

KIRKSVILLE CITY COUNCIL **NEWSLETTER . . .**

Mari E. Macomber, City Manager
May 3, 2013

SUBJECTS:

**DATES TO REMEMBER
SOUTH 63 COMMUNITY IMPROVEMENT DISTRICT AMENDMENT
COUNCIL AGENDA
KBSA OPENING DAY
NORTH PARK SCULPTURE UPDATE
INTERNATIONAL BUILDING CODE AVAILABLE ON-LINE
ADAIR COUNTY OATS FUNDRAISER
NATIONAL VOLUNTEER WEEK
DOWNTOWN TRASH CAN LOCATIONS
SLUDGE HAULING AT WASTE WATER TREATMENT PLANT
TEAM DAVID HALL T-SHIRTS
FRANKLIN STREET UPDATE
PROPOSED DOG PARK
AIRPORT EXPENSES
NATIONAL HISTORY DAY COMPETITION
GROSS RECEIPTS
PROPERTY AT 4TH AND DODSON
KIRKSVILLE CELEBRATES ARBOR DAY**

DATES TO REMEMBER

05/05 – Percussion in the Park – Rotary Park sponsored by KHS Percussion
05/06 – City Council Study Session and Council Meeting
05/06 – Governmental Affairs – 7:30 am
05/06 – ATC and LPRC - noon
05/18 – Buddy Bass Tournament – Thousand Hills State Park
05/18 – Patt/Hagar wedding -- Rotary Park
05/18 – KBSA Opening Day—10 am at North Park
05/19 – Alzheimer’s Walk – Hike/Bike Trail sponsored by YMCA
05/22 – David Hall Blood Drive – noon at NEMO Fairgrounds
05/25 – Outdoor Pool Opens – 1 pm
05/27 – City Offices Closed – Memorial Day Holiday
05/28 – Special Olympics Torch Run

SOUTH 63 COMMUNITY IMPROVEMENT DISTRICT AMENDMENT

The South 63 Tax Increment Finance District and the South 63 Community Improvement District have been working together to get the façade improvements started within the district boundary. The next step in the process is to amend the CID petition to include a finding of blight in the district boundary. This amended petition will be on your agenda for May 6th but will only include a public hearing and first reading of the ordinance. Then at the May 20th meeting, the amended petition will have a second

reading and Council will be asked to approve a Revolving Loan to the South 63 TIF in the amount of \$100,000 and a Redevelopment Agreement that will spell out the specifics of the façade projects.

COUNCIL AGENDA

The City Council has a request for a special use permit on Monday's agenda for the purpose of constructing a cell tower on city owned property east of Cottage Grove. US Cellular has been talking to the City about placing a tower in this location. When discussing this with the Council previously, the direction was to make sure that once the tower were constructed that it would be located far enough away to eliminate concerns of it falling on any homes. This was communicated to the company and the location was selected with this in mind. The Planning and Zoning Commission turned down the request for this special use permit. Brad Selby will be at the Study Session on Monday to provide additional information and to answer questions the Council may have regarding the tower.

KBSA OPENING DAY

The Kirksville Baseball Softball Association will hold opening day ceremonies on Saturday, May 18 at 10 am at North Park. All teams will be announced and prizes awarded for the spring fundraiser. KBSA will also be holding a BBQ fundraiser and have games and activities for everyone.

NORTH PARK SCULPTURE UPDATE

Work continues on the sculpture for North Park that is being donated by the Freeman Foundation and created by Crandall Sculpture and Design. A few current pictures of the project have been included with this newsletter. The sculpture will have 3 figures that are standing in a group as if the "coach" is talking to the kids and it is currently being called "Fundamentals". The piece may be ready for installation as soon as fall of 2013.

INTERNATIONAL BUILDING CODE AVAILABLE ON-LINE

The council had discussed the availability of the International Building Code recently and had requested that a copy be made available to anyone who would want to view it. We were able to find a free on-line source for the International Building code and now have linked it to our website on the Codes and Inspections Department Page, <http://www.kirksvillecity.com/content/72/156/2959/default.aspx> or it can be accessed directly at <http://publicecodes.cyberregs.com/icod/index.htm>.

ADAIR COUNTY OATS FUNDRAISER

The Adair County Oats program is sponsoring a salad/dessert luncheon on May 14 from 11 am to 2 pm at the Adair County Annex Building 300 N. Franklin Street. The cost is \$6 per person. They will also have cookbooks and raffle tickets for sale at the event. The proceeds will go toward the purchase of new buses.

NATIONAL VOLUNTEER WEEK

National Volunteer week was April 21-27 and an email was sent to all volunteers who currently serve on the City's various boards and commission on the Council's behalf thanking them for their service to the City.

