

PART II
ELECTIONS, ELECTED OFFICIALS, AND COUNCIL MEETINGS

**CHAPTER 6: ELECTED OFFICIALS AND COUNCIL STRUCTURE
AND ROLE**

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Chapter 6

Elected officials and council structure and role

The cornerstone of city government in Minnesota is the elected city council (“council”). The council fashions the policies that determine a community’s present and future well-being. Because people look to their local government for leadership, much of the responsibility for community development falls on the shoulders of city councilmembers.

Although the mayor is a member of the council in statutory cities and the clerk is a member of the council in Standard Plan cities, the mayor and clerk in all cities have some special duties. This chapter will discuss the special aspects of these positions and the council’s role in city governance.

I. Elected officials in general

Minn. Stat. § 412.02, subd. 1;
Minn. Stat. § 412.191, subd. 1.

Although not all statutory cities have the same elective offices, all must have a mayor and at least three councilmembers. Whether a statutory city elects other officers depends on several factors, including the plan of government under which it operates.

For home rule charter cities, the city’s charter specifies the type and number of elected officials.

A. Eligibility for office

Minn. Const. art VII, § 6; *See also, Jude v. Erdahl*, 296 Minn. 200, 207 N.W.2d 715 (Minn. 1973).

Minn. Const. art. VII, § 1.

The Minnesota Constitution sets the qualifications for elective office. To hold elective city office, individuals must be qualified city voters, at least 21 years of age on the date of taking office, U.S. citizens, and residents of the city for at least 30 days prior to the election. An individual who has been convicted of a felony under either state or federal law cannot hold elective office in Minnesota unless the individual’s civil rights have been restored.

Minn. Stat. § 351.02(6).
Minn. Stat. § 412.02, subd. 2a.

If an individual fails to qualify for elective office within the allotted time, the city council may, by resolution, declare a vacancy and proceed to fill it by appointment. Individuals appointed to fill vacancies must also satisfy the requirements for elective office.

Minn. Stat. § 10A.01, subd. 26; Minn. Stat. § 10A.07; Minn. Stat. § 10A.09, subds. 1, 6a.

Elected and some appointed officials of cities with populations over 50,000 located in the seven-county metropolitan area must comply with conflict-of-interest disclosure and economic-interest-reporting requirements. Candidates for elected office must submit statements of economic interest to the city council within 14 days of filing an affidavit of candidacy. Persons accepting employment as public or local officials must file the disclosure statement within 60 days of accepting employment. In both cases, the law requires the filing of supplementary annual reports.

B. Terms of office

Minn. Stat. § 412.02, subd. 2; Minn. Stat. § 351.02; 2010 Minn. Laws ch. 201, § 59.

Terms of office in statutory cities begin on the first Monday of January following the election. The terms of the old officers in statutory cities end at this time, or as soon after that as the newly elected officers qualify by taking an oath and filing a bond, if one is required. If the newly elected officer refuses or fails to qualify, the incumbent officer continues to hold office until the council declares the office vacant and appoints a successor. The terms of all city councilmembers in charter cities expire on the first Monday in January of the year in which they expire. The length of the various terms of office is provided by statute. The attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

A.G. Op. 471-M (Nov. 23, 1999).

C. Oath of office

Minn. Stat. § 358.05.

Whether or not officials need a bond, they must take and sign an oath of office before exercising any of their powers. This includes members of councils, boards, commissions, and administrative officers. This applies to appointed as well as to elected officials.

See Minn. Const. art. V, § 6.
Minn. Stat. § 358.06.

The required oath is: "I, (name) do solemnly swear to support the Constitution of the United States, the Constitution of the State of Minnesota, and to discharge faithfully the duties of the office of (insert brief description of office) of the city of (insert city), Minnesota, to the best of my judgment and ability, so help me God."

Minn. Stat. § 358.08.

If the officer objects to an oath on religious grounds, the word "affirm" can substitute for the word "swear," and the phrase "and this I do under the penalties of perjury" can substitute for the phrase "so help me God."

Minn. Stat. § 358.09;
Minn. Stat. § 358.10.

Any person with authority to take and certify acknowledgments may administer the oath, including the city clerk, a justice of the peace, a notary public or a register of deeds. The candidate taking the oath must lift his or her hand while reciting the oath. The candidate qualifying for office must take the oath and sign a copy of the oath in the presence of the administering official.

Minn. Stat. § 358.11(3); See "Bonds for City Officials and Employees," *Minnesota Cities*, May-June 2002.

The signed copy should go to the city clerk for filing. City assessors should file their copy with the county auditor. If an officer must also submit a bond, the oath should be attached to the bond and both documents should go to the council for approval and then to the clerk for filing.

D. Term limits

Minn. Const. art. VII, § 6;
*Minneapolis Term Limits
Coalition v. Keefe*, 535
N.W.2d 306 (Minn. 1995).

The Minnesota Constitution establishes the eligibility requirements for public office without authorizing the adoption of additional “eligibility” requirements. Therefore, a charter city may not enact term limits as an eligibility requirement.

E. Vacancies

Minn. Stat. § 351.02.

Vacancies in an elective office in a statutory or home rule charter city may occur for the following reasons:

1. Death

Minn. Stat. § 351.02(1), (8).

The vacancy exists as of the date of death. If the elected officer has not yet begun the term of office, the vacancy exists from the date the term would have started.

2. Resignation

Minn. Stat. § 351.02(2); Minn.
Stat. § 351.01, subd. 1.

A resigning elected public official must submit a written resignation to the council. After receiving a resignation, the council should pass a resolution stating it has received and accepted the resignation, and declaring that a vacancy exists.

Minn. Stat. § 351.01, subds. 2, 3, 4; See informal A.G. letter opinion dated March 3, 2003 (advising that Minnesota law does not require that a written resignation be “received” by the council during a formal meeting in order to be effective).

Unless the resignation expressly states it is to take effect at a future date, the resignation will be effective when received by the council. If the resignation states it takes effect on a specified date, the vacancy occurs on that date whether or not the council has accepted it. To withdraw a prospective resignation, the resigning officer must submit a written statement of withdrawal in the same manner as the resignation. In order to be effective, the withdrawal must be received before the council accepts the resignation by resolution or before an officer authorized to receive it has issued a written acceptance.

3. Removal by operation of law

In most situations, it is not possible to remove statutory elected officials before the end of their terms, for cause or otherwise. Cities should consult with their city attorneys before attempting removal of any elected official.

Statutory city voters have no recall authority. Some home rule charters, however, give voters this option, but there remains some question as to whether this type of charter provision is constitutional.

Minn. Stat. § 351.02(5).
A.G. Op. 490D (Nov. 18, 1952); Minn. Stat. § 609.02, subd. 2; Minn. Stat. § 609.42.

In certain situations, removal by operation of law can occur. A vacancy occurs if an elected official is convicted of any “infamous” crime. An infamous crime is a felony; that is, a crime for which a sentence of imprisonment for more than one year may be imposed. For example, bribery is a felony. Thus, a bribery conviction would result in the elected official’s immediate removal from office. Moreover, any public officer convicted of bribery is forever disqualified from holding public office.

Minn. Stat. § 609.43; Minn. Stat. § 609.02, subd. 4.

Misconduct of a public officer or employee, as defined by law, is a gross misdemeanor. Therefore, a misconduct conviction is not an infamous crime, and does not automatically result in an elected official’s removal from office.

Minn. Stat. § 351.02(5); Minn. Stat. § 358.05; Minn. Const. art. V, § 6.

