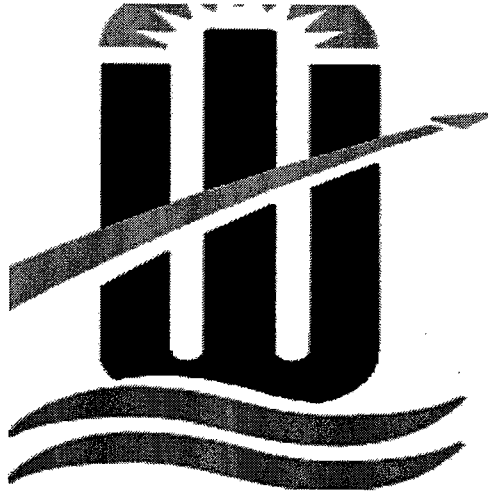


# *City of Wichita*



## *Legal Issues, Procedures and Codes*

# LEGAL ISSUES AND PROCEDURES

Director of Law  
And City Attorney

## **FORM OF GOVERNMENT AND COUNCIL RULES AND PROCEDURES**

**Form of Government.** The City of Wichita is a municipal corporation. It is a body corporate and politic with the power to determine its own local affairs and government by the enactment of ordinances. It is a city of the first class. It is organized under the statutory Commission-Manager form of government (K.S.A. 12-1001), but has used its Home Rule powers to make some modifications to this form, most notably the creation of council districts and the direct election of the mayor.

**Ordinances and Resolutions.** Most legislative action of the Council will be taken by the enactment of ordinances. Ordinances comprise the body of local law. Ordinances are required to be adopted by the procedure and in the form set forth in state law. They remain in effect until repealed. Most ordinances are codified in the Code Book. Charter ordinances are used when the City exercises its powers under Home Rule to exempt itself from state law. Certain actions are done by resolution which are less formal and of a more temporary nature than an ordinance.

# **FORM OF GOVERNMENT AND COUNCIL RULES AND PROCEDURES**

**Quorum and Voting.** A quorum of the seven-member council is four members. Four affirmative votes are required to approve matters of general policy, adopt ordinances or resolutions, or overrule recommendations of the City Manager or advisory boards (§2.04.270). Five affirmative votes are required for charter ordinances, some zoning actions, and certain other statutory acts. In voting, a member may not abstain unless the member declares a conflict of interest.

**Parliamentary Procedure.** The procedures to be followed by the Council are set forth in considerable detail by ordinance in Code § 2.04.010, et seq. These include rules of parliamentary procedure which are used in place of Robert's Rules of Order. Motions are restricted to those set forth in § 2.04.400. The City Attorney makes parliamentary rulings when requested.

# FORM OF GOVERNMENT AND COUNCIL RULES AND PROCEDURES

**City Manager and Council.** The City Manager is an employee of the City Council and is chosen solely on the basis of administrative ability. Under the City Manager form of government, the City Council is the policy-making body. The City Manager is the administrative head and carries out the policy as set by the governing body. The Manager is responsible for seeing that the laws are enforced.

All other City employees are, by state law and City ordinance, employed by the Manager. The Manager has the authority to hire and fire all City employees pursuant to the City personnel policy. By State law and City ordinance, "no member of the city [council] shall directly interfere with the conduct of any department, except at the express direction of the council."

# **FORM OF GOVERNMENT AND COUNCIL RULES AND PROCEDURES**

**Municipal Court.** The municipal court judges have the power to try all cases of alleged violation of City ordinance and are independent in such matters. The Council or City Manager cannot direct the judges on how to try cases or what sentences to impose in specific cases. Council members as individuals should not direct the city manager, police chief, or municipal court judges in their enforcement or application of the law.

**Code of Ethics.** The Code of Ethics for the Council is set forth in Code § 2.04.050. For example, Council members are not allowed to request the fixing of traffic tickets and related citations and generally requests for personal favors are not appropriate.

# **FORM OF GOVERNMENT AND COUNCIL RULES AND PROCEDURES**

**Appointments to City Boards and Commissions.** Each council member has one appointee on seven-member and two appointees on 14-member boards and commissions, unless otherwise provided by state law or city ordinance. The appointments are made with the approval of a majority of the Council. Most appointments are for a two-year term.

## **OPEN RECORDS ACT**

Kansas' "Freedom of Information" Act is the Kansas Open Records Act (KORA), K.S.A. 45- 201 et seq. The KORA provides that public records are open for inspection by any person unless otherwise closed by the Act. The act is to be liberally construed to promote such a policy.

A "public record" is any recorded information which is made, maintained or kept by or in the possession of a "public agency." The personal records of individual members of the governing body are not considered public records.



