

Public Meetings & Records

Missouri Sunshine Law

Earl Kraus
Assistant City Counselor
Columbia, MO

Topics

Public meetings

- Notice
- Minutes
- Exemptions (reasons meetings may be closed)
- Closed meetings

Public records

- Records requests, responses

Penalties for non-compliance

Authority

Public Meetings & Records

Sunshine Law

Chapter 610, RSMo

City Code

§ 2-25.1 (closed meetings)

§ 2-25.3 (closed records)

(City's written policy compliant with § 610.028.2, RSMo)

Meetings & Records Presumed Open

must point to exception to close

“It is the policy of this state that meetings, records ... be open to the public unless otherwise provided by law....[such openness] shall be liberally construed and their exceptions strictly construed to promote this public policy.” § 610.011, RSMo

“...a public governmental body is authorized to close meetings, records ... to the extent they relate to the following [exemptions]”

§ 610.021, RSMo

City “*is authorized to close meetings*” for specified reasons, and any other under Chp. 610, RSMo (i.e., *may* be closed)

City Code § 2-25.1

Records “*shall*” or “*may*” be closed to the extent allowed by law for specified reasons

City Code § 2-25.3

Public Meetings

What is a public meeting?

Any meeting of a public governmental body where public business is discussed, decided, or policy formulated

Includes commissions, councils, boards, subcommittees
(*and quasi-public governmental bodies; § 610.010(4)(f), RSMo*)

§ 610.010(5), RSMo

What is a public meeting?

A meeting is a public meeting whether conducted in-person, via email, conference call or video conference, internet chat, text, or other electronic means.

What is a public meeting?

Quorum must be present

If no quorum, then governmental body CANNOT do official business.

§ 610.010(5); *Colombo v. Buford*, 935 S.W.2d 690 (Mo. App. W.D. 1996)

Quorum for Finance Advisory and Audit Committee is a simple majority (4) of all members appointed by city council (7)

City Code § 2-272

What is a public meeting?

DOES include luncheon meetings

DOES include any electronic (email or otherwise) votes in lieu of holding a public meeting

§ 610.010(5), RSMo

What is a public meeting?

DOES NOT include an informal gathering of members of a public governmental body for ministerial or social purposes

– *UNLESS* intent is to avoid the Sunshine Law

§ 610.010(5), RSMo

What is a public vote?

Any vote that happens in person, by telephone, or by any other electronic means, during any public meeting

Public votes must also be open to the public for inspection and duplication

- Must personally vote (no proxies); § 610.015, RSMo

Number and type of votes needed for approval may depend on your board or commission

- When in doubt, roll call vote

§ 610.010(7), RSMo

Public meeting notice

Notice of all open or closed meetings must be posted at least 24 hours in advance (except emergencies), excluding weekends and holidays

Post on bulletin board at City Hall, in prominent place where holding the meeting, and on website

§ 610.020, RSMo

What should a public meeting notice include?

- Date & Time
- Place of each meeting
- Method of meeting
- Tentative agenda (for open meetings)
 - That reasonably advises public of the matters to be considered
- If going into closed session – statutory exemption and reason
- Where public can attend and observe the meeting
 - For open meetings

§ 610.020, RSMo

Public meeting minutes

Minutes of all open and closed meetings shall be taken.
Includes making a record/documentation of all votes.

§ 610.020, RSMo

What else should the minutes include?

- Date & Time
- Place of meeting
- Members present/absent
- Record/documentation of votes taken

For emergency meetings:

- Also include the good cause justification for not giving normal notice or why meeting was held in place not accessible to the public.

§ 610.020, RSMo

What is a closed meeting?

A public meeting may only be closed if it falls under one of the § 610.021, RSMo exemptions

Meetings *may* be closed (“is authorized”)

§ 610.021, RSMo; City Code § 2-25.1

EXEMPTIONS UNDER § 610.021, RSMo

City Code § 2-25.1 closed meetings &/or § 2-25.3 closed records

- 1) Legal actions or litigation, privileged communications, legal work product
- 2) Leasing, purchase or sale of real estate
- 3) Hiring, firing, disciplining or promoting particular employees
- 4) State militia or national guard (not in City Code)
- 5) Non-judicial mental or physical health proceedings of identifiable individuals
- 6) Scholastic records, except to parents for children under 18 (not in City Code)
- 7) Testing/examination materials
- 8) Welfare cases of identifiable individuals
- 9) Preparation for labor negotiations (employee groups)

EXEMPTIONS UNDER § 610.021, RSMo

City Code § 2-25.1 closed meetings &/or § 2-25.3 closed records

- 10) Software codes for electronic data processing
- 11) Specs for competitive bidding
- 12) Sealed bids, drawing and proposals, until open, executed, rejected
- 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 with proprietary interests
- 16) Municipal hotlines (for reporting abuse and wrongdoing)
- 17) Records relating to reports of allegations of improper governmental activities under section 29.221 (i.e., reports to state auditor) (not in City Code; AL 2024)
- 18) Confidential communications with auditors

