

## INTRODUCTION

The *2019 Handbook for Kentucky Municipal Clerks, 5th Edition* updates the *2009 Handbook for Kentucky Municipal Clerks, 4th Edition*. This new edition of the Handbook identifies statutory and regulatory requirements, policies, and procedures that Kentucky city clerks encounter on a daily basis.

As a local official and public servant, you deal with many individuals and issues. As a city clerk, you serve as a leader in your community. You often address numerous and complicated legal issues in your position. This Handbook does not replace other resources and training necessary to perform your job successfully. The *2019 Handbook for Kentucky Municipal Clerks* is a starting point for your legal questions. It identifies basic legal requirements and refers you to more detailed resources for specific and complicated legal issues.

We hope this Handbook is a good starting point for your legal research. For additional information, please see the Kentucky League of Cities *City Officials Legal Handbook, 2019 Edition* which contains comprehensive information on municipal management based upon years of research. You may also contact Kentucky League of Cities Department of Municipal Law and Training at 800-876-4552 or visit [www.klc.org](http://www.klc.org).

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## CHAPTER 1 – OFFICE OF THE CITY CLERK

### Section A. Historical Perspective

The term "clerk" descends from the early middle ages when church predominated over state and generally only clergymen were literate. The term "clerk" evolved into a role as writer, recordkeeper and local official. The "parish" or "town clerk" existed in early American history. Today, every city in the United States, regardless of size or government form, has a clerk's position or its equivalent. *Florida City Clerks Manual, 1978.*

### Section B. Role of the City Clerk

1. **General.** The International Institute of Municipal Clerks (IIMC) describes the role of city or municipal clerk as follows:

"The Clerk's office can truly be called the hub of local government. It is the clerk who is the contact between the citizens and the government. It is he/she to whom complaints are brought. He/she gives advice on many subjects, not necessarily relating to the government, but by his/her contact with the public, they for a great part place confidence in him/her as the one who can answer most any question. The clerk can, if he/she desires, yield a great measure of influence in his/her community. *Florida City Clerks Manual, 1978.*

The city clerk is the bridge between executive and legislative government units, and between local government and the public he or she has pledged to serve. The city clerk is the official custodian of records and often the only full-time officer with a professional working knowledge of the city's government.

2. **Kentucky.** Pursuant to KRS 83A.085, every city in Kentucky, except first class cities, must establish the office of city clerk by ordinance. City clerks are appointed city officials, except for the Georgetown city clerk, who is an elected official.
  - a. The office of city clerk may be combined with any other nonelected office, but the title of the combined office must contain the word "clerk." Often, the city clerk will have the title of City Clerk/Administrator, City Clerk/Treasurer/Tax Collector, Council Clerk, City Clerk/ABC Administrator.
  - b. In addition to the diverse titles, you will find many variations in the role of the clerk. It can be full-time, part-time or a combination of both. The existence of a city manager, city administrator, part-time/full-time mayor, commission or council further affects the city clerk's role and function.
  - c. Because of the ever-expanding requirements placed on the office of city clerk, many cities recognize the need for an assistant or deputy city clerk.

### Section C. Duties of the City Clerk

1. **Statutory.** Pursuant to KRS 83A.085, the city ordinance establishing the office of city clerk must set forth the duties and responsibilities of the city clerk. The duties must include, at a minimum, the following:
  - a. Maintenance and safekeeping of permanent city records.
  - b. Performance of duties required of "official custodian" or "custodian" pursuant to KRS 61.870-61.884, Open Records Act.
  - c. Possession of the seal of the city, if used.
  - d. No later than January 31 of each year, mail to the Department for Local Government a list of current city information including, but not limited to, the following:
    - 1) The correct name, telephone number, and email address of the mayor, legislative body members, and the city's appointed officials or employees who are serving in the following roles or substantially similar roles as of January 1 of each year:
      - a) City clerk;
      - b) City treasurer or chief financial officer;
      - c) City manager or administrator;
      - d) City attorney;
      - e) Human resources director;
      - f) Police chief;
      - g) Fire chief;
      - h) Public works director;
      - i) Risk manager;
      - j) Information technology manager;
      - k) Public relations or communications officer; and
      - l) Planning and zoning administrator.
    - 2) The correct name of the city and the mailing address and telephone number of city hall.

3) The name and telephone number of either an elected or appointed official to serve as a contact person that may be reached during normal business hours of 8:00 a.m. to 4:30 p.m.

e. Performance of all city clerk duties required by statute or ordinance.

NOTE: The Department for Local Government (DLG) shall immediately forward one copy of the information received from each city clerk to the Legislative Research Commission. DLG provides each city clerk with a reporting form in late December that identifies the information needed.

2. **Publication and Notice Requirements.** Pursuant to KRS Chapter 424, the city clerk must comply with legal advertising and notification requirements. Chapter 8 of this Handbook outlines these requirements.

3. **Minutes.** City clerks must maintain a record of the minutes of public body meetings and make them available for public inspection no later than immediately following the next meeting of the public agency pursuant to KRS 61.835.

4. **Customary Duties.** Local customs, traditions, conditions, and circumstances influence the city clerk's duties. Some city clerks may have simple recordkeeping duties and provide staff assistance to executive and legislative branches. Some city clerks carry these duties, plus other responsibilities, including the following:

a. Issuing licenses and permits;

b. Bookkeeping, depositing, and accounting of licenses, permits, fees, and utility charges;

c. Personnel and financial administration;

d. Furnishing data to the media in addition to open records;

e. Receiving and handling of complaints;

f. Performing delegated personnel functions;

g. Handling records management systems;

h. Codifying ordinances;

i. Conducting business with other city, county, state, and federal agencies as directed; and

j. City financing issues.

## **Section D. Bonds**

1. **KRS Chapter 65.** Pursuant to KRS Chapter 65.067, all city/county officials and employees who handle public money, including city clerks, must give good and sufficient bond. The amount of the bond is based upon the maximum amount of public funds the person handles at any given time during the fiscal year.
2. **Payment of bond.** The local governing body shall pay the cost of the bond.

#### **Section E. Appointment and Removal**

1. **City officer.** KRS 83A.080 allows cities to create "nonelected municipal officers" by ordinance. The office of city clerk falls within the definition of "city officer" as outlined in KRS 83A.010(10) and is specifically set forth as a nonelected office in KRS 83A.080(2)(a). The creation of the office must be codified by ordinance.
2. **Appointment.** The city's executive authority appoints the city clerk with the approval of the legislative body. The fact that the city's legislative body approves the appointment of the city clerk is one distinguishing characteristic of this office from a city employee. KRS 83A.080. A city employee is appointed by the executive authority without the approval of the legislative body; however, in commission and city manager forms of government the executive and legislative authority is shared equally among the commissioners of which the mayor is a member.
3. **Requirements.** A city clerk is not required to reside in the city or be a qualified voter. OAG 82-563.
4. **Removal.** KRS 83A.080 allows a city clerk to serve at the will of the executive authority, unless otherwise provided by statute or ordinance. However, the city ordinance may not take away the executive authority's removal power by requiring the legislative body's approval.
5. **Written dismissal.** In 2001, KRS 83A.080 was amended. Now, the executive authority that removes a nonelected officer at will must give the officer a written statement setting forth the reason or reasons for the removal. The reason may be as simple as "a change in administration prompted a decision to move in a different direction."
6. **Tenure.** Pursuant to OAG 84-14, the city clerk, like all nonelected officers and employees, is appointed for an indefinite term. No authority for a fixed term of office exists. The city clerk serves at the will of the executive authority, unless otherwise set forth by statute or ordinance.

#### **Section F. Professionalism**

1. **General.** The necessity of introductory on-the-job orientation, professional development and training courses cannot be over emphasized in an ever-changing business environment. The key sources of training and development include the

International Institute of Municipal Clerks (IIMC), the Kentucky Municipal Clerks Association (KMCA) and regional clerk's chapters.

2. **The International Institute of Municipal Clerks (IIMC).** The IIMC, headquartered in California, provides core curriculum for the three-year Kentucky Municipal Clerks Institute Certification Program. The KMCA highly encourages membership in this organization with over 10,000 members worldwide. IIMC also offers other services to members:
  - a. The resource center addresses local government issues through technical bulletins, an ordinance databank, and a monthly newsletter.
  - b. Ongoing training and networking opportunities through an annual conference featuring over 50 concurrent workshops focusing on large and small city needs.
  - c. IIMC Region 5. Five states comprise Region 5: Kentucky, Indiana, Michigan, Ohio and Tennessee. There is an annual conference that focuses on training.
3. **Kentucky Municipal Clerks Association (KMCA).** KMCA, established in 1977, enhances professionalism within the city clerk's office, encourages growth and development, establishes an interchange of ideas and support systems among KMCA members, and enhances the image of the city clerk.
4. **KMCA Certification Programs.** The Kentucky Municipal Clerks Institute (KMCI) is an IIMC-approved program designed to enable participants to earn their Certified Kentucky Municipal Clerk (CKMC) designation in three years. Each of the three years consists of 40 hours of training.
  - a. To become a Certified Municipal Clerk in the Commonwealth of Kentucky, one must complete 120 hours of training in an IIMC Certified Program. The 120 hours of training includes 50% in Public Administration; 30% in Social and Interpersonal Concerns; and 20% in Electives. Additionally, attendees must be full members of the Kentucky Municipal Clerks Association (KMCA) for two years. Membership information can be found at [www.kyclerks.com](http://www.kyclerks.com).
  - b. The Kentucky Master Municipal Clerk (KMMC) designation is issued by the Kentucky Municipal Clerks Association (KMCA). A CKMC or CMC certification and an active KMCA membership are required to apply. This designation requires 100 Education points and 20 Professional and Social Contribution points. The educational points must be obtained by attending 60 hours minimum at the Kentucky Master Municipal Clerks Academy and a minimum 20 hours through KMCA spring conference programs.
  - c. Since KMCI is an IIMC-approved program, all hours of training during the Institute may be used toward the CMC designation from IIMC if the

attendee completes the required assessment. More information about earning your CMC designation can be found at [www.iimc.com](http://www.iimc.com).

- d. The MMC designation is issued by IIMC. One must have the CMC designation before points can be earned toward MMC. It requires 60 Advanced Education points and 40 Professional points and can be worked on in conjunction with KMMC. Active IIMC membership is also required. More information about earning your MMC designation can be found at [www.iimc.com](http://www.iimc.com).

- 5. **KMCA Regional Chapters.** Regional chapters are based upon Area Development District boundaries. Most of the fifteen (15) districts have active regional chapters with a regional director and regular meetings. Contact the KMCA President or the Area Development District Public Administration Specialist for further information.

## CHAPTER 2 – FORMS OF CITY GOVERNMENT

### Section A. Overview

KRS Chapter 83A outlines three forms of city government for Kentucky cities: the mayor-council plan, the commission plan, and the manager plan.

1. **Urban county government.** In 1974 the City of Lexington and Fayette County merged, creating the only urban county government in Kentucky. The urban county plan is a form of government created by the merger of all units of city and county government under KRS 67A. The statutes do not set forth a particular organizational structure. The organizational plan develops during the merger process through an urban county charter. However, statute requires that the urban county government retain all county offices set forth in the Kentucky Constitution.
2. **Consolidated local government.** In November 2000, the voters of Jefferson County approved the consolidation of Jefferson County with the City of Louisville. The Louisville-Jefferson County Metro Government began operation in January 2003. The consolidated government is governed pursuant to KRS 67C by a mayor and a legislative council composed of 26 members elected in partisan elections from the districts in which the members live. The constitutional county offices remain in existence; however, the powers of these offices are assigned by statute to the consolidated government. *City Officials Legal Handbook*, Kentucky League of Cities (2019 KLC COLH).
3. **Unified local government.** In 2006, the General Assembly authorized a form of local government known as a unified local government. The legal requirements applicable to unified local governments are set forth in KRS 67.900-67.940. These statutes permit a county government and any number of incorporated cities within the county to form a merged unit of local government that possesses all the powers of a county government and of the city of the highest class that participated in the formation of the unified local government. The organizational plan of a unified local government must be described in a unification plan voted upon by the registered voters of the county. Each unified local government must have a chief executive officer who possesses the powers of a county judge/executive and of a mayor under the mayor-council form of government. The legislative authority of a unified local government is vested in a legislative council that is established in the unification plan. Cities that do not participate in the unification process maintain their incorporated status. Currently, there are no cities or counties in Kentucky operating under this plan. 2019 KLC COLH.
4. **Charter county government.** KRS 67.825 to 67.875 creates another form of merged city and county government. The organization of the merged government must be developed in a comprehensive plan during the merger process. Statute only requires that the merged government's organization and structure meet the requirements of the Kentucky Constitution.

5. **Changing a city's form of government.** Pursuant to KRS 83A.160, a city may change its form of government through a voting procedure outlined in KRS 83A.120. A city may change its form of government once every five years.

## **Section B. The Mayor-Council Form of Government**

1. **Overview.** Most Kentucky cities are organized under the mayor-council form of government.
2. **Executive and legislative authority.** Pursuant to KRS 83A.130 and 83A.030, the mayor-council form of government has a mayor, the elected executive authority, and a city council, the elected legislative authority.
3. **Number of city council members.** KRS 83A.030 governs the composition and size of city legislative bodies. Cities operating under the mayor-council form of government must have at least six but not more than 12 members as prescribed by city ordinance.
4. **Executive v. legislative powers.** The mayor-council form of government clearly separates the executive (mayor) and legislative (city council) authority. KRS 83A.130(3) gives the mayor all executive and administrative authority. The city council cannot perform any executive or administrative function unless expressly permitted to do so by statute. The mayor and city council are separate branches of government with equal status.

## **Section C. The Commission Form of Government**

1. **Overview.** KRS 83A.140(2) and KRS 83A.030(2) require cities using the commission form of government to have an elected mayor and four elected commissioners. The five elected officials form the city.
2. **Executive and legislative authority.** The city commission possesses the executive, administrative, and legislative authority. The powers are not separated as in the mayor-council form of government. The city commission acts as the executive and legislative body, with some exception.
3. **Administrative departments.** The city commission is required by KRS 83A.140(6) to separate all the administrative and service functions of the city into departments by ordinance. Each department must be placed under the supervision of one of the city commission members at the city commission's first meeting each year, unless the city commission has created the office of city administrator. In that case, the city administrator may be delegated the supervisory and administrative control over the departments and functions of the city government. While individual city commissioners are given authority to exercise certain executive and administrative powers on a day-to-day basis, ultimate authority rests with the city commission acting as a body. In other words, the city commission acting as a body has the power to override any decision made or action taken by an individual commissioner. 2019 KLC COLH.

