

Public Safety:

What City Officials Need To Know



When discussing public safety issues within municipalities, there are often three fundamental categories: fire and emergency medical services, police and code enforcement. All persons in these departments serve crucial roles in our cities. When city officials have a better understanding of certain aspects of public safety, it is a benefit to everyone.

Dedicated Revenue Sources

For cities interested in establishing a dedicated revenue source for public safety, there are two sales taxes of which city officials should be aware.

Fire Protection Sales Tax

The fire protection sales tax is available to cities and fire protection districts operating a fire department. Even though this sales tax is available to all cities that operate a fire department, it only applies to fire districts with identical boundaries to a city consisting of a population of at least 30,000, but not more than 35,000 residents, while being located in a first class county (except for St. Louis County). If approved by the voters, a sales tax of up to one-half of one percent (increased from one-quarter of one percent as of July 2019) is imposed for fire protection purposes.¹ As a dedicated revenue source for a vital municipal service, most fire protection sales taxes placed on the ballot are approved by the voters.

Public Safety Sales Tax

Unlike the fire protection sales tax, the public safety sales tax is not currently available to all municipalities. For a city to have the ability to place this tax on the ballot, it must first

obtain special statutory permission via the Missouri State Legislature. When and if a city obtains the necessary statutory authorization to place a public safety sales tax on the ballot, it is then subject to approval by the voters. The public safety sales tax can be imposed for up to one half of one percent and utilized for expenditures such as equipment, employee salaries and benefits, and facilities for police, fire and emergency medical providers.

Police Reports And Sunshine Law Issues

There are three types of police reports and each one is treated differently under the Sunshine Law, Missouri's open records law found in Chapter 610 of the Missouri Revised Statutes. Arrest reports, incident reports and investigative reports all have separate and specific limitations when it comes to obtaining or closing them.

Arrest Reports

An *arrest report* is defined as a "record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with a charge therefor."² While *arrest* is defined as the "actual restraint of the person of the defendant, whereby his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation that results in the issuance of a summons or the person being booked."³ Under the Sunshine Law, arrest reports are considered open records, unless the charge is dismissed or unless there are no charges filed within 30 days of the arrest. Also, when a person is charged with a crime and receives a suspended imposition of sentence, those records are considered open until probation is successfully completed.

Incident Reports

Incident reports are records of a law enforcement agency consisting of information gathered due to an initial report of a crime.⁴ Incident reports contain the who, what, when and where related to a police contact.⁴ Incident reports are generally open and often only include the information specifically described in the statutory definition.⁵ Items such as phone numbers, addresses, etc., that can be included in an incident report, are not necessarily subject to disclosure.⁵

Even though incident reports are generally open, there are exceptions that can cause them to be closed to some extent. "Information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person," information that would "jeopardize a criminal investigation, including records that would disclose the identity of a source wishing to remain confidential or a suspect not in custody," or information that "would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions," can be considered closed and the information redacted.⁶

Citizen complaints that are filed with a law enforcement agency involving an officer are considered to be incident reports.⁷ The complaint does not have to be about an alleged commission of a crime or about an accident, but it will still be considered an incident report and an open record.⁷ When reviewing a request for an incident report it's important to consider the exceptions for accessing closed information,⁸ including information that should be open.⁹



Investigative Reports

An investigative report is any record consisting of anything that has been associated with a law enforcement investigation.¹⁰ Investigative reports can include interviews, phone calls, documents, etc., and are closed until the investigation is *inactive*.¹¹

Cities and law enforcement agencies have different ways of interpreting what it means for an investigation to be *inactive*. Some agencies consider an investigation to be *inactive* when there is an arrest made, while other agencies consider an investigation *inactive* when a case has reached its final disposition in court. An investigation should be considered *inactive*, when no further action will be taken due to no charges being filed; the statute of limitations applying and charges can no longer be filed; or there is a finality of convictions of all persons involved.¹²

City Marshal V. Police Chief

Fourth class cities, by statute, have elected city marshals as their chief law enforcement officers.¹³ The main difference between a city marshal and police chief is that a city marshal is elected while a police chief is appointed. Some cities that have an elected marshal might refer to that person as the police chief, even though they are technically a marshal.

