



RISK MANAGEMENT INFORMATION

ALL ABOARD! CONDUCTING CITY COUNCIL MEETINGS

Being a part of a council meeting means that each person needs to know about many different things – from the Open Meeting Law to their own role at the meeting. While there is much more to know, this memo is intended to help you get on the right track in conducting meetings.

Common Questions: Open Meeting Law

While there are many nuances and details to the Open Meeting Law, the basic idea is that, in general, meetings of public bodies should be open to the public.¹ While there is no statutory definition of the term “meeting” for the purposes 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.² This section looks at a few common questions on the open meeting.

Learn More

Read more about the Open Meeting Laws in:

- *Meetings of City Councils*

It's available at www.lmc.org.

Does the Open Meeting Law apply to More than the City Council?

The Open Meeting Law applies to more than just the city council itself. These laws also apply to any committee, sub-committee, board, department or commission of the council.³ Thus, in addition to the city council meetings, the law applies to planning commissions, advisory boards, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

Can we have a Closed Meeting?

There are some limited exceptions to the Open Meeting Law that would allow the public body to close a meeting. The reasons enumerated in the law are the only lawful reasons to close a meeting. There are two types of closed meetings: those that may be closed and those that must be closed.

Meetings for the following reasons may be closed:

- To consider strategies for labor negotiations under PELRA.⁴
- To evaluate the performance of an individual subject to the public body's authority.⁵
- Attorney-client privilege.⁶

¹ Minn. Stat. § 13D.01.

² *Moberg v. Independent School Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983).

³ Minn. Stat. § 13D.01.

⁴ Minn. Stat. §§ 13D.01; 13D.03.

⁵ Minn. Stat. §§ 13.01; 13D.05, subd. 13D.03(a).

⁶ Minn. Stat. §§ 13.01; 13D.05, subd. 3(b).

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

- Purchase or sale of property.⁷
- Security briefings.⁸

Meetings **must** be closed for the following reasons:

- For preliminary consideration of allegations or charges against an individual subject to the public body's authority.⁹
- Portions of meetings at which any of the following data is discussed:¹⁰
- 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 certain sections of Minnesota law.¹¹

Keep in mind that there is more to deciding whether to close a meeting than these simply stated reasons. There may be additional or qualifying requirements that must be met. Also, just because a meeting may be closed does not mean that the law allows everything to occur or be decided in the closed meeting.

Do we have to Record Closed Meetings?

All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body.¹² The type of closed meeting dictates how long the tape must be kept, and is shown below. Depending upon the reason for the meeting closure, there may be additional requirements for what must be included in the recorded session or how the tape is handled.

Type of meeting:	How long to keep the recording:
To consider strategies for labor negotiations under PELRA.	2 years after the contract is signed.
To evaluate the performance of an individual subject to the public body's authority.	At least 3 years after the meeting.
Attorney-client privilege.	No taping requirement.
Purchase or sale of property.	8 years after the meeting.
Security Briefings.	At least 4 years.
For preliminary consideration of allegations or charges against an individual subject to the public body's authority.	At least 3 years after the meeting.
Portions of meetings at which certain data is discussed.	At least 3 years after the meeting.

⁷ Minn. Stat. §§ 13.01; 13D.05, subd. 3(c).

⁸ Minn. Stat. §§ 13.01; 13D.05, subd. 3(d).

⁹ Minn. Stat. §§ 13.01; 13D.05, subd. 2(b).

¹⁰ Minn. Stat. §§ 13.01; 13D.05, 2(a).

¹¹ Minn. Stat. §§ 144.291-.298.

¹² Minn. Stat. §§ 13.01; 13D.05, 13D .03.

There is no similar requirement to record open meetings, although many cities do make recordings for a variety of reasons. These recordings must be kept in accordance with record retention and data practices laws.

What is the Penalty for Violating 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.¹³

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 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.¹⁴

Common Questions: Open Meeting Law and Technology

The Open Meeting Law does not specifically address newer technologies such as e-mail, social media, blogs, and other forms of communication via new technology. This raises questions on if and how the law applies to these technologies. This section addresses some these common questions.

Does the Open Meeting Law apply to E-mails, Social Media, and Other Similar Technology?

The Open Meeting Law most likely covers technology such as e-mail, social networking sites, blogs, and microblogs. This is because technology could be used in such a way that a quorum of the council receives or discusses city business. Cities need to be careful because electronic communications and other technologies may make it easier to violate the Open Meeting Law. Some common examples include forwarding e-mail messages, responding to another members' blog, or using Facebook, MySpace or Twitter to comment among one another.

