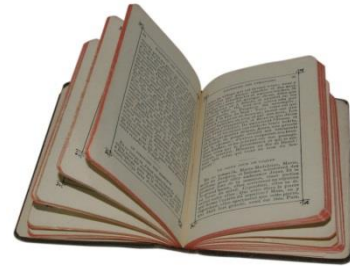


**Ethics ,
Conflicts of Interest,
Sunshine,
and
Council Procedures**

City of Columbia

Form of Government

In General, Powers and Duties are Expressly Granted to a Municipality by the General Assembly of the State of Missouri



- Must be Consistent with the Constitution
- Depends on Type of City
- Charter Cities - Cities which derive their power from a special charter written and adopted by the citizens of the municipality

Columbia City Charter

Council/Manager Form of Government

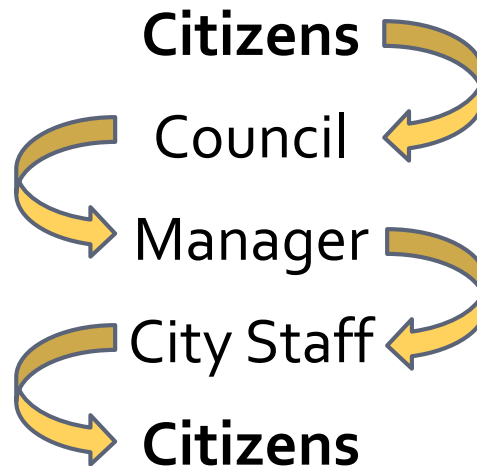
PREAMBLE

We, the citizens of the City of Columbia, Missouri, in order to secure the benefits of constitutional home rule under the Constitution of the State of Missouri, maintain a democratic form of government, establish the basic governmental structure of the City, maintain an economical city manager form of city administration, provide for full publicity and openness in the conduct of affairs of city government, public meetings and records, provide for equality of citizenship for all Columbians, and promote the common welfare, do ordain and establish this HOME RULE CHARTER FOR THE CITY OF COLUMBIA, MISSOURI.

Columbia City Charter

Council/Manager Form of Government

Council-Manager form of government combines the strong political leadership of elected officials with the strong managerial experience of an appointed professional manager



Ethics Guiding Principles

- Elected officials are in **positions to serve the public**
 - ✓ Not for **personal** benefit
- The **public resources** available to elected officials are to **assist in serving the public**
 - ✓ Not for **personal** benefit

To Whom do Ethics Laws Apply?

- Elected officials
- Appointed public officials
- All public employees
- Persons with rulemaking authority
- Persons in judicial positions
- Persons in quasi-judicial positions

Source of Ethics Laws

- Subject to Laws Applicable to Public Generally
- Subject to Particular Laws Related to Duty in Public Office
 - Chapter 576 RSMo.
 - Bribing a Public Servant
 - Public Servant Acceding to Corruption
 - Obstructing Government Operations
 - Official Misconduct
 - Misuse of Official Information
- Conflict of Interest Laws – Ch. 105 RSMo.
- Missouri Constitution
- State Laws Related to Operation of Cities – Ch. 71-100 RSMo.
- City of Columbia Charter and City Code



Columbia City Charter

Non-Interference Clause

- Charter Section 12 (See also Code Sec. 19-40; 19-42)
 - Shall not request or interfere with appointment or removal of officers or employees
 - Except for purpose of inquiry, shall deal with administrative officers and services solely through the city manager
 - Shall not give orders to subordinates of the city manager, either publicly or privately
- Penalty – **FORFEITURE OF OFFICE**

Personnel Matters

- Council has three employees:
 - City Manager
 - City Clerk
 - Municipal Judge
- City Charter violation to interfere with the appointment or removal of any other employee
- Sole Exception:
 - City Counselor – Charter Section 65
 - Appointed by City Manager with consent of Council
 - Removed by City Manager with advice and consent of Council

Columbia City Charter

Conflict of Interest

- Charter Section 156 (See also Code Sec. 2- 125; 19-41(a); 19-42)
 - Shall not have any interest in any contract or sale to the city of any land, materials, supplies or services where said interest is in violation of the Constitution of the State of Missouri or ordinance of the City
- Penalty – **FORFEITURE OF OFFICE**

