

CITY OF ROCKVILLE

P.O. BOX 93

229 Broadway Street East

ROCKVILLE, MN 56369

QUORUM OF THE ROCKVILLE CITY COUNCIL

April 22, 2019, 9:00 A.M.

Rockville City Hall

LMC Open Meeting Law Training

(No Action Will Be Taken)



Open Meeting Law 101

Pamela Whitmore, *Collaboration & Mediation Manager*

Agenda

- Understand Open Meeting Law (OML) purpose
- Review basic requirements
- Discuss the exceptions
- Review common issues
- Know where to get answers

OML - Purpose

- To prohibit actions taken at secret meetings
- To assure the public's right to be informed
- To give the public an opportunity to present its views to the public body

✓ However, the law is silent on whether people can speak at a meeting



Basic Requirements

- Provide advance notice of meetings
- Hold meetings open and accessible to the public



What's a Meeting

- The "quorum" rule
 - *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983).
- Two parts to the rule
 1. Quorum (majority) or more of full public body, or quorum of any of the public body's committees, subcommittees, etc. - and
 2. Quorum (majority) discusses, decides, or receives information as a group on issues relating to its official business



Types of Council Meetings

- Regular
 - Keep schedule on file at primary office
 - Council should set alternate day for meetings landing on holidays
- Special
 - 3 day notice
 - Mail to anyone who has made a written request for notice of special meetings
 - Only transact business for which notice provided
- Emergency
 - Called due to circumstances, e.g. health pandemic or declared emergency
 - Good faith effort to provide notice

Violation or Not?

School board closed a meeting to discuss its superintendent's performance. The closed meeting took place ½ hour before the regular meeting time so board didn't provide any notice since the regular meeting was noticed.

Was notice of special meeting required?

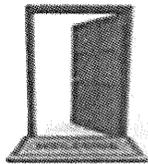


Continued Meetings

- Time and place established at original meeting, do not adjourn original meeting however!
- Must be in the minutes for original meeting
- No additional notice required

TO BE CONTINUED ...

Accessible to Public

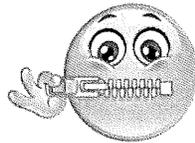


Violation or Not?

School board provided advance notice of a meeting that took place in a private office located about 20 miles outside the school district's borders.



Closed Meetings



Closed Meetings

Closed Meeting - Talk to City Attorney

- >The same notice requirements apply to closed meetings as to open meetings.
- >Advance notice to an individual who will be the subject of such a meeting is needed under certain circumstances (such as to employees who are the subject of performance evaluations and disciplinary proceedings).
- >If Performance Review, employee can request open and must open

Reasons to Close Meetings

Must close:

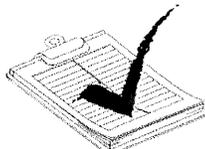
- Misconduct allegations
- Certain not-public data (important to work with attorney on this one because confusing)

May close:

- Labor negotiations
- Attorney-client privilege (*very limited)
- Employee performance review (employee can open)
- Purchase or sale of property
- Security data

Process to Close

- State specific grounds permitting closure (should be presiding member of council, not city attorney)
- Describe subject to be discussed
- All closed meetings must be recorded, except if closed under attorney-client privilege



Violation or Not?

A City has closed a meeting under a provision of Minn. Stat. Cha. 13. Once the meeting reconvenes, a summary of what was discussed must be made on the record in the open meeting.



What Groups Need to Comply with OML

- City council
- Committees, commissions, board of the Council (non-advisory**), such as planning commission, library board, park board...
- Other public bodies, such as HRA, EDA (statutorily created)
- Courts have found Fire Relief Associations subject to OML
- PUC?

Violation or Not?

Councilmember attends a committee meeting *and only* observes. Other councilmembers serve on the committee. A quorum of the council is present with the additional councilmember attending. Notice was provided for the committee meeting but not for a city council meeting.



Violation or Not?

4 members of council signed a letter that administrator drafted but then gave to each member individually to review and sign. Issue?



Pre & Post-Meeting Discussions



- Discussing city business among quorum likely a violation
- Avoid going out for coffee or dessert after meetings

Serial Meetings

- Meetings of less than a quorum
- Held **serially** (one after another)



Social Gatherings



Interviews

Subject to OML or not?



