

THE 3-TRAILS COMMUNITY IMPROVEMENT DISTRICT

RESOLUTION OF THE 3-TRAILS COMMUNITY IMPROVEMENT DISTRICT  
(THE "DISTRICT") EXPRESSING THE DISTRICT'S INTENT TO CONFORM  
WITH THE MISSOURI SUNSHINE ACT

WHEREAS, the District; which was formed July 7, 2002, by ordinance number 020753 adopted by the City of Kansas City, Missouri, City Council, is a public body created under the authority of the "Missouri Community Improvement District Act," Sections 67.140, *et seq.*, RSMo, as amended (the "Act"), and is transacting business and exercising the powers granted by the Act;

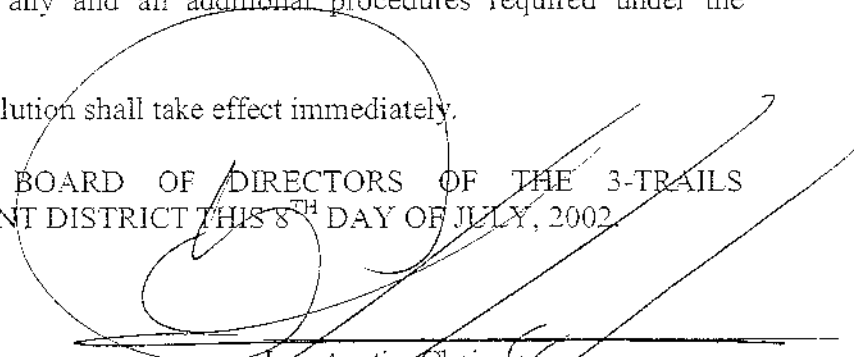
WHEREAS, the District desires to ensure that it conforms with the requirements set out in Section 610.010 to Section 610.200, RSMo, otherwise commonly known as the Missouri Sunshine Act (the "Sunshine Act").

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the 3-Trails Community Improvement District:

Section 1. The District, duly created as a political subdivision under the Act, does resolve that it shall conform with all policies and procedures attached hereto as Exhibit A, and comply with any and all additional procedures required under the Sunshine Act.

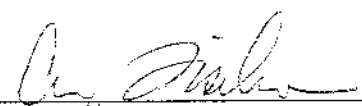
Section 2. This resolution shall take effect immediately.

PASSED BY THE BOARD OF DIRECTORS OF THE 3-TRAILS  
COMMUNITY IMPROVEMENT DISTRICT THIS 8<sup>TH</sup> DAY OF JULY, 2002.



Lou Austin, Chairman

ATTEST:



Craig Fischman, Secretary

## EXHIBIT A

### SUNSHINE ACT COMPLIANCE OUTLINE

#### I. Purpose of the Sunshine Act, Sections 610.010 to 610.032, RSMo.

To further the public policy of Missouri that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. The Sunshine Act is to be liberally construed and its exceptions strictly construed to promote this public policy.

Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public, all public records of public governmental bodies shall be open to the public for inspection and copying and all public votes of governmental bodies shall be recorded. *News-Press and Gazette Co. v. Cathcart*, 974 S.W.2d 576 (Mo. App. 1998)

#### II. Applicability

The Sunshine Act applies to all public governmental bodies. A public governmental body is any legislative, administrative or governmental entity created by the constitution or statutes of Missouri, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order. *State ex rel. Bd. of Public Utilities of City of Springfield v. Crow*, 592 S.W. 2d 285 (Mo. App. 1979).