See, Minn. Stat. §§ 609.415-.475.

A vacancy does occur, however, when an elected official is convicted of an offense involving a violation of the individual’s official oath. Many offenses that are not felonies or “infamous” crimes may involve a violation of an individual’s oath and may result in a vacancy upon conviction.

Minn. Stat. § 13D.06, subd. 3.

A vacancy also occurs if a councilmember is found to have intentionally violated the open meeting law on at least three separate occasions. If a court finds a third, separate intentional violation, it must declare the position vacant and notify the appointing authority or clerk.

4. Termination of city residency

Minn. Stat. § 351.02(4).

A vacancy occurs when a city councilmember ceases to be a resident of the city. Residence is a factual question the council must determine in each case. Voting in the city is only one indication of residence. The office holder’s intent and availability to perform official duties are additional criteria that should be considered. A councilmember becomes a non-resident when the property where the councilmember lives is detached from the city.

5. Failure to qualify for office

Minn. Stat. § 351.02(6).

An elected official may fail to qualify for office by refusing or neglecting to take the oath of office, to give or renew an official bond, or to deposit such oath or bond within the time prescribed by law. This type of vacancy is not automatic. A newly elected official may qualify at any time prior to the council declaring the office vacant.

6. Abandonment

A.G. Op. 99 (Aug. 26, 1920).

Whether an abandonment of office actually occurs is difficult to determine. The intent of the office holder is the controlling factor. The attorney general, while cautioning that this is a question of fact, has indicated that failure to participate in council activities for three months is sufficient grounds for declaring an abandonment of office.

7. 90-day absence rule

Minn. Stat. § 412.02, subd. 2b.

A vacancy in the office of mayor or councilmember may be declared by the council when the office holder is unable to serve in the office or to attend council meetings for a 90-day period because of illness, or because of absence from or refusal to attend council meetings for a 90-day period. If any of the preceding conditions occurs, the council may, by resolution, declare a vacancy and then fill it at a regular or special council meeting. The appointed councilmember will serve for the remainder of the unexpired term, or until the absent councilmember is again able to resume duties and attend council meetings, whichever is earlier. When the absent councilmember is able to resume duties and attend council meetings, the council shall, by resolution, remove the temporary office holder and restore the original office holder.

8. Qualifying for a second or incompatible office

See LMC Information Memo, *Official Conflict of Interest* for more information.

If an officer accepts a second office that is incompatible with the first, the first office is automatically vacated. (Section H of this chapter discusses incompatible offices in more detail.)

9. Expiration of elected term

Minn. Stat. § 412.02, subd. 2.

Generally, the vacancy occurring at the conclusion of an incumbent's term of office is filled immediately by the successor. If no one has been elected, the incumbent fills the office until the council appoints a successor and that person qualifies for the office.

10. Habitual drunkenness

Minn. Stat. § 351.07.

State law provides that the habitual drunkenness of any person holding office is good cause for removal from office.

F. Filling vacancies

Minn. Stat. § 412.02, subd. 2a.
A.G. Op. 59a-30 (July 24, 1996).

See "Vacancies on a Statutory City Council," *Minnesota Cities*, Oct. 2000.

While a council might identify and declare the facts giving rise to a vacancy, for all practical purposes they occur automatically and are not based upon any removal action. Because the council must fill vacancies in elective offices, it should determine whether a vacancy exists. After investigating the facts, the council should pass a resolution declaring a vacancy and then fill it as soon as possible.

Minn. Stat. § 412.02, subd. 2a.

A.G. Op. 471-M (Oct. 30, 1986).

State law provides that statutory city councils make the appointment to fill a vacancy, except in the case of a tie vote when the mayor makes the appointment. That means all members of the council, including the mayor, can vote on the appointment. And as long as at least a quorum of the council is present, a majority vote of those present is sufficient to make the appointment.

- Minn. Stat. § 412.121; Minn. Stat. § 471.46. State law does not place any limitation on a mayor's ability to make an appointment in the case of a tie vote. As a result, the mayor can appoint any qualified person willing to fill the vacancy even if that person was not the subject of the original appointment vote. If the vacancy is for the mayor's office and the council casts a tie vote, the acting mayor should make the appointment. The acting mayor may not, however, appoint himself or herself.
- Minn. Const. art. VII, § 6. The council may appoint any individual who is eligible for election to that office. Generally, to be eligible a person must be a U.S. citizen, a resident of the city, and at least 21 years old. The council is not obligated to appoint any candidate previously defeated in an election for the office.
- Minn. Stat. § 415.15.
A.G. Op. 471-M (Dec. 27, 1977). A retiring councilmember may not vote on the appointment of the successor to that vacancy. A councilmember who is elected mayor, however, may participate in the appointment vote to fill the vacancy in his or her former council position.
- Minn. Stat. § 412.02, subd. 2a. Under certain circumstances, individuals appointed to fill council vacancies serve on a temporary basis, and the city must hold a special election to elect a permanent replacement to fill the vacancy. Two factors determine whether an election is required: first, whether filing has opened for the next regular city election, and second, the length of the unexpired portion of the term at the time of the vacancy. If the vacancy occurs on or after the first day to file as a candidate for the next regular city election or if less than two years remain in the unexpired term, the city does not need to hold a special election, and the appointed person can serve out the remainder of the unexpired term. In the alternative, if the vacancy occurs before the first day to file as a candidate for the next regular city election and more than two years remain in the unexpired term, the city must hold a special election to fill the council vacancy at or before the next regular city election, and the person elected will serve out the remainder of the unexpired term. If the council chooses to hold a special election to fill a vacancy at a time other than at the regular city election, it must first adopt an ordinance specifying the circumstances under which such an election will be held.
- Minn. Stat. § 412.02, subd. 2;
A.G. Op. 471-M (Nov. 23, 1999). State law generally provides that the terms of elected city officials begin on the first Monday in January following the election. However, the attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

G. Councilmembers ineligible to fill certain vacancies

- Minn. Stat. § 471.46. City councilmembers, including mayors and elected clerks, may not be considered to fill vacancies in other city elective offices if the council has the power to make the appointment to fill the vacancy. This rule applies even if a councilmember resigns the position on the council before the council makes the appointment. An exception to this rule is that the council may appoint one of its members to the office of either mayor or clerk. In such a case, the councilmember being considered for the appointment may not vote.

H. Special concerns—gift law, conflicts of interest, and incompatible offices

There are several areas that are special concerns for all elected officials and some appointed officers. These include the following:

Gift law. City officials are generally prohibited from accepting gifts, although there are a few limited exceptions.

Conflicts of interest. Councils are generally prohibited from entering into a contract if one of their councilmembers has an interest in the contract. There are some exceptions to this rule.

Incompatible offices. City officials may not hold two offices that are incompatible.

In all three of these areas, the law is complex and whether a violation has occurred is not always clear. And even when a situation does not violate the law, people sometimes still question whether a city official has acted ethically. This section discusses each of the laws in more detail.

See n. LMC Information Memo. *Official Conflict of Interest.*



1. The law prohibiting gifts to city officials

With some exceptions, every gift to any city official is prohibited. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

An “interested person” is a person or a representative of a person or association with a direct financial interest in a decision the local official is authorized to make.

A “gift” means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

A “local official” means an elected or appointed official of a city, or of an agency, authority, or instrumentality of a city.