DOWNTOWN TRASH CANS LOCATIONS

The trashcans in the downtown area are checked and dumped by City crews several times each week and staff has noticed that several cans are underutilized by citizens. These cans have not been removed from the downtown area. There are still lots of trash cans around the square and public parking lots. A map of current locations is included with this newsletter.

SLUDGE HAULING AT WASTEWATER TREATMENT PLANT

The weather finally let the fields dry enough to start hauling sludge from the WWTP. The contractor set up on Friday, April 26 and Monday, April 29 and began hauling on Tuesday, April 30. They are running three trucks with about 5,000 gallons per load. Cycle time from the plant to the field on Route P is a little over an hour, so they are averaging about 15,000 gallons per hour. They are spreading sludge on the former McClanahan Farms on Route P just east of Highway 63. Pictures of the process have been included in this newsletter.

TEAM DAVID HALL T-SHIRTS

Orders are now being accepted for t-shirts in memory of David Hall. The shirts are orange, the support color for Leukemia, and are \$15 each. All proceeds will go to David's family to help cover medical expenses. The order form and artwork for the shirts is included in this newsletter, if you would like to purchase one.

FRANKLIN STREET UPDATE

The work on Franklin Street Phase 1 began again on Monday, April 29. The sidewalks from McPherson to Washington Street on the west side are currently being replaced. The project team met on May 1 to discuss Phase 2 of the project. Phase 2 will be bid on May 14th, 2013 at 3 pm and presented to Council at the May 20th meeting. If approved, the notice to proceed would begin on June 3 and would plan for completion around August 15. Plans have been made with Truman State University and Emergency Personnel for access to the area from Normal Street to Patterson Street during Phase 2 of the project. The time of this project is very tight and we will keep Council posted.

PROPOSED DOG PARK

The City has met with various groups in the past few years that are interested in creating a dog park in Kirksville. The Kirksville Leadership Institute Class of 2013 is considering this concept as their group project. The group would work to raise funds that could be used to convert the Roadside Park into a Dog Park with a small dog area and a large dog area. A fencing style has not been selected but Trumascap has offered to sell the group wooden fencing at cost and install if for free, if the project is selected. They will pick a project at their next session on May 7. If the Dog Park is

selected for the project, the KLI group will be invited to a future study session to discuss how the City may partner on this project.

AIRPORT EXPENSES

With the upcoming inspection it has been learned that we need to make a repair to our tank monitoring system. The system that is in place is suppose to provide a daily print out on the tank to verify that there are no leaks. This has not been working for almost a year. Just learned that this has to be repaired and we are required to provide this information. The estimated cost for this is less than \$10,000 but was not budgeted. In addition the HVAC system at the airport is in need of replacement. We had hoped to make it through this year. The cost for this is \$4,840. Finally, with David Hall's passing we have incurred additional personnel expenses that were not budgeted.

NATIONAL HISTORY DAY COMPETITION

The Kirksville Middle School will be sending Lauren Kramer to represent Kirksville and Missouri at the National History Day Competition at the University of Maryland on June 9-13. Ms. Kramer was selected in a statewide competition of more than 2,600 students for this honor. Each year students create exhibits, websites, documentaries, performances and papers about a topic that is related to the annual theme. This year's theme is *Turning Points in History: People, Ideas, Events*. Lauren's winning website, "Dust to Diamonds to Dust: The William P. Hall Story," is about the history of a man from Schuyler County, Missouri. In the late 1800's William P. Hall began building his herd of horses in Lancaster, Missouri, eventually providing approximately 200,000 horses to the British during the Boer War in South Africa. William P. You can find more about William P. Hall, the self-proclaimed "Horse King of the World" and circus entrepreneur at Lauren's website, 59781931.nhd.weebly.com. Lauren is seeking financial support for her trip in June. The council may want to discuss if this is something they would like to financially support.

GROSS RECEIPTS

The City Code Chapter 14 – Licenses, Permits and Miscellaneous Regulations, Article II – Businesses, Occupations, Professions or Services was reviewed last year by the City Council. During the review process, the Finance Director determined that Gross Receipt Fees authorized under section 14.19 – 14.22 were not submitted by all businesses. The practice of the Finance Department was to send a Gross Receipt Fee form on a quarterly basis to businesses with a sales tax identification number. This practice failed to send forms to businesses that do not collect sales taxes, but are required to pay a Gross Receipts Fee. As a reminder, we identified 242 businesses that should have been receiving a Gross Receipts Fee form and were sent one at the end of the 1st quarter this year. As a result of these additional mailings we have had a number of questions, many of which we have been able to respond to but two specific questions require policy decisions. In addition, there were a few businesses, hotels, motels, beauty shops, etc. that had received the gross receipts forms in the past but should not have received them.

