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CITY FEST

2025 ANNUAL
CONFERENCE

CONNECTING
LEADERS
CELEBRATING
COMMUNITY

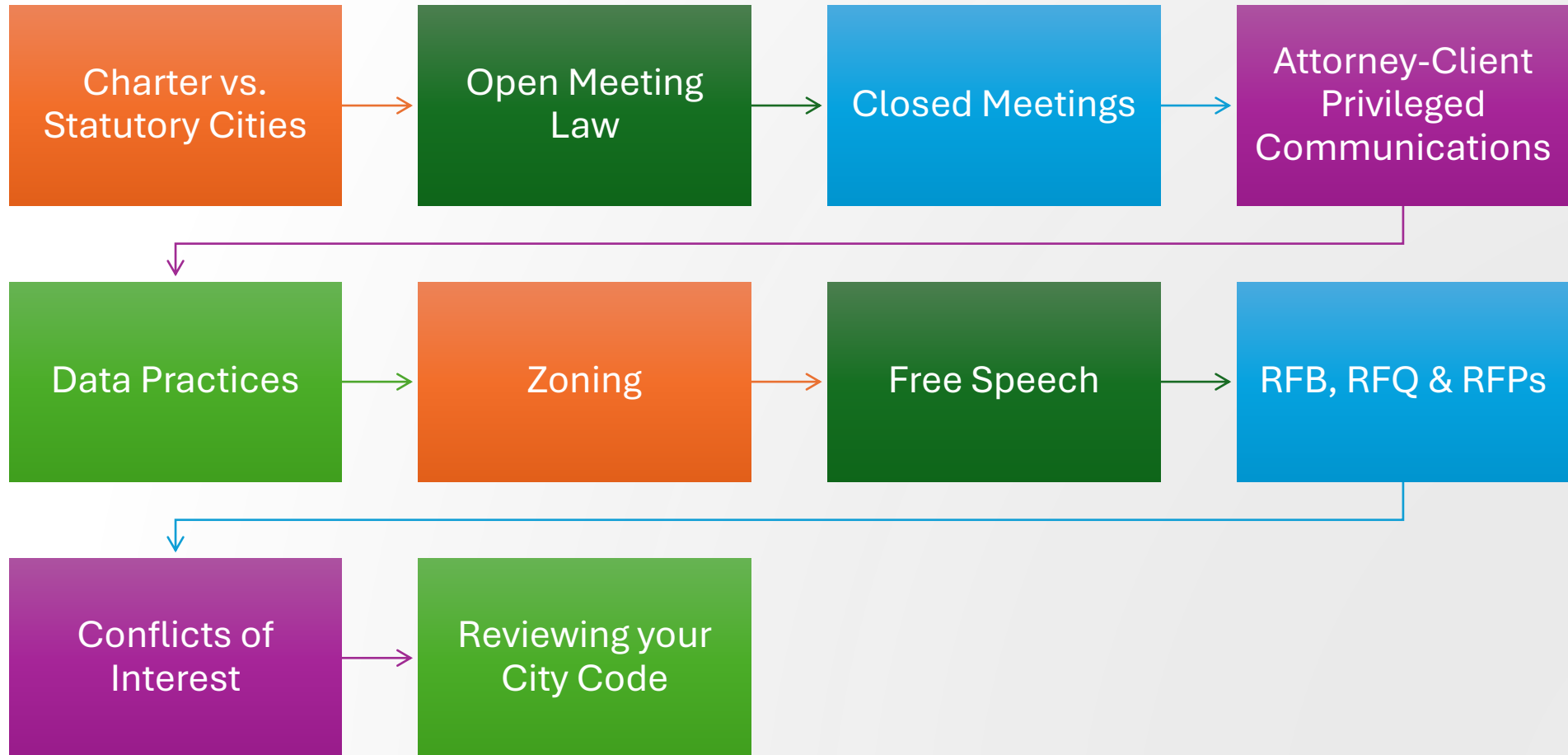


JUNE 25-27
DULUTH

DULUTH ENTERTAINMENT
CONVENTION CENTER

LMC.ORG/AC25

Top 10 Things Your City Attorney Wants You to Know



1. Charter vs. Statutory City

Charter Cities have Super-powers

Types of Cities

853 cities
in the
State of
Minnesota

- Statutory Cities (Minn. Ch. 412)
 - 746 Statutory cities
 - 2.1 million people
- Charter Cities (Minn. Ch. 410)
 - 107 Charter cities
 - 2.4 million people