All members of the city council, appointed boards, commissions, and committees are covered by this law. The definition of an interested person implies that local officials who are authorized to make decisions or recommendations that could impact someone financially are also covered by the law. As a result, top appointed employees are likely covered, such as the manager, administrator, clerk, financial officer, and other department heads. Other covered city employees could include inspectors and people who can make decisions or recommendations about purchasing property, supplies or services. Indeed, it is possible to construct fact situations where almost any public employee can make or recommend actions that could affect someone’s direct financial interest. As a result, many cities interpret the gift law to apply to all city employees.

Minn. Stat. § 471.895.



Minn. Stat. § 471.895, subd. 1(c).

Minn. Stat. § 10A.071, subd. 1; Minn. Stat. § 471.895, subd. 1(b).

Minn. Stat. § 471.895, subd. 1(d).

An interested person under the gift law likely includes anyone who may provide goods or services to a city, such as engineers, attorneys, fiscal advisors, contractors, and sales representatives.

In addition, virtually every resident of the city and anyone doing business in the city could at some time have a direct financial interest in a decision a city official is authorized to make and thus could qualify as an interested person. The following are possible examples where a resident or business owner's financial interest could be affected:

- The levying of property taxes.
- The spreading of special assessments.
- The valuation of property for tax purposes.
- The issuing of a license.
- The zoning of property or granting of a land-use permit.

As a result, any person doing business or residing in the city is potentially an interested person as far as a city councilmember is concerned. Whether a resident or business owner is an interested person, as far as members of boards and commissions are concerned, depends on the types of decisions or recommendations the boards or commissions are authorized to make.

It is important to note that the decision or recommendation a city official is authorized to make does not have to be pending or probable. If an individual could at any time have a direct financial interest in a decision or recommendation that a city official would be authorized to make, that individual would likely be considered an interested person.

Minn. Stat. § 471.895, subd. 3; See opinions issued by the MN Campaign Finance and Public Disclosure Board relating to some of these exceptions.

There are a few limited exceptions to the gift law. For example, the following types of gifts are not prohibited:

- Political contributions.
- Services to assist an official in the performance of official duties.
- Services of insignificant monetary value.
- A plaque with a resale value of \$5 or less.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before whom the recipient makes a speech or answers questions as part of a program. (This exception probably permits only the principal speakers at meetings to receive gifts of food or beverage.)

- Gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is offered to or given to the other members of the group.
- Gifts given by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.
- Gifts given by a national or multi-state organization of governmental organizations or officials, if a majority of the dues to the organization are paid from public funds, to attendees at a conference sponsored by that organization if the gift is food or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

The law prohibits gifts to city officials, not to cities. Thus, an interested person can give a gift to a city. If the giver has no control over who will receive the gift and the gift was not targeted to a specific person, perhaps a city official could benefit from that gift. If the person who benefits from the gift has any control over its use, the gift would likely be prohibited. For example, if an interested person gave a city five tickets to a football game, the councilmembers probably could not decide to use the tickets for themselves.



2. Conflicts of interest

There are two types of conflicts of interest that a councilmember may encounter: those involving contractual decisions, and those involving non-contractual decisions.

Minn. Stat. § 471.87; Minn. Stat. § 412.311.

See LMC Information Memo, *Official Conflict of Interest*, for more information.

First, a councilmember of a statutory city may not have a direct or indirect personal, financial interest in any sale, lease or contract they are authorized to make in their official capacity. There are limited exceptions to this law. Unless there is an exception, any contract made in violation of this law is void.

City councilmembers, who knowingly authorize a prohibited contract, even though they do not benefit from it, may be guilty of a crime. The councilmember who would benefit from the contract could also be guilty of a crime if that person entered into it knowing it was prohibited. The contract is void even if the benefiting councilmember did not participate in the discussion of the contract or vote on the contract.



Second, there are also situations where councilmembers may find that they have an interest in a non-contractual decision the council will make. This type of interest does not have to be of a financial nature. These non-contractual matters may include such things as council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested councilmember most likely should abstain from participating in the council discussion and from voting on these issues.

3. Incompatible offices

A.G. Op. 358 (Dec. 18, 1970); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923); *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886).

McCutcheon v. City of St. Paul, 216 N.W.2d 137 (Minn. 1974).

See LMC Information Memo, *Official Conflict of Interest*, for more information.

See 2010 Minn. Laws ch. 206, §§ 1-2 to be codified at Minn. Stat. § 410.191 and Minn. Stat. § 412.02, subd. 1a.

A.G. Op. 471-M (Dec. 11, 1957).

See *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923);

Minn. Stat. § 471.46; A.G. Op. 256 (Jan. 17, 1935); A.G. Op. 235 (Dec. 31, 1928); A.G. Op. 234 (Dec. 19, 1927).

Incompatible offices are any public offices an individual may not hold simultaneously. The term “office” has been interpreted to include all elected offices and those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor’s approval. Without specific statutory authority government officials cannot hold more than one position if the functions of the positions are incompatible or if the jobs create a conflict between two different public interests. In addition, a new state law expressly prohibits the mayor and councilmembers in both statutory and home rule charter cities from being “employed” by their city. The term “employed” is defined as “full-time permanent employment as defined by the city’s employment policy.” The new law applies to persons elected or appointed to serve as mayor or city councilmember on or after Aug. 1, 2010.

Unless otherwise limited by law, an individual may apply for a job or run for an office that is incompatible with a current position without resigning from the current position. When the individual is elected or appointed to an incompatible office, the individual is considered to have resigned from the first position.

Generally, positions are incompatible when one or more of the following conditions exist:

If the holder of one position (or the group or board of which the person is a member):

- Hires or appoints the other.
- Sets the salary for the other.
- Performs functions that are inconsistent with the other.
- Makes contracts with the other.
- Approves the official or fidelity bond of the other.

If a specific statute:

See 2010 Minn. Laws ch. 206, §§ 1-2 (to be codified at Minn. Stat. § 410.191 and Minn. Stat. § 412.02, subd. 1a).

- States that certain positions may not be held by one person.
- Requires that the holder may not take another position.
- Requires that the holder devote full-time to the position.

Minn. Stat. § 412.152.
See LMC Information Memo, *Official Conflict of Interest*, for more information.

State statute allows a statutory city mayor to be the fire chief of an independent, nonprofit firefighting corporation if certain conditions are met. The statute, however, is unclear on several points. For example, it does not address council positions other than the mayor, so there still may be incompatibility concerns. It also appears to be limited to independent, nonprofit fire departments, so city departments (whether volunteer or salaried) are not addressed. Because each city may have a different relationship with its fire department, a city may want to get a legal opinion from its city attorney or from the attorney general before allowing a councilmember to serve as a firefighter with any sort of supervisory powers.

Minn. Stat. § 43A.32, subd. 2(b).

State law generally allows state employees to hold city offices as long as the positions are compatible. State civil-service employees can hold any local elected office as long as it does not conflict with their regular state employment. The Department of Employee Relations will make the determination of whether a conflict exists.

I. Publications and Web sites

Minn. Stat. § 10.60, subds. 2, 3.

The purpose of a city Web site or publication must be to provide information about the duties and jurisdiction of the city or to facilitate access to public services and information related to city responsibilities or functions. A city Web site or publication must not include pictures or other materials that tend to attribute the Web site or publication to an individual or group of individuals instead of to the city. A city publication must not include the words “with the compliments of” or contain letters of personal greeting that promote an elected or appointed official of a city.

Minn. Stat. § 10.60, subd. 3.

A city Web site may not contain a link to a Web-blog or site maintained by a candidate, a political committee, a political party or party unit, a principal campaign committee, or a state committee.

Minn. Stat. § 10.60, subd. 4.

