



**HANDBOOK FOR MINNESOTA CITIES**

**Chapter 7  
Meetings, Motions, Resolutions, and  
Ordinances**

**TABLE OF CONTENTS**

- I. Types of council meetings and notice requirements .....3
  - A. Regular meetings.....3
  - B. Special meetings.....3
  - C. Emergency meetings .....5
  - D. Closed meetings .....6
  - E. Annual meeting (first meeting of the year) .....6
  - F. Adjourned meetings .....7
  - G. Meetings conducted by interactive television .....7
  - H. Telephone or electronic meetings.....8
  - I. Public Hearings .....9
  - J. Days and times when meetings cannot be held .....10
- II. Open meeting law.....11
  - A. Purpose .....11
  - B. Public notice .....12
  - C. Printed materials.....12
  - D. Groups governed by the open meeting law .....12
  - E. Gatherings governed by the open meeting law .....12
  - F. Open meeting law exceptions.....13
  - G. Common issues.....17
  - H. Advisory opinions .....23
  - I. Penalties.....23
- III. Meeting procedures .....25
  - A. Citizen involvement .....25
  - B. Recording and broadcasting of meetings .....26
  - C. Meeting room .....26
  - D. Maintaining order .....27
  - E. Rules of procedure.....27
  - F. Parliamentary procedure.....29

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

- G. Voting procedures .....29
- H. Role of the mayor and clerk .....30
- I. Minutes of council meetings .....30
- IV. Motions, resolutions, and ordinances .....34
  - A. Passing motions, resolutions, and ordinances .....34
  - B. Differences between motions, resolutions, and ordinances.....35
  - C. Ordinances.....41
- V. Local approval of special laws .....55
- VI. How this chapter applies to home rule charter cities.....55



## HANDBOOK FOR MINNESOTA CITIES

# Chapter 7 Meetings, Motions, Resolutions, and Ordinances

*Review requirements city councils must follow when conducting meetings and public hearings, such as the open meeting law and its exceptions, taking and publishing minutes, and parliamentary procedure. Learn when to use a motion, resolution, or an ordinance to do city business and the procedures required for each. Links to various sample resolutions, ordinances, and a notice of hearing.*

### RELEVANT LINKS:

See LMC information memo, [Meetings of City Councils](#), for more information.

[Minn. Stat. § 412.191, subd. 2.](#)

[Minn. Stat. § 13D.04, subd. 1.](#) [Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 13D.04, subd. 2.](#) [Minn. Stat. § 412.191, subd. 2.](#) *Elseth v. Hille*, No A12-1496 (Minn. Ct. App. May 13, 2013) (unpublished opinion). [IPAD 10-013](#).

## I. Types of council meetings and notice requirements

The city council exercises its authority when it meets as a group. Under state law, there are certain requirements for council meetings.

### A. Regular meetings

State law does not govern the time, place, or frequency of council meetings. Regular meetings of the council, however, must be held at 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.

The council must keep a schedule of its regular meetings on file at its primary office. The council should also set an alternate meeting day for any regular meeting days that fall on a legal holiday. If the council decides to hold a meeting at a different time or place from that stated in its schedule of regular meetings, it must generally give the notice required for special meetings.

### B. Special meetings

A special meeting of the council refers to any meeting at a time or place different from that stated in the council's schedule of regular meetings. The council may transact any business within its powers at a special meeting. The council should, however, only transact business for which notice has been provided in the special-meeting notice. All statutory provisions governing regular meetings, including the open meeting law, apply to special meetings.

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

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 2.](#)

[Minn. Stat. § 13D.04, subd. 2.](#)

[Minn. Stat. § 412.191, subd. 2.](#)  
[A.G. Op. 471-e \(Jan. 22, 1957\).](#)  
[Minn. Stat. § 13D.04, subd. 7.](#)

[Minn. Stat. § 13D.04, subd. 2.](#)

[Rupp v. Mayasich, 533 N.W.2d 893 \(Minn. Ct. App. 1995\).](#)

[Minn. Stat. § 13D.04, subd. 2 \(b\), \(c\).](#)

See LMC information memo, [Newspaper Publication](#), for more information.

[Minn. Stat. § 331A.05, subd. 7.](#)

[Minn. Stat. § 645.15. In re Appeal from an Order of Lake Valley Township Bd., 305 Minn. 488, 234 N.W.2d 815 \(Minn. 1975\).](#)

Special meetings may be called by the mayor or by any two members of a five-member council or three members of a seven-member council. Special meetings are called by filing a written statement with the city clerk. Home rule charter cities may have different requirements for special meetings.

Unless otherwise expressly established by statute, the following notice requirements apply to all special meetings.

### 1. Notice to the council

When a special meeting has been called, the clerk must mail a notice to all councilmembers, at least one day before the meeting, stating the time and place of the meeting. If all of the councilmembers attend and participate in the meeting, the notice requirements will be considered to have been satisfied. In addition, 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.

### 2. Notice to the public

The clerk must also post written notice of the date, time, place, and purpose of the special meeting on the city's principal bulletin board at least three days before the meeting. A principal bulletin board must be located in a place reasonably accessible to the public. If the city does not have a principal bulletin board, the notice must be posted on the door of its usual meeting room.

In addition to posting notice, the city must also mail or deliver notice to each person who has filed a written request for notice of special meetings with the city. Notice to these individuals must be mailed or delivered at least three days before the meeting. As an alternative to mailing or delivering the notice, the city may publish the notice once in its official newspaper at least three days before the meeting. If there is no official newspaper, notice must be published in a qualified newspaper of general circulation that covers the city. If, through no fault of the city, an error occurs in the publication of a notice, the error generally does not impact the validity of a public meeting.

In calculating the number of days for providing notice, the first day the notice is given should not be counted, but the last day should be counted. But if the last day is a Saturday, Sunday, or a legal holiday, that day is omitted from the calculation and the following day is considered the last day. For example, if a special meeting is scheduled for a Thursday, notice has to be given by Monday at the latest to meet the three-day notice requirement.

## RELEVANT LINKS:

[Minn. Stat. § 13D.04, subd. 2 \(d\).](#)

[Minn. Stat. § 13D.04, subd. 2 \(e\), \(f\).](#)

[A.G. Op. 63a-5 \(Aug. 28, 1996\). IPAD 16-005.](#)

[IPAD 13-015.](#)

[Minn. Stat. § 13D.04, subd. 3. IPAD 06-027](#) (advising that the city council improperly held an emergency meeting to consider complaints about the city's building inspector). *Slippy v. Rach*, No C5-06-3574 (9th Jud. Dist. June 8, 2007) (after the commissioner issued the advisory opinion, the district court held that the city council's decision to hold the emergency meeting complied with the open meeting law).

In this example, Tuesday is day one, Wednesday is day two, and Thursday is day three. Monday is not included in the time computation. Similarly, if a special meeting is planned for Monday, notice must be given by Friday at the latest; Saturday is day one, Sunday is day two, and Monday is day three. Saturday and Sunday are included in the time computation since they are not the last day of the fixed period.

A person filing a written request for notice of special meetings may limit the request to notification of special meetings that cover a particular subject. In this case, the city only needs to send notice of special meetings addressing those subjects.

Cities may set an expiration date for written requests for notices of special meetings, and require people to refile a request once each year. The city must notify each person of the requirement not more than 60 days before the refiling is due.

If a council committee or other public body meets and a quorum of city councilmembers attends and observes the meeting, the city most likely does not need to give additional notice of a special city council meeting as long as proper notice of the committee or other public meeting has been given. If councilmembers participate in discussions or deliberations during the meeting of the committee or other public body, however, an additional separate notice of a special city council meeting may be required.

The commissioner of the Minnesota Department of Administration has advised that when a town board changed the time and location of a meeting on the same day it was scheduled to occur, the town board violated the open meeting law by failing to provide the required three-day notice for a special meeting. The town board had changed the time and place of the meeting due to the weather and the lack of air conditioning in the town hall meeting room.

## C. Emergency meetings

An emergency meeting is a special meeting called by the council due to circumstances that, in its judgment, require immediate council consideration. The procedure for notifying councilmembers of emergency meetings is the same as that for special meetings. The public notice requirements, however, are different. The council must make good-faith efforts to provide notice of the emergency meeting to all media that have filed a written request for notice. Notice must be by telephone or by any other method used to notify councilmembers. The notice must include the subject of the meeting. A published or posted notice is not necessary.

## RELEVANT LINKS:

[Minn. Stat. § 13D.04, subd. 3\(f\).](#)

See section II-F for more information about the specific exceptions that authorize certain closed meetings. [Minn. Stat. § 13D.04, subd. 5.](#)

[Minn. Stat. § 412.02, subd. 2.](#)  
[Minn. Stat. § 205.07, subd. 1a.](#)

[Minn. Stat. § 412.831.](#) [Minn. Stat. § 331A.02.](#) See also LMC information memo, *Newspaper Publication*, for more information.

[Minn. Stat. §§ 427.01-12.](#)  
[Minn. Stat. § 118A.02, subd. 1.](#)

[Minn. Stat. § 412.121.](#)

[Minn. Stat. § 424A.04, subd. 1.](#)

If matters not directly related to the emergency are discussed or acted upon at an emergency meeting, the meeting minutes must include a specific description of them.

## D. Closed meetings

A closed meeting is a meeting of a public body that the public is not allowed to attend. A public meeting only may be closed if it meets the requirements of one of the specific exceptions listed in the open meeting law. The same notice requirements that apply to open meetings also apply to closed meetings. For example, if a closed meeting takes place at a regular meeting, the notice requirements for a regular meeting apply. Likewise, if a closed meeting takes place at a special meeting or an emergency meeting, the notice requirements for a special meeting or emergency meeting apply.

