EVERYTHING YOU WANTED TO KNOW ABOUT CITY GOVERNMENT…

City of Manhattan Kansas

2017

But were afraid to ask.

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THE CITY MANAGER PLAN ACT

Pursuant to a Kansas law known as the City Manager Plan Act, Manhattan adopted the City Manager-Commission form of government by an election, held in the late 1950s. The City Commission is the City's governing body, serving as the policymaking body for the City. The Commission consists of five commissioners, elected at large, on a staggered basis. The Commission chooses a chairperson to run its meetings, and the chairperson is given the title of Mayor so that the City has an official head on formal occasions. However, the Mayor has no more power or authority, except as chairperson of the meetings, than the other elected Commissioners.

*The City Commission is the legislative body of the City.

*The City Manager is the administrative head of the City.

The Commission appoints the City Manager, based solely upon administrative ability, and the City Manager holds office at the Commission's pleasure. The City Manager implements the City Commission's policies, as directed by a majority. In fact, City ordinance specifically prohibits an individual Commissioner from directly interfering with the business of a City department.

City ordinance sets forth the City Manager's duties in more detail:

> "The manager shall be responsible for the administration of all of the affairs of the City. He shall see that all of the laws and ordinances are enforced. He shall appoint and remove all heads of departments and all subordinate officers and employees of the City. All such appointments shall be made upon merit and fitness alone. He shall be responsible for the discipline of all appointed officers, and may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. He shall prepare and submit the annual budget to the governing body and also keep the City fully advised as to the financial condition and needs of the City. He may make recommendations to the Commissioners on all matters concerning the welfare of the City, and shall have a seat, but no vote, in all of the public meetings of the Governing Body. He shall perform such other and further duties as may be required by law or ordinance."

CITY COMMISSION ACTION

The City Commission can only take action at a legislative meeting open to the public. A majority of the governing body (≥3 members) must vote to take the action, unless state law requires a supermajority (≥4 members). The action may take a variety of forms, including the adoption of an ordinance or resolution, approval of a contract or project, or authorization for City Administration to pursue a particular course of action. Most ordinances adopted by the Commission are codified in the City of Manhattan Code of Ordinances, commonly referred to as the "Code Book" or "City Code."

OTHER CITY BOARDS & COMMITTEES

The City has a wide variety of other boards and committees comprised of individuals appointed by the Mayor with the Commission's consent. Most of these boards cannot take action, but advise the Commission in a specific subject area. They make recommendations to the Commission or City Administration on policies, projects, programs, etc.

However, two City boards make determinations about the application of City Codes to certain properties: the Code Appeals Board and the Housing Appeals Board. Also, the Board of Zoning Appeals and Manhattan Urban Area Planning Board are created pursuant to state law and operate differently than typical advisory boards.

The Riley County Police Department Law Board is the governing body of the consolidated law enforcement agency. The Law Board is comprised of members of the City Commission, citizens, and Riley County officials. The Law Board is not part of the City.

- Aggieville Business Improvement District
- Airport Advisory Board
- Arts and Humanities Advisory Board
- Bicycle and Pedestrian Advisory Committee
- Board of Zoning Appeals
- Cemetery Board
- City/University Special Project Fund Committee
- Code Appeals Board
- Douglass Center Advisory Board
- Downtown Business Improvement District
- Flint Hills Discovery Center Advisory Board
- Historic Resources Board
- Housing Appeals Board
- Human Rights & Services Board
- Manhattan Urban Area Planning Board
- Municipal Audit Committee
- Parks and Recreation Advisory Board
- Partner City Advisory Committee
- Social Services Advisory Board
- Special Alcohol Funds Advisory Committee

ROLE OF THE LEGAL DEPARTMENT

The Legal Department consists of two divisions: the Manhattan Municipal Court and the City Attorney's Office. The City prosecutors in the Manhattan Municipal Court prosecute violations of City ordinances before the Municipal Judge. The Municipal Court only hears criminal cases; under state law, a municipal court has no jurisdiction over civil cases. Appeals are taken to the district court.

The City Attorney's Office ("CAO") provides general legal counsel to the municipality as an organization. The organization can only act through its people; thus, the CAO delivers its legal services to City Commissioners and City staff. The CAO cannot provide legal advice to any party other than the City. The CAO attorneys are licensed to practice law in the State of Kansas, and must comply with certain professional obligations to maintain their licenses and to ethically serve their client: the municipality.

