



**CITY OF SMITHVILLE, MISSOURI
BEST PRACTICES
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- I. **Ordinance Approval** – may be read by title two times at the same meeting (notwithstanding City of Smithville Board of Aldermen Rules of Order); some actions approved by ordinance are merely ministerial (plat, destruction of records per SOS and City guidelines, certain contracts)
- II. **Contracting** – must comply with Section 432.070's requirements (specifically approval and authorization for execution); no general bidding requirements (but remembers last week); purchasing policy acts as guide for staff to ensure public funds are expended carefully
- III. **Sunshine law** – policy is important as it serves as a shield (review regularly); close everything; some actions require additional 4-day notice (tax increase, CID/TDD, eminent domain)
- IV. **Public Comment** – limited designated public forum (we think?), Board of Aldermen may set reasonable regulations (time, place, manner) and may restrict content of speech – in a viewpoint neutral manner – to relevant matters.

I. Ordinance approval

a. Section 79.130, RSMo

- i. "Be it ordained by the board of aldermen of the city of _____, as follows:"
- ii. No ordinance shall be passed except by bill, and no bill shall become an ordinance unless on its final passage a majority of the members elected to the board of aldermen shall vote for it, and the ayes and nays be entered on the journal.
- iii. Every proposed ordinance shall be introduced to the board of aldermen in writing and shall be read by title or in full two times prior to passage,
 1. both readings may occur at a single meeting of the board of aldermen.
 2. If the proposed ordinance is 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 by the board of aldermen.
- iv. 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.

b. Rule 5, City of Smithville Board of Aldermen Rules of Order

- i. The first reading of an ordinance will be read on the action agenda and the second and final reading will be read the next subsequent meeting on the consent agenda, unless the item is a time-sensitive matter in which it may be approved during the same meeting

c. Ministerial Actions (aka Good Housekeeping)

- i. Plats
 1. "Plat approval" is the ministerial application of zoning requirements, uniformly, to all particular parcels within the zoned area.
 2. The statutes and the ordinance grant the commission or the council the authority to deny a subdivision plat that complies with the subdivision ordinance. **If the plat complies, then it is the ministerial duty of the commission and the council to approve it, and they have no discretion to deny it.**
 3. Furlong Companies, Inc. v. City of Kansas City, 189 S.W.3d 157, 163 (Mo. 2006)

4. Section 445.030, RSMo, “if such map or plat be of land situated within the corporate limits of any incorporated city, town or village, it shall not be placed of record until it shall have been submitted to and approved by the common council of such city, town or village, by ordinance, duly passed and approved by the mayor, and such approval endorsed upon such map or plat under the hand of the clerk and the seal of such city, town, or village..”
- ii. Destruction of Records per Secretary of State and City Policy
 1. 109.310. Records, how destroyed — rules and regulations to supersede existing law and regulations. — Records shall be destroyed according to the provisions of existing law and administrative regulations until the state records commission or local records board promulgates rules and regulations for the destruction of records.
 2. Section 120.070Retention Of Public Records. Pursuant to Sections 109.200 to 109.310, RSMo., commonly referred to as the "State and Local Records Law," Chapter 109, Section 255, RSMo., the Local Records Board establishes minimum retention periods for the administrative, fiscal and legal records created by local governments. It is the intent of the City of Smithville to retain records pursuant to the periods established by the Local Records Board, and the designated custodian of records is authorized to do so.
- iii. Yearly or semi regular, reoccurring contracts

II. Contracting

a. Section 432.070

- i. No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the **scope of its powers or be expressly authorized by law**, nor unless such contract be made upon a **consideration wholly to be performed or executed subsequent to the making of the contract**; and such contract, including the consideration, shall be **in writing** and **dated when made**, and shall be **subscribed by the parties** thereto, or their agents authorized by law and duly appointed and **authorized in writing**.
- ii. Purpose. The purpose of the statute is to provide protection for municipalities, not parties who seek to impose obligations upon government entities. Public Water Supply Dist. No. 16 v. City of Buckner,

44 S.W.3d 860, 864 (Mo App. W.D. 2001). To that end, “[a] court should unhesitatingly enforce compliance with all mandatory legal provisions designed to protect a municipal corporation and its inhabitants.” State ex. Rel. State Highway Commission v. City of Washington, 533 S.W.2d 555, 558 (Mo. 1976).

- iii. Compliance is Mandatory. “The requirements of § 432.070 are mandatory and not merely directory.” City of Kansas City v. Sw. Tracor Inc., 71 S.W.3d 211, 215 (Mo. App. W.D. 2002) (citations omitted).
- iv. Notice to potential contractors. “Those contracting with entities subject to § 432.070 are charged with knowing the statutory requirements which courts should not hesitate to enforce even if it yields a harsh result.” *Id.* (citations omitted).