A city Web site or publication may include biographical information about an elected or appointed official, a single official photograph of the official, and photographs of the official performing functions related to the office. There is no limitation on photographs, Web-casts, archives of Web-casts, and audio or video files that facilitate access to city information or services or inform the public about the duties and obligation of the city office or that are intended to promote trade or tourism. A city Web site or publication may include press releases, proposals, policy positions, and other information directly related to the legal functions, duties, and jurisdiction of a city official or organization.

Minn. Stat. § 10.60, subd. 5.

Cities may adopt more restrictive standards for the content of city publications or Web sites.

II. City council and its powers



It is the duty of the mayor, clerk, and councilmembers to ensure that the city is fulfilling its duties under the law and lawfully exercising its powers.

See Handbook, Chapter 18 for more information about personal liability for official actions.

City officials can sometimes be held personally liable for failing to act or for taking unauthorized actions on the part of the city. To avoid personal-liability lawsuits, city officials should gain a working knowledge of the laws that regulate city government. Whenever there is any doubt about the validity of an action or procedure, city officials should consult their city attorney.

A. Role of the individual councilmember



Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, it is the council and not individual councilmembers that must supervise administrative officers, formulate policies, and exercise city powers.

Councilmembers should devote their official time to problems of basic policy and act as liaisons between the city and the general public. Councilmembers should be concerned, not only with the conduct of daily affairs, but also with the future development of the city.

The most important single responsibility of a councilmember is participation at council meetings. In statutory cities, each councilmember, including the mayor, has full authority to make and second motions, participate in discussions, and vote on every matter before the council.

Minn. Stat. § 412.191, subd. 2;
Minn. Stat. § 13D.04.



In a statutory city, the mayor or any two councilmembers of a five-member council or any three members of a seven-member council may call a special meeting. Care should be exercised to give proper notice, however.

As individuals, councilmembers have no administrative authority. They cannot give orders or otherwise supervise city employees unless specifically directed to do so by the council. The council, however, has complete authority over all administrative affairs in the city. In Plan B cities, this authority is generally restricted to conducting investigations and establishing policies to be performed by the manager.

Minn. Stat. § 412.101
(repealed by Laws 2001, ch.
135, sec. 3).

Under state law that was repealed in 2001, all members of the council, including mayors, were "peace officers." Councilmembers were authorized to suppress any "riotous or disorderly conduct" in the streets or public places of the city. The mayor and individual councilmembers no longer have peace-officer authority.

B. The council's authority

Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467 (Minn. 1944).

The city council is a continuing body. New members have no effect on the body except to change its membership. This means that all ordinances and resolutions remain in effect until the council alters or rescinds them, or until they expire through their own terms. At any time, the council can change any resolution, ordinance or administrative order whether or not the individuals presently on the council are the same as those serving when the council originally took action.

Minn. Stat. § 306.41.

There are exceptions to this rule. For example, the council cannot dissolve a perpetual-cemetery-maintenance fund. In addition, the council cannot rescind or unilaterally alter any valid contracts. This means the law of contracts applies to the council as it does to any other party. Whether a contract was validly made is a question of fact.

Reed v. City of Anoka, 85 Minn. 294, 88 N.W. 981 (Minn. 1902).

The following information outlines the major areas of council authority and responsibility.

1. Judging the qualification and election of its own members

Minn. Stat. § 412.191, subd. 2.

The council evaluates the credentials of individuals who are, or who claim to be, members of the council. This power includes certifying election results, determining whether an individual has the necessary qualifications to hold office, and deciding whether a council vacancy has occurred.

2. Setting and interpreting rules governing its own proceedings

Minn. Stat. § 412.191, subd. 2.

The council has the following powers:

- To preserve order during its own meetings.
- To establish rules of procedure.
- To compel the attendance of members at meetings and to punish non-attendance. The council does not have the power to remove members from office, but it may punish members by fines or by deducting a part of the absentee's compensation for failure to comply with attendance orders.

See Minn. Stat. § 43A.17, subd. 10 (prohibiting the reduction of councilmembers' salaries because of absences from official duties because of vacation or sickness).

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3. Exercising all the powers of cities that the law does not delegate to others

Except for powers that the statutes delegate to a specific official or independent board or commission, the council has the authority to exercise all powers given to the city.

4. Legislating for the city

Minn. Stat. § 412.191, subd. 4.

The council may enact ordinances by a majority vote of all its members except where a larger number is required by law. The power to legislate also includes setting administrative policies and otherwise establishing public policy for the city.

Minn. Stat. § 412.231.

The council has the power to declare that violations of any ordinance are a crime and may prescribe penalties for ordinance violations. The statutory city code limits the penalty for ordinance violations to a fine of up to \$1,000 or 90 days in jail, or both.

5. Directing the enforcement of city ordinances

The council directs the enforcement of city ordinances by determining the level of law enforcement, setting qualifications for the police chief and police officers, purchasing certain types of equipment for police use, and by directing and supervising the work of police officers. The city council also directs all departments and employees responsible for the administration of its policies and ordinances in the general administration of their duties. The city council generally should not direct the enforcement efforts of its employees as to particular situations.

6. Appointing administrative personnel

In Standard Plan and Plan A cities, the council has the sole authority to appoint all city employees.

Minn. Stat. § 412.661.

In Plan B cities, the council appoints a city manager, who in turn appoints all city employees. The council may not dictate that the city manager appoint a particular person to city employment. Additionally, the council may not give any orders to employees hired by the manager.

7. Transacting city business

See Minn. Stat. § 412.201;
Minn. Stat. § 412.211.

The transaction of city business includes a wealth of activities, such as purchasing, executing legal papers, taking bids, letting contracts, making discretionary administrative decisions, and evaluating the work of the administrative departments and personnel.

8. Managing the city's financial operations

Minn. Stat. § 412.241.

The council has full authority over the city's financial affairs, including but not limited to:

Minn. Stat. § 412.251.

- Levying taxes.

Minn. Stat. § 412.701; Minn. Stat. § 275.065.

- Adopting a budget.

Minn. Stat. § 412.241.

- Auditing and settling accounts.

Minn. Stat. § 412.241.

- Safekeeping and disbursement of public money.

- Borrowing money.
- Designating depositories.

Minn. Stat. § 118A.02; Minn. Stat. §§ 427.01-.02.

Councils should seek the advice of their staff and of consultants in making many of these decisions.

9. Appointing members of the boards

Minn. Stat. § 412.111.

The council may create departments and advisory boards and appoint officers, employees, and agents for the city as deemed necessary for the proper management and operation of the city.

10. Conducting the city's intergovernmental affairs

Minn. Stat. § 471.59; Minn. Stat. § 465.58.

The council may make agreements for the joint exercise of powers through agreements with other units of government, appoint people to serve on intergovernmental bodies, conduct city business with state and federal agencies, and participate in intergovernmental programs and the work of municipal associations such as the League of Minnesota Cities.

11. Protecting the welfare of the city and its inhabitants

Minn. Stat. § 412.221, subd. 32.

Elected officials must formulate policies that will help the city solve future problems and adjust to social and economic trends. This requires long-range planning regarding city facilities and needs.

12. Providing community leadership

In addition to participating in civic events, city officials must provide leadership by promoting new ideas and suggesting new programs to improve the community and its surrounding areas.

13. Other specific powers

The city council also has specific powers in the following areas:

Minn. Stat. § 412.221, subds. 3, 28.

Buildings. The council has the power to construct or acquire structures needed for city purposes, and to control, protect, and insure public buildings, property, and records. The council also has the power, by ordinance, to regulate the construction of buildings.