The CAO must exercise independent judgment and render candid advice, although the advice may consider relevant financial, social, practical and political factors. The CAO's advice may include a legal risk assessment, evaluating the facts and law, the likelihood of a lawsuit, the City's vulnerability in a lawsuit, the City's ability to defend a lawsuit, factors that may influence settlement, etc. However, the CAO cannot dictate a particular course of action; the Commission or City Administration are the final decision-makers.

That said, if the CAO believes that a Commissioner or employee is acting in a way that could substantially injure the municipality (due to legal risk or other risks), then the CAO must ask the Commissioner/employee to reconsider the action. Also, the CAO must notify a higher authority in the City of the matter.

OPEN GOVERNMENT: THE KANSAS OPEN RECORDS ACT ("KORA")

Kansas' policy is to provide open and transparent governance. KORA declares that all records of City business, except those that are specifically exempted, shall be open to inspection by any person. KORA defines "public records" as "any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by, or is in the possession of" either the City or any City officer or employee pursuant to his/her official duties if related to City business. This includes electronic and print records.

Common KORA Exemptions

Some of the most common reasons the City withholds a record, based upon the KORA exemption number:

(4) Individual employee personnel records;

(5) Identity of an informant;

(12) Information about building/facility security or emergency planning;

(14) Certain correspondence between a private individual and the City;

(18) Plans, drawings or specifications prepared and owned by a private entity;

(20) Notes, preliminary drafts, data, memorandum, recommendations, etc., in which opinions are expressed or policies or actions are proposed, **as long as the record has not been publicly cited or identified in an open meeting or open meeting agenda**

(25) Attorney work product;

(28) Sealed bids, until a bid is accepted or rejected;

(31) Prospective business location, before public disclosure.

Any person can request a City record from the City Clerk. The City Clerk processes the request, checking with City departments and employees who may have relevant records. If records are found, the record is reviewed to determine if it (a) must be disclosed; (b) must be withheld; or (c) could be discretionarily withheld.

The City does not have to disclose all records to the public; some records cannot be disclosed, while the City has the discretion to withhold other records. KORA lists 52 types of records that are considered "exemptions" to the policy of public disclosure. The overarching reasons to withhold a record relate to the protection of individual privacy; the need to preserve the City's ability to function effectively and efficiently; and the inherent confidentiality of certain functions.

In 2016, the Kansas legislature amended the definition of "public records" to include records of City business that are made, kept or maintained by any City officer or employee, in the course of his/her official duties, at *any location*. If a City employee sends a text relating to City business on his/her personal cell phone pursuant to his/her official duties, the text record from the personal cell phone is a public record, even if the City does not have the record. The City has a duty to attempt to retrieve the record from the City official/employee's personal device or location.

The law still exempts City Commissioners from this rule, to a degree. The definition of "public record" does not include records that a City Commissioner makes, keeps or maintains personally, unless the record is somehow also kept by the City. For example, the City Commissioner's record may be a public record if it was viewed or created on a City computer, stored on a City server, or emailed or texted to a City employee. Of course, a City Commissioner's record could still be withheld pursuant to a KORA exemption.

OPEN GOVERNMENT: THE KANSAS OPEN MEETINGS ACT ("KOMA")

Kansas' commitment to open government is also evidenced by KOMA, which requires that all meetings at which the City conducts its affairs or transacts business be open to the public. The term "meeting" is defined as "any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication," by a majority of the membership of a public body for the purpose of discussing City business. KOMA does not apply to internal City staff meetings; it only applies to meetings of the public body (City Commission) and its sub-entities (City boards and committees).

If a meeting is subject to KOMA, the City must provide notice of the meeting and make it possible for the public to attend the meeting. KOMA does not give the public any right to participate or speak at any meeting; KOMA only requires that the meeting be held in a way that the public can observe or listen.

Executive sessions provide the only opportunity for the Commission to discuss City business outside of a public meeting. However, no binding action may be taken in executive session. The Commission can reach a consensus in the executive session, but the binding action must occur during the open meeting.

If three City Commissioners are gathered to discuss City business, even if it is not a City-held meeting, then the City must meet the KOMA requirements. If three City Commissioners are engaged in any form of interactive communication related to City business – such as conversing on a conference call or exchanging messages via email or text – the City must meet the KOMA requirements. KOMA also applies to serial communication, if the serial communication involves three Commissioners communicating about City business with the intent to reach agreement. Put another way, a "meeting" may occur when Commissioner 1 sends a City business message to Commissioner 2 who forwards it to Commissioner 3, even if the Commissioners are never on one email together.