Columbia City Charter

Campaign Financing

- Charter Section 164
 - Must comply with state and local laws related to campaign practices and the financing and conduct of campaigns for elective office
- Penalty
 - Council may **ORDER** the office of any candidate who was elected to be **FORFEITED**

Authority of Governing Body

- Governing Body of Municipality Can Only Act at an Official Meeting
- Acts of Municipal Officials Beyond the Scope of Their Authority Do Not Bind a City
- Charter Section 14 – No action by Council has legal effect unless vote takes place at meeting open to the public



Sunshine Law

- Am I part of a "public governmental body"?
- Is a quorum of the public governmental body present?
- Is "public business" being discussed?
- Is the "public business" a proper topic for closed session?
- Was the "public meeting" properly noticed?
- (Date, Time, Place, & Tentative Agenda posted 24 hours in advance)

Public Meetings

Sunshine Law

A proper notice of a public meeting must include:

1. Date
2. Time
3. Place
4. Tentative Agenda
5. Posting notice 24 hours in advance in a place reasonably calculated to notify citizens of the meeting

* Exception for Emergency

Public Records

Sunshine Law

- Any record retained by a public governmental body shall be open to the public for inspection and copying
 - Any member who transmits a message relating to public business via e-mail must also transmit the message to the custodian of records or “office computer”
 - Use of private email to conduct public business does not evade Sunshine Law
 - Text messages on personal phones regarding public business are subject to Sunshine Law
- Transparency Policy – City Code Sec. 2-24.1
 - It shall be the policy of each department of the city to carry out its mission with *full transparency* to the public
 - Each request for information shall be broadly interpreted

Sunshine Law Exceptions

- 1) Legal actions, causes of action or litigation
- 2) Leasing, purchase or sale of real estate
- 3) Hiring, firing, disciplining or promoting employees
- 4) State militia or national guard
- 5) Non-judicial mental or physical health proceedings of identifiable individuals
- 6) Scholastic records (except to parents for children under 18)
- 7) Testing and examination materials
- 8) Welfare cases of identifiable individuals
- 9) Preparation for labor negotiations
- 10) Software codes for electronic data processing

....

Sunshine Law ...more exceptions

- 11) Specs for competitive bidding
- 12) Sealed bids, drawing and proposals
- 13) Individually identifiable personnel records – does not apply to names, positions, salaries and length of service for all employees
- 14) Protected by other laws
- 15) Scientific and technological innovations
- 16) Municipal hotlines (abuse and wrongdoing)
- 17) Confidential communications with auditors
- 18) Guidelines and policies regarding public safety
- 19) Security systems and access thereto
- 20) Computer networking
- 21) Credit card numbers and personal identifiers
- 22) Proposals to license property to higher education institution

Closed Meetings

- Roll Call vote of majority authorizes closed meeting
- Record each member's vote in minutes
- Announce publically the specific exception under 610.021 authorizing closure and enter it into the minutes
- Record each member's vote taken during closed meeting in minutes
- CANNOT discuss any business which does not directly relate to the specific reason for the closed meeting

Sunshine Law Violations

- A person who “knowingly” violates the law is subject to a civil penalty of up to \$1,000
 - Court “may” order payment of costs and attorney fees
- A person who “purposely” violates the law is subject to a civil penalty of up to \$5,000
 - Court “shall” order payment of costs and attorney fees
- Factors:
 - Size of jurisdiction
 - Seriousness of the offense
 - Whether the body or member has violated the law previously

Decision Making

Nature of Action Taken

- Legislative
 - When City MAKES the Rules
 - Presumed to be Correct
 - Judicial Review for Arbitrary & Unreasonable
- Administrative
 - When City APPLIES the Rules
 - No Presumption of Validity
 - Judicial Review on the Record Made of the Proceedings
 - Upheld Only if Supported by Competent and Substantial Evidence Included in the Record

Decision Making

Official Acts for Making Decisions

- Motion
- Resolution
- Policy Resolution
- Ordinance
- Voting
 - City Charter Section 8 – The affirmative vote of a majority of the entire council shall be necessary to adopt any ordinance, resolution or motion.

