OPINION SUMMARY
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

The St. Louis Association of Realtors ("Appellant") appeals the entry of summary judgment in its declaratory judgment action against the City of Florissant and its Director of Public Works, Todd Hughes ("Respondents"). 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. 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 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.

AFFIRMED.

DIVISION IV HOLDS:

Point I is denied. The Ordinance is not facially 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). To win a facial vagueness challenge, Appellant was required to establish "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).

Point II is denied. "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). Here, the Ordinance gives license holders notice and an opportunity to

be heard before depriving them of a property right. The Ordinance therefore 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.

Point III is denied. 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. The Ordinance is a lawful and reasonable business regulation that does not rise to the level of a taking.

Point IV is denied. 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). 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.

Opinion by: Philip M. Hess, J.
Gary M. Gaertner, Jr., P.J. and Michael E. Gardner, J. concur.

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