MoCCFOA New Clerks Institute

CITY CLERKS 101

ERIN SEELE & LYNDEE RODAMAKER

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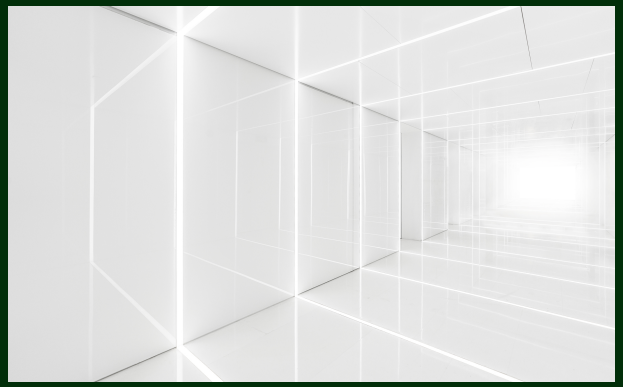
CUNNINGHAM, VOGEL & ROST, P.C.
legal counselors to local government

Today's Topics

- THE SUNSHINE LAW – OPEN RECORDS & MEETINGS
- ETHICS AND CONFLICTS OF INTERESTS
- LOCAL GOVERNMENT – AUTHORITY & LIMITATIONS
- ORDINANCES
- MISCELLANEOUS

The SUNSHINE LAW



What is the Sunshine Law?

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Chapter 610, Revised Statutes of Missouri

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

I. Public Meetings

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

610.010(5) RSMo.

What is a "public governing body"

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

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.

QUESTION

TRUE OR FALSE:

THE MAYOR CAN CALL EACH MEMBER OF THE BOARD TO DETERMINE WHETHER TO PUT SOMETHING ON THE AGENDA?

II. Notice of Meeting

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

610.020 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

Exception:

610.020.4 allows meetings on *less than* 24 hours notice for "**good cause**"

QUESTION

CAN THE MAYOR SIMPLY ADD AN ITEM TO THE AGENDA AT THE MEETING?

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)

610.022 RSMo.

Authorized reasons to close

- **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)

610.021 RSMo.

QUESTION

WHEN POSTING A CLOSED SESSION, DO YOU HAVE TO INCLUDE THE REASON FOR ENTERING EXECUTIVE SESSION?

Hiring, firing, disciplining or promoting of particular employees

Elected officials are not "employees"

AG OPINION NO. 77-92

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

AG OPINION NO. 184-89

QUESTION

CAN WE GO INTO CLOSED SESSION TO DISCUSS WHETHER TO BUY PROPERTY TO BUILD A NEW PUBLIC WORKS BUILDING?

III. Voting

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.

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

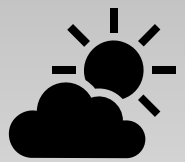
When is roll call required?

- To go in closed session
- Any vote taken in closed
- To pass an ordinance
- Whenever specified number of votes are required
- Issue is important

QUESTION

IF AN ALDERMAN IS OUT OF TOWN AND WITHOUT HER WE DON'T HAVE ENOUGH ALDERMEN TO PASS AN ORDINANCE, CAN SHE VOTE BY TELEPHONE?

Ordinance v. Motion: *the numbers*



Ordinance requires majority of elected members of the board/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 board/council, and two are absent, a motion can pass 4-2.

Ordinance Voting

ABSTENTIONS

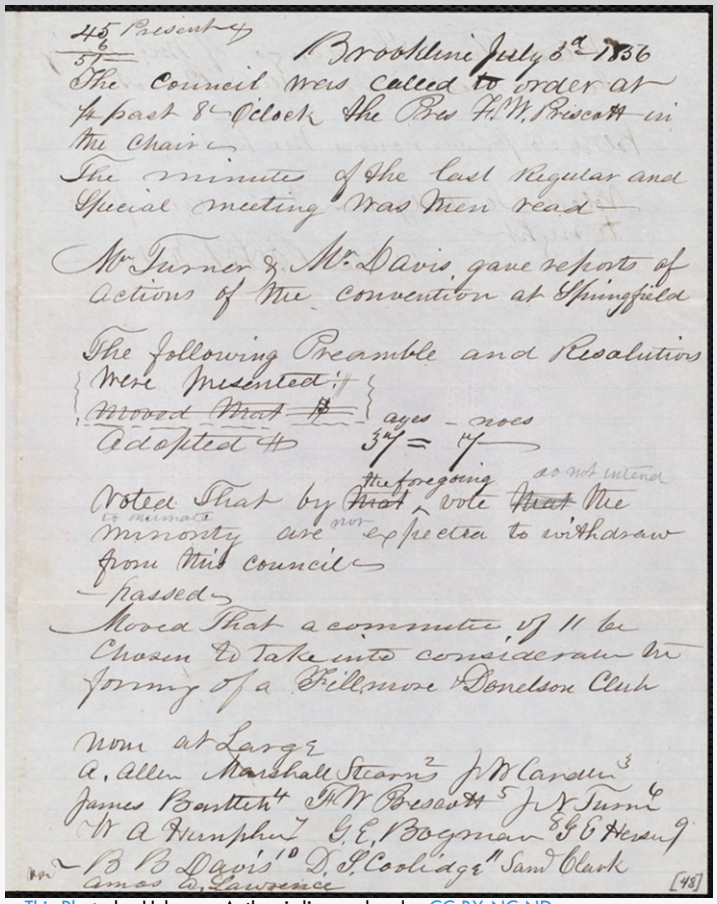
- ROBERT'S RULES say that an **abstention can be counted** with the majority but that rule **does not apply** where a statute governs voting requirements.
- "[a]n abstention is not a favorable vote" and thus cannot be counted. *Braddy v. Zych*, 702 S.W. 2d 491, 495 (Mo.App. 1985).

QUESTION

Council has 6 members.

True or False:

An ordinance passes when 3 members vote in favor of adopting an ordinance, 1 member abstains, and 2 vote nay.



45 Present
6
51

Brookline July 3d 1856

The Council was called to order at ½ past 8 o'clock the Pres F. W. Prescott in the chair

The minutes of the last Regular and Special meeting was then read

Mr Turner & Mr Davis gave reports of actions of the convention at Springfield

The following Preamble and Resolutions were presented

~~Moved that~~ ayes - noes

Adopted 37 = 7

Voted That by ~~that~~ the foregoing vote ~~that~~ do not intend the minority are not expected to withdraw from this council

passed

Moved That a committee of 11 be chosen to take into consideration the forming of a Fillmore & Donelson Club

Now at Large

A. Allen Marshall Stearns 2 J W Cardell 3
James Bartlett 4 F W Prescott 5 J N Turner 6
W A Humphrey 7 G. E. Bogman 8 G E Hersey 9
B B Davis 10 D. S. Coolidge 11 Saml Clark
Amos A. Lawrence

[48]

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IV. Meeting Minutes

QUESTION

DO I NEED TO KEEP CLOSED SESSION MINUTES?

What about Work Sessions?

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.

QUESTION

IF EXECUTIVE SESSION MINUTES ARE APPROVED IN OPEN SESSION, DOES THAT MAKE THEM A PUBLIC RECORD?

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V. Records & Record Requests

What is a "Public Record?"

610.010. DEFINITIONS.

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.

QUESTION

IF A PERSON REQUESTS THE CITY TO PUT TOGETHER A LIST OF ALL THE NAMES OF RESIDENTS WHO DRIVE A FORD, DOES THE CITY HAVE TO GIVE OUT SUCH INFORMATION?

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/

QUESTION

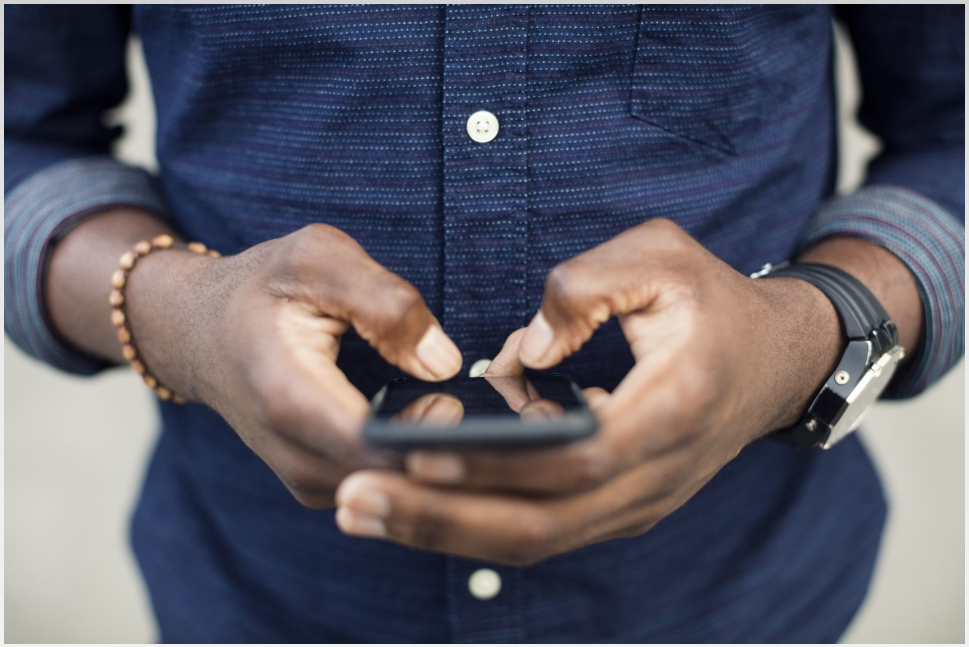
IF A COUNCILMEMBER SENDS AN EMAIL TO THE ENTIRE COUNCIL BUT NOT TO THE CUSTODIAN OF RECORDS, WHO IS IN TROUBLE?

