

*Each workday your Missouri Municipal League staff answers dozens of questions on municipal issues. This column discusses some of the most common questions League staff receives. The FAQ's column in this issue of the Review takes a look at the top 10 commonly misunderstood issues and topics often posed to League staff. As with all legal matters, municipal officials are urged to consult their city attorney for guidance in the specific problems faced by their municipality. Answers provided in this column should serve only as a general reference.*

**MYTH #10 -IF YOU MISS THREE MEETINGS IN A ROW YOU LOSE YOUR POSITION.**

Not necessarily. There is no state statute that specifically provides that someone who misses three meetings (or any number of meeting for that matter) forfeits their position. However, many municipalities have adopted a local policy that requires councilmember attendance at council meetings and further provides that missing a set number of meetings without a valid excuse may be grounds for beginning impeachment proceedings. Cities without such a policy in place may contact the League for a sample policy.

**MYTH #9 - A CITIZEN PETITION CAN CHANGE CITY ORDINANCES.**

Depends on the classification of the city. In most Missouri municipalities (specifically villages, 4th class cities and 3rd class non-manager form) there are no provisions in the state statute for initiatives or referendums. Citizens certainly may present their petitions or grievances to the local governing body and the governing body may decide on the merits of the request. However, in most cases the governing body is not required (or authorized) to place the issue on the ballot. The exception to this is found in 3rd class cities with the city manager form of government as well as many home rule charter cities. In 3rd class city manager cities state law (78.573 RSMo.) does provide a process whereby citizens can bring ordinance changes to the ballot. In addition, many home rule charters have similar provisions in the city charter.

**MYTH #8 -THE SUNSHINE LAW REQUIRES THAT THE CITY CREATE A REPORT IN THREE BUSINESS DAYS.**

The Missouri Open Meetings and Records act only applies to existing documents and files. While the law clearly requires that city hall make documents available to the public for inspection (unless the documents relate to a topic that the law specifically provides is closable- such as personnel), the Missouri Open Meetings and Records Act does not require that the city create new documents or reports to satisfy a request.

**MYTH #7 - A PUBLIC HEARING IS REQUIRED PRIOR TO THE ADOPTION OF THE MUNICIPAL BUDGET.**

No. State law does not specifically require a public hearing prior to adopting the annual budget. The practice of holding a hearing dates back to the days of federal revenue

sharing when the hearings where required as a condition. Holding a public hearing prior to adopting the budget may be a good practice, but it is not specifically required by state law.

**MYTH #6 - CITY STAFF MUST COMPLY WITH ANY DIRECTIVES FROM COUNCILMEMBERS.**

The power of aldermen and councilmembers to shape municipal policy and regulations comes from holding a seat as a member of the city's legislative body. Collectively the city council sets policy, pass municipal laws, and can direct the activities of the executive branch of the municipal government. Individual councilmembers have the power to vote on board issues, as well as make motions, introduce legislation, ask questions and speak their mind on municipal issues. However, when solely acting on their own, aldermen or councilmembers have no authority to direct city staff. Many cities may have a policy that individual concerns from aldermen or councilmembers be channeled through the city administrator's office or the mayor. Such policies save city staff from being placed in the difficult position of having one councilmember issue a directive in one direction, while another councilmember suggests another.

**MYTH #5 - FAMILY MEMBERS CANNOT SERVE ON THE BOARD TOGETHER - THAT WOULD BE NEPOTISM.**

The Missouri Constitution provides that, "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 there by forfeit his office or employment." This provision prohibits municipal officials from appointing their relatives to a position within the city government. It does not prohibit the voters from electing someone who may be a relative to someone who is already serving on the governing body or working for the city.

**MYTH #4 - THE PREVAILING WAGE IS ONLY TRIGGERED IF THE PROJECT IS MORE THAN \$5,000 OR WHEN THE PROJECT INVOLVES STATE OR FEDERAL MONIES.**

Wrong. There is no dollar minimum and in general the prevailing wage requirement applies to any new construction project, as well as most remodeling and repair projects. All Missouri municipalities starting a contracted construction project must get an Annual Wage Order from the Missouri Department of Labor. The Annual Wage Order lists the prevailing wage rates on public construction projects in each county. The rates must be incorporated into the bid specifications for the job. After awarding the contract, the city must submit a project notification form (PW-2) to the Division of Labor Standards. During the course of the project, the city must review all payroll records to ensure Prevailing Wage Law requirements are being met. At the completion of a project, the city must acquire a completed Affidavit of Compliance form from the contractor(s) before making final payment and send a copy to the Division of Labor Standards.

**MYTH #3 - WE DON'T HAVE TO PAY OVERTIME TO SALARIED EMPLOYEES.**

Under the federal Fair Labor Standards Act, overtime

pay (paid at one and half times the regular rate of pay) must be paid to the vast majority of employees for hours worked in excess of 40 hours in a work week. Some positions such as executive, professional or administrative may be exempt from overtime requirements if they are paid over \$47,476 annually. However, simply paying an employee on a salary basis (even if they agree to it), does not exempt the employer from the requirement to pay overtime.

**MYTH #2 – THE MAYOR OF OUR 4TH CLASS CITY JUST RESIGNED. SO OUR MAYOR PRO TEM BECOMES THE MAYOR, RIGHT?**

Following the April elections, 4th class cities typically elect one of the aldermen as Acting President of the Board (often called *mayor pro tem*, though this term more correctly applies to 3rd class cities). The alderman designated as Acting President has the powers and duties of the mayor when the mayor is absent. When the mayor is temporarily absent from the city, the acting president is authorized to perform mayoral functions. However, should a vacancy in the office of mayor occur, the person serving as Acting President does not automatically step into the Mayor’s position. Rather, the mayor’s office is considered vacant and the board of aldermen is authorized to appoint someone to the mayor’s seat. The person appointed to fill the mayor’s seat could be the acting president, another member of the

board or any citizen who meets the requirements for office. During the time period that the mayor’s seat is vacant, the acting president does have powers of the mayor; however, they should not be considered as mayor.

**MYTH #1 – WE HAVE TO READ BILLS THREE TIMES IN ORDER TO PASS AN ORDINANCE.**

False. Under the current law, villages, and 3rd and 4th class cities need only read a bill in full or by title twice. If the bill is read by title only, copies must be available to the public prior to the time the bill is under consideration. Both readings may occur on the same night. □



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