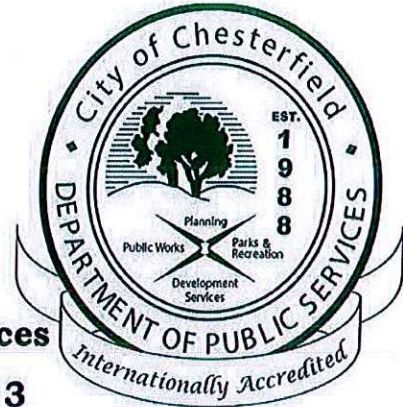


MEMORANDUM

DATE: March 18, 2016
TO: Mike Herring, City Administrator
FROM: Mike Geisel, ^{mer} Director of Public Services
RE: Chapter Two – Code Review, volume 3



As has been directed, I have completed a comprehensive review of Chapter Two of the City Code, to identify conflicts with current practices and state statute. As described in separate correspondence, this is the third volume in the trilogy of code review. The first volume dealt solely with the text differences of Ordinances #7, #8 and #11 with City Code. The second volume addressed the code sections within Chapter Two – Administration, that were peripherally associated with those same three ordinances. This volume, the third review, is comprehensive and inclusive. This review represents an unrestricted identification of issues, concerns, and deviations from practice. The items identified in the first two reviews are also repeated herein. Although it may appear redundant, this review is the single comprehensive list of issues for the entire Chapter.

This review also includes a number of sections that are, in my opinion, simply inappropriate and unnecessary inclusions in the Code. A number of policy, procedure, and at least one full contract document has been codified. Incorporating these documents into the code is undesirable, as it makes the code more voluminous and unfriendly to the general public, makes it difficult and unwieldy for ongoing administration, and ultimately suggests that deviations of internal policies and/or procedures are punishable by law.

This review was completed independent of the work recently done by Mr. Christopher Graville at the request of Representative Sue Allen. As Mr. Graville explained, he found no direct conflicts or contradictions between Statute and the City's code, but did opine on specific sections of the City Code. However, I did incorporate those specific code references which Mr. Graville cited and suggested that the City attempt to reconcile with its operational procedures.

Finally, as you are aware, Staff and Legal Counsel have been discussing these concerns for some time. As a general note, the City's legal counsel has been consulted and has provided opinions to Staff as the review was compiled.

Mike Herring
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In order to assist you in navigating this analysis, I offer the following explanation:

The analysis is ordered, in the same way the City's Code is ordered. In reading this analysis, it progresses from Article 1, Section 1, through the end of the code sequentially.

Where a conflict, deviation from practice, or other suggestion was warranted, I identify the specific Section reference in **bold type**.

The actual text of the existing code follows in *italicized text* following the Section referenced. If a specific word, phrase, or segment is the concern, it is depicted in **yellow highlight**.

My review commentary, suggestion, or alternatives is provided immediately under the specific text, and is provided in **red font**.

As you will determine, this review was extensive. While I have made every effort to be comprehensive, it is possible that as these specific concerns are addressed, there may be minor additional concerns identified.

I look forward to your review and further direction.

Attachment C1

Cc Harry O'Rourke, Interim City Attorney

Article I

Section 2-3 Indemnification of City officials and employees.

(d) The person seeking indemnification shall cooperate with the City in any investigation, defense, negotiation or compromise of any claim, suit or action, even if any of the allegations of the suit are groundless, false or fraudulent, and the City may make such investigation and settlement of any claim or suit as it deems expedient, but the City shall not be obligated to pay any claim or judgment or expense including attorney fees unless and until the benefits of any insurance, whether provided by the City or by the person seeking indemnification, have been exhausted and in no event in excess of one hundred thousand dollars (\$100,000.00) for any one claimant or an aggregate of one hundred fifty thousand dollars (\$150,000.00) for all claims arising out of and upon the same act or an aggregate of one hundred fifty thousand dollars (\$150,000.00) during any one calendar year.

This section contains specific dollar values, and the actual limits are established by statute. They should reflect the indemnification limits used generically throughout the code and can be referenced by council policy allowing greater flexibility and uniformity. Indemnification limits are routinely changed and are established to match insurance requirements.

Section 2-4 City of Chesterfield Retirement Plan

The City, by Ordinance No. 367, adopted Nov. 6, 1989, has adopted a retirement plan for the employees of the City. Said retirement plan is not set out herein, but is on file and available for inspection in the Office of the City Clerk.

This is an administrative policy, approved by council and has been amended from time to time. It should not be codified.

Section 2-5 Notice of Claim prior to institution of suit for damages against the City.

*In accordance with Chapter 77.600 RSMo 1986, no action shall be maintained against the City on account of any injuries growing out of any defect or unsafe condition of or on any bridge, boulevard, street, sidewalk or thoroughfare in the City, until notice shall first have been given in writing to the **City Administrator** or his designated representative.*

Per Statute Chapter 77.600 RSMo, this section should be revised. The required notice of claim should be directed to the Mayor.

Article II

Mayor and City Council

Section 2-29 Duties and Powers

The Mayor shall be the Chief Elected Officer of the City and shall be recognized as the official head of the City by the Governor for all legal purposes. The Mayor shall preside at all meetings of the City Council and all ceremonial occasions. The Mayor shall execute on behalf of the City all contractual and legal documents approved by the City Council. The Mayor shall preside over the City Council but shall not vote except in case of a tie in said Council, when he shall cast the deciding vote; but provided, however, that he shall have no such power to vote in cases when he is an interested party.

In practice, the Mayor does not execute all contracts and/or legal documents, it is dependent on the individual instrument, legislation or authorization. In most instances, the enabling motion specifically authorizes "the City Administrator to execute contract for... or The Mayor to execute contract for...". This duty is not restricted by statute. I suggest that specific sentence simply be considered for deletion and each authorization be directed as appropriate and has been the City's actual practice.