## E. Annual meeting (first meeting of the year)

At its first meeting of the year, sometimes referred to as the annual meeting, the council must perform certain functions. State law does not set a date for the annual meeting, but council bylaws usually establish when it will occur. The annual meeting usually takes place on or shortly after the first Monday in January, which is when the terms of new councilmembers begin. At this first meeting, the council must:

- Designate a newspaper of general circulation as its official newspaper in which the city will publish ordinances and other matters as required by law.
- Select an official depository, by resolution, for city funds. This must be done within 30 days of the start of the city's fiscal year.
- Elect an acting mayor from among the councilmembers. The acting mayor shall perform the duties of the mayor during the mayor's disability or absence from the city, or, if there is a vacancy, until a successor has been appointed.

Councils should also, on at least an annual basis:

- Review different council appointments to city boards and commissions. For example, the council must appoint one elected city official and one elected or appointed city official to serve with the city's fire chief on the board of trustees for a city fire department's volunteer relief association.
- Review the council's bylaws or rules of procedure, and make any necessary changes. An ordinance amendment is necessary if the bylaws are in ordinance form; otherwise a resolution or motion is sufficient.

## RELEVANT LINKS:

[Minn. Stat. § 412.111.](#)

[Minn. Stat. § 412.191, subd. 1.](#)

[Minn. Stat. § 13D.04, subd. 4.](#)

[Minn. Stat. § 13D.02. IPAD 08-034.](#)

[Minn. Stat. § 13D.02. Minn. Stat. § 13D.04.](#)

- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

## F. Adjourned meetings

City officials often use the terms “adjourned,” “continued,” and “recessed” interchangeably when referring to meetings that are postponed to a future time for lack of a quorum, for convenience, or to complete pending business from a regular meeting.

Although a quorum (majority of a city council in statutory cities) is necessary in order to conduct business, less than a quorum may adjourn or postpone a regularly organized meeting to a fixed, future time. When the council calls an adjourned meeting to complete pending business, the adjournment should be treated as a recess.

If the date, time, and place of the adjourned, continued, or recessed meeting are announced at the previous meeting and the information is recorded in the meeting minutes, no additional public notice is necessary. Otherwise, the notice required for a special meeting is necessary.

## G. Meetings conducted by interactive television

A city council meeting may be conducted by interactive television in compliance with the open meeting law if all four of the following requirements are met:

- At least one councilmember is physically present at the regular meeting location.
- All councilmembers must be able to hear and see each other and all discussion and testimony presented at any location at which at least one councilmember is present.
- All members of the public at the regular meeting location must be able to hear and see all discussion, testimony, and votes of all councilmembers.
- Each location at which a councilmember is present must be open and accessible to the public.

If possible, a member of the public should be allowed to monitor the meeting electronically from a remote location.

If interactive television is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location and notice of any site where a member of the public body will be participating by interactive television.

## RELEVANT LINKS:

[Minn. Stat. § 13D.02, subd. 5.](#)

[IPAD 13-009.](#)

The timing and method of providing notice will depend on whether the meeting is a regular, special, or emergency meeting.

The open meeting law does not provide a definition for the term “interactive television.” Therefore, it is not clear what technology is authorized to be used under this authority. Although school boards have express authority to use “interactive technology with an audio and visual link” to conduct a meeting if all of the other requirements for interactive television are satisfied, city councils do not have similar authority.

However, the commissioner of the Minnesota Department of Administration has advised that a city council meeting, where a city councilmember participated through Skype while physically present at a remote location outside Minnesota, complied with the statutory authority for conducting meetings through interactive television. After the meeting occurred, a newspaper article suggested that the meeting violated the open meeting law because the councilmember’s remote location was not accessible to the city’s residents.

The advisory opinion noted that the meeting met each of the four requirements in the statute authorizing meetings using interactive television and reasoned that the plain language of the statute does not forbid a member of a public body from attending a public meeting at a location open and accessible to the public outside of the entity’s geographic area, as long as all other conditions of the statute are met.

## H. Telephone or electronic meetings

Meetings may be conducted by telephone or by other electronic means if the following conditions are met:

[Minn. Stat. § 13D.021, subd. 1.](#)

- The presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted through interactive television is not practical or prudent because of a health pandemic or an emergency declared under chapter 12 of the Minnesota Statutes.
- All members of the governing body participating in the meeting can hear each other, and can hear all discussion and testimony.
- Members of the public present at the regular meeting location can hear all discussion, testimony, and votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.
- At least one member of the governing body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.

## RELEVANT LINKS:

[Minn. Stat. § 13D.021, subd. 2.](#)

[Minn. Stat. § 13D.021, subd. 3.](#)

[Minn. Stat. § 13D.021, subd. 4.](#) [Minn. Stat. § 13D.04.](#)

See section I-F for more information on adjourned meeting.

- All votes are conducted by roll call so that each member’s vote on each issue can be identified and recorded.

Each member of the governing body participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

If telephone or another electronic means is used to conduct a meeting, to the extent practical, the governing body shall allow a person to monitor the meeting electronically from a remote location. The governing body may require the person making a connection to pay for the documented, additional cost incurred as a result of the additional connection.

If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and, if practical, of the option of connecting to the meeting remotely.

The timing and method of providing notice will depend on whether the meeting is a regular, special, or emergency meeting.

## I. Public Hearings

A public hearing is a meeting that is held where members of the public can express their opinions regarding a particular issue. The council is there to regulate the hearing and make sure that people who want to speak get an opportunity to do so. The council does not deliberate or discuss matters during the public-hearing portion of a meeting; instead, it listens to the public. Once the public-comment period is finished, the council will often end the meeting. In order to continue a public hearing, the council should not formally end the public-comment part of the hearing and should state the date, time, and place of the continued public hearing and record this information in the meeting minutes. There are two types of hearings, those that are discretionary and those that are required by a specific statute, ordinance, or charter provision.

### 1. Discretionary hearings

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

## RELEVANT LINKS:

[Minn. Stat. § 412.851.](#)  
[Minn. Stat. § 414.033, subd. 2b.](#)  
[Minn. Stat. § 429.031, subd. 1.](#)  
[Minn. Stat. § 429.061.](#)  
  
[Minn. Stat. § 444.18, subd. 3.](#)  
  
[Minn. Stat. § 469.003, subd. 2.](#)  
[Minn. Stat. § 469.093, subd. 1.](#)  
[Minn. Stat. § 469.065, subd. 2.](#)  
[Minn. Stat. § 469.105, subd. 2.](#)  
[Minn. Stat. § 469.107, subd. 2.](#)  
[Minn. Stat. § 340A.602.](#)  
[Minn. Stat. § 275.065, subd. 3.](#)  
[Minn. Stat. § 462.357, subd. 3.](#)  
[Minn. Stat. § 462.358, subd. 3b.](#)  
[Minn. Stat. § 462.3595, subd. 2.](#)  
[Minn. Stat. § 410.12, subd. 7.](#)

[Minn. Stat. § 645.44, subd. 5.](#)

## 2. Required hearings

When a specific statute, ordinance, or charter provision requires the council to hold a public hearing, any notice requirements must be followed. For example, required hearings for zoning-ordinance amendments and special assessments have special notice requirements. There are other situations that may require a public hearing. Contact the League if you are unsure about a particular situation.

Here are some required public hearings:

- Street vacation.
- Annexation by ordinance.
- Approval of local improvement project to be paid for with special assessments.
- Consideration of proposed special assessments.
- Purchase and improvement of waterworks, sewers, drains, and storm sewers by storm sewer improvement districts.
- Adoption of a resolution establishing a housing redevelopment authority.
- Adoption of a resolution establishing an economic development authority.
- Sale of port authority land.
- Sale of EDA land.
- Increase of EDA levy.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- Truth in taxation.
- Adoption or amendment of zoning ordinance.
- Subdivision applications.
- Conditional use permits.
- Adoption of a charter amendment by ordinance.

## J. Days and times when meetings cannot be held

State law establishes a set of public holidays when no public business can be transacted except to deal with emergencies. The transaction of public business includes conducting public meetings. The public holidays are:

- New Year's Day (Jan. 1).
- Martin Luther King's Birthday (the third Monday in January).
- Washington's and Lincoln's Birthday (the third Monday in February).
- Memorial Day (the last Monday in May).

## RELEVANT LINKS:

[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 645.15.](#) See Section I-B-2 for more information about notice for special meetings.

[Minn. Stat. § 204C.03.](#) [Minn. Stat. § 202A.19.](#)

See LMC information memo, [Meetings of City Councils](#), for more information about the open meeting law.

[Minn. Stat. § 13D.01.](#) *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).

- Independence Day (July 4).
- Labor Day (the first Monday in September).
- Christopher Columbus Day (the second Monday in October).
- Veterans Day (Nov. 11).
- Thanksgiving Day (the fourth Thursday in November).
- Christmas Day (Dec. 25).

All cities have the option, however, of deciding whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. If these days are not designated as holidays, public business may be conducted on them.

If a holiday falls on a Saturday, the preceding Friday is considered to be a holiday. If a holiday falls on a Sunday, the next Monday is considered to be a holiday.

State law does not prohibit meetings on weekends. However, state law regulating how time is computed for the purpose of giving any required notice provides that if the last day of the notice falls on either a Saturday or a Sunday, that day cannot be counted. For example, if notice for a special meeting to be held on a Saturday or Sunday is required, the third day of that notice would need to be provided on the preceding Friday.