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/board

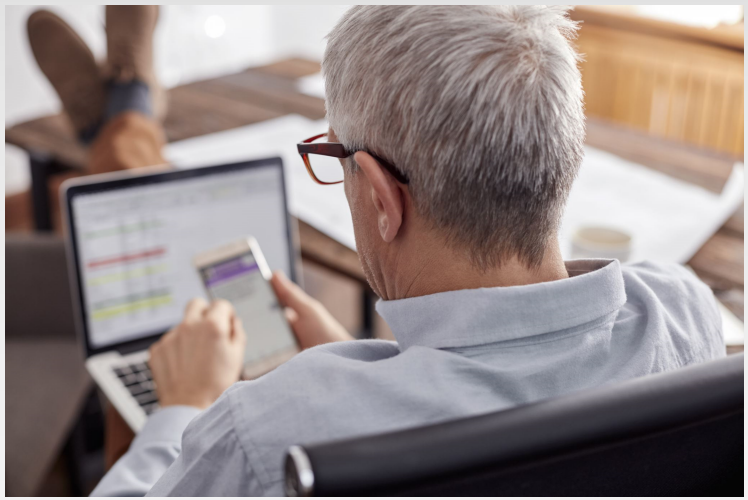
610.025 RSMo.



QUESTION

IF DURING A MEETING, A COUNCIL MEMBER TEXTS ANOTHER COUNCIL MEMBER, CAN THE PUBLIC OBTAIN THOSE TEXTS VIA A RECORDS REQUEST?

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

Open or Closed?

- "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

Relevant closed records

Vote or settlement agreement related to legal actions, cause of actions, or litigation (1)	• But such shall be made public upon final disposition of the matter
Real estate contract (if being made public will affect negotiation)	• Real estate contracts (purchase, sale or lease) must be made public on execution (2)

Individually identified personnel records, performance ratings, etc. (13)	• Only exceptions:
	  • Name, position, length of service, and salary
	  • Final decision to fire, hire, promote or discipline employee must be made public within 72 hours

Sealed Bids (12)	• Until opened, then public
Confidential or privileged communications with auditor (17)	• Final audit reports are public

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.

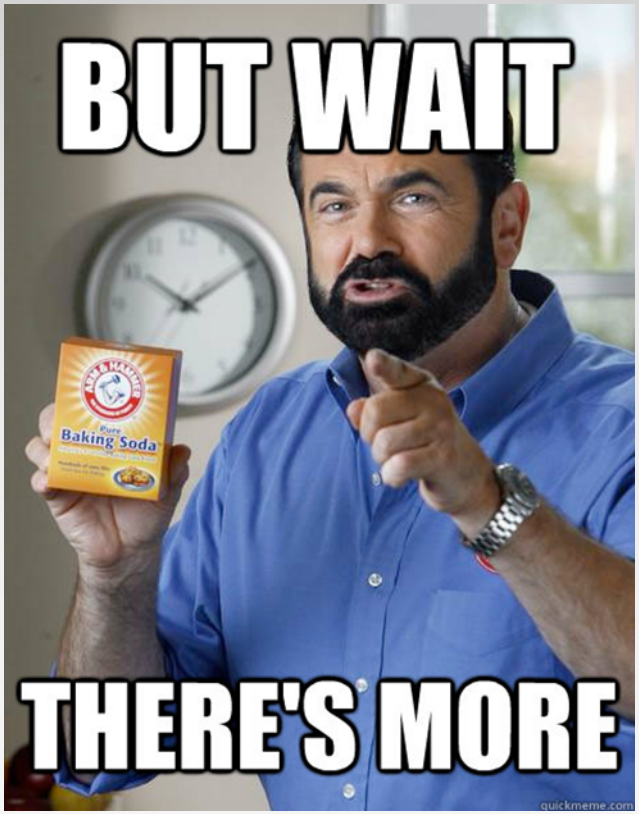
Social Security Numbers

Redact SSNs?

42 USC 405 (c)(2)(c)(viii)(I) states: Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record

- 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?

Policy/Disclaimer



QUESTIONS

DOES A CITY HAVE TO APPOINT A CUSTODIAN OF RECORDS?

MUST A CITY HAVE A SUNSHINE POLICY?

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.

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

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…"**

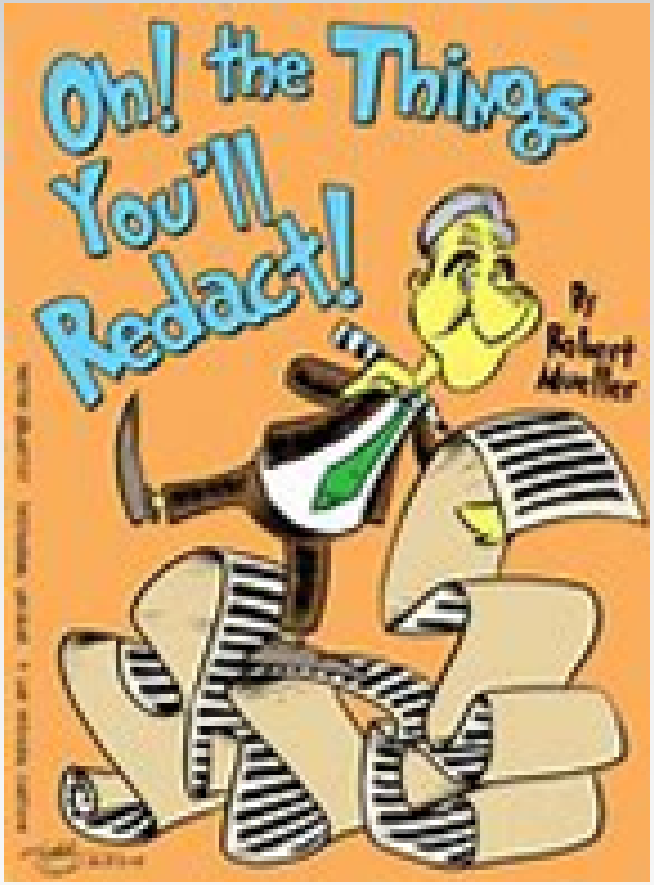
IF NOT producing records at end of third business day, give a "detailed explanation of the cause for further delay" **and give the place and earliest time and date the records will be available**

Records to be provided in the format requested (if available)

610.023 RSMo.

QUESTION

IF A CITY CLERK RECEIVES A REQUEST ON FRIDAY AT 11 AM AND DOES NOT RESPOND UNTIL WEDNESDAY AT 5 PM, DID HE/SHE VIOLATE SUNSHINE?



Exempt/Nonexempt Materials

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**

Records Request

Pro Tips

Have requester or City Clerk fill out a request form

Attach request form to response so no confusion what request City is responding to

Check to see if requestor asked for a written statement of the grounds for denial

You do <u>not</u> have to create a new record

- Under Sunshine, a compilation of information must already exist in public records

You do <u>not</u> have to answer questions

You do <u>not</u> have to "certify" records

"reasonable clerk standard" *Anderson v. Village of Jackson,* 103 S.W.3d 190 (Mo. App. 2003)

Pop quiz!

Is this a proper records request?

1. I want a copy of the minutes from the closed session of the City Council on June 30, 2020.

2. Why did the Board vote to give the employees a raise this year?

3. Send me the resignation letter of the Public Works Director. Did the Public Works Director say why she resigned?

4. Does the City collect gross receipts taxes? What is the City's rate it charges to cable providers? Telecommunication providers?

5. I request you make available to me the working contract with Officer Nitro.

[Officer Nitro is a police canine.]

6. Please provide a copy of the minutes from the Board meeting on January 10, 2023.

[BUT—the minutes from that meeting have not been drafted yet.]

