Agenda

City Council Study Session

Monday, May 15, 2023 - 7:00 PM
Council Chambers

I. Call to Order

II. Attendance

III. Topics of Discussion

A. CVR PUBLIC OFFICIALS LIABILITY TRAINING

IV. Summary

V. Adjournment

ADA Accessible entrance is available from Missouri Street at the Police Department entrance. An elevator will provide access to the second floor – Council Chambers

Elected Officials Training

JOE BOND

CUNNINGHAM, VOGEL & ROST, P.C.

MAY 15, 2023

Today's Topics

CITY OF LIBERTY FORM OF GOVERNMENT – AUTHORITY AND LIMITATIONS

LAND USE

MEETING PROTOCOL

THE SUNSHINE LAW & SOCIAL MEDIA

ETHICS AND CONFLICTS OF INTERESTS

MISCELLANEOUS

Liberty, Special Charter City: Authority & Limitations

Not all cities are equal

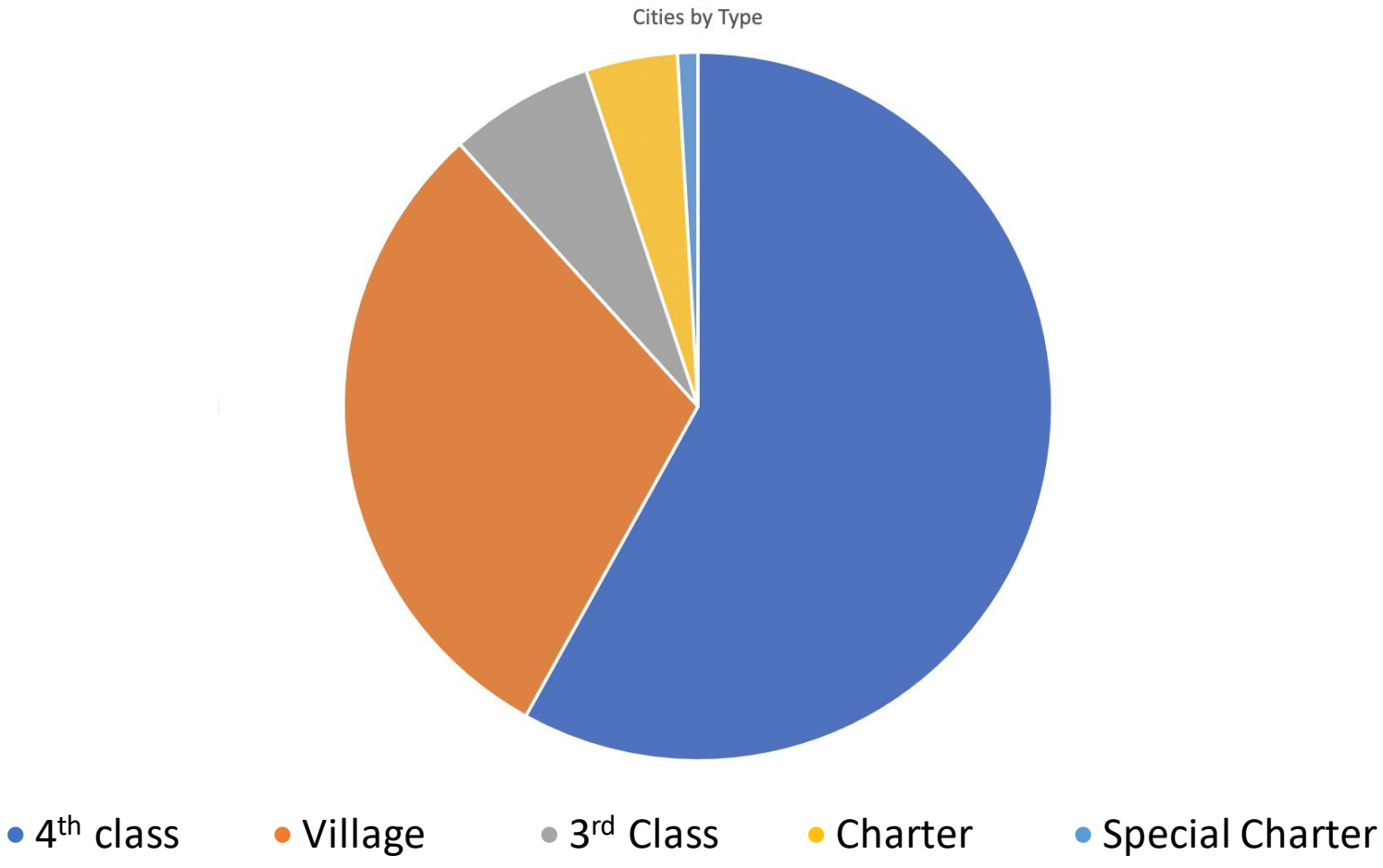
JUST BECAUSE one city in your area enacted a LAW, does NOT mean your City can enact that same LAW

Municipal Classifications, generally

- Missouri statutes:
  - classify municipalities **on the basis of population**
    - third class, fourth class, or village based on population **at the time of incorporation**
  - limit the form of government options per classification
- No **automatic change in** classification with a gain or loss of population
- Change classification only when approved by majority vote

Types of Municipalities

Class	Population Requirement	Form of Government	Missouri Total Number
Village	Less than 500	Board of trustees	260 (approx.)
4th Class	500-2,900	Mayor/board of alderman Mayor/city administrator/alderman	500 (approx.)
3rd Class	3,000-29,999	Mayor/council Mayor/city administrator/council Council/Manager Commission	57
Constitutional Charter	More than 5,000	To be decided by the people	36
Special Charter	No requirement	As set forth in the individual special charter	7



Types of Municipalities

Liberty is a *Special Charter City*

There are 7 municipalities, including Liberty, that operate under Special Charter status.

Special Charters were granted by the Missouri General Assembly from 1821 to 1875. The 1875 Missouri Constitution prohibited the granting of additional special charters, or of amending special charters.

Liberty could, ***upon a vote of the people***, decide to relinquish its special charter, and due to its population ***would become a 3rd Class City***.

Liberty could also elect to relinquish its special charter and vote to frame up a Constitutional Charter

- A special charter is a guiding piece of legislation outlining the general powers of the City. This document outlines the duties and authority of the City.
  - Generally speaking, the authority provided for within the Special Charter would be valid so long as it does not ***Prohibit what state law Permits*** or ***Permit what state law Prohibits***
- In instances where the Special Charter is under-inclusive as to powers, Chapter 81 of the Revised Statutes of Missouri ("RSMo.") govern.
- Additionally, certain Chapters of the state statutes, such as Chapter 89 on Zoning and Planning, also apply to the City.

What ***is*** a Special Charter?

Dillon's Rule v. Special Charter

State Statute

Local Ordinances

State Courts

Sources of City Authority

Power as a Collective

Council is empowered by voters to collectively make decisions in the best interest of the city

An individual council member generally has no authority to act alone

--it's only collectively that Council has authority to make laws, formulate policies, speak for the City, etc.