City Charter

Charter is local framework for a City's form of government and **may only be adopted after approval by the voters**

- Form of Government (Mayor-Council, Council/Manager Plan)
- Wards, Terms, Mayor's ability to vote
- Recall of Council members
- Referendums/Petitions for ordinances
- Filling Vacancies on the Council
- Procedures for Council
- City Administrator/Manager's powers and duties
- Budget Preparation/Passage
- Franchises (Xcel, NSP)
- Utilities (electric, water, storm, streetlight)

Governed by a Charter Commission

City Charter

- Advantages of a Charter
 - Can exercise super-powers as long as not in conflict with state law
 - Can be more restrictive than state law
 - If Charter is silent, can follow state law
 - If state law is silent, can enact a Charter provision
 - Change can occur locally instead of waiting for the legislature
- Disadvantages of a Charter
 - Cannot relate to other cities because all Charters are unique
 - Poor drafting of a Charter can lead to interpretation questions
 - Must consult state law, City Codes, and Charter for all applicable laws

2. Open Meeting Law

Please stop talking to each other outside of a meeting

Open Meeting Law

Minn. Stat. §13D.01

All meetings of -

The City; or

A committee, subcommittee, board,
department or commission of the City,



Must be open to the public.

Council Commissions Committees

City Council
Meetings/Work
Sessions

Sub-committees of
the Council

EDA/HRA

Parking
Commission

Historic
Preservation
Commission

Human Rights
Commission

Charter
Commission

Library Board

Park and Rec
Commission

Utilities
Commission

Special Service
District

Planning
Commission

Remote Meetings

Remote Location allowed IF:

- At least one person is in the regular meeting location
- All members and the public can see/hear everyone
- All votes are conducted by roll call
- ~~Remote location is open and accessible to the public~~
- Need at least 3 days' notice (cannot decide at the last minute to be remote)

*Inside the room
meetings
vs.
Outside the
room meetings*

Inside:

Notice of the date, time, location is posted on the City's bulletin board and you meet at City Hall

Outside:

- Email
- Telephone
- Social media
- Serial Meetings



Open Meeting Law

Example:

- City was hiring a new finance director
- Top candidate declined
- #2 candidate quit after a week
- City Administrator conducted a telephone poll of the four council members and asked if they could hire the candidate #3
- Each council member said yes

Open Meeting Law

Quorum of the Council

Discusses, decides or receives information
as a group

Information is related to official business

*Round robin style of contact, even though by
an intervening party, is still considered a
violation of the OML.*

Open Meeting Law

When a quorum of the members of a public body subject to the OML want to discuss or decide public business, that discussion or business must occur at a public meeting. *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983). As part of its discussion in *Moberg*, the Supreme Court directed members of a public body not to use serial meetings in groups of less than a quorum to avoid a public hearing or reach an agreement on a particular issue. *Moberg* at 518.

Open Meeting Law

Email communication is the same as the telephone, especially when you hit:

“Reply All”

Bottom line:

You cannot talk to each other about City business unless you are in a public meeting

Open Meeting Law

Penalties

- \$300 for each occurrence & attorney's fees (up to \$13,000)
- Removal from office for 3 or more violations
- ***Public humiliation***

3. Closed Meetings

You can't close a meeting just because you want to talk about something uncomfortable

When can you hold a closed meeting?

Mandatory Closed Meeting

- Victims or Reporters of Criminal Sexual Misconduct, Domestic Abuse, or Maltreatment of Minors or Vulnerable Adults
- Active Criminal Investigation
- Allegations of Law Enforcement Personnel Misconduct
- Individual Medical Records

When can you hold a closed meeting?

Permissive Closed Meeting

- Purchase/Sale of Property
- Appraisal Date
- Performance Evaluation
- Security Briefing
- Attorney/Client Privileged and Confidential
- Labor negotiations
- Public Meeting – vote to hold a closed meeting

Closed Meeting Procedures

Notice.

Cite/reference the Statutory authority for the closed meeting AND Subject of the Meeting (Property Address; Performance Review Subject; Collective Bargaining Unit; Litigation Subject.)

Record the closed Meeting.

Recording retained for 3 years. Minn. Stat. §13D.05(1)(d)

Discussion.

Stick to closed Meeting Subject!

Roll Call Votes.**Summary of Closed Meeting.**

Minn. Stat. §13D.05(3)(a) (“At its next open meeting, the public body shall summarize its conclusions regarding the evaluation.”).