Question 1 – If the business paid the gross receipts should we reimburse them and if so how far back should we go?

According to City Attorney Hickman's review of this matter, he determined that the City is not required to reimburse the businesses. Noting that Missouri recognizes the "voluntary payment doctrine" (sometimes called the "Missouri Rule"), as a defense to any action to recover money under these circumstances. The doctrine essentially states that payments to which a payee is not entitled, that are made under a mistake of law or ignorance of the law, are not recoverable unless made under fraud or duress, unless otherwise provided by a statute. Duress has to be something more than the mere existence of the potential power in the payee to compel payment. The City would have previously required payments from hotels etc. mistakenly believing that the code required such payments, and that they were paid under the same mistaken belief. If the City had exacted the prior payments knowing that they were not required under the code, then the payments could be recovered.

Recommendation: Since we discovered the mistake at the end of last year, it is suggested that we reimburse these businesses for that amount they paid in the last quarter of 2012.

Question 2 – Do Not for Profits have to pay the Gross Receipts Fee?

City Attorney Hickman reviewed this matter for us as well. His conclusion was that there was nothing in the statutes that would prevent the City from imposing the licensing requirements and accordingly the gross receipts licensing tax requirements on not-for-profit organizations. But the City's own ordinance limits the licensing requirements to for profit individuals.

As it stands right now, we will need to let the not-for-profits know that they do not have to pay, but the City Council could change the ordinance to allow for the collections of Gross Receipts as these businesses do operate within the city limits. The City has been asked by Preferred Family to exempt them from this requirement.

PROPERTY AT 4TH AND DODSON

For a number of years now we have had an unsightly corner property located at the corner of 4th and Dodson. The land apparently was railroad property. The adjoining property owners are Doug Porter and the city, due to the location of our street right of way. Mr. Porter has agreed to obtain the land and will maintain the property. Mr. Porter will add an additional apartment building onto this lot and will provide the City the necessary utility easement.

Attachments

- Google Analytics – April
- North Park Sculpture Pictures
- Downtown Map of proposed trash cans locations
- Team David T-shirt order form

Building Permits for April 2013
Humane Society Report for March 2013
Arbor Day Press Release
Dump Truck Pictures for Council Agenda Items #15 & #16
Lake Level Pictures for Forest Lake
Friends of Forest Llewellyn Cemetery Project Ideas
Gross Receipts – Attorney Opinion

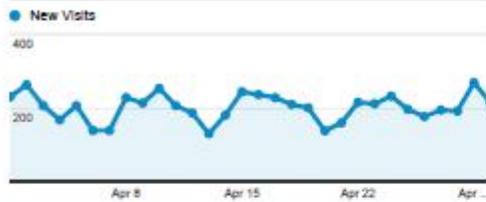
My Dashboard

Apr 1, 2013 - Apr 30, 2013

Advanced Segments | + Add Widget | Email | Export

Customize Dashboard

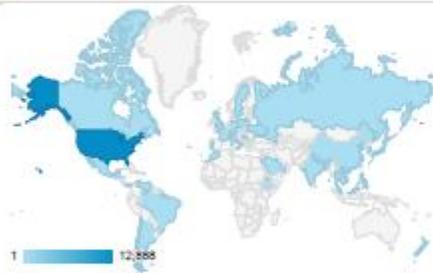
New Visits



Unique Visitors



Visits



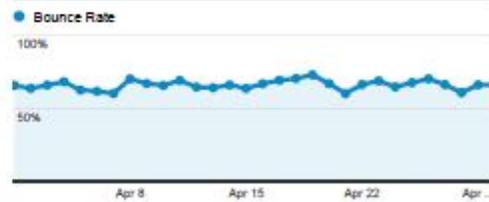
Visits by Browser

Browser	Visits
Internet Explorer	5,682
Chrome	3,327
Safari	1,642
Firefox	1,538
Android Browser	763
Safari (In-app)	67