Minnesota election law provides that meetings are prohibited between 6 p.m. and 8 p.m. on any election day, including a local general or special election.

Therefore, if a school district is holding a special election on a particular day, no other unit of government totally or partially within the school district may hold a meeting between 6 p.m. and 8 p.m. Meetings are also prohibited after 6 p.m. on the day of a major political precinct caucus.

## II. Open meeting law

### A. Purpose

The open meeting law requires that meetings of public bodies must generally be open to the public. It serves three vital purposes:

- Prohibits actions from being taken at a secret meeting where the interested public cannot be fully informed of the decisions of public bodies or detect improper influences.
- Ensures the public's right to be informed.
- Gives the public an opportunity to present its views.

## RELEVANT LINKS:

See section I-Types of council meetings and notice requirements. Minn. Stat. § 13D.04, subd. 7.

Minn. Stat. § 13D.01, subd. 6. IPAD 08-015. IPAD 13-015 (noting that the open meeting law “is silent with respect to agendas; it neither requires them nor prohibits them”).

Minn. Stat. § 13D.01, subd. 6.

Minn. Stat. § 13D.01, subd. 1. Minn. Stat. § 465.719, subd. 9.

*Southern Minnesota Municipal Power Agency v. Boyne*, 578 N.W.2d 362 (Minn. 1998).

*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983). *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).

## B. Public notice

Public notice generally must be provided for meetings of a public body subject to the open meeting law. 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 method of receipt.

## C. Printed materials

At least one copy of the printed materials relating to agenda items that are provided to the council at or before a meeting must also be made available for public inspection in the meeting room while the governing body considers the subject matter.

This requirement does not apply to materials classified by law as other than public or to materials relating to the agenda items of a closed meeting.

## D. Groups governed by the open meeting law

Under the Minnesota open meeting law, all city council meetings and executive sessions must be open to the public with only a few exceptions. The open meeting law also requires meetings of a public body or of any committee, subcommittee, board, department, or commission of a public body to be open to the public. For example, the governing bodies of local public pension plans, housing and redevelopment authorities, economic development authorities, and city-created corporations are subject to the open meeting law.

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

## E. Gatherings governed by the open meeting law

The open meeting law does not define the term “meeting.” The Minnesota Supreme Court, however, has ruled that meetings are gatherings of a quorum or more members of the governing body—or a quorum of a committee, subcommittee, board, department, or commission thereof—at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 1.](#)  
[Minn. Stat. § 645.08\(5\).](#)

See Section II-G-4 for more information about serial meetings.

[Minn. Stat. § 13D.05, subd. 1\(d\).](#)

[Minn. Stat. § 13D.01, subd. 3.](#)

[IPAD 14-005.](#) [IPAD 13-012.](#)  
[IPAD 06-020.](#) [IPAD 14-005.](#)  
See *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004) (holding that the county’s statement that it was closing a meeting under the attorney-client privilege to discuss “pending litigation” did not satisfy the requirement of describing the subject to be discussed at the closed meeting).

[Minn. Stat. § 13D.04, subd. 5.](#)

[Minn. Stat. § 13D.03, subd. 1\(b\).](#)  
[IPAD 13-012.](#)

For most public bodies, including statutory cities, a majority of its qualified members constitutes a quorum. Charter cities may provide that a different number of members of the council constitutes a quorum.

The open meeting law does not generally apply in situations where less than a quorum of the council is involved. However, serial meetings in groups of less than a quorum that are held in order to avoid the requirements of the open meeting law may be found to violate the law, depending on the specific facts.

## F. Open meeting law exceptions

The open meeting law is designed to favor public access. Therefore, the few exceptions that do exist are carefully limited to avoid abuse.

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.

Before closing a meeting under any of the following exceptions, a city council must make a statement on the record that includes the specific grounds that permit the meeting to be closed and describes the subject to be discussed.

The commissioner of the Minnesota Department of Administration has advised that a member of the public body (and not its attorney) must make the statement on the record. The commissioner has also advised that citing the specific statutory authority that permits the closed meeting is the simplest way to satisfy the requirement for stating the specific grounds permitting the meeting to be closed. Both the commissioner and the Minnesota Court of Appeals have concluded that something more specific than a general statement is needed to satisfy the requirement of providing a description of the subject to be discussed.

The same notice requirements that apply to open meetings also apply to closed meetings. For example, if a closed meeting takes place at a regular meeting, the notice requirements for a regular meeting apply. Likewise, if a closed meeting takes place as a special meeting or as an emergency meeting, the notice requirements for a special meeting or an emergency meeting would apply.

### 1. Labor negotiations

The city council may, by majority vote in a public meeting, decide to hold a closed meeting to consider its strategy for labor negotiations, including

## RELEVANT LINKS:

[Minn. Stat. §§ 179A.01-.25.](#)

[Minn. Stat. § 13D.03, subds. 1\(d\), 2.](#)  
[IPAD 05-027.](#)  
[IPAD 00-037.](#)

[Minn. Stat. § 13D.03, subd. 3.](#)

[Minn. Stat. § 13D.05, subd. 2.](#)

[Minn. Stat. §§ 144.291-.298.](#)

[Minn. Stat. § 13D.05, subd. 1\(d\).](#)

negotiation strategies or developments or discussion of labor-negotiation proposals conducted pursuant to Minnesota Statutes sections 179A.01 to 179A.25. The council must announce the time and place of the closed meeting at the public meeting.

After the closed meeting, a written record of all members of the city council and all other people present must be available to the public. The council must tape-record the proceedings at city expense and preserve the tape for two years after signing the contract. The tape-recording must be available to the public after all labor contracts are signed for the current budget period.

If someone claims the council conducted public business other than labor negotiations at the closed meeting, a court must privately review the recording of the meeting. If the court finds the law was not violated, the action must be dismissed and the recording sealed and preserved. If the court determines a violation of the open meeting law may exist, the recording may be introduced at trial in its entirety, subject to any protective orders requested by either party and deemed appropriate by the court.

## 2. Not public data under the Minnesota Government Data Practices Act

The general rule is that meetings cannot be closed to discuss data that are not public under the Minnesota Government Data Practices Act. A meeting must be closed, however, if certain not public data is discussed.

Any portion of a meeting must be closed if expressly required by law or if any of the following types of not public data are discussed:

- Data that would identify victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- Active investigative data created by a law-enforcement agency, or internal-affairs data relating to allegations of law-enforcement personnel misconduct.
- Educational, health, medical, welfare, or mental-health data that are not public data.
- Certain medical records.

A closed meeting held to discuss any of the not public data listed above must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

## RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 1 \(b\), \(c\).](#)  
[IPAD 09-012.](#)

[Minn. Stat. § 13D.05, subds. 1\(d\), 2\(b\).](#)  
[IPAD 03-020.](#) (Advising that when a meeting is closed under this exception, [Minn. Stat. § 13.43, subd. 2](#) requires the government entity to identify the individual who is being discussed).

[IPAD 14-004.](#)

[IPAD 10-001.](#)  
[Minn. Stat. § 13.43.](#)

[Minn. Stat. § 13D.05, subds. 1\(d\), 3\(a\).](#) [IPAD 14-007](#), [IPAD 15-002](#), and [IPAD 16-002](#) (discussing what type of summary satisfies the open meeting law).

Other not public data may be discussed at an open meeting without liability or penalty if the disclosure relates to a matter within the scope of the public body's authority, and it is reasonably necessary to conduct the business or agenda item before the public body. The public body, however, should make reasonable efforts to protect the data from disclosure. Data discussed at an open meeting retains its original classification; however, a record of the meeting shall be public.

### 3. Misconduct allegations or charges

A public body must close one or more meetings for "preliminary consideration" of allegations or charges of misconduct against an individual subject to its authority. This type of meeting must be open at the request of the individual who is the subject of the meeting. If the public body concludes discipline of any nature may be warranted, further meetings or hearings relating to the specific charges or allegations that are held after that conclusion is reached must be open. This type of meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

The commissioner of the Minnesota Department of Administration has advised that a city could not close a meeting under this exception to consider allegations of misconduct against a job applicant who had been extended a conditional offer of employment. The job applicant was not a city employee. The commissioner reasoned that the city council had no authority to discipline the job applicant or to direct his actions in any way; therefore, he was not "an individual subject to its authority."

The commissioner has also advised that a tape recording of a closed meeting for preliminary consideration of misconduct allegations is private personnel data under Minn. Stat. § 13.43, subd. 4, and is accessible to the subject of the data but not to the public. The commissioner noted that at some point in time, some or all of the data on the tape may become public under Minn. Stat. § 13.43, subd. 2. For example, if the employee is disciplined and there is a final disposition, certain personnel data becomes public.

### 4. Performance evaluations

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must identify the individual to be evaluated before closing the meeting.

## RELEVANT LINKS:

[IPAD 05-013](#) (advising that a government entity could close a meeting under this exception to discuss its contract with an independent contractor when that contractor is an individual human being).

[Minn. Stat. § 13D.05, subd. 3 \(b\)](#).  
[Brainerd Daily Dispatch, LLC v. Dehen](#), 693 N.W.2d 435 (Minn. Ct. App. 2005).  
[Prior Lake American v. Mader](#), 642 N.W.2d 729 (Minn. 2002).  
[Northwest Publications, Inc. v. City of St. Paul](#), 435 N.W.2d 64 (Minn. Ct. App. 1989).  
[Minneapolis Star & Tribune v. Housing and Redevelopment Authority in and for the City of Minneapolis](#), 251 N.W.2d 620 (Minn. 1976).  
[IPAD 14-005](#). [IPAD 14-017](#).  
[IPAD 16-003](#).