Sometimes, a majority of City Commissioners are attending a social event, community event or meeting of another group. Attendance alone is not a KOMA violation, but each City Commissioner has a duty not to discuss City business when a majority of the City Commission is present. Every effort should be made to reduce or eliminate circumstances that may look suspicious to the public (such as gathering in a corner together) even if City business is not being discussed.

Any person can enforce KOMA by either filing a lawsuit or making a complaint to the county attorney or attorney general. The City as an entity may be held responsible, but in certain situations, individual Commissioners can be fined up to $500 per violation or be required to attend KORA training.

EXECUTIVE SESSIONS

Procedure:

- City Commission must be convened in a public meeting and make a motion to recess into executive session.
- The motion must state the justification for the executive session, the subject to be discussed, and the time the open meeting will resume.
- Discussion is limited to the subject in the motion.

Discussion Topic Examples:

- Personnel matters of non-elected personnel.
- Attorney-client discussion.
- Preliminary discussion relating to acquisition of real estate.
- Certain security matters.

CONFLICT OF INTEREST: GENERALLY

As a general rule, a Commissioner should not take an action in which he/she has a conflict of interest. Each individual Commissioner bears the responsibility and liability for knowing whether a given set of circumstances creates a conflict of interest. The City Manager's Office and City Attorney's Office will provide forms and advice to help a Commissioner determine if a conflict of interest exists. Provided that, we request as much advanced notice as possible to analyze the facts and circumstances; it can be difficult to provide guidance if the question is raised minutes before a Commission meeting.

There are four different types of conflicts of interest: state law, common law, City Code of Ethics and quasi-judicial matters.

State law definition of "Substantial Interest":

(1) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding $5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.

(2) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of $2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(3) If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of $500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(4) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States code, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

(5) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of $2,000 or more in the preceding calendar year.

CONFLICT OF INTEREST: KANSAS CONFLICT OF INTEREST ACT

K.S.A. 75-4304 prohibits any public official from making or participating in the making of a contract with any person or business by which the public official is employed or in whose business the public official has a "substantial interest." (This law does not apply to any contract that is let after competitive bidding which has been advertised by published notice, or to any contract for property or services for which the price or rate is fixed by state law).

A violation of K.S.A. 75-4304 is a misdemeanor criminal offense. To avoid a violation, a Commissioner must abstain from any action in regard to the contract. A Commissioner who violates this state law must either forfeit the public office or the employment.

A "business" includes any business form or business interest; it does not include not-for-profit entities. It is unclear whether it includes other government entities.

The phrase "participating in the making of a contract" means doing any act which assists in the furtherance of a contractual relationship between the City and the business. For instance, if a Commissioner

or Commissioner's spouse owns a lumberyard and a City employee purchased a pound of nails from the lumberyard on a City account, the Commission cannot vote on the appropriation ordinance which authorized the payment of the account. The appropriation ordinance consists of hundreds of line items, and it is possible to miss an item that pertains to a Commissioner. To avoid the inadvertent violation of the statute, City staff prepared a letter for individual commissioners to sign which directs the City Clerk to reflect abstention on any item on the appropriation ordinance that involves a business reflected on a Commissioner's Disclosure of Substantial Interest form.

K.S.A. 75-4305 is even broader in its application than K.S.A. 75-4304's rules related to the making of a contract. K.S.A. 75-4305 requires any Commissioner, before acting upon any matter which will affect any business in which the Commissioner has a substantial interest, to have reflected that business on his or her "Disclosure of Substantial Interest Form." A candidate is required to file this form when he/she files for office, or within ten (10) days thereafter.

A Commissioner files this form at the time of, or within ten (10) days after, filing to run for the Commission. In addition, a Commissioner must file an amended form between April 15 and April 30 when there has been any change in the preceding year. Finally, before acting on a matter that will affect a business in which a Commissioner has a substantial interest, if that business is not reflected on his/her current form, he/she must file an amended form.

K.S.A. 75-4305 specifically means that if a Commissioner or Commissioner's spouse is employed by a business, and the City Commission is considering an action which could affect that business, such as a zoning ordinance, or a widening of the street in front of the business, or a licensing of that type of business, the Commissioner should not participate in the action unless the Commissioner reported that interest on the Disclosure of Substantial Interest form.