7. I know the City has a contract with X trash hauler. As you know, we have had lots of issues and keep being told the City is taking action to address this with the contractor. Explain all actions taken.

8. Please provide the emails for every official running for office.

9. Provide copies of all emails sent by the City Clerk since 2020.

10. A copy of the lease purchase agreement with the City. Please explain how this contract allows the City to rent this property to X.

Fees for Copying Public Records (610.026 RSMo.)

Establishing the rate to charge for copies (not to exceed $0.10 per page for 9"x14")

- for 2-sided copy, can I charge $0.10 per side?

Hourly fee for **duplication** time

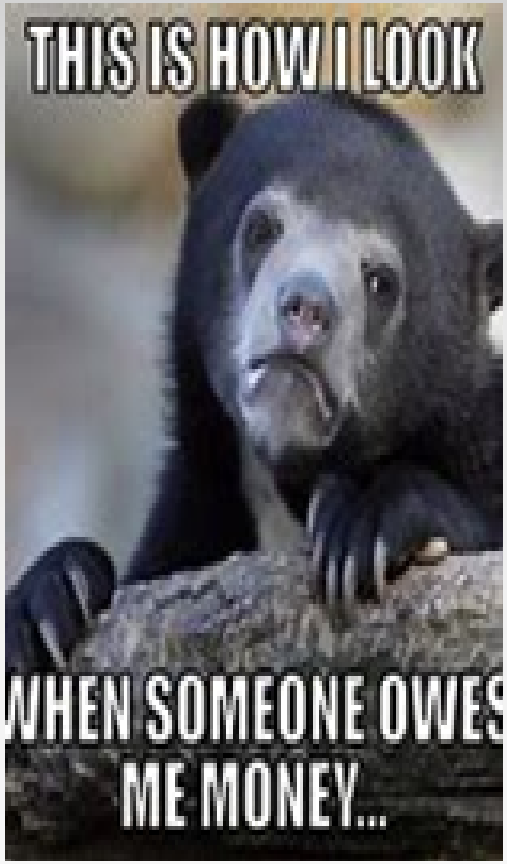
- Not to exceed average hourly rate of pay for clerical staff

Hourly fee for **research** time

- Actual cost (610.026.1(1) RSMo.)

Estimates, collecting fees "up front" ??

Special Costs – see 610.026.1(2)



QUESTIONS

CAN CITY CHARGE FOR COPYING FEES WHEN RECORDS WERE REQUESTED TO BE SENT VIA EMAIL?

CAN CITY CLERK WAIVE THE FEES?

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**

VI. Law Enforcement Records

Special Rules

- Sunshine Law distinguishes between records of law enforcement ("L.E.") agencies (§§610.100-150) and other records of public governmental bodies
- While some of the "ordinary" Sunshine Law still applies, there are special rules regarding law enforcement records

Unique Attributes of Law Enforcement Records

L.E. agencies are required to maintain records of all reported incidents, investigations, and arrests made (§ 610.100.2)

It is a crime to knowingly violate certain Sunshine Law provisions relating to L.E. agency records (§ 610.115)

MOST critical distinction is the three "special types" of records:

- Arrest reports
- Incident reports
- Investigative reports

Arrest Reports

An "arrest report" is a record of a L.E. agency of an arrest and any detention or confinement and the charge

"Arrest" is an actual restraint of a person or his or her submission to the custody of an officer *for a criminal violation that results in issuance of summons or person being booked*

610.100.1 RSMo.

Incident Reports

A record of a L.E. agency pertaining to a "crime or incident" that consists of:

- Date,
- Time,
- Specific location,
- Name of victim, and
- Immediate facts and circumstances surrounding the initial report of the "crime or incident

Includes the daily "log book"

610.100.1 RSMo.

Investigative Reports

"Investigative report": a record that is:

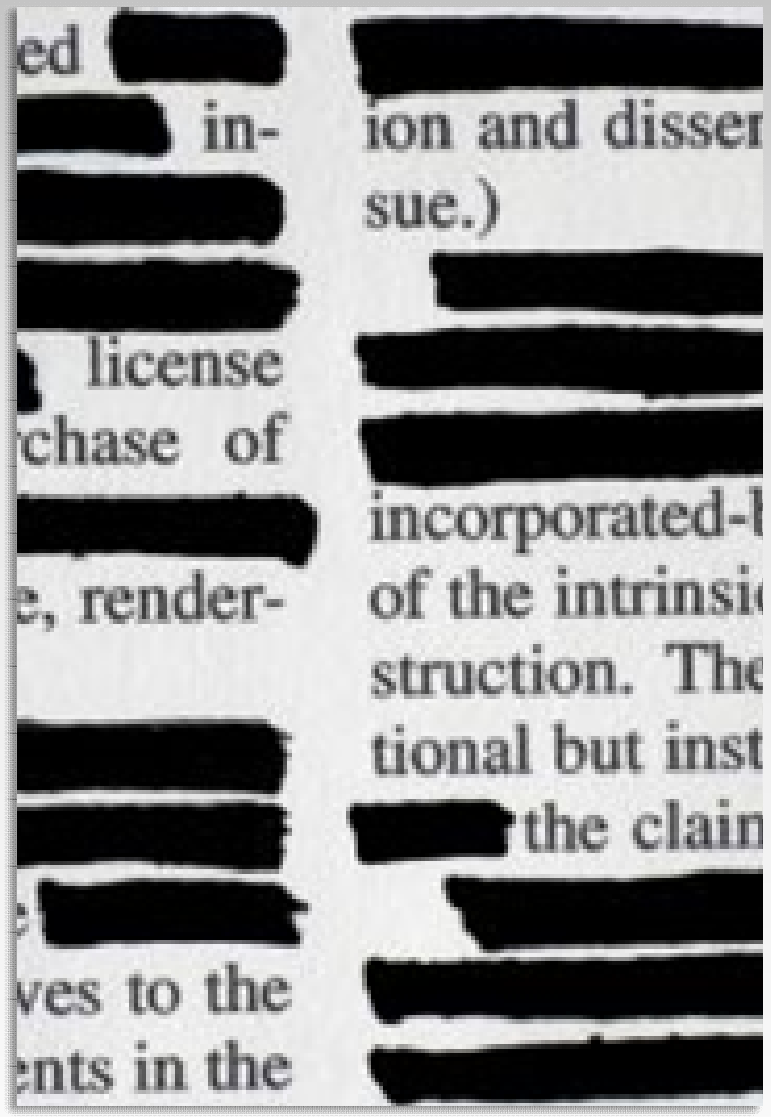
- Not an arrest or incident report and
- Prepared by personnel of L.E. agency inquiring into a crime or suspected crime, either in response to incident report or in response to "evidence developed by [LEOs] in the course of their duties"

610.100.1 RSMo.

- The type of record, along with other factors, determines the rules for whether it is open or closed
- Arrest reports are generally OPEN
  - Unless person is not charged within 30 days, then only the "disposition portion of the record may be accessed" and subject to § 610.120
  - also closed if found not guilty, SIS, etc.
- Incident reports are generally OPEN
- Investigative reports are generally CLOSED
  - *unless and until the investigation is "inactive"*

610.100 RSMo.

Why It Matters



Closure Requirements

- In some cases, required to redact information / close the record (§ 610.100.3 RSMo.)
- 911 calls and information (§ 610.150 RSMo.)
- Juvenile Records - § 211.321 RSMo.
  - "kept separate from the records of persons eighteen years of age or over"

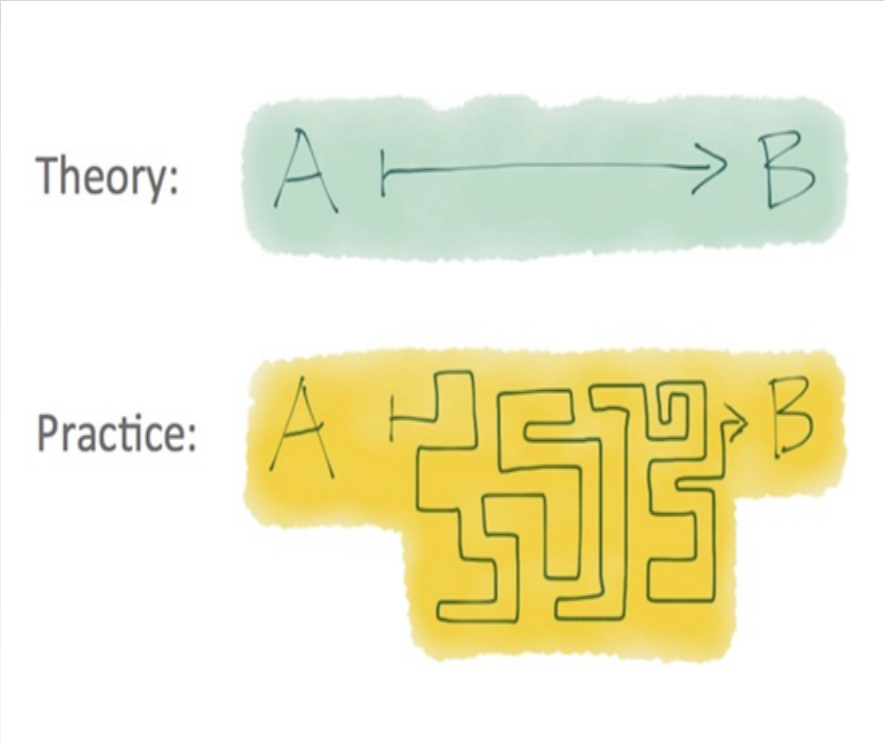
- If SIS, records after completion of probation and closure of case
- Investigative records pursuant to § 590.502
- Mobile Video Recording
  - Closed record until investigation is inactive or a "nonpublic location"

But Wait – Other Closures

Do victims have special access?