[Minn. Stat. § 13D.05, subd. 3 \(c\)](#).

[Minn. Stat. § 13.44, subd. 3](#).

[Minn. Stat. § 13D.05, subd. 3 \(c\)](#). [Vik v. Wild Rice Watershed Dist.](#), No. A09-1841 (Minn. Ct. App. Aug. 10, 2010) (unpublished opinion) (holding that this exception authorizes closing a meeting to discuss the development or consideration of a property transaction and is not limited to the discussion of specific terms of advanced negotiations).  
[IPAD 08-001](#). [IPAD 14-014](#).

At its next open meeting, the public body must summarize its conclusions regarding the evaluation. This type of meeting must be open at the request of the individual who is the subject of the meeting. If this type of meeting is closed, it must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

## 5. Attorney-client privilege

A meeting may be closed if permitted by the attorney-client privilege. Meetings between a government body and its attorney to discuss active or threatened litigation may only be closed, under the attorney-client privilege, when a balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after the city has made a substantive decision on the underlying matter. This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed underlying action that may give rise to future litigation.

## 6. Purchase or sale of real or personal property

A public body may close a meeting to:

- Determine the asking price for real or personal property to be sold by the public body.
- Review confidential or protected nonpublic appraisal data.
- Develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this exception, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The closed meeting must be tape-recorded. The recording must be preserved for eight years, and must be made available to the public only after all real or personal property discussed at the meeting has been purchased or sold, or after the public body has abandoned the purchase or sale. The real or personal property that is being discussed must be identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. The actual purchase or sale of the real or personal property must be approved at an open meeting, and the purchase or sale price is public data.

## RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 3 \(d\).](#)

[Channel 10, Inc. v. Indep. Sch. Dist. No. 709](#), 215 N.W.2d 814 (Minn. 1974).

[Mankato Free Press v. City of North Mankato](#), 563 N.W.2d 291 (Minn. Ct. App. 1997).

[Mankato Free Press v. City of North Mankato](#), No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished opinion).

## 7. Security reports

Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency-response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities, if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this exception, the public body must, when describing the subject to be discussed, refer to the facilities, systems, procedures, services or infrastructures 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.

## G. Common issues

### 1. Interviews

The Minnesota Supreme Court has ruled that a school board must interview prospective employees for administrative positions in open sessions. The court reasoned that the absence of a statutory exception indicated that the Legislature intended such sessions to be open.

As a result, a city council should conduct any interviews of prospective officers and employees at an open meeting if a quorum or more of the council will be present.

The Minnesota Court of Appeals considered a situation where individual councilmembers conducted separate, serial interviews of candidates for a city position in one-on-one closed interviews. The district court found that no “meeting” of the council had occurred because there was never a quorum of the council present during the interviews.

However, the court of appeals sent the case back to the district court for a determination of whether the councilmembers had conducted the interview process in a serial fashion to avoid the requirements of the open meeting law.

On remand, the district court found that the individual interviews were not done to avoid the requirements of the open meeting law. This decision was also appealed, and the court of appeals affirmed the district court’s decision. Cities that want to use this type of interview process should first consult their city attorney.

## RELEVANT LINKS:

[St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools](#), 332 N.W.2d 1 (Minn. 1983).

[IPAD 08-007](#).  
[IPAD 13-015](#).

[IPAD 05-014](#).

[IPAD 07-025](#).

[A.G. Op. 63a-5 \(Aug. 28, 1996\)](#). [Sovereign v. Dunn](#), 498 N.W.2d 62 (Minn. Ct. App. 1993). [IPAD 07-025](#).

## 2. Informational meetings and committees

The Minnesota Supreme Court has held that informational seminars about school-board business, which the entire board attends, must be noticed and open to the public. As a result, it appears that any scheduled gatherings of a quorum or more of a city council must be properly noticed and open to the public, regardless of whether the council takes or contemplates taking action at that gathering. This includes meetings and work sessions where members receive information that may influence later decisions.

Many city councils create committees to make recommendations regarding a specific issue. Commonly, such a committee will be responsible for researching the issue and submitting a recommendation to the council for its approval. These committees are usually advisory, and the council is still responsible for making the final decision. This type of committee may be subject to the open meeting law. Some factors that may be relevant in deciding whether a committee is subject to the open meeting law include: how the committee was created and who are its members; whether the committee is performing an ongoing function, or instead, is performing a one-time function; and what duties and powers have been granted to the committee.

For example, the commissioner of the Minnesota Department of Administration has advised that “standing” committees of a city hospital board that were responsible for management liaison, collection of information, and formulation of issues and recommendations for the board were subject to the open meeting law. The advisory opinion noted that the standing committees were performing tasks that relate to the ongoing operation of the hospital district and were not performing a one-time or “*ad hoc*” function.

In contrast, the commissioner has advised that a city’s Free Speech Working Group consisting of citizens and city officials appointed by the city to meet to develop and review strategies for addressing free-speech concerns relating to a political convention was not subject to the open meeting law. The advisory opinion noted that the group did not have decision-making authority.

It is common for city councils to appoint individual councilmembers to act as liaisons between the council and particular council committees or other government entities. The Minnesota Court of Appeals considered a situation where the mayor and one other member of a city council attended a series of mediation sessions regarding an annexation dispute that were not open to the public.

## RELEVANT LINKS:

*Thuma v. Kroschel*, 506 N.W.2d 14 (Minn. Ct. App. 1993). [IPAD 16-005](#).

A.G. Op. 63a-5 (Aug. 28, 1996).

*St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983). *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983). *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757 (Minn. 1982).

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

The Court of Appeals held that the open meeting law did not apply to these meetings concluding “that a gathering of public officials is not a ‘committee, subcommittee, board, department or commission’ subject to the open meeting law unless the group is capable of exercising decision-making powers of the governing body.”

The Court of Appeals also noted that the capacity to act on behalf of the governing body is presumed where members of the group comprise a quorum of the body and could also arise where there has been a delegation of power from the governing body to the group.

If a city is unsure whether a meeting of a committee, board, or other city entity is subject to the open meeting law, it should consult its city attorney or consider seeking an advisory opinion.

Notice for a special meeting of the city council may be needed if a quorum of the council will be present at a committee meeting and will be participating in the discussion. For example, when a quorum of a city council attended a meeting of the city’s planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law not simply because the councilmembers attended the meeting but because the councilmembers conducted public business in conjunction with that meeting.

Based on this decision, the attorney general has advised that mere attendance by councilmembers at a meeting of a council committee held in compliance with the open meeting law would not constitute a special city council meeting requiring separate notice. The attorney general cautioned, however, that the additional councilmembers should not participate in committee discussions or deliberations absent a separate special-meeting notice of a city council meeting.

### 3. Social gatherings

Social gatherings of city councilmembers will not be considered a meeting subject to the requirements of the open meeting law as long as there is not a quorum present, or, if a quorum is present, as long as the quorum does not discuss, decide, or receive information on official city business. The Minnesota Supreme Court has ruled that a conversation between two city councilmembers over lunch about a land-use application did not violate the open meeting law because a quorum of the council was not present.

### 4. Serial meetings

The Minnesota Supreme Court has noted that meetings of less than a quorum of a public body held serially to avoid a public meeting or to

## RELEVANT LINKS:

[IPAD 10-011](#). [IPAD 06-017](#).

*Mankato Free Press v. City of North Mankato*, 563 N.W.2d 291 (Minn. Ct. App. 1997).

*Mankato Free Press v. City of North Mankato*, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished opinion).

Compare *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983) and *A.G. Op. 63a-5* (Feb. 5, 1975).

*A.G. Op. 63a-5* (Feb. 5, 1975).

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

[IPAD 09-020](#). [IPAD 14-015](#).

fashion agreement on an issue of public business may violate the open meeting law.

The Minnesota Court of Appeals considered a situation where individual councilmembers conducted separate, serial interviews of candidates for a city position in one-on-one closed interviews. The district court found that no “meeting” of the council had occurred because there was never a quorum of the council present during the interviews. However, the court of appeals sent the case back to the district court for a determination of whether the councilmembers had conducted the interview process in a serial fashion to avoid the requirements of the open meeting law.

On remand, the district court found that the individual interviews were not done to avoid the requirements of the open meeting law. This decision was also appealed, and the court of appeals affirmed the district court’s decision. Cities that want to use this type of interview process with job applicants should first consult their city attorney.

## 5. Training sessions

It is not clear whether the participation of a quorum or more of the members of a city council in a training program would be defined as a meeting under the open meeting law. The determining factor would likely be whether the program includes a discussion of general training information or a discussion of specific matters relating to an individual city.

The attorney general has advised that a city council’s participation in a non-public training program devoted to developing skills was not a meeting subject to the open meeting law.

However, the opinion also advised that if there were to be any discussions of specific city business by the attending members, either outside or during training sessions, it could be a violation of the open meeting law.

## 6. Telephone, email, and social media

It is possible that communication through telephone calls, email, or other technology could violate the open meeting law. The Minnesota Supreme Court has indicated that communication through letters and telephone calls could violate the open meeting law under certain circumstances.

The commissioner of the Department of Administration has advised that back-and-forth email communications among a quorum of a public body that was subject to the open meeting law in which the members commented on and provided direction about official business violated the open meeting law.