Decision Making

Levels of Discretionary Authority

- Discretionary Acts
- Ministerial Acts
- Quasi-Judicial Acts
 - Statutorily mandated public hearing
 - Decision affects property rights
 - Invokes procedural and substantive due process
 - Notice
 - Opportunity to be Heard
 - Impartial decision-making body
 - Decision based upon facts – not political pressure or vocal opposition
 - Full disclosure of facts considered by decision making body

Decision Making

Quasi-Judicial Actions

- No ex parte communications
 - Decision makers should make decision based only on what is included in the record
 - Potential for real or perceived bias/influence
 - Public perception of fairness
 - No undue influence by one party
- If ex parte communication occurs...
 - Disclose on the record

Land Use

- Legislative Land Use Decisions
 - Annexation
 - Zoning
 - Adoption of New/Amended Development Code Provisions
- Administrative Land Use Decisions
 - Platting
 - Planned Development – elements outside of standard platting requirements are akin to zoning and may be legislative in nature
 - Application of Existing Development Code Provisions

Land Use

Annexation

- Consider the following:
 - Whether the area to be annexed must be "contiguous and compact";
 - Whether the annexation is reasonable and necessary to the proper development of the city; and
 - Whether the city has the ability to furnish normal municipal services to the area to be annexed within a reasonable time.

Land Use

Zoning

- Zoning regulations govern the use of land and location, size and height of buildings. Zoning divides the city into multiple districts with each district containing a distinct set of regulations that are uniformly applied to all property within the district.
 - Text specifying the regulations
 - Map defining the location of the districts
- Limits on Zoning
 - Procedural Due Process
 - Substantive Due Process



Land Use

Zoning

- Purpose
 - Protect health safety and morals
 - Protect historical, cultural and architectural areas
- Relationship to Subdivision Regulation
 - Zoning regulates use, lot size, setbacks and heights
 - Plats regulate street and lot layout, infrastructure, etc.

Land Use

Zoning Considerations

- Consider the following:
 - Character of the neighborhood;
 - The zoning and uses of surrounding/nearby property;
 - Detrimental effect that any change in zoning would have on other property in the area;
 - The adaptability of the property for the current permitted use;
 - Traffic congestion;
 - Public Safety – to secure safety from fire, panic and other dangers; to promote health and the general welfare;

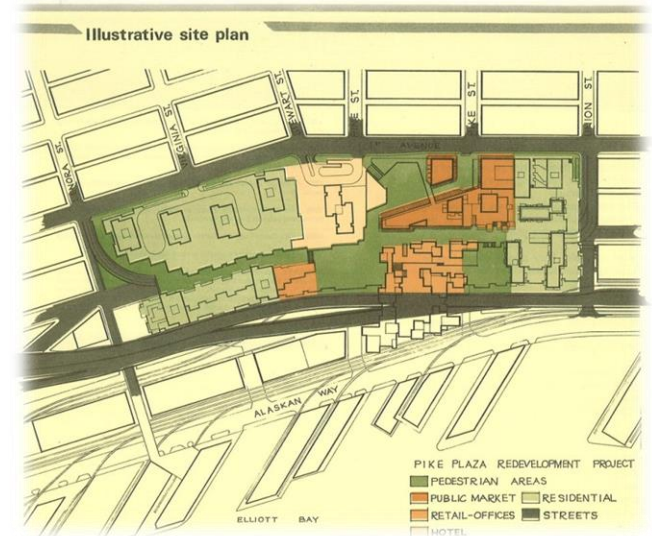
Land Use

Zoning Considerations (Con't)

- Density – to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population;
- Preservation of features of historical significance;
- Existence of adequate infrastructure to support the proposed use, including transportation, water, sewerage, schools, parks, and other public requirements;
- Property values with a view to conserving the values of buildings;
- Consistency with Comprehensive Plan adopted by the city; and
- Reasonable use of the property

Site Plan Review

-
- ILLUSTRATIVE site plan
- PIKE PLAZA REDEVELOPMENT PROJECT
- PEDESTRIAN AREAS
 - PUBLIC MARKET
 - RESIDENTIAL
 - RETAIL-OFFICES
 - HOTEL
- ELLIOTT BAY
- ALASKA WAY