Electronic Communications



- Use of computers can be **Intentional or Unintentional** conduit for OML violations
- Non-Public discussion of city business
- Establish and follow policy
 - E-mail, Chat Rooms, Listservs, etc.
 - Equally applicable to written & telephone communications

Email

- Reply all or serial email likely violates Open Meeting Law
- One-way email communication does not violate OML.

IPAD 09-020.

Interactive TV/Skype

- Councilmembers can hear and see each other & all discussion & testimony.
- Public at regular meeting location can hear and see all discussion, testimony, & voting.
- At least 1 councilmember at regular meeting location.
- Each location where a councilmember is present is "open and accessible to the public."

Violation or Not?

A city council member is going on a cruise and wants to participate in a regularly scheduled council meeting via interactive television while on a cruise ship in the Bahamas. Can the council member participate in the council meeting via interactive television from the comfort of their cruise ship cabin?



Telephone?

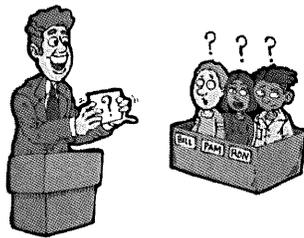


Personal Liability? In some situations, yes.

- Reasonable costs, disbursements, and attorney fees (commonly up to \$13,000, but some cases up into six figures)
- \$300 fine (city can't pay)
- Forfeit office (three or more separate, intentional violations) – Victoria case (Funk v. O'Connor)
- Mandatory Attorney Fees in some instances – successful lawsuit against the city and city failed to comply with DPO opinion



Quiz



Fact or Not?

The OML requires a public body to provide advance notice of its regular meetings.

Fact or Not?

The OML requires public bodies to follow Roberts Rules of Order or another parliamentary process when conducting a public meeting.

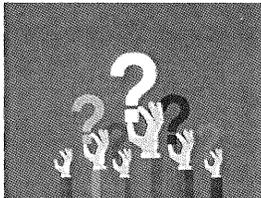
Fact or Not?

An action of a public body can be reversed because the body did not comply with the OML in conducting the meeting at which the action was taken.

Fact or Not?

The OML gives the public the right to speak at an open meeting.

Thank you & Resources



- www.lmc.org
- Research Attorneys:
 - 651-281-1200
 - research@lmc.org
- Pam Whitmore
 - 651-281-1224
 - pwhitmore@lmc.org



A Good Start to Good Governance

Guidance for Newly Elected City Officials from the League of Minnesota Cities

Congratulations on your election! Serving a city says a lot about a person's sense of public responsibility, but being on city council isn't easy. The League of Minnesota Cities offers guidance to elected officials across the state on a variety of topics and we're here to help. Here's just a sample:

- **Can I re-hash the city council meeting with my colleagues at the café after we adjourn?**
Find out if council can talk about city business outside of a public meeting—see page 11.

- **Can I talk to the public works director about some department performance problems I've identified?**
Find out what power a single councilmember has to make changes—see page 2.

- **Can I improve the efficiency of our city government by using e-mail to communicate among councilmembers?**
Find out if it's a problem that the public can't see and participate in these discussions—see page 12.

Comprehensive
resources for new
city officials like you at:
www.lmc.org/goodstart

Don't think twice about turning to the League of Minnesota Cities for answers!

This booklet represents just a sample of the governance information and resources the League offers. When you need to know more, turn to the League!

- Contact the League anytime with any questions at (800) 925-1122 or research@lmc.org.
- Check out more great resources for new city officials at www.lmc.org/goodstart.

League of Minnesota Cities

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TDD: (651) 281-1290 • Fax (651) 281-1299

www.lmc.org

The information below on elected officials and council structure and role is an excerpt from Chapter 6 of the League's Handbook for Minnesota Cities.

The Handbook is available FREE on the League's website at www.lmc.org. It has information for city councils on:

- the form and structure of Minnesota Cities;
- elections, elected officials, and council meetings;
- regulatory and development functions of cities, liability, finance, budgeting and debt, and more.

Elected officials and council structure and role

The cornerstone of city government in Minnesota is the elected city council. The city 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 document will discuss the special aspects of these positions and the city council's role in city governance.

■ Terms of office

All terms of office in statutory cities begin on the first Monday of January following the election. The terms of the old officers 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 length of the various terms of office is provided by statute.

■ Oath of office

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. The oath is as follows:

"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."

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."