## RELEVANT LINKS:

[O'Keefe v. Carter](#), No. A12-0811 (Minn. Ct. App. Dec. 31, 2012) (unpublished opinion).

[Minn. Stat. § 13D.065](#).

However, the commissioner also advised that “one-way communication between the chair and members of a public body is permissible, such as when the chair or staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues.”

In contrast, an unpublished decision by the Minnesota Court of Appeals concluded that email communications are not subject to the open meeting law because they are written communications and are not a “meeting” for purposes of the open meeting law.

The decision also noted that even if email communications are subject to the open meeting law, the substance of the emails in question did not contain the type of discussion that would be required for a prohibited “meeting” to have occurred. The court of appeals noted that the substance of the email messages was not important and controversial; instead, the email communications discussed a relatively straightforward operational matter. The decision also noted that the town board members did not appear to make any decisions in their email communications.

Because this decision is unpublished, it is not binding on other courts. In addition, the outcome of this decision might have been different if the email communications had related to something other than operational matters, for example, if the board members were attempting to build agreement on a particular issue that was going to be presented to the town board at a future meeting.

The open meeting law was amended in 2014 to provide that “the use of social media by members of a public body does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public.” Email is not considered a type of social media under the new law.

The open meeting law does not define the term “social media” but this term is generally understood to mean forms of electronic communication including websites for social networking like Facebook, LinkedIn, and MySpace as well as blogs and microblogs like Twitter through which users create online communities to share information, ideas, and other content.

It is important to remember that the use of social media by councilmembers could still be used to support other claims such as claims of defamation or of conflict of interest in decision-making. As a result, councilmembers should make sure that any comments they make on social media are factually correct and should not comment on issues that will come before the council in the future for a quasi-judicial hearing and decision, such as the consideration of whether to grant an application for a conditional use permit.

## RELEVANT LINKS:

See II-G-4 - Serial meetings.

[Minn. Stat. § 13.02, subd. 7.](#)

See [Handbook, Chapter 27](#) for more information about records management.

It is also important to remember that serial discussions between less than a quorum of the council could violate the open meeting law under certain circumstances. As a result, city councils and other public bodies should take a conservative approach and should not use telephone calls, email, or other technology to communicate back and forth with other members of the public body if both of the following circumstances exist:

- A quorum of the council or public body will be contacted regarding the same matter.
- City business is being discussed.

Another thing councilmembers should be careful about is which email account they use to receive emails relating to city business because such emails would likely be considered government data that is subject to a public-records request under the Minnesota Government Data Practices Act (MGDPA). The best option would be for each councilmember to have an individual email account that the city provides and city staff manage. However, this is not always possible for cities due to budget, size, or logistics.

If councilmembers don't have a city email account, there are some things to think about before using a personal email account for city business. First, preferably only the councilmember should have access to the personal email account. Using a shared account with other family members could lead to incorrect information being communicated from the account, or incoming information being inadvertently deleted. Also, since city emails are government data, city officials may have to separate personal emails from city emails when responding to a public-records request under the MGDPA.

Second, if the account a city councilmember wants to use for city business is tied to a private employer, that private employer may have a policy that restricts this kind of use. Even if a private employer allows this type of use, it is important to be aware that in the event of a public-records request under the MGDPA or a discovery request in litigation, the private employer may be compelled to have a search done of a councilmember's email communications on the private employer's equipment or to restore files from a backup or archive.

What may work best is to use a free, third-party email service, such as gmail or Hotmail, for your city account and to avoid using that email account for any personal email or for anything that may constitute an official record of city business since such records must be retained in accordance with the state records-retention requirements.

## RELEVANT LINKS:

[Minn. Stat. § 13.072, subd. 1 \(b\)](#). See [IPAD](#) for an index of advisory opinions.

See [Requesting an Open Meeting Law Advisory Opinion from IPAD](#).

[Minn. Stat. § 8.07](#). See [index of Attorney General Advisory Opinions from 1993 to present](#).

[Minn. Stat. § 13D.06, subd. 1](#).

[Claude v. Collins](#), 518 N.W.2d 836 (Minn. 1994).

[Minn. Stat. § 13D.06, subd. 2](#).

[O’Keefe v. Carter](#), No. A12-0811 (Minn. Ct. App. 2012) (unpublished opinion).

[Minn. Stat. § 13D.06, subd. 4](#). See LMC information memo, [LMCIT Liability Coverage Guide](#), for information about insurance coverage for lawsuits under the open meeting law.

## H. Advisory opinions

### 1. Department of Administration

The commissioner of the Minnesota Department of Administration has authority to issue non-binding advisory opinions on certain issues related to the open meeting law. A \$200 fee is required. The Information Policy Analysis Division (IPAD) handles these requests.

A public body, subject to the open meeting law, can request an advisory opinion. A person who disagrees with the manner in which members of a governing body perform their duties under the open meeting law can also request an advisory opinion.

### 2. Attorney General

The Minnesota Attorney General is authorized to issue written advisory opinions to city attorneys on “questions of public importance.” The Attorney General has issued several advisory opinions on the open meeting law.

## I. Penalties

Any person who intentionally violates the open meeting law is subject to personal liability in the form of a civil penalty of up to \$300 for a single occurrence. The public body may not pay the penalty. A court may take into account a councilmember’s time and experience in office to determine the amount of the civil penalty.

An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located.

In an unpublished decision, the Minnesota Court of Appeals concluded that this broad grant of jurisdiction authorized a member of a town board to bring an action against his own town board for alleged violations of the open meeting law. This same decision also concluded that a two-year statute of limitations applies to lawsuits under the open meeting law.

The court may also award reasonable costs, disbursements, and attorney fees of up to \$13,000 to any party in an action alleging a violation of the open meeting law. The court may award costs and attorney fees to a defendant only if the action is found to be frivolous and without merit.

A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members.

## RELEVANT LINKS:

[Minn. Stat. § 13D.06, subd. 4.](#)

[Minn. Stat. § 13D.06, subd. 4 \(d\). \*Coalwell v. Murray\*, No. C6-95-2436 \(Minn. Ct. App. Aug 6, 1996\) \(unpublished decision\). \*Elseth v. Hille\*, No. A12-1496 \(Minn. Ct. App. May 13, 2013\) \(unpublished opinion\).](#)

[Minn. Stat. § 13D.06, subd. 3 \(a\). \*Brown v. Cannon Falls Township\*, 723 N.W.2d 31 \(Minn. Ct. App. 2006\).](#)

[Minn. Stat. § 13D.06, subd. 3 \(b\).](#)

[Minn. Const. art. VIII, § 5.](#)

[Jacobsen v. Nagel](#), 255 Minn. 300, 96 N.W.2d 569 (Minn. 1959).

[Jacobsen v. Nagel](#), 255 Minn. 300, 96 N.W.2d 569 (Minn. 1959). [Claude v. Collins](#), 518 N.W.2d 836 (Minn. 1994).

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

No monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds there was intent to violate the open meeting law.

If a person is found to have intentionally violated the open meeting law in three or more separate actions involving the same governing body, that person must forfeit any further right to serve on the governing body or in any other capacity with the public body for a period of time equal to the term of office the person was serving.

If a court finds a separate, third violation that is unrelated to the previous violations, it must declare the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable, the appointing authority or governing body shall fill the position as in the case of any other vacancy.

Under the Minnesota Constitution, the Legislature may provide for the removal of public officials for malfeasance or nonfeasance.

To constitute malfeasance or nonfeasance, a public official's conduct must affect the performance of official duties and must relate to something of a substantial nature directly affecting the rights and interests of the public.

“Malfeasance” refers to evil conduct or an illegal deed. “Nonfeasance” is described as neglect or refusal, without sufficient excuse, to perform what is a public officer's legal duty to perform. More likely than not, a violation of the open meeting law would be in the nature of nonfeasance. Although good faith does not nullify a violation, good faith is relevant in determining whether a violation amounts to nonfeasance.

## RELEVANT LINKS:

*Sullivan v. Credit River Township*, 299 Minn. 170, 217 N.W.2d 502 (Minn. 1974). *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757 (Minn. 1982). *In re D & A Truck Line, Inc.*, 524 N.W.2d 1 (Minn. Ct. App. 1994). *Lac Qui Parle-Yellow Bank Watershed Dist. v. Wollschlager*, No. C6-96-1023 (Minn. Ct. App. Nov. 12, 1996) (unpublished opinion). IPAD 11-004.

*Quast v. Knutson*, 276 Minn. 340, 150 N.W.2d 199 (Minn. 1967).

Minn. Stat. § 13D.01, subd. 6.

Minn. Stat. § 412.191, subd. 2.

See *Two-Way Street: How Does Your City Promote Civility?*, Minnesota Cities Magazine, July-Aug. 2014.

The open meeting law does not address whether actions taken at a meeting that does not comply with its requirements would be valid. Minnesota courts have generally refused to invalidate actions taken at an improperly closed meeting.

But the Minnesota Supreme Court has held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

## III. Meeting procedures

### A. Citizen involvement

Any person may observe council meetings. In fact, the council should encourage citizen attendance to help raise awareness of the city's problems and help create support for programs suggested by the council.

Citizens must be able to hear the discussion at a meeting, and must be able to determine who votes for or against a motion.

One copy of any printed materials relating to the agenda items of the meeting that have been distributed or made available to all members of the council must be made available to the audience unless doing so would violate the Minnesota Government Data Practices Act.

Although anyone can attend council meetings, citizens cannot speak or otherwise participate in any discussions unless the mayor or the presiding officer recognizes them for this purpose. The decision to recognize speakers is usually up to the mayor or presiding officer, but the council can overrule this decision. The council can, through a motion, decide to hear one or more speakers from the audience.