Technology can also be used in a way that might create a serial meeting issue. To understand how a serial meeting occurs, imagine that council member A e-mails council member B about a city issue; B e-mails council member C about that issue, and C e-mails A. Serial meetings also can occur through written correspondence, telephone calls, or other technologies. This type of scenario could potentially give rise to an Open Meeting Law violation.

The Minnesota Supreme Court has indicated that communication through telephone conversations or letters by a quorum of a group subject to the Open Meeting Law about official business would

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Read more about technology and the Open Meeting Law in:

- *Electronic Communications Between Councilmembers*

It's available at www.lmc.org

¹³ Minn. Stat. § 13D.06.

¹⁴ Minn. Stat. § 13D.06; *Claude v. Collins*, 518 N.W.2d 836 (Minn. 1994); *Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. Ct. App. 2006).

violate the law. It seems very likely that this reasoning would also apply to e-mail communication and other technologies.¹⁵ More recently, an IPAD advisory opinion¹⁶ concluded that an advisory board violated the Open Meeting Laws by exchanging e-mail messages relating to official activities of the board. This particular situation was more than just receiving information, but included commenting and providing direction on an issue related to the official business of the board.

How can Councils use E-mail and Other Technologies without Violating the Law?

The answer to this question is not entirely clear, but there are some suggestions that may help keep the city out of trouble.

Councilmembers should treat electronic media only as a way to receive information from the clerk or administrator

One suggestion is that councilmembers never communicate to each other using electronic means, but instead treat electronic media, such as e-mail, only as a way to receive information from the city clerk or administrator. This is sometimes described as using the clerk as a clearing house for information distribution. IPAD¹⁷ has indicated that one-way communication between the chair of a public body (or a staff member) and the rest of the public body is permissible as long as there is no discussion or decision making. To compliment this method of distribution, the city might consider a “no reply” sort of rule when it comes to these resources so councilmembers do not start a discussion of the information by e-mail.

While using the clerk as the clearinghouse for information distribution is probably a safer alternative than having councilmembers communicate directly by e-mail or other technology, it does not completely eliminate concerns about violating the Open Meeting Law. Even this clearinghouse concept could provide opportunity for three or more councilmembers to exchange opinions about city business, so it’s important that the city clerk be aware of and watch for possible issues. Finally, this model would still present problems in Standard Plan cities, where the clerk is also a member of the council.

If councilmembers are engaged in direct electronic discussions, it’s probably best to limit it to only two members

A “no forwarding and no copying” rule might be a good way to make sure the Minnesota Open Meeting Law is not unintentionally violated through electronic conversation.

Be careful with list-servs, chatrooms, forums, and social media

Cities should be careful when councilmembers participate in a listserv, chatroom, forums and social media such as Facebook, MySpace and Twitter. Because these groups may include a quorum of the council, one council member’s comments will be viewed by other members. If the topic has to do with city business and other councilmembers reply, it could prove problematic under the Minnesota Open Meeting Law.

¹⁵ *Moberg v. Independent School Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983).

¹⁶ IPAD Advisory Opinion 09-020.

¹⁷ IPAD Advisory Opinion 09-020.

While there does not seem to be a clear solution on how to avoid Open Meeting Law issues and technology, cities might develop and adopt policies that clarify appropriate or preferred uses of e-mail and electronic communications between councilmembers.

Can we have a Council Meeting where one or more Members Participate in a Different Location by Phone or Other Means?

Generally, the answer is “no.” There are, however, two situations where state law allows a meeting to be held where members of the council in a different location attend the meeting via phone or other technology.

One situation is where there is a health pandemic or a disaster-related emergency. It may be possible to conduct a meeting by phone or other electronic means if all the conditions in Minnesota Statute § 13D.021 are met. This law requires, among other things, that all members of the body participating in the meeting must be able to hear one another and can hear all discussion and testimony.

The second situation allows a meeting to be conducted by interactive television (TV). To conduct a meeting by interactive TV, the conditions in Minnesota Statute § 13D.02 must be met. There is no requirement in this statute that there be a disaster or emergency to meet using interactive TV. This law requires, among other things, that all members of the council participating in the meeting can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present.

In both situations, each member of a body participating in a meeting from a different location is considered present at the meeting for purposes of determining a quorum and participating in all proceedings. Other aspects of the Open Meeting Law and other laws still apply to these meetings.