b. Purchasing Policy

- i. No general statewide bidding requirements
- ii. Locally adopted purchasing policy provides staff with a procedure of how to use appropriately determine the best use of public funds
- iii. Lowest and Best
 - 1. Wide discretion in determination: In determining who is the “lowest and best bidder” on a public works contract, a public authority is vested with wide discretion, and its decision, when made honestly and in good faith, will not be interfered with by the court, even if erroneous. Missouri Serv. Co. v. City of Stanberry, 341 Mo. 500, 108 S.W.2d 25, 33 (Mo.1937).
 - 2. Relevant Factors: Besides considering a bidder's pecuniary ability in determining the “lowest and best bidder,” a public authority may consider:
 - a. the honesty and integrity of the bidder necessary to a faithful performance of the contract;
 - b. the bidder's skill and business judgment;
 - c. the bidder's experience and facilities for carrying out the contract;
 - d. previous conduct of the bidder under other contracts;
 - e. and the quality of the bidder's previous work. KAT Excavation, Inc. v. City of Belton, 996 S.W.2d 649, 651–52 (Mo. Ct. App. 1999)
- iv. Bid Protest

1. Typically, unsuccessful bidders do not have standing to challenge award: As an unsuccessful bidder, plaintiff was not deprived of anything to which it was legally entitled and therefore cannot state a cause of action. La Mar Construction Company v. Holt City, R-II School District, 542 S.W.2d 568, 570 (Mo.App.1976)
2. State v. Sevier, 339 Mo. 483, 98 S.W.2d 677, 679 (Mo. banc 1936) two reasons why unsuccessful bidder lacks a legal right to the relief requested: “(1) Because the ‘advertisement was not an offer of a contract, but an offer to receive proposals for a contract,’ and (2) because the statute requiring that contracts be let to the lowest and best bidder was designed for the benefit and protection of the public and not the bidders.”

III. Sunshine Law

- a. Have a clear, strong policy, review periodically
 - i. Section 610.028.2, RSMo - Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote and **any member or employee of the public governmental body who complies with the written policy is not guilty of a violation of the provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of his adherence to the written policy of the agency.**
 - ii. Close all records subject to closure and provide opening only by board action
 - iii. Section 620.014, RSMo - Records and documents submitted to the department of economic development, to the Missouri economic development, export and infrastructure board, or to a regional planning commission formed pursuant to chapter 251, relating to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business, or records pertaining to a business prospect with which the department, board, or commission is currently negotiating, may be deemed a closed record as such term is defined in section 610.010.
- b. Special Notice provision – Section 67.2725, RSMo – 4 day notice
 - i. For any public meeting where a vote of the governing body is required
 1. to implement a tax increase,

2. or with respect to a retail development project when the governing body votes to
 - a. utilize the power of eminent domain,
 - b. create a transportation development district or a community improvement district,
 - c. or approve a redevelopment plan that pledges public funds as financing for the project or plan,
3. the governing body of any county, city, town, or village, or any entity created by such county, city, town, or village, shall give notice conforming with all the requirements of subsection 1 of section 610.020 **at least four days before such entity may vote on such issues, exclusive of weekends and holidays when the facility is closed**; provided that this section shall not apply to any votes or discussion related to proposed ordinances which require a minimum of two separate readings on different days for their passage.
- ii. 30-day statute of limitations - Any legal action challenging the notice requirements provided herein shall be filed within thirty days of the subject meeting, or such meeting shall be deemed to have been properly noticed and held.

IV. Public Comments

- a. The purpose of the Board of Aldermen meeting is for the Board to conduct its business and approve items necessary for the continuing functioning of the City. “There is a significant governmental interest in conducting orderly, efficient meetings of public bodies.” Rowe v. City of Cocoa, Fla., 358 F.3d 800, 803 (11th Cir.2004).
 - i. Plainly, public bodies may confine their meetings to specified subject matter. City of Madison Joint Sch. Dist.No. 8 v. Wis. Employment Relations Comm'n, 429 U.S. 167, 175 n. 8 (1976)
 - ii. “A speaker may disrupt a [city] Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies. To deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting ... would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.” Wright v. Anthony, 733 F.2d 575, 577 (8th Cir.1984)

- b. Public comment periods during Board of Aldermen meetings are considered limited designated public forums. Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106, 121 S. Ct. 2093, 2099, 150 L. Ed. 2d 151 (2001).
 - i. limited public forum is a subset of the designated public forum [that] arises “where the government opens a non-public forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects.” Make the Road By Walking, Inc. v. Turner, 378 F.3d 133, 143 (2nd Cir.2004)
 - ii. In a limited designated public forum, “[r]estrictions on speech not within the type of expression allowed in a limited public forum must only be reasonable and viewpoint neutral.”
 - iii. “The restriction must not discriminate against speech on the basis of viewpoint, and the restriction must be reasonable in light of the purpose served by the forum.”
 - iv. Regulations on public comment in a limited designated public forum must be: reasonable, viewpoint neutral, and served important governmental interests.
- c. Rule 7, City of Smithville Board of Aldermen Rule of Order
 - i. Time: Three (3) minute time limitation on issues not listed on the action agenda
 - 1. Mayor may limit public comment on action agenda items to 3 minutes
 - 2. Mayor may further limit total time devoted to public comment on action agenda items provided that opponents and proponents granted equal time
 - ii. Place: At meetings of the Board of Aldermen
 - iii. Manner: Must address Board of Aldermen as a whole and not individual members or staff.