

LEGAL UPDATES

PUBLISHED: AUGUST 25, 2010

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# Missouri Implements New Notice and Public Comment Requirements for Some Public Meetings

House Bill 1444 requires that public bodies provide at least four (4) days notice for public meetings and a time for public comment where such meeting will include a vote to (i) implement a tax increase, or with respect to a retail development project, (ii) utilize the power of eminent domain, (iii) create a transportation development district (“TDD”) or a community improvement district (“CID”), or (iv) approve a redevelopment plan that pledges public funds as financing, such as with tax increment financing (“TIF”) redevelopment plans. The bill will go into effect as law on August 28th and will be codified as Section 67.2725 (RSMo). HB 1444 is of particular concern to municipalities, developers and other real estate development stakeholders.

The new notice requirements apply in certain circumstances based generally on the type of public meeting to be held and the subject of such meetings. The substance of the notices remains governed by Section 610.020 (RSMo); only the timing of those notices is modified by this law. HB 1444 contains some ambiguity that will require careful interpretation by interested parties, as described below. The bill does include several limitations on applicability. Also, the law introduces procedural requirements and consequences for violations.

## General Requirements

The new notice requirements apply to public meetings held by “the governing body of any county, city, town or village, or any entity created by such county, city, town or village.” More specifically, the law applies to public meetings where “a vote of the governing body” will be held on certain subjects. This would presumably not apply to any public meetings where the matter may be discussed but no vote will actually be held.

If a vote will be held at the public meeting, then the question of whether the new law applies will depend on the subject of that vote. First, the law would apply to any public meeting where a vote is required to implement a tax increase. There are no specifics as to the types of taxes at issue, but presumably any vote to implement an increase in local sales tax, real or personal property tax, local income tax or other taxes would be subject to the new notice requirements. Moreover, it is unclear whether this would include the initial implementation of a tax or only increases in previously established taxes. Despite this ambiguity, interested parties should assume that any action approving a tax implementation or increase of an existing tax would be subject to the new law.

Next, the law limits its applicability to a series of actions with respect to a retail development project. In this area, any vote to take one of the following actions would trigger the new requirements:

Utilize the power of eminent domain

Create a TDD or CID

Approve a redevelopment plan that pledges public funds as financing for the project or plan

Note that the law uses particularity in describing the actions to be voted on at the public meeting. A vote by a city council to issue TIF notes would arguably not be subject to this law, for example. Only the approval of a TIF redevelopment plan would be subject. Moreover, only a vote with regard to the creation of a CID or TDD is subject to this new law, while any other votes related to such subject would presumably not be. Again, with such ambiguity in the new law, interested parties should err on the side of compliance.

## **Limitations on Applicability**

In addition to not applying to votes on actions not precisely defined in the statute, the new law will also not apply to “any votes or discussion related to proposed ordinances which require a minimum of two separate readings on different days for their passage.” This is a notable limitation, as many public bodies require several readings of bills before they are finally voted on, and thus all such votes would be exempt from this new extended notice requirement.

The new law also states that the setting of annual tax rates provided under section 67.110 and 137.055 is exempt from inclusion as a “tax increase” under the statute.

## **Procedural Requirements and Effect of Non-Compliance**

When extended notice is required, the actual notice needs to conform to all the requirements of subsection 1 of section 610.020. The public body must give notice at least four days before a vote on the issue, excluding weekends and holidays when the public body’s facilities would be closed. These

requirements would presumably be in addition to any notice and public hearing requirements provided for in the various governing statutes of subjects of this new law (i.e. TIFs, CIDs, TDDs, etc.).

Also, each public meeting subject to the new law must include time for public comment and no vote may be taken until such public comment period has closed. Particular consideration should be given to this requirement, as a public comment period will need to be incorporated into all meetings subject to the new law. A meeting subject to the new law which previously was open to the public but did not specifically reserve time on its agenda for public comment should now do so to ensure compliance.

The effect of non-compliance with these new requirements is that “[n]o vote shall occur until after a public meeting on the matter at which parties in interest and citizens shall have an opportunity to be heard.” Further, “[i]f the notice required under this section is not properly given, no vote on such issues shall be held until proper notice has been provided.” In other words, the effect of non-compliance with either the public comment or notice requirements of the law is procedural delay, as failure to comply may be remedied at a subsequent meeting. Additionally, the sufficiency of notice may only be challenged within thirty (30) days of the subject meeting, or the meeting will be deemed to have been properly noticed and held.

### **What This Means To You**

While many public meetings will not be subject to these new notice and public comment requirements, this new law will demand increased diligence from both public bodies and private parties involved in all aspects of real estate development. All interested parties must be careful to assess whether a public meeting is subject to the new requirements, and then to ensure compliance with the new procedural obligations.

### **Contact Info**

If you have any questions about this or any other Real Estate and Development matters, please contact your Husch Blackwell Sanders attorney.

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