Access to certain records required to person involved in an "incident" under § 610.100.4

So, you open your mail at work to find a very demanding-sounding letter from a lawyer. . .



Preservation Letters

Theory: Send evidence preservation letters to law enforcement agencies that investigated the crime or other incident to prevent law enforcement from destroying evidence.

What is required and purpose?

- Sending the letter unequivocally starts duty to preserve evidence as of date of receipt of letter
- Primary purpose: prevent routine destruction of documents and evidence
  - Video and audio recordings
  - 911 Calls

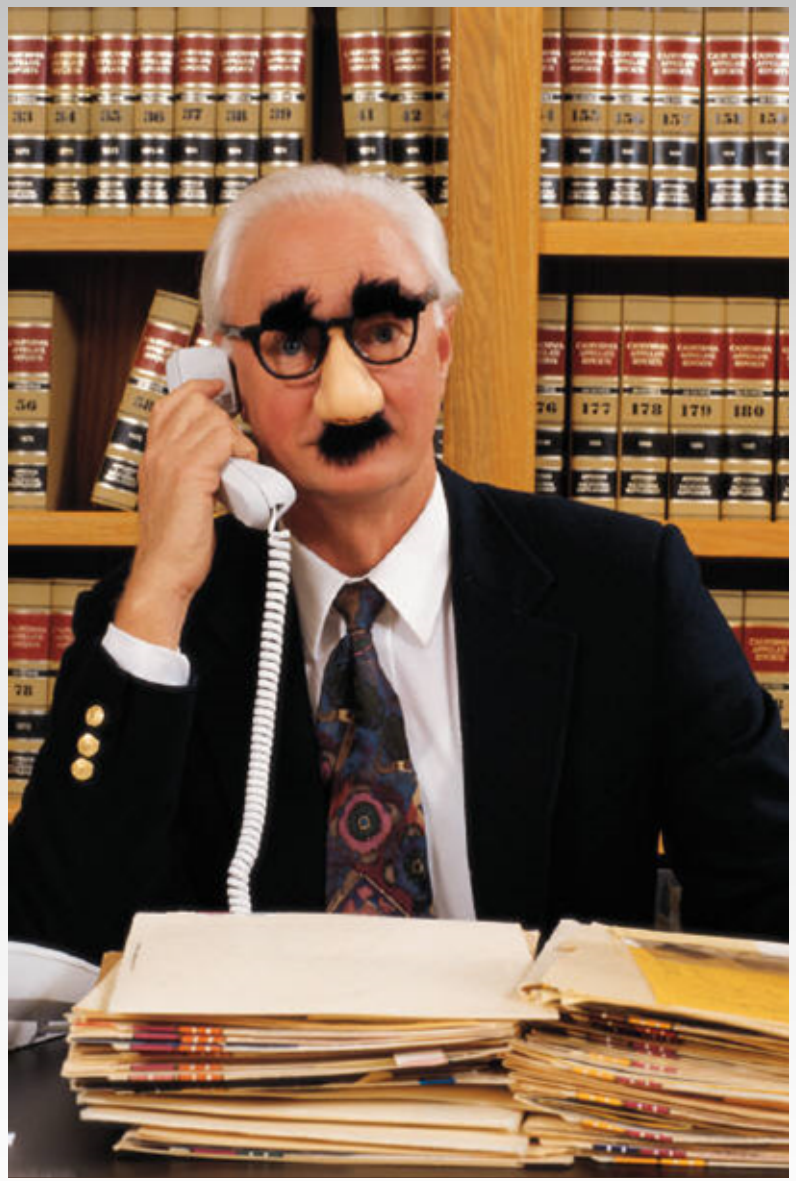
Preservation Letters, cont.

Possible sanctions for non-compliance:

- Awarding attorneys' fees and costs to requesting party
- Giving jury an adverse inference instruction
- Precluding admission of favorable evidence
- Dismissal of action or judgment by default (the "death-by-nuclear-bomb penalty")
- *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 569 (D. Md. 2010).

Subpoena

Call your City Attorney



VII. Best Practices

Suggested 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

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?

Ethics and Conflicts of Interest Considerations

1. Statutory Restrictions

- Sections 105.452-.464 RSMo. impose statutory restrictions and prohibitions on public officials related to conflicts of interest, including:

§ 105.452	Elected or appointed public officials and employees
§ 105.454	Certain elected or appointed public officials and employees serving in an executive or administrative capacity
§ 105.458	Members of governing and legislative bodies of political subdivisions
§ 105.461	Officials with a substantial personal or private interest in any measure, bill, order, or ordinance proposed or pending
§ 105.462	Any person with rulemaking authority
§ 105.464	Any persons in judicial or quasi-judicial positions

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

Statutory Prohibitions Question #1

A Board of Adjustment is voting to grant a variance to the City's zoning code to allow a roundabout to be built in a residential area as part of a new residential development. The Chair of the Board lives close to the development, and she is in favor of a roundabout being built there to help improve traffic flow

Q: Does the Chairman have a statutory conflict?

A. Yes	**B.** No	**C.** Maybe

Answer – B (no)

- Not under chapter 105 RSMo.
  - Whether the variance is granted or not has no bearing on the losing bidders' financial situation and therefore Chapter 105 is inapplicable to this situation.

Statutory Prohibitions Question #2

What if the chairman had won the bid for constructing the roundabout?

Now does the chairman have a conflict of interest in hearing the variance request?

A. Yes	**B.** No	**C. Probably**

Answer – C (Probably)

The statutes prohibit the following conduct:

- Use decision making authority for the purpose of obtaining **financial gain** which **materially enriches** himself, his spouse or dependent children;
- Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit.

So, the question is whether granting the variance will materially enrich the board member or provides a special monetary benefit.

Statutory Prohibitions Question #3

City Clerk's company places a bid for a $25,000 city project and is the second lowest bid but unlike the lowest bidder, City Clerk's company is known for quality of work and ability to always finish on time. May the city award the contract to the City Clerk's company?

A. Yes, but only if the bid was publicly advertised	**B.** No	**C.** Yes, the City Clerk is not voting on the matter

Answer – B (no – must be the lowest bid)

105.454 prohibits any elected or appointed official or employee from performing any service in excess of $500 per transaction or $5,000 per year unless after public notice and competitive bidding, he/she is the lowest bidder

So here, because the City Clerk's company was best but not the lowest, the City may not award the contract

Statutory Prohibitions Question #4

Assume instead, it was the City Clerk's son's company. Could the City award the bid to the son's company?

A. Maybe – depends	**B.** No	**C.** Yes

Answer – C (yes)

Because the son is not an employee or official of the City, 105.452-.458 prohibitions do not apply

Therefore, the City may award to son's company

Statutory Prohibitions Question #5

What if instead of City Clerk. It was an alderman's son's company. Could the alderman vote on the issue of awarding the bid to his son?

A. Maybe – probably	**B.** No	**C.** Yes

Answer – A (Maybe – Probably)

Here, depends if the son is dependent and whether the Alderman can be said to be "associated" with the son's business

Also, depends if the alderman would receive a special monetary benefit from his son getting the contract

105.454 prevents any official or employee from taking part in a matter costing in excess of $500 per transaction or $5,000 per year that will result in value to him/her, his her spouse, dependent child in his/her custody or business associated with the member

105.452 prevents the alderman from favorably acting on any matter that is so specifically designed so as to provide a special monetary benefit to him or dependent child.

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 Cont.

- 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))

Nepotism Question #1

Can a husband and wife serve on the Board of Aldermen together?

A. Regardless of the law, it's a bad idea and should be prevented	**B.** Yes	**C.** No

Answer – B (yes)

Nepotism does not apply

No state law prohibiting it

Nepotism Question #2

Mayor has her son-in-law perform work to repair a City sign for the City. Mayor pays son-in-law $100 from the general fund upon completion of work repairing the sign. Mayor argues that is not nepotism because she hired the son-in-law as an independent contractor.