Section 2-47 Regular meetings

The regular meeting of the City Council shall be on the first and third Mondays of each month beginning at 7:00 p.m. and no notice of such regular meetings shall be required provided that if such meeting date should fall on a legal holiday or if there is no quorum present, the meeting shall be held on the following day at 7:00 p.m. The meeting place of the Council shall be at the City Hall unless otherwise ordered by the Council.

CONFLICTS WITHIN THIS SECTION:

No notice required? (Violation of Sunshine law)

If LEGAL holiday, next day (not following Wednesday per current practice)

Does not follow current practice of recognizing Jewish holidays.

This section is inconsistent with our practice and conflicts with my understanding of the Sunshine Law. It is certainly not consistent with our practice of scheduling meetings for holiday periods. This section also does not comport to our practice of re-scheduling meetings as they relate to the Jewish calendar.

In addition, the text of the City Code does not appear to provide for planned cancellation of a regular meeting. The mandatory term "shall" is used. The City should reconcile the code and our practices.

Meeting times should not be included\formalized by ordinance\code? This is an administrative policy\procedure and as long as notice provisions are complied with, this should not be incorporated into the Code. Violation of policies and procedures should not result in a violation of law.

Section 2-50 Rules of procedure.

The following rules of procedure shall govern the conduct of all meetings of the City Council, although these rules, other than those prescribed by statute, may be suspended at any time by the consent of a majority of the Council present at any meeting.

Rule 1. The Mayor shall decide all questions of order.

This section is inconsistent with our practice and conflicts with City Policy which has identified the City Attorney as the Parliamentarian. Council must reconcile their desire and either amend the code, or amend the policy.

Rule #3 A roll call vote of yeas and nays shall be taken and recorded on the journal of proceedings for all ordinances or propositions which create any liability against or obligation on the part of the City or for the expenditure or appropriation of its money, and in all other instances where request therefore is made by any member of Council.

In practice, we have not complied with Rule #3 and have not required roll call votes on all financial matters, for example, bid approvals and contract authorizations. While a roll call vote does not appear to be required by Statute, the Council should provide direction and appropriate adjustments be made in City Code.

Section 2-52 Disturbing meetings

It shall be unlawful for any person to disturb any meeting of the City Council or of any committee thereof. Violation of the provisions of this section shall be a misdemeanor, punishable by a fine of not less than five dollars (\$5.00) and not more than five hundred dollars (\$500.00) or by imprisonment for a period not to exceed three (3) months or by both such fine and imprisonment.

This section references the penalty for offense. Current practice in codification is to reference a separate penalty section of code that is amended from time to time as opposed to identifying the penalty

associated with violation of each individual citation. Referencing a specific penalty section prevents errant omissions and provide ease of update when statutes permit changes.

Sec. 2-54 Standing committees.

(a) Establishment. There are hereby established as Standing Committees of the City Council the following:

- (1) Finance and Administration;*
- (2) Parks, Recreation and Arts;*
- (3) Planning and Public Works; and*
- (4) Public Health and Safety.*

(b) Membership; appointment.

(1) Each committee shall be compromised of four (4) Council members. One (1) Council member from each of the City's four (4) wards will serve on each committee, with no two (2) Council members from the same ward serving on the same committee.

(2) The President Pro Tem shall coordinate the process of committee assignments and chairpersons in consultation with all Council members. The President Pro Tem shall appoint members of the Council to Committees and Committee Chairpersons upon the approval of the City Council by formal vote taken at the first City Council meeting immediately following each regular City election held in April of every year.

(3) The Mayor and City Administrator shall both serve as non-voting ex officio members of each committee.

(4) Chairperson. One (1) Council member from each ward shall serve as a Chairperson of a committee, and no person shall serve as Chairperson of more than one (1) committee. The Council member selected as Chairperson of each committee shall be that person, from his or her ward, whose term is up for reelection the following April.

(5) Vacancy. Should there be a vacancy on the Council, the other Council member of the affected ward shall be deemed a full voting member of the committees upon which his or her ward-mate served until said vacancy has been filled. If the Council member previously occupying the currently vacant position served as Chairperson, the Vice Chairperson, at the time of the vacancy, shall assume the position of Chairperson.

(c) Functions.

(1) Making recommendations to the Council or to the City Administrator, or both, concerning any of the matters within its purview, when requested and also at other times when it appears that the best interest of the City and its residents will be served thereby;

(2) Formulating, with the assistance of the staff, long-range plans and evaluation and revision (if necessary) of such plans as adopted;

(3) Reviewing and recommending legislation concerning any of the matters within its purview;

(4) Quorum and presiding officer. At least three (3) Council members must be

present in order to hold a Committee meeting. The Chairperson shall preside over the Committee meeting. In the absence of the Chairperson, the Vice Chairperson shall preside;

(5) Recommendations to Council. Other than items discussed and/or acted upon by the Planning and Public Works Committee, in order for an item to pass out of Committee to the Council, said item shall require at least two (2) affirmative votes. Three (3) affirmative votes are required for an item to be passed to the Council with a favorable recommendation from the Committee;

(6) Closed meetings. Closed meetings cannot be held at any meeting of the Standing Committees.

This relates to ordinances #12, 467, 664, and 2859, and specifically the committee structure recently revised. In actuality, this is an administrative process, and policy. Council should consider repealing the legislation and replacing it with formal policy. I don't think anybody desires an unintentional infraction to be a municipal code violation, prosecutable in municipal court.

Article III City Administrator

Sec. 2-70. Bond.

Before entering upon the duties of his office, the City(sic) Administrator shall file with the City a bond conditioned upon the faithful and honest performance of his duties and the rendering of faithful and proper accounts to the City for funds and property in his possession or under his control in the amount of one hundred thousand dollars (\$100,000.00); provided, however, in the event that the Administrator be covered by a blanket bond to the same extent as an individual bond shall not be required. The cost of such bond shall be borne by the City.

The language for the bonds is inconsistent between the Mayor, City Administrator, and Finance Director. These sections should be consistent.