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.

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 city council for approval and then to the clerk for filing.

City council and its powers

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

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.

■ Role of the individual councilmember

Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, the council, not individual councilmembers, 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.

In a statutory city, 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.

YOU'LL
WANT
TO
KNOW
THIS

■ The council's authority

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.

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.

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

1. Judging the qualification and election of its own members

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

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 nonattendance. 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.

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

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.

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 indirectly, through the police chief. 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.

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 any subordinate of the manager, either publicly or privately.

7. Transacting city business

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

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

- Levying taxes.
- Adopting a budget.
- Auditing and settling accounts.
- Safekeeping and disbursement of public monies.
- Borrowing money.
- Designating depositories.

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

9. Appointing members of the boards

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

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

Elected officials must formulate policies that will help the city solve anticipated 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 provide leadership by promoting new ideas and suggesting new programs to improve the community and its surrounding areas.

Mayor

As the head of the city, the mayor officially speaks for both the government 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 city 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 Mayor's 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.

■ 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 city problems and defend city 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.

■ Executing official documents

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.

■ 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:

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

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

- City art commission members (First Class cities).
- The mayor also appoints to fill vacancies in elective offices if the council vote to fill the vacancy is tied.

■ Presiding officer at council meetings

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.

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.

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. Mayors may also call special meetings.

■ Declaring local emergencies

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

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.

The information below on meetings and hearings is an excerpt from the League's Governing and Managing Information Memo on "Meetings of City Councils." The section on the open meeting law applies to all city councils, city boards, commissions, and other public bodies.

The League has many Information Memos on topics for city councils such as:

- Securing Payment of Utility Charges;
- Acquisition and Maintenance of City Streets;
- Liquor Licensing and Regulation, and more.

You can find these memos on the League's website at www.lmc.org. Or to get a FREE copy of any memo or to ask a question about city government, contact the League's Research Service at (800) 925-1122 or research@lmc.org.

Meetings and hearings

■ Meetings

A meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority. The members of the public usually do not speak at a meeting, although some city councils will occasionally recognize a member of the audience.

1. Types of meetings

There are basically two different types of meetings:

- **Regular meetings.** Regular meetings of a statutory city council are held at times established by council rules. A council will typically meet once a month on a particular day, although some councils may have regular meetings scheduled more frequently. Home rule charter cities should consult their charters and any council rules concerning the scheduling of regular meetings.
- **Special meetings.** Special meetings are meetings held at times or places that are different from the regularly scheduled meetings. These are often scheduled to deal with specific items that need to be addressed before the next regular meeting. Generally, any matter can be addressed at a special meeting that can be addressed at a regular meeting. There are different types of special meetings, such as emergency meetings and continued meetings, which are discussed in more detail in a later section of this memo.

2. First meeting of the year

There is no date set by statute for the first meeting of the year. In most statutory cities, the date is set by an ordinance establishing rules of procedure for the council. A home rule charter city should consult both its charter and any procedural rules the council has adopted.

The term of office for new statutory city council members begins on the first Monday in January. The first meeting is usually held on or shortly after this date. In the meantime, all previously chosen and qualified council members shall serve until their successors qualify. The first day of a new term in a home rule charter city is generally set by the charter.

The following must be done at the first meeting of the year:

- Appoint an acting mayor.
- Select an official newspaper.
- Select an official depository for city funds. (This must be done within 30 days of the start of the city's fiscal year.)

In addition, although not required by statute, many city councils will also do the following at the first meeting of the year:

- Review council's bylaws and make any needed changes.
- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

Home rule charter cities may have additional requirements for their first meeting of the year in their charters.

■ Hearings

A public hearing is a meeting that is held where members of the public can express their opinions. The council is there to regulate the hearing and make sure that people who want to speak on the issue get the opportunity. The council does not deliberate or discuss matters during the public-hearing portion of this type

of meeting; instead, it listens to the public. Once the public-comment period is finished, the council will often wrap up the meeting.

In order to recess or continue a meeting of this sort, the council should not formally end the public-comment part of the hearing.

There are two types of hearings, those that are discretionary and those that are required by a specific statute, ordinance or charter provision.

1. Discretionary hearings

Many city councils will hold public hearings even when not legally required to do so. Generally, hearings of this type are for the purpose of allowing the public to comment on a specific issue. Such hearings can be helpful in raising concerns about an issue that the council may not have considered.

