

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 your sense of public responsibility but being on city council is not easy. The League of Minnesota Cities offers guidance to elected officials on a variety of topics to set you up for success. Here's just a sample of questions that we can help you answer:

Can I rehash 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 have identified?

Find out what power a single council member has to make changes — see page 5.

Can I improve the efficiency of our city government by using email to communicate among council members?

Find out if it is a problem that the public cannot see and participate in these discussions — see page 12.

lmc.org/goodstart

Turn to the League of Minnesota Cities for answers!

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

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



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The following information on types of cities and forms of organization can be found in the League's Handbook for Minnesota Cities Chapter 3: The Statutory City, and Chapter 4: The Home Rule Charter City. The Handbook is available FREE on the League's website at lmc.org/handbook.

Types of cities and forms of organization

There are two types of cities in Minnesota: statutory cities and home rule charter cities.

Statutory cities

Statutory cities operate under the statutory city code in Chapter 412 of the Minnesota Statutes (as well as other laws that cover specific situations or apply to both statutory cities and home rule charter cities).

There are three forms of organization for statutory cities: the Standard Plan, Optional Plan A, and Optional Plan B.

The Standard Plan is available to all cities. The Standard Plan has a weak mayor-council form of government that includes an elected mayor, an elected clerk (or a combined clerk-treasurer) who serves as a voting member of the council, and three or five elected council members. The treasurer is also elected but is not a member of the council.

Plan A is also available to all cities. Plan A includes some of the weak mayor-council form of government, but instead includes an appointed clerk and an appointed treasurer (or a combined clerk-treasurer), an elected mayor, and four to six elected council members.

Plan B is only available to cities with a population greater than 1,000. Plan B is a council-manager plan that includes an elected mayor, four to six elected council members, and an elected city manager. The city manager oversees administrative duties while the mayor and council have traditional policy making roles.

Home rule charter cities

Home rule charter cities operate under the locally adopted charter as well as Chapter 410 of the Minnesota Statutes. Charters are essentially local constitutions that are drafted to meet the specific needs of the city.

Home rule charter cities can have any of the standard forms of government, including weak mayor-council, strong mayor-council, and council-manager forms of government. Additionally, home rule charter cities can have a commission form of government, where each elected council member is responsible for a particular administrative department.

The following information on elected officials and council structure and role can be found in the League's Handbook for Minnesota Cities Chapter 6: Elected Officials and Council Structure and Role.

Elected officials and council structure and role

The city council is the foundation of city government in Minnesota. The city council makes the policies that affect the city's present and future.

Terms of office

In statutory cities, terms of office begin on the first Monday of January following the election. The terms of the old elected officials end at this time, or as soon as the newly elected officials qualify by taking an oath and filing a bond, if one is required. If the newly elected official refuses or fails to qualify, the elected official who currently holds the office will continue to hold office until the council declares the office vacant and appoints a new individual to hold the office. The length of terms of office is set in state law.

Oath of office

Newly elected officials must take and sign an oath of office before they can use their authority to take action. This includes members of councils, boards and commissions, as well as administrative officers. This applies to appointed and elected officials. The oath states:

"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 elected official objects to an oath for religious reasons, the word "affirm" can be substituted for the word "swear," and the phrase "and this I do under the penalties of perjury" can be substituted for the phrase "so help me God."

Any person with the authority to take and certify acknowledgments can give 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 a hand while reciting the oath. The candidate qualifying for office must take the oath and sign a copy of the oath in front of the person giving the oath.

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 council members to make sure that the city is fulfilling its duties under the law and lawfully exercising its powers.

City officials can sometimes be legally responsible for failing to act or for taking unauthorized actions. To avoid this, city officials should know the laws that regulate city government. Whenever city officials have doubts about an action or procedure, they should ask their city attorney.

ROLE OF THE INDIVIDUAL COUNCIL MEMBER

The council as a group, not individual council members, must perform all duties required by law. For example, the council, not individual council members, must supervise administrative officers, make policies, and use the council's authority to act.

As individuals, council members do not have administrative authority. They cannot give orders or supervise city employees unless the council directs them to do so. The council, however, has authority over all administrative affairs in the city. In Plan B cities, this authority is generally limited to conducting investigations and making policies for the city manager.

