

GOOD GOVERNANCE TRAINING NOTES APRIL 1ST 2015

Present were: James Monge League of Minnesota Cities Research Attorney & Doug Gronli – LMCIT.

Mayor Jeff Hagen, Council Member Don Simon, Rick Tallman, Susan Palmer & Duane Willenbring.

Staff Rena Weber, Judy Neu, Mandy Lais, Nick Waldbillig & City Attorney Adam Ripple.
Planning Commission Chair Bill Becker & Member Toni Honer.

Park & Recreation Member Paul Wirth

Others present: None

League of Minnesota Cities Attorney James Monge did a Power point on City Government and Meetings

Powers come from State:

Types of Cities:

- Standard Plan Cities
- Statutory A Plan Cities
- Statutory B Plan Cities
- Charter Cities

City Council:

- Authority is exercised by the council acting together as a decision-making body.

Pursuant to state statute the council exercises authority to:

- Control city finances
- Adopt ordinances
- Enter into contracts
- Appoint city personnel
- Appoint committee members
- Establish policies and rules of procedures

Duties of Individual Council Members:

- Participate in council meetings and votes
- Educate themselves on issues
- Act as liaison between city and residents
- Be a link between council and staff

Mayor in Statutory Cities:

- Weak-mayor form of government
 - Cannot act alone
 - No individual authority over staff
 - No veto

Mayor limited additional powers:

- Presides of meetings
- Council Vacancies
- Appointments subject to council approval
- Official Head of City

Delegation of Council Authority:

- Can't delegate
 - Legislative decision
 - Discretionary administrative authority
- Can delegate
 - Ministerial functions

Contract example:

- Jewell Belting Co. v Village of Bertha
- Council authorizes president to contract for fire engine
- President contracts for fire engine
- Council refuses delivery
- Jewell sues village\

Held:

- Council cannot delegate authority
- President had no authority to contract
- If councilmember acts individually
 - Council may later ratify
 - Potential personal liability
 - No city liability

Advisory Bodies:

- Composed of
 - Council members
 - Staff
 - Residents or non-residents
- No decision making authority
- Can assign non-discretionary duties to councilmember

Access to Government Data:

- Public Data
 - Members follow general access procedures
- Private Data
 - Includes personnel data
 - Council can view
 - Members cannot view unless authorized by council

Personal Liability?

- Protections
 - Official immunity
 - Official actions
- Statutory
 - Cities must defend and indemnify
- No protection if acting
 - With bad faith or malice
 - Beyond authority

Summary:

- Council governs city
- Individual authority
- Mayors have limited additional authority
- No delegation of legislative or administrative authority
- Potential liability

Minnesota Open Meeting Law:

- Minnesota Statutes Chapter 13D (OML)
- When a public body meets it must:
 - Provide advance notice
 - Allow the public to attend*

OML – Purpose:

- Prohibit secret meetings
- Protect public's right to:
 - Be fully informed
 - Detect improper influence
 - Present its view
- Presumption:
 - Openness

OML applies to:

- City Council
 - Regular meeting
 - Special meeting
 - Work sessions
 - Executive sessions
 - Public hearings
- Planning Commissions
- Advisory boards
- Economic Development authorities
- Housing and redevelopment authorities

- Port authorities
- Committees

What is a meeting?

- *Meeting” not defined in statute
- Minnesota courts:
 - Quorum of body is present
 - City Business:
 - City issues discussed
 - Information received
 - Action is taken

Types of meeting:

- Regular
- Special
- Emergency
- Continued
- Closed

Regular Meetings:

- Held at a regularly scheduled time and place
- Schedule is on file at city
- Public can attend
- May discuss items not on agenda

Special Meetings:

- Different day, time or location
- 3 day notice to public of date, time, place, and purpose of meeting
 - Posted
 - Mailed or published
- Notice to councilmembers before meeting
- Public can attend

Emergency Meetings:

- Matter requires immediate consideration
- Publish or posted notice not required
- Good faith effort to notify media
- Public can attend

Continued Meetings:

- Time and place:
 - Established at previous meeting
 - Recorded in minutes
- Published or mailed notice not required
- Public can attend

Closed Meetings:

- Start as an open meeting
- Explain on the record
 - Specific statutory authority for closing
 - Subject to be discussed
- Tape record closed meetings
 - Except attorney – client meetings

Meeting that must be closed:

- For preliminary consideration of allegations or charges against an individual subject to public body's authority
- Meetings where sensitive data is discussed

Meeting may be closed:

- To consider strategies for labor negotiation under PELRA
- Performance evaluations
- Attorney-client privilege
- Security briefings
- In connection with purchase or sale of real or personal property

Exceptions of the OML:

- Limited
- Specific procedures must be followed to close meetings.
- City attorney should assist in closing meetings.

Open Meeting Law concerns:

- Chance or social gatherings
- Training
- Pre & post meeting discussions
- Serial meetings
- Electronic communications

Chance or social gatherings of a quorum:

- No information received related to official business
- No discussion of official business
- Not meetings under OML

Training:

- OML does not apply where training is general in nature
- No discussion of city business

Pre & Post Meeting Discussions:

- Discussing 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 to fashion agreement on an issue
- Violate the OML
- Walking quorum
- Snail mail
- Email
- Text messages
- Social media

Electronic Communications:

- Use of computers can be intentional or unintentional conduit for OML violations
- Non-Public discussion of city business

Penalties for Intentionally Violating the OML:

- Minn. Stat. §13D.06
 - Personal liability-\$300 fine
 - Forfeit office after three violations
 - Cost and attorney fees up to \$13,000
 - Council action invalidated

Checklist:

- 1) Is the group subject to the Open Meeting Law?
 - City Council, Committee, Commission, Board etc. ?
- 2) Is this a “meeting”?
 - Quorum?
 - City business?
- 3) Is there a specific exception?