#### III. Relevant Terms

- A. **Record**. "Record" is not defined under the Sunshine Law, however, "record" is defined in the State and Local Records Law, Sections 109.200 through 109.310, RSMo. Pursuant to Section 109.210(5) of the State and Local Records Law, a "record" is any "document, book, paper, photograph, map, sound recording, or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with a transaction of official business." While this definition is not controlling for Sunshine Law purposes, it does provide useful statutory guidance.
- B. **Closed Meeting, Closed Record, Closed Vote**. Any meeting, record or vote closed to the public. *Smith v. Sheriff*, 982 S.W.2d 775 (Mo. App. 1998)(discussing closed records);
- C. **Sunshine Law**. Section 610.010 to 610.032, RSMo, governing meetings of public governmental bodies.
- D. **Public Governmental Body**. Any legislative, administrative or governmental entity created by the constitution or statutes of Missouri, by order or ordinance of any political subdivision or district, judicial entities when operating in an

administrative capacity, or by executive order. *Bauer v. Kincaid*, 759 F. Supp. 575 (W.D. Mo. 1991); *Colombo v. Buford*, 935 S.W.2d 690 (Mo. App. 1996)(stating that groups of less than a quorum do not qualify as public governmental bodies under the Act); *Champ v. Poelker*, 755 S.W.2d 383 (Mo. App. 1988)(discussing quasi-public governmental entities).

- E. **Public Business.** All matters which relate in any way to the performance of the public body's functions or the conduct of its business. *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934 (Mo. App. 1993).
- F. **Public Meeting.** Any public body meeting at which any public business is discussed, decided, or public policy formulated, whether corporeal or by means of communication equipment; however, "public meeting" shall not include informal gatherings of members of the public body for social or ministerial purposes, but shall include a public vote of all or a majority of the members of the public body by electronic communication or other means, conducted in lieu of holding a public meeting with the members of the public body gathered at one location in order to conduct public business. *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934 (Mo. App. 1993).
- G. **Public Record.** Any record, whether written or electronically stored, retained by or of the public body, including any report, survey, memorandum or other document or study prepared and presented to the public body by a consultant or other professional service provider paid for in whole or in part by public funds; provided, however that "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of the public body consisting of advice, opinions, and recommendations in connection with the deliberative decision making process of the public body, unless such records are retained by the public body or presented at a public meeting. *North Kansas City Hosp. Bd. Of trustees v. St. Luke's Northland Hosp.*, 984 S.W.2d 113 (Mo. App. 1998); *City of Springfield v. Events Pub. Co.*, 951 S.W.2d 366 (Mo. App. 1997)(stating that public record determination is based upon who prepares or retains record)
- H. **Public Vote.** Any vote cast at any public meeting of the public body. *Oregon County R-IV School Dist. V. LeMon*, 739 S.W.2d 553 (Mo. App 1987).
- I. **Written Policy.** A reasonable written policy regarding the release of information under the Sunshine Act that, if complied with, renders an employee of that public governmental body not guilty of violating the Sunshine Act nor subject to civil liability for any act arising out of its adherence to the written policy. *Wolfskill v. Henderson*, 823 S.W.2d 112 (Mo. App. 1991).

## **IV. Public Meetings**

### **A. Notice of Public Meetings**

Notice shall be given of the time, date, place of meeting and anticipated agenda for all Public Meetings at least twenty-four (24) hours in advance of any Public Meeting through the posting of such notice on a bulletin board located in a public area in the principal office of the public body holding the meeting.

If it is anticipated that all or a portion of a Public Meeting of the public body is to be closed, the notice for the meeting shall set forth the reason for its closure by reference to the specific exception allowed pursuant to the provisions of Section 610.021, RSMo (See Section 7 below).

Copies of the meeting notice shall be made available at the same time notice is given to the members of the public body to all members of the media who have submitted such a request to the public body.

The twenty-four (24) hour notice period shall not include weekends and holidays when the public body's offices are closed. *Hawkins v. City of Fayette*, 604 S.W.2d 716 (Mo. App. 1980); *Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52 (Mo. App. 1990).

### **B. Emergency Meeting**

A Public Meeting may be held with less than twenty-four (24) hours notice if there is good cause to render such notice impossible or impractical. If such good cause exists, as much notice as is reasonably possible shall be given. Following the opening of the Public Meeting, the nature of the cause justifying the departure from the normal requirements shall be stated in the minutes.