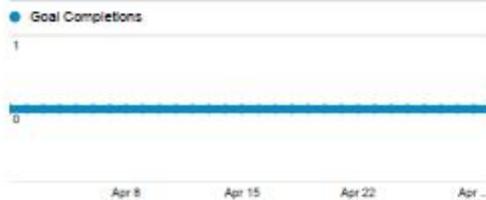
Avg. Visit Duration and Pages / Visit



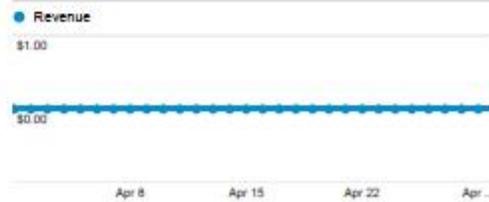
Bounce Rate



Goal Completions



Revenue



Audience Overview

● % of visits: 100.00%

Overview



7,762 people visited this site

Visits

13,122

Unique Visitors

7,762

Pageviews

23,772

Pages / Visit

1.81

Avg. Visit Duration

00:01:29

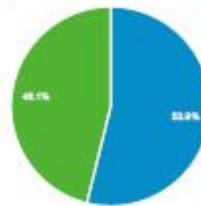
Bounce Rate

66.37%

% New Visits

46.11%

■ Returning Visitor ■ New Visitor



Language	Visits	% Visits
1. en-us	12,572	95.81%
2. en	403	3.07%
3. zh-cn	29	0.22%
4. en-gb	22	0.17%
5. fr	14	0.11%
6. es-es	8	0.06%
7. ja	8	0.06%
8. de-de	7	0.05%
9. en_us	5	0.04%
10. es-us	5	0.04%

[view full report](#)

North Park Sculpture: "Fundamentals"



Downtown map with trash can locations.



T-Shirt Order Form

All T-Shirts are 100% Cotton and ORANGE.

SHORT SLEEVE ONLY

\$15 each

- PLEASE ORDER FOR YOURSELF AND OTHER MEMBERS OF YOUR FAMILY
- YOU CAN PLACE AS MANY ORDERS AS YOU WISH
- OUR FIRST INITIAL ORDER WILL BE PLACED NO LATER THAN MAY 6TH. WE WILL BE PLACING AN ADDITIONAL ORDER AT A LATER TIME, BUT THE FIRST ORDER WILL BE HERE BEFORE THE BLOOD DRIVE ON MAY 22ND
- PLEASE ENCLOSE PAYMENT WITH THE ORDER FORM

Please indicate the # of each size you want to order:

S _____ M _____ L _____ XL _____ XXL _____

Name _____ Agency _____

Address _____

E-Mail Address _____

Telephone _____ Cell _____

PLEASE RETURN YOUR ORDER FORM AND PAYMENT TO:

LINDSAY LECKBEE or SONYA RAY
CITY OF KIRKSVILLE
201 S. FRANKLIN
KIRKSVILLE, MO 63501



If you have any questions or need additional information, please contact Lindsay @ lleckbee@kirksvillecity.com (660) 627-1224; or Sonya @ sray@kirksvillecity.com (660) 627-1272

BUILDING PERMITS FOR APRIL:

Date: April 1, 2013
Owner: Richard Gooch
Use: Multi-Family
Address: 1101 N. Luther Apts. A-D
Permit No.: 7871
Const. Co.: Self

Date: April 4, 2013
Owner: Craig Kilmer Construction
Use: Duplex
Address: 908-910 E. Brewington
Permit No.: 7873
Const. Co.: Self

Date: April 8, 2013
Owner: Daniel Coin
Use: Garage Addition
Address: 1305 W. LaHarpe
Permit No.: 7875
Const. Co.: Self

Date: April 9, 2013
Owner: James Harmon
Use: Garage
Address: 204 W. LaHarpe
Permit No.: 7881
Const. Co.: Mike Louder

Date: April 12, 2013
Owner: Kirksville R-III School
Use: Single-Family
Address: 2904 Weatherbrooke
Permit No.: 7884
Const. Co.: Self

Date: April 24, 2013
Owner: Merle Dunham
Use: Addition – Single Family
Address: 2300 State Hwy P
Permit No.: 7887
Const. Co.: Ryan Barnes

Date: April 25, 2013
Owner: Tiffany Athon
Use: Addition – Single Family & Garage
Address: 3001 Timber Lane
Permit No.: 7876
Const. Co.: Hays Construction

Date: April 30, 2013
Owner: Car Mart
Use: Garage
Address: 2015 N. Baltimore
Permit No.: 7893
Const. Co.: Carolina Carports

ADAIR COUNTY HUMANE SOCIETY

P. O. Box 481

Kirkville, Missouri 63501

April 10, 2013

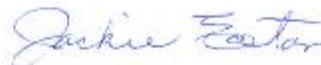
REC'D APR 23 2013

TO: Kirkville City Manager

FROM: Adair County Humane Society

RE: March Shelter Report

Brought to Shelter	Dogs	13
	Cats	8
	Puppies	1
	Kittens	0
Reclaimed by Owner	Dogs	0
	Cats	0
	Puppies	0
	Kittens	0
Euthanized from City	Dogs	5
	Cats	3
	Puppies	0
	Kittens	0
Brought to Shelter Dead	Dogs	0
	Cats	0
	Puppies	0
	Kittens	0
	Other	12



Jackie Eaton, Treasurer



For Immediate Release

April 24, 2013

For More Information Contact:
Melanie Smith
(660) 627-1224

KIRKSVILLE CELEBRATES ARBOR DAY

(Kirksville, MO) – The City of Kirksville will celebrate Arbor Day on Friday, April 26th. The tree planting will take place at Forest Llewellyn Cemetery approximately 3 p.m. Representatives from the Parks and Recreation Department, Missouri Department of Conservation and members of the Friends of the Forest Llewellyn Cemetery Committee will be planting trees that fulfill the tree plan for the cemetery.