Qualifications for Officials – Article II, Section 2

Councilperson & Mayor

- At least 21years of age
- 2-year residency in City prior to election
- Resident of ward from which he/she is elected
- U.S. citizen
- Oath of office
- Not owing City or state taxes or “municipal user fees”
- *Found in State Law, not Special Charter

The Mayor's Duties

The Mayor, or the President Pro Tem in the Mayor's absence, runs all Council meetings

The Mayor shall sit in the Council, preside over the Council, and vote only in the case of a tie

The Mayor shall exercise general supervision over all the officers and affairs of the City

The Mayor is to communicate with the Council information relative to the state of the City and shall recommend to Council's consideration such measures expedient for the advantage of the City

The Mayor also signs all commissions and appointments and approves all official bonds unless an ordinance otherwise prescribes

President Pro Tem

- President Pro Tempore is established in Art. II, Section 4:
  - The council, in the absence of the mayor, shall elect one of their number to be president pro tem of the council; and the president pro tem thus elected shall, during the absence from the city of the mayor, or a vacancy in the office, or of the inability of the mayor to serve, perform all duties of mayor.
  - **Unique from other cities in that it is unclear if the President Pro Tem. is elected each meeting, or is an office of sorts with a term.**

Passing Legislation

Two primary actions of City Council:

Adopt resolutions, policies, or directives; and	Adopt laws (ordinances)

All require a motion to adopt, a second to the motion, discussion, call the question and then vote

ORDINANCES

HOW A LOCAL GOVERNMENT DOES BUSINESS

The Form of an Ordinance

#1 In Writing

Bill No. ___ Ordinance No. ___

Title etc. ...

Passed this ___ day of _____ after being **read twice** either by title or in full.

_____ _____

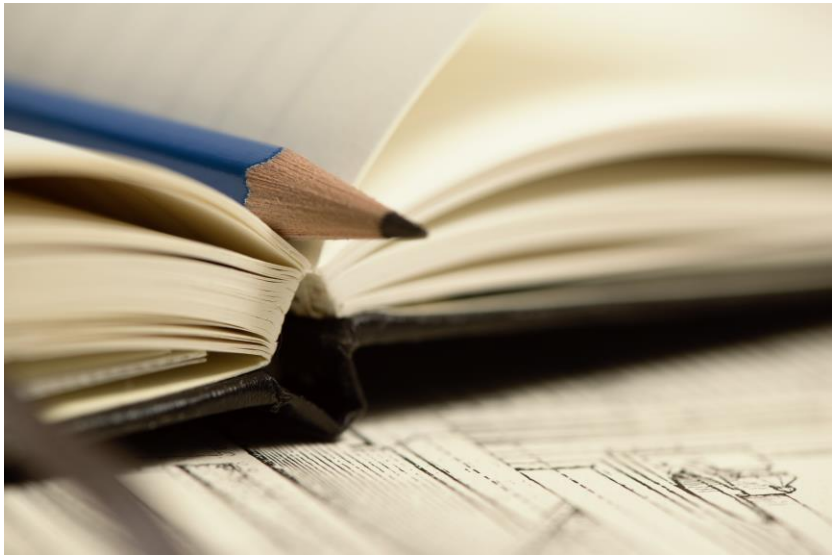
Mayor Attest

(or Pres. Pro Tem)

- Art II, Section 9. – Journal:
  - The mayor and council shall keep a journal of their proceedings; and the yeas and nays of the members on any question shall, at the desire of any member present, be entered on the journal.
- Art II, Section 15. - Entering ayes and nays under certain conditions:
  - Upon the passage of all and every bill appropriating money, imposing taxes, or increasing, lessening or abolishing licenses, or borrowing money, the ayes and nays shall be entered upon the journals, ***upon the motion of the mayor***, or any member of the council present.
- Sunshine Law also requires the recording of Ayes & Nays for passage of an ordinance – 610.020.7 RSMo.

#2 MINUTES – Ayes + Nays

Minutes – Best Practices



- Minutes are designed to be a record of what happened
  - Record motions/votes
  - General actions/discussion topics
  - Policies
  - Minutes do not have to be a transcript of the meeting

Courts – ordinance not validly passed for failure to record the vote, *i.e.*, the ayes and nays on final passage in the minutes!

Examples of defective or insufficient minutes:

- "passed unanimously by all of the Councilmembers present"
- "unanimously adopted"
- "declared passed by the Mayor"

“Recitals”

Why Whereas?

When Whereas?

Where Whereas?

How many Whereases?

“Recitals”

Why & When?

#3 Be It Ordained

Art. III, Section 1, Power 36

The style of the ordinances of the city shall be:

"Be it ordained by the city council of the City of Liberty."

#4 Signed & Dated

Art. III, Sec. 1

35th.—Every ordinance or resolution passed by the city council shall be signed by the mayor or president pro tem of the council, and attested by the clerk of the city council before it shall have or take effect; *provided, however, that, if the mayor shall neglect or refuse to sign such resolution, order or ordinance within two (2) months after it shall have been passed by the city council, then the same is become as valid as if it had received the approval of the mayor and attestation of the city clerk*; and in the event that the mayor shall veto any measure whatever passed by the city council the same may be passed over his veto, by a vote of two-thirds of the whole council.

#4 Signed/Dated, continued

Art. III, Sec. 1

37th.—All ordinances passed by the city council, within thirty (30) days after they become laws, shall be published in pamphlet form, or in some newspaper printed in the City of Liberty, in the discretion of the city council; but the failure to publish any ordinance within the time specified in this section, shall not render void or affect the validity of any such ordinance, unless such delay may cause such ordinance to act retrospectively on the rights of individuals.

38th.—All ordinances of the city may be proved by the seal of the present city corporation, and when such ordinance or ordinances have been published by authority of the corporation, they shall be received as evidence in all courts and places, without further proof.

Bill No. ___ Ordinance No. ___

Section 2: This ordinance shall be in full force and effect after its passage by the Council and after its execution and approval by the Mayor.

The Law

Must have “Be it ordained” clause

Must be in writing

Effective date and signature

Mayor's Veto Authority

Art. III, Sec. 1, Power 35

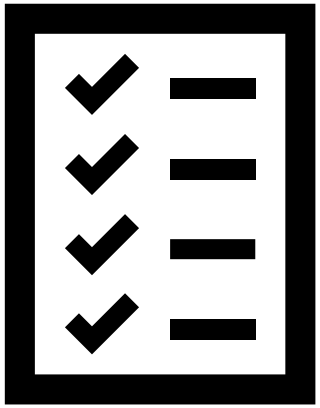
The Council can override a veto by a 2/3 majority vote of the whole Council (members-elect).

Ordinance Good Practices

1

Establish liability and payment limit in authorizing ordinance and contract

Resolution v. Ordinance?



Partial list of laws requiring an ordinance:

- **Approval of intergovernmental agreement**
- **Approval of agreement between city and elected or appointed official of another city**
- **Approval of plat**