Individual council members do have important responsibilities. Generally, council members should focus on city policy and the relationship between the city and the public. Council members should focus on the city's daily affairs and future growth.

The most important responsibility of an individual council member is participation at council meetings. In statutory cities, council members, including the mayor, can make and second motions, participate in discussions, and vote on matters before the council.

THE COUNCIL'S AUTHORITY

The city council is a continuous body, meaning that the council members' terms are staggered and new members have no effect on the body except to change its membership. All ordinances and resolutions remain in effect until the council changes or officially ends them, or until they expire. At any time, the council can change any resolution, ordinance, or administrative order (an order given to a city employee) whether or not the current council members are the same as those who were council members when the council originally took action.

There are exceptions to this rule. For example, the council cannot dissolve a perpetual-cemetery maintenance fund. Additionally, the council cannot withdraw or unilaterally alter any valid contracts.

The major areas of council authority and responsibility include:

- **Judging the qualification and election of council members**

The council evaluates the qualifications of council members. This includes certifying election results, determining whether an individual has the necessary qualifications to hold office, and deciding whether a council vacancy has occurred.

- **Setting and interpreting rules governing its own proceedings**

The council can:

- Keep order during council meetings.
- Make rules of procedure.
- Require council members to attend meetings and punish nonattendance. Although the council cannot remove council members, it can punish members with fines or by taking away part of their pay for failing to follow attendance orders.

- **Exercising all the powers of cities that the law does not delegate to others**

Except for the powers that the law gives to a specific elected official or independent board or commission, the council can exercise all powers given to the city.

- **Legislating for the city**

The council can enact (make into law) ordinances by a majority vote of all council members except where a larger number is required by law. The power to legislate (make laws) also includes making administrative policies and public policy for the city.

The council has the power to make violations of any ordinance a crime and can set penalties for ordinance violations. The law limits the penalty for ordinance violations to a fine of up to \$1,000 or 90 days in jail, or both.

- **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 directing and supervising the work of police officers indirectly through the police chief. The city council also directs all departments and employees who are responsible for the administration of city policies and ordinances.

- **Appointing administrative personnel**

- In Standard Plan and Plan A cities, only the council can appoint all city employees.
- In Plan B cities, the council appoints a city manager who then appoints all city employees. The council cannot command the city manager to appoint a specific person to city employment. Additionally, the council cannot give orders to the city manager's subordinates, either publicly or privately.

- **Handling city business**

Handling city business includes purchasing, executing legal papers, taking bids, letting contracts, making discretionary administrative decisions, and evaluating the work of administrative departments and personnel.

- **Managing the city's financial operations**

The council has full authority over the city's financial affairs, including:

- Levying taxes.
- Adopting a budget.
- Auditing and settling accounts.
- Safekeeping and disbursing public funds.
- Borrowing money.
- Designating depositories.

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

- **Appointing members of the boards**

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

- **Conducting the city's intergovernmental affairs**

The council can make joint powers 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, like the League of Minnesota Cities.

- **Protecting the welfare of the city and its inhabitants**

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

- **Leading the community**

In addition to participating in civic events, city officials lead by promoting new ideas and suggesting new programs to improve the community.

Mayor

The mayor is the head of the city and speaks for both city government and the community. 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 council member in addition to those of mayor.

In a home rule charter city, the charter spells out the duties and responsibilities of the mayor.

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:

- Representing the city before the Minnesota Legislature, federal agencies, and other local governments.
- Performing ceremonial duties for the community, like greeting important visitors, giving formal and informal talks, and participating in public events.
- Providing leadership in city affairs.

- **Executing official documents**

The mayor must sign ordinances, contracts authorized by the council, and written orders for payment of claims that have been audited and approved by the council. These are ministerial duties (duties that require a person to do something without using their own judgment or discretion), and the mayor cannot refuse to sign if the purpose, approval, and form are legally correct and complete.

- **Power to make some appointments**

Usually, the council has the power to appoint. However, the mayor can make the following appointments, with council approval:

- Park board members.
- Public library board members.
- Emergency management director.
- Hospital board members.
- Some police civil service commission members.
- Housing redevelopment authority (HRA) members.
- Economic development authority (EDA) members.