##

Unit 253, 2001 Sterling Tandem—Transfer to Utility Maintenance from Streets



Unit 278, 1996 GMC Tandem—Trade in for new truck for Streets.



Unit 251, 2001 Sterling 2-ton—Refurbish = replace bed, upgrade hydraulics, new plow, new brine tank, retain salt spreader



Forest Lake Docks and Ramp
December 2012



April 2013



Cemetery Improvements

Restore brick veneer at front gate. Repair gate. Relay pavers at entrance

Repair south drive/walk (concrete pavement)

Install security fence on west property line, separate cemetery from Kirksville Plumbing Supply

Install decorative iron fence on Harrison to match downtown theme

Restore damaged tombstones

Right fallen but unbroken stones

Earthwork and seeding at sunken graves

Relocate steps to A.T. Still grave/Still plot

Develop an "Adopt a Plot" program for community involvement

Complete cemetery way finding markings

GPS graves and stones, update mapping

Locate graves previously marked but w/o stones today, record and mark.

Locate and mark unmarked graves, record

Question Presented: Can the city impose a gross receipts tax on a not-for-profit corporation?

Answer: There appears to be no limitation on this in the statutes, but I believe there is a limitation in the city's ordinances.

DISCUSSION

The first place to look, of course, is the state enabling statutes. There does not appear to be any limitation preventing gross receipts licensing taxation of not-for-profits. The operative provisions are contained in chapters 71 and 94. Chapter 71 contains exemptions and Chapter 94 is the enabling provisions.

Chapter 71-Provisions Relative to All Cities and Towns

Imposition of tax on business, when.

Section 71.610. No municipal corporation in this state shall have the power to impose a license tax upon any business, avocation, pursuit or calling, unless such business, avocation, pursuit or calling is specially named as taxable in the charter of such municipal corporation, or unless such power be conferred by statute.

Imposition of tax or license fee on certain professions prohibited--imposition of tax or fee prohibited unless business office maintained--limitation on business license tax amount in certain villages.

Section 71.620. 1. Hereafter no person following for a livelihood the profession or calling of minister of the gospel, duly accredited Christian Science practitioner, teacher, professor in a college, priest, lawyer, certified public accountant, dentist, chiropractor, optometrist, chiropodist, physician or surgeon in this state shall be taxed or made liable to pay any municipal or other corporation tax or license fee of any description whatever for the privilege of following or carrying on such profession or calling, and, after December 31, 2003, no investment funds service corporation, as defined in section 143.451, may be required to pay, or shall be taxed or made liable to pay any municipal or other corporation tax or license fee of any description whatever for the privilege of following or carrying on its business or occupation, in excess of or in an aggregate amount exceeding twenty-five thousand dollars annually, any law, ordinance or charter to the contrary notwithstanding.

2. No person following for a livelihood the profession of insurance agent or broker, veterinarian, architect, professional engineer, land surveyor, auctioneer, or real estate broker or salesman in this state shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of following or carrying on his or her profession by a municipality unless that person maintains a business office within that municipality.

3. Notwithstanding any other provision of law to the contrary, after September 1, 2004, no village with less than one thousand three hundred inhabitants shall impose a business license tax in excess of fifteen thousand dollars per license.

Chapter 94 Taxations in Other Cities.

License taxes on certain businesses.