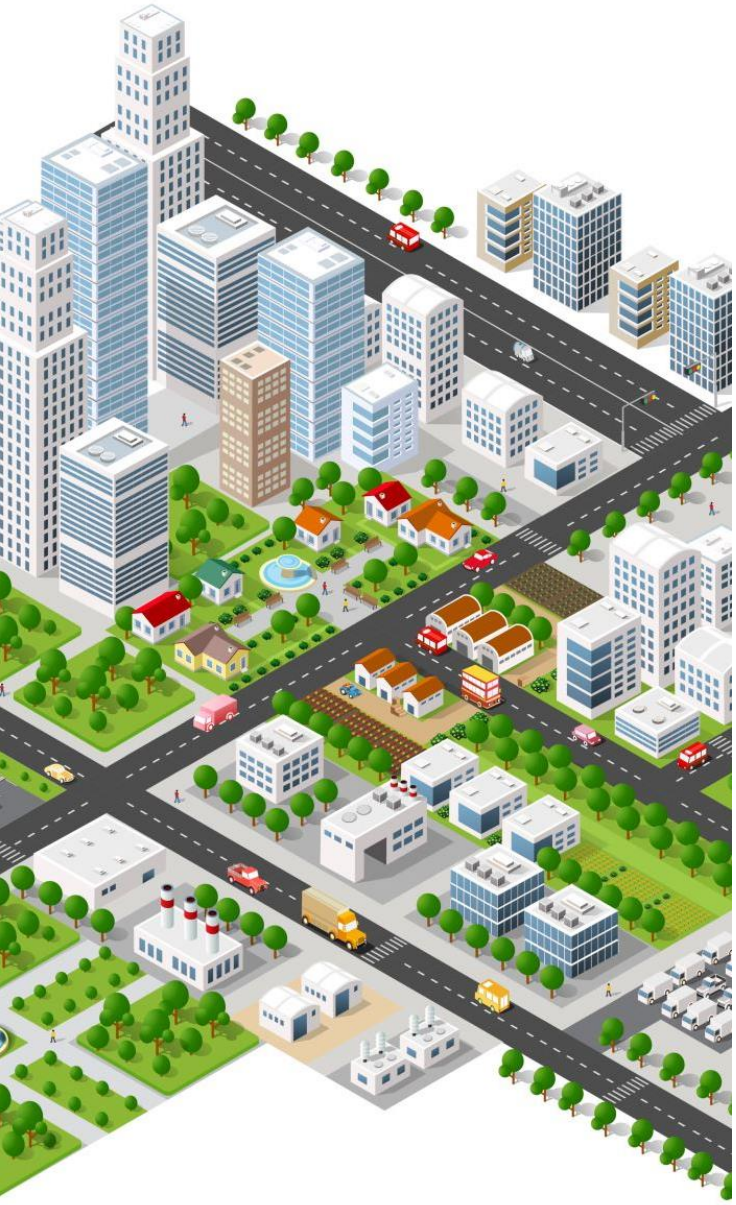
Liberty Administration – City Administrator Form

- Per City Code (Chapter 2, Art. IV, Division 1A), the City Council has established a City Council / City Administrator form of government.
- Under this form, Mayor with advice and consent (majority vote) of the City Council, appoints the City Administrator.
- The City Administrator then manages the day-to-day affairs of the City
  - Per City Code Section 2-56(1)(f), the City Administrator is to advise and recommend appointment or dismissal of department heads, ***but department heads and the City Administrator appear to be the only employees that the City Council has direct hiring/firing authority over***.
  - Other subordinate employees of individual City departments are subject to hiring and firing ***from the City Administrator*** in conjunction with the appropriate department head.

Land Use

Sources of Authority

Dillon's Rule



Importance of the Comprehensive Plan

- Courts look at local adherence to and consistency with adopted comprehensive plan as a factor in reasonableness of zoning *J.R. Green Properties v. City of Bridgeton,* 825 S.W.2d 684 (Mo. App. 1992)
- Plan authorizes City to prohibit building over **planned streets** "carefully determined and accurately delineated on maps." §89.480 RSMo.
- Plan may trigger review of proposed public improvements. §89.380 RSMo.
- Street Plan requires location of streets only in compliance with Plan. (see §89.460 RSMo. for many exceptions)

Plan Adoption/Amendment Procedures-

- § 89.360 RSMo. gives authority to amend or add new sections to the Comprehensive Plan
- To make a change, the following are required:
  - Hold a hearing, and give published notice at least 15 days beforehand
  - Pass a resolution by majority vote of the full membership of the Planning & Zoning Commission
  - Record the approved action, signed by the P&Z Commission Secretary
  - Certify a copy of the record to the City Council and Municipal Clerk
- File copies in the offices of the:
  - P&Z Commission
  - County Recorder of Deeds
  - Municipal Clerk

Zoning Definitions

“Spot” Zoning – the rezoning of a single parcel that benefits a private party, to the detriment of the public interest as a whole – an “unreasonable” zoning of a small area

Vested Rights/Legal Non-Conforming Uses – a use that lawfully existed at the time the ordinance became effective but does not fully conform to the requirements of the ordinance

Planned Zoning – site-specific zoning that waives or imposes requirements to address specific issues

Special Use Permits – not a rezoning; rather an “evidentiary” permit under existing zoning

Zoning “Runs with the Land” – annexation does not automatically change or implement zoning; zoning stays until affirmatively changed by required process

Key Zoning Issues

Procedure for Amending Zoning Code

Procedures are ***Mandatory***

- § "Where the enabling statutes are not complied with, the ordinance is invalidly acted and cannot be enforced." *State ex. rel. Casey's General Stores, Inc. v. City of Louisiana*, 734 S.W.2d 890, 895 (Mo. App. E.D. 1987)

Public hearing and at least 15 days' notice of hearing shall be published in an official paper or a paper of general circulation in the City §89.050 RSMo.

Protests require 2/3 vote of governing body for approval

- §Protest is a petition "acknowledged" by owners of 30% or more in or within 185 feet from the boundaries of the district proposed to be changed §89.060 RSMo.

Decision-Making Factors

- Factors that can be considered in a rezoning (per City Code Section 30-24.3):
  - Conformance to comprehensive plan and other adopted planning policies of the City
  - Effect of proposed rezoning will have on properties in the general vicinity
  - Extent to which public facilities and services are available and adequate to meet the demand generated by the proposed use

- Factors that are impermissible or not controlling:
  - Competition
  - Highest and best use ($) of the property
  - Personal financial hardship
  - Others…

Zoning Standards

- Rezoning decisions are ***legislative*** in nature
  - Presumption favors the legislative determination. Reviewing courts will defer to any decision that is reasonable or where the issue is "***fairly debatable***."
- Reviewed based on **existing** zoning NOT proposed zoning
  - National Super Markets, Inc. v. Bellefontaine Neighbors, 825 S.W.2d 24, 26 (Mo. App. E.D. 1992) - "It is not the province of the court to determine the proper zoning but only if the present zoning is reasonable."

Versus: Standards for *Administrative* Land Use Decisions (Special Use Permits)

- Substantial evidence needed
- Accordingly, more limitations exist on administrative decisions
- Must have established criteria to consider
- Constrain review to established criteria
- Includes Special Use Permits, sign plan, and specific site plan reviews

Subdivision: Definition

Local law controlling the division of land

Subdivision may occur by recording of:

- Deed (metes and bounds or other legal description)
- Recorded Plat (and deeds referencing numbered plat lots)

2 Sources of Authority:

- §89.300 et seq. RSMo. (subdivision and planning)
- §445.030 RSMo. (historical plat act)