2. Required hearings

When a specific statute, ordinance or charter provision requires that the council hold a public hearing, the notice requirements must be followed carefully. Often there are special notice requirements that are more substantial than the notice that is needed for a simple special meeting. For example, hearings required for zoning ordinance amendments and special assessments have special notice requirements.

Following are several of the more common matters that require public hearings:

- Street vacation.
- Annexation by ordinance.
- Local improvement projects that will be paid for with special assessments.
- When special assessments are made to property.
- Storm sewer improvement district purchases and improvements of waterworks, sewers, drains, and storm sewers.
- Adoption of a housing redevelopment authority (HRA) resolution.
- Adoption of an economic development authority (EDA) enabling resolution.
- Sale of port authority land.
- Sale of EDA land.
- Increase of levy for an EDA.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- Adoption or amendment of a zoning ordinance.
- Subdivision applications.
- Granting of a conditional use permit.
- Adoption of a charter amendment by ordinance.

There are other situations that may require public hearings. Contact the League's Research Department at (651) 281-1200 or (800) 925-1122 for further information if you are unsure about a particular situation.

The open meeting law

The Minnesota open meeting law generally requires that all meetings of public bodies be open to the public. This presumption of openness serves three basic purposes:

- To prohibit actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or detect improper influences.
- To ensure the public's right to be informed.
- To afford the public an opportunity to present its views to the public body.

The open meeting law also contains some specific notice and record-keeping requirements, which are discussed in detail in later sections of this document.

■ Groups to which the law applies

The open meeting law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body.

Thus, the law applies to meetings of all city councils, planning commissions, advisory boards, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Minnesota Legislature granted these agencies authority to conduct their affairs as private corporations.

■ What is a meeting?

There is no statutory definition of the term “meeting” for the purpose of the open meeting law. Minnesota courts have generally ruled that a meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority.

Because the term “meeting” has not been clearly defined, the issue of whether or not a meeting has been held must be decided on a case-by-case basis. Some examples of cases are discussed in further detail in a later section of this memo.

■ Gatherings to which the law applies

The open meeting law applies to any gathering of a quorum or more of public officials where the members discuss, decide or receive information as a group on issues relating to the official business of the public body.

A “quorum” is a majority of the members of a statutory city council. A majority of the qualified members of any board or commission also constitutes a quorum. Home rule charter cities may have different quorum requirements in their charters.

Thus, the open meeting law would apply to any of the following types of gatherings:

- Regular and special meetings.
- Public hearings.
- Executive sessions.
- Work sessions.
- Retreats.

■ Exceptions and the procedures to use them

There are some exceptions to the open meeting law. Under certain circumstances, some meetings may be closed. There are also some meetings that must be closed. Before a meeting can be closed under any of the exceptions, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

1. Meetings that may be closed

The public body may choose to close certain meetings. The following types of meetings may be closed:

- ***Meetings to consider strategies for labor negotiations under PELRA.*** Although a meeting to consider strategies for labor negotiations may be closed, the actual negotiations must be done at an open meeting if a quorum of the council is present.

Procedure. The following must be done to use this exception:

- Before closing the meeting, the council must decide to close the meeting by a majority vote at a public meeting.
- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- A written roll of all people present at the closed meeting must be available to the public after the closed meeting.
- The meeting must be tape-recorded.
- The recording must be kept for two years after the contract is signed.
- The recording becomes public after all labor agreements are signed by the city council for the current budget period.

If an action claiming that other public business was transacted at the closed meeting is brought during the time the tape is not public, the court will review the recording privately. If it finds no violation of the open meeting law, the action will be dismissed and the recording will be preserved in court records until it becomes available to the public. If the court determines there may have been a violation, the entire recording may be introduced at the trial. However, the court may issue appropriate protective orders requested by either party.

- ***Meetings to evaluate the performance of an individual subject to the public body’s authority.***

Procedure. The following must be done to use this exception:

- The public body must identify the individual to be evaluated prior to closing the meeting.

- The meeting must be open at the request of the individual who is the subject of the meeting, so some advance notice to the individual is needed in order to allow the individual to make an informed decision.
 - Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
 - The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
 - At the next open meeting, the public body must summarize its conclusions regarding the evaluation. The council should be careful not to release private or confidential data in its summary.
- ***Attorney-client privilege.*** Meetings between the governing body and its attorney to discuss active, threatened, or pending litigation may be closed when the balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after a substantive decision on the underlying matter has been made. This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed underlying action that may give rise to future litigation.

