



Sent via email

March 14, 2023

Dear Sedalia City Council,

We have been asked by several nonprofit organizations and concerned citizens in Sedalia to look into the proposed zoning ordinance drafted by Joe Lauber, at great expense to the city, regarding services for people in need. After spending several months attending meetings and reading through documents, we are touched and inspired by the rich history of care in Sedalia. As evidenced by the stories shared at the council meeting on January 30th, there is clearly a sense of pride in being known as a community that turns “love thy neighbor” into action by providing hope and care for those who are unhoused or otherwise need a hand up.

We think the main source of contention and confusion around the proposed ordinance is the claim that a project like Mercy Rest Stop could not be permitted in Sedalia absent passage of a new ordinance. Specifically, Joe Lauber has stated and convinced the Planning and Zoning Commission that because Mercy is not explicitly allowed, it is therefore prohibited because of the permissive zoning scheme used by Sedalia.

It is true that Sedalia utilizes a zoning method known as “permissive zoning”. *See* Sec. 64-6 of the Sedalia Ordinances. This means that, as Joe states, unless a use is expressly permitted, it is excluded. *State ex rel. Barnett v. Sappington*, 266 S.W.2d 774, 777 (Mo. App 1954).¹ That is not, however, the end of the inquiry. **It is not true that because the zoning ordinances do not specifically mention a building which provides laundry services, social services, showers, and emergency sleeping quarters, that such a building could not exist.** It would be impossible for a zoning ordinance to state every type of use to the level of granularity Joe thinks is necessary. Luckily, Missouri law is not quite so rigid and Missouri courts clearly allow proposed uses to draw parallels to other categories. *See St. Louis County v. Taggert*, 866 S.W.2d 181 (1993).

As such, **we can interpret the Sedalia zoning code according to Missouri case law to see if Mercy fits within an already defined, permitted use.** There are a few potential uses that may work – most compelling is a “philanthropic” institution use. Such use is permitted in R-3 (which is the zoning around where Mercy was originally proposed), and on its face², would seem to

¹ NOTE: Missouri case law analysis provided by Missouri barred pro bono attorneys through the Law Center’s In-HOUSING Counsel program.

² “Philanthropic institution” is not defined in the Sedalia zoning ordinance but there are several common definitions which all boil down to a [nonprofit nongovernmental organization that utilizes donated assets and income to provide socially useful services](#).



include a use such as Mercy. The next step would be to determine how to interpret “philanthropic institution”. Missouri courts typically follow six principles in interpreting zoning ordinances:

- “(1) The determination of what uses are permitted under a zoning ordinance must be made on the basis of the wording of the particular ordinance and the context in which it occurs;
- (2) The basic rule of statutory construction is to seek the intention of the legislators and, if possible, to effectuate that intention;
- (3) Legislative intent must be ascertained by giving the word an ordinary, plain and natural meaning, by considering the entire act and its purposes and by seeking to avoid an unjust, absurd, unreasonable or oppressive result;
- (4) Zoning ordinances, being in derogation of common law property rights, are to be strictly construed in favor of the property owner against the zoning authority;
- (5) Where a term in a zoning ordinance is susceptible of more than one interpretation, the courts are to give weight to the interpretation that, while still within the confines of the term, is least restrictive upon the rights of the property owner to use his land as he wishes;
- (6) The interpretation placed upon a zoning ordinance by the body in charge of its enactment and application is entitled to great weight.”

Coots v. J.A. Tobin Construction Co., 634 S.W.2d 249, 250-251 (Mo. App. 1982).

Cases regularly references these six principles, and, most importantly, principle number 4. *See, e.g., State ex rel. Heck v. City of Pacific*, 616 S.W.3d 387 (Mo. App. 2020); *State ex rel. Cushman properties, LLC v. board of Adjustment of City of Branson*, 453 S.W. 3d 815 (Mo. App 2014); *Heuer v. City of Cape Girardeau*, 370 S.W.3d 903 (Mo. App. 2012). Turning to these six principles, we conclude that Mercy could be permitted as a “philanthropic institution”.

In looking at principle one, there is not much context in the Sedalia zoning code to analyze “philanthropic” use - it is not specifically defined in the zoning ordinances or, from what we can tell, elsewhere in the Sedalia municipal code. It first appears, for our purposes, in the uses permitted in R-3. The rest of the uses in R-3 are a mix of overnight type establishments (apartment houses, sorority houses), general non-business types uses (fraternal orders, sanitariums), and other uses for providing care to those who require it (hospitals, day care centers, residential care centers). **Looking at the Master Plan, however, a charitable use such as Mercy is expressly contemplated in an R-3 type district, which was created to serve as a**



transitional buffer from the downtown business districts to the less intense residential uses.³

Similarly, we don't have much context right now to evaluate principle two regarding legislative intent but there is clearly a history in Sedalia of nonprofit organizations being allowed to site their buildings and operate programs for the community without the need for extensive revisions to the zoning code. With respect to principle three above, a plain language interpretation of "philanthropic" would include a use such as Mercy would be appropriate because the proposed project does not seem to be "absurd" in an R-3 district and very much in line with the Master Plan. "Philanthropic" was likely intended to be a "catch-all" that included many charitable uses (such as food pantries, for example).