## **Section D. The City Manager Form of Government**

1. **Overview.** The city manager form of government is similar in basic structure to the commission form of government. Under the city manager form, KRS 83A.150(2) and KRS 83A.030(2) require a city to have an elected mayor and four elected commissioners. Together they form the board of commissioners.
2. **Executive and legislative authority.** KRS 83A.150 places all executive and legislative authority in the board of commissioners. The board has the overall responsibility and control of the executive authority. However, the city manager has the responsibility for supervising the daily city functions.
3. **City manager v. city commission.** Both forms of government merge the executive and legislative authority. However, under the city commission form of government, the individual commissioners oversee the city's daily functions, unless an administrator is appointed. The city administrator's authority is established by ordinance. Under the city manager form of government, the city manager oversees the city's daily functions. The city manager's authority is established by statute and ordinance.

## CHAPTER 3 – HOME RULE

### Section A. Overview

Kentucky cities have no inherent right to self-government in the Kentucky Constitution. Prior to 1980, the Kentucky General Assembly granted cities specific powers to perform a narrow range of functions by state statute. Most of the municipal statutes were enacted over 100 years ago and often were obsolete or in conflict. Cities had difficulty knowing what duties and powers the General Assembly had given.

### Section B. KRS 82.082 - The Home Rule Statute

In 1980, the Kentucky General Assembly repealed most of these municipal statutes and enacted the broad "Home Rule" statute. This broad statute states, as follows:

1. A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.
2. A power or function is in conflict with a statute if it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes including, but not limited to, the provisions of Chapters 95 and 96.

### Section C. Home Rule in First Class Cities

In 1972, KRS 83.420 granted home rule powers to first class cities. KRS 82.082 applies to all cities in Kentucky. This means that Louisville, the only first class city in Kentucky, has dual home rule powers.

1. Although KRS 83.420 grants basic home rule powers, it is the board of aldermen which implements the powers, so KRS 83.520 restates the grant in equally broad language in setting out the powers of the board. The board:

"shall have the power to exercise all of the rights, privileges, powers, franchises, including the power to levy all taxes, not in conflict with the Constitution, and so as to provide for the health, education, safety and welfare of the inhabitants of the city to the same extent and with the same force and effect as if the General Assembly had granted and delegated all of the authority and powers that are within its powers to grant to a municipal corporation as if expressly enumerated herein."

2. This home rule provision gives a first class city freedom from the strict forms and powers created by statute. If the board votes that a specific statutory procedure is inappropriate for the city, it may vote to modify or ignore the statute.

## CHAPTER 4 – ELECTED CITY OFFICIALS

### Section A. Mayor

1. **Overview.** Statutory requirements: KRS 83A.040(1) states that a candidate for mayor must:
  - a. Be at least 21 years old;
  - b. Be a qualified voter in the city;
  - c. Have been a resident of the city for not less than one year prior to the election; and
  - d. Be a resident of the city throughout the term of office.
2. **Election and term.** KRS 83A.040(1) states that a mayor must be elected at a regular election. The mayor takes office on the January 1 following the election and serves for a four-year term and until the successor is qualified. The only exceptions to this are found in the Metro Louisville Government (consolidated local government) and in the Lexington-Fayette Urban County Government, where the mayor assumes office on the first Monday in January as opposed to January 1. KRS 67C.105(2)(b) and Section 4.04 of the Lexington-Fayette Urban County Government charter.

KRS 117.265 requires write-in candidates to file a declaration of intent to run as a write-in candidate on or before the fourth Friday in October preceding the date of the regular election and not later than the second Friday before the date of a special election. Write-in votes are not permitted in a primary election.
3. **Oath of office.** KRS 62.010 requires that all officers, including mayors and city clerks, must take an oath of office before they begin their official duties. The mayor's oath may be administered by any state or federal judge within Kentucky, any member of the Kentucky General Assembly, or by any county judge/executive, notary public, clerk of a court, or justice of the peace within the county.
4. **Filling a vacant mayor's seat.** The city legislative body may select one of its members or anyone else who meets the statutory requirements. Other requirements must be met when filling a vacant mayor's seat:
  - a. **Commission or city manager plan.** A member of the city legislative body may vote for himself when voting to fill the vacant mayor's seat.
  - b. **Mayor-Council plan.** A member of the city legislative body may not vote for himself to fill a vacant mayor's seat.
  - c. During a vacancy in the mayor's office, the legislative body must elect one of its own members to preside over meetings.

- d. When voting to fill the vacancy created by a resignation of a mayor, the resigning mayor cannot vote on his or her successor.
  - e. Per KRS 83A.040 and 118.305, the legislative body or the governor, whichever is designated to make the appointment, shall notify the county clerk and secretary of state in writing when a vacancy in city office occurs that must be filled by appointment.
  - f. Depending on the time frame, a subsequent election may be required to fill the remainder of the term.
  - g. **Time frame for filling vacancies.** Vacancies of the mayor's office is filled by following specific statutory procedures. Pursuant to KRS 83A.040(2), city legislative bodies must fill a vacancy in the mayor's office within 30 days. If they do not appoint a new mayor within 30 days, the governor must fill the vacancy. Following is a general outline of these procedures. For additional details, please refer to the Kentucky League of Cities *City Officials Legal Handbook*. This publication provides an entire chapter detailing the statutes relating to vacancies in public office.
    - 1) **No action within 30 days.** If the city legislators do not fill the vacancy within 30 days, the governor is required to fill the vacancy. This timeline is not extended if more than one vacancy occurs on the same day. KRS 83A.040(6).
    - 2) **Voluntary resignations.** All voluntary resignations must be accompanied by a written resignation which states the exact resignation date and is tendered to the city legislative body. The resignation becomes effective at the next regular or special meeting of the city legislative body occurring after the date specified in the written letter of resignation. KRS 83A.040(7).
    - 3) **Notice.** The city legislative body must immediately notify the county clerk and the secretary of state in writing of all vacancies that are required to be filled by appointment. This duty may fall upon the shoulders of the city clerk as a matter of practice. KRS 83A.040(8).
    - 4) A mayor in the mayor-council form of government may not fill a vacancy on a city legislative body; only the remaining legislative body members can fill the appointment. OAG 82-351.
    - 5) If a candidate fails to qualify for office or does not assume office in January or within a reasonable time, the office is considered vacated, and must be filled within 30 days from the time the vacancy would have occurred. OAG 84-245.
5. **Removal from office.** Pursuant to KRS 83A.040, a legislative body may remove a mayor by unanimous vote and after a public hearing, if so requested, for "misconduct,

incapacity, or willful neglect in the performance of the duties of his office.” A mayor may appeal the removal vote to the circuit court. Pursuant to KRS 83A.130, 83A.140 and 83A.150, a legislative body may remove a mayor experiencing a disability lasting for 60 consecutive days and that impedes the ability to perform the duties of the office. KRS 67C.143, a legislative council in a consolidated local government can remove any elected officer from office for misconduct, incapacity, or willful neglect in the performance of the duties of the office. KRS 83.660 sets forth removal procedures in a first class city.

6. **Duties.** The mayor's duties vary under the three main forms of city government. Following is an outline of a mayor's authorities and duties under each form of government.

a. **Mayor-council form of government.** Under the mayor-council form of government, a mayor is not a member of the legislative body. KRS 83A.010; KRS 83A.130. Pursuant to Chapter 83A the mayor has the following duties and limitations:

- 1) The mayor may not officially introduce legislation. KRS 83A.130.
- 2) The mayor may not vote on any city council matter, except when voting to break a tie. KRS 83A.130(5).
- 3) The mayor is not counted when determining a quorum of council. KRS 83A.060(6).
- 4) The mayor may veto an ordinance by returning the ordinance to the council unsigned together with a statement of his or her objections within 10 days after the council approves the ordinance. If the mayor fails to act by signing or vetoing the ordinance within 10 days, the ordinance becomes effective by operation of the law. KRS 83A.130(6).
- 5) The mayor presides over city council meetings. KRS 83A.130(5).
- 6) The mayor serves as chief executive and administrative officer of the city. KRS 83A.130(2) and (3).
- 7) The mayor enforces the mayor-council plan, city ordinances, and all applicable statutes. KRS 83A.130(3).
- 8) The mayor supervises the daily activities and operations of the city government and oversees city officers and employees under his jurisdiction. KRS83A.130(3).
- 9) The mayor may require each city department to makes reports, as required by ordinance or at his discretion. KRS83A.130(3).

- 10) The mayor serves as a liaison with other local governments for interlocal contracting and joint services. KRS 83A.130(3).
- 11) The mayor makes periodic reports to the council and the public on the state of the city, as required by ordinance, or deemed necessary, but at least annually. KRS 83A.130(3).
- 12) The mayor promulgates procedures, subject to council's disapproval, to ensure orderly city operations and compliance with statutes and ordinances. Upon promulgation, revision, or rescission of the procedures, copies are filed with the city clerk. KRS 83A.130(4).
- 13) The mayor makes and executes all written city obligations, including bonds, notes, and contracts. KRS 83A.130(8).
- 14) The mayor appoints all city employees, including police officers, except for city council staff. KRS 83A.130(9).
- 15) The mayor appoints all nonelected city officials, subject to the approval of city council. KRS 83A.080.
- 16) The mayor may discipline and dismiss all city employees and nonelected officers at will; subject to tenure or protection by statute, ordinance or contract; and except for employees of the city council. KRS 83A.130(9) and KRS 83A.080.
- 17) The mayor prepares, presents, and administers the city budget. KRS 83A.130 and KRS 91A.030(5).
- 18) The mayor may call special city council meetings. KRS 61.823(2).
- 19) The mayor may delegate authority when necessary or desirable to ensure orderly continuation of city government. KRS 83A.130(10).
  - a) If the mayor delegates executive and administrative duties, he or she must delegate those duties to nonelected officers and/or city employees and must do so by written executive order. KRS 83A.130(7). The mayor cannot delegate an executive or administrative power to a city council member, unless permitted to do so by statute.
  - b) The mayor may only delegate the responsibility of approving ordinances or promulgating administrative procedures to an elected officer, e.g. a city council member.
  - c) The mayor may not delegate the responsibility of presiding over council meetings. KRS 83A.130(10). If a mayor is absent, this responsibility may be handled by the council in

advance by ordinance or may be done by motion and vote at the meeting. A council member who presides in the place of a mayor maintains his or her status as a council member and may still vote on council matters.

- d) The mayor may rescind, within 30 days of the date the action was taken, any executive or administrative action taken during the mayor's absence, with the council's approval.

b. **Commission/city manager forms of government.** The mayor in the commission and city manager forms of government is a full member of the legislative body, and only has a few distinct responsibilities as mayor. KRS 83A.140 and KRS 83A.150.

- 1) The mayor presides at legislative body meetings.
- 2) The mayor may call special meetings of the legislative body.
- 3) The mayor makes and signs all written obligations of the city, including bonds, notes, and contracts.
- 4) The mayor serves as the ceremonial head of the city government.
- 5) The mayor is recognized as the head of the city government by the governor for purposes of military law.
- 6) Many state statutes assign the mayor, in all types of government, the authority and responsibility to appoint individuals to a number of boards and commissions, such as the tourism commission. Specific state statutes should be consulted to determine the appropriate procedure.
- 7) The mayor in the commission or manager forms of government may not designate a person to fulfill the mayor's separate administrative and executive functions. The city commission appoints one commissioner as mayor pro tem to serve in the absence of the mayor, or when the mayor is unable to function.

## **Section B. Legislative Body Members**

- 1. **Qualifications.** Pursuant to KRS 83A.040, a member of a city legislative body must meet the following qualifications:
  - a. Be at least 18 years old;
  - b. Be a qualified voter in the city;

- c. Have been a resident of the city for not less than one year prior to the election; and
  - d. Be a resident of the city throughout the term of office.
2. **Election and office tenure.** City legislators must be elected at a regular election. KRS 83A.040 states that the term of office is for two years and begins January 1 following the election. In a consolidated local government, a member's term of office begins on the first Monday in January and is for four years. KRS 67C.103(4). Section 4.04 of the Lexington-Fayette Urban County Government charter provides that council members elected from a single member district serve for a term of two years beginning on the first Monday in January following their election. At-large council members serve a term of four years beginning on the first Monday in January following the election and may serve no more than three consecutive terms as an at-large council member.

KRS 117.265 requires write-in candidates to file a declaration of intent to run as a write-in candidate. Write-in votes are not permitted in a primary election.

3. **Required oath.** KRS 62.010 requires city legislators to take an oath on or before January 1 when their term begins. If the city legislator is appointed to fill a vacancy, the oath must be taken within 30 days after the notice of the appointment, not 30 days from the date the appointment begins. KRS 83A.180 permits the mayor to administer the oath in addition to the other individuals outlined in KRS 62.020.
4. **Vacancies.** Vacancies in a city legislative body are filled by following specific statutory procedures. Following is a general outline of these procedures. For additional details, please refer to the Kentucky League of Cities *City Officials Legal Handbook*. This publication provides an entire chapter detailing the statutes relating to vacancies in public office.
- a. **Time frame.** KRS 83A.040(5) requires that the remaining members of a city legislative body must fill one (1) or more vacancies on the city legislative body within thirty (30) days. If more than one vacancy occurs at a time, the remaining members must appoint only one individual at a time. They must give the new appointee time and notice to meet and act with the remaining members in filling the remaining vacancies.
    - 1) **No action within 30 days.** If the city legislators do not fill the vacancy within 30 days, the Governor is required to fill the vacancy. This timeline is not extended if more than one vacancy occurs on the same day. KRS 83A.040(6).
    - 2) **Notice.** The city legislative body must immediately notify the county clerk and the secretary of state in writing of all vacancies that are required to be filled by appointment. This duty may fall upon the shoulders of the city clerk as a matter of practice. KRS 83A.040(8).