Subdivision: Purpose

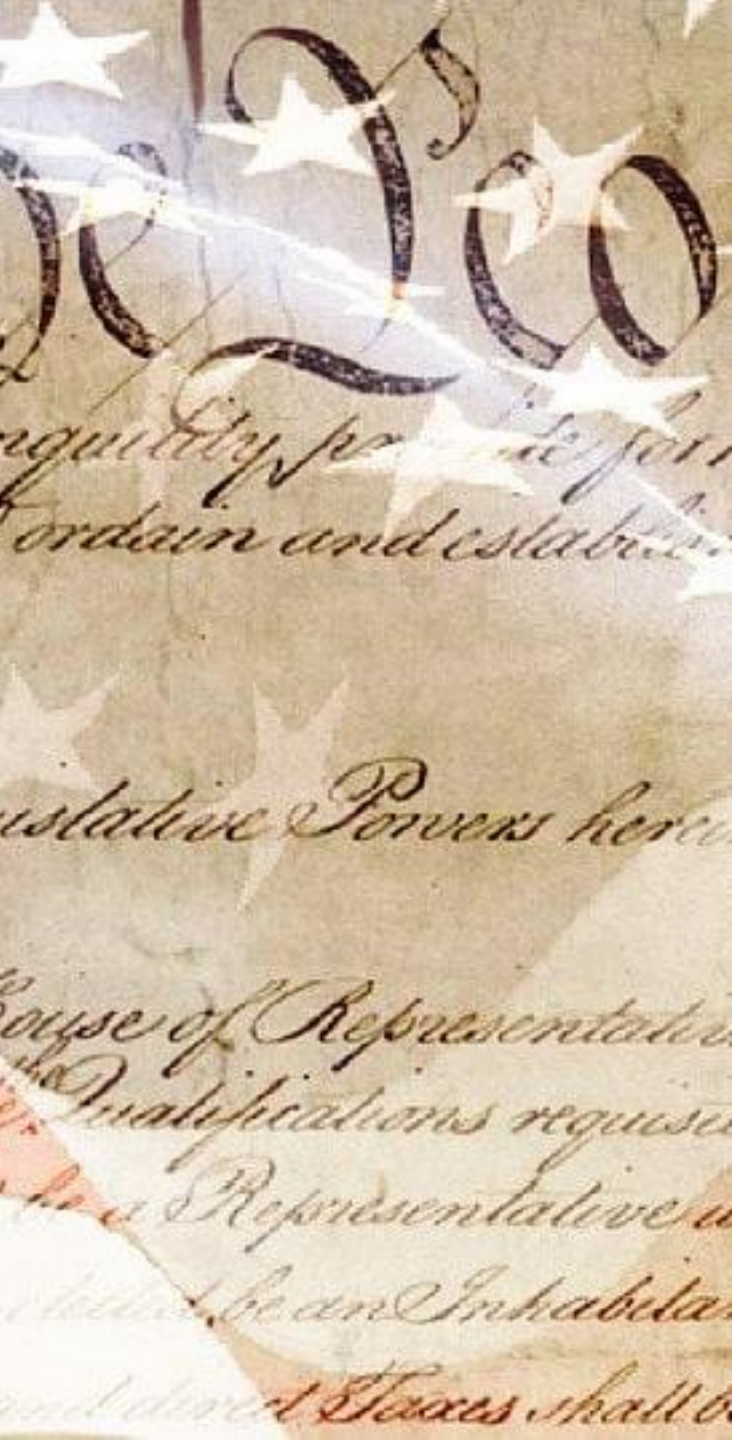
- Ensure public facilities impacted/required by subdivision are addressed:
  - Roads (easements; ROW)
  - Utilities
- Ensure dedication of land for other public uses
- Public Safety
- Implement planning document
- Certainty of property boundaries (platting)

Initial Adoption and Amendment §89.410.1 RSMo.

1. The P&Z Commission shall recommend Regulations

2. City Council adopts by ordinance

3. "Duly advertised" public hearing required to be held "by the council." §89.410.7 RSMo.



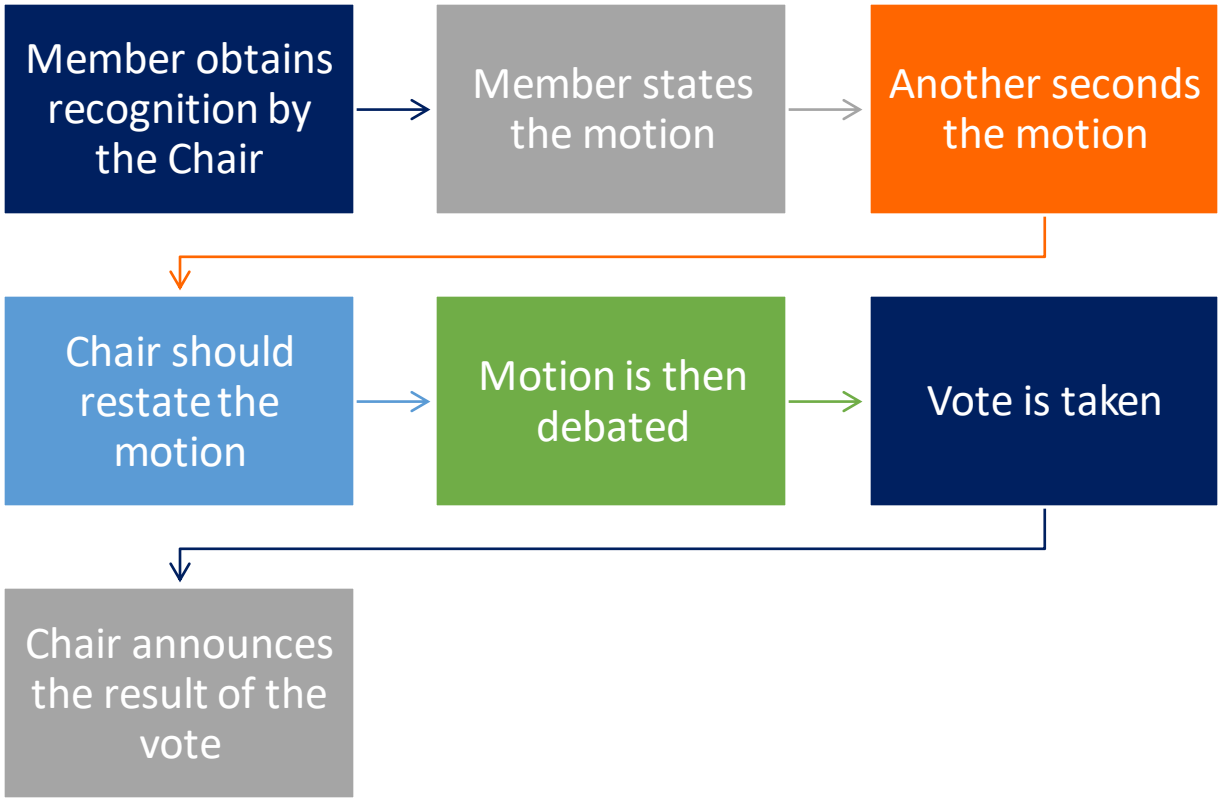
Constitutional & Statutory Limitations on Local Authority

- Takings
  - Impact Fees
  - Land Dedications
- Free Speech
- Free Exercise/RLUIPA
- Medical & Recreational Marijuana
- Intergovernmental Conflicts
- Telecommunications Towers
- Utilities
- Other limitations

Robert's Rules of Order & Meeting Protocol

HOW TO RUN A MEETING

How to Make a Motion



Robert's Rules of Order

What?

- Robert's Rules is a set of rules for conducting business at meetings and public gatherings

Why is it important?

Rules of Debate

"But before we move on, allow me to belabor the point even further..."

