

## City of Arnold, Missouri

**Work Session  
Council Chambers**

**March 10, 2016  
7:00 p.m.**

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### **Agenda**

1. Buxton
2. Storm Water Fee
3. Adjournment

March 7, 2016

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DATE: March 3, 2016  
TO: Mayor Counts and Members of the Arnold City Council  
FROM: John Brazeal, Citizen and Ward 2 Candidate for Arnold City Council  
RE: Repeal of unconstitutional Arnold storm water "tax"



Attached hereto is a proposed ordinance that repeals the Arnold storm water charge. I request this ordinance be placed on the March 10, 2016 work session agenda so I can discuss it with you in detail. I also request this ordinance be placed on the March 17, 2016 council agenda for adoption.

Missouri courts employ the 5-point Keller test to determine whether a charge imposed by any governmental agency in Missouri qualifies as a "tax" or a "user charge". In this case, the Keller test clearly indicates the Arnold storm water charge fails to qualify as a "user charge", thereby yielding a determination the Arnold storm water charge is properly classified as a "tax".

The Hancock Amendment to the Missouri constitution requires voter approval of all "tax" proposals. Arnold's storm water "tax" has not been voter approved, thereby rendering it unconstitutional.

In November 2013, the Missouri Supreme Court ruled the storm water charge levied by MSD was a "tax" that had not been voter approved. As a result, MSD immediately discontinued the charge.

In my role as CFO for Fox C-6 Schools, I sent a letter (see attached) dated October 21, 2014 to the City of Arnold seeking the city's opinion regarding the validity of Arnold's storm water charge. Of course, the concern being if Arnold's storm water charge qualifies as a "tax", then it should not be levied upon "tax exempt" entities such as the school district.

Although my letter has not had the courtesy of a reply; nevertheless, the City of Arnold later acted by removing the storm water charge from the Fox C-6 accounts with the City. I accept the City's action as agreement with the idea that Arnold's storm water charge is really a "tax".

This made me curious whether or not the City was treating all tax exempt entities alike. So, recently I requested copies of account statements for various entities (see attached). A review of selected accounts indicates that while the City has discontinued billing Fox C-6 Schools for the storm water tax, this is not true for other local tax exempt entities. Billings for the storm water tax continue to be sent to Rock Community Fire Protection District, Rock Township Ambulance District, Jefferson College, Jefferson County Library, the First Baptist Church of Arnold and Immaculate Conception Church. However, it is interesting to note that billings to First Baptist Church for the storm water tax have gone unpaid for the past year with no collection action evident.

Ladies and gentlemen of the council, there's no question the storm water charge is really a "tax". Being a tax, it is not eligible to be levied upon tax exempt entities. Additionally, being this tax lacks required voter approval, it should not be levied upon anyone.

For these reasons, I urge the city council to repeal this "tax" as soon as possible. The task is easy. The legislation that repeals this unconstitutional tax upon Arnold property owners is in your hands.

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REPEALING THE STORM WATER CHARGE SET FORTH  
IN SECTION 24-125 OF THE CODE OF ORDINANCES OF THE CITY OF  
ARNOLD, MISSOURI.**

**WHEREAS**, Section 24-125 of the Code of Ordinances of the City of Arnold, Missouri, establishes a charge relating to storm water upon the owners of real property existing within the corporate boundaries of the Arnold city limits; and

**WHEREAS**, the Missouri Hancock Amendment requires taxes to be voter approved before being levied upon taxpayers; and

**WHEREAS**, the Missouri courts rely upon a five factor test known as the "Keller" test, in reference to Keller v. Marion County Ambulance District to determine whether a charge is a tax or a user fee; and

**WHEREAS**, Factor #1 of the Keller test considers "When the charge is paid", using the basis that taxes are likely to be paid on a regular periodic basis, but a user fee is likely to be paid on or after a service has been provided to the payer of the charge; and

**WHEREAS**, the Arnold storm water charge is billed uniformly on monthly basis with no consideration given to the level of services provided to payers of the charge, thus considered a "tax" according to Factor #1 of the Keller test; and

**WHEREAS**, Factor #2 of the Keller test considers "Who pays the charge", using the basis that taxes are likely to be blanket-billed to all residents within the city, but a user fee is likely to be billed only to those that actually use the service that relates to the charge; and