## **OPEN RECORDS ACT**

The City of Wichita has set forth its procedures for compliance with the KORA in Administrative Regulation no. 70 and the booklet “A Guide to Open Public Records.” This booklet is available in all offices having direct contact with the public. The City Clerk is designated as the Local Freedom of Information Officer and the principal records custodian. Each department appoints a contact person to handle public requests. Forms are available for use by the public and City custodians. Public requests for documents must generally be acted upon as soon as possible but within 3 days. Reasonable charges may be made for copies.

## **OPEN RECORDS ACT**

There are 45 categories of records which are public records but which may be discretionarily closed by the public agency. These are documents not deemed appropriate for public disclosure such as investigative matters, personnel files, correspondence with private individuals, preliminary research, and drafts of memoranda. As a general rule, a record becomes public once it becomes official action, is distributed to a majority of the Council or a board, or is publicly cited in an open meeting or on an agenda.

## **OPEN RECORDS ACT**

There are certain documents that the City is prohibited from releasing by the Act. These include criminal history information and lists of names or addresses intended for commercial solicitation.

The City Attorney is available to give opinions when questions arise as to whether or how records should be made available to the public.

## **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

Following is a summary of the public meeting law, the Kansas Open Meetings Act (**KOMA**), K.S.A. 75-4317 *et seq.* This summary is based upon Attorney General Opinions, court cases, and interpretation by the City Attorney.

# OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

## **Entities covered**

“All legislative and administrative bodies and agencies of [the City], including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds” are subject to the KOMA (K.S.A. 75-4318).

Entities covered by the KOMA include the City Council, all boards and commissions appointed by the City Council, and committees appointed by the City Council consisting of a majority of a quorum of the members of any public entity.

The KOMA does not apply to meetings of the City Manager and City Staff where a majority of a quorum of the members is not present. It does not apply to committees and task forces appointed by the City Manager or City Staff.

# OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

## Meeting definition

“A ‘meeting’ means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the members of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency” (K.S.A. 75-4317a).

For a meeting to occur, there must be participation of at least three Council members ("majority of a quorum"; quorum is 4 of a 7 member board). Keep in mind that any time three or more Council members are together by design or happenstance, directly or electronically, a meeting could occur if there is the discussion of City or Council business or affairs. Listed below are some examples where the law would apply and where it would not apply:

## **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

The following would not normally be meetings:

- Any gathering involving less than three members
- Correspondence (including e-mails)
- Social affairs where no City business is discussed, such as parties, weddings, funerals, receptions, banquets, sporting events, etc.
- General conventions or educational seminars (e.g., National League of Cities) so long as not used by Council members to discuss specific business or affairs of the City.
- Events attended by members independently (without notice of meeting) where they do not participate and are “mere observers.”

## **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

### **Serial communications**

In 1998, the Kansas Attorney General took the position that “serial meetings” or indirect communications between individual Council members or Council members and Staff or third-parties “collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of the body constitutes a meeting for the purposes of the KOMA.” The City Attorney and the League of Municipalities have expressed disagreement with the legal interpretation given by the Attorney General as being inconsistent with the legislative intent of the KOMA and interpretation of the KOMA by the Supreme Court, but the Council should be advised of this position.



## OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

The Attorney General opines that the following is prohibited when it involves a majority of a quorum:

- “Calling trees” and e-mail exchanges in which members individually call each other to survey or express opinions before a vote.
- Communications through thirds parties (staff or private citizens) when used for the purpose of discussion between members.

The Attorney General has clarified that the following is allowed:

- The above activities when used only for “procedural issues” (such as agenda planning).
- Staff briefings “if the staff member does not discuss any board member’s concerns and comments with other board members so that a majority of a quorum are made aware of and can respond to each others concerns.”

## OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

It is the City Attorney's position that only contemporaneous "interactive communications" constitute a "meeting" and so-called serial communications were not intended to be covered by the KOMA. The Supreme Court stated,

*"The State suggests that the quorum resolution at issue in the present case violates the Open Meetings Act by permitting two members of the county commission to meet outside the scope of the Act. Those two members could, in turn, individually speak with other members of the Board thereby circumventing the provisions of the Open Meetings Act. The legislature, however, could have prevented this result by simply providing that the Open Meetings Act applies whenever two members of a governmental body or agency gather or assemble. Instead, it refused to adopt such an approach and defined a meeting simply as "a majority of a quorum," and did not define what constitutes a quorum."*

## **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

Even though the Attorney General's proposed limitations may not legally apply to the Council in all circumstances, it is important that Council members are constantly vigilant to assure that their activities comply with the expressed public policy purpose of open government. Decisions should be made in open meeting. The City Attorney is available to give advice on specific matters.