- 3) A mayor in the mayor-council form of government may not fill a vacancy on a city legislative body, only the remaining legislative body members can fill the appointment. OAG 82-351.
    - 4) If a candidate fails to qualify for office, or does not assume office in January or within a reasonable time, the office is considered vacated, and must be filled within 30 days from the time the vacancy would have occurred. OAG 84-245.
  - b. **Voluntary resignations.** All voluntary resignations must be accompanied by a written resignation which states the exact resignation date and is tendered to the city legislative body. The resignation becomes effective at the next regular or special meeting of the city legislative body occurring after the date specified in the written letter of resignation. KRS 83A.040(7).
5. **Removal from office.** A member of a city legislative body may only be removed from office by a unanimous vote of the remaining members and after the opportunity to have a public hearing. A member may only be removed for "misconduct, incapacity, or willful neglect in the performance of the duties of his office." A member who is removed from office may appeal to the circuit court. KRS 83A.040(9). KRS 67C.143, a legislative council in a consolidated local government can remove any elected officer from office for misconduct, incapacity, or willful neglect in the performance of the duties of the office.
6. **Authority of city legislators.**
- a. **Mayor-Council form of government.** City council may only act as a whole body. Individual city council members may not make decisions or act on behalf of the body. Pursuant to KRS 83A.060, the council must have a quorum, or majority of all members present, to act. Once a council has a quorum, a majority of the members present may take action.  
  
KRS 83A.130 states that the city council may only perform legislative functions. A city council is strictly prohibited from performing any administrative or executive functions, except those assigned to it by statute. Neither the council as a whole nor any individual member has authority over the day-to-day functions of a city government. This includes overseeing the role and duties of a city clerk, unless outlined by ordinance.
  - b. **Commission and city manager forms of government.** The city commission and board of commissioners also act as a body when performing its legislative and executive duties.  
  
Under the commission form of government, individual commissioners may exercise executive and administrative authority over the day-to-day operations of various city departments, unless a city administrator is appointed. However, their individual authority is always subject to the ultimate authority of the city commission as a whole body.

- c. **Other authority.** The city legislative body, not the mayor, sets the paid holidays for city employees. OAG 90-44.

7. **Duties of city legislators.**

- a. **Mayor-Council form of government.** KRS 83A.130 places all legislative authority in the hands of the city council. The specific powers of the city council are as follows:
  - 1) Establish by ordinance all appointed offices and the duties and responsibilities of those offices. KRS 83A.130(12).
  - 2) Enact all codes, rules and regulations for the general public's health, safety and welfare. KRS 83A.130(12).
  - 3) Provide sufficient revenues to operate city government through the adoption of annual budget ordinance and by levying all taxes and establishing all fees and charges for city services. KRS 83A.130(12).
  - 4) Establish by ordinance the compensation to be paid to all elected and appointed officers and employees of the city. KRS 83A.070.
  - 5) May investigate all activities of city government and may require any city officer or employee to prepare and submit sworn statements regarding the performance of his or her official duties. KRS 83A.130(13).
  - 6) May appoint a new mayor or council member, if a vacancy occurs during the term of office. KRS 83A.040.
  - 7) May remove elected officers for misconduct, inability or willful neglect of office. KRS 83A.040(9).
  - 8) May change the manner of electing city officers by adopting the nonpartisan primary election process. KRS 83A.050(2).
  - 9) May divide the city into wards for the purpose of electing council members. KRS 83A.100.
  - 10) Approve the appointment of nonelected city officers. KRS 83A.080.
  - 11) May disapprove regulations promulgated by the mayor. KRS 83A.130(4).
  - 12) May override mayoral votes with the affirmative vote of one more than a majority of the membership. KRS 83A.130(6).
- b. **Commission and city manager forms of government.** The city commission and board of commissioners have all the powers of a city council, as outlined above, with some exceptions:

- 1) A city commission has no veto power and no power to disapprove regulations promulgated by the mayor, because the mayor is a voting member of the commission/board of commissioners and has no independent executive authority to promulgate regulations.
- 2) The commission and board of commissioners possess the executive powers that a mayor has in a mayor-council form of government, except those powers that KRS 83A.150 places under the authority of the city manager.

## CHAPTER 5 – CITY ORDINANCES v. RESOLUTIONS & ORDERS

### Section A. Overview

Cities create governing priorities through ordinances, resolutions, and orders. However, Kentucky statutes strictly define the difference among these three types of governing rules. If a municipal order is utilized to take an action when state law requires an ordinance be adopted, or if the requirements for the enactment of an ordinance are not fully satisfied, then the action taken will be void and unenforceable. *Merritt v. City of Campbellsville*, 678 S.W.2d 788, 789 (Ky. App. 1984). The following is an overview of the differences among ordinances, resolutions, and orders. For specific questions, contact the Kentucky League of Cities, the Department for Local Government, or your local city attorney.

1. **Statutory definition.** Pursuant to KRS 83A.010(11), an "ordinance" is "an official action of a city legislative body, which is a regulation of a general and permanent nature and enforceable as a local law or is an appropriation of money." In short, an ordinance has the force of law within the boundaries of a city.
  - a. **Violations.** Violations of a city ordinance may be punishable by civil or criminal penalty, as outlined in the ordinance. Both are enforceable in a court of law. KRS 83A.065.
  - b. **Requirements.** Statutes require that ordinances be enacted with a detailed and deliberate process to give citizens notice that the ordinance is being considered and is being passed by the city legislative body.
2. **City ordinances v. state law.** Pursuant to the home rule statute, KRS 82.082, city ordinances are inferior to state law.
3. **Conflicts with state law.** KRS 82.082 states that a city may not act or perform any function in conflict with state law. "A power or function is in conflict with a statute if it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general statute embodied in the Kentucky Revised Statutes... ."
  - a. **Preemption.** When a city ordinance conflicts with a state statute, it is preempted, and may be void and unenforceable.
  - b. A city may pass an ordinance that is in addition to, yet not inconsistent with, state provisions. *City of Louisville v. Michael A. Woods, Inc.*, Ky.App., 883 S.W.2d 881 (1993)(discretionary review denied). This case found a city ordinance forbidding nude or nearly nude activities on premises licensed by the ABC Board in the city was not in conflict with a

comprehensive scheme of state legislation and therefore was not void and unenforceable under the home rule statute. KRS 82.082.

- c. **Adult Entertainment Ordinances.** *Restaurant Ventures, LLC v. Lexington-Fayette Urban Co. Gov.*, 60 S.W.3d 573 (Ky.App. 2001). Ordinance regulating personnel qualifications, license requirements, and hours of operation upheld; statute governing hours of permissible alcohol sales did not preempt ordinance.

## **Section B. Procedures for Adoption of a City Ordinance**

KRS 83A.060 sets forth requirements for the passage of an ordinance. City legislative bodies must strictly adhere to these requirements.

1. **Writing an ordinance.** All ordinances must be presented for adoption in a written form. The ordinance must meet the following requirements:
  - a. Relate to only one subject. KRS 83A.060(1).
  - b. Clearly state the ordinance's subject matter in the title. KRS 83A.060(1).
  - c. Have an enactment clause which specifically states: "Be it ordained by the City of \_\_\_\_\_." KRS 83A.060(2).
2. **Introduction and first reading.** In accordance with KRS 83A.060 and OAG 81-207, a city legislative member must introduce an ordinance. KRS 83A.010(8) defines "legislative body member" to mean a "city council member" in mayor-council cities, or a city commissioner in manager and commission plan cities. This means that in a mayor-council form of government, any mayor who wants to introduce an ordinance must find a council member to sponsor the ordinance. In the commission and city manager forms of government, the mayor may introduce an ordinance because the mayor is a full-voting member of the legislative body.
  - a. **Official introduction.** An ordinance is introduced when it is given its first reading. KRS 83A.040(4). City clerks are often responsible for the agenda and therefore should be familiar with this requirement.
  - b. **Official reading of an ordinance.** An ordinance is introduced when it is given its first reading at a public meeting of the legislative body. There is no statutory requirement that the ordinance be read in full. The requirement for a reading may be satisfied by stating the title of an ordinance and reading a summary of it. KRS 83A.060(4).
    - 1) KRS 83A.010(12) defines "summary" as a brief narrative prepared under the supervision of an attorney succinctly covering the main points of an official statement, ordinance, or rule in a way reasonably calculated to inform the public in a clear and understandable manner as to its meaning.

- 2) Although some cities take a vote after the first reading to determine support for the ordinance, it is not required. However, any vote should be recorded in the minutes and specifically state that it was after the first reading. OAG 83-404.
3. **Second reading.** Unless an emergency exists, all ordinances must be given their second reading on a separate day. The statute does not require a specific number of days between readings. A first reading can be done one day, and a second reading can be done at a special meeting the following day, if the legislative body chooses to call a special meeting for this purpose. KRS 83A.060(4).
4. **Emergency.** If two-thirds of the membership of the legislative body declare an emergency exists, a second reading may be waived. The type of emergency must be stated in the "whereas" clause of the ordinance or may be contained in the body of the ordinance. KRS 83A.060(7). The body of the ordinance must state that an emergency exists and that the ordinance will take effect upon passage. An emergency has been defined in several cases as an "occasion of urgency and suddenness, where something helpful needs to be done at once; an emergency is more pressing, and naturally less common than an exigency; a crisis is an emergency, on the outcome of which everything depends." *Hill v. Pineville*, 235 S.W.2d 776 (Ky. 1950). Therefore, the requirements for dispensing with normal ordinance enactment procedures is similar to what is required to conduct an "emergency meeting" under the Kentucky Open Meetings Act. There must be such probability of crisis that would justify a departure from the normal procedural rules for ordinance enactment. A mere inconvenience to the city is not an emergency.
5. **Quorum and votes needed.** For an ordinance to be legally enacted, it must receive the majority vote of the members voting on the ordinance, provided that a quorum is present. KRS 83A.060(6) states that "[u]nless otherwise provided by statute, a majority of a legislative body shall constitute a quorum." For example, on a six-member city council, four members must be present for a quorum to exist; on a five-member city commission, three members must be present for a quorum to exist. *Payne v. Petrie*, 419 S.W.2d 761, 763.
6. **Abstentions.** OAG 87-38 states that all abstentions must be counted with the majority. In rare situations, this can mean that an ordinance can pass without a majority of the present quorum voting in favor of the ordinance. OAG 84-299.

### **Section C. Approval by Mayor**

1. **Mayor-Council form of government.** After the council enacts an ordinance, the mayor must approve and sign the ordinance. The mayor has three options pursuant to KRS 83A.130(6):

- a. Approve and sign the ordinance within 10 days and return it to the council.
- b. Veto the ordinance by returning the ordinance to the council unsigned with a written statement of the reasons for the veto within 10 days.
- c. The mayor may do nothing. If the mayor does not act within 10 days, the ordinance is automatically approved.

**NOTE:** In cities with commissioner or city manager forms of government, the mayor signs ordinances, but it is purely ministerial because the mayor has no authority to veto ordinances.

2. **Veto override.** Legislative bodies may override a veto by a vote of one more than the majority. The veto override must take place no later than the second regular meeting after the return of the veto. KRS 83A.130(6). In a six-member council city, a majority of the legislative body is four, and one more than a majority of the legislative body would be five. Five of the six members of the council would have to vote to override the veto.

#### **Section D. Publication**

KRS 83A.060(9) requires that, except in first class cities, ordinances are not effective until they are published according to KRS Chapter 424. The city legislative body must designate whether the ordinance should be published in whole or in summary. If the city legislative body decides to publish a summary, the summary must meet the following requirements:

1. **Preparation and certification.** All ordinance summary publications must be prepared or certified by an attorney licensed to practice law in Kentucky. KRS 83A.060(9).
2. **Title.** The summary must state the title of the ordinance. KRS 83A.060(9)(a).
3. **Brief narrative.** The summary must contain a brief narrative stating the main points of the ordinance giving the public a clear and understandable meaning of the ordinance. KRS 83A.060(9)(b).
4. **Taxes and fees.** The full text of each section of the ordinance that imposes taxes or fees must be included. KRS 83A.060(9)(c).
5. **Metes and bounds.** Metes and boundary descriptions may be substituted with sketches, drawings, or maps including common landmarks. KRS 83A.060(9).
6. **Time.** Ordinances must be published within 30 days of enactment. KRS 424.130(1)(a). Failure to publish an ordinance, however, is not always fatal to enactment.

- a. KRS 424.130(1)(a) reads, “[h]owever, a failure to comply [with the 30-day publication requirement] shall not invalidate any ordinance or resolution or subject a person to any of the penalties provided by KRS 424.990 unless such failure continues for a period of fifteen (15) days after notice to comply has been given by registered letter.” If the city misses the 30-day window, the ordinance may still be saved if publication occurs before a certified letter of notice is received by the city and 15 days after receipt of the certified letter of notice.
  - b. In mayor-council cities, enactment occurs on the date the mayor approves the ordinance or the date the city council overrides a mayoral veto. In cities with city manager and commission forms of government, enactment occurs upon the legislative body’s approval of the ordinance after its second reading.
- 7. **City clerk's duty.** Under KRS 424.150()(b), the city clerk is the official responsible for publishing the duly enacted ordinances of a city. Ordinances must be published in a newspaper that meets the requirements set forth in KRS 424.120.
  - 8. **Alternative publication.** Alternative publication is outlined in Chapter 9.
  - 9. **Emergencies.** If an emergency has been declared, the emergency ordinance becomes effective immediately upon passage and must be published within 10 days of enactment. KRS 83A.060(7).

**Section E. City Clerk's Statutory Duties to Index, Record, and Revise**

- 1. **Indexing and recording.** Pursuant to KRS 83A.060(8), all adopted ordinances must be indexed and recorded at the end of each month. This duty is usually part of the city clerk's responsibilities as custodian of record. The ordinances must be indexed and recorded as follows:
  - a. **Budget, tax, and appropriation ordinances.** Budget, appropriation, and tax ordinances must be indexed and maintained by fiscal year. KRS 83A.060(8)(a).
  - b. **Other ordinances.** The city clerk must maintain all other ordinances in a minute book, by order of adoption date, and either indexed in a composite index or codified in a code of ordinances. KRS 83A.060(8)(b).
  - c. **Minute book.** City clerks do not need to copy the ordinance in full in the minute book in order to be compliant. A summary of the ordinance is acceptable. *Pure Milk Producers and Distributors Assn. V. Morton*, 125 S.W.2d 216 (Ky. 1939).
- 2. **Revisions.** Pursuant to KRS 83A.060(11), all composite indexes and codes of ordinances must be revised at least once every five years. All redundant, obsolete, inconsistent and invalid provisions must be removed. Although the statute requires this procedure to be once every five years, city clerks are encouraged to do this more often.