Sec. 2-74 Duties and authority.

The Administrator shall serve as the Chief Administrative Officer of the City. He shall be responsible for the administration and management of the business and employees of the City subject to the direction and supervision of the Mayor and City Council. To that end, he shall have the following duties and powers:

(1) General administrative.

(l) Be accountable to the Mayor and City Council for any actions taken when requested to do so, and at all times be subject to the supervision, direction and control of the Mayor subject to review by the City Council.

(7) *Other duties.* Perform such other duties as may be imposed upon him by the Mayor and City Council or by a contract of employment with the City.

As suggested by Mr. Graville, this section of City Code goes beyond state statute and should be reviewed by City Council to determine if this section is representative of the anticipated direction and supervision to be provided to the City Administrator.

From Mr. Graville's correspondence: "The City's code imposes a very specific duty (much more specific than required by State law) on the City Administrator and the Mayor; sections 2-74(1)(l) and 2-74(7) state that the Administrator is under the general control of the Mayor and she must be accountable to, supervised by, and perform all duties and directions of the Mayor. Although the City Administrator is the "Chief Administrative Officer", in the City of Chesterfield, the Mayor is given very specific supervisory duties and responsibilities over her."(sic)

Section 2-75 Responsibility for Real Property

The Administrator shall have responsibility for all real and personal property owned or maintained by the City of Chesterfield. He shall have responsibility for all inventories of such property and for the upkeep of all such property. Personal property owned by the City may be sold by the Administrator only with approval of the Mayor and City Council. Real property may be sold only when such sale is authorized by ordinance.

"Personal property owned by the City may be sold by the Administrator only with approval of the Mayor and City Council", conflicts with Section 2-144 (copied below for ease of reference) which authorizes the supplies with a value less than \$5,000.

First, Council should consider increasing the disposal threshold to coincide with the purchasing authority of \$25,000.

Secondly, I recommend deleting the provision in Section 2-75 to eliminate the potential conflict with section 2-144.

7

However, preferably, we should acknowledge that this is a procedural matter, not a matter of law, and the issue should be addressed via council policy and purchasing policies.

Section 2-144

(c) *Sales. The City Administrator is authorized to sell all supplies having an estimated value of less than five thousand dollars (\$5,000.00) which have become unsuitable for public use, or to exchange the same for, or trade in the same, on new supplies. Sales shall be made to the highest possible bidder.*

Section 2-80 Interference by City Councilmen prohibited, exceptions.

No member of the City Council shall directly interfere with the conduct of any Department, Agency or Office or with the duties of employees subordinate to the Administrator except at the express direction of the City Council or with the approval of the Mayor or Administrator.

Does the Mayor and City Council desire elected officials to direct work of subordinate employees? This indicates that the Mayor has the right to unilaterally authorize direct interference with the employees subordinate to the City Administrator. In order for this to be made consistent with policy and practice, perhaps the language giving the Mayor independent authority should be stricken, while retaining the authority of the Council and the City Administrator.

**Article IV
City Clerk**

Sec. 2-91 Appointment

The City Administrator shall appoint the City Clerk with the consent of the City Council. The term of the City Clerk shall continue from the date of appointment for an indefinite period of time not to exceed four (4) years or until his employment is terminated by the Mayor with the approval and consent of the City Council. Such termination shall not be effective until thirty (30) days' written notice thereof has been given to the City Clerk.

This section indicates that the City Clerk is appointed by the City Administrator, but can only be terminated by the Mayor with consent of the Council. This is inconsistent at best and certainly makes supervision extremely difficult. In addition, this section requires 30 day notice of termination. I would suggest that this section be revised, similar to the language for Director of Finance which states:

The Director City Clerk may be removed from office by the City Administrator with approval of the Council.

Sec. 2-92 Duties generally

The City Clerk shall, among other duties, keep a journal of the proceedings of the Council. He shall safely and properly keep all records and papers belonging to

the City which may be entrusted to his care; he shall be the General Accountant of the City, and generally shall perform all of the duties required of him by ordinance or orders of the Council. He is hereby empowered to administer official oaths, and also oaths to personnel certifying to demands or claims against the City.

Unless there is some varied definition of Accountancy that I am unaware of, it certainly does not appear to be a function of the City Clerk's office.

Section 2-95 Compensation

Compensation for the City Clerk shall be established by the Council within the guidelines as established in the City Compensation Classification Pay Plan.

This is inconsistent with current practice where compensation, reviews and periodic changes are managed by the City Administrator. This section could be deleted entirely.

Article V City Officials

Section 2-106 Appointment of certain City officials; term.

(a) Pursuant to Section 77.370 Revised Statutes of Missouri, the following City officials shall be appointed:

- (1) Municipal Judge;
- (2) City Attorney;
- (3) Assessor;
- (4) Collector;
- (5) Treasurer.
- (6) Prosecuting Attorney

(b) The term of appointment shall not exceed four (4) years.

Identifies and assigns responsibilities to City Officials that do not exist.

**Identifies Assessor
Identifies Collector
Identifies Treasurer**

The prosecuting attorney is not identified in the existing Code? That office is included in the Department of Law described later, section 2-151, but judge is missing from that section.

Section 2-107 Coordinator of Alcohol and Drug Abuse.

- (a) *Established. There is hereby established the position of Coordinator of Alcohol and Drug Abuse Prevention.*
- (b) *Function. The Coordinator of Alcohol and Drug Abuse Prevention is intended to be a part time position that would provide support to meet the objectives of the strategic plan as established by the Chesterfield Task Force on Alcohol and Drug Abuse. Further, the Coordinator will work in a support capacity to better enable the Chesterfield Task Force on Alcohol and Drug Abuse to meet its objectives and provide leadership for alcohol and drug prevention activities for the City of Chesterfield which would include organizing alcohol and drug prevention programs; organizing drug awareness events and representing the City of Chesterfield in contracts with public and private organizations with community issues relating to alcohol and drug abuse.*
- (c) *Terms. The Coordinator shall be appointed by the City Administrator with the approval of the City Council for an initial period not to exceed six (6) months. The Coordinator shall be chosen on the basis of experience and training in the field and may be removed from office by the City Administrator with the approval of City Council. The Coordinator shall be under the direct supervision of the City Administrator.*

This is not consistent with current practice. There is no such official designated as the Coordinator of Alcohol and Drug Abuse. Certainly no City Official is to be under the auspices of a Citizens Advisory Committee. This entire section should be deleted.