Procedure. The following must be done to use this exception:

- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. The council should also describe how a balancing of the purposes of the attorney-client privilege against the purposes of the open meeting law demonstrates the need for absolute confidentiality.
 - The council must actually communicate with its attorney at the meeting.
- ***Purchase or sale of property.*** A public body may close a meeting to: determine the asking price for real or personal property to be sold by the public body; review confidential or nonpublic appraisal data; develop or consider offers or counteroffers for the purchase or sale of real or personal property.
- Procedure.*** The following must be done to use this exception:
- Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
 - The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.
 - A list of council members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
 - The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.
- ***Security Briefings.*** A meeting may be closed to receive security briefing and reports, to discuss issues related to security systems, to discuss emergency-response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities— if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed, and all related financial decisions must be made at an open meeting.

Procedure. The following must be done to use this exception:

- Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. When describing the subject to be discussed, the public body must refer to the facilities, systems, procedures, services or infrastructure to be considered during the closed meeting.
- The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

2. Meetings that must be closed

There are some meetings that the law requires to be closed. The following meetings must be closed:

- ***Meetings for preliminary consideration of allegations or charges against an individual subject***

to the public body's authority. While the law permits the council to announce that it is closing a meeting to consider charges against an individual, it is still the best practice not to refer to that individual by name. The council should state only that it is closing the meeting to give preliminary consideration to allegations against someone subject to its authority. However, if someone requests the name of the employee who is the subject of the closed meeting, the name will probably have to be furnished since the existence and status of any complaints against an employee are public data.

Procedure. The following must be done to use this exception:

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- The meeting must be open at the request of the individual who is the subject of the meeting. Thus, the individual should be given advance notice of the existence and nature of the charges against him or her, so that the individual can make an informed decision.
- The meeting must be electronically recorded and the recording must be preserved for at least three years after the meeting.
- If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.
(Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see next discussion*.)

• **Portions of meetings at which any of the following data is discussed:**

- Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- *Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.
- Educational data, health data, medical data, welfare data or mental health data that are not-public data.
- An individual's medical records governed by sections §§ 144.291 to 144.298.

Procedure. Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

■ Notice requirements

Public notice must be given of all meetings of a public body. The notice requirements differ depending on the type of meeting.

However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied, regardless of the method of receipt.

It should also be noted that statutory cities have some additional requirements for mailing notice to their council members regarding special meetings. There may also be additional notice requirements for home rule charter cities to consider. These cities should consult their charters for more information.

1. Regular meetings

A schedule of the regular meetings must be kept on file in the city office. If the city decides to hold a meeting at a different time or place, it must give the notice required for a special meeting.

Cities must keep a schedule of the regular meetings of the council on file at the primary office of the council. This requirement can be complied with by posting the regular meeting schedule in a convenient public location.

2. Special meetings

A special meeting is a meeting that is held at a time or location different from that of a regular meeting.

A city must post written notice of a special meeting on its principal bulletin board or on the door of its meeting room if it does not have a bulletin board. If notice is posted on a bulletin board, the bulletin board must be located in a place that is reasonably accessible to the public. The notice must give the date, time, place, and purpose of the meeting. It must also be mailed to each individual who has filed a written request for notice of special meetings. As an alternative to posting the notice, the city can publish notice in the official newspaper at least three days before the meeting.

A city must post written notice of a special meeting on its principal bulletin board or on the door of its meeting room if it does not have a bulletin board at least three days prior to the meeting. In statutory cities, the clerk must mail notice of special meetings to all council members at least one day before the meeting.

In calculating the number of days for providing notice, do not count the first day that the notice is given, but do count the last day. If the last day is a Saturday, Sunday or a legal holiday, that day is omitted from the calculation and the following day is considered the last day (unless, of course, it happens to be a Saturday, Sunday or legal holiday).

3. Emergency meetings

An “emergency meeting” is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body. Posted or published notice of an emergency meeting is not required. However, the city must make a good faith effort to notify each news outlet that has filed a written request for notice. Notice must be given by telephone or any other method to notify members of the public body. The notice must include the subject of the meeting.