Is the Mayor correct?

A. Yes – this was a contract situation	**B.** No, the son-in-law was employed by the City in violation of the nepotism statute.	**C.** Yes, $100 to fix a sign is a great deal and saved the City money	**D.** Yes, the son-in-law is not related to the Mayor within the 4th degree.

Answer – B (no – violated nepotism)

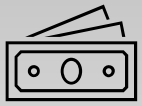
State ex inf. v. Rhoads, 399 S.W.3d 905 (Mo. App. 2013)

- The exact argument made by the Mayor was that because her son-in-law was an independent contractor, she did not appoint him to "employment" as that term is used in the constitution
- But odd facts that could have made a difference

- The appeals court found that work as an independent contractor falls within the definition of "employment" as that term was used in the constitution.
- Affirmed Mayor's removal

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



Financial Disclosure Requirements for Cities

§ 105.483(11) dictates which city officials are required to file financial interest statements:

- ✓ In political subdivisions with an annual operating budget of >$1 Million…
  - ✓ All elected officials and candidates for elective office; the chief administrative officer; the chief purchasing officer; and the general counsel--if employed full time

- ✓ In ALL political subdivisions…
  - ✓ All officials or employees who are 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

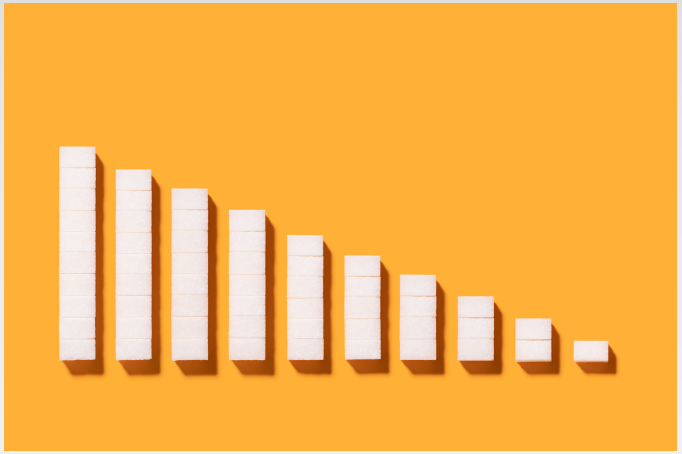
UNLESS the political subdivision adopts an ordinance, order, or resolution pursuant to subsection 4 of § 105.485…

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

Local Government: 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

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

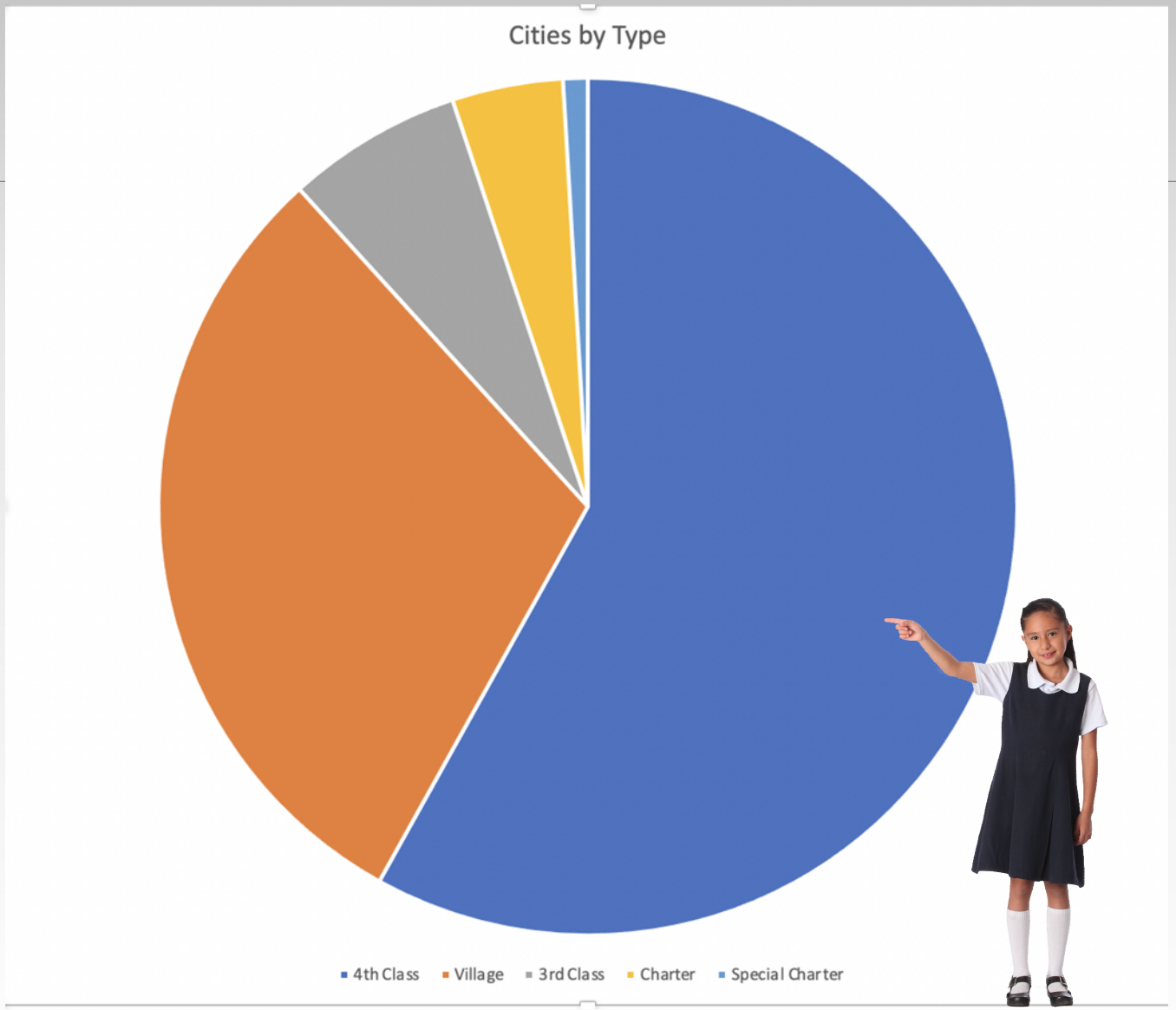
No **automatic change in** classification with a gain or loss of population

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	8

Types of Municipalities



Sources of City Authority

- Dillon's Rule v. Charter City
- State Statute
- Local Ordinances
- State Courts

Municipalities –different but similar

Comparisons

MAYOR AND BOARD OF ALDERMEN

§ 79.110 RSMo. Mayor and board — duties. — The mayor and board of aldermen … shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same.

MAYOR AND CITY COUNCIL

77.260. Powers and duties of mayor and council generally. — The mayor and council of each city governed by this chapter shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same.

Village Trustees

80.090. Trustees — power to pass certain ordinances. — Such board of trustees shall have power:

(1) To pass bylaws and ordinances to prevent and remove nuisances;

(2) To prevent, restrain and suppress bawdy-houses, gambling houses and other disorderly houses within the limits of such town, or any addition to said town, or any commons thereto attached;

(3) To restrain and prohibit gambling;

(4) To license, tax and regulate merchants, peddlers and auctioneers, and to regulate and prohibit the sale or giving away of intoxicating liquors under merchants' licenses in such towns; provided, that druggists and pharmacists may sell upon prescriptions, as is provided by law;

(5) To provide for licensing and regulating and prohibiting dramshops and tippling houses, public shows, circuses, theatrical and other amusements, to the distance of one-half mile from the corporate limits of such town;

(6) To prohibit the firing of firearms;

(7) To prevent furious and unnecessary riding or driving of any horse or other anima[illegible] such town, or such part thereof as they may think proper;

(8) To establish night watches and patrols;

(9) To erect and maintain calabooses, poorhouses and hospitals;

(10) To prevent the introduction and spreading of contagious diseases;

(11) To organize and maintain fire companies;

(12) To prevent and extinguish fires; . . .

Power as a Collective

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

An individual board or council member generally has no authority to act alone

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

Qualifications for Officials

ALDERMAN

- At least 18 years of age
- 1-year residency in City prior to election
- Resident of ward from which he/she is elected
- U.S. citizen
- Oath of office
- Not in arrears in City or state taxes

COUNCILMAN

- At least 21years of age
- 1-year residency in City prior to election
- Resident of ward from which he/she is elected
- U.S. citizen
- Oath of office
- Not in arrears in City or state taxes

TRUSTEE

- At least 21years of age
- 1-year residency in City prior to election
- U.S. citizen
- Oath of office
- Not in arrears in City or state taxes

Qualifications of Mayor

4TH CLASS CITY

- At least 25 years of age
- 1-year residency in city prior to election
- U.S. citizen
- Oath of office
- Not in arrears in City taxes
  - § 79.250 RSMo. – no election or appointment of ANY officer if in arrears on City taxes
- 79.080 RSMo.