Participation in council meetings can be intimidating for the average citizen. Councils should make sure citizens are invited to participate when appropriate and listened to with courtesy. Individual councilmembers should not argue with citizens. Citizens attend council meetings to give information for the council to consider. Discussions or debates between individual councilmembers and citizens during council meetings is inappropriate and may reflect badly on the decision-making process.

## RELEVANT LINKS:

[A.G. Op. 63a-5 \(Dec. 4, 1972\).](#)

[Minn. Stat. § 13.03, subd. 1.](#)  
[Minn. Stat. § 13.02, subd. 7.](#)

[Minn. Stat. § 13D.05, subd. 1\(d\).](#) See Part II-F for more information about the exceptions to the open meeting law.

[Minn. Stat. § 363A.12.](#)  
[42 U.S.C. §§ 12101-12213.](#)  
[28 C.F.R. § 35.160.](#)  
See *Effective Communication*, U.S. Department of Justice.

[28 C.F.R § 35.160.](#)

[Bahl v. Ramsey County](#), 695 F.3d 778 (8<sup>th</sup> Cir. 2012).  
[Loye v. Dakota County](#), 625 F.3d 494 (8<sup>th</sup> Cir. 2010).

[Minn. Stat. § 144.414, subds. 1, 5.](#) [Minn. Stat. § 144.412.](#)

[Minn. Stat. § 363A.12, subd. 1.](#)  
[42 U.S.C. §§ 12101-12213.](#)  
See U.S. Department of Justice, Civil Rights Division, *The ADA and City Governments: Common Problems* (2008).

## B. Recording and broadcasting of meetings

The public may make an audio or videotape of an open meeting if doing so does not have a significantly adverse impact on the order of the meeting. The city council may not prohibit dissemination or broadcast of the tape.

Cities may also choose to record council meetings. The recording is a government record that must be kept in compliance with the city's records-retention policy. It must also be made available to the public if it contains public data.

All closed meetings, except meetings closed under the attorney-client privilege, must be electronically recorded at the city's expense. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

Many cities broadcast their council meetings over cable television. Broadcasts may need to be closed-captioned or signed in order to provide effective communication for persons with disabilities. While the Americans with Disabilities Act has always required cities to provide auxiliary aids and services when necessary to ensure effective communication, federal regulations now specifically allow for the use of video remote-interpreting services as long as the city complies with certain performance standards addressing high-speed internet connection, video and audio quality, and user training.

The regulations also provide guidance on cities' obligations to communicate with disabled family members and other companions and on using children as interpreters (which is prohibited unless no other interpreter is available and an emergency situation exists). A city should never require an individual to bring his or her own interpreter, but may honor a specific request to allow an adult accompanying a disabled individual to interpret where reliance on that person is appropriate.

## C. Meeting room

State law prohibits smoking at a public meeting in order to protect city employees and the public from the hazards of secondhand smoke. This prohibition also applies to the use of electronic cigarettes.

Both the meeting and the meeting room must be accessible. To ensure accessibility, the meeting should be located in a room that all people, including people with disabilities, can access.

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 2.](#) [Minn. Stat. § 609.72, subd. 1\(2\).](#)

[State v. Occhino](#), 572 N.W.2d 316 (Minn. Ct. App. 1997).

[Steinburg v. Chesterfield County Planning Comm'n](#), 527 F.3d 377 (4<sup>th</sup> Cir. 2008).

[State v. Hensel](#), 874 N.W.2d 245 (Minn. Ct. App. 2016) (the Minnesota Supreme Court has granted review of this appeal).

See Section I-F for more information about adjourned meetings.

[Minn. Stat. § 412.191, subd. 2.](#)

See LMC information memo, [Meetings of City Councils](#), for more information.

## D. Maintaining order

Although meetings must be open to the public, individuals who are noisy or unruly do not have the right to remain in council chambers. When individuals abuse their right to be present in the council chamber, the mayor, as presiding officer (subject to being overruled by the council), should order their removal from the room. If the presiding officer fails to act, the council may, by motion, issue such an order. The council has authority to preserve order at its meetings. The council can use necessary force, including use of the police, to carry out the mandate. A person who disturbs a public meeting may be guilty of disorderly conduct. If a person is excluded from a meeting, the council should provide an opportunity for the excluded person to give his or her interpretation of the exclusion to a designated city staff member to satisfy any due-process concerns.

If the audience becomes so disorderly that it is impossible to carry on a meeting, the mayor can declare the council meeting adjourned to some other time. The members of the council can also move for adjournment.

No matter how disorderly a meeting may be, it is a legal meeting and any action the council takes in proper form is valid. The council cannot issue contempt citations against individuals whose disorderly conduct disrupts or interferes with the transaction of city business.

## E. Rules of procedure

The city council has the power to regulate its own procedure. While many councils operate without written rules or regulations, written rules may facilitate the conduct of city business and reduce the risk of mishandling important matters.

Council bylaws usually cover issues like the place and time of regular council meetings, the order of business, parliamentary rules governing council procedures, minutes, and standing and special committees.

### 1. Agendas

The bylaws should establish an order of business and a process for placing items on an agenda. Many councils have found the following order of business convenient:

- Call to order
- Roll call
- Approval of minutes from previous meeting
- Consent agenda
- Petitions, requests, and complaints

## RELEVANT LINKS:

See LMC Webinar: [Tips for Meeting Management—Managing Expectations and Meeting Your Goals](#), May 2014.

- Reports of officers, boards, and committees
- Reports from staff and administrative officers
- Ordinances and resolutions
- Presentation of claims (The authorization for paying city claims and bills are often included in the consent agenda.)
- Unfinished business
- New business
- Miscellaneous announcements
- Adjournment

## 2. Consent agenda

By resolution or through bylaws, a council may establish a consent agenda containing routine, non-controversial items that need little or no deliberation. The clerk or the person responsible for placing items on the agenda prepares the consent agenda. By a majority or higher vote, the council can approve all actions on the consent agenda with one vote. If a councilmember objects to an item being placed on the consent agenda, it should be removed and acted on as a separate agenda item.

## 3. Tips for managing meetings

In addition to the consent agenda, councils may consider the following suggestions for managing meetings.

Council bylaws may set a closing date for placing items on the agenda. For example, the clerk must receive all requests to include items on the agenda five days before the meeting. This is especially important if councilmembers need to review written material before the meeting. The council might make an exception in special situations. The council should set a definite time for adjournment and observe this rule.

At some time during the meeting, often at the beginning, many city councils establish a specific time when citizens can present concerns to the council. In such an open forum, the mayor or presiding officer should provide a limited time for each person who wishes to speak. No action should be taken on any of the issues raised. Rather, if appropriate, the issues should be placed on the agenda of a future council meeting.

When the council is going to discuss a major public issue, the bylaws, or the council, by resolution, may provide a limited, specific amount of time for each side to express its views. The council may also follow this procedure for all items on the agenda.

## RELEVANT LINKS:

See [Minnesota Mayors Handbook](#) for sample Rules of Order for City Councils.

[Minn. Stat. § 412.191, subd. 2](#) (authorizing the city council to regulate its own procedure). See LMC information memo, [Meetings of City Councils](#), for more information on Roberts Rules of Order, Newly Revised.

[Minn. Stat. § 13D.01, subd. 4.](#)

[Mankato Free Press v. City of Mankato](#), 563 N.W.2d 291 (Minn. Ct. App. 1997).

## F. Parliamentary procedure

Parliamentary procedure is a system of rules that aid in transacting meetings. The rules are designed to preserve order, expedite business, and protect the rights of those involved in making decisions. The mayor, as presiding officer, is responsible for guarding against abuse of the procedures. The effective use of parliamentary procedures is the joint responsibility of the mayor and all councilmembers.

Parliamentary rules can be very simple or very complex. The complexity of rules should vary in direct ratio to the size of the group. As the number of people in the group increases, the complexity of the rules should increase. Accordingly, the rules for city councils should be simple. Any attempt to introduce a high degree of formality into the proceedings of a city council will probably reduce its ability to operate effectively.

The rules of parliamentary procedure apply to council proceedings only if the council formally adopts such rules in its bylaws. The Roberts Rules of Order, Newly Revised is designed for meetings of large bodies. Rather than adopt these rules as a formal procedure to always follow, a council can agree to informally follow the rules while conducting meetings.

An informal application of the rules, together with the common sense of councilmembers, may be the only guidelines many councils need in order to conduct their business in an orderly manner. If a controversial discussion is about to occur, the mayor or a councilmember could move to adopt more formal rules for that particular discussion.

## G. Voting procedures

State law does not regulate the process of council voting. The council may generally use whatever procedures it prefers, subject to charter provisions in home rule charter cities.

The council's bylaws can include voting rules. Otherwise, the council may use voice voting or standing voting unless a councilmember calls for voting by ballot. The bylaws can also set the order in which councilmembers vote. Whether the vote is unanimous or not, the minutes must record the votes of the members of the council and the vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

In addition, The Minnesota Court of Appeals has concluded that secret voting violates the purposes of the open meeting law.

## RELEVANT LINKS:

IPAD 10-011. See LMC information memo, [Meetings of City Councils](#) for more information about voting.

Minn. Stat. § 412.02, subd. 2a. Minn. Stat. § 412.191, subd. 2. Minn. Stat. § 412.121.  
See LMC information memo, [Role with It: Individual versus Council Authority](#).

Minn. Stat. § 412.191.