The mayor can make the following appointments without council approval:

- City art commission members (First Class cities).
- In case of a tie vote among the council, the mayor appoints individuals to fill vacancies in elective offices.
- **Presiding officer at council meetings**

The mayor is the presiding officer at council meetings. Generally, the mayor 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.

The mayor can vote on all motions before the council but cannot veto council actions. The mayor's ability to make and second motions is implied from the mayor's ability to vote and participate in regular council deliberations. The mayor can also call special meetings. Mayors in charter cities should consult the charter for specific powers and limitations that may be different than those mentioned here.
- **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 be publicized promptly. The clerk must promptly file any order or proclamation declaring, continuing, or terminating the emergency.

A declaration of a local emergency triggers the response and recovery aspects of any local or interjurisdictional disaster plans and may authorize aid and assistance. Interjurisdictional agencies or officials cannot declare a local emergency unless expressly authorized by an agreement. An interjurisdictional disaster agency must provide aid and services following the agreement.

Team mindset by leaders

Close-knit teams have more success achieving their goals. Disrespect affects team performance by causing stress and tension among team members. Leaders of close-knit teams:

- Cut people slack.
- Do not blame others. City council, council members, and staff are a team.
- Focus on the process, not the people involved.
- Assume that others have good intentions.
- Listen to learn instead of pretending to listen while thinking of their next statement or counter argument.
- Ask questions and practice patience while waiting for a response. Silence allows others to think. Compromise is good, but understanding everyone's point of view may lead to a new idea that meets everyone's needs.
- Practice empathy. Empathy does not mean giving up your beliefs. Empathy is the ability to take on other peoples' perspectives and to understand, feel, and share their experience.
- Identify each team member's strengths and recognize their unique contributions to create a sense of belonging.
- Empower others by delegating with clear expectations.
- Celebrate success! Success comes in all shapes and sizes.

Meetings and hearings

Meetings

A meeting is a gathering of a quorum (the minimum number of officials that must be present) of public officials to discuss, decide, or receive information on matters over which they have authority.

TYPES OF MEETINGS

There are two types of meetings:

- **Regular meetings**

Regular meetings are held at a specific time and place as scheduled by the council. Typically, councils meet once a month on a particular day, although some councils meet more often. Home rule charter cities should look at their charters and any council rules about scheduling regular meetings.

- **Special meetings**

Special meetings are meetings held at times or places that are different than regular 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 the League's Handbook for Minnesota Cities Chapter 6: Elected Officials and Council Structure and Role.

FIRST MEETING OF THE YEAR

There is no law that sets a date for the first meeting of the year. In most statutory cities, the date is set by an ordinance that creates 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 current council members continue to serve until the new council members qualify. The first day of a new term in a home rule charter city is generally set by the charter.

At the first meeting of the year, the council must:

- 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.)

Though not required at the first meeting of the year, many city councils also:

- Review the council's bylaws and make any needed changes.
- Assign committee duties to council 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.

Public hearings

A public hearing is a meeting during which members of the public express their opinions. During a public hearing, the council does not deliberate or discuss matters. Instead, the council listens to the public.

TYPES OF PUBLIC HEARINGS

There are two types of public hearings:

- **Discretionary hearings**

Discretionary hearings are public hearings that are not legally required. Discretionary hearings allow the public to comment on a specific issue and can help the council learn about and understand issues it may not have otherwise considered.

- **Required Hearings**

Required hearings are public hearings that are required by a law, ordinance, or charter. There are many situations that require a public hearing, including:

- 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 a conditional use permit.
- Adoption of a charter amendment by ordinance.

PUBLIC COMMENT PORTION OF MEETINGS

City councils often reserve time for public comment during council meetings. Just as with public hearings, the public comment period at council meetings is an opportunity for members of the public to express their opinions to the city council.

There is no requirement in state law for a city to include a public comment period during its council meetings. It is up to each city to determine whether to include a public comment period during council meetings, although most cities do include one. When cities choose to include a public comment period, it is important to have rules in place for both the council and the public to follow during the public comment period.

The Open Meeting Law

The Minnesota Open Meeting Law generally requires that all meetings of public bodies be open to the public. This requirement:

- Prohibits actions from being taken at secret meetings where it is impossible for the public to be fully informed about public bodies' decisions or to detect improper influences.
- Ensures the public's right to be informed.
- Gives the public an opportunity to present its views to the public body.