CONFLICT OF INTEREST: COMMON LAW

The next type of conflict of interest arises at "common law," which means a court would consider whether the public official's financial or personal interest places him/her in a "situation of temptation to serve their own purposes, to the prejudice of those for whom they are sworn to act." The Commissioner is not required to exhibit any actual dishonesty. If a violation occurs, the City Commission's action may be invalidated.

It is difficult to describe circumstances to illustrate this principle, because the few court cases have held that no conflict exists. Each case would be evaluated on its own merits. Nonetheless, the Kansas Supreme Court has described this principle as follows: "a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interests of the public. If he acquires any interest adverse to those of the public, without a full disclosure, it is a betrayal of his trust and a breach of confidence."

CONFLICT OF INTEREST: CITY CODE OF ETHICS POLICY

The City adopted a Code of Ethics within its Personnel Policy and Procedure Manual. The Code of Ethics directs that a Commissioner should not vote on any matter if the Commissioner determines that factors exist, related to the Commissioner, which would prevent the Commissioner from acting in the best interests of the community or organization, as a whole, and, instead would tend to cause the Commissioner to act in his/her own self interest or in the special interests of others to the detriment of the community as a whole.

It is the Commissioner's responsibility and authority, alone, to determine those relevant factors; however, the Commissioner may request assistance from the City's legal staff, City Manager, other members of the Commission, or any other person the Commissioner deems appropriate.

CONFLICT OF INTEREST: QUASI-JUDICIAL ACTS

Some actions of the City Commission are considered "quasi-judicial." A "quasi-judicial" act is when the City Commission examines specific facts, applies a law or policy to the facts, and renders a decision that has limited effect on those other than the affected party. When the Commission sits in its "quasi-judicial" capacity, the Commission must provide constitutional due process, which means the affected party is entitled to a fair, open and impartial hearing. A Commissioner is advised not to prejudge the matter, or give any statements on outcome, prior to the Commission hearing. A Commissioner should base his/her decision only on the evidence presented during the hearing. If the Commissioner fails to take these precautions, the Commissioner may be subject to claims that the affected party was denied due process due to the Commissioner's bias and/or prejudgment.

At the City, zoning decisions are the most common "quasi-judicial" actions: rezoning, variances, special exceptions, subdivision approvals, etc. K.S.A. 75-4305 prevents a Commissioner from participating in a zoning decision that had any effect upon a business in which the Commissioner had a substantial interest, until the Disclosure form has been filed. However, simply filing the Disclosure form may not completely eliminate a conflict of interest if the affected party did not get due process (a fair, open and impartial hearing).

Kansas law has not set forth specific criteria to determine when a Commissioner may be inappropriately biased in a quasi-judicial proceeding. Kansas caselaw only states that each case will be evaluated based upon its specific facts and circumstances. However, a court would likely consider the factors at right (among others) to determine whether a Commissioner was biased or impartial.

I suggest that in any circumstance in which the appearance of a conflict exists, a Commissioner should review these criteria. If after such a review, a Commissioner believes a reasonable person would believe that a conflict of interest does not exist (meaning that the Commissioner could act impartially), then it is likely a court would agree.

FACTORS TO REVIEW FOR BIAS/IMPARTIALITY:

- The nature of the relationship between the Commissioner and the interested party.
- Whether the Commissioner has any direct financial interest in the interested party or property.
- The nature of the interest that the interested party has in the matter.
- Whether the decision will impact the relationship between the Commissioner and the interested party.
- Whether the interested party has taken an active position on the issue before the board, and if so, whether the Commissioner was involved in formulating that position on behalf of the interested party.
- Whether there have been discussions, outside the public hearing, between the interested party (or his/her representatives) and the Commissioner concerning the matter.
- Whether the Commissioner believes he/she can be impartial in deciding the issue, and base the decision solely upon information from the public hearing.
- Whether the public record completely discloses the relationship between the Commissioner and the interested party.
- Whether the Commissioner has disclosed any factors that are relevant to the concept of fairness in performing public business, as required by the City Code of Ethics.

However, a Commissioner is advised to take three steps if there is the possible suggestion of bias. First, the Commissioner should ensure that he/she has filed the Disclosure of Substantial Interest form required by K.S.A. 75-4305 before taking any action. Second, the Commissioner should state, publicly on the record, the answers to the above-mentioned factors. This would ensure that the public and a reviewing court would know the Commissioner's facts related to bias or impartiality. Third, when stating his/her decision, the Commissioner should state the reasons for the decision based upon the facts and evidence presented at the hearing, so it is clear that neither individual conclusions nor the final decision is related to any relationship with the affected party.