4. Closed Meetings Attorney-Client Privilege

You only get to do this when you are being sued

Threatened or Pending Litigation

- “Attorney-client privilege . . . is to be employed or invoked cautiously and seldom in situations other than in relation to threatened or pending litigation.” *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435 (Minn. App. 2005).
- *Prior Lake* Applicant sent a threatening letter to the City of Prior Lake stating that if the city denied the CUP or required an EAW, then the applicant may seek legal action against the City because the applicant believed an EAW should not be required. Primary City business was to determine whether applicant should be subject to an EAW in processing the CUP application. The decision on an EAW was deemed to be a matter that required public deliberation in open session.

5. Data Practices Act

Your data might be public



INFORMATION MEMO

Data Practices: Analyze, Classify, Respond

Learn your responsibilities under Minnesota's Government Data Practices Act for data your city creates or maintains. Understand how to balance the public's right to know what their government is doing with individuals' right to privacy in government data created and maintained about them, and the city's need to function responsibly and efficiently.

RELEVANT LINKS:

I. Creation of city data

Government runs on information. Elected and appointed officials make decisions based upon the information they have. Cities rely upon reports, financial projections, and community feedback when establishing:

- License and permit fees.
- Utility rates.
- Employee compensation.
- Budgets.

In turn, cities document their operations. Meeting minutes, ordinances, resolutions, and policies all preserve a record of a city's decisions and the basis behind those decisions.

A city's reliance on information creates significant responsibilities. Cities and other units of government must:

- Create official records.
- Retain and manage their records.
- Secure and provide access to government data.

This memo focuses on the roles and responsibilities related to the data cities create or maintain.

II. Minnesota's Government Data Practices Act

A. Purpose

The Minnesota Government Data Practices Act (MGDPA) is a series of state laws that attempt to balance the public's right to know what its government is doing, the right to privacy, and the government's need to function responsibly and efficiently.

[Minn. Stat. ch. 13.](#)

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

Minnesota Government Data Practices Act

- Minnesota Statutes Chapter 13
- "Government data" means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.
- All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute or federal law as private/nonpublic or confidential/protected nonpublic.

Public Data

- Your telephone number or e-mail address
- Your residential address
- Correspondence (created or received)
 - Email
 - Text message
 - Voicemail
- Notes

Social Media

An elected or appointed official's maintenance of a personal social media account may be considered government data in the event the official uses the account to speak on behalf of the government entity or corresponds with citizens via the social media account.



“These are my own opinions and do not represent those of the City of [Name]”



Exclude references to your title or role (mayor, council member, commissioner, etc.) from social media



Tip: Share links to City of Woodbury social media in lieu of your own post

6. Zoning

Variances are trickier than you think

Practical difficulties

Minn. Stat. 462.357 subd. 6 (2)

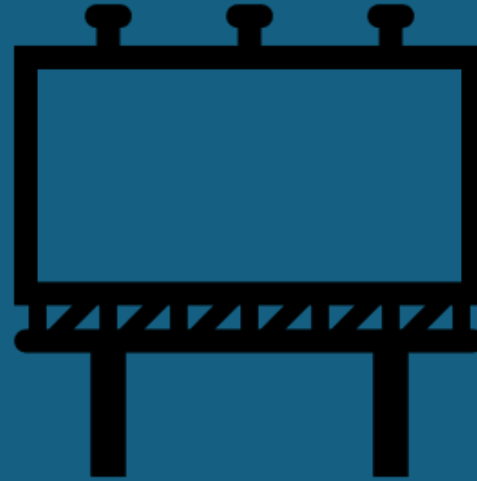
- Variances are permission to “break the rules” and may only be granted when there are “practical difficulties”
 - 1) Property will be used in a **reasonable manner**
 - 2) There are circumstances **unique to property** not caused by landowner
 - 3) The variance will not alter **essential character** of locality

Example: Garage



Example:

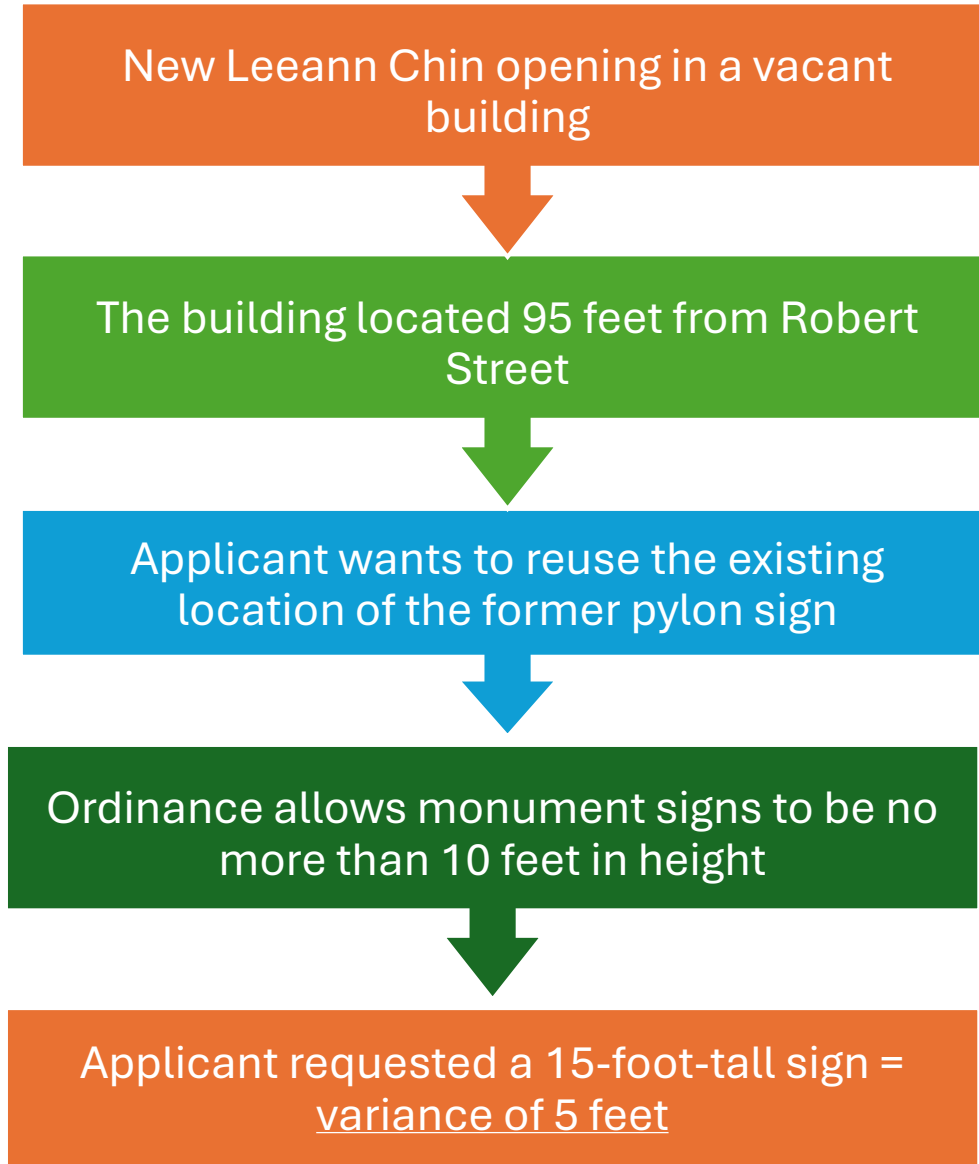
Signs



WE PUT THE
PAO
IN KUNG PAO
CHICKEN!



Leeann Chin Sign Height Variance





Sign Height Variance

APPLICANT'S ARGUMENT

Limited visibility for the restaurant because of the location of the building which is set back from Robert Street

Restaurant industry relies on the impulse decision making of customers and signs direct people to the business

Google Maps 1728 State Hwy 952



Image capture: May 2009 © 2018 Google

West St Paul, Minnesota

Google, Inc.

Street View - May 2009

5-8 Club Sign Height Variance



5-8 Club Sign Height Variance

APPLICANT'S ARGUMENT

Limited visibility of the restaurant because of a retaining wall and higher elevation to the south and the vegetation and Leeann Chin sign to the north

Google Maps 1728 State Hwy 952



Image capture: May 2009 © 2018 Google

West St Paul, Minnesota

Google, Inc.

Street View - May 2009

5-8 vs. Leeann Chin

“As the applicant states, signage is very important to their operation. The same can be said for all restaurants/retailers. Staff fears that approving the requested variance for the reasons provided would trigger similar requests. The existing sign code was specifically enacted to clean up visual clutter on Robert St. by no longer allowing taller/larger pylon signs. The elimination of pylon signs and recommendations for limiting visual clutter on Robert St. is a result of the Council approved Robert St. Renaissance Plan, which is included in the city’s Comprehensive Plan. Therefore, approving variances to go above the maximum size allowances counters the intent of the code and the Comprehensive Plan.”