Minn. Stat. §15.17. Minn. Stat. § 412.151, subd. 1. See [Make Your Meeting Minutes Count](#), Minnesota Cities, Jan.-Feb. 2012 for more information.

A.G. Op. 470-c (Feb. 18, 1959).

The Court of Appeals reasoned that a meeting is not “open” to the public if voting is conducted in secret because it denies the public the right to observe the decision-making process, to know councilmembers’ stance on issues, and to be fully informed about the councils’ actions.

## H. Role of the mayor and clerk

Mayors have the same powers as councilmembers to make, second, and vote on motions in statutory cities. The mayor does not have a veto, and the mayor generally may not vote twice in order to break a tie. If there is a tie vote in filling a vacancy in elective office, however, the mayor must break the tie by making the appointment. The mayor presides at council meetings, and the clerk keeps the minutes. In the absence of the mayor, the acting mayor must perform the mayor’s duties. The acting mayor is chosen at the first meeting each year.

In some charter cities, the mayor has veto power. Charter cities should consult their charters for more information.

In Plan A or Plan B statutory cities, the clerk attends council meetings and records the minutes but may not make, second, or vote on motions. In addition, unless the council extends the privilege, the clerk lacks the right to participate in discussions.

In Standard Plan statutory cities, the clerk is an elected member of the council and has the same voting powers as the other councilmembers. Charter cities should consult their charters for more information about the clerk’s role.

## I. Minutes of council meetings

The council must keep a full and accurate record of its actions at every council meeting. In statutory cities, the clerk records the council proceedings in a minute book. In the clerk’s absence, the council should delegate the duty of taking minutes for that meeting.

The clerk determines the actual wording of the minutes, unless the council adopts a standard form by motion or specifically directs the clerk to change the wording. The minutes should be written in language average citizens can understand. Reference to numbers of ordinances, resolutions, and other matters should include a brief description of their subject matter.

If the council finds a mistake in the minutes of the previous meeting, the clerk should correct the minutes. If the clerk declines, the council can order the change by motion and a vote.

## RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 1.](#)  
[Minn. Stat. § 15.17, subd. 1.](#)

[Minn. Stat. § 412.151, subd. 1.](#)

[Minn. Stat. § 412.191, subd. 3.](#)  
[Minn. Stat. § 331A.01, subd. 10.](#)  
[Minn. Stat. § 331A.08, subd. 3.](#)

The clerk must then make the change and show in the minutes that the change was made by order of the council.

Once the council has formally approved the minutes of any meeting, they should not be changed under any circumstance. The council can dispense with the reading of the minutes if all councilmembers have received them prior to the meeting.

The council must provide books and stationery for keeping minutes. State law requires all cities to keep minutes on a physical medium that is of a quality that will ensure permanent records.

Because minutes would likely be considered official papers of the city, they should be signed by the clerk. Although not required by law, in many cities the mayor also signs the minutes after the council approves them. If the minute book includes only a clipping from the published proceedings, the clerk should sign the clipping even though the signatures of the clerk and mayor are already printed on the clipping. Minute books are public records and must be available for public view at any reasonable time.

### 1. Publication of council minutes

After every regular or special meeting, statutory cities with populations over 1,000 (according to the latest federal census) must publish the official council minutes or a summary of the official minutes unless the city alternatively chooses to mail (at city expense) a copy of the minutes to any resident upon request. The summary must include action on motions, resolutions, ordinances, and other official proceedings.

The summary must state that the full text of the official minutes is available for public inspection at a designated location or by standard or electronic mail. Publication of the council minutes must generally occur within 30 days of the meeting. If a city council does not conduct a regular meeting more than once every 30 days, however, the city does not need to publish the meeting minutes until 10 days after they have been approved by the governing body.

Cities with a population of less than 1,000 are not required to publish the council minutes but may choose to do so. The publication requirement in state law does not cover home rule charter cities; therefore, charter cities should consult their charter to determine whether it has publication requirements.

## RELEVANT LINKS:

[Minn. Stat. § 13D.01, subd. 4.](#)  
[Minn. Stat. § 412.191, subd. 3.](#)  
[Minn. Stat. § 331A.01, subd. 6.](#)

[Minn. Stat. § 412.151, subd. 1.](#)

See Office of the State Auditor, *Statement of Position: Meeting Minutes*.

## 2. Content of council minutes

The clerk must include the following information in the minutes:

- The members of the public body who are present.
- The members who make or second motions.
- Roll-call vote on motions.
- Subject matter of proposed resolutions or ordinances.
- Whether the resolutions or ordinances are defeated or adopted.
- The votes of the members of the council.
- The vote of each councilmember must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

Ordinances, resolutions, and claims considered by the council do not need to be fully detailed in the minutes if they appear in other permanent records kept by the clerk and can be accurately identified by the description given in the minutes.

The Office of the State Auditor has recommended that meeting minutes include the following information in addition to the information required by state statute.

- Type of meeting (regular, special, emergency, etc.).
- Type of group meeting (whether the meeting is a meeting of the governing body or committee, for example).
- Date and place the meeting was held.
- Time the meeting was called to order.
- Approval of minutes of the previous meeting, with any corrections.
- Identity of parties to whom contracts were awarded.
- Abstentions from voting due to a conflict and the member's name and reason for abstention.
- Reasons the governing body awarded a particular contract to a bidder other than the lowest bidder.
- Granting of variances and special use permits.
- Approval of hourly rates paid for services provided, mileage rates, meal-reimbursement amounts, and per-diem amounts.
- Listing of all bills allowed or approved for payment, noting the recipient, purpose, and amount.
- List of all transfers of funds.
- Appointments of representatives to committees or outside organizations.
- Reports of the officers.

## RELEVANT LINKS:

*Metro 500, Inc. v. City of Brooklyn Park*, 297 Minn. 294, 211 N.W.2d 358 (Minn. 1973). *Inland Constr. Co. v. City of Bloomington*, 292 Minn. 374, 195 N.W.2d 588 (Minn. 1972). *Bank of America, FSB v. City of St. Paul*, No. C7-97-1073 (Minn. Ct. App. Feb. 17, 1998) (unpublished opinion). See [Handbook, Chapter 14](#).

- Authorizations and directions to invest excess funds, information on investment redemptions and maturities.
- Time the meeting concluded.

### 3. Making an adequate record

It is very important to make an adequate record of council decisions and of the factual information on which councilmembers base their decisions. Minutes are the primary record of the decision-making process and are critical if council actions are challenged in court.

Council actions are generally classified as either legislative or administrative in nature. The establishment of general policies and procedures is legislative action and is subject to limited judicial review. Courts typically will not substitute their judgment for a council's judgment on these topics.

Administrative or quasi-judicial actions involve the application of a general policy to a specific person or situation. An example of a quasi-judicial decision is a city council's decision regarding whether an applicant has satisfied the criteria for a conditional use permit.

Administrative actions are subject to greater judicial scrutiny, and will be set aside if they are arbitrary, unreasonable, or capricious. Therefore, it is important for the council to develop an accurate record and findings.

In order for a court to meaningfully review council actions, the minutes must clearly and precisely state the council's findings of facts and how those facts led to the council's decision. Findings of fact serve not only to improve the decision-making process, but also aid in judicial review. The findings are part of the record. When a court reviews council proceedings, it will rely on the records the city actually kept and not on the records the city might have maintained.

### 4. Parts of the record

When the city council or other public body holds a hearing, the record usually consists of two separate parts: the transcript, which preserves testimony, and the final order or determination. Following is a sample final-order outline for a conditional use permit. The elements of the order reflect the steps taken by a hearing body in arriving at a decision.

- A caption or title, such as, "In the matter of Ms. X's application for a conditional use permit."
- A preamble that summarizes the council's actions at the hearing and states the purpose of the application.

## RELEVANT LINKS:

- Findings of fact (individually numbered).
- Conclusions or reasons.
- A decision.
- An opinion (if any).
- A copy of the transcript, tape recording or, at minimum, detailed minutes that include all objections and rulings on them (if any).

When a council prepares precise findings of relevant facts, the result is a well-reasoned decision. When a council can demonstrate its conclusions are consistent with all the facts in the record, its decision is likely to be upheld if challenged. The record should also demonstrate compliance with all constitutional requirements, as well as with all procedural requirements. Often, due-process deficiencies, such as lack of notice, provide grounds for appeal.

## IV. Motions, resolutions, and ordinances

### A. Passing motions, resolutions, and ordinances

Any councilmember, including the mayor, may introduce an ordinance or resolution. When ordinances or resolutions are before the council, the council may act upon them at once, refer them to a committee for study and recommendation, postpone consideration to some future time, or take any of the other subsidiary or privileged motion actions.

After the council has completed all consideration and discussion of the matter, the presiding officer should read the ordinance or resolution and call for a vote.

If the council decides to refer the matter to a committee, the committee may conduct an investigation and recommend passage of the ordinance or resolution in its original form or in an amended form, or it may reject the ordinance or resolution. Debate on the ordinance or resolution may take place at the time of its introduction, while a committee is considering it, and after the committee has reported its findings and recommendations.

Most resolutions and procedural motions of the council must receive a majority of the votes cast in order to be adopted. To illustrate: if two members of the council vote in favor of a resolution, one votes against it, and two abstain from voting, the resolution passes.

State law requires some resolutions to be adopted by more than a majority of those voting on the resolution. For example, a resolution to approve summary publication of an ordinance requires a four-fifths vote of the members of the council. Likewise, a four-fifths vote of the members of the council is required to vacate a street.