CITY LIABILITY/CLAIMS AGAINST THE CITY

It is not uncommon for an individual or entity to threaten to sue the City when they are displeased in some manner, or to file a claim against the City for some loss or damage they have sustained. Remember, if such action is taken, the City Commission (as part of the City) will be the "other side" (the defendant). It is rarely helpful for a Commissioner to comment on this threat or to make any statement or evaluation of a claim against the City. In other words, a Commissioner should not express any opinion as to whether the City is liable or make any promises that the City will pay for the claim. Any such commitments could prove difficult when all the facts, laws and legal responsibilities are known. Moreover, such commitment could have an adverse effect on the City's legal position, policy decisions and insurance coverage.

If an individual asks how to pursue a lawsuit against the City, a Commissioner should not provide any advice (which could be considered the unlicensed practice of law). A Commissioner should not respond, advise them to speak to their own attorney, or state that the Commissioner cannot comment on that issue.

If an individual asks about filing a claim for damage or injury against the City, please refer him/her to the Department of Human Resources to start the claim process. The law requires that a written claim must be submitted to the City, and the City has 120 days to respond before the individual is permitted to pursue the claim in court.

The City carries various forms of liability insurance that cover most claims. When a claim is filed, the City internally investigates the facts and circumstances surrounding the claim. If the claim amount exceeds the City's deductible, City Administration forwards the claim and investigation to the appropriate insurance carrier for review. If insurance coverage exists, the carrier usually makes the decision to pay or deny the claim. If there is no coverage, or if it is below the City's deductible amount, City Administration will determine whether to pay or deny the claim. The decision to pay or deny any claim is based upon the facts and circumstances and the liability of the City under the law.

SAMPLE EXEMPTIONS

The KTCA states that the City or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from a variety of circumstances, in sum, based upon the KTCA exemption letter:

(a) Legislative functions (adoption or failure to adopt any ordinance or resolution);
(b) enforcement of or failure to enforce a law;

(k) the failure to make an inspection, or making an inadequate or negligent inspection, of any property other than the property of the governmental entity, to determine whether the property complies with or violates any law or rule and regulation or contains a hazard to public health or safety;

(o) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury.

It is important to note that Kansas law protects municipalities from liability for many types of claims. For example, the Kansas Tort Claims Act (KTCA) makes the City immune from liability for a wide variety of functions. The City is liable under the KTCA for the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment only if: (1) a private person could be liable under the same circumstances, and (2) no statutory exception to liability applies. Whether the City has immunity from liability is fact-specific; in other words, the City reviews the facts of each case and applies the law to those specific circumstances.

PLATTING/ZONING FUNCTIONS

The Commission performs platting and zoning functions to further land development. While the terms are sometimes used interchangeably, they are quite different.

Both processes begin when an applicant files an application with the Community Development Department to be heard by the Manhattan Urban Area Planning Board ("Planning Board"). The applicant must hold a neighborhood meeting prior to City action, and the City sends notice to all owners of property within two hundred feet (200') of the proposed zoning or platting. Once the applicant has completed the initial steps, the Planning Board conducts a public hearing on the request.

In a platting decision, the Planning Board itself decides whether the plat meets the subdivision regulations. If the Planning Board decides the regulations are met, the law requires the Board to approve the plat. If the plat does not meet the regulations, the Planning Board may deny the plat. Approval/disapproval of plats stops with the Planning Board. The City Commission has no authority to either approve or disapprove plats. However, plats are submitted to the Governing Body for a decision as to whether or not to accept the public easements and dedicated right-of-ways on the plats. The decision of whether or not to accept such public dedications must be based solely upon issues related to the ownership, improvement and maintenance of the public dedications by the City.

The Commission has no authority to approve or deny the Planning Board's platting decision. It can only accept or deny the public easements or rights-of-way.

In contrast, the Commission can approve or override the Planning Board's zoning decision, or return it to the Board for further consideration.

In contrast, in a zoning decision, the Planning Board, after conducting the public hearing, makes a recommendation to the Commission to either approve or deny the Planning Board's decision. The Commission may approve the recommendation of the Planning Board by either passing an ordinance if the recommendation was for approval, or by denying the application if the recommendation was for denial. The Commission may also disagree with the recommendation of the Planning Board. If the City Commission disagrees with the recommendation, it has two choices. The Commission can either send the request back to the Planning Board with a statement setting forth the basis for their disagreement, or it can take action contrary to the recommendation; however, this action, without first sending it back to the Planning Board, would take four votes of the Commission (a "supermajority"). If the matter is sent back, the Planning Board then reconsiders the matter and sends it back to the City Commission for final action. When the matter is returned, the City Commission can approve, deny or amend with a simple majority.