Conducting Meetings:

- Generally left to city to regulate procedures

Should the council adopt rules of procedure?

- Generally, yes
- No default rules
- Mayor’s Handbook rules, Robert’s Rules, other
- Rules should fit the needs of the council

Should council adopt bylaws?

- Generally , yes
- No default bylaws
- Bylaws should fit needs of council

Do we need an agenda?

- Regular meetings: not required but good idea
- Special meetings: notice to public
- Emergency meetings: notice to public

Decorum:

- Expectations
- Apply to everyone
 - Council
 - Staff
 - Audience
- Enforced when needed
- Wait to be recognized before speaking
- Refrain from offensive words, threats or objectionable language
- Stay on topic
- Refrain from private conversation
- Abide by time limits
- Listen
- Keep an open mind
- Turn off cell phones

Additional Resource:

- Research Memos
 - www.lmc.org
- Handbook for Minnesota Cities
 - www.lmc.org
- Research Department
- 1.800.925.1122
- 651.281.1220

TOPICS TO BE DISCUSSED:

- **CONFLICT OF INTEREST**
- **OPEN MEETING LAW**
- **CIVILITY**
- **WEB-SITE REQUIREMENTS**
- **DATA PRACTICES**
- **VARIANCES**
- **STRATEGIC PLANNING**
- **E-SERIES**

CONFLICT OF INTEREST

1. When discussion is being held regarding an issue such as water/sewer rates and some members will be directly affected by the change – is this a conflict? What if these councilors have been very vocal and active previously in response to an issue like this, including arranging citizen groups to vocalize the councilor’s position at council meetings?

OPEN MEETING LAW – 4 COUNCIL MEMBERS & MAYOR Chapter 13 D Reg Met Spec Work Session Planning, Fire Dept:**Fire Dpt can change a meetings but it is not a special meeting so notice needs to be sent out.**

1. If there is a standing committee meeting going on with the 2 council members appointed and two more council members show up – can the members who are not on the committee engage in the discussion?
Can the council member put on his “citizen hat” and be allowed to talk if the facilitator (in this case the chair of the committee) allows that council member talk?
2. Calendar – the council adopts a calendar for the year at the first meeting in January. Is it possible to approve a policy that if the meeting is cancelled for any reason it is common knowledge the meeting will be held one week later thereby eliminating the need to send out notices to the people who have signed a petition requesting notice of any special meeting?
3. Fire Department meetings – They are included on the city calendar so if they change their meeting date and move it up two weeks – should this have been posted and notice mailed to the petitioners who requested notice of special meetings?
In the same fire department meeting two council members met in a closed meeting with the Chief & Secretary. This was not posted. Is this violating any laws?
If a council member knows that the Fire Department has moved the date of the meeting up – should they inform staff of the change so it can be posted?
4. If the Human Resources Committee is holding interviews can the public be in the room and videotaping the interviews? How can HR conduct employee interviews or similar “sensitive/private” discussions without opening these meetings to the public?

CIVILITY

1. Some of the members have seen the Mosquito Heights video at the Regional training in Waite Park. Can this be shown again and discussed?
2. Is it a better practice for councilmembers to ask their questions regarding bills, etc. before a council meeting?
3. Council meeting Etiquette – discuss in general

WEB-SITE REQUIREMENTS

1. What are the requirements for what should be on a web-site?

Notice of meetings – do we need to load the entire packet up on the web-site or just the agenda? After reviewing other cities web-sites (Richmond, Cold Spring, Avon) they provide the Council agenda and minutes only, no packets, nothing on the Planning Commission

2. Going green or paperless – What are your thoughts on providing laptops/tablets for the council chambers to be used by both CC & PC? These would be kept on site to eliminate cost of repairs. We would still do a paper copy for the table.

DATA PRACTICES

1. The city has been contacted by a person from Goodhue County asking specific information regarding an issue that is mute – how much effort does the city have to put into those requests? Can you elaborate on what if we need to create something that we don't have or will use – how is that handled?
2. This also has happened with a citizen – how much is too much when staff is spending a lot of time addressing one person? Is this fair to the tax payers?
3. How can excessive inquiries for data by councilors be handled when it interferes with other staff duties and can occur at the expense of other taxpayers in terms of delays and additional administrative expense? Is there any way of managing these requests such as having council approve them in advance, or approval by mayor/administrator, etc.?
4. Should requests for data by councilors be treated equally with that of a taxpayer in terms of priority and charging for copies, etc.?

Put a posting on door Park & Rec meeting on Friday

VARIANCES

1. What is the rule on granting variances? Is it true that the more variances that you grant the city should change the ordinance? **Statue 462.367**
Work with Adam on practically difficulty standard.

STRATEGIC PLANNING

1. The city was consolidated in 2002 and since then has adopted a new zoning ordinance, comprehensive plan and had the MN Design Team come in and make recommendations for possible change in the city. What would the right process be to get the key leaders together and hire a facilitator to sit down with them and come up with some goals/plan?

E-SERIES

1. When is a city ready to convert to electronic packets? City e-mail addresses? What are some of the downfalls?
2. The cost to have individual e-mails is \$50 per year/per person. \$250.
3. The city will have access to the individual e-mails – how is this received?
4. Do we need to have a policy in place? Are there samples?

City Attorney Adam Ripple will reply to the above questions in a memo (A copy is hereby attached and marked Exhibit A)