4. Recessed or continued meetings

No additional notice is needed for a recessed or continued meeting if all of the following criteria are met:

- The meeting is a recessed or continued session of a previous meeting.
- The time and place of the meeting was established during the previous meeting.
- The time and place of the meeting was recorded in the minutes of the previous meeting.

5. Closed meetings

The same notice requirements apply to closed meetings as to open meetings. Additionally, advance notice to an individual who will be the subject of such a meeting is needed under certain circumstances (such as to employees who are the subject of performance evaluations or disciplinary proceedings).

■ Written materials

At least one copy of the materials related to agenda items that are made available to the council at or before the meeting must also be made available for inspection by the public. However, this does not apply to not-public data or materials relating to the agenda items of a closed meeting.

■ Common problems in applying the law

There are many situations for which the open meeting law is unclear. This section provides an overview of some of the more common situations and how the law may be applied.

1. Data practices

Generally, meetings may not be closed to discuss data that is not public. However, the public body must close any part of a meeting at which certain types of not-public data are discussed (such as active law enforcement investigative data, police internal affairs data, medical records data, and certain victim, health, medical or welfare data).

If not-public data is discussed at an open meeting when the meeting is required to be closed, it is a violation of the open meeting law. Discussions of some types of not-public data may also be a violation of the Minnesota Government Data Practices Act (MGDPA). However, not-public data may generally be discussed at an open meeting without liability or penalty if both of the following criteria are met:

- The disclosure relates to a matter within the scope of the council’s authority.
- The disclosure is necessary to conduct the business or agenda item before the public body.

Data that is discussed at an open meeting retains its original classification under the MGDPA. However, a record of the meeting is public, regardless of the form. It is suggested that not-public data that is discussed at an open meeting not be specifically detailed in the minutes.

2. Interviews

In 1996, a district court found that it was not a violation of the open meeting law for candidates to be serially interviewed by members of a city council in one-on-one closed interviews. In this case, five city council members were present in the same building but each was conducting separate interviews in five different rooms. Because there was no quorum present in any of the rooms, the court found there was no meeting. The decision, however, was appealed.

In 1997, the Minnesota Court of Appeals reversed the district court's decision and remanded the case back to it for a factual determination on whether the city used the one-on-one interview process in order to avoid the requirements of the open meeting law. On remand, the district court found that the private interviews were not conducted for the purpose of avoiding public hearings. The case was again appealed. In an unpublished decision, the court of appeals agreed.

The implication of this decision appears to be that if serial meetings are held for the purpose of avoiding the requirements of the open meeting law, it will constitute a violation of the law. Cities that are considering holding private interviews with job applicants should first consult their city attorney.

3. Executive sessions

The attorney general has advised that executive sessions of a city council must be open to the public.

4. Committees and liaisons

The attorney general has advised that citizen advisory panels that are appointed by a governing body are also subject to the open meeting law.

Many city councils create committees to make recommendations to the council. Commonly, such committees will be responsible for researching a particular area and submitting a recommendation to the council for its approval. Such committees are usually advisory, and the council is still responsible for making the final decision.

City councils routinely appoint individual council members to act as liaisons between the council and particular committees. These types of meetings may also be subject to the open meeting law if the committee contains a quorum or more of the council or has decision-making authority. In addition, notice for a special council meeting may be needed if a quorum of the council will be present at the meeting and participating in the discussion.

For example, when a quorum of a city council attended a meeting of the city's planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law, not because of the council members' attendance at the meeting, but because the council members conducted public business in conjunction with that meeting. Based on that decision, the attorney general has advised that mere attendance by additional council members at a meeting of a council committee held in compliance with the open meeting law would not constitute a special council meeting requiring separate notice. The attorney general warned, however, that the additional council members should not participate in committee discussions or deliberations absent a separate notice of a special city council meeting.

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5. Chance or social gatherings

Chance or social gatherings of a quorum are not considered meetings under the open meeting law and are therefore exempt from it. However, a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a social gathering.

In 1982, the Minnesota Supreme Court held that a conversation between two council members over lunch regarding an application for a special-use permit did not violate the open meeting law because a quorum was not present.

6. Serial gatherings

The Minnesota Supreme Court has noted that meetings of less than a quorum of the public body held serially to avoid public hearings or to fashion agreement on an issue may violate the open meeting law. In short, this type of situation is a circumvention of the statute. As such, council members should avoid this type of practice.