Common Questions: Conducting Meetings

City councils generally are allowed to regulate their own meeting procedures. This may raise a variety of questions on how a meeting should be conducted so this section covers some of these common questions.

Should the Council Adopt Rules of Procedure?

Generally, it seems to be a good idea for a council to adopt rules of procedure, sometimes called rules of parliamentary procedure. As the name suggests, rules of procedure govern procedures at the meeting, such as making motions and debating. In addition, rules of order help to promote debate and discussion in an orderly manner, while allowing all members to speak on issues. Rules also help to keep the meeting moving in an organized, coherent, and efficient manner. There are no default rules of procedures, in state law or elsewhere, that cities must follow if they do not adopt their own rules.

Because of the small size of most city councils, procedures at council meetings, particularly in discussions, tend to be quite informal and many cities prefer to

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Read more about conducting meetings in:

- *Meetings of City Councils*
- *Chapters 6 and 7 of the Handbook for Minnesota Cities*

Both are available at www.lmc.org.

keep things simple and use just the basic rules regarding motions and voting, rather than adopting a more complex set of procedures. Since the council is left to adopt its own rules, it should select something that fits its needs.

Procedural rules may be a stand-alone document or may be included as part of the council bylaws. The council may borrow rules from another source or write its own. Some cities have adopted Robert's Rules of Order, which is a recognized source of parliamentary procedure. Whatever the council decides to use, it should take some formal action to adopt the rules and then follow them.

Should the Council Adopt Bylaws?

It is generally a good idea for a council to adopt bylaws. Bylaws cover aspects of the council meeting other than procedural issues, such as meeting organization, the role of the presiding officer, meeting schedules, agendas, and rules of decorum. Bylaws also help meetings to run smoothly and efficiently and help lay the foundation for orderly and respectful communications between the various people at council meetings.

Bylaws may be a stand-alone document, or may encompass other rules or policies, such as rules of procedure. The council should determine what makes the most sense for the city and then take formal action to adopt the bylaws. The Minnesota Mayors Association's *Minnesota Mayor's Handbook* includes sample bylaws, which are available upon request and on the League's website.

Our Council Meetings Run Smoothly, so Why do we Need Rules of Procedure and Bylaws?

Even when council meetings tend to run smoothly, there always is the possibility that something new or controversial will come up at some point that might cause things to be less smooth. Having rules and bylaws already in place will help guide the council through the situation. Adopting rules and bylaws also helps to ensure that meetings continue to run smoothly by outlining the proper procedure that should be followed. This will help ensure that all members are on the same page and things will get done with similarity and continuity over time. It also may help to streamline meetings by eliminating debate on how to proceed in a particular situation.

Do we Need to have an Agenda for a Meeting?

While the law does not require the council to have an agenda for regular meetings, many cities do so because it helps to establish the order in which things will be discussed and what topics can be expected to come up.

It seems to be common practice for councils to address items that were not originally on the agenda of a regular meeting through a miscellaneous item on the agenda, although it could be handled many different ways.

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The Minnesota Mayors Association's *Minnesota Mayor's Handbook* includes sample rules, which are available upon request and on the League's website.

Highlight

When something comes up that is not on the agenda, there sometimes is a question of whether that item may properly be discussed at the meeting. While the answer may not be entirely clear, it depends, in part, on the type of meeting that is being held and the type of meeting rules the council has adopted.

The statutes are basically silent on the ability of the council to address items that are not on the agenda at a regular meeting, so be sure to check local policies or rules.

For a special meeting, an “agenda” is not required, but the city must give notice to the public. This notice must include the date, time, place, and purpose of the meeting. Since the notice of the meeting should announce its purpose, councilmembers should deal only with that specific issue.¹⁸

Similarly, emergency meetings do not require an “agenda,” but the city must give notice to the public. This notice must include the subject of the meeting. The law also states that if matters not directly related to the emergency are discussed or acted upon in an emergency meeting, the meeting minutes shall include a specific description of the matters. While this statute seems to give the council more leeway to take up other matters at an emergency meeting than at special meetings of meetings, discussion of topics other than the emergency should be avoided.¹⁹

Common Questions: Roles at Council Meetings

The council meeting is made up of many different people, each with his or her own role. It is important for each person to know his or her own role at the meeting, including what he or she can or cannot do. This section discusses some common questions related to particular people at meetings.