- Except as provided in the Rules, members must be recognized by the Mayor before speaking
- Technically, discussion is not permitted unless there is a motion on the floor
- No person should have a chance to speak more than once until everyone has been given a chance to speak one time
- If an item comes up in discussion that is not related to the motion on the floor, the Mayor or other member has the right to call it "out of order" or call "point of order"

To Do This	You Say This	May you interrupt the speaker?	Do you need a second?	It is debatable?	Can it be amended?
Adjourn meeting	I move that we adjourn	No	Yes	No	No
Call an intermission	I move that we recess for…	No	Yes	No	Yes
Complain about heat, noise, etc.	I rise to a question of privilege	Yes	No	No	No
Temporarily suspend consideration of an issue	I move to table the motion	No	Yes	No	No
End debate and amendments	I move the previous question	No	Yes	No	No
Postpone discussion for a certain time	I move to postpone the discussion until..	No	Yes	Yes	Yes
Give closer study of something	I move to refer the matter to committee	No	Yes	Yes	Yes
Amend a motion	I move to amend the motion by…	No	Yes	Yes	Yes
Introduce business	I move that…	No	Yes	Yes	Yes

To Do This	You Say This	May you interrupt the speaker?	Do you need a second?	It is debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Protect Breach of Rules or Conduct	I rise to a point of order	Yes	No	NO	NO	No Vote	No
Vote on a Ruling of the Chair	I appeal from the chair's decision	Yes	Yes	Yes	No	Majority	Yes
Suspend Rules Temporarily	I move to suspend the rules so that …	No	Ys	No	NO	2/3	No
Avoid Considering an Improper Matter	I object to consideration of this motion	Yes	No	No	No	2/3	-
Verify a Voice by Having Members Stand	I call for a division	Yes	No	No	No	No Vote	No
Request Information	Point of information	Yes	No	No	No	No Vote	No
Take up a Matter Previously Tabled	I move to take from the table…	No	Yes	No	NO	Majority	No
Reconsider a Hasty Action	I move to reconsider the vote on..	Yes	Yes	-	No	Majority	No

The SUNSHINE LAW

What is the Sunshine Law?

Chapter 610 RSMo., Missouri's **open meetings and records law,** opens governmental records, meetings, & votes for public access

- Basic intent: **"It's the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law"** § 610.011 RSMo
- Some records, meetings, & votes can be "closed" to keep them confidential
- Liberally construed in favor of disclosure and openness

The Sunshine Law Does Not:

1

CREATE A RIGHT TO SPEAK AT A PUBLIC MEETING

2

EFFECT HOW LONG A CITY MUST RETAIN A RECORD

3

REQUIRE PROVIDING INFORMATION OR ANSWER QUESTIONS

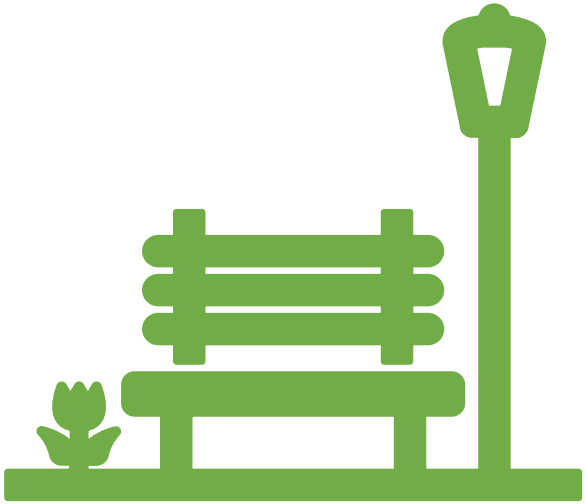
Definition of Public Meeting:

Any **meeting** of a public governmental body …

at which any **public business** is discussed, decided, or **public policy formulated**,

whether corporeal or by means of communication equipment

What is a “public governing body”



- We all know this means the City Council
- But also includes any group created by the Council to provide recommendations to the Council or make decisions:
  - Board of Adjustment
  - Planning and Zoning Commission
  - Park Board/Commission
  - Historic Preservation Commission
  - Subset of Council established by the Council (i.e., if Council votes for 4 members of Council to constitute a committee to study and make recommendations to entire Council)

What is a *meeting*?

For a *meeting,* look at whether **QUORUM** exists – 1 more than ½

BUT – applies to less than a quorum where group is attempting to circumvent Sunshine by having multiple, mini-meetings

- "Includes a public vote of all or majority of members of Council by electronic communication or any other means, **conducted in lieu of holding a public meeting"**

610.010(5) RSMo.

What is **not** a meeting?

Does not include informal gatherings for ministerial or social purposes when there is no intent to avoid the purposes of the Sunshine law

610.010(5) RSMo.

Typical Meeting Format

Consent Agenda

Public Hearings / Citizens' Participation

Resolutions and Ordinances

Miscellaneous Matters / Staff Reports

City Council Reports

Consent Agenda

- Consent Agenda is established ***to address non-controversial items***, such as approving the agenda, bills, minutes, appointments, and potentially small contracts.
- Consent Agenda ***is not an attempt to obfuscate City business or hide City financials***—all of which would be public records
- Typically, ***any member of the City Council*** may move to remove an item from the consent agenda for individual discussion to be adjudicated later in the meeting

Public Hearings & Citizens' Participation

- Public Hearings are an opportunity for the public to come comment on certain matters, typically zoning issues.
- During these public hearings, members of the public are invited to speak or bring in evidence germane to the reason for the public hearing
- Public Hearings differ from Citizens' Participation, in that Citizens' Participation during meetings is only available during certain parts of the meeting, and is guided by specific decorum rules (such as time limits on comments)
- ***It is generally recommended, for the steady administration of City Council meetings, that public comment not become a question-and-answer session with the City Council***

Notice requirements

- Time, date, place, tentative agenda
- If conducted by phone/ electronically, must identify mode and designate location where public may observe/attend
- If meeting by Internet chat, message board, or other computer link, must also post notice on your web site and notify public how to access meeting

- Agenda provides a *tentative* description of what will be discussed at the open meeting
- If planning on going into closed session, place notice of such on the agenda with citation to reason governing body is closing the meeting

610.010(5) RSMo.

Time of Notice

- Section 610.020.2 – Notice "shall be given at least 24-hours, exclusive of weekends and holidays when the facility is closed"
- Section 89.050 – 15-day hearing notice requirement for zoning matters
- Section 67.2725 – 4 days notice for meetings where eminent domain or taxes are discussed
- Note, 610.020.4 allows meetings on less than 24 hours notice for "***good cause***"

Closed Meetings – Procedures & Limitations

Reason for closure must be included in motion to enter into closed session and in open meeting minutes

Affirmative **roll call** vote by majority of quorum of governmental body is required

All votes taken in closed session must be by **roll call**

May only discuss the topic(s) for which they voted to close meeting & which were posted on tentative agenda (unless good cause)

Authorized reasons to close

610.021 RSMo.

- **Litigation/legal advice** (1)
- **Leasing, purchase or sale of real estate** (2)
- **Hiring, firing, disciplining or promoting of particular employees** (3)
- **Individually identified personnel records** (13)
- **Labor Negotiations** (9)
- **Otherwise protected by law** (14)

Hiring, firing, disciplining or promoting of particular employees

AG OPINION NO. 77-92

Elected officials are not "employees"

AG OPINION NO. 184-89

Appointments of ***volunteers*** to citizen boards are not eligible for closed session

Video Meetings

Attorney General said member can participate in roll call vote if participating **via video-conference** and quorum can be met by counting those in physical attendance ***or*** participating via videoconferencing

Elected member's video must be working so that member can be seen to vote via roll call and count towards quorum

Votes, how taken?

… All votes taken by **roll call** in meetings of a public governmental body consisting of members who are all **elected** shall be cast by members of the public governmental body **who are physically present** and in attendance at the meeting **or who are participating via videoconferencing**

610.015 RSMo.

When is roll call required?

To go in closed session

Any vote taken in closed

To pass an ordinance

Whenever specified number of votes are required

Issue is important

Ordinance v. Motion: *the numbers*

ORDINANCE

- Requires majority of elected members of the Council
  - If voters elect 8 members, no matter what, need 5 to vote in affirmative for passage
  - Does not matter if have vacancy or if someone is absent

MOTION

- Generally requires simply majority of those present
  - Number for passage will change based on number present
  - i.e., if 8-member Council, and two are absent, a motion can pass 4-2.