With respect to principles four and five, strict construction and the least restrictive interpretation of philanthropic use would certainly weigh in favor of Mercy Rest Stop. While Missouri does give authority to municipalities to engage in land use regulation through zoning, there is still a strong weight given to protection of private property rights and for property owners to make of use of their land as they see fit. **Creating an entire ordinance targeting a project like Mercy is in direct violation of these principles.**

Principle six may be the most important. The City of Sedalia leaves enforcement of its zoning code (and therefore its interpretation) to its community development director. *See* Sec. 64-7 of the Sedalia Code. If that director makes the judgment that Mercy may be built and operated in R-3, courts would be very unlikely to overturn that judgment, based on the principle set forth of deference to local zoning officials. However, **even if the community development director were to decide against a use such as Mercy in R-3, the previous five principles all seem to weigh sufficiently in favor of Mercy that a court would likely require the zoning administrator to allow Mercy in an R-3 district.**

As such, we feel confident that the most legally sound path forward is to reject Joe's extensive edits to the zoning code and simply allow philanthropic uses in R-3 as Sedalia has been doing for many years! This would allow the Mercy Rest Stop and other organizations to exist in areas of the city that comply with the Master Plan.

Alternately, if the city does want to expand the zoning code to more explicitly allow a variety of uses related to homelessness, it is very important that the new provisions are unambiguous, nondiscriminatory, and deferential to private property rights. There has been extensive commentary regarding the legal problems with Joe's ordinance via letters from Laurie Ward and from the National Homelessness Law Center. These are legal problems that will open the city up

³ *See* Neighborhood Institutions - https://www.sedalia.com/filestorage/11407/11419/11470/11472/ComDev_CompPlan_Draft_Ch4_S2.pdf



to costly court battles and potential liability, which is the exact sort of thing that Joe is supposed to be helping the city to prevent. These letters are available if you'd like to read them in full but in general the problems are as follows:

1. **An ordinance that regulates land based on presumed characteristics of a specific population of people rather than on similar uses of land violates the Equal Protection Clause of the U.S. Constitution.** Joe's ordinance regulates land based on the housing status of the people using it, rather than the intensity/type of use. A zoning decision needs to be based on a distinction between the proposed use and other permitted similarly situated uses. See *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) at 449. "[N]egative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding" are not a rational basis to treat one group differently than another similarly situated one. *Cleburne Living Ctr.*, 473 U.S. at 448.
2. **Several provisions are vague, meaning they don't provide sufficient notice of how the ordinance would actually be applied.** For instance, the word "facilities" or "like facilities" is used many times in the proposed ordinance but is not defined. Several provisions are "arbitrary and capricious", meaning they have no substantial relationship to health, safety, or general welfare. For instance, requiring "facilities" (which are not defined) to be located at least 1000 feet away from schools and daycares...unless they happen to be located on the same site as a school or daycare, in which case they must provide for "secure separation". Why was 1000 feet chosen? What does secure separation mean? What factual relationship does it have to health or safety?
3. Finally, **many of Joe's provisions are overbroad, meaning they affect way more conduct than a zoning board has the authority to regulate and as such, encroach on private property rights, privacy rights, etc.** Examples include attempts to regulate how a nonprofit organization handles staffing, program rules, eligibility rules, decisions about the types of services they offer, and even who they can invite onto their own property for trainings and services. The city (and, in some cases, the state and federal government) already has laws to regulate nuisances and criminal activity and to ensure that certain types of nonprofit organizations are licensed and meet other operational requirements. The Sedalia zoning code does not need to provide additional and possibly contradictory rules around these issues.

At this point, several attorneys, who have no financial incentive or interest in the revision of the zoning code, have taken time to warn the city about the problems with Joe's ordinance. The authors of this letter have donated many hours of time to review the proposed ordinance, attend public meetings, research the law, and provide legal analysis. **It is now in the hands of the city council to determine what is best for the city and, ultimately, protect the city from liability.**



While we do believe the best action is to leave the ordinance as is and to allow services like Mercy Rest Stop to build and operate as a philanthropic organization, we have also drafted an alternative to Joe's proposed ordinance that define certain types of shelter, housing, and services that a city may want to have to address homelessness and allow these services by right in certain zones where it makes sense in regard to intensity of land use and character of the neighborhood, etc. It also allows for these programs to operate in other zones with a special use permit. We would be happy to discuss this more with you!

Sincerely,

A handwritten signature in black ink that reads "Katie Scott". The signature is written in a cursive style with a large, stylized "K" and "S".

Katie Meyer Scott, Senior Attorney
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