## **Section F. How Municipal Orders Differ from Ordinances**

1. **Definition.** Pursuant to KRS 83A.010(9), a "municipal order" is "an official act of the legislative body of a municipality which is binding upon the officers and employees of the municipality and any governmental agency over which the municipality has jurisdiction." A municipal order tends to be used more often in a commission or city manager form of government where the majority of the power rests with the legislative body.
2. **When to use a municipal order.** Pursuant to KRS 83A.060(13), a municipal order may be used instead of an ordinance in the following situations:
  - a. Matters relating to the internal operation and function of the city, such as:
    - 1) To establish parliamentary procedures for meetings.
    - 2) To establish a holiday for city personnel.
    - 3) To disapprove of regulations promulgated by the mayor (mayor-council) or establish regulations (commissioner and city manager) governing the conduct of city employees and officers.
    - 4) To establish rules, regulations, or reporting requirements for agencies reporting to the city legislative body.
  - b. To appoint or remove members of boards, commissions, and other agencies under the legislative body's control, or to require the entity to establish rules or submit reports to the legislative body.
3. **Formalities.** Municipal orders are less formal and detailed than ordinances. An order can never be used when an ordinance is required. However, a city can pass an ordinance when an order will suffice.
4. **Requirements for passage.** Municipal orders must adhere to the following:
  - a. Be in written form.
  - b. Be adopted at an official meeting.
  - c. No publication requirement.
  - d. Become effective upon passage or upon date stated in order. OAG 83-64.
  - e. Be recorded in official order book. KRS 83A.060.
  - f. May be amended or repealed by subsequent order or ordinance.

5. **Penalties.** Municipal orders do not have civil or criminal penalties because they are only binding upon city officers and employees. Therefore, the penalties for violating an order are often dismissal, suspension, demotion, reprimand, or removal from office.

## **Section G. Executive Orders**

Pursuant to KRS 83A.010(7), an "executive order" is the same as a municipal order, except it is passed by the executive authority of the city, not the legislative authority.

1. **Violations.** The executive authority that promulgated the executive order may take appropriate disciplinary action against violators.
2. **Appropriate uses.** Executive orders may be used in several ways:
  - a. Delegate authority. KRS 83A.130(7) requires that the mayor in the mayor-council form of government use executive orders to delegate authority.
  - b. Promulgate regulations for city operations and city employee/officer conduct.
  - c. Appoint or remove members to and from boards, agencies, and commissions.
  - d. Establish administrative decisions, such as daily work schedule, assign work space and establish city office hours.
3. **Requirements.** To be effective, executive orders must meet several requirements:
  - a. Be in written form and in sequential order, but in no specific format.
  - b. Be kept in a permanent file.
  - c. No publication requirement.
  - d. Become effective upon adoption or date set in order. OAG 83-64.
  - e. May be amended or repealed by subsequent executive order.

## **Section H. Resolutions**

1. **Definition.** A resolution is a less formal mechanism that expresses the legislative body's opinion, will or policy on a matter of ministerial business. It differs from an order or an ordinance, in that the latter two involve a specific legislative act. Resolutions have the equivalent legal impact as a motion that is made and passed.
2. **Requirements.** Resolutions require no particular format or adoption requirements. They are usually passed by a voice vote and have no binding effect. Resolutions are often used to honor individuals, state a formal position on a matter, or approve a bid or contract.

## CHAPTER 6 – MEETINGS

### Section A. Overview

KRS Chapter 83A and the Kentucky Open Meetings Act list the requirements for a city legislative body meeting. Meetings are the mechanism city legislatures use to conduct official city business. City legislatures may only act as a body; individual city legislators may not act on their own. Following is a brief overview of meetings, and what occurs before, during, and after. For more specific details, you may refer to additional legal resources.

### Section B. Agenda

The city clerk's duties as writer and recordkeeper are clearly evident when it comes to the preparation of the agenda, either by himself or herself or in conjunction with the responsible elected or appointed official, and its distribution, along with the preparation, transcribing and distribution of minutes. There is no statute mandating the requirement of an agenda at regular monthly meetings; however, there is a statute that requires agendas for special meetings.

1. **Definition.** An agenda is a non-binding written outline of a meeting. It lists the topics or business items up for introduction, discussion, or action during a meeting. The order and detail of the topics is not binding, unless an "order of business" regulation has been adopted in that city or is formally adopted as the official "order of business" for that meeting.
2. **Purpose.** An agenda is generally for informational purposes only. Only legislative body members, the presiding officer, and the staff may place an item on the agenda.
3. **Agenda format and city clerk's responsibilities.** A city clerk's responsibilities regarding the agenda vary. The city clerk usually prepares the agenda after consulting the mayor, council members/commissioners, city administrator/manager, or city attorney. Sometimes, the responsibilities may include typing what the mayor, city manager/administrator or other designated official has developed.
  - a. **Typical agenda.** The heading of the agenda should state whether the meeting is a regular or a special meeting. The heading should also state the date, time, and location of the meeting. The Kentucky League of Cities suggests including these general topics in the agenda:
    - 1) Invocation and Pledge of Allegiance.
    - 2) Roll call.
    - 3) Approval of minutes.
    - 4) Consent calendar.

- 5) Reports of officers and committees.
- 6) Unfinished business.
- 7) New business.
- 8) Announcements.
- 9) Adjournment.

b. **Order of other agenda items.** The order of agenda items varies. The Virginia Municipal Clerks Association suggests the following order:

- 1) Important business should be placed in the first non-routine slot because the first item of business usually has special prominence.
- 2) Starting with items that all city legislative body members are in agreement with is also a good idea; it helps build a mood of consensus.
- 3) Executive meetings should be scheduled last, so the public does not have to wait through them.
- 4) Public hearings should be scheduled early, so that individuals attending only that portion may leave.
- 5) Lengthy public hearings should be placed last so that all other official business can be concluded.

c. **Meeting packets.** Many city clerks prepare a packet of information for city legislative body members that includes a copy of the agenda.

- 1) The Virginia Municipal Clerks Association suggests that only legislative body members receive the full packet. Department or division heads, staff participants, and the media may only receive a copy of the agenda with background material about items on the upcoming meeting's agenda. The size of the full information packet might make it impractical to distribute those to every interested individual.
- 2) **Information packet materials.** Packets generally include:
  - a) Previous meetings' minutes.
  - b) Reports and recommendations.
  - c) Correspondence and relevant background materials relating to upcoming items to be discussed.

- d. **Special meetings.** KRS 61.823 requires that all "special meetings" include an agenda with the notice.

### **Section C. Preparing the Meeting Room**

The Florida City Clerks Manual suggests that the meeting room be prepared on a regular schedule and done prior to the meeting. City clerks may want to create a regular checklist that includes:

1. Cleaning up by custodian or designated person.
2. Provision of fresh water with ice.
3. Ensuring proper order of nameplates.
4. Sharpened pencils and paper at each council member's/commissioner's desk.
5. Checking microphones for working order.
6. Recorder and proper number of tapes for length of meeting.
7. Distributing any materials which were not available at the time the agenda was distributed.
8. Providing visual aids when needed.
9. Setting up speakers' podium.
10. Supplying agendas for the public attending the meeting.
11. Getting all materials together and in order.

### **Section D. The Role of the City Clerk**

The city clerk is essential to the meeting of a city's legislative body.

1. The Kentucky League of Cities *City Officials Legal Handbook* suggests the city clerk perform the following functions during a meeting:
  - a. Call the roll.
  - b. Act as the timekeeper whenever there is a limit placed on the time for debate or testimony.
  - c. Take the minutes of the meeting.
  - d. Track the progress of the meeting and the status of the agenda at all times.

- e. Read by title and summary (or in full when necessary) all ordinances, resolutions, orders and other written items of business introduced for consideration.
- f. Be able to advise the presiding officer when requested to do so at any point during the meeting.
- g. Act as parliamentarian (but only when specifically assigned this duty) and advise the presiding officer and the members on matters of procedure, including when motions are improper or out of order.
  - 1) The parliamentarian gives explanations or advice but does not make rulings; only the presiding officer has the right to make rulings on matters of procedure.
  - 2) Many cities use *Robert's Rules of Order* as established by municipal order. City clerks should be familiar with these procedures and keep a copy of the book with them at the meetings for easy reference.
- h. Record the vote on all matters coming to a vote and inform the presiding officer of the vote count.
- i. Perform any other function required by the rules of the legislative body or requested by the presiding officer.

2. **Minutes.**

- a. **Requirements.** All minutes must be kept in a minute or ordinance book. Minutes must be signed by the city's custodian of record (the city clerk) and by the presiding officer. KRS 83A.060.
- b. The Open Meetings Act does not require the minutes of a meeting to summarize the discussion or to record what any members said. Minutes need only set forth an accurate record of votes and actions at the meeting. Anything more is a matter of parliamentary procedure and at the discretion of the public body. 03-OMD-006.
- c. The Kentucky League of Cities suggests that the following items are usually included in formal minutes:
  - 1) Date, hour, and place of the meeting.
  - 2) Type of meeting (regular or special).
  - 3) Indication that proper notice has been given if it's a special meeting.
  - 4) Names of members of the governing body present and absent.

- 5) Names of employees and guests present. 03-OMD-116. The inclusion of the attendance sheet in the minutes is not prohibited.
- 6) Presence of a quorum and actions taken at the meeting.
- 7) Vote count for any official action indicating the names of members voting for, against, and abstaining from the action.
- 8) Adjournment time and length of meeting.

d. **Details.** No specific requirements exist pertaining to what information must be recorded. Some cities keep "verbatim" minutes, which record everything said. Some cities keep "action" minutes, which record only what actions are taken by the governing body.

- 1) The Kentucky Municipal Clerks Association suggests that minutes contain the following standard items:
  - a) Motions. Record all motions made by members of the governing body, even if not seconded; list the seconder and result of the vote for all motions.
  - b) Recorded votes. Give a recorded vote (aye, nay, or abstained for each member present) on the following:
    - i. All motions involving ordinances and resolutions.
    - ii. Any question submitted to the governing body, if required by any member present.
  - c) Directives to staff. Record all directives or questions to staff that require response, as well as the information offered in response.
  - d) Attachments. Attach to the minutes the following:
    - i. All adopted ordinances and resolutions and refer to them in the text.
    - ii. All proposed amendments to the local code.
    - iii. Other documents adopted by the governing body.
  - e) Points of Order. Record all.
  - f) Local attorney's opinions. Record all, unless very routine.

- g) Individuals addressing the meeting. Record the full name, title and address of any person who wishes to speak or address the governing body.
  - h) Matters requested to be on the record. Record any statements that a member specifically requests "that the record show."
- e. **Writing style.** Each city has a specific style of writing minutes. City clerks should look at past minutes to learn how a city drafts its minutes. Following are suggestions on drafting clear and concise minutes:
- 1) Minutes should use consistent language and format.
  - 2) Headings should clearly identify main topics.
  - 3) Paragraphs should be brief.
  - 4) Use a separate paragraph for each speaker in a discussion.
  - 5) Use discreet wording. The minutes should not include derogatory language or statements that convey a bad image of anyone. Debate should be presented as impersonally as possible.
  - 6) Use the past tense. Instead of "today" or "last week," use "that day" or "the previous week."
  - 7) Use the third person. Instead of "we" or "our city," use "the community" or "the city."
  - 8) Attribute every statement to a particular person. Write "Supervisor X stated that. . ." instead of "It was stated that. . ."
  - 9) Use standard expressions for recurrent situations. Standard expressions include phrases like "the motion died for lack of a second", or "the board concurred in the staff's recommendation and. . ." Using standard phrases consistently simplifies writing and promotes clarity.
  - 10) Be factual.

**Section E. Consulting the City Attorney**

Usually a city clerk may consult the city attorney for either one or more of the following items:

- 1. The city attorney may review ordinances in advance that the city clerk is drafting for the city council.

2. The city attorney may give advice to either the city clerk or the council as to items on the agenda as they come before the city council.
3. The city attorney may draft ordinances in advance of the city council meeting.

## **Section F. The Kentucky Open Meetings Act**

KRS 61.805 to 61.850 is the Open Meetings Act (OMA). The OMA encourages public participation in the decision-making process and encourages accountability of public officials. The OMA is designed to prevent the government from conducting business in secret. Some exceptions, discussed below, may apply.

1. **OMA and city legislative body meetings.** KRS 61.810 states that the Open Meetings Act applies to "[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the public agency, shall be public meetings open to the public at all times."
  - a. **Meetings.** The OMA, specifically KRS 61.805, defines a "meeting" as "all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting."
  - b. **Quorum.** Under KRS 83A.060(6), unless otherwise provided by statute, a majority of a legislative body is necessary to constitute a quorum, and a vote of a majority of a quorum is sufficient to take action.
  - c. **Action taken.** The Kentucky Attorney General's *Open Records/Open Meetings Law: Protecting your Right to Know* and the Kentucky League of Cities *City Officials Legal Handbook* both agree that, generally, the law refers to all meetings where a quorum or majority of the membership is present and public business is discussed or action is taken.
    - 1) The OMA does not apply unless (a) public business is discussed; and (b) action is taken.
    - 2) "Action taken" means "a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body." KRS 61.805. *Yeoman v. Commonwealth of Kentucky, Health Policy Board*, 983 S.W. 2d 459,474 (Ky. 1998), provides that public business is not simply any discussion between two (2) officials of the agency. Public business is the discussion of the various alternatives to a given issue about which a public agency has the option to take action.

- 3) "Member" is defined in KRS 61.805 as a member of the governing body of a public agency. This definition would exclude city clerks, other nonelected officials, and city employees.

2. **Types of meetings covered under the OMA.** There are several types of meetings with which the city clerk is involved. Several of these are covered under the OMA.

- a. **Regular meetings.** Discussed below.
- b. **Special meetings.** Discussed below.
- c. **Work sessions.** OAG 82-91. This opinion specifically addresses work sessions for preparing the fiscal budget.
- d. **Informal meetings.** OAG 80-81 addresses informal meetings where straw votes are counted. This counts as an open meeting.

If there is a discussion of public business, even in the form of a presentation, and a quorum is present, it is a meeting. 03-OMD-022.