Minn. Stat. § 412.221, subd. 5.

Actions at law. The council has the power to provide for the initiation or defense of actions in which the city may be interested. The council may employ attorneys for this purpose.

Minn. Stat. § 412.221, subd. 6.

Streets. The council has the power to lay out or change streets, parks, and other public grounds. By ordinance, the council may regulate the use of streets and public grounds.

- Minn. Stat. § 412.491. **Parks.** A statutory city may establish, improve, maintain, and manage parks and recreational facilities and, by ordinance, protect and regulate their use.
- Minn. Stat. § 412.221, subd. 8. **Trees.** The council has the power to provide for and, by ordinance, regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.
- Minn. Stat. § 412.221, subd. 9. **Cemeteries.** The council has the power to acquire, hold, and manage cemetery grounds and to sell and convey cemetery lots. By ordinance, the city may regulate cemeteries and the disposal of cadavers.
- Minn. Stat. § 412.221, subd. 11. **Waterworks.** The council has the power to provide for and, by ordinance, regulate the use of wells, cisterns, reservoirs, and other types of water supply.
- Minn. Stat. § 412.221, subd. 16. **Hospital.** The council has the power to establish hospitals.
- Minn. Stat. § 412.221, subd. 17. **Fire prevention.** The council has the power to establish a fire department, appoint its officers and members, and prescribe their duties. The council also has the power, by ordinance, to prevent, control or extinguish fires.
- Minn. Stat. § 412.221, subd. 18. **Naming streets.** The council has the power, by ordinance, to name or rename the streets and public places of the city and to number or re-number the lots and blocks of the city. The council may make and record a consolidated plat of the city.
- Minn. Stat. § 412.221, subd. 21. **Animals.** The council has the power, by ordinance, to regulate the keeping of animals, to restrain their running at large, and to authorize their impoundment and destruction.
- Minn. Stat. § 412.221, subd. 22. **Health.** The council has the power, by ordinance, to provide for the disposal of solid waste, sewage, garbage, and other unwholesome substances.
- Minn. Stat. § 412.221, subds. 24, 25. **Noise and nuisances.** The council has the power, by ordinance, to regulate and prevent noise and to define and provide for the prevention or abatement of nuisances.
- Minn. Stat. § 412.221, subd. 25. **Amusement.** The council has the power, by ordinance, to prevent or license and regulate, billiard tables, bowling alleys, gambling devices, circuses, theatrical performances, amusements, or shows of any kind.
- Minn. Stat. § 412.221, subd. 26. **Vice.** The council has the power, by ordinance, to restrain and punish vagrants, prostitutes, and individuals guilty of lewd conduct.
- Minn. Stat. § 412.221, subd. 27. **Dances.** The council has the power, by ordinance, to license and regulate the operation of public-dance halls and the conduct of public dances.
- Minn. Stat. § 412.221, subd. 30. **Restaurants.** The council has the power to license and regulate restaurants and public-eating places.
- Minn. Stat. § 412.221, subd. 31. **Sewer and water connections.** The council has the power, by ordinance, to require the owner of any property that is abutting or adjacent to any street in which sewer and water mains have been laid to install a toilet in such buildings and connect it with the sewer and water mains.

Minn. Stat. § 412.221, subd. 32.

General welfare. The council has the power to provide for the government and good order of the city, the prevention of crime, the protection of public and private property, and the promotion of health, order, and convenience through the enactment of ordinances.

Minn. Stat. § 415.01.

Township powers. The council has all the powers given to towns in chapters 365 and 368 of the Minnesota Statutes.

C. Council committees

Although the statutes do not require the use of committees, some councils find they are helpful in reducing workload. By dividing their membership into several committees, a council enables its members to devote most of their time to specific areas of the city's operations. Each councilmember becomes a relative specialist in these areas and that councilmember's services become of greater value to the council as a whole.

Council action is necessary to establish committees either in the council's bylaws, by special resolution or through a motion.

The council may set up special and standing committees. The council appoints special committees to deal with a single transaction or project. For example, the council might appoint a special committee to study the advisability of purchasing land for a new park. Standing committees concentrate on work that is continuous or repeated from time to time during the year. Many cities, for example, have a standing committee on finance.

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Sometimes councils set up their committees on a functional basis. Such committees deal with fire, police, health, public works, welfare or public utilities. This system encourages councilmembers to handle administrative details and, consequently, does not make full and proper use of the city's administrative officers. Thus, councils should try to limit their work to special policy problems or to certain staff or public-relations functions that are not the responsibility of administrative personnel. Examples include committees on auditing, personnel, budget, public reporting, purchasing, and licensing.

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Committees may exercise all duties the council has legally assigned to them. They can have authority to conduct investigations and to make recommendations. Committees, however, may not make decisions on behalf of the council. Committees are subject to the same rules as the full council under the open meeting law.

In many cities, it is routine for the council to approve a committee's recommendations if it has done a thorough and competent job. It is important, however, for all councilmembers to be aware of their independent obligation to the city when considering whether to adopt a committee's recommendation. It is only the council's final decision, and not the committee's recommendation, that can bind the city. For example, committees may not enter into contracts or employ workers even if a specific motion of the council delegates such power to them.

D. Delegation of council power

A.G. Op. 624a-3 (Nov. 2, 1998).

Muehring v. School Dist. No. 31, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947); *Jewell Belting Co. v. Village of Bertha*, 91 Minn. 9, 97 N.W. 424 (Minn. 1903); *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Absent specific statutory or charter authority, a city council may not delegate its legislative or quasi-judicial power. In addition, a council may not delegate any administrative power of a discretionary nature. Merely ministerial functions, however, may be delegated to an officer or committee.

1. Discretionary and ministerial powers

The courts have not been explicit in describing the meaning of discretionary administrative power. They have, however, provided several rules that offer some basis for distinguishing which powers the council can delegate.

Johnson v. State, 553 N.W.2d 40 (Minn. 1996).

Discretionary powers or functions are those that involve the exercise of judgment. Ministerial functions are absolute, fixed, and certain so that no judgment is necessary in fulfilling them.

For example, the approval of a budget is a discretionary function while the signing of legal papers is a ministerial function. There are many tasks, however, for which the difference is largely one of degree. The courts, in these cases, generally differentiate by using a test of reasonableness.

2. Administrative standards

Courts generally permit the delegation of administrative power when the council establishes a fixed standard or rule to guide the subordinate. The courts usually permit delegation when the subordinate has reasonable discretion in administering an established standard or rule. Administration of land-use ordinances, building codes, and many other ordinances are examples.

3. Making vs. executing the law

Finally, the courts sometimes recognize a distinction between the power to make the law and the authority to execute it. A council cannot delegate the power to make a law, but the council can delegate the authority to execute it.

E. Salaries of mayor and councilmembers

Minn. Stat. § 415.11; See "Changing City Council Salaries," *Minnesota Cities*, Sept. 2002.

The city council in Second Class, Third Class, and Fourth Class cities establishes, by ordinance, the salaries of the mayor and councilmembers in an amount that the council deems "reasonable." Generally, no change in salary shall take effect until after the next succeeding regular city election.

Minn. Stat. § 415.11,
subd. 3.

A city council, however, may adopt an ordinance to take effect before the next city election that reduces the salaries of the mayor and councilmembers. The ordinance shall be in effect for 12 months, unless another period of time is specified in the ordinance, after which the reduced salary reverts to the salary in effect immediately before the ordinance was adopted.

Salaries may be an annual or monthly sum, or a per-meeting rate. The ordinance should specify whether the per-meeting rate applies only to regular meetings or to both regular and special meetings.