The winner is...



7. Free Speech – Signs

*You can't ban a sign just because you don't like
the message*

FREE SPEECH



Signs

- Government cannot regulate the **content** of signs
- Government can regulate **time, place, manner**
- Size, location, number, zoning districts



+



Commercial Signs



Noncommercial Signs

Minn. Stat.
§211B.045:
Noncommercial Signs
during elections are
allowed as follows:

In **any** size, in **any**
number from 46 days
before the state
primary until 10 days
after the election



Noncommercial Signs







U SUCK ASS!



8. RFP, RFQ, RFB

The Alphabet Soup of bidding projects

Request for Bid (RFB)
Request for Quote (RFQ)
Request for Proposal (RFP)

City Business. Four means of seeking construction, property, or services is through:

- Request for Bid (RFB), aka Competitive Bidding
- Request for Quote (RFQ)
- Request for Proposal (RFP)
- Direct Negotiation (\$25,000 or less or professional services)

Lowest Responsive and Responsible Bidder

City may decide not to contract on project. But if City elects to do so, then City must award the contract to the lowest responsive and responsible bidder.

- Responsive Bidder(s) - Bid Opening Date. Actual, documented Acceptance.
- Timely, Submitted, Signed, Completed, Accurately and All Required Forms.
- Responsible Bidder(s). Post Bid Opening Date. Demonstrate ability to perform the contract requirements.

Legal Obligation: City awards contract to Lowest Responsive and Responsible Bidder.

Request for Proposal (RFP)



A Request for Proposal – City seeks (1) an Offer from a Business/Person and/or (2) Initiates a Negotiation.



In contrast, an RFP asks interested persons for proposals that specifically define the services that will be offered and the amount they will cost. RFPs are commonly used for contracts that are not required to be competitively bid, such as contracts for professional services.



Typical Subjects: Professional Services; Real Estate Development.



Private/Nonpublic negotiations/evaluation process. Upon “[c]ompletion of the evaluation process” the City is deemed to have completed negotiating the contract and all data submitted by all the Responders is public (with the exception of trade secret data. 13.591(1)(b) and (3)(b).

Request for Quote (RFQ)

Request for a Quote. City seeks an offer.



Contracts under \$175,000. Goal is to obtain at least two quotations which shall be kept on file for at least one year.



Typical: All other City contracts, except for those \$25,000 or less, where the City elects to contract through direct negotiations.

9. Conflicts of Interest

Avoid even the appearance of a conflict

Conflict of Interest

“Conflict of Interest” –
Legal term.



Objective is to Avoid:
Unfair Dealings
Lack of Transparency
Preferential Treatment

Conflict of Interest



- Two types of Conflicts of Interest:
 - Contractual: situation in which official has a personal financial interest in a contract, sale, lease (§471.87).
 - Non-contractual: situation in which an official has a personal financial interest in a non-contractual decision: family connections, self-judgment.
- Many exceptions to conflict of interest laws and rules (§471.88).

Best Practice: Disclose a potential conflict of interest in advance for legal analysis.



Conflict Procedure

1. Identify Conflict on the Record
2. Council Member abstains from discussion; abstains from voting.
3. Council Approves, unanimous is usually required

10. City Code Review

You probably need to revise your Code

Basic Model Code

Small Cities
(Population under 500)

Want a Do-Over of City
Code

Comes in a nifty Hard-
Cover Book

Still have to Make
decisions

All good

Some good

No good



LMC-ALP- Other Codifiers (Municode)

Good for Regular sized cities

Codifier will:

- Organize your Code in a First Draft
- Wash it (gender, uniformity, numbering, statutes)
- Offer suggestions
 - New laws
 - Internal conflicts
 - State law conflicts

Codifier updates Code with your changes

Re-write it
yourself

When you need to read all the words

- Step by Step Code review
- Tailor it to meet City's needs
- Control the process
- End up with a Perfect Shiny New Code



Think of all the changes you can make!

- Buskers
- Penalty Grid for liquor licenses
- Decision-making authority for certain Commissions/Committees
- No Front Yard Parking
- New License Process
- Animals – chickens, goats, and bees
- Nuisance Ordinances

Challenges to each process

Basic Model Code

- Still have to review each section with the Council

LMC/ALP/Other

- Still have to review each section with Staff and then with the Council
- Must be clear with codifier about the process you want
- Lag time to get amendments back from codifier

Doing it yourself

- Resources
- Expense
- Frustration



QUESTIONS?



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