- e. **Video teleconference meetings.** KRS 61.826 now allows video teleconference meetings under specific situations and requirements.
- f. **Series of meetings.** While the general rule is that the Open Meetings Act does not apply where less than a quorum of the public agency's membership is assembled, KRS 61.810(2) provides one exception. It states that "[a]ny series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the [Open Meetings] requirements. . . shall be subject to the [Open Meetings] requirements. . ." In other words, members of a public agency may not conduct a series of less-than-quorum meetings to get around the requirements of the Open Meetings Act. The statute goes on to provide that this exception is not intended to "prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues."

- 1) *Yeoman v. Commonwealth of Kentucky, Health Policy Board*, 983 S.W. 2d 459 (Ky. 1998). "[The Open Meetings Act] prohibits a quorum from discussing public business in private or meetings in number less than a quorum for the express purpose of avoiding the open meetings requirement of the Act."
- 2) A city council cannot conduct two meetings where one is open to the public with three council members attending and the second between one council member and the mayor in which the mayor discloses the decision made by the other council members. Although both meetings do not separately violate the OMA, together they combine to

constitute a quorum of the council. The series of less-than-quorum meetings violated the OMA where the discussion and vote was made outside of the public's scrutiny. OAG 03-OMD-092.

- 3) A series of less than quorum telephone calls for the purpose of discussing the employment status of a city employee violates the OMA. OAG 02-OMD-153. 2019 KLC COLH.
- 4) A city violates the OMA by convening a “virtual meeting” to have a first reading of an ordinance. OAG 17-OMD-165.
- 5) To avoid violating the OMA when receiving a group email to a quorum of the legislative body, members need only refrain from responding to the email, which will avoid engaging in a discussion of public business. OAG 14-OMD-015. 2019 KLC COLH.

## **Section G. Regular Meetings**

1. **Scheduling requirements.** KRS 83A.130(11), KRS 83A.140(7), and KRS 83A.150(4) require that city councils, city commissions, and city boards, respectively, conduct regular meetings at least once a month.
  - a. **Set by ordinance.** Every public agency must establish a schedule of regular meetings by ordinance, order, resolution, or by whatever other means may be required for the conduct of business by the particular public agency. In addition, the schedule of regular meetings must be made readily available to the public. KRS 61.820. For cities, regular meetings must be established by ordinance as required by KRS Chapter 83A. The ordinance must fix the times and places of the city's regular meetings. Once the regular meeting schedule has been established, any deviation from the times and places specified in the ordinance will make the meeting a special meeting. 2019 KLC COLH.
  - b. **Convenient location.** KRS 61.820 requires that a city legislative body hold regular meetings at specified times and places which are convenient to the public on a regular schedule basis and that a schedule of such meetings be made available to the public.
    - 1) A public agency should hold all public meetings within its jurisdictional limits unless it is unavoidably necessary to go outside of those limits. In 02-OMD-78, the Kentucky Attorney General determined that cities must always hold their public meetings within their corporate limits. However, this opinion was subsequently overruled by the Kenton Circuit Court. Now, determining whether public agencies can conduct meetings outside of their jurisdictional limits depends on the necessity of the situation.

- 2) If it is impossible to hold the meeting inside of the jurisdictional limits, the public agency may be able to schedule a public meeting elsewhere. For example, joint meetings of public agencies often present circumstances where it is impossible to hold the meeting within the jurisdictional limits of all the public agencies involved. 2019 KLC COLH.

2. **Committee and ad hoc meetings.** If a committee or ad hoc legislative group cannot meet on a regular schedule, every meeting must be noticed and conducted as a special meeting. Under the Open Meetings Act, public agencies are limited in their discussions and action in special meetings to items listed on a special meeting agenda. In addition to complying with the OMA, committees and ad hoc groups must follow the requirements for special meetings contained in KRS Chapter 83A.

## **Section H. Special Meetings**

1. **Definition.** Under the Open Meetings Act, special meetings are all meetings that are not regularly scheduled meetings. This is an important factor for city clerks, who are often the ones to satisfy the statutory notice requirements under the Open Meetings Act.
  - a. Public agencies sometimes hold work sessions prior to regular meetings. Unless a work session is a regularly scheduled meeting, work sessions must be treated as special meetings adhering to all notice and procedural requirements. 02-OMD-11.
  - b. If a regular meeting is rescheduled, it is a special meeting, and remains a special meeting even if it is eventually rescheduled on the original meeting date. 99-OMD-153.
2. **Who may call a special meeting.** The OMA and KRS Chapter 83A permit a special meeting to be called by the mayor or upon the request of a majority of the legislative body.
  - a. **Purpose of the meeting.** KRS 61.823 requires the mayor, council, or commission to designate the purpose, date, time, and place of the special meeting in accordance with Chapter 61.
  - b. **Agenda.** Pursuant to Chapter 61, only the items on the agenda may be discussed at a special meeting.
3. **Notice requirements for special meetings.** KRS 61.823 states that a written notice containing the date, time, place, and agenda of the special meeting must be delivered personally, by fax, or by mail to each member of the public agency at least 24 hours in advance of the special meeting. In addition, the same notice must be given to all media organizations that have filed a request to receive notification of special meetings at 24 hours prior to the special meeting. Public agencies may, once per year, require media organizations to submit a new written request for

notice of special meetings. The public agency is not required to notify media organizations who have not submitted new written requests for special meeting notices. In lieu of sending the notice by mail, fax, or personal delivery, a public agency may send the notice by electronic mail (email) to those members and media organizations that have submitted a written request to receive notification by email. The written request must contain the email address or addresses of the members or media organizations. 2019 KLC COLH. Notice requirements are discussed in more detail in Chapter 9 of this Handbook.

## **Section I. Closed/Executive Sessions**

Closed executive sessions are meetings that fall within an exception of the Open Meetings Act. Closed sessions must follow certain statutory procedures. City clerks may or may not attend these meetings; it depends upon the working relationship of the city clerk, mayor, and legislative body members. Attendance by a city clerk also may depend upon the nature of the matter discussed.

### **1. Exceptions to the OMA.** KRS 61.810 lists several exceptions to the OMA. Following is a list of some of the exceptions that city clerks may encounter:

- a. Deliberations on the future acquisition or sale of real property when publicity would be likely to affect the value of the property.

Strict compliance requires “both a statement of the exception and a description of the business to be discussed couched in sufficiently specific terms to enable the public to assess the propriety of the agency’s actions.” 04-OMD-127.

- b. Discussions of proposed or pending litigation.

- 1) This does not include matters which could possibly lead to litigation; only proposed or pending litigation. The threat of litigation must be more than a remote possibility. OAG 03-OMD-178.

- 2) Discussion of topics tangential to threatened litigation must take place in open session. 04-OMD-146.

- c. Collective bargaining negotiations.

- d. Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee or member of a public agency without restricting that employee's or agency member's rights to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret.

- 1) This exception applies to discussions of a specific individual, not general matters such as vacations, pay raises, etc.

- 2) The discussions regarding the individual employee may be held in closed session. However, if formal action is taken, the employee is entitled to an open hearing. OAG 81-413.
  - e. Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business.
  - f. State and local cabinet meetings and executive cabinet meetings.
  - g. Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his or her representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustments.
  - h. Meetings specifically required to be closed pursuant to federal or state law.
  - i. Meetings constitutionally mandated to be closed.
  - j. Portions of a meeting devoted to discussion of specific homeland security records.
2. **Procedures for a closed/executive session.** Before going into closed session, a public agency must follow the procedures outlined below. While there are conflicting interpretations of KRS 61.815, the Attorney General has consistently held that KRS 61.815 requires a public agency not exempted specifically by statute to observe the procedural requirements for conducting closed sessions. OAG 05-OMD-148. 2019 KLC COLH.
- a. Notice must be given in open meeting of the general nature of the business to be discussed in closed session and the specific exception for conducting the closed session.
  - b. A motion must be made to reconvene in closed session and the motion must be approved by a majority vote conducted in open session.
  - c. Once the public body has convened in closed session, no final action may be taken in the closed session. The public body must reconvene again in an open meeting and take its final action in that setting. However, according to OAG 82-341, during the closed session, it is permissible to take a straw vote to determine the position of the members.
  - d. No subjects may be discussed during a closed session other than those publicly announced prior to convening the closed session.
    - 1) Discussion of collateral issues in the closed session is improper. 02-OMD-6.

- 2) Although administratively inefficient, the board should have asked for a second closed session to discuss separate, ongoing litigation. 03-OMD-170.
3. **Minutes.** Minutes from the closed meeting record the following information:
  - a. That the statutory requirements for convening in closed session were followed, including:
    - 1) A statement of the general subject matter of the closed session.
    - 2) The fact that a motion was made, seconded, and approved.
  - b. The final action taken in open session, if any, including the votes cast by each member of the public agency.
    - 1) As a matter of practice, the meetings may want to reflect when no final action was taken after the closed session.
  - c. **Minutes taken inside the closed session.** OAG 85-136 and OAG 81-235 do not require that city clerks take minutes inside the closed session. However, any minutes that are taken during the closed session, including taped transcription, may be kept confidential.

## CHAPTER 7 – OPEN RECORDS ACT

### Section A. Overview

KRS 61.970 to KRS 61.884 is the Open Records Act. Much like the Open Meetings Act, the Open Records Act holds public officials accountable for their actions and allows the public the opportunity to know about the affairs of government.

1. **Definition.** KRS 61.871 states that the purpose behind the Open Records Act "is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others."
2. **KRS 61.872.** A "public record" is open to inspection by any person, unless exempted by the terms of the Open Records Act or some other statute or law.

### Section B. Definitions

Following is a list of definitions explaining which records are open for public inspection.

1. **Public record.** KRS 61.870 defines "public record" as all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings or other documentary materials regardless of form or characteristics which are prepared, owned, used, in the possession of or retained by a public agency."
  - a. **Electronic mail (email).** Email messages "are a form of business communication." Kentucky Department for Libraries and Archives, E-mail Guidelines (2005). Not all emails will be considered public record, but "messages sent and received in the course of business transactions are government records and must be retained and managed for as long as they are needed for administrative, fiscal, legal, or historical requirements." *Id.* See also 08-ORD-140: We decline the Council's invitation to construe the term "notes" so broadly as to encompass email communications relating to public business, regardless of how "brief" or "informal" they are, but continue to ascribe to the view that the term "notes," as it appears in KRS 61.878(1)(i), applies to a "brief record written down to aid the memory," such as notes taken at a meeting. 97-ORD-183, p. 3. To find otherwise would render KRS 61.878(1)(j) a redundancy insofar as a recommendation or memorandum in which opinions are expressed or policies formulated can be brief and informal, and, under the Council's line of reasoning, qualify as "notes." ...Consistent with the statutory requirement that public agencies separate the excepted and make the nonexcepted material available for examination, we conclude that only the "correspondents" name and email address may be redacted from these emails under authority of KRS 61.878(1)(a)."

- b. Records generated and maintained by an officer in the discharge of his public function are public records, even if they remain in his custody and control. The city must show if an exception applies.
- c. Emails consisting of political humor, sports commentary, discussing plans for lunch, etc., are not exempt from production under KRS Chapter 61. OAG 12-ORD-075. However, there is not a records retention schedule for these informal emails and the Kentucky League of Cities recommends deleting after use. *See* KDLA, Municipal Government, State Agency Records Retention Schedule, <https://kdla.ky.gov/records/recretentionschedules/Documents/Local%20Records%20Schedules/MunicipalGovernmentRecordsRetentionSchedule.pdf>

2. **Public agency.** KRS 61.870 defines "public agency" as the following:

- a. Every state or local government officer.
  - 1) This definition includes city clerks and other nonelected officers.
  - 2) This definition includes mayors, commissioners, and council members.
- b. Every state or local government department, division, bureau, board, commission, and authority.  
  
This definition includes the city clerk's office.
- c. Every . . . city governing body, council, . . . special district board, and municipal corporation.
- d. Every state or local government agency. . . created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act.
- e. Any body created by state or local authority in any branch of government.
- f. Any body which derives at least 25% of its funds expended by it in the Commonwealth from state or local authority funds.
- g. Any entity where the majority of its governing body is appointed by a public agency or by a member or employee of a public agency.
- h. Any board, commission, committee, ad hoc committee, advisory committee, council or agency, except for a committee of a hospital medical staff, created and controlled by a public agency.
- i. Any interagency body of two or more public agencies.

**Section C. How to Inspect a Public Record**

The procedure for inspecting a public record involves numerous opinions and scenarios. For specific situations, a city clerk may refer to the Kentucky Attorney General's *The Kentucky Open Records and Open Meetings Act: Your Duty Under the Law*.

1. **Who may inspect a public record.** KRS 61.872 permits any person the right to inspect public records, unless the records are specifically exempted from public inspection. A city, and often the city clerk, must provide a suitable facility for the inspection. Pursuant to KRS 61.872 a person may inspect public records either:
  - a. During the regular business hours of the public office; or
  - b. By receiving copies in the mail.
2. **Mandatory mailing of copies.** KRS 61.872 requires the public agency, often the city clerk, to mail the public records to requestors who reside or whose principal place of business is outside of the county, if the requestor meets the statutory requirements:
  - a. The records must be precisely described;
  - b. The records must be readily available within the public agency; and
  - c. The requestor must pay any fees in advance, including postage, if required by the public agency.
3. **Limits.** “Pulaski County Schools did not violate the Open Records Act in requiring requester to conduct an on-site inspection of its records to locate information sought insofar as the requester resided in county where records were located and certain of the information and records requested did not exist in the form requested.” 08-ORD-252. OAG 76-375 states that a public agency does not have to create records that do not exist, such as a summary list of all public records.
4. **Inspection requests.**
  - a. Requests may be made orally or in writing, but the custodian may require a signed written request describing the records to be inspected. The written application may be delivered by hand, mailed, or sent by fax. In general, a person requesting public records must follow the rules and regulations adopted by the public agency pertaining to open records requests. 2019 KLC COLH.
  - b. The request to inspect must identify and describe the records with sufficient particularity. A public agency is under no obligation to produce records when the request is so vague that one cannot determine with reasonable certainty which records are being requested. OAG 02-ORD-115. However, if an applicant cannot sufficiently specify the records they wish to review or wish to extract information that has not been compiled, the public agency

must permit review of the category of records on the applicant's own time and under the restrictions and safeguards of the public agency. OAG 97-ORD-12. 2019 KLC COLH.