MORE EXEMPTIONS

- 19) Security measures, GPS data, investigative information, tip line information, suspicious activity reports potentially endangering public or individual safety, operational guidelines, response plans, and plans of law enforcement or public health, and related financial records
- 20) Existing or proposed security systems and structural plans of real property owned or leased by public governmental body
- 21) Security systems and access codes of real property
- 22) Configuration of components or operations of computer systems and networks
- 23) Credit card numbers and personal identifiers
- 24) Records submitted to public higher education associated with proposals to license IP or perform research that contains certain business info that may endanger competitiveness (not in City Code)

MORE EXEMPTIONS

25) Records involving foster care (not in City Code)

26) Municipal utility customer information, except commercial customer name, address & service info (not in City Code; AL 2022)

27) Individually identifiable information of a minor under eighteen, except DOLIR enforcing child labor laws (“may” be closed, City Code § 2-25.3(b)(1))

28) Individually identifiable information of visitors reserving camping, lodging, or shelter for state, county, or municipal park, unless authorized by visitor; except visitor municipality of residence and zip code

29) Records to protect the specific location of a plant or animal species considered endangered, threatened, critically imperiled, imperiled, or vulnerable when the know location may cause the species to be at an increased risk of peril.

MORE EXEMPTIONS

More City Code exemptions:

Regarding meetings:

“Any other subject which may be discussed and voted upon at a closed meeting under RSMo ch. 610.”

City Code § 2-25.1(8)

Regarding meetings and records:

Financial data disclosed by an applicant for housing rehabilitation assistance

City Code § 2-25.1(6) (meetings); § 2-25.3(15) (records)

What's needed to go from an open to a closed meeting?

To go into closed meeting:

- State on agenda the specific subsection(s) under § 610.021, RSMo, authorizing closure
- Announce this at relevant time of the meeting
- Have motion, second, & majority vote for closing (roll call vote)
- Record each member's vote and the statutory subsection and reason in minutes

During a closed meeting

During the closed meeting:

- Record individual member's vote on each item in closed minutes (roll call votes), unless required to be in open minutes.
- *CANNOT* discuss any business which does not directly relate to the specific reason(s) for the closed meeting.
- §§ 610.015 & 610.020, RSMo

Board Member communications

Any member who transmits an electronic message relating to public business to a majority of the body (counting the sender) must also transmit the message to the member's "public office computer" or the custodian of records.

§ 610.025, RSMo

What is a public record?

Any record (electronic or otherwise) retained by a public governmental body

Regardless of format

Paper, electronic, email, text, voicemail, audio, video, social media, webpages, etc.

Includes drafts

Includes those prepared by outside agencies, consultants, contractors, associates, or friends and given to public governmental body/members

What is a public record (cont.)?

Each retained record of the public governmental body is public unless it falls under an exemption

Business use of a personal cellular telephone is subject to sunshine law provisions. City Code § 19-114(c)

See § 610.010(6), RSMo; *see also*, AGO booklet, p. 25, citing *Missouri Protection and Advocacy Services v. Allan*, 787 S.W. 2d 291 (Mo. App. W.D. 1990);

https://ago.mo.gov/wp-content/uploads/SW_Sunshine-Law-Handbook-CH.pdf

City Records Custodians respond to requests for records

Records Custodian (after receipt of records request)

- Completes initial search for responsive records (for cost and time estimate)
- May ask Board Member(s) to search your documents, email, texts, etc. for responsive records
- Seeks clarification from requestor as needed
- Provides requestor time and cost estimate for response
- May communicate with Board Members through Board Liaison

City Records Custodians respond to requests for records (cont.)

Records Custodian (usually after cost is paid):

- Gathers records
- Reviews records for what's responsive, open, and closed
- Redacts records as appropriate
- Provides responsive open records
- Can extend time for legitimate reason

Penalties for violating Sunshine Law

A public governmental body or a member who “**knowingly**” violates the Missouri Sunshine Law is subject to a fine of **up to \$1,000**.

A public governmental body or a member who “**purposely**” violates the law is subject to a fine of **up to \$5,000**.

In addition, **costs and reasonable attorney fees** may be assessed against the governmental body or member.

(attorney fees can exceed the fine)

Any action taken by the body in violation of the sunshine law **may be voided** by the court.

§ 610.027, RSMo

Finance Advisory and Audit Committee

7 members appointed by City Council:

- Members must have experience in one of the following categories: finance, investment management, financial statement analysis, or auditing
- 1 member appointed must be a certified public accountant with knowledge of public administration and finance
- Consideration shall be given to the appointment of at least 1 member who is an owner of a business

Quorum is a simple majority (4) of members appointed by City Council (7)

See City Code sections 2-271 – 2-272 (April 16, 2024), and 2-273

QUESTIONS ?

Your staff liaison is your friend.

Thank you for your service!

Earl Kraus

Assistant City Counselor

Earl.Kraus@como.gov

City of Columbia

701 E. Broadway, 2nd Floor

P.O. Box 6015

Columbia, MO 65205-6015

573-817-6449