**Article VI
Departments**

- Division 2**
- Department of Finance and Administration**
- Division 3**
- Department of Purchasing**
- Division 4**
- Department of Law**
- Division 5**
- Department of Public Works**
- Division 6**
- Department of Planning**

These sections describe in detail, specific organizational structure, employees, and duties. Overall, the entire article is inconsistent with current practice, limits flexibility, and identifies employees\functions which do not exist within Chesterfield. In several cases, these do not reflect current assignments. Further, these sections contain procedures which have been updated and should remain fluid for Council adaption from time to time. In reality, these are policy concerns which do not

need to be formalized into ordinances. Purchasing procedures, payments, and bidding processes are examples of policies which certainly should be formalized and adopted, but should not be codified into law. It is my recommendation, which has been reviewed and endorsed by legal counsel,

that these divisions be eliminated entirely, replaced with formal policy documents where they do not already exist.

If this recommendation is accepted, the specific concerns expressed below, with references to these divisions should be ignored. However, if Council desires to retain these divisions, the errors and conflicts therein should be individually addressed.

Sect. 2-125 Payment of bills.

The Director of Finance shall pay to any person designated and any warrant lawfully drawn upon the City, the amount specified in such warrant or bill, but such amount shall be made only out of the funds in the possession of the Director of Finance and properly appropriated for such payment, as approved by the City Administrator.

The Director of Finance shall prepare each month a warrant for the payment of all sums due to be paid by the City, listing each item and the account out of which it is payable, said warrant, when properly signed by the City Administrator and/or other persons he may designate, shall authorize the issuance of vouchers or checks as provided by law for the payment of each item. The City Administrator shall have the authority to authorize the expenditure of any expense that is within the budget which is an amount which is less than five thousand dollars (\$5,000.00) without requiring that said expenditure be approved in advance by the City Council, but that a list shall be prepared and presented to the City Council indicating each expenditure.

A list of all items which need to be paid, which exceed the sum of five thousand dollars (\$5,000.00), shall be submitted to the City Council before the warrant is submitted for payment. Approval for the expenditure of the items contained on said warrant shall be deemed approved by acclamation on the day following the meeting of the City Council at which the list was presented. Such list shall contain a statement of the Director of Finance and of the City Administrator to the effect that all items contained thereon are proper expenses due from the City for services performed or materials furnished to the City. Provided, however, that the Council may, in any motion to approve payment, except specific items from such approval, in which case such items shall not be paid.

This is inconsistent with the actual practice and conflicts with the purchasing authorization levels provided in Section 2-137, copied for ease

of reference below. The City does not delay payment of invoices previously lawfully authorized until after Council approves them individually.

Section 2-137 Purchasing rules. (provided for ease of reference)

No purchases or contracts for services or goods of any kind or description, payment of which is to be made from funds of the City, shall be made by the Purchasing Agent or any officer, employee or agent of the City except in the manner hereafter set forth.

- (1) *Purchases under two thousand five hundred dollars (\$2,500.00).* Whenever any contemplated purchase or contract for goods or services is for the sum of less than two thousand five hundred dollars (\$2,500.00) inclusive, the Purchasing Agent may order the items as needed in accordance with the approved accounting system.
- (2) *Goods or services costing two thousand five hundred dollars (\$2,500.00) to five thousand dollars (\$5,000.00) inclusive.* Whenever any contemplated purchase or contract is for goods or services costing from two thousand five hundred dollars (\$2,500.00) to five thousand dollars (\$5,000.00) inclusive, the Purchasing Agent shall obtain at least three (3) quotations from qualified vendors for the goods or services to be purchased. The quotations may be obtained orally and the award for purchase or contract given to the lower responsible bidder.
- (3) *Purchases costing from five thousand dollars (\$5,000.00) to ten thousand dollars (\$10,000.00) inclusive.* Whenever any contemplated purchase or contract is for goods or services costing from five thousand dollars (\$5,000.00) to ten thousand dollars (\$10,000.00) inclusive, the Purchasing Agent shall solicit at least three (3) written quotations for the item or items to be purchased. The quotation shall be submitted in written form to the Purchasing Agent who shall award the purchase or contract to the lowest responsible bidder.
- (4) *Items costing over ten thousand dollars (\$10,000.00).* Whenever any contemplated purchase or contract for goods or services is for the sum of more than ten thousand dollars (\$10,000.00), the Purchasing Agent shall cause to be published in one issue of a newspaper of general circulation in the City a notice inviting bids, provided however, that the Purchasing Agent shall have the authority upon the recommendation of the department head to forego advertising in such cases where advertising would not be an appropriate method to seek bids. Said notice shall be published at least ten (10) business days prior to the date set for the receipt of the bids. The Purchasing Agent may allow more time for the preparation and submittal of bids whenever the contemplated purchase of goods or services indicates that a longer period of time will be required for vendors to complete and submit bids. The notice herein required shall include a general description of the articles to be purchased or services performed and the time and

place for opening bids. In addition, the Purchasing Agent shall post a notice inviting bids in City Hall, and may also mail to all responsible prospective suppliers of the items to be purchased or services performed a copy of the notice inserted in the newspapers hereinbefore required. Upon opening of the sealed bids, the Purchasing Agent shall review and investigate all bids received and shall then make a recommendation to the City Council based upon said investigation as to which bidder has submitted the lowest responsible bid.