3RD CLASS CITY

- At least 30 years of age
- 2-year residency in city prior to election
- U.S. citizen
- Oath of office
- Not in arrears in City taxes
  - § 77.380 RSMo. – no election or appointment of ANY officer if in arrears on City taxes
- 77.230 RSMo.

The Mayor's Duties

- The Mayor, or the Acting President in the Mayor's absence, runs all Board meetings
- The Mayor shall sit in the Board, preside over the Board, 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 Board "from time to time" on how to improve the finances, police, health, security, ornament, comfort, and general prosperity of the City
- The Mayor also signs all commissions and appointments and approves all official bonds unless an ordinance otherwise prescribes

Village Chair

80.060 RSMo.

Every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman of their number, and some other person as clerk.

The chairman may vote on any proposition before the board.

Acting President/ President Pro Tem

- Fourth Class -- "**acting president** of the board of aldermen" R.S.Mo. 79.090
- Third Class "**president pro tem**" R.S.Mo. 77.070
- The Acting President's term is one year.
- The Acting President shall perform all duties of the Mayor when any vacancy of the Mayor shall happen.

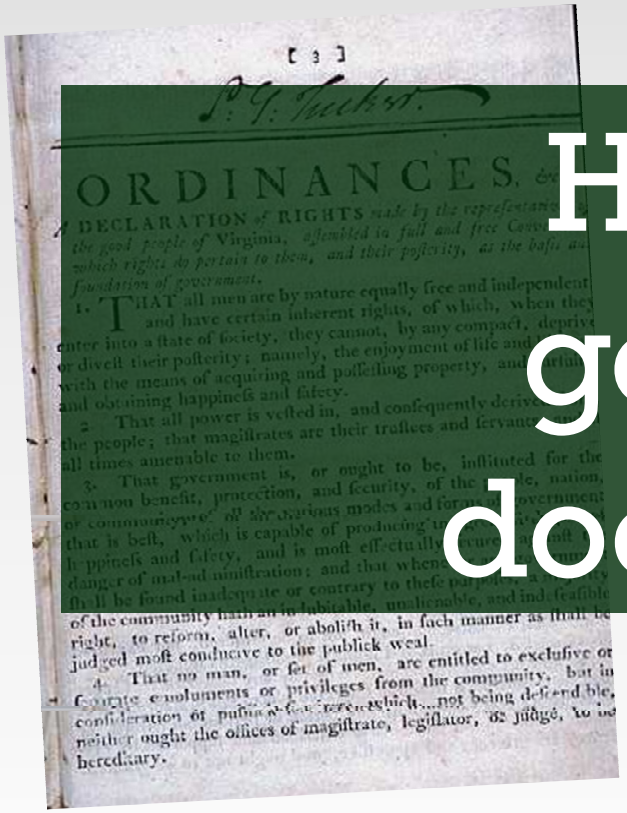
  - Can Acting President or President Pro Tem vote both as a member and as the acting president to break the tie?

Two primary actions of a Governing Body:	
Adopt resolutions, policies, or directives; and	Adopt laws (ordinances)

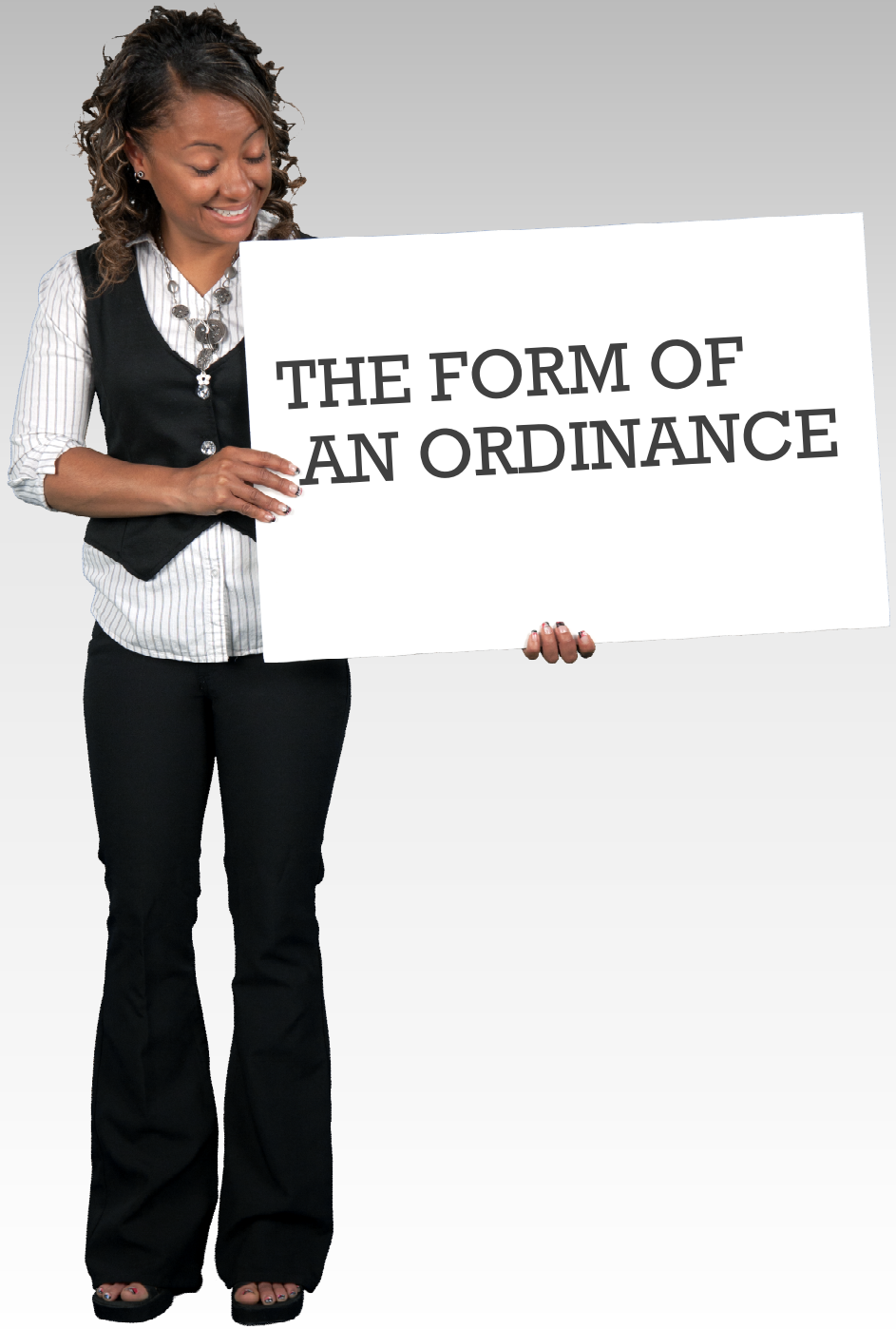
All require a motion to adopt, a second to the motion, discussion, call the question and then vote

Passing Legislation

ORDINANCES



How a local government does business


THE FORM OF
AN ORDINANCE

#1 In Writing

3rd Class -- must be introduced to council **in writing** and **be read by title or in full 2 times prior to passage**, **77.080 RSMo.**

4th Class -- shall be introduced to board of aldermen **in writing** and **be read by title or in full 2 times prior to passage**, **79.130 RSMo.**

Villages -- must be introduced to the board of trustees in writing and **shall be read by title or in full 2 times prior to passage**, **80.110 RSMo.**

Bill No. ___ Ordinance No. ___

Title Blah Blah....