94.110. The council shall have power and authority to *levy and collect a license tax* on wholesale houses, auctioneers, architects, druggists, grocers, banks, brokers, wholesale merchants, merchants of all kinds, confectioners, delivery trucks, ice trucks, transfer trucks, laundry wagons, milk wagons, merchant delivery companies, cigar and tobacco stands, hay scales, wood dealers, coal dealers, lumber dealers, real estate agents, loan companies, abstracters, abstract agencies, loan agents, collection agencies, undertakers, public buildings, office buildings, public halls, public grounds, concerts, photographers in office or upon the streets, canvassers, artists, drummers, patent right dealers, automobile agents and dealers, automobile accessory dealers, insurance companies, insurance agents, taverns, hotels, rooming houses, boardinghouses, health schools, telephone companies, street contractors, paper hanger contractors, painting contractors, plastering contractors, and all subcontractors, flour mills, express company agencies, wagons, buggies, carriages, tanners, barbers, barbershops, hair dressers, hair dressing shops, whether conducted in connection with other business or separate beauty parlors, tailors, florists, nursery stock agents, book binders, monument dealers and agencies, manufacturing agents, shoe cobbler shops, storage warehouses, shoe shining parlors, newspaper offices, job printing plants, ready-to-wear clothing agencies, tailor-made clothing agencies, sewing machine agents, piano and organ dealers and agents, foreign coffee and tea dealers and agents, and *all other vocations whatsoever*, and fix the rate of carriage of persons and wagonage, drayage and cartage of property; and to *levy and collect a license tax and regulate* hawkers, peddlers, pawnbrokers, restaurants, butchers, wholesale butchers, bathhouses and masseurs, lunch stands, lunch counters, lunch wagons, soft drink and ice cream stand and vendors, ice cream parlors, peanut and popcorn stands, and stands of every kind, hucksters, opera houses, moving picture shows, private parks, public lectures, public meetings, baseball parks, outdoor advertising, horse and cattle dealers, stockyards, wagon yards, auto yards, oil stations, wholesale and retail, inspectors, gaugers, mercantile agents, manufacturing and *other corporations, or institutions*, machine shops, blacksmith shops, foundries, sewer contractors, building contractors, stone contractors, plumbing contractors, brick contractors, cement contractors, sidewalk contractors, bridge contractors, and all subcontractors, street railroad cars, light, power and water companies, gas companies, laundries, laundry agencies, ice plants and ice plant agencies, ice dealers, omnibuses, automobiles, automobile trailers, tractors, carts, drays, milk wagons, laundry wagons, delivery wagons, transfer and job wagons, ice wagons, and all other vehicles, traveling and auction stores, plumbers, pressing establishments, installment houses and agencies, produce and poultry dealers, feather renovators, bakers and bakeries, bakery delivery wagons, and delivery autos, bottling works, dye works, cleaning establishments, sand plants, steam fitters, corn doctors, chiropodists, hackmen, taxicabs, buses, draymen, omnibus drivers, porters, ferries, and to regulate the same, and the landing thereof,

within the limits of the city, and *all others pursuing like occupations*; and to *levy and collect a license tax, regulate, restrain, prohibit and suppress* ordinaries, money brokers, money changers, intelligence and employment offices and agencies, public masquerades, balls, street exhibitions, dance halls, fortune tellers, pistol galleries, shooting galleries, palmists, private venereal hospitals, museums, menageries, equestrian performances, fluoroscopic views, picture shows, telescopic views, lung testers, muscle developers, magnifying glasses, ten pin alleys, ball alleys, bowling alleys, billiard tables, pool and other tables, miniature golf courses, theatrical or other exhibitions, boxing and sparring exhibitions, shows and amusements, amusement parks, and the sales of unclaimed goods by express companies or common carriers, auto wrecking shops, bill posters, junk dealers, porters, carnival and street fairs, circuses and shows, for parade and exhibition, or both, skating rinks, and runners and solicitors for steamboats, cars, stages, taxicabs, hotels, rooming houses, boardinghouses, bathhouses, masseurs, health schools, *and all other vocations and business whatsoever*, and all others pursuing like occupations.

Viewing these two chapters together, there does not appear to be any limitation on imposing a gross receipts licensing tax on not-for-profit corporations. Preferred Family Healthcare has raised the issue of their exemption from state income taxation as well as their exemption from paying state sales taxes. There is no doubt that Preferred Family Healthcare is exempt from sales taxes. The exemption is set forth in Section 144.030 at subsection 20, which provides as follows:

(20) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities

However, Preferred Family Healthcare cannot infer that a sales tax exemption applies to a gross receipts licensing tax. They are not the same. There is clearly a distinction between a sales tax and a gross receipts licensing tax. It has been discussed many times by the courts. The following excerpt from *Miller v. City of Springfield*, 750 S.W.2d 118, 120 (Mo. App. 1988), is but one example:

Both parties cite and primarily rely on *Anderson v. City of Joplin*, 646 S.W.2d 727 (Mo. 1983) and *Suzy's Bar & Grill, Inc. v. Kansas City*, 580 S.W.2d 259 (Mo. banc 1979). *Anderson*, 646 S.W.2d at 728, summarizes how *Suzy's Bar & Grill* distinguishes between a sales tax and a license tax based on gross receipts:

In either instance, the base may be referred to as "gross receipts," but the distinction lies in the difference between the kinds of receipts upon which the tax is assessed. A gross receipts-license tax starts with the revenue received by the licensee as a base, not the basic charge made to the customer by the merchant, and assesses a tax equal to a percentage of those revenues without regard to the makeup of the revenue and without restrictions to the percentage stated in the taxing ordinance. [citing *Suzy's Bar & Grill*]. On the other hand, a sales tax is assessed against the taxpayer as a percentage of the price of the goods.

