant’s argument is based on an apparent misreading of Respondents’ brief and contradicts what Respondents’ brief says. Respondents’ brief states, “if a property owner decides that eviction is warranted and would reasonably resolve the circumstances giving rise to the suspension or revocation, the property owner may decide to pursue eviction.”

Point II: The Ordinance Provides Sufficient Procedural Due Process

In Point II, Appellant argues sections 605.461(A)-(B) of the Ordinance violate license holders' procedural due process rights because they deprive license holders of a property interest *before* giving them notice and an opportunity for a hearing. Section 605.461(A)-(B) provides:

(A) The residential rental license applicable to the residential rental property may be suspended or revoked by the Director of Public Works or designee following written notice to the owner and occupant(s)

(B) Any appeal of a suspension or revocation must be made, in writing, to the Director of Public Works or their designee and received by the Director of Public Works or their designee within ten (10) working days of notification of suspension or revocation. The submission of an appeal will stay the suspension or revocation pending the holding of a hearing before a three (3) person panel consisting of a member of the Florissant City Council appointed by the Mayor, a resident of the City of Florissant appointed by the Mayor and an owner of residential rental property located within the City of Florissant who has been appointed by the Mayor, and the issuance of written findings and conclusions by the panel. Such hearing shall be held within a reasonable period of time following receipt of the appeal and written findings and conclusions will be issued within ten (10) days of such hearing.

Appellant claims the Ordinance fails to “provide notice or an opportunity to be heard prior to the suspension or revocation of the License.” Appellant relies on the fact section 605.461(B) states license holders can stay suspension or revocation by filing an “appeal,”

reasoning the City can deprive license holders of a property interest in their licenses *before* giving the license holders an opportunity to be heard.

Respondents assert Appellant misreads the Ordinance. Respondents argue suspension or revocation will not take effect until after the appeal period runs and, if an appeal is filed, suspension or revocation is stayed until *after* a panel hears the appeal and issues written findings. Respondents conclude the trial court correctly found the Ordinance affords sufficient procedural due process protections because its plain language is clear no suspension or revocation will take effect until after the appeal period has run.

We agree with Respondents. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. This does not mean that the same type of process is required in every instance; rather due process is flexible and calls for such procedural requirements as the particular situation demands.” *State ex rel. Nixon v. Peterson*, 253 S.W.3d 77, 82 (Mo. banc 2008) (internal citations omitted).

Here, the Ordinance gives license holders notice and an opportunity to be heard before depriving them of a property right. Although the Ordinance calls the hearing before a three-member panel an “appeal,” it is functionally a pre-deprivation hearing because notices of suspension or revocation do not take effect until (1) the period to file an “appeal” runs or (2) the “appeal” is heard and the panel issues written findings and conclusions, which may then be appealed to a court. Section 605.461(A)-(B) is therefore consistent with *Peterson*. 253 S.W.3d at 82.

Even if we accepted Appellant’s argument the pre-appeal notice of suspension constituted a pre-hearing deprivation, we would still find it did not violate due process. Pre-deprivation hearings “may not be required so long as the potential for harm to the defendant is

slight and the statute advances legitimate state interests in providing *ex parte* preliminary relief.” *Id.* Further, “a statutory scheme which permits an initial summary decision . . . without hearing based on objective statutory criteria involving public safety does not violate due process provided a full, post-deprivation hearing is available.” *Jarvis v. Dir. of Revenue*, 804 S.W.2d 22, 24 (Mo. banc 1991). The Ordinance offers sufficient procedural due process because it provides objective, public safety-based criteria for suspension or revocation and provides license holders a meaningful opportunity to be heard. *Id.*

Point II is denied.

Point III: The Ordinance does not Violate the Missouri Constitution’s Takings Clause

Appellant alleges the Ordinance violates Article I, section 26 of the Missouri Constitution because the requirements it imposes on license holders constitute a taking. Article I, section 26 provides:

That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be provided by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of land taken for railroad purposes without consent of the owner thereof shall remain in such owner subject to the use for which it is taken.