7. Technology trouble

The open meeting law does not address situations that may occur as a result of communication through telephone calls, letters, e-mail or similar technology. The Minnesota Supreme Court found that the open meeting law did not apply to letters or to telephone conversations between less than a quorum. While it is possible that a similar decision might be reached concerning the use of e-mail and other forms of technology, it should be stressed that if a quorum of members is involved in the communication, it would likely be considered to be a violation of the open meeting law.

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In addition, serial discussions between less than a quorum of the council that are used to deliberate matters that should be dealt with at an open meeting would likely violate the open meeting law. Therefore, city councils and other groups to which the open meeting law applies should not use letters, telephone conversations, e-mail, and other such technology if the following circumstances exist:

- A quorum of the council is involved.
- Information relating to official city business is being discussed.

The open meeting law was amended in 2014 to provide that “the use of social media by members of a public body does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public.” The open meeting law does not define the term “social media,” but this term is generally understood to mean forms of electronic communication, including websites for social networking like Facebook, LinkedIn, and MySpace as well as blogs and microblogs like Twitter through which users create online communities to share information, ideas, and other content. It is important to remember that the use of social media by councilmembers could still be used to support other claims such as claims of defamation or of conflict of interest in decision-making. As a result, councilmembers should make sure that any comments they make on social media are factually correct and should not comment on issues that will come before the council in the future for a quasi-judicial hearing and decision, such as the consideration of whether to grant an application for a conditional use permit.

Councilmembers unable to make a meeting may ask to attend meetings through technology like Skype. There is an exception to the open meeting law where a member can be in attendance through the use of interactive television. The open meeting law does not define the term “interactive television.” However, the commissioner of the Minnesota Department of Administration has advised that a city council meeting where a city councilmember participated through Skype, while physically present at a remote location outside Minnesota, complied with the statutory authority for conducting meetings through interactive television. We encourage interested cities to develop a policy for using technology like Skype with the assistance of your city attorney.

■ **Intentional violations of the open meeting law**

A public officer who intentionally violates the open meeting law can be fined up to \$300. This fine may not be paid by the public body. In addition, a court may also award reasonable costs, disbursements, and attorney fees up to \$13,000 to the person who brought the violation to court.

If a plaintiff prevails in a lawsuit under the open meeting law, a court shall award reasonable attorney fees if the court determines the public body was the subject of a prior written advisory opinion from the commissioner of the Department of Administration, and the court finds that the opinion is directly related to the lawsuit and that the public body did not act in conformity with the opinion. A court is also required to give deference to the advisory opinion in a lawsuit brought to determine whether the open meeting law was violated.

If a public official is found to have intentionally violated this chapter in three or more separate actions, the public official must be removed from office and may not serve in any other capacity with that public body for a period of time equal to the term of office the person was serving. However, removal is only required if the conduct constitutes malfeasance or nonfeasance.

The statute does not address whether actions taken at an improper meeting would be invalid. The Minnesota Supreme Court once held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

However, in more recent decisions, Minnesota courts have refused to invalidate actions taken at improperly closed meetings. In an unpublished decision, the court stated that “even a violation of the open meeting law will not invalidate actions taken at that meeting.”

A public body may pay any costs, disbursements or attorney fees incurred by or awarded against any of its members for an action under the open meeting law.

Tables of motions

There are three basic types of motions: privileged motions, subsidiary motions, and main motions. Privileged motions take precedence over subsidiary motions; subsidiary motions take precedence over main motions. The following charts of motions are listed in order of precedence and are based upon *Robert's Rules of Order Newly Revised*, 10th Edition (2000):

Privileged motions—A privileged motion is a motion that does not relate to the business at hand. Such a motion usually deals with items that require immediate consideration.

| Motion | Requires a second | Can interrupt speaker | Debatable | Amendable | Votes required to pass | Can be reconsidered |
|---|-------------------|-----------------------|-----------|-----------|---|---------------------|
| Fix a time to adjourn. | ✓ | | | ✓ | Majority | ✓ |
| To adjourn. | ✓ | | | | Majority | |
| Recess. (A motion to take an intermission.) | ✓ | | | ✓ | Majority | |
| Raise a question of privilege. (A motion referring to a matter of personal concern to a member, e.g., asking to have the heat turned up, the windows opened, or the motion be stated again.) | | ✓ | | | Usually, no vote is taken. The chair decides. | |
| Call for the orders of the day. (Forces the consideration of a postponed motion.) | | ✓ | | | Usually, no vote is taken. The chair decides. | |