Land Use

Platting and Subdivision

- Subdivision regulations govern the division of land into two or more parts
 - Governed by criteria set forth in development code and may only consider those requirements
 - Lot configuration
 - Street pattern
 - Public spaces and common areas
 - Easements
 - Ministerial Act



Land Use

Exactions

- An exaction is a requirement to dedicate land to construct public improvements or payments of fees in lieu as a condition of development approval
- Authority is derived from general police powers and specific statutory authority
 - Imposed by local ordinance
- The law requires a reasonable relationship exist between the exaction demanded and the proposed activity of the landowner
 - Rational Nexus
 - Rough Proportionality
- Greater latitude exists with regard to a "planned development" because there is give and take in the strict adherence to the subdivision regulations in order to create the development plan

Use of Public Resources

Missouri Constitution, Article VI, Sec. 23 and 25



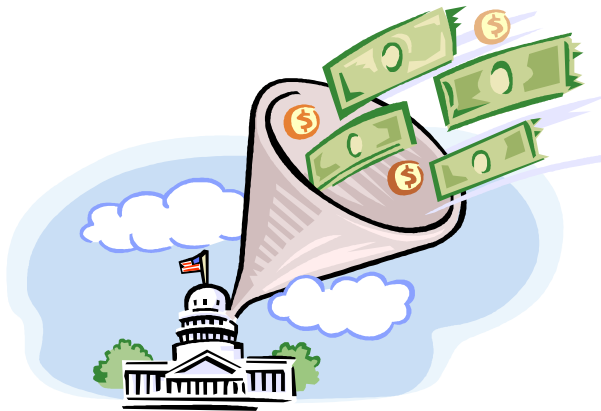
- **Public Funds - Public Benefit**
 - Incidental Private Benefit Allowed
 - No Charitable Contributions
- No public funds to advocate, support or oppose any ballot measure or candidate for public office
 - Public appearances and press releases of an informative basis are permitted

Conflict of Interest

Section 105.450 RSMo. et seq.

Conflict of Interest - Generally, Official is Prohibited From Participating **Directly** or **Indirectly** in an Action That Would Result in a Financial Gain to Self, Spouse, or Dependent Children

- Requirement: Official Must Affirmatively Report Conflict
- Penalty



Prohibited Acts

Members of Governing Body, Elected and Appt Officials

Sections 105.454 and 105.458 RSMo.

- Perform any service to city for additional compensation
- Sell, rent or lease property to city
 - For pay of more than \$500 per transaction or \$5000 per year
 - UNLESS there is a public **BID** and the official is the LOWEST bidder
- Participate directly or indirectly to influence decision resulting in financial gain to self, spouse, dependent child or business with which person is associated

What is a “Business with which a person is associated”?

Section 105.450 RSMo.

- Business in which the person is an officer or director
- Business or trust in which official, spouse or dependent child (singularly or collectively) own 10% interest

What is “Dependent Child”?

Section 105.450(7) RSMo.

- Applies to:
 - Children
 - Stepchildren
 - Foster children
 - Wards
- Who are:
 - Under age of 18
 - Residing in household
 - AND receive in excess of 50% of support from official

Prohibited Acts

Persons with Rulemaking Authority

Section 105.462 RSMo.

- Attempt to influence decision or participate
 - Knowing result of such decision
 - May be adoption of rates or zoning plans
 - Which may result in direct financial gain or loss to self, spouse, dependent child or business with which associated
- Perform any service to city for additional compensation

Prohibited Acts

Persons with Rulemaking Authority (con't)

Section 105.462 RSMo.

- Perform for one year after termination of employment any service for compensation to influence the decision of the agency of which was a member
- Not sell rent, or lease property or perform service to any person who received zoning plan approval or license during prior year if such pay is in excess of \$500 per transaction or \$1500 per year
 - UNLESS the service is bid and the official is the LOWEST bidder

Prohibited Acts

Section 105.452.1(2) and (3) RSMo.

- **USE confidential information**
 - Obtained in official capacity
 - With intent to result in financial gain for self, spouse, dependent child or business with which associated
- **DISCLOSE confidential information**
 - Obtained in official capacity
 - With intent to result in financial gain for self OR **ANY OTHER PERSON**

What is “Confidential Information”?