- c. KRS 61.870 requires that the request must be made to the "official custodian of record." KRS 83A.085 requires the city clerk to act as the official custodian of the city's records.
- d. If the person to whom the request to inspect is made does not have custody or control over the documents requested, the individual receiving the request must direct the requestor to the appropriate official or employee having custody of the record, if known. This means the public agency cannot simply avoid responding to the request because it was made to the wrong person. OAG 92-94.

5. **The city clerk as official custodian.** The city clerk, as official custodian, must respond to an open records request within three working days (excludes weekends and holidays). The city clerk does not need to respond in writing when the request is an oral request. The city clerk may respond in one of three ways to the request:

- a. The city clerk may grant the request and send the public records to the requestor.
- b. The city clerk may deny the request because the request places an unreasonable burden on the city, the clerk believes that repeated requests are intended to disrupt essential functions, the records don't exist, or the records are statutorily exempt from public inspection.
  - 1) In this case, the city clerk must explicitly state the reason for the denial, including the specific statutory exemption relied upon to deny the request.
  - 2) The city bears the burden of proof to show that producing the requested records is an unreasonable burden or that the requests are designed to disrupt essential functions. Meeting this burden is extraordinarily difficult. A request to inspect police dispatch logs spanning a four-year period was not overly burdensome. OAG 89-20.
- c. The city clerk may respond that the request will take longer than three (3) days to grant because the records are either in active storage or, otherwise unavailable.

In this case, the city clerk must outline in writing the earliest date possible for the inspection, where the documents may be inspected, and the reason for the delay. KRS 61.872.

6. **Fees.** OAG 91-98 permits the agency to charge a fee for the copies. However, the fee must be for the actual cost of the copies, not for the cost of staff (unless the

agency at its discretion provides a requested non-standardized or tailored format). The fee may include the cost of the equipment and supplies.

The Courts and the Attorney General have adopted the position that \$0.10 per copy is a per se reasonable charge. If a public agency charges greater than \$0.10 per copy, the public agency has the burden of substantiating higher cost. OAG 05-ORD-194.

7. There is “a line of decisions dating from the inception of the Open Records Act... recogniz[ing] that a public agency is not statutorily obligated to honor a request for information as opposed to a request for specifically described public records.” 06-ORD-024.

#### **Section D. Denied Requests**

The city clerk may deny the open records request for several reasons set forth in KRS 61.872. These reasons include:

1. The request places an unreasonable burden on the city to produce the public records. The city clerk must have clear and convincing evidence of this fact before denying the request. KRS 61.872(6).
  - a. The Open Records Act initially stated that a request could be denied if it placed an unreasonable burden on the agency to produce "voluminous" records. The Act was amended in 1992 to eliminate the word "voluminous." The clear implication is that requests may be unreasonably burdensome even though only a small number of records are requested. For instance, if an applicant requests a single obscure record that might require hours of research to locate, it may be argued that the request is unreasonably burdensome.
  - b. In OAG 03-ORD-093, the Attorney General held that the response of a public agency that some of the requested documents do not exist was sufficient and proper under the Open Records Act. In order to satisfy its statutory burden of proof, an agency must, at a minimum, offer some explanation for the nonexistence of the records. 2019 KLC COLH.
2. Repeated requests are intended to disrupt essential functions of the city. The city clerk must have clear and convincing evidence of this fact before denying the records request.

There is no limitation on the number of requests that an applicant may submit to a public agency for access to records. However, the public agency may establish a pattern of conduct where the repeated requests are shown to have the effect of harassing the public agency. The burden is on the public agency denying the request to show that the repeated requests are intended to be disruptive. OAG 05-ORD-121.

3. The records are subject to exemption under KRS 61.878.

## Section E. Exemptions

KRS 61.878 sets forth 16 types of records exempt from the Open Records Act. For more information on the types of exempted records, you may refer to the statute, the Attorney General's *The Kentucky Open Records and Open Meetings Acts: Your Duty Under the Law*, or the latest version of the Kentucky League of Cities *City Officials Legal Handbook*. The following exemption descriptions are taken from the 2019 KLC COLH.

1. Public records containing information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy. Some examples of the type of information referred to are addresses, phone numbers, social security numbers, marital status, and medical information. This list is not exhaustive. The balancing test for determining whether a disclosure would constitute a clearly unwarranted invasion of personal privacy was articulated in *Zinc v. Com., Dept. of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994).
2. Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption does not, however, apply to records the disclosure or publication of which is required by another statute.
3. Records confidentially disclosed to an agency, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to the competitors of the entity that disclosed the records.
4. Records confidentially disclosed to an agency, generally recognized as confidential or proprietary, and which are maintained:
  - a. In conjunction with the application for or the administration of a loan or grant.
  - b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154.
  - c. In conjunction with the regulation of commercial enterprise, including mineral exploration records; unpatented, secret commercially valuable plans; or appliances, formulae, or processes which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person.
  - d. For the grant or review of a license to do business.
5. Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business's or industry's interest in locating in, relocating within or expanding within the commonwealth. This exemption does not include those records pertaining to an application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as otherwise provided in KRS 61.878.

6. Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to banks, savings and loan associations, and credit unions which disclose the agency's internal examining or audit criteria and related analytical methods.
7. The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency relative to the acquisition of property, until such time as all of the property has been acquired, provided that the law of eminent domain is not affected by this exemption.
8. Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again.
9. Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations, if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision become open records after the enforcement action is completed or a final decision is made to take no action.
10. Preliminary drafts, notes, and correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.
11. Preliminary recommendations and preliminary memoranda in which opinions are expressed or policies formulated or recommended.
12. The "homeland security exception" exempts public records which, if disclosed, have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act. Records that fall into this category are limited to criticality lists resulting from consequence assessments, vulnerability assessments, antiterrorism protective measures and plans, security and response needs assessments, certain infrastructure records, certain maps and drawings of public buildings, and any records which may disclose the exact physical location of hazardous chemicals, radiological, or biological materials.
  - a. When the public agency issues a denial under this exception, the public agency is required to forward a copy of the written denial to the executive director of the state Office of Homeland Security and the Attorney General.
  - b. A public agency may not invoke this exception to deny inspection to a member of the Kentucky General Assembly. KRS 61.878(m).

13. All public records or information the disclosure of which is prohibited by federal law or regulation.
14. Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.
15. Procurement process records under KRS 45A (includes local model procurement code) but this exemption does not apply if the process is cancelled without award and it will not be resolicited, or the contract is awarded.
16. Otherwise qualified communications that are of a purely personal nature and unrelated to any governmental function.
17. Any audio or visual depiction of an autopsy unless the spouse or personal representative of the decedent provides an express waiver to the state medical examiner, coroner, or other public official in lawful possession of the materials. The waiver must state in specificity that the spouse or personal representative authorizes public release of the materials. KRS 71.031.

**Section F. Appeal**

The requestor may appeal any denial of access to records to the Attorney General and the circuit court.

**Section G. Local Procedures**

KRS 61.876 requires that the city have procedures in place to provide public access to public records. This is generally done by ordinance.

1. **Minimum requirements of rules and regulations.** The rules and regulations adopted by the public agency must include the following information:
  - a. The principle office of the public agency and its regular office hours;
  - b. The title and address of the official custodian of the public agency's records;
  - c. The fees to be charged for copies of public records; and
  - d. The procedures to be followed for requesting public records.
2. **Display of rules and regulations.** Every public agency is required to display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public. 2019 KLC COLH.

## CHAPTER 8 – OVERVIEW OF RECORDS RETENTION

### Section A. Statutory Requirements for Records Retention

Pursuant to KRS Chapter 171, cities must maintain and retain public records of the local city government. The Kentucky Department for Libraries and Archives (DLA) sets forth the rules and procedures for records retention in 725 KAR Chapter 1.

1. **Statutory requirements.** KRS Chapter 171 requires all records which are likely to be of continuing value to the city, state government, or researchers to be retained permanently. Also, records may not be destroyed unless provided so by state law. *Local Records Management*, Department for Libraries and Archives and *Kentucky Municipal Statutory Law*, Kentucky Legislative Research Commission.
2. **725 KAR 1 and the Department for Libraries and Archives.** The Department for Libraries and Archives establishes the rules for destruction of public records and reproduction of public records by photographic and microphotographic process. The DLA has established model retention schedules in 725 KAR 1:061.

### Section B. Overview of Support Programs for Records Retention

In an effort to help preserve and maintain public records, the Kentucky Department for Libraries and Archives (DLA), Local Records Branch, assists cities with management and archival requirements. The Local Records Branch will provide cities with the direction, supervision, education, and other needs necessary to satisfy the mandates on record retention. In addition, the schedules specific for local government may be found at this link:

<https://kdla.ky.gov/records/retentionschedules/Pages/LocalRecordsSchedules.aspx>

The Local Records Branch has two programs to assist cities:

1. **Direct Services Program.** This is a hands-on program that provides actual assistance through four regional administrators. The regional administrators provide in-agency services to local governments. Types of services covered under this program include:
  - a. Identification, appraisal and retention scheduling and destruction of records.
  - b. Analysis and consulting on records management and archival needs.
  - c. Assisting cities with applying for local records grants.
  - d. Preparing records for microfilming.
  - e. Providing prompt records disaster recovery assistance.

2. **Local Records Grant Program.** The DLA provides grants to help cities manage their records retention program. Types of activities that may qualify for grants include:
  - a. Microfilming.
  - b. Rerecording and reproduction.
  - c. Conservation of records.
  - d. Archival and conservation equipment and supplies.
  - e. Records management software and hardware systems.
  - f. Establishing local archives.
  - g. Ordinance codification.

**Section C. Additional Resources**

For more specific information, contact the Department for Libraries and Archives, Local Records Division at 502-564-8300 or visit their website at <https://kdla.ky.gov/Pages/default.aspx>.

## CHAPTER 9 – NOTICE AND PUBLICATION REQUIREMENTS

### Section A. Legal Notices

KRS 424.150(2)(b) states that when the statute requiring advertising does not designate the person responsible for such advertising, that duty falls to the city clerk if there be one; if not, the mayor. Following is an overview of those requirements.

1. **Qualification of newspapers.** KRS 424.120(1) states that if an advertisement is required to be published in a newspaper, the newspaper must meet the following requirements:
  - a. It shall be published in the publication area. A newspaper meets this requirement if it maintains its principal office in the area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publications and has a periodicals class mailing permit issued for that office. KRS 424.120(1)(a).
  - b. The newspaper shall be of regular issue and have a bona fide circulation in the publication area. KRS 424.120(1)(b). A newspaper shall be deemed to be of regular issue if it is published at least once a week, for at least 50 weeks during the calendar year as prescribed by mailing permit and has been so published in the area for the immediately preceding two-year period. KRS 424.120(1)(b).
  - c. A newspaper meeting all other regular-issue criteria, except publication in the area for the immediately preceding two-year period, shall be deemed to be of regular issue if it is the only paper in the publication area and has a paid circulation equal to at least 10% of the population of the publication area. KRS 424.120(1)(b).
  - d. A newspaper shall be deemed to be of bona fide circulation in the publication area if it is circulated generally in the area and maintains a definite price or consideration not less than 50% of its published price, and is paid for by not less than 50% of those to whom distribution is made. KRS 424.120(1)(b). This requirement rules out the free local paper.
  - e. The newspaper shall bear a title or name, consist of not less than four pages without a cover, and be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements, and other notices. KRS 424.120(1)(c).
  - f. The news content shall be at least 25% of the total column space in more than one-half of its issues during any 12-month period. KRS 424.120(1)(c).

2. If the publication area has more than one newspaper that meets these requirements, the newspaper having the largest bona fide paid circulation as shown by the average number of paid copies of each issue as shown in its published statement of ownership filed as of October 1 for the publication area shall be the newspaper where advertisements required by law to be published shall be carried. KRS 424.120(1)(d).
3. If there is no newspaper published in the city, the publication shall be in a newspaper published in the county that is qualified to publish advertisements for the county. If the qualified newspaper publishes a zoned edition which is distributed to regular subscribers within the publication area, any advertisement required by law to be published in the publication area may be published in the zoned edition distributed in that area. KRS 424.120(2)(a).
4. If no newspaper meets the requirements for publication in the county, any advertisements required to be published for the city shall be published in a newspaper of the largest bona fide circulation in that county published in and qualified to publish advertisements for an adjoining county in Kentucky. KRS 424.120(2)(b).
5. HB 487, passed in 2018, provides some publication options to cities located in a county with a population over 90,000 people. Notwithstanding KRS 83A.060, 91A.040, and Chapter 424, a county containing a population of more than 90,000 or any city within a county containing a population of more than 90,000, as determined by the 2010 United States Census, may publish enacted ordinances, audits, and bid solicitations by posting the full ordinances, the full audit report including the auditor's opinion letter, or the bid solicitations on an internet website maintained by the county or city government for a period of at least one year. If a county or city publishes ordinances, audits, or bid solicitations on a website, the county or city shall also publish an advertisement in a newspaper qualified in accordance with KRS 424.120, with a description of the ordinances, audits, or bid solicitations published on the website, including the Uniform Resource Locator (URL) where the documents can be viewed.
6. **Times and periods of publication.** KRS 424.130 states that, except as otherwise provided by statute, the following times and periods of publications of advertisements must apply (see KRS 424.130 for more details):
  - a. Completed acts that do not require or allow the public to exercise a right by a designated time or date (e.g., ordinance, resolution, or order) must be published one time within thirty (30) days of the completed act (e.g., passage of the ordinance). KRS 424.130(1)(a). However, a failure to comply with the 30-day requirement shall not invalidate any ordinance or resolution unless such failure continues for a period of 15 days after notice to comply has been given by registered letter to the city. KRS 424.130(1)(a).

- b. Informing the public that before a specific date they may file a petition, objection, submit a bid, etc., must be published at least once, but may be published more than once. Also, at least one of the advertisements must be published between seven and 21 days before the event or deadline. KRS 424.130(1)(b).
  - c. Delinquent tax notices or notice of the sale of tax claims must be published once, preceded by a one-half page notice of advertisement the preceding week, which includes information about public inspection at the business address and on the website. The delinquent tax list shall be posted on the website for a minimum of 30 days and shall be updated weekly. KRS 424.130(1)(c).
  - d. Other advertisements, including notice of public hearing, an examination, or due date of a tax or special assessment must be published at least once, but may be published more than once. Also, at least one of the advertisements must be published between seven and 21 days before the event or deadline. KRS 424.130(1)(d).
7. **Contents or form of advertisements.** KRS 424.140 requires that certain types of notices and publications contain specific information.
- a. **Hearing, meeting, or examination.** Must state the time, place, and purpose. KRS 424.140(1).
  - b. **Election.** Time and purpose, and if on a public question, the substance of the question. KRS 424.140(2).
  - c. **Invitation for bid or notice of sale.** Must describe what is for bid or sale, time, and place of sale or receipt of bids, and any special terms. KRS 424.140(3).
  - d. The advertisement must also state any statutory notice requirements, such as the time and place when and where city council must take specific governmental action. KRS 424.140(4).