In 1978, the Kansas Supreme Court decided a landmark zoning case: Golden v. The City of Overland Park. Prior to Golden, a court only overturned a zoning decision if it was "unreasonable." That rarely happened, because judges gave wide deference to zoning as a "legislative" act.

The Supreme Court in Golden made a specific finding that when a City is considering a specific tract of land, as opposed to a general ordinance for the entire City, the zoning function is more quasi-judicial than legislative. While policy is involved in such a decision, the proceeding requires weighing evidence, balancing equities, applying rules, regulations and ordinances to facts, and resolving specific issues. Once the Supreme Court declared this process as quasi-judicial rather than legislative, the courts no longer feared overturning the governing body's decision.

Now, state law and City ordinance require the Commission to specifically state its reasons for a zoning action so a court can review those specific reasons to determine whether the decision was "reasonable" rather than based upon political whims. The Supreme Court in Golden did not like the city's explanations of its zoning decision, which included the following:

- "The zoning is likely to have a domino effect...."
- "The zoning is against the public interest...."
- "The zoning will be a possible cause of traffic problems, noise, and litter...."

The Supreme Court said those comments could apply to any proposed change to a more intensive land use, making the statements insufficient without more detail. The Golden decision listed factors that should be specifically addressed for a rezoning of a specific tract, and the Court recommended a written order. The Zoning Regulations were amended to comply.

The Community Development Department prepares a staff report that contains written determinations of the factors set forth to the right. In most instances, the Commission can merely adopt the staff report as its reasons for granting or denying a rezoning request. However, when individual Commissioners or the entire Commission disagree with any staff report conclusions, the reasons for a specific action must be enumerated and contained in the minutes to create a written record of the reasons for the action taken on a rezoning request. If the Commission does not specifically address any factor listed in the staff report, then it has adopted and affirmed what the staff report said.

Rezoning Factors

(1) the existing use of the property;
(2) the physical and environment characteristics of the property;
(3) the zoning and land uses of nearby properties;
(4) the suitability of the subject property for the land uses to which it is restricted under current zoning;
(5) the character of the neighborhood;
(6) the compatibility of the proposed zoning district with nearby properties and the extent to which it may detrimentally affect those properties;
(7) the conformance of the requested change to the adopted Comprehensive Plan for the City of Manhattan (If the proposed amendment is in accordance with said Comprehensive Plan, it shall be presumed to be reasonable.);
(8) the zoning history of the subject property and the length of time it has remained vacant as zoned;
(9) whether the proposed district would be consistent with the intent and purpose of these regulations;
(10) the relative gain to the public health, safety and welfare that a denial of the proposed amendment would accomplish, compared with the hardship imposed upon the individual owner that would result from such denial;
(11) whether adequate sewer and water facilities, streets and other needed public services exist, or can be provided to serve the uses that would be permitted by the proposed zoning district;
(12) the recommendations of permanent or professional staff; and
(13) such additional matters as may apply in individual circumstances.

The Commission shall also consider the Planning Board's decision.

DISCLAIMER

This information contained in this document is provided for educational and informational purposes only to provide a summary overview of certain elements of local government. This document should not be construed as legal advice. The City Attorneys Office should be consulted as specific questions or matters arise to provide comprehensive, specific legal advice to City Commissioners or City Administration.

RESOURCES

City of Manhattan website:

http://cityofmhk.com/

Chapter 2, "Administration," of the Code of Ordinances of the City of Manhattan:

https://www.municode.com/library/ks/manhattan/codes/code_of_ordinances

Open Government:

http://ag.ks.gov/open-government

Kansas Open Records Act, K.S.A. 45-215 *et seq*.

Kansas Open Meetings Act, K.S.A. 75-4317 *et seq*.

Conflict of Interest:

Kansas Conflict of Interest Act, K.S.A. 75-4301a *et seq*.

City of Manhattan Code of Ethics, City Personnel Policy & Procedure Manual

City Liability/Claims:

Kansas Tort Claims Act, K.S.A. 75-6101 *et seq*.

Zoning/Platting

Manhattan Zoning Regulations: http://cityofmhk.com/458/Manhattan-Zoning-Regulations

Manhattan Subdivision Regulations: http://cityofmhk.com/DocumentCenter/Index/224