Ordinance Voting: Abstentions

- ROBERT'S RULES say that an **abstention can be counted** with the majority but that rule **does not apply** where a statute governs voting requirements.
- "[a]n abstention is not a favorable vote" and thus cannot be counted. *Braddy v. Zych*, 702 S.W. 2d 491, 495 (Mo.App. 1985).

Minutes – Open & Closed

"A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including, but not limited to, a **record of any votes** taken at such meeting."

"shall include the date, time, place, members present, members absent…"

"When a **roll call vote** is taken, the minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the individual member of the public governmental body."

610.020 & 610.015 RSMo.

What is a “Public Record?”

610.010. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms mean:

(6) “Public record”, any record,

- whether written or electronically stored,
- retained by or of any public governmental body
- including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds,
- including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body;

What is *not* a "Public record?"

(6) "Public record", ... shall **not** include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body…

unless such records are retained by the public governmental body or presented at a public meeting.

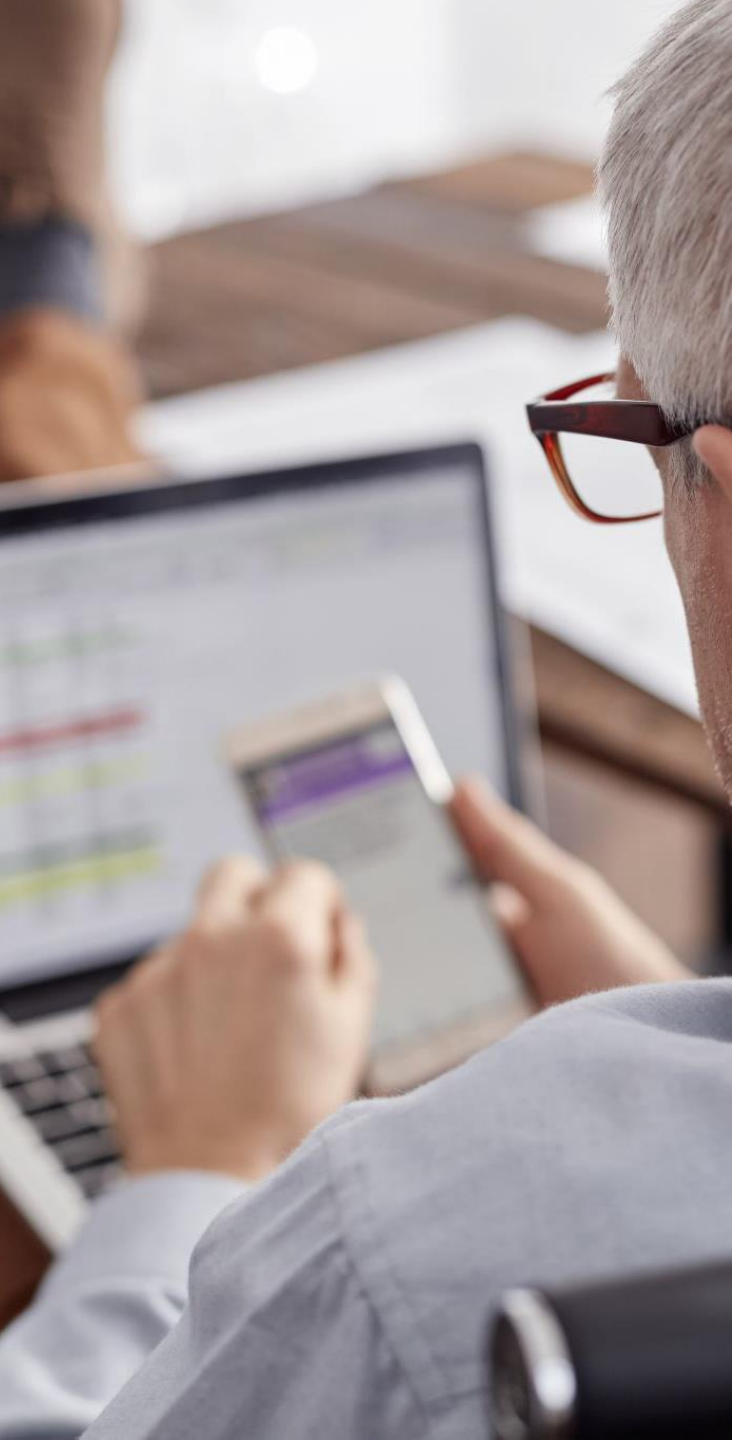
Record Retention

- Not governed by the Sunshine Law
- Section 109.255 RSMo. designates authority for determining document retention schedules to the Local Records Board
- A “public record” under the Sunshine Law and a “record” falling under the retention requirements are not necessarily the same thing
- Record retention schedules available online at the Secretary of State’s website: http://www.sos.mo.gov/archives/localrecs/schedules/
- No penalty for violating record retention policies

E-mail Communications

- Any member … who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format
- ***Only*** when sent to a majority of Council

610.025 RSMo.



Text Messages/emails during meeting?

- Are they public records?
  - Private phone/account versus City phone/account
- Law settled in some other states
- Law unsettled in Missouri

Relevant closed records

Vote or settlement agreement related to legal actions, cause of actions, or litigation (1)

Real estate contract (if being made public will effect negotiation)

Individually identified personnel records, performance ratings, etc. (13)

- But such shall be made public upon final disposition of the matter
- Real estate contracts (purchase, sale or lease) must be made public on execution (2)

Relevant closed record, continued

- Personal identification numbers and credit card numbers (22)
- Specifications for competitive bidding (11)
  - Until such are published for bid or officially approved
- Software codes for electronic data processing, operational guidelines and policies developed for law enforcement, existing or proposed security systems and structural plans (21)
- Records relating to scientific and technological innovations in which owner has proprietary interest (15)
- Confidential or privileged communications with attorney; attorney work product in anticipation of litigation (1)
- Records protected by disclosure of law (14)

610.021 RSMo.

"A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may…"

1. Bring suit at the expense of that public governmental body in circuit court … to ascertain the propriety of such action,

   Note: City will be paying both its attorney's fees and requester's attorney's fees. *See City of Byrnes Mill v. Limesand,* NO. ED 107847 (Feb. 2020)("The Supreme Court of Missouri has interpreted this statute to mean that the public governmental body bringing the declaratory-judgment action ***must*** shoulder the costs for both itself and the party against whom it filed suit.")
2. Seek a formal opinion of the Attorney General or
3. Seek a formal opinion from attorney for the governmental body

Open or Closed?

Policy/Disclaimer

- What about City databases on the City's computer containing residents' names, addresses & phone numbers - Public record?
- Employee lists, name address and phone number - Public record?
- Can residents request confidentiality of their information when submitted to a governmental body?
- E-mails. Should they be deleted? What should be saved and for how long?
- Personal e-mails?

Custodian Issues

Must appoint a custodian to be responsible for records and make available records for inspection/ copying

Shall provide a reasonable written policy regarding "release of information on any meeting, vote, or record" in compliance with 610.010-.030

Policy should also:

- Provide method for records management
- Designate closed records
- Provide rules for virtual meetings

610.023; 610.028 RSMo.

Record Requests

- Respond "as soon as possible, but in no event later than the end of the **third business day following the date the request is received…"**
- IF NOT producing records at end of third business day, give a "detailed explanation of the cause for further delay" **and give the place and earliest time and date the records will be available**
- Records to be provided in the format requested (if available)

610.023 RSMo.

If record contains information that is both exempt **and** non-exempt from disclosure, **there is a duty to separate out the exempt and make the non-exempt material available**

Exempt/Nonexempt Materials

The City's policy is your shield!