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

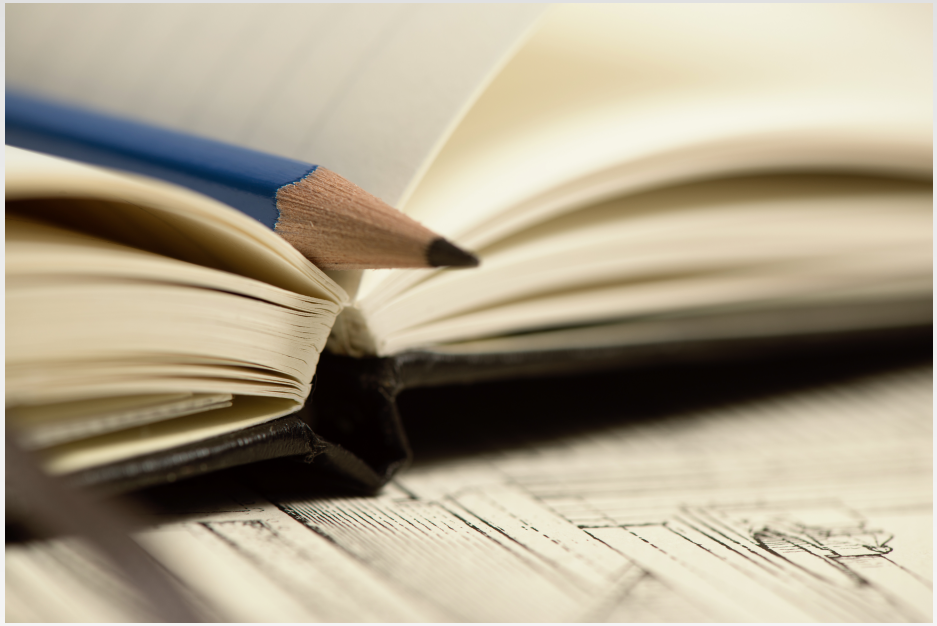
_____ _____

Presiding officer Attest

#1½ MINUTES – Ayes + Nays

- "…no bill shall become an ordinance unless … the ayes and nays shall be entered on the journal." **77.080 RSMo.; 79.130 RSMo.; 80.110 RSMo.**
- Where the minutes did not contain an entry showing the yeas and nays in the passage of an ordinance, **the ordinance did not exist.**

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 trustees present"
- "unanimously adopted"
- "declared passed by the Mayor"

#2
Read 2 times

Both readings may occur at the same meeting

If read by title only, **copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration…**

- 3rd Class Cities - 77.080 RSMo.
- 4th Class Cities - 79.130 RSMo.
- Villages - 80.110 RSMo.

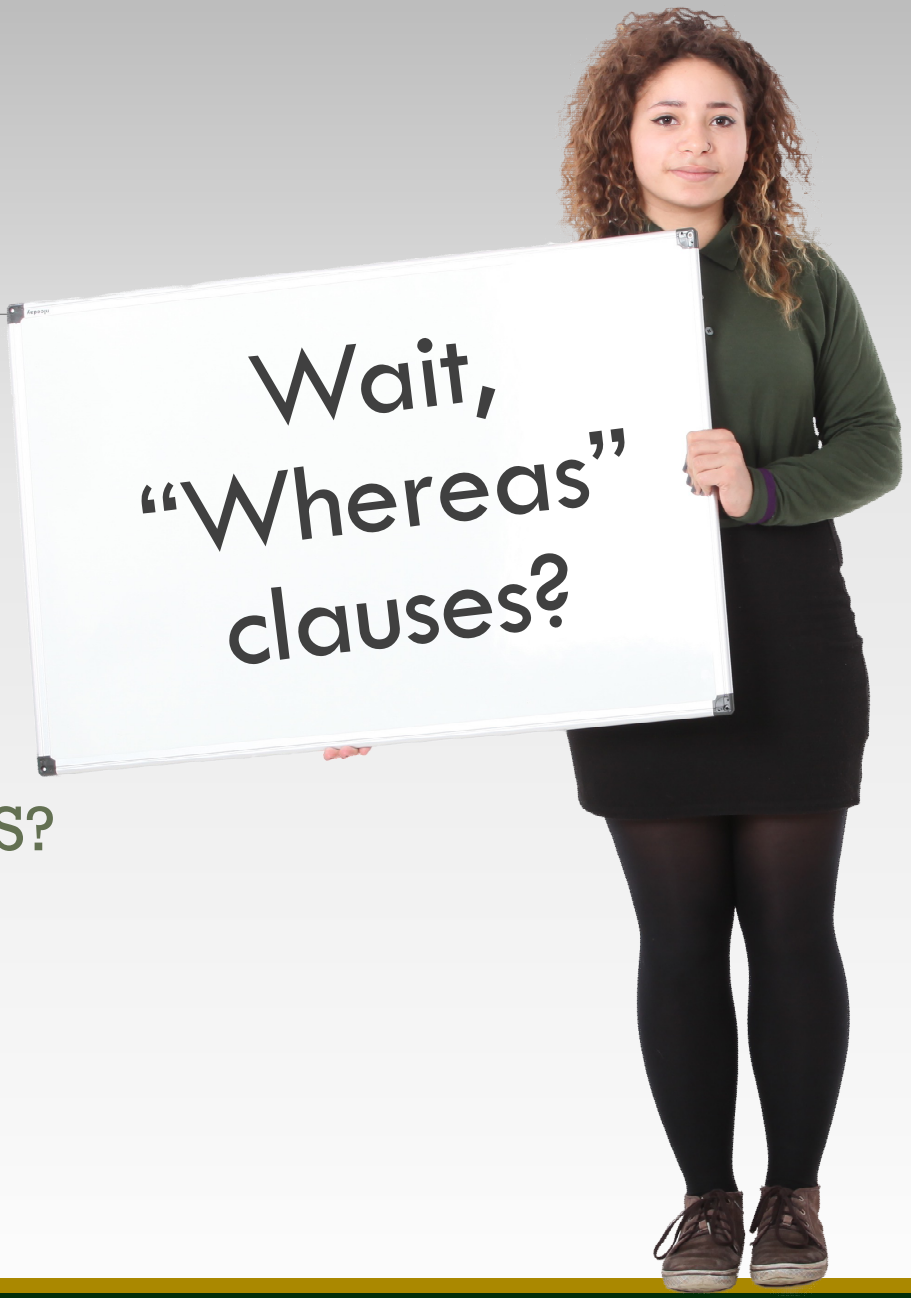
"Recitals"

WHY WHEREAS?

WHEN WHEREAS?

WHERE WHEREAS?

HOW MANY WHEREASES?



"Recitals"

Why & When?

- Explain the reason; tell the story
- Political (e.g.,medical marijuana)
- Legal (recite that required hearings were held)
- Road map (GPS) for future (forgetful) city officials

Where?

- At the beginning, before "Be it ordained"

How Many?

- As many or few as you want/need

#3 Be It Ordained

3rd Class Cities **77.080 RSMo.**

"Be it ordained by the council of the city of ……, as follows:"

4th Class Cities **79.130 RSMo.**

"Be it ordained by the board of aldermen of the city of ….., as follows:"

Villages **80.100 RSMo.**

"Be it ordained by the board of trustees of the village of … as follows."

#4 Signed & Dated

THIRD CLASS CITIES - 77.080 RSMO.

No bill shall become an ordinance until it shall have been **signed by the officer presiding** at the meeting of the council at which it shall have been passed. When so signed, it shall be delivered to the **mayor** for his approval and signature, or his veto."

#4 Signed/Dated, continued

FOURTH CLASS CITIES – 79.130 RSMO.

No bill shall become an ordinance until it shall have been **signed by the mayor or person exercising the duties of the mayor's office**, or shall have been passed over the mayor's veto, as herein provided.