Division III

Department of Purchasing

Section 2-136 Office of Purchasing Agent established; duties; authority; etc.

There is hereby established the Office of Purchasing Agent who shall be appointed by the City Administrator with approval of the Council. The Administrator shall serve as the Agent until the office is filled by appointment.

This Department and Title do not exist within the City of Chesterfield.

The full text of the sections below have been intentionally omitted.

Sec. 2-137 Purchasing rules.

Sec. 2-138 Bidding procedures.

Sec. 2-139 Determination of lowest responsible bidder

Sec. 2-140 Approval of purchases.

Sec. 2-141 Miscellaneous purchasing requirements

Sec. 2-142 Conflicts of interest.

Sec. 2-143 Inspections and testing.

Sec. 2-144 Surplus stock.

Each of the above sections are internal policy or procedures, which are separately documented and adopted by Council. As previously suggested, they should be removed by code and replaced by formally adopted policy documents. Policies and procedures should not be codified into law.

Section 2-144 Surplus Stock

(c) Sales. The City Administrator is authorized to sell all supplies having an estimated value of less than five thousand dollars (\$5,000.00) which have become unsuitable for public use, or to exchange the same for, or trade in the same, on new supplies. Sales shall be made to the highest possible bidder.

See prior reference to section 2-75 which restricts the sale or disposal of property.

Section 2-75 Responsibility for Real Property

The Administrator shall have responsibility for all real and personal property owned or maintained by the City of Chesterfield. He shall have

responsibility for all inventories of such property and for the upkeep of all such property. Personal property owned by the City may be sold by the Administrator only with approval of the Mayor and City Council. Real property may be sold only when such sale is authorized by ordinance.

The City Administrator is required to obtain approval by the Mayor and City Council prior to disposal of any surplus goods, regardless of value. This Section (144) requires authorization only for goods in excess of \$5,000.

In practice, the City routinely disposes of surplus goods at higher values, e.g. vehicles sold at auction, surplus tools and equipment. Not only does this section conflict with Section 2-75, the threshold should be increased to match the purchasing threshold for the City Administrator, which is \$25,000. In any event, this is a procedural matter, not a matter of law, and I recommend deleting the provision in Section 2-75 and addressing the authorization via council policy.

**Division IV
Department of Law**

Sec. 2-151. Created.

There is hereby created the Law Department which shall consist of the Office of City Attorney and the Office of City Prosecutor.

These are identified in Article V City Officials as appointees. This is not a functional department, is redundant and unnecessary. In my opinion, they should be identified as appointees and City Officials, but should not be established as a Department. Consider prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Sec. 2-XX. Assistants.

The Mayor may appoint Assistant City Attorneys, Assistant City Prosecutors with the advice and consent of the County, of persons competent to carry out the duties of said offices. Such appointments shall be for an indefinite term. Assistant City Attorneys and Assistant City Prosecutors, may be removed from office by the Mayor with the advice and consent of the Council

This new section should be incorporated into the Code per prior legal counsel request if this Division is retained.

Sec. 2-153. City Attorney, City Prosecutor, and Municipal Judge; appointment and removal.

The Offices of City Attorney, City Prosecutor, and Municipal Judge shall be filled by appointment made by the Mayor with the advice and consent of the Council, of persons competent to carry out the duties of said offices. Such appointments shall be for an indefinite term. The City Attorney, City Prosecutor, and the Municipal Judge may be removed from office by the Mayor with the advice and consent of the Council. The Mayor, with the advice and consent of the City Council, may also retain special counsel to advise or represent the City on special matters.

This seems to conflict with Sec 2-106 above which states that the term of appointment is four years. While technically these sections could be compatible, I would suggest editing the language “for an indefinite term” to for an indefinite term not to exceed four years.

Sec. 2-XX. Duties of Municipal Judge.

The Municipal Judge shall have the duty to hear all violations of the ordinances of the City and shall have original jurisdiction to hear these cases. The Municipal Judge shall keep a docket and administer oaths and enforce due obedience to all orders, rules and judgments made by the Municipal Judge and may fine or imprison for contempt committed before such judge while holding court in the same manner and to the same extent as a circuit judge.

**Existing Code does not define the duties of the municipal judge
Former City Attorney Rob Heggie suggested that the following text be incorporated into code to define the responsibilities of the municipal judge.**

Division V

Department of Public Works

Section 2-167 Functions

The Department of Public Works shall have responsibility in the areas of public works, including City Engineering design and review functions, City Streets and sewers, zoning and development code enforcement, building code and maintenance code enforcement, inspection of building construction and property maintenance, parks, housing and neighborhood preservation, project coordination and such other duties related to overall community development as from time to time may be authorized by the City Council.

The functions prescribed to the Department of Public Works in this section conflict with the current practice and job descriptions. Consider

prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Sec. 2-173 Division of Inspections

There is hereby established within the Department of Public Works a Division of Inspection. The Division shall be under the supervision of the Building Commissioner. The Division shall review all plans for the construction, reconstruction, or alteration of any structure in the City, and shall inspect such construction to insure that all work is done in compliance with the City's building, plumbing, electrical, mechanical and such other codes or ordinances as may from time to time be approved by the City Council.

This section introduces an organizational Division of Inspections and an official designated to be the Building Commissioner, neither of which currently do not exist within the City of Chesterfield. Consider prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Sec. 2-174 Office of Building Commissioner established.

There is hereby created the Office of Building Commissioner. The Building Commissioner shall be appointed by the Director of Public Works with the approval of the City Administrator and may be removed at any time by the Director of Public Works with the approval of the City Administrator. The Building Commissioner shall have control and supervision over all employees assigned to the Division of Inspections, subject to the supervision of the Director of Public Works. The Director of Public Works shall serve as ex-officio Building Commissioner until the position is filled by appointment.

This section establishes the office of Building Commissioner, which currently does not exist within the City of Chesterfield. Consider prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Sec. 2-176 Same --- Building and construction codes.