Subsidiary motions—A subsidiary motion is a motion that assists the group in disposing of the main motion.

| Motion | Requires a second | Can interrupt speaker | Debatable | Amendable | Votes required to pass | Can be reconsidered |
|--|-------------------|-----------------------|-----------|-----------|------------------------|---|
| Lay on the table. (To postpone discussion temporarily.) | ✓ | | | | Majority | |
| Previous question or call for the question. (To stop debate and force an immediate vote.) | ✓ | | | | 2/3 | ✓ |
| Postpone to a definite time. | ✓ | | ✓ | ✓ | Majority | ✓ |
| Commit or refer. (A motion to refer to a smaller committee.) | ✓ | | ✓ | ✓ | Majority | If group has not begun consideration of a question. |
| Amend. | ✓ | | ✓ | ✓ | Majority | Y |
| Postpone indefinitely. | ✓ | | ✓ | | Majority | Affirmative vote only |

Main motions—A main motion is a formal proposal that is made by a member that brings a particular matter before the group for consideration or action.

| Motion | Requires a second | Can interrupt speaker | Debatable | Amendable | Votes required to pass | Can be reconsidered |
|---|-------------------|-----------------------|-----------|-----------|-------------------------|---------------------|
| Any general motion, resolution, or ordinance. | ✓ | | ✓ | ✓ | Majority | ✓ |
| Take from the table. | ✓ | | | | Majority | |
| Reconsider. (To reconsider a motion already passed/defeated.) | ✓ | ✓ | ✓ | | Majority | |
| Appeal or challenge a ruling of the chair. | ✓ | ✓ | Depends | | Majority | ✓ |
| Rescind. (A motion to strike out a previously adopted motion, resolution, bylaw, etc.) | ✓ | | ✓ | ✓ | Varies, based on motion | Negative vote only |



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This Business Of Farming

by Roger Strom — Part of the Morning Show on KASM Radio
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Despite efforts to preserve farmland, in many farm states the cities are growing up around farms with suburbs cropping up at an alarming rate, taking productive farmland out of production to be cemented or asphalted over.

Developers are buying out farmers, offering much more money than the farmer can get by selling the land to another farmer...driving up land prices to the point farmers can't compete.

Although a retiring farmer might want his land to remain in farming, when "push comes to shove," he's got to do what's best for his family's future.

New development brings city dwellers to the middle of farm country. Folks that probably know little about farming or the noise and odors that come with it. Even though the farmer was there long before anyone thought of building houses, the new neighbors don't want the smell of livestock mixing with their Saturday grilling.

There are plenty of cases in which a neighboring landowner charges the farmer with "substantially and unreasonably interfering with the use and enjoyment of their property."

If it goes to court, the judge uses a cost-benefit analysis to determine whether the interference with property rights is unreasonable. If the judge decides in favor of the plaintiffs, the farmer may be forced to pay damages or even cease operations.

Thankfully, every state now has some form of a "right-to-farm" law to protect farmers against nuisance lawsuits filed by people who want to shut down the neighboring farm.

Under the typical right-to-farm statute, if a farming operation has been in existence for more than one year prior

to the nuisance claim, the farmer is protected from a lawsuit. Protection that can quickly disappear if the opposing lawyers finds the farmer hasn't been in compliance with all regulations, permitting, and licensing requirements for their operation

Dealing with urban sprawl isn't just about protecting a farmer's livelihood; it's also about preserving land for food production. According to some estimates, the U.S. loses an acre of farmland every minute, losing more than 6 million acres of farmland since 1997, about the the size of Maryland.

Right-to-farm may keep a farmers land in production, but there's little protection for non farmed ground that may be needed for future farm expansion.

There are over 7 billion people in the world today with projections of 9 billion by 2050. Those people are going to need a place to live, gobbling up even more of the same crop-bearing land needed to feed that many people.

This presents some real questions. How are we going to keep farmers on the land as land prices are driven up by developer competition? How can they produce enough food for that many people with less land base to be farmed? Can we count on technology and modern farming methods to increase the amount of food per acre fast enough to meet demand? And lastly, can we afford to gamble with the potential out-come if we don't come up with a plan?

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