WHO DOES THE LAW APPLY TO?

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.

This means that 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.

WHAT IS A MEETING?

There is no definition of "meeting" in 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.

WHAT MEETINGS DOES THE LAW APPLY TO?

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

The Open Meeting Law applies to:

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

EXCEPTIONS TO THE OPEN MEETING LAW AND THE PROCEDURES TO USE THEM

There are some exceptions to the Open Meeting Law. Under certain circumstances, some meetings can 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 under 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.

Meetings that can be closed

The public body can choose to close certain meetings, including:

- **Meetings to consider strategies for labor negotiations under the Public Employment Labor Relations Act (PELRA)**

Although a meeting to consider strategies for labor negotiations can 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 close a meeting under 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.

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

Procedure

The following must be done to close a meeting under this exception:

- The public body must identify the individual to be evaluated before closing the meeting.
- If the individual who is the subject of the meeting requests it, the meeting must be open. This means that some advance notice to the individual is needed so that the individual can 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 about 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 can be closed when maintaining attorney-client privilege is needed to ensure confidentiality, outweighing the purpose of the Open Meeting Law. The need for absolute confidentiality should relate to litigation strategy and will usually arise after a substantive decision about the matter has been made. This privilege cannot be abused to prevent the public from observing the decision-making process, and does not include situations where the council receives general legal opinions and advice from the city attorney about the strengths and weaknesses of a matter that might be litigated in the future.

Procedure

The following must be done to close a meeting under 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 balancing the purpose of the attorney-client privilege against the purpose of the Open Meeting Law demonstrates the need for absolute confidentiality.
- The council must communicate with its attorney at the meeting.

- **Purchase or sale of property**

A public body can 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, and develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Procedure

The following must be done to close a meeting under 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 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 people 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 can 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 or recommendations about 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 close a meeting under 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.

Meetings that must be closed

There are some meetings that the law requires to be closed, including:

- **Meetings for preliminary consideration of allegations or charges against an individual subject to the public body's authority**

While the law allows 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 consider 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 provided because the existence and status of any complaints against an employee are public data.

Procedure

The following must be done to close a meeting under 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.
 - At the request of the individual who is the subject of the meeting, the meeting must be opened. This means that the individual should be given advance notice of the existence and nature of the charges against them, 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 for the specific charges is necessary, further meetings must be open.
- **Parts of meetings during 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 Minn. Stat. §§ 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 for all meetings of a public body. The notice requirements depend 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.

Statutory cities have some additional requirements for mailing notice to their council members for special meetings. There may also be additional notice requirements for home rule charter cities to consider. Home rule charter cities should consult their charters for more information.

- **Regular meetings**

Regular meetings are held at dates, times, and places established by council rules. Councils typically meet once or twice a month in the city hall or at another public place in the city. A schedule of regular meetings must be kept on file in the city office. Typically, cities comply with the notice requirements for regular meetings by posting the regular meeting schedule in a convenient public location. If the city decides to hold a meeting at a different time or place, it must give the notice required for a special meeting.

- **Special meetings**

A special meeting is a meeting that is held at a date, time, or location different than 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 accessible to the public. The notice must give the date, time, place, and purpose of the meeting. It also must 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.

- **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.

- **Recessed or continued meetings**

No additional notice is needed for a recessed or continued meeting if:

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

- **Closed meetings**

The same notice requirements that apply to open meetings also apply to closed meetings. Additionally, advance notice to an individual who will be the subject of a closed 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 materials related to agenda items that are available to the council at or before the meeting must also be available to the public. However, this does not include data that is not public or materials relating to agenda items of a closed meeting.

COMMON PROBLEMS IN APPLYING THE OPEN MEETING LAW

- **Data practices**

Generally, meetings cannot 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 (like 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 can generally be discussed at an open meeting without legal responsibility or consequences if:

- Disclosure of the data relates to a matter over which the public body has authority.
- Disclosure of the data is necessary to conduct the business or agenda item before the public body.

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

- **Executive sessions**

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

- **Committees and liaisons**

The attorney general has advised that standing committees appointed by a governing body are likely subject to the Open Meeting Law.