As of 2013, when a city desires to remove a police chief, what is essentially an impeachment proceeding must occur prior to removal. The statute applies to "any nonelected chief law enforcement officer of any political subdivision."¹⁴ (i.e., the statute is only applicable to police chiefs and not city marshals, who are elected). Although



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Municipal Court

Cities that utilize a municipal court can also issue citations for code violations. Citations can be issued in conjunction with or separately from the administrative process outlined above. Often a municipal prosecutor will dismiss a citation if it has been addressed in a timely manner, as compliance and abatement are typically more important to cities than punishing someone with a fine. Unfortunately, some property owners will ignore citations or just pay fines instead of addressing a violation; in these situations, cities will typically need to utilize the administrative process if they really want to enforce their codes and address the issue.

Missouri Sheriff's Retirement Fund

the statute lists various situations where *just cause* exists to remove a police chief (e.g., has been found to have violated any law, statute or ordinance that constitutes a felony), it does not contain less serious but more common circumstances, such as disagreements over policies, personnel decisions, etc. City officials should always consult with their legal counsel prior to taking any action to remove a police chief.

Code Enforcement Options

Code enforcement that can be done administratively or through municipal court, is an important component of public safety.

Administrative

When a city wants to address a code violation (e.g., an overgrown lawn), it will often send the property owner a notice informing them of the violation and what they need to do to correct it. If the property owner does not correct the violation or request a hearing then the city may end up using city funds to address the issue and then sending a bill to the property owner (if a hearing is requested then it should be held prior to the city taking any further action). If the property owner ignores the bill or refuses to pay, then the city can file the bill as a lien against the property. While the administrative route can often be an effective way to address a code violation, it can also be expensive, as cities do not typically get reimbursed in a timely manner, if at all.

In August of 2017, a lawsuit was filed in the Jackson County Circuit Court challenging the constitutionality of the assessment of certain court costs on municipal court cases, specifically the \$3.00 surcharge added to tickets for the Missouri Sheriff's Retirement System, a retirement system for former Missouri sheriffs and their beneficiaries. Municipal courts, at one time, were exempt from collecting this fee, but that has since changed.

In March of 2020, the court found in favor of the Sheriff's Retirement System by concluding that to determine the appropriateness of the surcharge the expense needed to be reasonably related to the administration of justice. Even



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though sheriffs do not typically have a role in municipal courts, the court found that due to the variety of services provided, a "rational basis" existed "for the Missouri General Assembly to incentivize attracting and retaining more qualified individuals to become Missouri Sheriffs."¹⁵ The plaintiffs have appealed the case to the Missouri Supreme Court.

Public safety is a fundamental component of the services provided by Missouri municipalities, no matter their size. By becoming more aware of some of the issues and options associated with public safety personnel, city officials are in a better position to support them and their community. 🍃

This article is intended as an overview of certain public safety issues and should not be construed as legal advice. City officials should contact their legal counsel with any questions.

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End Notes:

¹ §321.242, RSMo

² §610.100.1(2), RSMo

³ §610.100.1(1), RSMo

⁴ §610.100.1(4), RSMo

⁵ *State ex rel. Goodman v. St. Louis Bd. of Police Com'rs*, 181 S.W.3d 156, 159 (Mo.App. E.D. 2005)

⁶ §610.100.3, RSMo

⁷ *State ex rel. City of Springfield v. Brown*, 181 S.W.3d 219, 221 (Mo.App. S.D. 2005)

⁸ See §610.100.4, RSMo for how to access to closed information in an incident report

⁹ See §610.100.6, RSMo for how to open information in an incident report believed to be unlawfully closed

¹⁰ §610.100.1(5), RSMo

¹¹ §610.100.2, RSMo

¹² §610.100.1(3), RSMo

¹³ §79.050.1, RSMo

¹⁴ §106.273.1, RSMo

¹⁵ *Daven Fowler et al. v. Mo. Sheriffs Retirement*, SC98484