Section 105.450(5) RSMo.

- Information transmitted orally or in writing
- Not a matter of public record or public knowledge

Prohibited Acts

Section 105.452.1(4) RSMo.

- Favorably act on any matter
- To provide a special monetary benefit to self, spouse or dependent children



What is “Special Monetary Benefit”?

Section 105.452.1(4) RSMo.

- Being materially affected
- In a substantially different manner
- Than the general public OR a class of individuals

Misuse of Public Position

Section 105.452.1(1) RSMo.

- Act or refrain from acting
- By reason of any payment or receipt of anything of pecuniary value
- To self or any third person
- Includes gift or campaign contribution made as a condition of the performance of an official act

Misuse of Public Position

Section 105.452.1(5) RSMo.

- Use decision-making authority
- To obtain financial gain
- Which materially enriches self, spouse or dependent children
- By acting or refraining to act
- For the purpose of coercing or extorting from another anything of pecuniary value

Misuse of Public Position

Section 105.452.2 RSMo.

- Offer, promote or advocate
- For a political appointment
- In exchange for anything of value to the city

Reporting Requirement

Section 105.461 RSMo.

- Official with a substantial personal or private interest in any measure proposed
- Shall file a written report of the nature of the interest with the Clerk before such official passes on the measure
- Statement must be recorded in record of proceedings
- City Code Section 2-53: Affirmative Duty to Vote
 - Consent of Council required to abstain
 - Reasons for abstention stated on the record

What is “Substantial Interest”?

Section 105.450(10) RSMo.

- Ownership by individual, spouse or dependent children
- Singularly or collectively
- Directly or indirectly
- 10% or more of business
- Interest having value of \$10,000
- Receipt of \$5,000 during calendar year from person or business

Personal Financial Disclosure

Section 105.483 RSMo. et seq.; City Code Sec. 2-125.1

- City Council, City Manager, Purchasing Officer and City Counselor are REQUIRED to file personal financial disclosure statements with the **Missouri Ethics Commission AND City Clerk**
- City Council and City Counselor must disclose (short form):
 - Transactions with the City in excess of \$500 per transaction by any member of family within first degree of consanguinity or affinity; or
 - Transactions with the City in excess of \$500 per transaction by any business entity in which the person has a substantial interest.
- City Manager and Purchasing Officer must disclose (long form):
 - Each employer from whom received income of \$1,000 or more;
 - Name and address of each sole proprietorship owned, joint partnership or joint venture, closely held corporation or limited partnership in which 10% or more is owned; and publicly traded corporations or limited partnerships in which the person owns 2% or more interest

Campaign Financial Disclosure

Chapter 130 RSMo.

- Campaign Finance Disclosure
 - Applies only to candidates who are required to file a disclosure
 - Exempt Candidates
- Candidate may not take office or file for subsequent elections until disclosure reports are filed
 - Section 130.071 RSMo
 - Includes the 30 day after election report, if required – which must be filed BEFORE taking office
 - Includes April quarterly report if not sworn in before report due

Incompatibility of Office

- Under common law, an individual may hold more than one office only if the offices are compatible
 - Four factors:
 - One office is subordinate to the other
 - One office has supervisory powers over the other
 - One office audits the other's accounts
 - One office has power of appointment or removal over the other
- Acceptance of second office operates as a resignation of the first