Mayor

The mayor is the presiding officer of the meeting.²⁰ The mayor generally recognizes speakers for debate and motions, and rules on questions of council procedure. As the presiding officer, the mayor is also in charge of keeping order at meetings. Statutory cities are authorized to preserve order at its meetings. (Charter cities likely have a similar authority in the city charter.) The mayor, as the presiding officer, also is vested with some authority to prevent disturbances.²¹

The mayor of a statutory city is a member of the council and has the same right to vote, and make and second motions as the other councilmembers.²² 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. Generally, the mayor does not have the right to veto council actions.

The mayor generally has no individual administrative authority. He or she cannot give orders or otherwise supervise city employees unless specifically directed to do so by the council. The mayor individually can perform any duty the council legally assigns to them. However, a statutory city council cannot delegate any discretionary powers, defined by the courts as powers involving the exercise of judgment.²³ Charter cities cannot delegate any discretionary authority unless the charter specifically allows delegation.

Learn More

Read more about roles at a council meeting in:

- *City Administration: Clerk, Administrator and Manager*
- *Meetings of City Councils (Chapter 6 of the Handbook for Minnesota Cities)*
- *Role With It – Individual vs. Council Authority*

All are available at
www.lmc.org

¹⁸ Minn. Stat. § 13D.04, subd. 2.

¹⁹ Minn. Stat. § 13D.04, subd. 3.

²⁰ Minn. Stat. § 412.191

²¹ Minn. Stat. § 412.191, subd. 2.

²² Minn. Stat. § 412.191, subd. 1 See “Mayor’s Power to Vote and Make Motions,” Minnesota Cities, Jan. 2004.

²³ *Johnson v. State*, 553 N.W.2d 40 (Minn. 1996).

The role of the mayor may be different in charter cities, so charter cities should consult their charters for more information.

Councilmembers

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

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. Individual councilmembers can perform any duty the council legally assigns to them. A statutory city council, however, cannot delegate any discretionary powers, defined by the courts as powers involving the exercise of judgment.²⁴ Charter cities cannot delegate any discretionary authority unless the charter specifically allows delegation.

City Clerk

In a Standard Plan statutory city, the clerk is an elected member of the council. As such, he or she has the same voting powers and other privileges as the other councilmembers. Like the mayor, the clerk in a Standard Plan city is able to make and second motions.

Statutory city clerks have duties specific to their type of city, and general duties that apply regardless of city type. Further, the council may develop other ministerial duties specific to the city's needs. Some duties of standard plan and Plan A city clerks that relate to meetings are:²⁵

- Provide notice of each regular and special meeting.
- Record the proceedings of each regular and special meeting.
- Keep a minute book that contains all of the city council proceedings.
- Keep an ordinance book to record all of the ordinances passed by the council.
- Post and publish such notices, ordinances, and resolutions as may be required.
- Perform such other duties as may be imposed by the council.

Plan B city clerks are subject to the direction of the city manager and have the following statutory duties:²⁶

- Keep public records.
- Maintain custody of and disburse public funds.
- Administer city affairs as ordained by the council.

In addition to the above duties, the clerk may be designated to act as secretary to the council.

Home rule charter cities may have different provisions in their charters, so charter cities should consult their charter.

City Administrator

²⁴ *Johnson v. State*, 553 N.W.2d 40 (Minn. 1996).

²⁵ Minn. Stat. § 412.151, subd. 1.

²⁶ Minn. Stat. § 412.681.

The answer depends on the particular city. Not all cities have an administrator and some cities will combine the clerk and administrator positions. This means that the role of the administrator will vary from city to city. If there is an administrator, the duties should be spelled out in an ordinance or the charter. When the position is combined with that of the city clerk, the position will include all the duties of the city clerk as well.

Some common responsibilities assigned to city administrators that relate to council meetings are:

- Recommend adoption of policies that will further goals of the city council and generally improve the quality of city administration.
- Prepare various reports and summaries for council review.
- Attend and participate in council meetings (but there is no right to vote at meetings).

Cities must only delegate ministerial duties to a city administrator. Ministerial duties are those that do not call for judgment or discretion.

City Manager

In a Plan B city, the city manager must attend all council meetings. He or she has the right to take part in the discussions, but not to vote. The council has the power to exclude the city manager from any meeting at which the manager's removal is considered. Some of the duties of the city manager at a meeting include:²⁷

- Recommending ordinances, resolutions, and policies to the council for adoption the city manager deems necessary for the welfare of the people and the efficient administration of city affairs.
- At the council's request, the city manager must prepare an administrative code for the council to consider for adoption. The code must incorporate the details of administrative procedure, and the manager must suggest amendments to the code from time to time.
- Keep the council fully advised as to the city's financial condition and needs. The manager must also prepare and submit the annual budget to the council.