Any member **or employee** of the public governmental body who complies with a written policy is not guilty of a violation of Sunshine Act or subject to civil liability for any act arising out of following the written policy

RSMo Section 610.028.2

Violations and Court Actions

- If court finds City violated sunshine, court may declare the action taken void
- If court finds the **governing body or member knowingly** violated sunshine, the court:
  - **Shall** subject member or governing body up to $1,000 fine
  - **May** order the member or governing body to pay **all costs and reasonable attorney fees**
- If court finds that governing body or member **purposefully** violated sunshine, the court **shall**:
  - **Subject member** or governing body up to $5,000 fine
  - Order the member or governing body to **pay all costs and reasonable attorney fees**

Best Practices

1. Bring Sunshine Book to meetings
   - (Here is where can order for free: 573-751-8844; http://ago.mo.gov/sunshinelaw/)
2. Have a clear, strong policy; review periodically
3. Adopt practice of writing time of posting on agenda to prove 24-hour compliance
4. When posting agenda, if must amend, label the agenda as amended
5. Do not answer questions under the Sunshine Law; never answer legal questions

Suggested Best Practices

6. Do not create new records to respond to a request
7. Use forms to avoid disagreement about request – clerk may fill out if necessary to confirm request. Send request form back with production
8. Get payment up front for large requests to ensure understand costs and encourages requester to limit scope of request to reduce costs (*ensure policy allows this*)
9. Redact social security information
10. Remember the "reasonable clerk standard"
11. Only go into closed session when really need to not just because could be an authorized reason

Suggested Best Practices

FAQs

Q: Are drafts required to be disclosed?

Q: Can you admit the public into a closed session?

Q: What about requests for information about a specific employee by the person who didn't get the job requesting the other person's age, experience & whether that other person is a resident?

Q: Must you allow the public to remain in chambers when council moves to closed session?

Q: Must you allow the public to record the meeting?

Q: What about records held by your municipal court?

Social Media Issues

Social Media:

First Amendment Implications

Social media (Facebook, Twitter, LinkedIn, etc.) is a tool that can be used to convey ideas and information to a wider audience than ever before

It can also be used to harass, annoy, and spread hate. So, if you are running a social media page as a government official, what are the biggest issues to be aware of?

Mainly, ***the First Amendment***

Social Media:

First Amendment Implications

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Social Media:

First Amendment Implications

But I thought the First Amendment covered "State Action," i.e., restrictions by the government over individuals' speech?

It does, but case law is not yet settled on whether governmental officials' social media pages constitute part of a governmental role, and therefore action taken on those platforms constituting "state action."

Further, state law has not yet caught up on whether these governmental social media pages are subject to the Sunshine Law, but based on the e-mail and text cases, this may be on the horizon.

Social Media:

First Amendment Implications

- Cases on the Nexus of 1A and Social Media in the 8th Circuit:
  - *Tanner v. Ziegenhorn*, 2021 WL 4502080 (E.D. Ark. 2021) (where Arkansas State Police blocked individual on Facebook, or set the profanity filter to "strong" filtered too much speech, and additional filters for works like "copper," "pig," and "jerk" were overly broad)
  - *Campbell v. Reisch*, 367 F. Supp.3d 987 (W.D. Mo. 2019) (blocking individuals from state representative's Twitter account due to criticism relating to patriotism violated 1A)
  - *Felts v. Reed*, 504 F. Supp. 3d 978 (E.D. Mo. 2020) (Interactive component of public official's social media account is a public forum where official discussed public business, and blocking individual from accessing forum due to critical tweets violated 1A)
- 9th Circuit case, *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022) (public officials acted within official capacity and conducted state action when blocking users from Twitter and Facebook), is going to the Supreme Court regarding the contours of the 1st Amendment and Social Media usage

Social Media:

First Amendment Implications

What are best practices to avoid these issues:

1. Keep separate social media pages for public business and private business. Should still understand you are a representative of the City in private life.
2. If you have a private account, do not use private social media to discuss public business.
3. Only operate social media pages that do not allow interactive comments.
4. Set language filters to the weakest possible setting, or no filtered setting at all.
5. Do not engage with commenters, either to hide, block, argue, or reply.
6. If you can't take the heat, stay out of the kitchen.

Ethics and Conflicts of Interest Considerations

Statutory Restrictions

- Main ethics statutes describing prohibited transactions:
  - §105.452 - .454 – elected and appointed public officials and employees
  - §105.458 – members of governing bodies of political subdivisions
  - §105.462 – persons with rule making authority
  - §105.461 – disclosure

Summary

Generally, no appointed or elected official or employee shall:

- Use or disclose confidential information with intent to result in financial gain for himself, his spouse, his dependent child, or any business within which he is associated
- Use decision making authority for the purpose of obtaining financial gain which materially enriches himself, his spouse or dependent children
- Perform any service, act or refrain from acting or attempt to influence a decision by reason of any payment, offer to pay, promise to pay or receipt of anything of actual pecuniary value
- Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit
- Sell, rent or lease any property, or provide services, to the City in excess of $500 per transaction or $5,000 per year unless competitively bid and provided the bid is the lowest received
- Perform 1 year after termination any service for compensation to influence the decision

Additional Notes

City Code & City Policies

Appearance of Impropriety

City Policy—Conflicts (2-29(c))

City has a robust Ethics policy for Officials, found in Section 2-29:

(1) *Interest in contract, transaction, zoning decision or other matter.* No public officer, having the power or duty to perform an official act or action related to a particular contract, transaction, zoning decision or other matter which is or may be the subject of an official act or action of the city, shall:

a. Participate in or attempt to influence, either directly or indirectly, any official act or action in relation to such contract, transaction, zoning decision or other matter in which he or she has any interest except as otherwise stated in this section; or

b. Take any official act or action on any matter relating to a business entity in which the public officer shall have an interest; or

c. Represent, advise or appear on behalf of, whether paid or unpaid, any person involved in any such contract, transaction, zoning decision, or other matter, except as otherwise stated in this section; or

d. Have solicited, accepted or granted a gift from or to a person involved in such contract, transaction, zoning decision, or other matter, except as otherwise stated in this section.

(2) *Appearances.* No public officer shall appear on behalf of any private person or business entity, other than for himself or herself or for his or her spouse or for his or her minor children, before any city agency or municipal court.

a. Provided however, a member of the city council may, without compensation (except where compensation is provided by the city to all council members similarly situated), appear before city agencies on behalf of his or her constituents in the course of performing his or her duties as a representative of the electorate or in performing his or her public or civil obligations;

b. Provided further, no provision hereof shall preclude a public officer from making an appearance before any city agency in representation of a business entity in which such public officer has a substantial ownership interest so long as the public officer discloses, to the city agency, his or her ownership interest in the business entity at the inception of such appearance;

c. Provided further, no provision hereof shall preclude a public officer from making an appearance before any city agency in representation of a not-for-profit entity or association in which such public officer is an officer or board member so long as the public officer discloses, to the city agency, his or her relationship to the not-for-profit entity at the inception of such appearance;

d. Provided further, no public officer shall take any official act or action on any matter on which he has made an appearance, as permitted above, except as to members of the city council in acting in their official capacity as permitted in subsection (c)(2)a. hereinabove.

City Policy–Board of Ethics 2-29(d)

Duties of board. The duties of the board shall be to generally:

a. Investigate violations of this section as hereinafter provided; and

b. To render advisory opinions as hereinafter provided.

(3) *Advisory opinions.* The board shall have the power to render advisory opinions with respect to this section and its application to specific factual patterns.

