

AN ORDINANCE AMENDING CHAPTER 100 OF THE CODE OF ORDINANCES OF THE CITY OF GLADSTONE, MISSOURI, TO ENACT PROVISIONS RELATING TO SELF-PREEMPTION AND ENFORCEMENT OF THE CITY CODE.

WHEREAS, various new state or federal statutes and regulations continue to be enacted, supplemented, promulgated, amended, as well as subjected to judicial challenge and invalidation or subject to pending litigation regarding regulation of certain communications providers, services, and operations as they pertain to local rights-of-way, zoning regulations, and other municipal authority; and

WHEREAS, despite the uncertainty created by these circumstances, the City Council desires to continue at all times to ensure compliance with such changing applicable law, and, therefore, finds it in the best interest of the public to amend the City Code to be deemed to conform with any changes in state or federal law that may be validly enacted and lawfully applicable; and

WHEREAS, the City Council desires to enact a self-preempting provision to ensure that such self-preemption applies to any provisions of the Code that may be affected by the frequently-changing legal requirements imposed on cities until such provisions are amended or repealed, when appropriate; and

WHEREAS, the City is also authorized to protect the taxpayer and public funds from incurring expenses resulting from violators of laws or contracts or other obligations to the City including such as relating to use of City property, and the Council desires to further amend the Code to ensure the regulations for use of public property are clear and that recovery of costs are available in the event that the City is forced to incur such expenses; and

WHEREAS, the City wishes to amend Chapter 100 to enact a self-preemption provision and City Code enforcement provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:

Section 1. The whereas clauses are hereby specifically incorporated herein by reference.

Section 2. Section 1.100.030, Reference to Chapters, Etc.; Conflicts, is hereby amended by enacting a new subsection 3 to read as follows:

- (3) No provision of this Code shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and

furthermore, if any section, subsection, sentence, clause, phrase, or portion of this Code is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

Section 3. Chapter 100, General Provisions, is hereby amended by enacting two new Sections to read as follows:

Sec. 1.100.160. - Enforcement; Attorney's Fees.

The City shall be entitled to enforce any provision of the City Code through all remedies lawfully available, and any person determined to have violated the terms of the City Code shall further be liable to pay the City's costs and attorney's fees in enforcing such City Code provisions. Additionally, any user of City services, rights-of-way, or other City facilities or property, shall as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorney's fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, ordinance, or other enforceable duty as to such use.

Section 1.100.170. - Violation; Remedies, Unauthorized Holdover.

Any person who fails to hold and maintain a current and valid agreement with the City to use the City's land or facilities has no right to holdover and shall be subject to the provisions and City remedies of this section in addition to all other remedies and penalties as may otherwise exist in applicable law. Any claimed holdover right shall be deemed void and terminated upon expiration of a valid use agreement unless the City has affirmatively in writing authorized the holdover, or as otherwise may be required by law. Every person during any period without a valid agreement shall, during any period of unauthorized use: (1) indemnify the City from any liability arising from the use, (2) pay any damages and costs of the City from such use, including attorney fees incurred in enforcing this ordinance, and (3) make payment of compensation in the amount of two times the monthly rent of the last expired agreement, if a holdover, and two times the market rental value reasonably determined by the City (but in no event less than two times the rate required by ordinance), if no prior agreement, until a valid agreement is executed with the City or the attachments and/or use is fully removed, the property restored, and all obligations to the City satisfied. Unless otherwise provided in an unexpired agreement, such person shall also be responsible for interest on all amounts owed at a rate of one and one half (1 ½) percent per month. Nothing in these provisions, remedies, or compensation requirements, or acceptance or enforcement thereof by the City, shall be deemed to accept or authorize any use of public property without a required agreement, after the expiration of such agreement, or otherwise in violation of applicable requirements.

Section 4. That this Ordinance shall be in full force and effect from and after its passage.

INTRODUCED, PASSED, SIGNED, AND MADE EFFECTIVE BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, ON THIS 14TH DAY OF JUNE, 2018.



Mayor Bill Garnos

ATTEST:



Ruth E. Bocchino, City Clerk

First Reading: June 14, 2018

Second Reading: June 14, 2018



Request for Council Action

RES ☐ # City Clerk Only

BILL ☒ # 18-27

ORD # 4.434

Date: 6/7/2018

Department: General Administration

Meeting Date Requested: 6/11/2018

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Revisions to Chapter 100 of the City Code regarding self-preemption and enforcement of ordinances.

Background: The revisions to Chapter 100 of the City Code relate to self-preemption and enforcement of the City's ordinances. Specifically, the revisions provide that should any ordinance, or application thereof, be unlawful under superseding federal or state law, the ordinance is automatically preempted by the applicable federal or state law without the need to remove or revise the ordinance immediately. The self-preemption provision is of importance due to the always changing nature of federal and state law. Further, the revisions add sections relating to the enforcement of the City's ordinances, entitling the City to attorney's fees paid due to enforcement of ordinances, and the treatment of person(s) holding expired agreements to use City land or facilities.

Budget Discussion: Funds are budgeted in the amount of \$ from the Fund. Ongoing costs are estimated to be \$ annually. Previous years' funding was \$

Public/Board/Staff Input:

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Chris Williams
Department Director/Administrator

PC
City Attorney

SW
City Manager