The city manager must perform any other duties that are required by statute for Plan B cities. Additionally, the manager must meet any other responsibilities set forth in city ordinances or resolutions.²⁸

Some home rule charter cities also have a city manager. The role of the manager in charter cities may be different, so cities should consult their charter.

City Attorney and Other City Staff/Employees

The role of the city attorney and other staff at the council meeting is largely left up to the council to define. The city attorney likely would be at the meeting to offer legal guidance or advice or answer questions the council may have. Department heads or other employees or staff may be asked to attend a meeting to give reports or presentations. The roles may vary depending on the meeting and what is being discussed. It may be helpful for the council to outline the role of these

²⁷ Minn. Stat. § 412.651, subd. 6.

²⁸ Minn. Stat. § 412.651, subd. 9.

people will play at meetings so people can come to meetings prepared and knowing what is expected of them.

Audience

These are often referred to as “open forums.” During this part of the meeting, the chair of the council will recognize members of the audience to speak briefly on topics that concern them.

This will help keep the meeting on track, but still allow for public input. Here are some things to consider:

- Limit the amount of time audience members are allowed to speak at a meeting. It may be helpful to remind people of the time limit before they begin speaking. Some cities also have a clock visible to speakers so they can see when their time for speaking is over.
- Establish procedures for people to sign-up to speak at the meeting. Some cities require the speaker to notify the city at least one day in advance so that he or she can be put on the agenda. Other cities have a sign-up sheet at the meeting for people wishing to speak at the meeting.
- Establish rules or guidelines that citizens must follow when speaking at a meeting. The rules may include things like time limits, procedures for getting on the agenda, prohibiting name-calling or insults, prohibiting conduct that disrupts the meeting, and other similar guidelines.
- Have speakers follow the direction of the presiding officer and direct comments to the presiding officer.

As with any policy that limits or regulates speech, the city should work with the city attorney in developing these sorts of rules. While some limitations are appropriate, the city should be careful that the rules are not too restrictive. Also, if the council does adopt any of these policies, the city must be careful to enforce them equally on all people. For example, so long as a person follows the rules, he or she cannot be prevented from speaking because he or she has something critical or unpopular to say.

If there is an issue, the mayor and council might assign a staff person to look into the issue. The public forum is really just one way for audience members to address

Highlight

Audience members may not speak unless they have been recognized by the chair. In certain situations, however, such as public hearings, this general rule does not apply. Audience members are not normally able to take an active part in the council’s discussion at a meeting. If the council will allow members of the audience to speak during the council meeting, it is a good idea to adopt rules that govern these speakers.

Many city councils have scheduled a portion of their meeting for public comment, but this is not required by law.

Something to Think About

When members of the audience are speaking at a public forum, it is the role of the mayor and council to listen to the speakers. The mayor and council may ask questions to clarify or gain better understanding. The mayor and council, however, usually do not respond or attempt to solve the problem during the open forum.

their elected representatives and to raise issues, not to dominate or take-over the meeting or other council business.

At least one copy of the materials made available to the council at or before the meeting must also be made available for inspection by the public. This does not apply to not-public data or materials relating to the agenda items of a closed meeting.²⁹

While council meetings must be open to the public, no one who is noisy or unruly has a right to remain in the council chambers. When the council decides that a disorderly person should not remain in the meeting hall, the police may be called to execute the orders of the presiding officer or the council.³⁰

Conclusion

Conducting a council meeting requires knowledge of many different things. Knowing the Open Meeting Law, setting up procedures for the meeting, and knowing your role at the meeting will all help with running an efficient and smooth council meeting.

Alexis Stangl, 03/10

Learn More

To find out more details on the issues discussed in this memo, check out the following:

- *City Administration: Clerk, Administrator and Manager*
- *Electronic Communications Between Councilmembers*
- *Handbook for Minnesota Cities (Chapter 6 and 7)*
- *Meetings of City Councils*
- *Role With It - Individual Vs. Council Authority*

These are all available on the League's website: www.lmc.org

²⁹ Minn. Stat. § 13D.01, subd. 6.

³⁰ Minn. Stat. § 609.72, subd. 1(2); *State v. Guy*, 242 N.W.2d 864 (Neb. 1976).