Moreover, while the purpose for a sales tax is simply to raise revenue, the purpose of the gross receipts tax is different. As the court noted in *City of Bridgeton v. Nw. Chrysler-Plymouth, Inc.*, 37 S.W.3d 867, 872 (Mo. Ct. App. 2001):

Thus, “[g]ross receipts are merely a means to calculate the occupational license tax; what is being taxed is the privilege of doing business in [the municipality].” *Kansas City v. Graybar Electric Company, Inc.*, 485 S.W.2d 38, 41 (Mo. banc 1972), quoting 53 C.J.S. *Licenses* Section 30, p. 573 (1948).

These two taxes are clearly not the same and many cases have said as much. The question is whether the statutes or cases have applied the sales tax exemption to the gross receipts licensing tax. I have found no case that addresses this head on. However, there are cases which suggest that the sales tax exemption does automatically apply to the gross receipts tax. In *David Ranken, Jr. Technical Inst. v. Boykins*, 816 S.W.2d 189, 193 (Mo. 1991), the issue was whether a technical college would be exempt from a license tax. The cities’ enabling ordinance provided that it applied to “all businesses, avocations, pursuits, and callings that are not exempt from the payment of licenses by law...” Without reaching this issue the court found that the school was exempt under §71.620.1 as it exempts teachers. The court noted:

“We therefore find that this charitable school is exempt from the city license tax under the provisions of section 71.620.1. In view of this holding it is unnecessary to determine whether this not-for-profit school is a “business, avocation, pursuit, or calling” that the city may license and tax under its ordinance, unless exempt.”

I would certainly think that if the sales tax exemption automatically exempted the school from payment of any gross receipts licensing tax the court would have summarily found as much. Instead the court focused on the fact that the school fell under one of the specific exemptions for taxation for teachers.

A similar outcome can be found in *Bd. of Educ. of City of St. Louis v. Daly*, 175 S.W.3d 638, 639-42 (Mo. Ct. App. 2005). In this case, again the issue was not whether a sales tax exemption provided a blanket exemption from gross receipts taxes, but instead focused on whether the specific business involved (the Board of Education) was of a type exempt from taxation.

The Board owns a parking garage adjacent to its headquarters building in St. Louis City. The parking garage provides parking for Board employees and guests. Any excess parking spaces at the parking garage not being used by Board employees or guests can be used and paid for by users unrelated to the Board or its business (“unrelated parkers”). By contract, Central Parking performs certain management duties for the Board at the parking garage. The Board retains decision-making authority, is responsible for insuring and repairing the parking garage and is solely responsible for its budget deficits.

The License Collector imposed a license tax on the gross receipts of the Board’s parking garage operations under a city ordinance that taxes corporations operating public

garages in the City. See section 8.76.040 St. Louis City Revised Code (1994).¹ The Board paid the taxes under protest, and then the Board and Central Parking sought a declaration that the parking garage's gross receipts were exempt from taxation under a state statute that provides an exemption for certain professionals' activities, including teachers. See section 71.620 RSMo ("professional exemption")... We agree with the Board that it operates the garage, but find that the professional exemption does not prevent the License Collector from taxing the Board's revenue from unrelated parkers under the public garage tax... In this case, the taxes levied under the public garage tax against revenue from unrelated parkers are totally distinct from taxes levied "for the privilege of following or carrying on" the teaching profession. The public garage tax is not a tax "imposed for the privilege of the taxpayer to engage in or practice the particular business or profession," but is a license tax on the operation of a public garage... The exemption does not apply to a tax on the operation of this parking garage, at least with respect to unrelated parkers.

It is therefore my conclusion that the state sales tax exemption has no application to the issue of whether Preferred Family Healthcare is exempt from the gross receipts tax. That issue is controlled by §71.620 which specifies exemptions, 94.110 which specifies the businesses that can be regulated, and the language of the enabling ordinance itself.

In reading §71.620 there is a clear exemption for "physicians or surgeons". I am aware that Preferred Family Healthcare has physicians and surgeons on staff. I would think that under this statute the gross receipts related to a physician and surgeon's work should not be included in the gross receipts calculation. In §94.110 there is no provision which specifically allows for the regulation and taxation of alcohol and drug treatment facilities. I do believe that the statute is broad enough, however, as it specifies that the *city can levy and collect a license tax on ... all other vocations whatsoever; levy and collect a license tax and regulate... other corporations, or institutions... and all others pursuing like occupations; and levy and collect a license tax, regulate, restrain, prohibit and suppress... all other vocations and business whatsoever, and all others pursuing like occupations.*

The final issue is whether the ordinance itself allows for the gross receipts taxation against a not-for-profit corporation. This issue is more problematic. Section 14-17 specifies that:

Every person doing **business** and engaged in any of the businesses, occupations, professions or services shall pay the license fees set forth in this chapter which shall be annual and which shall be due and payable and issued on or before the first day of March of each year and be valid until the last day of February of the following year. (Emphasis mine).