Nepotism

Missouri Constitution, Article VII, Sec. 6

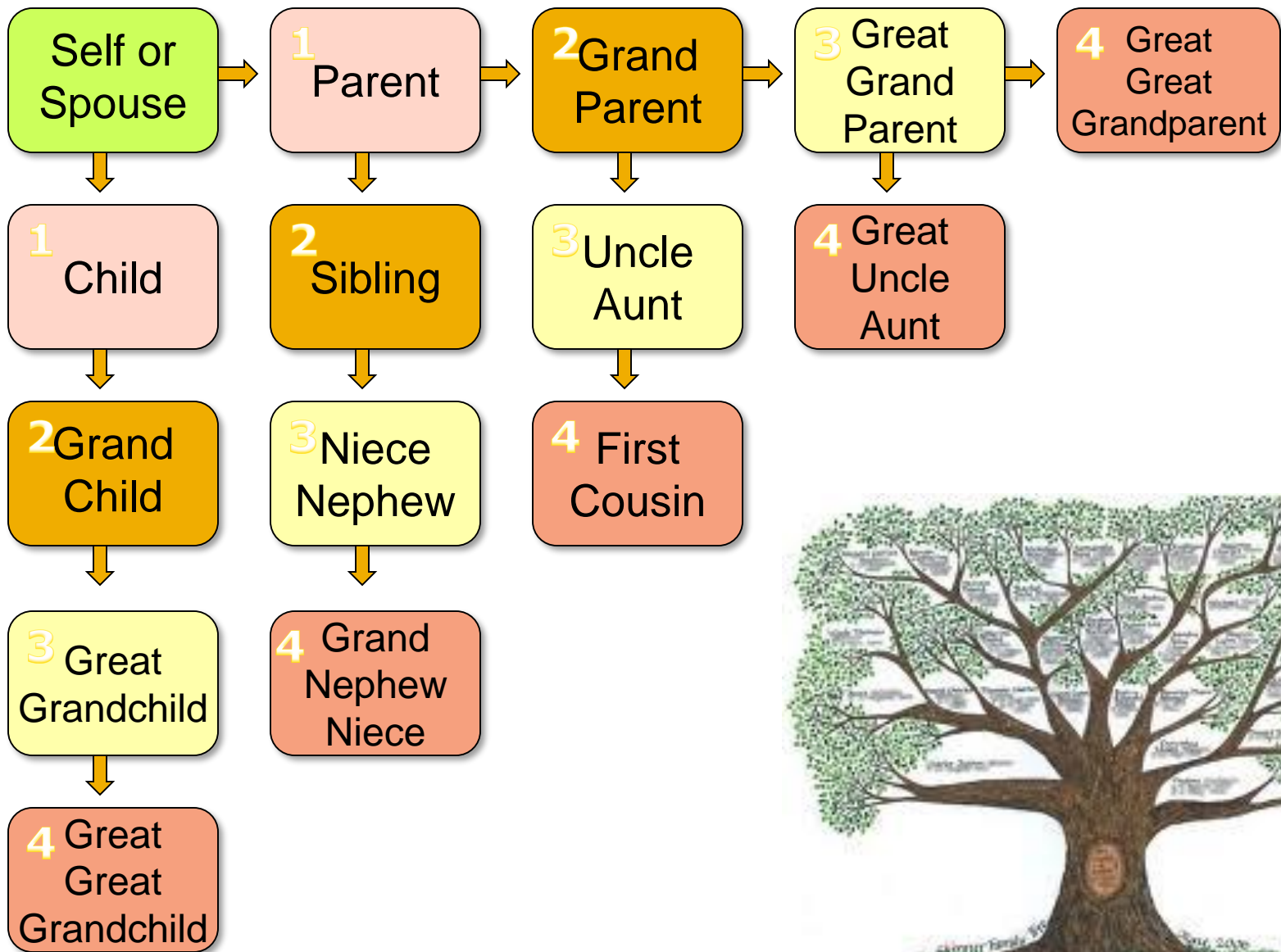
- **Nepotism**
 - Relative to 4th Degree
 - Affinity, or
 - Consanguinity
 - Penalty
 - **FORFEITURE OF OFFICE**



And one more thing; don't call me "Uncle" while we are in the office!

Nepotism

- 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 in the same way
- Half relationship is the same as whole
- Step relationship is the same as blood relationship
- Relation by marriage (affinity) terminates if death or divorce
- You can't retroactively "fix" the violation
- Intent (or ignorance) is irrelevant



Violations of Law

Section 105.472 RSMo.

- All complaints made in writing to Missouri Ethics Commission
 - Name of alleged violator
 - Nature of violation
 - Date of violation
 - Signed by complainant under oath
- Penalty (Section 105.478 RSMo)
 - First offense – class B misdemeanor
 - Second offense – class D felony

Protections for Complainant

Section 105.467 RSMo.

- No discrimination or discharge of employee for
 - Reporting suspected violation, or
 - Participating in investigation
- Civil action for injunctive relief and damages authorized
 - Reinstatement
 - Back wages
 - Costs of litigation

Questions

