

AN ORDINANCE REPEALING SECTIONS 1.12.050 AND 1.12.060 OF THE CODE OF THE CITY OF NORTH KANSAS CITY, MISSOURI; REPEALING ALL OTHER CODE AND ORDINANCE PROVISIONS PROVIDING FOR PRIMARY ELCTIONS WITHIN THE CITY; AND DELETING AND STRIKING FROM THE CODE AND PREVIOUSLY ADOPTED ORDINANCES ANY REFERENCES TO PRIMARY ELECTIONS WITHIN THE CITY.

WHEREAS, the City of North Kansas City, Missouri (the “City”) is a third class city and political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri; and

WHEREAS, the Code of the City of North Kansas City, Missouri (the “Code”) presently provides for the holding of primary elections in the City “[i]f more than two qualified candidates properly file for any elective office within the city. . . ” [see, Code at §§ 1.12.050 and 1.12.060]; and

WHEREAS, by action of the Missouri legislature, MO. REV. STAT. §115.123 was amended effective August 28, 2012, and now provides, in relevant part, that “[b]ond elections may be held on the first Tuesday after the first Monday in February but no other issue shall be included on the ballot for such election; and

WHEREAS, in order to comply with the requirements of MO. REV. STAT. §115.123, the City must repeal all authority and references within the Code and other City ordinances regarding the holding of primary elections within the City.

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

Section 1. Repeal of Code Sections. Sections 1.12.050 and 1.12.060 of THE CODE OF THE CITY OF NORTH KANSAS CITY, MISSOURI be and hereby are repealed in their entirety.

Section 2. Repeal of All Code and/or Ordinance Provisions Authorizing or Providing for Primary Elections. All other provisions within the Code or in any ordinance adopted prior to this ordinance that authorize the holding of primary elections within the City are hereby repealed.

Section 3. Deletion of All Code and/or Ordinance Provisions Referencing Primary Elections. Any other references within the Code or in any ordinance adopted prior to this ordinance that references or refers in any manner to primary elections within the City are hereby deleted and stricken therefrom and shall have no force or effect.

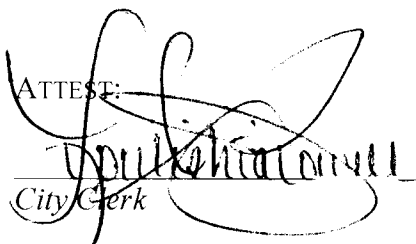
Section 4. Severability. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence,

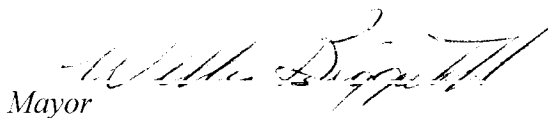
clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 5. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

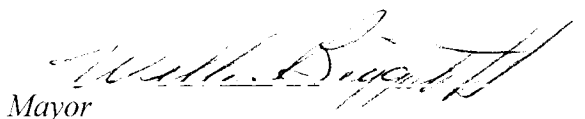
Section 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

PASSED this 2nd day of October, 2012.

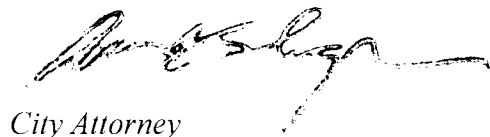
ATTEST:

City Clerk

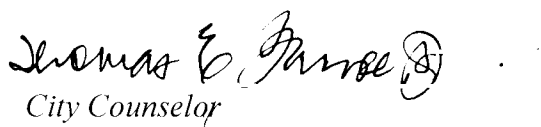

Mayor

APPROVED this 2nd of October, 2012.


Mayor

APPROVED AS TO FORM:


City Attorney


City Counselor

EXPLANATION TO COUNCIL

DATE: 1 October 2012

TYPE OF ORDINANCE: Modification of City Code by Eliminating Primary Elections within the City of North Kansas City, Missouri—Change in State Statute effective August 28, 2012

ORIGINATING DEPARTMENT: Administration

PURPOSE: The purpose of Ordinance No. 8649 is to consider modification of THE CODE OF THE CITY OF NORTH KANSAS CITY, MISSOURI (the “Code”), by eliminating certain provisions that provide for the holding of primary elections within the City of North Kansas City (the “City”).

REMARKS: Several weeks ago, the city clerk brought to my attention a new state statute, effective August 28, 2012, involving changes to the State of Missouri’s election laws. *See*, MO. ANN. STAT. § 115.123. This statute, as now effective, generally eliminated authorization for June and February election dates in Missouri as those dates had previously been used. The June date appears to be totally eliminated. With four exemptions, the February election date can now be used only for bond elections. The statute now specifically provides in relevant part in paragraph 1 as follows:

“Bond elections may be held on the first Tuesday after the first Monday in February but no other issue shall be included on the ballot for such election.”

MO. ANN. STAT. § 115.123.

Based thereon and upon some additional investigation and legal research, it appears that a third class city can no longer hold a primary election on the first Tuesday after the first Monday in February.¹

The city clerk has talked with the Missouri Municipal League regarding the amended statutory election provisions as those provisions relate to the ability of a third class city to hold primary elections in February. The Missouri Municipal League has taken the position that third class cities can no longer use the first Tuesday after the first Monday in February for municipal primary elections.

Though I have not thoroughly researched the legislative history of the amended election law as set forth in MO. ANN. STAT. § 115.123, a possible reason the elimination of the February election date for municipal primary elections may be due to the change of the presidential primary in Missouri from the first Tuesday after the first Monday in March to the first Tuesday after the first Monday in February.