Many city councils create committees to make recommendations to the council. Committees are responsible for researching a particular area and submitting a recommendation to the council for approval. Committees are often advisory, meaning that the council makes the final decision. The law is not clear when committees or citizen panels are subject to the Open Meeting Law. Courts often do a fact analysis when reviewing Open Meeting Law challenges involving advisory committees to determine if the committee is a standing committee whose recommendations the council generally or always follows, or if the council only follows the committee's recommendations in particular situations. Many cities err on the side of caution and follow Open Meeting Law guidelines for all citizen advisory committees.

City councils routinely appoint individual council members to connect the council and committees. Committee meetings may also be subject to the Open Meeting Law if the committee includes a quorum or more of the council or has decision-making authority. Additionally, 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 city planning commission meeting, 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 at the meeting. Based on that decision, the attorney general has advised that council members' attendance at a committee meeting that follows the Open Meeting Law would not be a special meeting requiring separate notice. The attorney general warned, however, that the additional council members should not participate in committee discussions or decision-making without a separate notice for a special meeting.

- **Chance or social gatherings**

Chance or social gatherings of a quorum are not considered meetings under the Open Meeting Law. However, a quorum cannot, as a group, discuss or receive information about official business in any setting during a social gathering.

- **Serial gatherings**

The Minnesota Supreme Court has noted that meetings of less than a quorum of the public body held repeatedly to avoid public hearings or to come to an agreement on an issue may violate the Open Meeting Law. Council members should avoid these meetings.

- **Technology trouble**

The Open Meeting Law does not address communication through telephone calls, letters, email, 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 for email and other forms of technology, it should be stressed that if a quorum of council members is involved in the communication, it would likely be a violation of the Open Meeting Law.

Additionally, serial discussions between less than a quorum of the council to make decisions that should be made at an open meeting would likely violate the Open Meeting Law. Therefore, city councils and other public bodies should not use letters, telephone conversations, email, and other technology if:

- A quorum of the council is involved.
- Official city business is discussed.

The use of social media by members of a public body does not violate the Open Meeting Law if it is limited to exchanges with all members of the general public. The Open Meeting Law does not define social media, but generally it means forms of electronic communication, including websites for social networking like Facebook, LinkedIn, as well as blogs and microblogs where users create online communities to share information, ideas, and other content. Council members should be mindful of whether their personal social media is, or appears to be, an account that looks like an official account in their professional capacity. If a council member's personal account appears to be an official account, the account may be deemed a government account and even a public forum so that people cannot be excluded, blocked, or muted.

City-owned social media accounts and social media accounts of elected officials (being used in their role as an elected official) must keep the First Amendment in mind when considering policies about comments and blocking. Policies that restrict comments to the topic or delete negative comments and practices of blocking or restricting friends or followers could face challenges.

Council members that cannot attend a meeting may ask to attend through interactive technology like Zoom or Teams. There is an exception to the Open Meeting Law where a member can attend via interactive technology. The remote location must be a public place unless the council member qualifies for one of the limited exceptions — the military service exception or the health exception — both of which only can be used three times each year. Additionally, when one or more members join remotely, notice must be posted at least three days before the meeting stating the location from which the remote attendee or attendees are joining. Cities should develop a policy for using technology like Zoom with the assistance of their city attorneys.

INTENTIONAL VIOLATIONS OF THE OPEN MEETING LAW

A public officer who intentionally violates the Open Meeting Law can be fined up to \$300. The fine cannot be paid by the public body.

If a public official is found to have intentionally violated the Open Meeting Law in three or more separate actions, the public official must be removed from office and cannot 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 is malfeasance (an intentional act that is unlawful) or nonfeasance (failure to act when required).

The Open Meeting Law 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 not valid when the 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.”

Tables of motions

A motion is a formal proposal by a member, in a meeting, that the public body take certain action. Before a subject can be considered, it must be placed before the public body in the form of a motion.

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 tables of motions are listed in order of precedence and are based upon *Robert's Rules of Order Newly Revised*, 12th Edition (2020).

Privileged motions

A privileged motion is a motion that does not relate to the business at hand. A privileged 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	Negative vote only
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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