The Director of Public Works and the Building Commissioner shall have the power to order all construction, alteration, or repair work to be stopped on any building, mechanical, plumbing, or electrical installation in the City when such work is being done in violation of any provision of any City ordinance or any national code adopted by the City by reference. Such stop orders may be given orally and may be enforced when so given, provided, however, that any oral stop orders will be followed by a written order within four (4) hours. All work thus stopped shall be not resumed except upon the permission of the Building Commissioner. Written stop orders may be served by any police officer or by any Public Works Department employee, and may be served by personal service or by posting on the premises affected.

This section references and assigns responsibilities to the office of Building Commissioner, which currently does not exist within the City of Chesterfield. Consider prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Sec. 22-177 Inspectors and officers authorized.

The Building Commissioner may employ and supervise building, plumbing, electrical, and mechanical inspectors and property maintenance code enforcement officers as may be authorized from time to time by the City Council. The employment of inspectors and officers shall be subject to the approval of the City Administrator.

This section references and assigns responsibilities to the office of Building Commissioner, which currently does not exist within the City of Chesterfield. Consider prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Sec. 2-179 Office of Superintendent of Streets.

There is hereby established the Office of Superintendent of Streets who shall be appointed by the Director of Public Works with the approval of the City Administrator by the Director of Public Works with the approval of the City Administrator.

This section is simply grammatically flawed and requires editing or preferably complete deletion.

Sec 2-181 Division of Parks and Recreation

There is hereby established within the Department of Public Works a Division of Parks and Recreation.

The Division shall be under the supervision of the Parks Supervisor.

The Division shall have charge of:

- (1) Parks development and maintenance.
- (2) Cycling, hiking and riding trails.
- (3) City participation in recreation and sports events.
- (4) Such other duties as may be prescribed from time to time by the Director of Public Works.

The Parks Supervisor may be removed from office by the Director of Public Works with

the approval of the City Administrator.

The Director of Public Works shall serve as ex-officio Parks Supervisor until such position is filled.

This establishes the Division of Parks and Recreation as a Division under the Department of Public Works. As evidenced by repeated organizational structure changes, this is a specific example of why organizational structure should be defined by law.

Further, this section specifically identifies the Parks Supervisor as being the head of the Parks and Recreation Division, subordinate to the Director of Public Works.

It is simply inappropriate to define this level of organizational hierarchy and titles by law. It is far too limiting for the City. These are policy and procedural decisions which can evolve at Council's discretion.

Division VI Department of Planning

Sec. 2-191 Established.

There is hereby established a Department of Planning, which shall have such other sections or divisions as from time to time may be authorized by the City Council and assigned to the **Department of Community Development.**

There currently is neither a Department of Planning, nor a Department of Community Development. While the complete text of this section is omitted for brevity, the titles, positions, duties and responsibilities defined therein are inconsistent with the current organization. Consider prior recommendations that such organizational hierarchy and specificity should not be incorporated into the code whatsoever.

Article VII Boards, Commissions, Committees, etc. Division 1 Generally

Sec. 2-202 Statutory Committees.

The statutory committees shall include the following plus any other committees hereafter created by ordinance or required by state statute. The statutory committees shall include:

- (1) Board of Adjustment;
- (2) Police Personnel Board;
- (3) Human Rights Commission;
- (4) Planning Commission;
- (5) **Public Works Board of Variance;**
- (6) Finance and Administration Citizens Advisory Committee.

While not a conflict with the existing code, the Public Works Board of Variance was created in 1992, as a mechanism to provide redress of decisions by the Public Works Director. As I recall, the Board has met on two occasions and it requires a specific composition of technical experience of its membership. I believe the City would be better served by simply incorporating this due process into the existing Board of Adjustment. The BOA could certainly manage review of either the Planning Department or Public Works Department decisions. Accordingly, I recommend that the Public Works Board of Variance be discontinued and their function consolidated with the Board of Variance, which is mandated by statute.

Division 3

Public Works

Subdivision 1. Board of Variance

Sec. 2-221 Created; duties generally.

Sec. 2-222 Membership of the Board.

Sec. 223 Chairperson; secretary

Sec. 2-224 Compensation.

Sec. 2-225 Appeals – Number of members present to hear.

Sec. 2-226 Same – Filing deadline and fee.

Sec. 2-227 Same – Meetings, notice, notification of appellant of decision

Sec. 2-228 Meetings to be open to public; minutes to be kept.

Sec. 2-229 Rules and regulations; instruction sheet for applications, plans etc.

Sec. 2-230 Approvals with modifications.

Sec. 2-231 When re-submission required.

Sec. 2-232 Conflict of interest.

I recommend that the Public Works Board of Variance be discontinued and their function consolidated with the Board of Variance, which is mandated by statute. Delete Subdivision 1 in its entirety.

Division 4

Finance and administration advisory committee

Sec 2-236 Creation

There is hereby created a Finance and Administration Advisory Committee.

Sec. 2-237 Members and qualifications; “quorum”

Sec. 2-238 Qualification of members.

Sec. 2-239 Terms of members.

- Sec. 2-240 Members to serve without compensation.**
- Sec. 2-240.1 Removal of members.**
- Sec. 2-240.2 Officers.**
- Sec. 2-240.3 Duties.**
- Sec. 2-240.4 Meeting.**
- Sec. 2-240.5 Rules and regulations.**
- Sec. 2-240.6 Conflict of interest.**

A citizens advisory committee is appropriately established by formal policy. It should not be codified into law. This section should be deleted in its entirety, but should concurrently be replaced by adopted Council policy.