¹ This conclusion is only applicable to those third class cities that have not adopted an optional form of government. For example, it is my understanding that Gladstone operates under the city manager optional form of government for a third class city. Without providing any legal opinion for the City of Gladstone, it does appear that there is a specific state statute [MO. ANN. STAT. § 78.470] that may still authorize a primary election to be held in a third class city that has adopted the optional city manager form of government. North Kansas City has not adopted an optional form of government for a third class city.

It should be noted that the statute, as amended, does allow for a “general municipal election day” each year. The definition of the “general municipal election day” is set forth in MO. ANN. STAT. § 115.121.3 as follows:

“The election day for the election of political subdivision and special district officers shall be the first Tuesday after the first Monday in April each year; and shall be known as the general municipal election day.”

Until the last couple of weeks, it had not been anticipated that the City would need to abolish its primary election day during the first week in February. Once, however, we became aware of the recently amended state statute, we felt that it was important to amend the City Code provision accordingly and to do so prior to the date on which candidates would be authorized to file for the primary election. Since the primary election would be eliminated, the opening for filing of candidates would move back a couple of months.

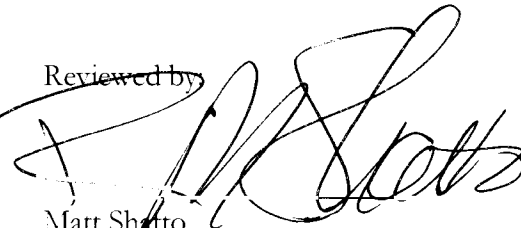
I trust you will find all to be in order, but should you have any questions or comments, please feel free to contact me.

Submitted by:



Thomas E. Barzee, Jr.
City Counselor

Reviewed by:



Matt Shatto
City Administrator

AMENDED EXPLANATION TO COUNCIL

DATE: 2 October 2012

TYPE OF ORDINANCE: Modification of City Code by Eliminating Primary Elections within the City of North Kansas City, Missouri—Change in State Statute effective August 28, 2012

ORIGINATING DEPARTMENT: Administration

PURPOSE: The purpose of Ordinance No. 8649 is to consider modification of THE CODE OF THE CITY OF NORTH KANSAS CITY, MISSOURI (the “Code”), by eliminating certain provisions that provide for the holding of primary elections within the City of North Kansas City (the “City”).

REMARKS: Several weeks ago, the city clerk brought to my attention a new state statute, effective August 28, 2012, involving changes to the State of Missouri’s election laws. *See*, MO. ANN. STAT. § 115.123. This statute, as now effective, generally eliminated authorization for June and February election dates in Missouri as those dates had previously been used. The June date appears to be totally eliminated. With four exemptions, the February election date can now be used only for bond elections. The statute now specifically provides in relevant part in paragraph 1 as follows:

“Bond elections may be held on the first Tuesday after the first Monday in February but no other issue shall be included on the ballot for such election.”

MO. ANN. STAT. § 115.123.

Based thereon and upon some additional investigation and legal research, it appears that a third class city can no longer hold a primary election on the first Tuesday after the first Monday in February. Though MO. REV. STAT. § 77.040 specifically provides that “the city council may by ordinance provide for the nomination of officers by primary elections,” the City must nevertheless comply with the provisions of the general election laws of the State of Missouri. As stated by the Missouri Supreme Court in *State ex rel. Edwards v. Ellison*, 271 Mo. 123, 196 S.W. 751, 752 (1917), “[i]t is the law of this state that ‘no election can be held unless provided for by law.’” Consequently, the City needs specific statutory authority to hold an election. The City can no longer rely upon the prior statutory law providing that a municipal election may be held in February. As stated above, only bond elections are authorized to be held on the first Tuesday after the first Monday in February.¹

The city clerk has talked with the Missouri Municipal League regarding the amended statutory election provisions as those provisions relate to the ability of a third class city to hold primary elections in

¹ The legal analysis set forth herein may only be applicable to those third class cities that have not adopted an optional form of government. For example, it is my understanding that Gladstone operates under the city manager optional form of government for a third class city. Without providing any legal opinion for the City of Gladstone, it does appear that pursuant to the provisions in MO. ANN. STAT. § 78.470 a primary election may still be authorized to be held on the first Tuesday after the first Monday in February in a third class city that has adopted the optional city manager form of government. North Kansas City has not adopted an optional form of government for a third class city and, therefore, MO. REV. STAT. § 78.470 is not applicable here.

February. She was informed that the Missouri Municipal League has taken the position that third class cities can no longer use the first Tuesday after the first Monday in February for municipal primary elections.

Though I have not thoroughly researched the legislative history of the amended election law as set forth in MO. ANN. STAT. § 115.123, a possible reason for the elimination of the February election date for municipal primary elections may be due to the change of the presidential primary in Missouri from the first Tuesday after the first Monday in March to the first Tuesday after the first Monday in February.

It should be noted that the statute, as amended, does allow for a "general municipal election day" each year. The definition of the "general municipal election day" is set forth in MO. ANN. STAT. § 115.121.3 as follows:

"The election day for the election of political subdivision and special district officers shall be the first Tuesday after the first Monday in April each year; and shall be known as the general municipal election day."

Until the last couple of weeks, it had not been anticipated that the City would need to abolish its primary election day during the first week in February. Once, however, we became aware of the recently amended state statute, we felt that it was important to provide to the City Council an ordinance amending the City Code provision accordingly and to do so prior to the date on which candidates would be authorized to file for the primary election. Assuming that the ordinance passes, it should be noted that the primary election would be eliminated and, therefore, the opening for filing of candidates for elected office would be moved back a couple of months.

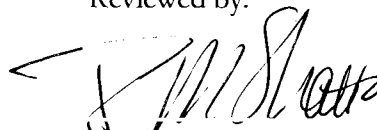
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