**WHEREAS**, the Arnold storm water charge is imposed upon property owners, not upon users of city storm water services, thus considered a "tax" according to Factor #2 of the Keller test; and

**WHEREAS**, Factor #3 of the Keller test considers "Is there a connection between the charge and the service", using the basis that taxes are less likely to be related to the level of goods/services provided to the payer of the charge while a fee is closely related to the level of good/services provided to the payer of the charge; and

**WHEREAS**, the Arnold storm water charge is imposed without any consideration given to the quantity of storm water runoff from a particular parcel of land, thus considered a "tax" according to Factor #3 of the Keller test; and

**WHEREAS**, Factor #4 of the Keller test considers "Is the government providing a service", using the basis that if the government is providing a service, the charge is likely to be a fee instead of a tax, or if no services are being provided or if a third party is providing a service, the charge is likely to be a tax; and

**WHEREAS**, the Arnold storm water charge is not imposed in exchange for a person's actual use of city storm water services, thus considered a "tax" according to Factor #4 of the Keller test; and

**WHEREAS**, Factor #5 of the Keller test considers "Has the service been historically been provided by government", using the basis that if the government has historically provided the service, the charge is likely to be a tax instead of a fee; and

**WHEREAS**, providing storm water services has traditionally been a function of government, thus considered a "tax" pursuant to Factor #5 of the Keller test; and

**WHEREAS**, the five factors of the Keller test are overwhelmingly resolved in favor of Arnold's storm water charge being classified as a tax; and

**WHEREAS**, the storm water "tax" set forth in Section 24-125 of the Code of Ordinances was levied without first being submitted to Arnold voters for approval in violation of the Missouri Hancock Amendment;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:**

**Section 1: Declaration.** The City Council of the City of Arnold, Missouri, hereby declares the storm water charge to be an unconstitutional tax by virtue of (1) the five factors of the Keller test being overwhelming resolved in favor of the charge being classified a tax, and (2) the storm water "tax" being levied without voter approval as required by the Missouri Hancock Amendment.

**Section 2: Repeal.** The City Council of the City of Arnold, Missouri, hereby repeals Section 24-125 of the Code of Ordinances of the City of Arnold, Missouri.

**Section 3: Prior Collections.** No refunds shall be made for collections of the storm water charge prior to repeal of the storm water charge set forth in Section 2 of this ordinance.

**Section 4: Uncollected Charges.** All previously billed, outstanding and uncollected storm water charges shall be reversed effective with the passage and approval of this ordinance.

**Section 5: Effective Date.** This ordinance shall be in full force and effect from and after its passage and approval.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Arnold, Missouri, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

(Seal)

Attest:

\_\_\_\_\_  
City Clerk



October 21, 2014

Robert Sweeney - City Attorney  
City of Arnold, Missouri  
2101 Jeffco Blvd.  
Arnold, Missouri 63010

RE: Stormwater charges

Dear Robert:

From records available to me, it appears that in mid-November 2013, the Missouri Supreme Court ruled that the St. Louis Metropolitan Sewer District (MSD) stormwater fee was actually a tax, which violated the state's constitution because it was established without voter approval.

The court opinion states, "A tax by any other name remains a tax. It cannot be transformed into a user fee by adept packaging any more than a zoologist can transform a horse into a zebra with a bucket of paint. Here, no matter how many stripes MSD paints on it, the stormwater user charge is not a user fee." The MSD stormwater fee was based on impervious surface area.

It is my understanding, the City of Arnold stormwater fee is similar in that it:

- is also based upon impervious surface area; and
- is not voter approved.

Fox School District recently received billings from the City of Arnold for stormwater fees. What is the City's position on the validity of its stormwater fee at this time, considering the recent Missouri Supreme Court decision?

If the City stormwater fee is not valid in the opinion of the court, I fail to understand why Fox School District should be expected to pay the fee.