Minn. Stat. § 43A.17,
subd. 10.

Cities are prohibited from including provisions for vacation or sick leave in the compensation plan for councilmembers. Cities are also prohibited from reducing the salaries of councilmembers because of absences from official duties because of vacation or sickness.

Minn. Stat. § 415.10.

Iron Range cities have special legislative authority to make per-diem payments to councilmembers up to \$25 per day, not to exceed \$250 per year, for absences from the city while on official city business.

See IRS Publication
1542—*Per Diem Rates*
(*For Travel Within the*
Continental United
States); IRS Publication
463—*Travel,*
Entertainment, Gift and
Car Expenses; IRS
Publication 15—
Circular E. Employer's
Tax Guide.

Some non-Iron Range cities have sought to pay their councils using per-diem rates. Cities should be careful in this area. A per diem is an expense allowance or an advanced reimbursement for business travel away from home. The IRS has strict guidelines for per-diem pay, including dollar limits above which the per diem must be treated as wages for tax purposes. Cities wishing to establish per-diem rates for councilmembers should consult with their financial advisors or the IRS for further guidance.

Minn. Stat. § 211B.10, subd. 2.

An employer must allow a councilmember to take time off from regular employment to attend council meetings. The time off may be without pay, with pay or made up with other hours as agreed to between the employee and the employer. When the councilmember takes time off without pay, the employer must make an effort to allow the employee to make up the time with other hours when the employee is available. No retaliatory action may be taken by the employer for absences to attend meetings necessitated by reason of the employee's public office.

III. Mayor

Minn. Stat. § 412.191, subds.
2, 1.

As the head of the city, the mayor officially speaks for both the council and the community as a whole. In all statutory cities and in most charter cities, the mayor is the presiding officer and a regular member of the council. The mayor has all the powers and duties for the office of councilmember in addition to those of mayor.

In a home rule charter city, the charter spells out the duties and responsibilities of the mayor. This chapter, however, deals with mayors of statutory cities.

Many mayors belong to the Minnesota Mayors' Association (MMA), which is affiliated with the League and holds an annual conference on issues of interest to mayors. Contact the League for more information about the MMA.

A. Official head of the city

As the official head of the city, the mayor has three important responsibilities:

First, the mayor usually serves as the city's representative before the Minnesota Legislature, federal agencies, and other local governments.

Second, the mayor performs ceremonial duties on behalf of the community. The mayor usually greets important visitors, gives formal and informal talks, and takes part in public events. Because local civic groups frequently ask the mayor to speak, the mayor must be prepared to explain and defend city problems and programs.

A third responsibility is to exert leadership in city affairs. Because the mayors of statutory cities lack significant individual authority, this responsibility frequently calls for tact rather than overt acts of direction or supervisory control.

B. Executing official documents

Minn. Stat. § 412.191, subd. 4;
Minn. Stat. § 412.201;
A.G. Op. 61-J (June 2, 1966).

The mayor of a statutory city must sign ordinances, contracts authorized by the council, and written orders for payment of claims that have been audited and allowed by the council. These are ministerial duties, and the mayor may not refuse to sign if the purpose, approval, and form are legally correct and complete.

C. Power to make some appointments

The power to appoint usually resides in the council. The mayor has authority to make the following appointments, however, subject to council approval:

Minn. Stat. § 412.501. (The council appoints the members of an advisory park board or commission created under Minn. Stat. § 412.111.)

Minn. Stat. § 134.09, subd. 1;
Minn. Stat. § 134.195, subd. 2
(joint school and public library).

Minn. Stat. § 12.25, subd. 1.

Minn. Stat. § 412.221, subd. 16.

Minn. Stat. § 44.04, subd. 1;
See Minn. Stat. § 419.02, subd. 1 (authorizing the creation of a joint police and fire commission with members appointed by the council).

Minn. Stat. § 469.003, subd. 6.

Minn. Stat. § 469.095,
subd. 2.

- Park board members.
- Public library board members.
- Emergency management director.
- Hospital board members.
- Some members of the police civil-service commission.
- HRA members.
- EDA members.

The mayor has authority to make the following appointments without needing council approval:

Minn. Stat. § 450.20.

- City art commission members (First Class cities).

Minn. Stat. § 412.02, subd. 2a.

- The mayor also appoints to fill vacancies in elective offices if the council's vote to fill the vacancy is tied.

D. Presiding officer at council meetings

Minn. Stat. § 412.191, subd. 1.

Plan A and Plan B statutory city councils are usually composed of five members consisting of the mayor and four councilmembers. In a Standard Plan city, the council consists of the mayor, the clerk, and three councilmembers. Any statutory city, however, may adopt a council size of seven following a council ordinance and voter approval at the next general city election.

Minn. Stat. § 412.02, subd. 6.

Minn. Stat. § 412.191, subd. 2.

The mayor serves as presiding officer at council meetings. The mayor generally recognizes speakers for debate and motions, and rules on questions of council procedure. The power to rule on council procedure is especially significant because once rulings are made they are binding on the council, unless the council votes to challenge them.

Minn. Stat. § 412.191, subd. 2;
See "Mayor's Power to Vote and Make Motions,"
Minnesota Cities, Jan. 2004.

A statutory city mayor can vote on all motions put before the council, but does not have the right to veto council actions. The right of the mayor to make and second motions is implied from the mayor's privilege of voting and taking part in regular council deliberations. The mayor has an obligation to be impartial and objective in conducting the meeting. To maintain this objectivity, many mayors choose to minimize making or seconding motions, and to allow other members of the council to speak before expressing an opinion. Mayors may also call special meetings.

E. Weed inspector

Minn. Stat. § 18.80, subds. 2, 3.

The mayor is the city weed inspector. The city may appoint one or more assistant weed inspectors. An assistant weed inspector has the same power, authority, and responsibility of the mayor in the capacity of weed inspector.

Minn. Stat. § 18.81, subd. 2.

Local weed inspectors examine all lands, including highways, roads, and alleys, to determine if the landowner has complied with the rules regarding the eradication of noxious weeds. Weed inspectors also issue permits for the transportation of materials infested with noxious, weed-propagating parts. A claim for the expenses of performing the weed inspector's duties is a legal charge against the city.

F. Election duties

Minn. Stat. § 204C.07, subds. 3, 4.

Mayors of all cities have election duties. At elections where cities will vote on a question, the mayor, upon receiving a written petition signed by at least 25 eligible voters, must appoint one voter for each precinct to act as a challenger of voters in the polling place. A challenger must be present in the polling place during voting hours, and must remain until the votes are counted and the results declared. Challengers cannot attempt to influence voting in any manner.

Minn. Stat. § 204C.31, subd. 1.

Mayors or chairs of the town board from the most populous municipality in each county serve as members of the county-canvassing board. Any member of the canvassing board may appoint a designee to appear at a meeting of the board.

G. Investigating fires

Minn. Stat. § 299F.04.

In cities without fire departments, the mayor must investigate or have investigated the cause, origin, and circumstances of any fire where damages exceed \$100. The investigation must begin within two days of the fire. The mayor must report the fire to the state fire marshal. Within one week of the fire, the mayor must furnish a written statement to the state fire marshal.

H. Declaring local emergencies

Minn. Stat. § 12.29, subd. 1.

Only the mayor can declare a local emergency. A local emergency cannot last for more than three days except with the council's consent. A local emergency must receive prompt and general publicity. The clerk must promptly file any order or proclamation declaring, continuing, or terminating the emergency.