**Section B. Alternatives to Newspaper Publication**

KRS 424.190 provides an alternative to newspaper publication if the statutory requirements are met.

- 1. **When mailing is less expensive than newspaper publication.** If a statute gives discretion to a public agency regarding the required method of making an advertisement, and if a statute provides that an advertisement may be made either by posting or by newspaper publication, the advertisement shall be made by newspaper publication, pursuant to KRS Chapter 424, except when the cost of newspaper publication exceeds the cost of reproduction and mailing. KRS 424.190(1).

2. **Mailing.** Any city, when the cost of publication exceeds the cost of reproduction and mailing, may mail a copy of the advertisement by First-Class Mail to each residence within the publication area. Any city electing this publication method shall forward an electronic copy of its audit report or a copy of its financial statement, whichever is applicable, to the Department for Local Government, pursuant to KRS 91A.040 and KRS 424.220.

### **Section C. Matters to be Published**

1. **Ordinances.** Pursuant to KRS 83A.060(9), an ordinance is not effective until it is published according to KRS Chapter 424. The city clerk, or designated official, must publish non-emergency ordinances within thirty (30) days of enactment.
  - a. **Emergency ordinances.** Effective upon passage but must be published within ten (10) days of enactment. KRS 83A.060(7).
  - b. **Alternative publication.** A city may publish through alternative means when mailing is less expensive than newspaper publication and statutory requirements are met, as addressed in Section B above.
  - c. **Municipal orders and executive orders.** No publication requirements.
2. **Financial statements of cities.** Pursuant to KRS 424.220, cities with a population less than 20,000 and conducting an audit in the fiscal year must publish an audit report. An officer in a city with a population less than 20,000 that has not conducted an audit in the fiscal year must publish a legal display advertisement of not less than six column inches in a qualified newspaper that the financial statement has been completed and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio and television station which has filed a written request with the city to be provided the financial statement. The publication is required to occur within 90 days of the close of the fiscal year.
3. **City budgets.** Pursuant to KRS 424.240 "[i]mmmediately following the adoption of an annual budget by any city other than one of the first class or a consolidated local government, the clerk shall cause a summary of the budget or the text of the budget ordinance to be advertised for the...city by publication in a newspaper."
4. **Invitations for bids for materials, supplies, equipment or services.** Depending on whether the city operates under the General Bidding Statute or the Local Model Procurement Code, the following publication requirements will apply to cities when making purchases over \$30,000:

- a. **General bidding requirement, KRS 424.260.** An advertisement soliciting bids must be published at least once, but may be published two or more times, provided that one publication occurs not less than seven days nor more than 21 days before the last day to submit bids. KRS 424.130. The advertisement must include a description of what is to be bid, the time and place for receipt of bids, and any special terms. KRS 424.140.
  - b. **Emergency situations.** KRS 424.260 may not apply in an emergency situation. KRS 424.260(4).
  - c. **Local Model Procurement Code, KRS Chapter 45A.** Adequate public notice must be given prior to the date set for the opening of bids. The notice may include newspaper publications or posting on the internet not less than seven days before the date set for the opening of bids. The notice must include the time and place the bids will be opened and the time and place where specifications may be obtained. KRS 45A.365(3).
5. **Due date of ad valorem taxes.** KRS 424.280 requires every officer whose duty it is to collect ad valorem taxes for any political subdivision of the state to cause notice of the due date of the tax to be published not less than seven nor more than twenty-one days before the day the taxes are due.
  6. **Delinquent taxes.** KRS 424.330 permits cities to publish a list of uncollected delinquent taxes by listing the names of the delinquent taxpayers and the amount due. The city is authorized to assess an additional fee equal to the prorated cost of publication per taxpayer per publication on the tax bill of the delinquent taxpayer for publication costs. If the city decides to publish a list of delinquent taxpayers, it must do so in accordance with KRS 424.130(1)(c). KRS 424.130 requires publication of a one-half page advertisement providing notice that a list of uncollected delinquent taxes will be published in the following week. The advertisement must include notice that the list is available for inspection at the business address of the city and on a website affiliated with the city. KRS 424.130 further requires publication of the list of delinquent taxes one time during the week following publication of the one-half page advertisement.
  7. **Invitations to bid on municipal bonds.** Except in cases of bonds issued for the purpose of facilitating construction, renovation, or purchase of new or existing housing as provided by KRS 58.125 or bonds issued and sold pursuant to any section of the Constitution or the Kentucky Revised Statutes providing for the sale of bonds at a private, negotiated sale, no sale of general obligation or revenue bonds shall be made until advertisement for bids are publicized. KRS 424.360(1).

Advertisements for bids may be publicized by newspaper publication in the area constituted by the city unit and published to afford statewide notice or posting a notice of sale to a nationally recognized electronic bidding system.

8. **Public hearings.** Cities must give public notice of any public hearings pursuant to KRS 424.130(1)(d).
9. **HB 44 rate limitation.** KRS 132.027 is often referred to as House Bill 44. If a city proposes an ad valorem tax in excess of the compensating tax rate, it must give public notice and hold a public hearing. If the proposed tax is expected to produce revenue of at least four percent above the previous year's compensating tax revenue, the tax is subject to recall. The public hearing and recall procedures apply only to the real property tax rate and not to the tax rate applicable to personal property. The detailed requirements for notice and hearing when a city proposed to levy a tax rate in excess of the compensating tax rate are set forth in KRS 132.027.
10. **Special meetings.** KRS 61.823 states that any meeting that is not a regularly scheduled meeting is a special meeting. The following notice requirements apply:
  - a. **Written notice.** Written notice of the special meeting, including the date, time, location, and agenda must be delivered personally, mailed, or faxed to each member of the agency having the meeting, and each media organization that has submitted a written request for notice of special meetings. Notice must be given within 24 hours of the scheduled meeting. In lieu of sending the notice by mail, fax, or personal delivery, a public agency may send the notice by electronic mail (email) to those members and media organizations that have submitted a written request to receive notification by email. The written request must contain the email address or addresses of the members or media organizations.
  - b. **Posting.** The written notice of the special meeting must also be posted in a conspicuous place in the building where the special meeting will be held and the headquarters of the public agency holding the special meeting. Notice must be posted at least 24 hours of the special meeting.
  - c. **Emergency.** The special meeting shall be called pursuant to KRS 61.823(2). The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to KRS 61.823(4)(a), and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with KRS 61.823(3) and (4). These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

## CHAPTER 10 – CITY BUDGETS

### Section A. Overview

**City clerk's role.** City financial issues directly or indirectly involve the city clerk in four primary areas:

1. Financial administration, including a budget, financial records and audits.
2. Bonding of city employees.
3. Procurement and disposition of surplus property.
4. Taxation and fees.

This chapter will give an overview of the financial budgets, records, and audits. Please see the Kentucky League of Cities *City Officials Legal Handbook* for a detailed explanation of bonding; procurement and surplus property; and taxes and fees.

### Section B. KRS Chapter 91A

**Statutory requirements.** KRS Chapter 91A and KRS Chapter 83A lists certain financial requirements all cities must meet:

1. A city may only operate and expend funds in accordance with an annual budget, adopted by ordinance. This is discussed further in Section C of this chapter. KRS 91A.030.
2. A city must maintain financial records in accordance with generally accepted principles of governmental accounting. This is discussed further in Section E of this chapter. KRS 91A.020.
3. A city's financial records must be periodically audited by an independent auditor. This is discussed further in Section F of this chapter. KRS 91A.040.
4. Requires cities to fix the salary of city employees and nonelected officers under a personnel and pay classification system, which must be adopted by ordinance. For smaller cities this may be included as part of their budget ordinance. KRS 83A.070.

### Section C. Budget

KRS 91A.010(1) defines "budget" as "a proposed plan for raising and spending money for specified programs, functions, activities, or objectives during a fiscal year."

1. **Budget must cover a fiscal year.** Pursuant to KRS 91A.030(4), a city's budget must plan for one fiscal year.
2. **Fiscal year.** Pursuant to the Kentucky Constitution, Section 169, a city fiscal year runs from July 1 to June 30.

3. **Failure to pass a budget.** Pursuant to KRS 91A.030(3), if a city fails to adopt a budget by July 1, the previous year's budget operates as if readopted. The previous year's budget operates until a new budget ordinance is adopted.
4. **Planning the budget.** Preparation of a budget proposal is the responsibility of the executive authority. In mayor-council and mayor-alderman cities, the executive authority is the mayor. In commission cities, the executive authority is the city commission. It is the responsibility of the city manager to prepare and present the budget in cities with a city manager form of government. KRS 91A.030(5).
5. **Budget message.** KRS 91A.030(7) requires the executive authority to present the budget and budget message to the city legislative body at least 30 days prior to July 1.
6. **Contents.** According to KRS 91A.030(7), the budget message is required to:
  - a. Explain the revenue raising and expenditure goals fixed by the budget for the upcoming fiscal year.
  - b. Explain important features of the budget.
  - c. Explain significant changes in program goals and appropriations levels from the previous year.
  - d. Explain any major changes in financial policy.

#### **Section D. Budget Ordinance**

A city must adopt its budget through a budget ordinance. The ordinance must appropriate all funds for the fiscal year. KRS 91A.030(8).

1. **Effective date of budget.** Pursuant to KRS 424.240, discussed in Chapter 9 of this Handbook, the city clerk must publish the budget ordinance, in full text or summary form. The budget becomes effective on the date of publication, unless declared an emergency.
2. **Budget deficit.** The Kentucky Constitution Section 157b and KRS 91A.030(8)(b) specifically state that a budget may not appropriate funds in excess of revenues.
3. **Debt service.** KRS 91A.030(9) requires that a city legislative body appropriate the full amount of any debt service during the full fiscal year.
4. **Budget amendments.** Budget amendments must be passed through an ordinance, which is passed as any other ordinance, and cannot exceed fiscal year revenues. KRS 91A.030(10).

#### **Section E. Budget Operation**

KRS 91A.030 requires the city's executive authority to administer the budget. KRS 91A.030(11). However, the city clerk often assists with these duties.

1. **Quarterly statements.** Pursuant to KRS 91A.030(11), the city's executive authority or city manager must present quarterly operating statements to the city legislative body. In cities that do not use a city manager, the city clerk often helps prepare these quarterly statements.
2. **Accounting records.** KRS 91A.020 requires a city to maintain accurate accounting reports and produce financial reports that show compliance with statutory requirements and financial operation of the city government funds with "generally accepted principles of government accounting." The Governmental Accounting Standards Board issues those standards and procedures.
3. **Noncompliance.** Pursuant to KRS 91A.030(13), if a city enters into a contract or other financial agreement that exceeds the budget appropriations, that contract or agreement is void.

## **Section F. Audits**

The city clerk/treasurer maintains the city financial books and may conduct audits throughout the year. However, a city must contract with an independent auditor to conduct the statutorily required audit.

1. **Cities with a population of over 2,000.** Pursuant to KRS 91A.040, cities with a population of over 2,000 must conduct an annual audit of all city funds. KRS 91A.040(1). The audit must be completed by February 1 immediately following the fiscal year being audited. KRS 91A.040(1).
  - a. **Auditor.** The city must enter into a written contract with the Kentucky Auditor of Public Accounts or a certified public accountant to conduct the audit. The written contract must meet the statutory requirements set forth in KRS 91A.040(7).
  - b. **Auditor's report.** The auditor's report must be presented to the city legislative body at a regular or special meeting. KRS 91A.040(7)(e). The city shall forward an electronic copy of the audit report to the Department for Local Government by March 1 immediately following the fiscal year being audited. KRS 91A.040(3)(a).
2. **Cities with a population equal to or less than 1,000.** Cities with a population equal to or less than 1,000 may elect to have an audit performed at the close of each odd-numbered fiscal year. KRS 91A.040(2).

- a. After the close of the odd-numbered fiscal year, the city shall cause each fund to be audited. This audit must only cover the previous fiscal year. Audits must be conducted by the Auditor of Public Accounts or a CPA pursuant to a written contract. The audits shall be completed by February 1 immediately following the fiscal year to be audited. The city shall forward an electronic copy of the audit report to the Department for Local Government for information purposes by no later than March 1 immediately following the fiscal year being audited. KRS 91A.040(2)(a).
  - b. In addition, after the close of each even-numbered year, the city shall not be required to complete an annual audit but shall forward an electronic copy of its financial statement prepared in accordance with KRS 424.220 to the Department for Local Government by no later than October 1 immediately following the close of the even-numbered fiscal year. KRS 91A.040(2)(b).
3. **Cities with a population less than 2,000 but greater than 1,000.** Cities with a population less than 2,000 but greater than 1,000 may elect to have an audit of the two previous fiscal years conducted at the close of odd-numbered years. KRS 91A.040(3)(a).
    - a. The audit must be completed by February 1 immediately following the two fiscal years to be audited. The audit must be conducted by the Auditor of Public Accounts or a certified public accountant pursuant to a written contract. The city shall forward an electronic copy of the audit report to the Department for Local Government for information purposes by March 1 immediately following the close of the two fiscal years being audited.
    - b. After the close of even-numbered fiscal years, cities with a population less than 2,000 but greater than 1,000 are not required to conduct an audit. Instead, these cities must forward an electronic copy of their financial statement prepared in accordance with KRS 424.220 to the Department for Local Government by no later than October 1 immediately following the close of the even-numbered fiscal year. KRS 91A.040(3)(b).
4. **KRS 424.220.** Financial statements must meet the requirements of KRS 424.220.
  5. **Audit exemption.** Pursuant to KRS 91A.040(4), if a city receives and expends less than \$75,000 in any fiscal year, and has no long-term debt, the city is not required to complete an audit. Any city using this audit exemption must file an electronic copy of the city's financial statement with the Department for Local Government by no later than October 1 immediately following the close of the fiscal year.