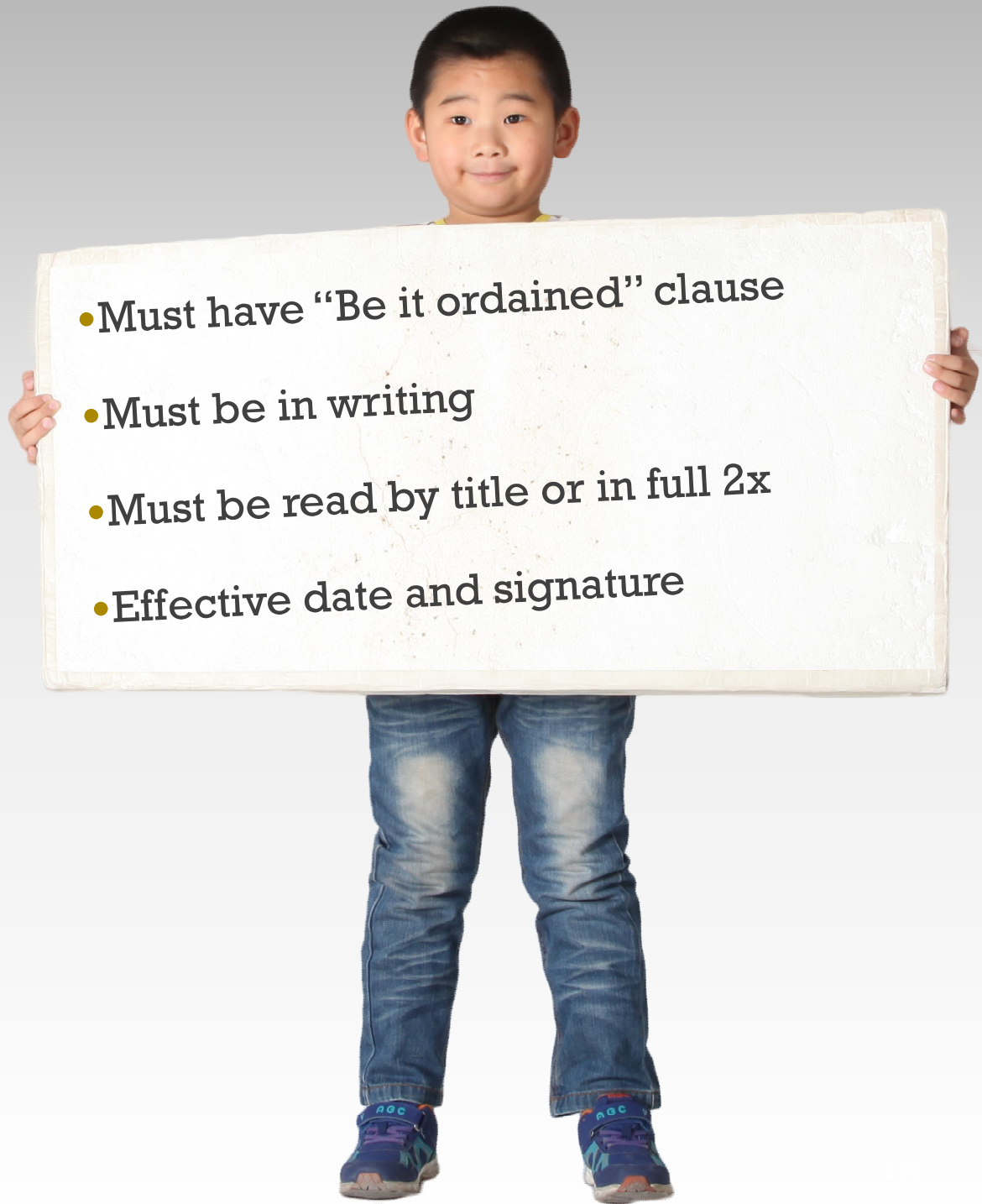
VILLAGE- 80.110 RSMO.

All ordinances shall be in full force and effect from and after their passage after being **duly signed by the chairman of the board of trustees and attested by the village clerk**.

Bill No. ___ Ordinance No. ___

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

The Law


•Must have "Be it ordained" clause
•Must be in writing
•Must be read by title or in full 2x
•Effective date and signature

Bill No. 102 Ordinance 111

AN ORDINANCE AUTHORIZING...

Whereas, ... [*OPTIONAL*]

[Now, therefore,] Be it ordained by the ... of the City/Village of Mayberry as follows:

Section 1+: Action taken or authorized to be taken ...

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

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

Attest

_____ _____

Presiding officer*[third class] City Clerk

_____ _____

Mayor City Clerk

Mayor's Veto Authority

Every bill presented to the Mayor but returned at the next regular meeting of the Board with the Mayor's objections thereto shall stand for reconsidered.

The Board/Council shall cause the objections of the mayor to be entered into the minutes and Board/ Council shall then consider the question: "Shall the bill pass, the objections of the Mayor notwithstanding?"

The Board/Council can override a veto by a 2/3 majority vote of the members-elect

Extra authority for third class Mayor: "approve all or any portion of the general appropriation bill, or to veto any item or all of the same"

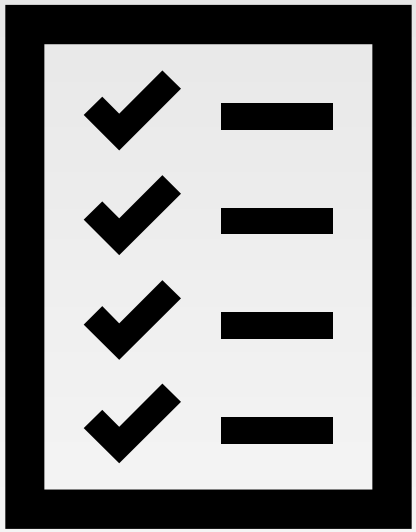
79.140; 77.270 RSMo.

Ordinance Good Practices

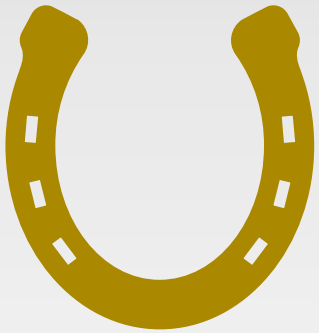
- ☑ Establish liability and payment limit in authorizing ordinance and contract
- ☑ *Authorize* signing
  - Don't direct … unless you mean it
- ☑ Authorize "in substantially the form as" to provide some minimal flexibility

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**
- **Compensation, appointment, and duties of 3rd and 4th class city employees generally**
- For villages, **setting the time and place of meetings**



Miscellaneous Fun!

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**

Question

DO CONTRACTS HAVE TO BE APPROVED BY ORDINANCE?

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

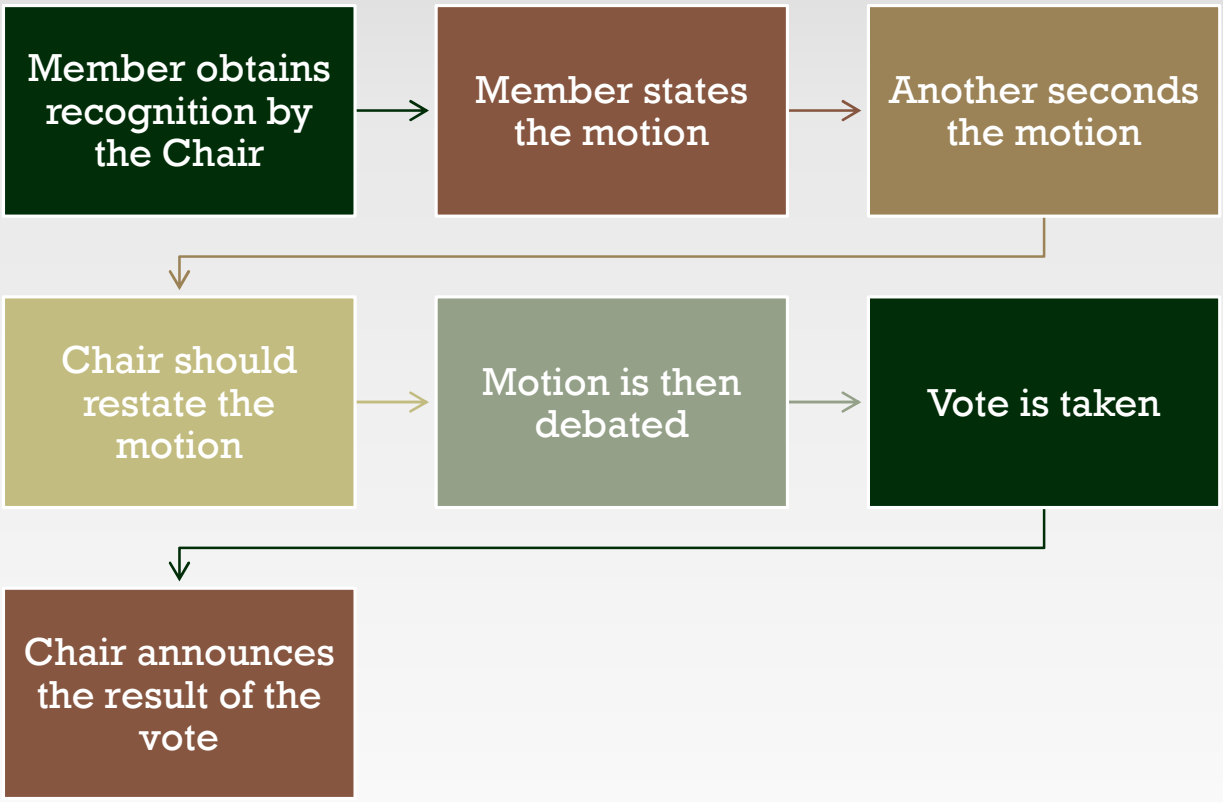
State law requires competitive bidding in:

- 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.

How to Make a Motion



Robert's Rules of Order

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?

- All members have equal rights
- Full and free discussion is essential for decision-making
- Logical precedence governs order of discussion
- Only one question considered at a time
- Members may not question the character or motives of other members

Rules of Debate

- Except as provided in the Rules, members must be recognized by the Chairman 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 Chair 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

SURGEON GENERAL WARNING: While the information in this presentation concerns legal matters, it is not, nor is it intended to be, legal advice, neither is it meant to contradict any legal advice you might have previously received, nor is it a substitute for the particularized advice of your own legal counsel. The information provided is merely for educational purposes and you should not act or rely on such information without seeking the advice of an attorney. Individuals seeking specific legal advice or assistance should contact a licensed attorney.