(4) *Investigation of violations.* The board shall have the general power to investigate any alleged violation of this section and all public officers shall fully cooperate with any such investigations. Any person who believes that any public officer has violated any provision of this section shall have the right to file a complaint with the board, which complaint shall be in such form and of such content as the board shall prescribe. The board shall, upon conclusion of its investigation, report its findings and recommendations to the city council. The board may retain independent legal counsel to assist and advise the city council regarding interpretation of this section and the operation and/or effect of this section to any factual pattern.

Nepotism

Mo. Const. Art. VII §6

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

Relations to the 4th Degree

1st Degree	Child & Parents
2nd Degree	Grandchild, Brother/Sister, Grandparents
3rd Degree	Great Grandchild, Great Grandparents, Aunt/Uncle, Niece/Nephew
4th Degree	Great Great Grandchild, Great Great Grandparents, First Cousin, Great Aunt/Uncle, Great Niece/Nephew

Tips

- A husband is related by marriage (affinity) to his wife's relatives in the same way that she is related to them by blood (consanguinity) and she to his family in the same way, but the kindred of the spouses are not related to one another. (e.g., a brother of the husband is not related to a brother of the wife, etc.)
- Half relationship is the same as a whole relationship.
- Step relationship is the same as a blood relationship.
- A relationship by marriage (affinity) terminates if death or divorce occurs.

Nepotism, continued

Applies equally to officers AND employees

Does not have to be a paid appointment (*State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397 (Mo. 1994))

Even if the vote was unnecessary in order to make the appointment, if the official takes any action to make the appointment, it's a forfeiture (*State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397 (Mo. 1994))

You cannot retroactively "fix" the violation

Intent (or ignorance) is irrelevant (*State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397 (Mo. 1994))

Statutory Disclosure

- 105.461 – "… any member of the governing body of a political subdivision who has a substantial personal or private interest in any measure, bill, order or ordinance proposed or pending … shall, before such official passes on the measure, bill, order or ordinance, file a written report of the nature of the interest with … clerk… ."
- This requirement is deemed met if the member filed a financial interest statement pursuant to sections 105.483 to 105.492 which disclosures the basis for such substantial personal or private interest

City's Financial Disclosure Policy

- 105.483 sets forth who is required to file financial interest statements:
- (11) Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of **each political subdivision with an annual operating budget in excess of one million dollars, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485.**

- 105.485 exception requires City to
  - biennially adopt by ordinance or resolution
  - by Sept. 15 the preceding year
  - establishing and making public its own method of disclosing potential conflicts of interest and substantial interests
  - A certified copy of the ordinance or resolution must be mailed to Missouri Ethics Commission within 10 days of adoption
  - Containing minimum requirements

Public Financial Disclosure – Where Must You File?

The reports shall be filed with the: City Clerk, Secretary of State's Office, and The Missouri Ethics Commission

The reports shall be in substantially the same form as the one issued by the Missouri Ethics Commission

All Agreements With the City Must be in Writing

§ 432.070 Requires that:

- No county, city, town, village . . . or other municipal corporation shall make any contract, *unless*
  - it is within the scope of its powers or expressly authorized by law,
  - it is made upon a promise to perform AFTER making of the contract,
  - includes the price term ($$$$$),
  - is **in writing**,
  - dated when made,
  - signed by the parties thereto (or their agents authorized by law and duly appointed), and
  - **authorized in writing**

CONTRACT MUST BE MADE PRIOR TO THE WORK

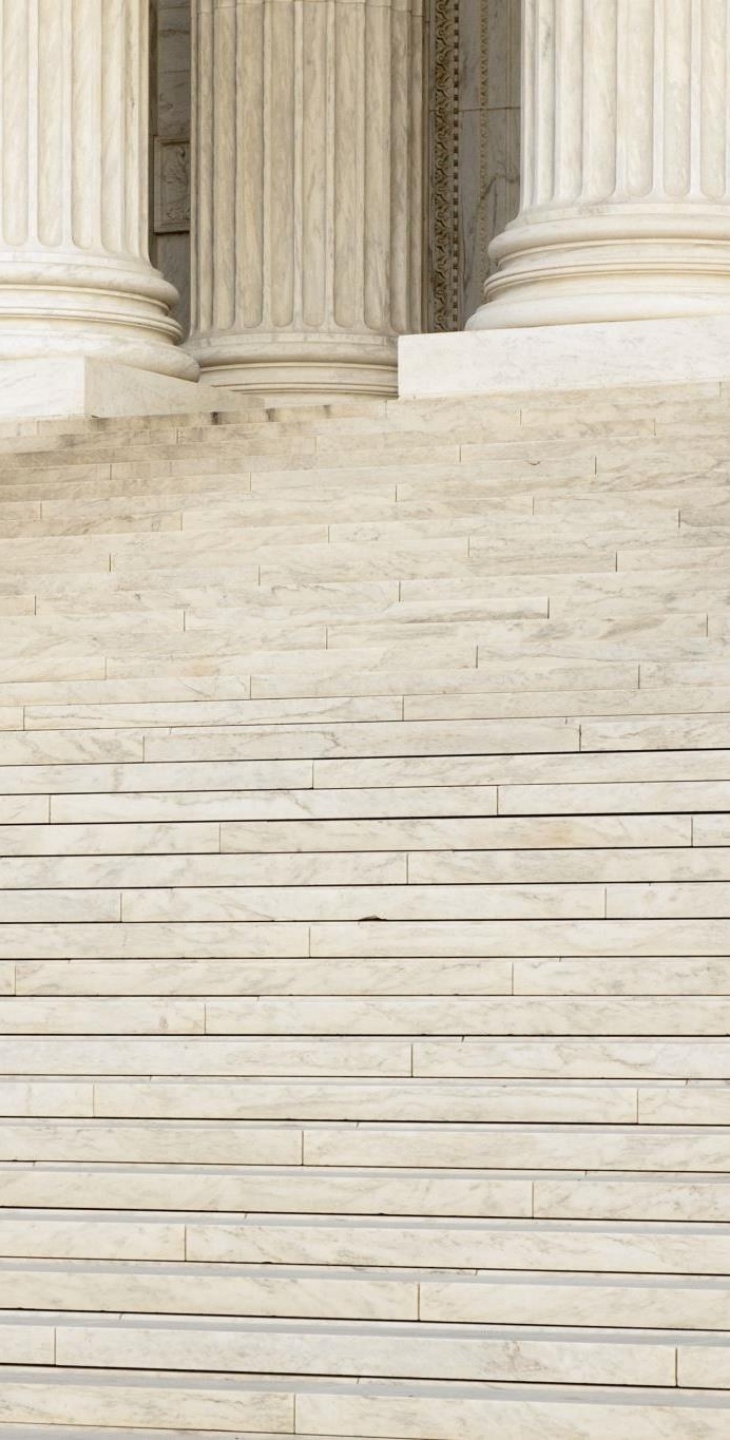
Art. III, §39 Mo.Const. prohibits authority:

> "to grant or to authorize . . . any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered . . .

Contract Bidding

State law requires competitive bidding in:

- contracts to provide health & employee benefits - must be competitively bid at least every three (3) years. (§67.150)
- contracts or business transacted with any city official or employee over $500.00 (§105.454)
- certain bank deposit contracts for 3rd and 4th class cities (§ 95.280)
- projects using federal or state funds requiring bidding



Election Issue

NO PUBLIC MONEY MAY BE USED TO SUPPORT OR OPPOSE ANY CANDIDATE OR BALLOT ISSUE. § 115.646 RSMO.

Questions?

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