Appellant analogizes the Ordinance to instances where the government caused physical damage to private property through public utility failures or eliminated the economic usefulness of privately-owned land through legislation. *See Akers v. City of Oak Grove*, 246 S.W.3d 916

(Mo. banc 2008) and *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992). Appellant concludes the Ordinance unlawfully permits Respondents to engage in takings without just compensation because it prohibits property owners from renting to tenants without a residential rental license and provides a mechanism for Respondents to take licenses away.

Respondents correctly argue the Ordinance does not constitute an unlawful taking. Municipalities in Missouri have the police power to license and regulate businesses, including rental property, without violating the takings clause. *St. Louis Ass'n of Realtors v. City of Ferguson*, 499 S.W.3d 395, 398-99 (Mo. App. E.D. 2016). The exercise of a municipality's police power is subject to a reasonableness test. *Glenn v. City of Grant City*, 69 S.W.3d 126, 132 (Mo. App. E.D. 2002). An appropriate exercise of a city's police power does not violate the constitution even though such actions may interfere with an individual's rights. *Id.* at 131-32.

Here, the City's purpose in passing the Ordinance was to increase public safety in rental properties by imposing licensure requirements on rental property owners and operators. We agree with the trial court's conclusion the Ordinance is a reasonable exercise of the police power that does not rise to the level of a regulatory taking.

Appellant's reliance on *Akers* and *Lucas* is misplaced. In *Akers*, the respondent city was found to have committed a taking requiring compensation when the city's sewer system malfunctioned due to rainfall, backed up, and severely damaged several apartment buildings. 246 S.W.3d at 919. In *Lucas*, an owner of beachfront property intended to construct a house on his property. 505 U.S. at 1006-07. The South Carolina legislature subsequently passed a beachfront protection statute, effectively preventing the owner from building on his land. *Id.* at 1007. The United States Supreme Court held the operation of the statute constituted a taking because it rendered the property economically valueless. *Id.* at 1031-32. Neither case is

analogous to the facts here, where the City lawfully exercised its police power by passing a business regulation ordinance that does not physically damage property as in *Akers*, or prevent property from being used for its intended economic purpose, as in *Lucas*. The Ordinance is therefore a lawful and reasonable business regulation that does not rise to the level of a taking.

Point III is denied.

Point IV: The Ordinance does not Conflict with State Law

In Point IV, Appellant argues the Ordinance conflicts with and is preempted by Mo. Rev. Stat. §§ 441.020, 441.040, and 441.710. Sections 441.020, 441.040, and 441.710, provide landlords *may* evict tenants who violate the law.⁸ Appellant notes license holders facing suspension or revocation must “reasonably resolve” Ordinance violations and argues “owners are left on their own to divine what [reasonable resolution] may be.” Appellant argues license holders at risk of suspension or revocation will feel pressure to evict to save their licenses, effectively transforming a permissive remedy into a requirement.

Respondents correctly argue nothing in the Ordinance mandates eviction; like state law, eviction is a permissive remedy available to landlords. The Ordinance does not permit any action forbidden by sections 441.020, 441.040, and 441.710. Conversely, the Ordinance does not forbid any action the statutes permit. In both instances, eviction is left to the discretion of the landlord.

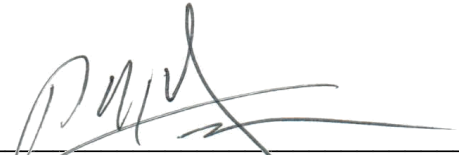
At most, the Ordinance is a valid supplement to state law because it is in harmony with the general law of the state. *Babb v. Missouri Pub. Serv. Comm’n*, 414 S.W.3d 64, 70 (Mo. App. W.D. 2013). The Ordinance does not elevate eviction to a mandatory remedy and therefore does not conflict with state law.

⁸ Section 441.020 provides landlords may evict tenants for illegal possession, sale, or distribution of controlled substances on the premises. Section 441.040 provides procedures landlords must follow if they evict a tenant for violating section 441.020. Section 441.710 gives landlords standing to bring eviction actions against tenants.

Point IV is denied.

Conclusion

For the reasons stated above, the trial court's judgment is affirmed.



Philip M. Hess, Judge

Gary M. Gaertner, Jr., P.J. and
Michael E. Gardner, J. concur.