Sincerely,

John Brazeal  
CFO

Utility Billing v8.3  
DATE: 02/12/2016  
TIME: 11:57:24

ACCOUNT NUMBER 54921-00  
CUSTOMER NAME FOX C-6 SCHOOL DISTRICT  
SERVICE ADDRESS ROCKPORT SCHOOL 3871 JEFFCO BLVD

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

PAGE NUMBER: 1  
MODULE : histfun

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	0.00	0.00
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	0.00	0.00
07/13/2015	07/31/2015	BILLED	STANDARD BILLING	0.00	0.00
05/05/2015	05/05/2015	POST AMT	BILLING AMOUNT POSTED	-712.89	0.00
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	712.89	712.89
01/30/2015	01/30/2015	POST AMT	BILLING AMOUNT POSTED	-1,461.42	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	712.89	1,461.42

Utility Billing V8.3  
DATE: 02/12/2016  
TIME: 11:55:45

ACCOUNT NUMBER 4861-00  
CUSTOMER NAME FOX SCHOOL  
SERVICE ADDRESS 745 JEFFCO BLVD PT LOT 38 SURVEY 2991

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

PAGE NUMBER: 1  
MODULE: histfun

TRANSACTION	DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
01/11/2016	01/21/2016	BILLED		STANDARD BILLING	0.00	0.00
10/13/2015	10/21/2015	BILLED		STANDARD BILLING	0.00	0.00
07/13/2015	07/21/2015	BILLED		STANDARD BILLING	0.00	0.00
05/12/2015	05/12/2015	PAYMENT		PAYMENT	5,053.75	0.00
05/12/2015	05/12/2015	POST AMT		BILLING AMOUNT POSTED	-25.31	5,053.75
05/12/2015	05/12/2015	POST AMT		BILLING AMOUNT POSTED	-454.76	5,079.06
05/12/2015	05/12/2015	LATE CHG		LATE CHARGE POSTED	25.31	5,533.82
05/12/2015	05/12/2015	LATE CHG		LATE CHARGE POSTED	454.76	5,508.51
05/05/2015	05/05/2015	POST AMT		BILLING AMOUNT POSTED	-506.16	5,053.75
04/13/2015	04/20/2015	BILLED		STANDARD BILLING	5,559.91	5,559.91
02/09/2015	02/09/2015	PAYMENT		PAYMENT	5,119.00	0.00
01/30/2015	01/30/2015	POST AMT		BILLING AMOUNT POSTED	-1,037.63	5,119.00
01/13/2015	01/21/2015	BILLED		STANDARD BILLING	5,625.16	6,156.63

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

Utility Billing V8.3  
DATE: 02/12/2016  
TIME: 11:58:10

ACCOUNT NUMBER 54927-00  
CUSTOMER NAME ROCK COMMUNITY FIRE DISTRICT  
SERVICE ADDRESS 3749 TELEGRAPH

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
01/28/2016	01/28/2016	PAYMENT	PAYMENT	56.43	0.00
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	56.43	56.43
10/30/2015	10/30/2015	PAYMENT	PAYMENT	56.43	0.00
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	56.43	56.43
07/31/2015	07/31/2015	PAYMENT	PAYMENT	56.43	0.00
07/13/2015	07/21/2015	BILLED	STANDARD BILLING	56.43	56.43
05/01/2015	05/01/2015	PAYMENT	PAYMENT	129.43	0.00
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	129.43	129.43
01/29/2015	01/29/2015	PAYMENT	PAYMENT	129.43	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	129.43	129.43



Utility Billing v8.3  
DATE: 02/12/2016  
TIME: 11:58:36

ACCOUNT NUMBER 47251-00  
CUSTOMER NAME ROCK TWN AMBULANCE DIST  
SERVICE ADDRESS 1800 LONEDELL RD SINGER OFFICE PARK

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

PAGE NUMBER: 1  
MODULE : histfun

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
02/11/2016	02/11/2016	LATE CHG	LATE CHARGE POSTED	0.10	1.39
01/26/2016	01/26/2016	PAYMENT	PAYMENT	25.74	1.29
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	25.74	27.03
11/18/2015	11/18/2015	PAYMENT	PAYMENT	25.74	1.29
11/12/2015	11/12/2015	LATE CHG	LATE CHARGE POSTED	1.29	27.03
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	25.74	25.74
07/27/2015	07/27/2015	PAYMENT	PAYMENT	25.74	0.00
07/13/2015	07/21/2015	BILLED	STANDARD BILLING	25.74	25.74
04/29/2015	04/29/2015	PAYMENT	PAYMENT	120.49	0.00
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	120.49	120.49
01/26/2015	01/26/2015	PAYMENT	PAYMENT	116.14	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	116.14	116.14