Article VIII

Fiscal Year and Budget Procedures

- Sec. 2-241 Fiscal Year established.**
- Sec. 2-242 Budget procedure for first year.**
- Sec. 2-243 Computation of annual budget.**
- Sec. 2-244 Public inspection; notice and hearing on budget.**
- Sec. 2-245 Revision of annual budget.**
- Sec. 2-246 Budget transfers within Department.**
- Sec. 2-247 Transfers between Departments.**
- Sec. 2-248 Transfers from contingencies.**
- Sec. 2-249 Budget report.**
- Sec. 2-250 Audit.**

Section 2-241 thru 2-248 are procedures and should be contained in a purchasing or accounting manual. These policy documents currently exist were approved by Council. This section should be deleted in its entirety, but should concurrently be replaced by adopted Council policy.

Article IX

County Enforcement Services

Sec. 2-261 Authorization of Mayor to sign agreement.

The Mayor of the City of Chesterfield is authorized to sign an agreement with St. Louis County for the following services: Permits, inspections, licensing and approval of plans in the following areas:

- (1) Amusements;
- (2) Building;
- (3) Electrical;
- (4) Elevators;
- (5) Explosives;
- (6) Mechanical;

- (7) Plumbing;
- (8) Weights and measures.

Sec. 2-262 Agreement.

ARTICLE I. SCOPE OF SERVICES

1.1 SCOPE OF SERVICES. County shall provide Municipality code enforcement services in the following areas:

- (1) Building;
- (2) Residential;
- (3) Existing building;
- (4) Mechanical;
- (5) Plumbing;
- (6) Electrical;
- (7) Explosives.

ARTICLE II. TERM OF AGREEMENT

2.1 TERM OF AGREEMENT. This Agreement shall commence on the 21st day of November, 1988, and shall continue in effect from year to year unless terminated as provided in Article IX herein.

ARTICLE III PERMITS, INSPECTIONS, LICENSING AND APPROVAL OF PLANS

3.1 PERMITS. County, through its Department of Public Works, shall issue all permits required by the code(s) as set forth in paragraph 1.1 herein.

3.2 INSPECTIONS. County, through its Department of Public Works, shall execute all inspections required by the code(s) as set forth in paragraph 1.1 herein.

3.3 LICENSING. County, through its Department of Public Works, shall license all persons as required by the code(s) as set forth in paragraph 1.1 herein.

3.4 APPROVAL OF PLANS. County, through its Department of Public Works, shall examine all plans to determine their compliance with the code(s) as set forth in paragraph 1.1 herein.

ARTICLE IV RESTRICTIVE PROVISIONS

4.1 RESTRICTIVE PROVISIONS. If Municipality has adopted provisions applicable to the services as set forth in paragraph 1.1 herein said provisions being more restrictive than those contained in County's code(s), Municipality shall approve all plans prior to submission to County's Department of Public Works for issuance of permits.

ARTICLE V REGULATORY ORDINANCES

5.1 REGULATORY ORDINANCES. Municipality shall approve all plans for compliance with zoning or other regulatory ordinances prior to submission to County's Department of Public Works.

ARTICLE VI ENFORCEMENT OF MUNICIPAL ORDINANCE

6.1 ENFORCEMENT. County shall not take any action, either at law or in equity, to enforce the provisions of Municipality's Ordinance(s) as the same shall apply hereto. County shall notify Municipality of any known violations of Municipality's Ordinance(s).

ARTICLE VII FEE COLLECTION

7.1 FEE COLLECTION. All fees shall be collected and retained by County's Department of Public Works.

ARTICLE VIII AMENDMENTS TO COUNTY CODE

8.1 AMENDMENTS. In the event County shall add to, delete or amend sections of the code(s) as set forth in paragraph 1.1 herein, Municipality shall amend its Ordinance to make it identical in substance to County's amended code. County shall supply Municipality with a copy of its proposed amendment prior to its effective date and Municipality shall amend its Ordinance within ninety (90) days of the effective date of said County amendment. In the event County shall fail to provide a copy of its proposed amendment as provided above, Municipality shall have ninety (90) days to amend its Ordinance after receipt of a copy of County's amendments.

8.2 CERTIFIED COPY. Municipality shall supply County with a certified copy of all amendments to its Ordinance within five (5) days of said amendment's effective dates.

ARTICLE IX TERMINATION

9.1 FAILURE TO AMEND. In the event Municipality shall fail to amend its Ordinance as provided in paragraph 1.1 herein this Agreement shall be terminated.

9.2 TERMINATION FOR CONVENIENCE. Either County or Municipality may terminate this Agreement at any time by giving ninety (90) days prior written notice to the other party.

For some unexplained reason, the entire contractual text of the original 1988 contract for services with St. Louis County has been codified into law. I know of no other contract authorized or executed by the City which has been codified. This entire contract should not be included in the code.

Sec. 2-263 County code enforcement services for various codes; county codes adopted.

(a) The Code of the City of Chesterfield hereby adopts the 2009 International Building Code as adopted by St. Louis County ordinance 24,444 dated July 21, 2010; the 2009 International Residential Code as adopted by St. Louis County ordinance 24,427 dated July 13, 2010; the 2009 International Existing Building Code as adopted by St. Louis County ordinance 24,444 dated July 21, 2010; the 2009 International Property Maintenance Code as adopted by St. Louis County ordinance 24,440 dated July 14, 2010; the 2009 International Mechanical Code as adopted by St. Louis County ordinance 24,438 dated July 14, 2010; the 2009 Uniform Plumbing Code as adopted by St. Louis County ordinance 24,441 dated July 14, 2010; the 2008 National Electrical Code as adopted by St. Louis County ordinance 24,439 dated July 14, 2010; and the 1997 Explosives Code as adopted by St. Louis County ordinance 18,693 dated November 6, 1997, respectively as the building code, residential code, existing building code, property maintenance code, mechanical code, plumbing code, electrical code and explosives code of the City of Chesterfield, Missouri, as if fully set out herein.

This section should remain in the code as it reflects the periodic adoption of specific building codes. This is not the County contract, but the formal adoption of specific building codes. This section must remain codified.

(b) Copies of the above listed codes shall be maintained by the Department of Public Works in the City for reference.