Minn. Stat. § 12.29, subds. 2, 3.

A declaration of a local emergency invokes the response and recovery aspects of any local or interjurisdictional disaster plans and may authorize aid and assistance. No interjurisdictional agency or official may declare a local emergency unless expressly authorized by an agreement. An interjurisdictional disaster agency must provide aid and services in accordance with the agreement.

IV. Clerk and treasurer

See LMC Information Memo, *City Administration: Clerk, Administrator, Manager*, for more information regarding the clerk position.

This section gives an overview of the positions of clerk and treasurer.

A. Clerk

Minn. Stat. § 412.191, subd. 1; Minn. Stat. § 412.02; Minn. Stat. § 412.151.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8 for more about the Clerk's duties.

The clerk position in a Standard Plan statutory city is an elected office. The clerk serves as a member of the council, as well as fulfilling the other duties of a city clerk prescribed by statute or by the council. Vacancies in the elected clerk position are handled in the same manner as council vacancies.

The clerk position in Plan A and Plan B cities is an appointed office. The clerk does not serve on the council, but is responsible for the duties prescribed by statute and by the council.

B. Treasurer

Minn. Stat. § 412.141; Minn. Stat. § 412.02.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8, for more about the Treasurer's duties.

The treasurer in a Standard Plan statutory city is also an elected position, but the treasurer does not serve on the council. Vacancies in the elected treasurer position are handled the same as council vacancies.

The treasurer in Plan A and Plan B cities is not an elected office. All treasurers are responsible for those duties prescribed by statute or their city councils.

C. Combination of clerk-treasurer

Minn. Stat. § 412.02, subd. 3; Minn. Stat. § 412.541, subd. 1; Minn. Stat. § 412.591, subd. 2.

Minn. Stat. § 412.02, subd. 3; Minn. Stat. § 412.591, subd. 2.

Minn. Stat. § 412.591, subd. 3 (In 2005 and after, the threshold amount for requiring an audit is a base of \$150,000, which is adjusted for inflation using the annual implicit price deflator for state and local expenditures as published by the United States Department of Commerce.); Minn. Stat. § 471.697. See *E-Update*, Office of the State Auditor (Feb. 12, 2010)

In statutory cities operating under either the Standard Plan or Plan A, the council may, by ordinance, combine the offices of clerk and treasurer into the office of clerk-treasurer. In Standard Plan cities, the council must adopt the ordinance at least 60 days before the next regular city election. The ordinance does not go into effect until the expiration of the term of the incumbent treasurer, or when an earlier vacancy occurs.

In a Plan A city, the clerk-treasurer is an appointed official and the ordinance generally goes into effect immediately. A Plan A city can abolish the position of treasurer even if an appointed person holds the position. Under either the Standard Plan or Plan A, the council may reestablish separate offices of clerk and treasurer by ordinance.

If the offices of clerk and treasurer have been combined in a Standard Plan or a Plan A city, the council must provide for an audit of the city's financial affairs by the state auditor or a certified public accountant in accordance with minimum procedures prescribed by the state auditor. According to the calculations of the Office of the State Auditor, a city with a population of 2,500 or less and a combined clerk and treasurer must have an annual audit for 2009 if its annual revenue is greater than \$185,000 and must have an audit once every five years if its annual revenue is \$185,000 or less. A city with a population over 2,500 must have an annual audit performed.

V. Citizen boards and commissions

One way to increase positive feelings about government is to promote citizen involvement. Citywide or neighborhood committees, special project review committees, and even block organizations are some of the committees cropping up in many cities. In many cases, the council has formed or encouraged these citizen committees. The committees have saved time and have made contributions that could only occur through citizen participation.

Councilmembers have found that ignoring citizen concerns can result in their removal from office at the next election, or in the defeat of a program or activity as a result of citizen opposition.

Although city officials cannot, in most cases, delegate decision-making authority to citizen groups, they can use citizens in advisory roles. This technique only works, however, if the council listens to the advice. If the council does not follow the advice of the committee, it should give understandable reasons for taking other action.

When a council forms a citizen-advisory body, it should also establish the ground rules for its activities. The council should also stress that in the absence of clear statutory authority to delegate responsibility, the council must, by law, make the final decisions. State law allows, and in some cases requires, city councils to delegate decision-making power to certain independent boards and commissions.

A. Independent citizen boards and commissions

A.G. Op. 624a-3 (Nov. 2, 1998); A.G. Op. 1007 (July 8, 1977); A.G. Op. 1001-a (Sept. 15, 1950); A.G. Op. 1001-a (Aug. 27, 1957).

See *Muehring v. School Dist. No. 31*, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947); *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Minn. Stat. § 412.621.

The amount of discretionary power the council can give to independent citizen boards and commissions varies. Absent specific statutory or charter authority, local governing bodies may not delegate their discretionary powers and duties to other persons or bodies, including independent citizen boards and commissions.

In Plan B cities, with the exception of civil-service boards, special boards of review, and possibly the housing and redevelopment authority, there shall be no independent administrative board or commission, except for the purpose of administering a function jointly with another city or political subdivision. The council itself shall perform the duties and exercise the powers of the board of health, and shall govern and administer the library, parks, and utilities as fully as any other municipal function. The council may, however, create boards or commissions to advise the council with respect to any municipal function or activity, or to investigate any subject of interest to the city.

The statutes specifically authorize various independent boards and commissions in other statutory cities. The following is a list of the most common.

1. Airport board

Minn. Stat. § 360.038, subd. 2.

The council may establish, by ordinance or resolution, an airport board. The board shall be vested with authority for construction, enlargement, improvement, maintenance, equipment, operation, and regulation of the airport.

2. Civil-service board and commission

See Handbook, Chapter 9 for more information.

Civil-service commissions can take several different forms depending on the state statute under which the council establishes them.

3. Hospital board

Minn. Stat. § 412.221, subd. 16.

The council has the power to provide hospitals and, by ordinance, to establish a hospital board. Hospital boards may exercise any hospital-management powers conferred by the council. The council may abolish the board by a vote of all five members of the council. The board shall consist of five members appointed by the mayor with council approval for overlapping five-year terms. The council may remove members for cause.

4. Housing and redevelopment authority

Minn. Stat. § 469.003, subds. 1, 2.

A housing and redevelopment authority (HRA) has been created in each city by the Legislature. The HRA may not transact any business or exercise any powers until the city council, by resolution, finds that the city: has substandard, slum or blighted areas that cannot be redeveloped without government assistance; or, has a shortage of decent, safe, and sanitary low-income dwellings. The council may consider such a resolution only after holding a public hearing and meeting publication requirements.

Minn. Stat. § 469.003, subds. 5, 6.

An HRA consists of up to seven members who may be officers and employees of the city. The mayor appoints members with the approval of the council for overlapping five-year terms. In many cities, councilmembers appoint themselves to serve on the HRA; so the council becomes the HRA.

5. Intergovernmental boards and commissions

Minn. Stat. § 471.59; See Handbook, Chapter 17 for more information.

The council may create intergovernmental boards and commissions. A mutual agreement of the cooperating governments will set up the organizational format, powers, and duties of such boards.

6. Library board

Minn. Stat. § 134.09.

When a public library is established, except in First Class cities operating under a home rule charter, the mayor of the city, with council approval, shall appoint a board of five, seven, or nine members from among the residents of the city. The number of members shall be determined by resolution or ordinance. The board members shall serve staggered, three-year terms and may be removed for misconduct or neglect.

Minn. Stat. § 134.10.

Library board members serve without pay but may be reimbursed for actual and necessary traveling expenses.