### **C. Location of Public Meetings**

Public Meetings should be held at the principal office of the public body or otherwise stated meeting place, unless otherwise specified in the notice. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate attendance by members of the public. Where it is necessary to hold a Public Meeting in a location that is not reasonably accessible to the public, the reason for the selection of the meeting location shall be stated in the minutes at the opening of the meeting. At any Public Meeting conducted by telephone or other electronic means, the meeting notice shall designate a location at which the public may meet and observe and/or attend the meeting.

### **D. Minutes of Public Meetings**

The minutes of all Public Meetings should be taken and maintained by a custodian designated by the members of the public body. The minutes shall include, at a minimum, the date, time, place, public body members present, public

body members absent, and a record of any votes taken. If a roll call vote is taken, the minutes shall indicate the vote of each public body member as yea, nay, or abstain, if not voting.

#### **E. Recording of Proceedings at Public Meetings**

Public Meetings may be recorded electronically or otherwise by members of the public at that individual's or group's expense. In those instances where an audio recording of a Public Meeting is made by the public body, the public body should make copies of its audio recordings available upon written request to the Custodian at a price established by the public body. The price established may include on the cost of the staff time required for making a copy and the cost of the tape used for its duplication.

#### **V. Closed Meetings**

- A.** A Closed Meeting, portion of a meeting, or vote may be held for different reasons under the Sunshine Law including, but not limited to the following reasons, citing the applicable sections, *City of Springfield v. Events Pub. Co.*, 951 S.W.2d 366 (Mo. App. 1997)(stating that records are presumed public unless they clearly fit within an express exemption):
1. Legal actions, causes of action or litigation involving the public body and any confidential or privileged communications between the public body or its representatives and its attorneys (610.021(1), RSMo); *Tuft v. City of St. Louis*, 936 S.W.2d 113 (Mo. App. 1996)(stating that exemption covers pending and potential litigation matters); *Tipton v. Barton*, 747 S.W.2d 325 (Mo. App. 1988)(excluding city attorney billing statements with only general description of services from exemption);
  2. Leasing, purchase or sale of real estate by the public body where public knowledge of the transaction might adversely affect the legal consideration therefor (610.021(2), RSMo); *Spradlin v. City of Fulton*, 982 S.W.2d 255 (Mo. 1998);
  3. Hiring, firing, disciplining or promoting of particular employees by the public body when information relating to an employee's performance or merit is discussed or recorded (610.021(3), RSMo); *Smith v. Sheriff*, 982 S.W.2d 775 (Mo. App. 1998);
  4. Preparation, including any discussions or work product, on behalf of the public body or its representatives for negotiations with employee groups (610.021(9), RSMo);
  5. Software codes for electronic data processing and documentation thereof (610.021(10), RSMo);

6. Specifications for competitive bidding, until either the specifications are officially approved by the public body or are published for bid (610.021(11), RSMo); *Hanten v. School Dist. Of Riverview Gardens*, 183 F.3d 799 (8<sup>th</sup> Cir. 1999);
7. Sealed bids and related documents, until the bids are opened and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected (610.021(12), RSMo);
8. Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment (610.021(13), RSMo);
9. Records that are protected from disclosure by law (610.021(14), RSMo); *City of Springfield v. Events Pub. Co.*, 951 S.W.2d 366 (Mo. App. 1997)(weighing constitutional right to privacy against the Act);
10. Meetings and public records relating to scientific and technological innovations in which the owner has proprietary interest (610.021(15), RSMo); and
11. Confidential or privileged communications between the public body and its auditor, including all auditor work product (610.021(17), RSMo).

#### **B. Public Presence at Closed Meetings**

Members of the public shall be allowed to remain at a designated area on-site but outside of the room in which a Closed Meeting, closed portion of a Public Meeting, or Closed Vote is conducted, so as to allow members of the public to attend any subsequent portion of the Public Meeting that is not closed. *Smith v. Sheriff*, 982 S.W.2d 775 (Mo. App. 1998)(permitting 47 members of the public to attend closed meeting to provide information concerning firing of personnel)

#### **C. Notice of Closed Meetings & Vote Required**

A Closed Meeting, closed portion of a meeting or Closed Vote may be held if proper notice is given. In addition to the general notice requirements, the notice shall set forth the reason for closing the meeting, portion of the meeting or vote, with references to the specific section and subsection of the Sunshine Law allowing such action.