# **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

## **Meeting procedures**

When there is a meeting of a majority of a quorum, then the following must occur:

1. It must be open to the public.
2. Notice of date, time, and place of any regular or special meeting must be given to any person requesting such information.
3. Prior to a meeting, any agenda shall be "made available" to any person requesting same.
4. Cameras, photographic lights, recordings shall be allowed, subject to reasonable rules which would allow the orderly conduct of the meeting.
5. Closed meetings (executive sessions) are allowed for limited purposes.

# **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

## **Executive Session Procedures**

The KOMA allows for closed meetings or “executive sessions” in limited circumstances where public discussion is not in the public interest. The following process must be followed:

1. To recess: The open meeting is recessed (not adjourned) by motion stating the justification, subject(s) to be discussed, and time and place the open meeting is resumed.
2. Action: Discussion is limited to those subjects stated in the motion. No binding action may be taken in closed meeting. Any action resulting from the discussion must be made in the public session.
3. Any item discussed in executive session should not be disclosed prior to the time official action by the Council occurs.

# **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

## **Executive Session Procedures**

**5. Subjects:** Only the listed subjects are proper for discussion (one matter might be proper under several subjects):

- a. Personnel matters of non-elected personnel.
  - (1) This relates to personnel matters involving any City employee. It does not include matters involving public officials or advisory board members.
  - (2) Personnel matters include, but are not limited to, the hiring, discharge or discipline of non-elected personnel.

**Note:** Any motion to recess on this subject should specify the type of personnel matter to be discussed (but not the names of individuals).

# **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

## **Executive Session Procedures**

- b. Consultation with the attorney for the public body which is privileged in the attorney-client relationship.
  - (1) The attorney-client privilege includes, but is not limited to, discussion of pending or threatened lawsuits in which the City or a public board is or may be a party;
  - (2) Contract negotiations with public or private entities conducted by an attorney on behalf of the City or public board;
  - (3) Legal advice on matters affecting the legal rights, obligations or duties of the City or its public boards; and
  - (4) Council decisions regarding actions to be taken upon the legal advice of an attorney.

# OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

## Executive Session Procedures

- c. Matters relating to Employer-Employee negotiations.
  - (1) This relates to information concerning labor negotiations between the City and its recognized labor unions including, but not limited to, consultation with the public body's representative.
  - (2) This would include actual negotiations with union representatives but not general discussions or exchange of positions with such representatives prior to negotiations.
- d. Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts and individual proprietorships.
  - (1) Involves discussions concerning industrial development prospects, where confidential commercial information, financial affairs and related matters are involved; and
  - (2) Trade secrets under trade secrecy agreements.



# OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

## Executive Session Procedures

- e. Matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution.
  - (1) This has limited application to the business or affairs of the City.
- f. Preliminary discussions relating to the acquisition of real property.
  - (1) Relates to preliminary discussions as to property to be condemned.
  - (2) Preliminary negotiations regarding real property which the City or board is contemplating purchasing.
  - (3) Can be used only for acquisition, not for sale or other action.

# OPEN MEETINGS LAW AND EXECUTIVE SESSIONS

## Executive Session Procedures

- g. Issues involving security of the body, agency, public facilities or public information systems if a public discussion would jeopardize the security of such body, agency, facility, or system.
- h. Miscellaneous matters generally inapplicable to the City including Racing Commission, Child abuse and neglect, and Medicaid Drug Utilization.

## **OPEN MEETINGS LAW AND EXECUTIVE SESSIONS**

### **Quasi-judicial Exception**

When the City Council is authorized by law to exercise quasi-judicial functions, it has the authority (but is not required) to conduct its deliberations in closed session. Quasi-judicial matters include, e.g., zoning decisions and some decisions on license and permit grant and revocation.

Even when deliberations take place in closed session, the decision must be announced in the public meeting.

The City Attorney is available to provide advice on KOMA matters.

# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

The City Code, in Section 2.12.010(7), prohibits Council and appointive board members from violating the state statutes which regulate conflicts of interest of public officers and employees. The Kansas Governmental Ethics Act, K.S.A. 75-4301a, et seq., specifically applies governmental ethics provisions to local government. These provisions provide for the filing of written reports disclosing the substantial financial interests of public officers and prohibits them from participating in certain contracts.

# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

## **Disclosure Requirements (Substantial Interests)**

Statements of substantial interest must be filed by local elected officials including City Council members upon their filing for or being appointed to office. (In contrast, City appointive board members and City employees have the option of either filing a disclosure or refraining from action affecting a substantial interest.) After the initial disclosure, any amendments to the statements must be filed annually between April 15 - 30. Such statements are filed with the County Election Commissioner; The City clerk can help with this process.

Unless a disclosure of substantial interest has been filed, a Council member shall not pass or act upon any matter affecting a business in which the Council member has a "substantial interest." The filing of the statement discloses all potential conflicts of interest and allows members to participate in a matter without a legal conflict of interest.

# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

"Substantial Interest" in a "business" is defined to include the following:

1. Any business in which a member and/or spouse owns a legal or equitable interest exceeding \$5,000 or 5% of the business (whichever is less) in the preceding twelve (12) months.
2. Receipt by a member and/or spouse of \$2,000 or more in taxable income from any business during the preceding calendar year.
3. Receipt by a member and/or spouse of \$500 in goods or services "without reasonable and valuable consideration" in the preceding twelve (12) months.

**GOVERNMENTAL ETHICS,  
CONFLICT OF INTEREST –  
DISCLOSURE OF SUBSTANTIAL INTERESTS**

4. A member or spouse holding the position of officer, director, associate, partner, or proprietor in any business (except for not-for-profit organizations under the Internal Revenue Code).
5. Any client or customer who pays fees or commissions to a business from which a member and/or spouse receive a portion which amounts to \$2,000 or more in the preceding year.

# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

In addition, a member must disclose if the member or spouse holds the position of officer, director, associate, partner, or proprietor in any not-for-profit organization. Such filing is for public disclosure purposes only and is not a "substantial interest" under the law.

This is merely a summary of the definitions in K.S.A. 75-4301a. Specific questions can be answered by the Kansas Commission on Governmental Standards and Conduct.

In sum, a Council member is not prohibited from passing or acting upon a matter (other than contracts) in which the member has a substantial interest if a disclosure has been filed. Council members have the option to abstain from acting on such matters, however, to avoid the appearance of impropriety.



# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

## **Contract Prohibitions**

A member of the Council, acting in that capacity, is prohibited from participating in the making of any contract with any person or business by which the member is employed or in which the member has a substantial interest as defined above. This prohibition applies even though a disclosure statement has been filed.

There are two exceptions to this prohibition. A member with an interest may participate in

1. contracts let after competitive bidding has been advertised for by public notice; and
2. contracts for property or service for which the price or rate is fixed by law.

# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

Under such exceptions, the member with an interest may participate if a disclosure has been filed. A member does not participate in the contract (and would not otherwise be required to file a disclosure statement) if the member abstains from any action in regard to a contract in which the member has an interest.

# **GOVERNMENTAL ETHICS, CONFLICT OF INTEREST – DISCLOSURE OF SUBSTANTIAL INTERESTS**

## **Penalties and Interpretation**

Violation of the provisions of the Conflict of Interest law is a Class B misdemeanor. Conviction of the provision on contract prohibition results in forfeiture of office. The City Attorney is available to provide information regarding the filing of disclosures or the participation in Council actions. Opinions may also be obtained from the Kansas Commission on Governmental Standards and Conduct.

## **HOME RULE**

Under the Constitution of the State of Kansas, cities are given the right to determine their local affairs. Home rule power for cities was approved by the voters of Kansas in 1960 as Article 12, §5, to the Constitution. At one time, cities had only those powers granted them by the state legislature (this was known as Dillon's Rule). Now, power is vested in the City, and the Council acts as a legislative body to enact those laws needed for the conduct of local affairs.

In general, Home Rule allows cities to act in any area in which the state legislature may act, subject only to preemption by the State in specifically defined areas. In the event of a conflict, the state law prevails. Cities are not necessarily bound by a state law, however. Cities are empowered to enact charter ordinances to exempt themselves from any state law that does not apply uniformly to all cities.

## **HOME RULE**

In only a few areas are the powers of cities restricted. When the legislature enacts a law "uniformly applicable" to all cities, a city may not enact an ordinance in conflict with the state law. The Constitution also contains a few provisions allowing the legislature to restrict cities' authority in such matters as incorporation, annexation, and taxation.

When a city desires to pass a charter ordinance to exempt the city from a state law, certain procedures must be followed. The charter ordinance must be adopted by a two-thirds vote (5) of the members of the Council and be published for two weeks. The Council may then call an election for approval of the charter ordinance or let it become effective after 60 days. During that 60-day period, an election may be called by a petition of the electorate.

## **HOME RULE**

There have been many court cases interpreting the Home Rule Amendment, and cities have vigorously defended this power granted by the people.