The problem concerns the fact that business is a defined term. Section 14-16 contains the definitions, and in particular, defines business:

Business. All kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted *for private profits or benefits*, either directly or indirectly, on any premises in this city or anywhere else within

its jurisdiction, as permitted by the Revised Statutes of Missouri and as provided for by this Code and other ordinances of the city.

This language would seem to exempt not-for-profit institutions. I reviewed some of the older versions of the code for clarity. In the old red book code is this language:

Sec. 15-4 Nonprofit organizations devoted to philanthropic, charitable, religious, patriotic, educational, scientific, civic or similar purposes may, in the sound discretion of the board of aldermen, be granted free permits in lieu of any license which might otherwise be required of them under this code.

Of course, this old language would be problematic in its own way in that there would be an argument that this language would create due process and equal protection constitutional problems in that there would be significant room for favoritism and that not all not-for-profits would be necessarily treated the same. I suspect it was for that reason that the language was changed to the present language in the 1974 codification of the city code. If it is the intent of the city council to exempt not-for-profit organization, I believe that the more blanket exemption as is contained in the definition for "business" is much more reasonable and enforceable.

The question has been raised as to the impact of section 14-24 which provides as follows:

Sec. 14-29. - Acts constituting "doing business"; agents of nonresidents or itinerants to obtain license.

(a) For the purposes of this article, any person shall be deemed to be in business or engaged in *nonprofit* enterprise, and thus subject to the requirements of subsections (1), (2) and (3) of this section, when he does one (1)act of:

(1) Offering or selling any goods or service.

(2) Soliciting business or offering goods or services for sale or hire.

(3) Acquiring or using any vehicle or any premises in the city for business or sales purposes.

(b) The agents or other representatives of *nonresidents* or itinerants who are doing business in this city shall be personally responsible for the compliance of their principals and of the businesses they represent with this article.

The purpose of this section is unclear to me and the section is confusing. I believe the section is designed to make it clear that minimal acts can result in a finding that a business is "doing business" within the city. I suspect that it was intended to apply to non-resident (and not nonprofit) businesses that have minimal contact within the city, yet are involved in commercial activities within the city, so that this may be a typographical error. This is further supported by the language in subpart (b) which specifically applies to "nonresidents." The language in identical form is present at least as far back as the 1974 code in section 14-24. It is clear, however, that the section in its present form does

not provide that nonprofits are subject to the code requirements for getting a business license, only that they are subject to requirements of subparts (1), (2) and (3). These subsections have no requirements, so I am unclear about what is intended here. It may have been the intention of the city council to bring organizations with minimal contacts under *Articles I, II and III*, (see the following outline structure of Chapter 14), and thereby subject to tax, but that is clearly not what this section provides.

Chapter 14 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS ^[1]

ARTICLE I. - IN GENERAL

ARTICLE II. - BUSINESSES, OCCUPATIONS, PROFESSIONS OR SERVICES

ARTICLE III. - PEDDLERS, SOLICITORS AND CANVASSERS

ARTICLE IV. - CIGARETTES

ARTICLE V. - FARMERS' MARKET

ARTICLE VI. - PAWNBROKERS AND SECONDHAND DEALERS

ARTICLE VII. - ITINERANT VENDORS

ARTICLE VIII. - PUBLIC UTILITIES

ARTICLE IX. - ALARMS

ARTICLE X. - ADULT ENTERTAINMENT BUSINESSES

ARTICLE XI. - GEOGRAPHIC INFORMATION SYSTEM (GIS)

If that is, in fact, the intent, this section should be amended to specify the Articles, not sections that minimal contact organizations come under. And further discussions should be had as to whether this is intended to apply to not-for-profits versus non resident organizations.

CONCLUSION

In conclusion, it is my opinion that there is nothing in the statutes which which would prevent the city from imposing the licensing requirements and accordingly the gross receipts licensing tax requirements on not-for-profits organizations like Preferred Family Healthcare. However, it is my opinion that the City's own ordinances limit the licensing requirements to for-profit individuals and organizations such that Preferred Family Healthcare, as a not-for-profit organization, would be exempt. I further do not believe that Section 14-29 changes my opinion.