## **Section G. Publication**

1. **KRS Chapter 424.** Within 30 days of the completion of the audit and its presentation to the legislative body, the city must publish an advertisement in accordance with KRS Chapter 424 containing:

- a. The auditor's opinion letter. KRS 91A.040(9)(a).
  - b. The “Budgetary Comparison Schedules-Major Funds” which shall include the general funds and all major funds. KRS 91A.040(9)(b).
  - c. A statement that a copy of the complete audit report, including financial statements and supplemental information, is on file at city hall and is available for public inspection during normal business hours. KRS 91A.040(9)(c). In addition, the advertisement must contain a statement that any citizen may obtain a copy of the complete auditor's report for their personal use, including financial statements and supplemental information, and that the citizen will be charged for duplication costs at a rate that shall not exceed twenty-five cents (\$0.25) per page. KRS 91A.040(9)(d) and (e).
  - d. A statement that copies of the financial statement prepared in accordance with KRS 424.220 are available to the public at no cost at the business address of the officer responsible for preparation of the statement. KRS 91A.040(9)(f).
2. **Alternative publication.** Any city may, in lieu of publishing an auditor's report or the financial statements in accordance with KRS 424.220, utilize the alternative publication method authorized in KRS 424.190(2). KRS 424.190(2) allows any city to send a copy of the auditor's report or the financial statement to each resident within the publication area by First-Class Mail, rather than publish the reports in a newspaper, if the city determines that the cost of postage, supplies, and reproduction for First-Class Mailing is less expensive than newspaper publication.

**Section H. Department for Local Government**

The Department for Local Government (DLG) is required to provide technical assistance to cities in meeting their statutory requirements set forth in KRS Chapter 91A.

**Section I. Uniform Financial Reporting**

KRS 65.905 requires cities to prepare and submit an annual uniform financial report. Cities must submit the report to the Department for Local Government on or before May 1, following the close of the fiscal year. KRS 65.905(1). The DLG sends the Uniform Financial Report Forms to each city no later than 120 days prior to May 1. KRS 65.905(4).

- 1. **Who completes the form.** A city may have an auditor complete the form. If an auditor does not complete the form, the city must pass an executive or municipal order designating the elected or nonelected official responsible for completing the form. KRS 65.905(3)(b).
- 2. **Failure to comply.** A city that fails to submit the annual report is ineligible to receive municipal road aid funds. KRS 177.366(8).

## CHAPTER 11 – PROCUREMENT

### Section A. Overview

1. **Statutory authority.** KRS 82.081 permits a city to contract with others for goods and services. Kentucky statutes impose limits and requirements on this power. The Kentucky General Assembly has imposed procedural requirements in relation to the procurement of goods and services by city governments and other public agencies pursuant to KRS 424.260, the general bidding statute, and the Local Model Procurement Code, KRS 45A.343-45A.460.
2. **Prohibition against city officers and employees contracting with city for property or services.** Pursuant to KRS 61.252, no officer or city employee shall be interested in any contract with the city or city agency, with the following exceptions:
  - a. Contracts awarded before an elected officer filed as a candidate for office or was appointed;
  - b. Contracts awarded after public notice and competitive bidding; or
  - c. Contracts made pursuant to a specific finding by the governing body that the contract is in the best interests of the public.
3. **General bidding requirement.** If a city does not adopt the provisions of the Local Model Procurement Code, it must advertise pursuant to KRS 424.260 for bids for any contract, lease, or other agreement for materials, supplies, equipment, or nonprofessional services that involve an expenditure in excess of \$30,000.
4. **Local Model Procurement Code (LMPC).** A city may also elect by ordinance to adopt the Local Model Procurement Code, KRS 45A.343 to KRS 45A.460. If the city adopts the code, all city contracts and purchases exceeding \$30,000 must comply with the code.
5. **Miscellaneous procurement rules for general bidding and LMPC.**
  - a. **State master agreement or GSA contract.** A city government may participate in purchasing from the state master agreement without going through the bid process. KRS 45A.050 permits political subdivisions, including cities, to purchase materials and supplies in accordance with a contract for materials and supplies entered into by the Kentucky Finance and Administration Cabinet. Similarly, bids are not required where the contract was entered into between the state and a vendor who maintains a GSA (General Services Administration) price agreement with the United States and its agencies under KRS 45A.045. A link to the Finance & Administration Cabinet website that contains the master agreements is here: <https://finance.ky.gov/services/eprocurement/Pages/contractinginfo.aspx>

- b. **Subcontractors.** KRS 45A.343 dictates that any public authority that issues an invitation to bid or solicits public works construction projects must require persons responding to the bids to provide information on all subcontractors and the amount of the subcontract bids used in formulating the bid response.

**Section B. Basic Requirements of the General Bidding Statute**

- 1. **Advertisement.** An advertisement soliciting bids must be published at least once, but may be published two or more times, provided that one publication occurs not less than seven days nor more than 21 days before the last day to submit bids. KRS 424.130. The advertisement must include a description of what is to be bid, the time and place for receipt of bids, and any special terms. KRS 424.140.
- 2. **Acceptance.** The city may cancel the solicitation or reject all bids if it is determined to be in the best interest of the city. Under general bidding there is no requirement for the city to accept the lowest or best bid or to open the bids in public. It is always the best practice, however, for a city to justify its reasoning for not accepting the lowest bid to defend any allegation of fraud, collusion, or favoritism.
- 3. **Exceptions to Bidding.** The statute exempts contracts for the purchase of perishable meat, fish, and vegetables and contracts for professional services. Professional services include the services of physicians, lawyers, engineers, artists, architects, and certified public accountants. OAG 78-725 and OAG 75-488. In addition, cities are not required to bid banking and insurance services. *McCloud v. City of Cadiz*, 548 S.W.2d 158 (Ky. App. 1977).

Bids are not required if the chief executive officer of the city certifies an emergency exists and files a copy of the certificate with the chief financial officer of the city. KRS 424.260.

**Section C. Basic Requirements of the Local Model Procurement Code (LMPC)**

- 1. **Scope.** The LMPC requires all contracts and purchases exceeding \$30,000, with some exceptions, to be awarded by competitive sealed bidding to the responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price. When lowest evaluated bid price is used as the basis for selection, the local public agency is required to establish objective measurable criteria included in the invitation for bids. KRS 45A.365.
- 2. **Advertisement.** Pursuant to KRS 45A.365(3), the city must give adequate public notice of the bids before the date of the bid opening. A city may meet the notice requirements by either posting on the internet or publication in a newspaper of general circulation in the local jurisdiction.
- 3. **Notice requirements.** The public notice must be published at least seven days before the bid opening. The public notice shall include the time and place of the bid opening and where specifications may be obtained.

4. **Opening of bids.** The city may cancel the solicitation or reject all bids if it is determined to be in the best interest of the city. KRS 45A.390. Bids must be opened publicly in an announced location. Each bid must be recorded and open to public inspection. KRS 45A.365.
5. **Contract.** The city establishes a contract with the successful bidder. KRS 45A.345(5).
6. **Alternative Methods.** When competitive sealed bidding is not feasible.
  - a. **Competitive Negotiation.** KRS 45A.370 permits competitive negotiation when competitive sealed bidding is not feasible.
    - 1) **Purpose.** Competitive negotiation is permitted by the LMPC upon a written finding that:
      - a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price;
      - b) Sources of supply are limited;
      - c) Time and place of performance cannot be determined;
      - d) Price is regulated by law;
      - e) Fixed price contract is not applicable;
      - f) Bids received are unreasonable or identical; or
      - g) All bids received exceed available funds.
    - 2) **Process.** The competitive negotiation process requires proposals to be solicited by public notice or any other means that can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition. KRS 45A.370(2).
      - a) Written or oral negotiation must be conducted with all responsible offerors whose offers are reasonably susceptible to being selected. Discussions cannot reveal information derived from the proposals of competitors.
      - b) Discussions are not required where:
        - i. Prices are fixed;
        - ii. Time of delivery or performance will not permit discussions; or
        - iii. Where it can be demonstrated because of past experience or competition that acceptance of the

initial offer without discussion would result in a fair and reasonable price and all offerors are notified that the award may possibly be made on the basis of initial offers. KRS 45A.370(3).

- c) Where there is a revision of the specifications or quantity after offers are submitted, all offerors must be given the opportunity to revise offers. Any award shall be on the basis of the lowest bid price or the lowest evaluated bid price. KRS 45A.370(4).
  - d) Where the designated time for bids has passed and no bids have been received, a city may proceed to acquire the supplies or services by noncompetitive negotiation in accordance with KRS 45A.380. The city is not required to advertise for a second time after receiving no response. KRS 45A.375(4).
- b. **Noncompetitive negotiations.** Pursuant to KRS 45A.380, a city may contract or purchase through noncompetitive negotiations upon making a written determination that competition is not feasible and one of the following:
- 1) An emergency exists;
  - 2) There is only one supplier;
  - 3) The contract is for services of a licensed professional;
  - 4) The contract is for perishables frequently bought;
  - 5) The contract is for replacement parts, and the need for the replacement is not anticipated;
  - 6) The contract is for proprietary items for resale;
  - 7) The contract is for purchases on trips;
  - 8) The contract is for purchase of supplies sold at auction;
  - 9) The contract is for insurance; or
  - 10) The contract is for supplies at reduced prices.
- c. **Small Purchases.** Pursuant to KRS 45A.385, small purchase procedures apply when the contract is less than \$30,000, if the small purchases procedures are in writing and available to the public.
- d. **Architectural and engineering services.** Cities may adopt KRS 45A.730 through KRS 45A.750 and procure these professional services through qualification-based negotiations.

## **Section D. Federal and State Surplus Property**

1. **Division of surplus property generally.** The Cabinet of Finance and Administration, Division of Surplus Property can assist a city with purchasing needed items. A city can procure federal and state surplus property, office equipment, vehicles and machinery by only paying for service and handling.
2. **Surplus property information.** For more information on purchasing surplus property, call 502-564-4836.

## **Section E. Disposition of Surplus Property**

1. **Generally.** KRS 82.083 provides the methods for cities to sell or otherwise dispose of surplus real and personal property. Before selling or disposing of property, a city must make a written determination describing the property, its intended use at the time of acquisition, the reasons why it is in the public interest to dispose of it, and the method of disposition. Real or personal property may be transferred with or without compensation to another governmental entity, sold at public or electronic auction following publication pursuant to KRS 424.130(1)(b), or sold by sealed bids in accordance with the procedures for sealed bids under KRS 45A.365(3) and (4). Real or personal property may additionally be transferred with or without compensation for economic development purposes. If a city receives no bids for the property, it may dispose of it in any manner deemed appropriate by the city consistent with the public interest. Any compensation resulting from the disposal of real or personal property must be transferred to the city's general fund.
2. **Under Local Model Procurement Code (LMPC).** The LMPC imposes specific guidelines for the disposal of surplus personal property if the city has adopted the code. Pursuant to KRS 45A.425, the city must state in writing a full description of the property, its intended use at the time of purchase, the reasons why it is in the public interest to dispose of the item, and the method of disposition to be used. Cities then have the option to dispose of surplus personal property under the LMPC or KRS 82.083. Note that cities can dispose of real property under KRS 82.083 as explained above. Disposition under the LMPC is as follows:
  - a. Surplus personal property may be transferred with or without compensation to another governmental agency. Otherwise, it must be sold at public auction or by sealed bids in accordance with KRS 45A.365. If no bids are received, the city may dispose of the property in any manner deemed appropriate by the city. KRS 45A.425.
  - b. If no bids are received, the city can dispose of the property consistent with the public interest in any manner deemed appropriate. Detailed records containing a description of the property, method of disposal, and the amount of compensation received must be maintained. All proceeds from the disposal shall be transferred to the general fund.

## CHAPTER 12 – RESOURCE GUIDE

### **Americans with Disabilities Act:**

McQuillin's *Municipal Corporations*, 3<sup>rd</sup> Edition.

Kentucky Department for Local Government; 502-573-2382

### **CERS - Retirement Benefits:**

Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, KY, 40601;  
800-928-4646; <https://kyret.ky.gov>; krs.mail@kyret.ky.gov

### **Conflicts of Interest:**

*Conflicts of Interest and Incompatible Offices*, Attorney General's Office, 700 Capitol Avenue, Frankfort, KY, 40601; 502-696-5300;  
[https://ag.ky.gov/government/opinions/Documents/conflicts\\_of\\_interest.pdf](https://ag.ky.gov/government/opinions/Documents/conflicts_of_interest.pdf)

### **Notary Public Issues:**

*Notary Public Handbook*, Secretary of State;  
<https://www.sos.ky.gov/bus/businessrecords/notaries/Documents/NotaryHandbook2012.pdf>

### **Open Meetings and Open Records:**

*Your Duty Under the Law*, Attorney General's Office, 700 Capitol Avenue, Frankfort, KY, 40601; 502-696-5300;  
<https://ag.ky.gov/publications/AG%20Publications/Your-Duty-Under-the-Law.pdf>

*Outline: The Law of Open Records and Open Meetings*, Attorney General's Office, 700 Capitol Avenue, Frankfort, KY, 40601; 502-696-5300;  
[https://ag.ky.gov/publications/AG%20Publications/OROM\\_Outline.pdf](https://ag.ky.gov/publications/AG%20Publications/OROM_Outline.pdf)

### **Personnel Issues:**

*Kentucky Municipal Statutory Law, Informational Bulletin No. 145*, Legislative Research Commission, Revised 2018.  
<https://legislature.ky.gov/LRC/Publications/Informational%20Bulletins/ib145.pdf>

McQuillin's *Municipal Corporations*, 3<sup>rd</sup> Edition.

### **Planning and Zoning:**

*Land Use, Zoning and Private Controls on Real Estate*, UK/CLE.

**Records Retention:**

Department for Libraries and Archives, Local Records Branch, 300 Coffee Tree Road, Frankfort, KY, 40602-0537; 502-564-8300; <https://kdla.ky.gov>.

**Taxes and License Fees:**

*City Officials Legal Handbook, 2019 Edition*, Kentucky League of Cities

*Kentucky Municipal Statutory Law, Informational Bulletin No. 145*, Legislative Research Commission, Revised 2018.

<https://legislature.ky.gov/LRC/Publications/Informational%20Bulletins/ib145.pdf>