CITY OF ARNOLD, MO  
 CUSTOMER HISTORY REPORT

Utility Billing V8.3  
 DATE: 02/12/2016  
 TIME: 11:59:03

ACCOUNT NUMBER 54922-00  
 CUSTOMER NAME JEFFERSON COLLEGE  
 SERVICE ADDRESS 1687 MO STATE RD

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
01/27/2016	01/27/2016	PAYMENT	PAYMENT	190.71	0.00
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	190.71	190.71
11/02/2015	11/02/2015	PAYMENT	PAYMENT	190.71	0.00
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	190.71	190.71
08/06/2015	08/06/2015	PAYMENT	PAYMENT	190.71	0.00
07/13/2015	07/21/2015	BILLED	STANDARD BILLING	190.71	190.71
04/22/2015	04/22/2015	PAYMENT	PAYMENT	437.71	0.00
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	437.71	437.71
01/28/2015	01/28/2015	PAYMENT	PAYMENT	437.71	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	437.71	437.71

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

Utility Billing V8.3  
DATE: 02/12/2016  
TIME: 11:59:21

ACCOUNT NUMBER 54480-00  
CUSTOMER NAME JEFFERSON COUNTY LIBRARY  
SERVICE ADDRESS 1701 MO STATE RD

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
02/01/2016	02/01/2016	PAYMENT	PAYMENT	130.50	0.00
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	130.50	130.50
11/02/2015	11/02/2015	PAYMENT	PAYMENT	130.50	0.00
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	130.50	130.50
08/04/2015	08/04/2015	PAYMENT	PAYMENT	130.50	0.00
07/13/2015	07/21/2015	BILLED	STANDARD BILLING	130.50	130.50
05/04/2015	05/04/2015	PAYMENT	PAYMENT	229.60	0.00
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	229.60	229.60
01/30/2015	01/30/2015	PAYMENT	PAYMENT	242.65	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	242.65	242.65

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

Utility Billing V8.3  
DATE: 02/12/2016  
TIME: 12:00:10

ACCOUNT NUMBER 47618-00  
CUSTOMER NAME FIRST BAPTIST CHURCH OF ARNOLD  
SERVICE ADDRESS 2012 MO STATE RD PT LOT 16 SURVEY 2991

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
02/11/2016	02/11/2016	LATE CHG	LATE CHARGE POSTED	31.40	2,637.32
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	627.93	2,605.92
11/12/2015	11/12/2015	LATE CHG	LATE CHARGE POSTED	31.40	1,977.99
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	627.93	1,946.59
08/11/2015	08/11/2015	LATE CHG	LATE CHARGE POSTED	31.40	1,318.66
07/13/2015	07/21/2015	BILLED	STANDARD BILLING	627.93	1,287.26
05/12/2015	05/12/2015	LATE CHG	LATE CHARGE POSTED	31.40	659.33
05/11/2015	05/11/2015	PAYMENT	PAYMENT	2,343.70	627.93
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	2,971.63	2,971.63
02/10/2015	02/10/2015	PAYMENT	PAYMENT	5,022.98	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	3,641.53	5,022.98

CITY OF ARNOLD, MO  
CUSTOMER HISTORY REPORT

Utility Billing V8.3  
DATE: 02/12/2016  
TIME: 12:00:37

ACCOUNT NUMBER 20768-00  
CUSTOMER NAME IMMACULATE CONCEPTION CHURCH  
SERVICE ADDRESS 2300 CHURCH RD PT LOT 17 SURVEY 2991

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
01/25/2016	01/25/2016	PAYMENT	PAYMENT	494.65	-0.01
01/11/2016	01/21/2016	BILLED	STANDARD BILLING	494.64	494.64
11/04/2015	11/04/2015	PAYMENT	PAYMENT	494.64	0.00
10/13/2015	10/21/2015	BILLED	STANDARD BILLING	494.64	494.64
07/24/2015	07/24/2015	PAYMENT	PAYMENT	494.64	0.00
07/13/2015	07/21/2015	BILLED	STANDARD BILLING	494.64	494.64
04/29/2015	04/29/2015	PAYMENT	PAYMENT	898.24	0.00
04/13/2015	04/20/2015	BILLED	STANDARD BILLING	898.24	898.24
02/04/2015	02/04/2015	PAYMENT	PAYMENT	985.24	0.00
01/13/2015	01/21/2015	BILLED	STANDARD BILLING	985.24	985.24