This section errantly suggests that the codes are maintained by the Department of Public Works. However, the code organization has assigned the responsibility of these codes to the Department planning. Yet another prime example of why the “law” should not dictate organizational structure.

In addition, the City does NOT maintain copies of these codes. Inasmuch as we contract with St. Louis County for their execution, the City has no employee(s) qualified to act upon, and there is a significant expense in obtaining these codes, the City does not possess these documents.

**Article X
Officers and Employees
Division 1 Generally**

**Sec 2-301 Ordinary and travel expenses – Elected officials.
Sec 2-302 Same – Employees.**

Section 2-301 & 302 are actually personnel travel policies. These policies are adopted by formal policy and should not be codified into law. Such policies are adopted by City Council and implemented by City Staff. These sections should be deleted from the Code.

**Division 3
Personnel Rules and Regulations**

**Sec. 2-341 Purpose.
Sec. 2-342 Personnel rules and regulations adopted by reference.
Sec. 2-344 Additional personnel rules and regulations.**

Similar to prior recommendations, the City’s personnel policies and procedures, are just that, policies and internal procedures. They need not, and should not be codified into law. They have been adopted by City Council and are routinely modified.

Sec. 2-345 Personnel system.

The City has a centralized personnel system administered by the Personnel Department. All employees are appointed according to any ordinances governing their position and/or as adopted in the personnel rules and regulations. The City Administrator is the final hiring authority and must approve all recommendations. The City Council must also confirm some appointments.

This is inconsistent with the City's current practice. We do not have a centralized personnel system and do not have a Personnel Department. This is an internal policy as to how the City manages and assigns its staff. Not having a Personnel Director, Building Commissioner, Auditor, Purchasing Agent, et al, is a policy and budgetary judgement of the City, it should not be a violation of law. There is no requirement that this level of specificity be incorporated into the code. It should be removed.

Sec. 2-346 Personnel Director; powers and duties.

Personnel Director is responsible for the administration and technical direction of the City personnel program. Specifically, the Personnel Director:

- (1) Administers the personnel program, under the direction of the City Administrator, as set forth in the City ordinances and the Personnel Rules and Regulations.
- (2) Performs all lawful and necessary duties required for the effective administration of the personnel system.
- (3) Recommends to the City Administrator for consideration, rules, revisions and amendments to the personnel program.
- (4) Recommends to the City Administrator a position classification plan for approval by the City Council, and installs and maintains such plan.
- (5) Prepares and recommends to the City Administrator a pay plan for all City employees for approval by the City Council, establishes and maintains a roster of all persons in the municipal service setting forth each officer and employee, class title of position, salary, any change in class title, status and such other data as may be desirable or useful.
- (6) Develops and administers such recruiting and examining programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the City.
- (7) Authorizes all persons to be included on the payroll.
- (8) Develops and coordinates training and educational programs for City employees.
- (9) Investigates periodically the operation and effect of the personnel provisions of these rules and regulations and report such findings and recommendations to the City Administrator.

This is inconsistent with the City's current practice. We do not have a Personnel Director. Again, this is an internal policy as to how the City manages and assigns its staff. Not having a Personnel Director, Building Commissioner, Auditor, Purchasing Agent, et al, is a policy and budgetary

judgement of the City, it should not be a violation of law. There is no requirement that this level of specificity be incorporated into the code. It should be removed.

- Sec. 2-347 Classification of employees.**
- Sec. 2-348 Employment continued.**
- Sec. 2-349 Rights of employees.**
- Sec. 2-350 Disqualification of applicants.**
- Sec. 2-351 Prohibited acts.**

Similar to prior recommendations, the City's personnel policies and procedures, are just that, policies and internal procedures. They need not, and should not be codified into law. They have been adopted by City Council and are routinely modified. Sections 2-347 through 2-351 can and should be removed from code.

Sec. 2-352 Penalty

Any person who violates any provision of this division shall be subject to a fine of not more than five hundred dollars (\$500.00) or to imprisonment for not more than ninety (90) days or by both such fine and imprisonment.

As you may remember, for the entire code, we elected to create a penalties section, rather than have the prescribed penalty identify with each offense. That way, if global changes are made as they were a few years ago increasing penalty limits, you don't have to change multiple sections of code. If we are going to be consistent, we need to revise to remove the specific penalty amounts and refer to the penalty section of the code.

Sec. 2-353 Drug/alcohol testing policy and procedures for employees with commercial drivers licenses.

The City hereby adopts the drug/alcohol testing policy and procedures for employees with commercial drivers licenses as attached hereto Exhibit "A" and made a part hereof.

ARTICLE XI

Disposal of Unclaimed Property and Evidence

- Sec. 2-361 Marking and cataloging of unclaimed property.**
- Sec. 2-362 Sale and disposal of unclaimed property.**
- Sec. 2-363 Disposal of alcoholic beverages.**
- Sec. 2-364 Perishable property; donation to certain organizations.**
- Sec. 2-365 Destruction of controlled substances.**
- Sec. 2-366 Disposition of cash.**
- Sec. 2-367 Disposition of firearms and weapons.**
- Sec. 2-368 Cash found by a citizen.**

Sec. 2-369 Employees of the city receiving property at auction.

In any auction of the goods being presented under this article or any other disposition of such property, the employees of the City and their families are prohibited from participating in such auction and otherwise buying or receiving evidence or found property which had previously been held by the Police Department.

Similar to prior recommendations, the City's internal policies and procedures, should remain independent and not be codified into law. They should remain flexible and violations of a policy\procedure would not typically result in a municipal code violation. This section should be removed from code.

This section is specifically limited to unclaimed property and evidence disposal. It does not address surplus property or disposal of aged assets. However, I would recommend that a similar prohibition be incorporated into the City's personnel policies\procedures. Inasmuch as employees have internal knowledge and some degree of input in the decision process for equipment disposal and replacement, employees should NOT be permitted to directly purchase or receive such goods from the City.

End of Review