Prior to closing a Public Meeting, a portion of a Public Meeting or a vote, the presiding member of the public body shall state forth and include in the minutes of the Public Meeting, the specific section and subsection of the Sunshine Law upon which the decision to close the meeting, portion of the meeting or vote is based.

A Public Meeting or a vote may be closed to the public for any of the reasons enumerated above. Upon a roll call vote, a majority of the quorum present must vote in favor of a motion to close the meeting or vote, before such a meeting or vote is closed. The vote of each member of the public body on the question of closing a Public Meeting or vote and the specific reason for closing that Public Meeting or vote by reference to a specific section and subsection of the Sunshine Law shall be announced publicly at the Public Meeting and entered into the minutes of the Public Meeting.

Public Meetings shall be closed only to the extent necessary for the specific reason announced to justify the Closed Meeting, closed portion of a meeting, or Closed Vote. During the Closed Meeting or Closed Vote, the members of the public body shall not discuss business unrelated to the reason announced to justify closing the meeting, portion of a meeting, or vote.

A Closed Meeting, closed portion of a Public Meeting or Closed Vote may be held with less than the required notice if there is good cause to render such notice impossible or impractical, in which case the public body must give as much notice as is reasonably possible prior to closing the meeting or vote. The nature of the cause justifying the departure from the normal requirements shall be stated and included in the minutes of the Public Meeting.

#### **D. Minutes of Closed Meetings**

1. The minutes of all Closed Meetings, closed portions of Public Meetings, and Closed Votes shall be taken and maintained by the custodian of the public body or a person designated by the custodian.
2. The minutes shall include the date, time, place, members present, members absent and a record of any votes taken. Any Closed Votes shall be taken by roll call and the minutes shall indicate the vote of each member of the public body as yea, nay or abstaining if not voting.

### **VI. Public Records**

#### **A. Requests for Public Records**

The Public Record Custodian ("Custodian") is responsible for maintenance of public body's Records. The Custodian may delegate this duty. Requests for access to the Public Records shall be made to the Custodian. Requests may be made verbally (in person or by telephone) or in writing (by mail or electronically). If, for reasonable cause, by the end of the third (3<sup>rd</sup>) business day following the day of the Custodian's receipt of the request for access to those Public Records (*i.e.* day of receipt plus 3 days), access is not made available, the Custodian shall provide a written explanation of the cause of the delay and the place, time and date that the Public Records will be available for inspection. If a request for access to any Public Record of the public body is denied, the person seeking access may request a written statement of the grounds for denial. The written

statement should cite to the specific provisions of the Sunshine Law under which the access has been denied. *City of Springfield v. Events Pub. Co.*, 951 S.W.2d 366 (Mo. App. 1997).

## **B. Classification of Records**

1. Records which may always be closed to the public pursuant to the Sunshine Law with the applicable statutory reference, include:
  - a. Legal work product (610.021(1) RSMo);
  - b. Minutes of closed meetings regarding the hiring, firing, discipline or promotion of an employee of the public body (610.021(3) RSMo) (however, any vote taken must be made public within 72 hours of such vote);
  - c. Any Records pertaining to the state militia or National Guard (610.021(4) RSMo);
  - d. Any Record concerning non-judicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, alcoholism or drug dependency diagnosis or treatment (610.021(5) RSMo);
  - e. Any Record relating to scholastic probation, expulsion or graduation of an identifiable individual including records of that individual's test scores (610.021(6) RSMo);
  - f. Any Record relating to testing and examination materials prior to the exam being given (610.021(7) RSMo);
  - g. Any Record relating to welfare cases of identifiable individuals (610.021(8) RSMo);
  - h. Any Record relating to the preparation, including discussions or work product, on behalf of the public body or its representatives for negotiations with employee groups (610.021(9) RSMo);
  - i. Any Record relating to software codes for electronic data processing and documentation thereof (610.021(10) RSMo);
  - j. Any individually identifiable personnel Record, performance rating or Record pertaining to an employee or applicant for employment (610.021(13) RSMo) (however, this exemption shall not apply to names, positions, salaries and lengths of service of officers and employees a person is employed);



