

BILL NO. 23-203

AN ORDINANCE AMENDING SECTION 2-530 OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI, TO UPDATE PROVISIONS PERTAINING TO CLOSED MEETINGS, RECORDS AND VOTES, TO BE IN CONFORMITY WITH THE MOST CURRENT REVISED VERSION OF MISSOURI'S SUNSHINE LAW.

WHEREAS, the City of Lee's Summit, Missouri ("City") enacted Section 2-530 which relates to, among other things, the handling of closed meetings, records and votes, in a manner consistent with Missouri's Governmental Bodies and Records Law (hereinafter "Sunshine Law"); and,

WHEREAS, Section 2-530 is based upon various provisions of Missouri's Sunshine Law, including Sections 610.015, 610.021 and 610.022 of the Revised Statutes of Missouri ("RSMo."); and,

WHEREAS, Section 610.021, RSMo., was recently revised in such a manner that portions of Section 2-530 are now inconsistent with the current revision of Section 610.021, RSMo.; and,

WHEREAS, the City Council of the City of Lee's Summit wishes to revise Section 2-530 subsection A paragraph 18 so that will it conform to the current version of Section 610.021, RSMo.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That Section 2-530 of the Code of Ordinances of Lee's Summit is hereby amended by repealing the current Section 2-530, and in enacting in lieu thereof a new Section 2-530:

A. Except to the extent disclosure is otherwise required by law, and subject to additional actions on the part of the City as may be required by law, all meetings, records, and votes of the City and its governmental bodies are closed to the public to the extent they relate to the following:

1. Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of RSMo Section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

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2. Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;

3. Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two (72) hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two (72) hour period before such decision is made available to the public. As used in this subsection, the term "personal information" means information relating to the performance or merit of individual employees;

4. The State militia or National Guard or any part thereof;

5. Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

6. Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen (18) years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen (18) years;

7. Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

8. Welfare cases of identifiable individuals;

9. Preparation, including any discussions or work product, on behalf of the City or its public governmental bodies or their representatives, for negotiations with employee groups;

10. Software codes for electronic data processing and documentation thereof;

11. Specifications for competitive bidding, until either the specifications are officially approved by the City or its public governmental bodies or the specifications are published for bid;

12. Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;

13. Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of the City and its public governmental bodies once they are employed as such;

14. Records which are protected from disclosure by law;

15. Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

16. Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

17. Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to Chapter 610 RSMo;

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18. (a) Security measures, global positioning system (GPS) data, investigative information, or investigative or surveillance techniques of any public agency responsible for law enforcement or public safety that, if disclosed, has the potential to endanger the health or safety of an individual or the public.

(b) Any information or data provided to a tip line for the purpose of safety or security at an educational institution that, if disclosed, has the potential to endanger the health or safety of an individual or the public.

(c) Any information contained in any suspicious activity report provided to law enforcement that, if disclosed, has the potential to endanger the health or safety of an individual or the public.

(d) Operational guidelines, policies and specific response plans developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which has the potential to endanger individual or public safety or health. Financial records related to the procurement of or expenditures relating to operational guidelines, policies or plans purchased with public funds shall be open. When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair its ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

19. Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety:

(a) Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open;

(b) When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

(c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the document shall be returned to the nonpublic governmental body or destroyed;

20. The portion of a record that identifies security systems or access codes or authorization codes for security systems of real property;

21. Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open; and

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22. Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body.

B. Except as set forth in Subsection C of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this article shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

C. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of Subsection A. of this section. Such notice shall comply with the procedures set forth in Section 2-526 for notice of a public meeting.

D. Any meeting or vote closed pursuant to Subsection A of this section shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. Public governmental bodies holding a closed meeting shall close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.

E. Any votes taken during a closed meeting shall be taken by roll call.

F. Public records shall be presumed to be open unless otherwise closed pursuant to the provisions of this article.

G. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication.

H. All votes taken by roll call in meetings of a public governmental body consisting of members who are all elected, except for any committee established by a public governmental body, shall be cast by members of the public governmental body who are physically present and in attendance at the meeting. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, Internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.

I. In the event any member of a public governmental body makes a motion to close a meeting, or a record, or a vote from the public and any other member believes that such motion, if passed, would cause a meeting, record or vote to be closed from the public in violation of any provision in Chapter 610 RSMo, such latter member shall state his objection to the motion at or before the time the vote is taken on the motion. The public governmental body

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shall enter in the minutes of the public governmental body any objection made pursuant to this subsection. Any member making such an objection shall be allowed to fully participate in any meeting, record or vote that is closed from the public over the member's objection. In the event the objecting member also voted in opposition to the motion to close the meeting, record or vote at issue, the objection and vote of the member as entered in the minutes shall be an absolute defense to any claim filed against the objecting member pursuant to Section 610.027 RSMo.

J. Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the Custodian of Records in the same format. The provisions of this section shall only apply to messages sent to two (2) or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the Custodian or at the member's office computer shall be a public record subject to the exceptions of Subsection A of this section.

SECTION 2. That this ordinance shall be in full force and effect from and after the date of its passage and approval.

SECTION 3. That should any section, sentence, or clause of this ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2023.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2023.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*