Minn. Stat. § 134.11, subd. 2;
Minn. Stat. § 134.13.

Once established, the board prescribes its rules of procedure, selects its officers, and controls the library fund. Besides appointing new members to the board, the council has approval of all purchases of land and proposals for the erection of buildings. The board must file an annual report each year with the city council and the Department of Education.

7. Park board

Minn. Stat. § 412.501 (Cities may also create advisory park boards and commissions under Minn. Stat. § 412.111).

The council of any city of more than 1,000 population may, by ordinance, establish a park board. The board shall consist of three, five, seven or nine members as determined by resolution or ordinance. The mayor, with council approval, appoints the board members. Members serve three-year overlapping terms and may be removed by the mayor, with the council's consent, for cause after a hearing. Board members receive no compensation, unless the council authorizes it. The board may be dissolved by a unanimous vote of the council.

Minn. Stat. § 412.501; Minn. Stat. § 412.521.

The park board shall maintain, beautify, and care for park property and perform all other acts necessary to carry out its statutory powers. The board must make quarterly reports of its activities to the council, and file an annual statement of receipts and disbursements with the city clerk.

8. Recreation board

Minn. Stat. § 471.15.

Recreation is usually a function that is administered by the city council, the park board or the local school board. Any city may operate and expend funds for a public-recreation program and playgrounds, and acquire, equip, and maintain land, buildings or other recreational facilities, including swimming pools.

Minn. Stat. § 471.16.

Generally, a recreation board refers to an independent commission that is established cooperatively by the city council, school board, and park board. The statutes specifically authorize the formation of an intergovernmental commission with representatives from all three bodies.

9. Utilities commission

Minn. Stat. § 412.321, subds. 1, 2.

Any statutory city may own and operate facilities for supplying utility service. No gas, light, power, or heat utility may operate until approval by five-eighths of the voters voting on the proposition at a regular or special election.

Minn. Stat. § 412.331; Minn. Stat. § 412.341, subd. 1.

By ordinance, a city may establish a public-utilities commission. Utility commissions must have three council-appointed members who serve overlapping three-year terms. The council may appoint no more than one of its own members to the commission. City residence is not a qualification for membership on the commission unless required by the council.

Minn. Stat. § 412.341, subd. 2; Minn. Stat. § 412.351; Minn. Stat. § 412.361.

The commission shall adopt rules for its proceedings, but must hold at least one regular meeting each month. The commission may exercise all of the discretionary administrative authority necessary for the management of the utilities. The council may prescribe a salary for the commissioners and decide, by ordinance, which of the following municipally owned public utilities shall be within the commission's jurisdiction:

- Water.
- Light and power, including any system for the production and distribution of steam heat.
- Gas.
- Sanitary or storm sewer, or both.
- Public buildings owned or leased by the city.
- District heating systems.

Minn. Stat. § 465.70.

Additionally, some Third Class and Fourth Class cities may own and operate a television-signal-distribution system that shall be considered a public utility.

10. Municipal power agencies

Minn. Stat. §§ 453.51-.62.

Any two or more cities may form a municipal power agency if each city passes a resolution authorizing an agreement. The purpose of the agency is to secure an adequate, economical, and reliable supply of energy for cities that own and operate a utility for the distribution of electric energy. All agency powers lie with its board of directors and include constructing and acquiring generating and transmission facilities, the power of eminent domain, and the authority to issue bonds and notes. Any city council may, by resolution, exercise any of these powers as if it were a municipal power agency.

11. Municipal gas agencies

Minn. Stat. §§ 453A.01-.12.

Any two or more cities owning or operating a utility for the local distribution of gas may form a municipal gas agency if each passes a resolution authorizing the agreement. The purpose is to secure an adequate, economical, and reliable supply of gas for utility customers. The board of directors exercises all agency powers. Any city may, by resolution, exercise any of the powers of a municipal gas agency as if it were an agency.

12. Special board of review

Minn. Stat. § 274.01, subd. 2.

The governing body of any city may appoint a special board of review. This special board of review serves at the direction and discretion of the city council. The council determines the number of members, the compensation and expenses to be paid, and the term of office of each member. At least one member of the special board must be an appraiser, realtor or someone familiar with property valuations in the assessment district.

B. Advisory citizen boards and commissions

Minn. Stat. § 412.111.

Minn. Stat. § 462.354, subd. 1.

Another important link in city governing activities is the work of advisory boards and commissions. These entities are much like the independent or administrative boards and commissions. The city council may create and dissolve them by resolution, appoint people to serve on them, and exercise other powers of general supervision. The council must, however, pass an ordinance to create a planning commission.

There are several differences between independent boards and advisory boards. State statutes establish most independent boards and commissions and give them some discretionary powers. Advisory boards conduct studies and investigations on behalf of the council, and submit reports and recommendations for council consideration. An advisory-board recommendation does not take effect unless the council accepts it by passing an ordinance or resolution.

The council may organize advisory groups in any manner it deems appropriate. The council may find it wise to appoint people who represent various special-interest groups in the city.

An advisory commission may be created by the council for a special purpose, such as for conducting an investigation, and will cease to exist once the purpose of the commission has been achieved.

1. Planning commissions

Minn. Stat. §§ 462.351-.364;
See LMC Information Memo,
Planning Commission Guide

Cities can establish planning commissions by passing an ordinance describing their organization and powers. City officials, such as the mayor, attorney, and engineer, frequently are advisory members.

2. Other advisory boards and commissions

Other advisory boards and commissions commonly established by city councils include: industrial commissions, which have power to study the ways and means of attracting more commercial and industrial development to the city; safety councils, which advise the council on safety programs; and intergovernmental agencies, such as a joint-planning commission, which the city sponsors in cooperation with other units of government.

As government has become increasingly complex, cities have used fewer independent or administrative citizen boards and commissions. Instead of diffusing authority for government administration over a number of different agencies, many cities place all authority in the city council. This decision centralizes responsibility for the proper direction of local government affairs and increases voter understanding of government. Frequently, this trend leads to pressures for greater simplification and centralization in administration as well. The council-manager form of government (Plan B) is an answer to this pressure. Administrators, whose duties and functions lie somewhere between those of a manager and those of a clerk, may also help to centralize government.

See LMC Information Memo, City Administration: Clerk, Administrator, Manager, for more information about the manager and administrator positions.

VI. How chapter 6 applies to home rule charter cities

Several sections of this chapter may be useful to charter cities:

In the section concerning elected officials, the discussion of statutory city officers does not apply to charter cities, but the portions on eligibility, removal, resignations, and vacancies generally do apply. It may be possible that a charter could specify the particular conduct that would result in removal of a councilmember for nonfeasance of office. The attorney general, however, has advised that a charter provision which provides that a council vacancy would occur if a councilmember did not attend a specified number of meetings would not be valid. A charter may provide for the recall of any elective municipal officer and for removal of the officer by the electors of the city.

Minn. Stat. § 410.20; Minn. Const. art. VIII, § 5.

A.G. Op. 59a-30 (July 24, 1996); Minn. Stat. § 410.20.

If the mayor of a charter city presides at the council meeting, most of the section concerning the mayor applies to charter cities. Otherwise, only the portions dealing with weed inspection, election duties, and other duties apply.

The section concerning the statutory city council and its powers might prove interesting to charter city councilmembers since many of their powers are similar to those of statutory city councils. The laws relating to conflicts of interest and prohibiting gifts to local officials also apply to members of charter city councils, but many charter cities have more restrictive provisions concerning both issues in their charters.