- k. Any Record which is protected from disclosure by law (610.021(14) RSMo);
  - l. Any Record, with the exception of a record of a Closed Vote, relating to scientific and technological innovations in which the owner has a propriety interest (610.021(15) RSMo);
  - m. Any Record relating to municipal hotlines established for the reporting of abuse and wrongdoing (610.021(16) RSMo); and
  - n. Any Record of a confidential or privileged communication between the public body and its auditor, including all auditor work product (610.021(17) RSMo).
2. The following Closed Records must be made available to the public as provided by the Sunshine Law and as described below:
- a. Minutes, votes and settlement agreements regarding legal actions or litigation must be made public upon the final disposition or upon the signing of a settlement agreement unless ordered closed by a court (610.021(1) RSMo) but even if a court orders a settlement agreement closed, the amount of any money paid by or on behalf of the public body must be disclosed;
  - b. Any vote involving the exercise of the power of eminent domain shall become public or be announced immediately following the action on the motion to authorize the institution of such legal action (610.021(1) RSMo);
  - c. Any information regarding the lease, purchase or sale of real estate where public knowledge might adversely affect legal consideration for the real estate may be closed, but the minutes, votes and records regarding these actions shall be made public within 72 hours after the execution of the lease, purchase or sale contract for the real estate (610.021(2) RSMo);
  - d. Any final vote regarding the hiring, firing, promotion or discipline of an employee must be made available with a record of each member's vote within 72 hours of the vote provided that the affected employee is entitled to prompt notice within that 72 hour period (610.021(3) RSMo);
  - e. Specifications for competitive bidding until the specifications are officially approved or published for bid may be closed, but once the specifications are officially approved or published for bid, they must be opened (610.021(11) RSMo); and

- f. Sealed bids and related documents may be closed until they are opened by the public body. Sealed proposals and related documents or any documents related to a negotiated contract may be closed until the contract is executed or all proposals are rejected (610.021(12) RSMo).

## VII. Remedies for Violations of the Sunshine Act

Any aggrieved person, taxpayer to, or citizen of Missouri, or the attorney general or prosecuting attorney, may seek judicial enforcement of the Sunshine Act. Suits to enforce the Sunshine Act are to be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon a showing, by the plaintiff, that the body in questions is subject to the Sunshine Act and has held a closed meeting, record or vote, the burden of persuasion is on the body and its members to demonstrate compliance with the requirements of the Sunshine Act.

Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has purposely violated the Sunshine Act, the public governmental body or member shall be subject to a civil fine in the amount of not more than five hundred dollars and the court may order the payment of all costs and reasonable attorney fees to any party successfully establishing a violation.

*The court shall then void any action taken in violation of the Sunshine Act, if the court finds that the public interest in enforcement of the policy of the Sunshine Act outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote.* Suit for enforcement must be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in circuit court to ascertain the propriety of such action, or seek a formal opinion of the attorney general or an attorney for the governmental body. *Spradlin v. City of Fulton*, 982 S.W.2d 255 (Mo. 1998)(permitting costs and attorneys fees against governmental officials for purposeful violations of the Act); *Deaton v. Kidd*, 932 S.W.2d 804 (Mo. App. 1996)(stating that good faith belief in propriety of action, if purposeful, is not relieved of liability); *Champ v. Poelker*, 755 S.w.2d 383 (Mo. App. 1988)(stating that there is no personal liability for expenditures authorized during unlawful meeting); *Buckner v. Burnett*, 908 S.W.2d 908 (Mo. App. 1995)(stating that injunctive relief ordering compliance with future requests is not provided for by the Act); *State ex re. Page v. Reorganized School Dist. R-VI of Christian County*, 765 S.W.2d 317 (Mo. App. 1989)(permitting action taken at unlawful closed meeting where public interest in sustaining action outweighs public interest in enforcement of the Act)