See *Counting the Votes of Council Actions Parts I and II*, Minnesota Cities Magazine, May 2006 and June-July 2006 for more information.

[Minn. Stat. § 412.191, subd. 4.](#)  
[Minn. Stat. § 412.851.](#)

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 462.357, subd. 2b.](#)

[Lindahl v. Indep. Sch. Dist. No. 306](#), 270 Minn. 164, 133 N.W. 2d 23 (Minn. 1965).

[Minn. Stat. § 471.89.](#)

[LMC General Resolution Form.](#)

See, [Hanson v. City of Granite Falls](#), 529 N.W.2d 485 (Minn. Ct. App. 1995).

Ordinances must be enacted by “a majority vote of all the members of the council,” except where a larger number is required by law. Therefore, on a five-member council, an ordinance would need at least three favorable votes to pass. State law requires a larger number in some circumstances. For example, a two-thirds vote of all the members of a city council is required to change the classification of land in a zoning district from residential to commercial or industrial.

## **B. Differences between motions, resolutions, and ordinances**

### **1. Motions**

A motion is a matter of parliamentary procedure. Motions generally are made orally and may introduce ordinances and resolutions, amend them, and take any other action.

### **2. Resolutions**

A resolution is essentially a formal, written expression of a motion. Councils should use resolutions for any action of a temporary, routine, or administrative nature. For example, resolutions should be used to approve contracts and may be helpful to record findings of fact in connection with planning and zoning decisions. Courts may view motions that are approved and recorded to be the equivalent of resolutions. A resolution must be used when required by law, for example, a resolution must be used when approving a contract under an exception to the conflict of interest prohibition. If the council has any doubt whether a motion or a resolution is necessary to take a particular action, it is generally best to proceed as if the action requires a resolution.

In its traditional form, a resolution begins with a “whereas” clause or clauses explaining the reason for the action, followed by the substance of the resolution beginning with “Therefore, be it resolved” or some similar phrase distinguishing the action from “The council ordains” enacting clause of an ordinance. In more recent practice, the preamble is omitted and the material setting out the reason for the action is given as a separately numbered section or sections of the body of the resolution.

### **3. Ordinances**

If the council has any doubt whether a resolution or an ordinance is necessary to take a particular action, it is generally best to proceed as if the action requires an ordinance.

## RELEVANT LINKS:

[Minn. Stat. § 609.0332.](#)  
[Minn. Stat. § 609.034](#)  
(increased the maximum fine to \$1,000 (misdemeanors) and \$300 (petty misdemeanors)).  
[State v. Weltzin](#), 618 N.W.2d 600 (Minn. Ct. App. 2000).

[Minn. Stat. § 44.02.](#)

[Minn. Stat. § 160.232\(d\).](#)

[Minn. Stat. § 205.07, subd. 1.](#)

[Minn. Stat. § 238.084.](#)

[Minn. Stat. § 272.67.](#)

[Minn. Stat. § 273.1321, subd. 1.](#)

[Minn. Stat. § 299F.362, subd. 9.](#)

[Minn. Stat. § 346.47, subd. 2.](#)

[Minn. Stat. § 349.213, subd. 1\(f\).](#)

[Minn. Stat. § 410.12, subd. 5.](#)

[Minn. Stat. § 412.02, subd. 2a.](#)

[Minn. Stat. § 412.02, subd. 3.](#)  
[Minn. Stat. § 412.591, subd. 2.](#)

[Minn. Stat. § 412.02, subd. 6.](#)

Any council enactment that regulates people or property and provides a penalty if violated should be adopted in the form of an ordinance. As a result, the council must pass, in ordinance form, all police regulations for public health, morals, economic well-being, welfare, and safety. Ordinance regulations should be of general application within the city, and of a permanent and continuing nature.

Violations of an ordinance may be specified in the ordinance to be either a misdemeanor or a petty misdemeanor. State law establishes the maximum penalty for each violation. The maximum penalty for a misdemeanor is a \$1,000 fine or imprisonment for up to 90 days, or both. The maximum penalty for a petty misdemeanor is a \$300 fine. Generally, if an ordinance does not provide for the penalty of imprisonment, individuals prosecuted for its violation are not entitled to a jury trial.

State law requires city councils to adopt ordinances to take certain actions, including the following:

- Establish a municipal merit system.
- Authorize mowing of ditches outside city.
- Hold elections in odd number years and set transition terms.
- Required contents of cable franchise ordinance.
- Create urban and rural service districts.
- Establish a program to encourage redevelopment of vacant commercial properties.
- Adopt more restrictive rules for installation of smoke detectors in single-family homes.
- Establish a longer time for redemption of impounded animals.
- Require an organization conducting lawful gambling to make an expenditure to the city.
- Home rule charter cities: propose charter amendments.
- Establish conditions under which a special election to fill a vacancy will be held.
- Combine or separate the office of clerk and treasurer.
- Submit question to voters to increase or reduce number of councilmembers.

## RELEVANT LINKS:

[Minn. Stat. § 412.021, subd. 5.](#)

[Minn. Stat. § 412.022, subd. 1.](#)

[Minn. Stat. § 412.151, subd. 2.](#)

[Minn. Stat. § 412.221, subd. 6.](#)

[Minn. Stat. § 412.221, subd. 8.](#)

[Minn. Stat. § 412.221, subd. 11.](#)

[Minn. Stat. § 412.221, subd. 12.](#)

[Minn. Stat. § 412.221, subd. 14.](#)

[Minn. Stat. § 412.221, subd. 16.](#)

[Minn. Stat. § 412.221, subd. 17.](#)

[Minn. Stat. § 412.221, subd. 18.](#)

[Minn. Stat. § 412.221, subd. 19.](#) [Minn. Stat. § 330.025.](#)  
[Minn. Stat. § 437.02.](#)

[Minn. Stat. § 412.221, subd. 20.](#)

[Minn. Stat. § 412.221, subd. 21.](#)

[Minn. Stat. § 412.221, subd. 22.](#)

[Minn. Stat. § 412.221, subds. 23, 24.](#)

[Minn. Stat. § 412.221, subd. 25.](#)

- Set the initial salaries for mayor and councilmember upon incorporation.
- Establish a four-year term, or reestablish a two-year term, for mayor.
- Delegate bookkeeping duties of clerk to another officer or employee.
- Regulate the use of streets and other public grounds to prevent encumbrances or obstructions, and to require the owners or occupants of buildings and the owners of vacant lots to remove any snow, ice, dirt or rubbish from sidewalks, and to assess the cost of removal against the owners.
- Regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.
- Regulate the use of wells, cisterns, reservoirs, waterworks, and other means of water supply
- Regulate the location, construction, and use of piers, docks, wharves, and boat houses on navigable waters, and to maintain public docks and warehouses.
- Regulate tourist camps and automobile parking facilities.
- Establish a hospital board and authorize it to establish a separate fund in the city treasury.
- Prevent, control, or extinguish fires.
- Name or rename streets and public places, number and renumber the lots and blocks of the city, and make and record a consolidated plat of the city.
- License and regulate transient merchants, dealers, hawkers, peddlers, solicitors, and canvassers. (Cities can no longer license auctioneers.)
- License taxis and automobile rental agencies.
- Regulate animals, including the keeping of animals, running of animals at large, and impounding of animals.
- Establish various health regulations, including establishing a board of health.
- Regulate nuisances, and noise and disorder.
- Regulate amusements.

**RELEVANT LINKS:**

[Minn. Stat. § 412.221, subd. 26.](#)

[Minn. Stat. § 412.221, subd. 27.](#)

[Minn. Stat. § 412.221, subd. 28.](#) [Minn. Stat. § 326B.121.](#)

[Minn. Stat. § 412.221, subd. 30.](#)

[Minn. Stat. § 412.221, subd. 31.](#)

[Minn. Stat. § 412.221, subd. 32.](#)

[Minn. Stat. § 412.331.](#)

[Minn. Stat. § 412.501.](#)

[Minn. Stat. § 412.671.](#)

[Minn. Stat. § 412.681.](#)

[Minn. Stat. § 412.741.](#)

[Minn. Stat. § 412.751.](#)

[Minn. Stat. § 413.02.](#)

[Minn. Stat. § 414.033.](#)

[Minn. Stat. § 415.02.](#)

[Minn. Stat. § 415.11.](#)

[Minn. Stat. § 416.01.](#)

[Minn. Stat. § 419.01.](#) [Minn. Stat. § 419.02.](#)

[Minn. Stat. § 420.01.](#)

[Minn. Stat. § 428A.02.](#)

[Minn. Stat. § 428A.13, subd. 2.](#)

- Restrain vice.
- Regulate public dances.
- Regulate the construction of buildings. (The city may only adopt regulations found in the state building code).
- License and regulate restaurants.
- Require sewer connections.
- Provide for the governance and good order of the city; the prevention of vice; the prevention of crime; the protection of public and private property; the benefit of residence; trade and commerce; and the promotion of health, safety, order, convenience, and the general welfare.
- Create a utility commission.
- Create a park board if the city’s population is more than 1,000.
- Enact an administrative code.
- Plan B cities: create or abolish officers subordinate to the city manager.
- Plan B cities: adopt regulations for safekeeping and disbursement of funds.
- Plan B cities: authorize issuance of emergency debt certificates.
- Change name of city.
- Annex property by ordinance.
- Declare codification of ordinances to be prima facie evidence of the law.
- Set the salaries for mayor and councilmembers.
- Establish memorials for veterans.
- Create a police civil service commission; combine police civil service commission with existing fire commission.
- Create a fire civil service commission.
- Establish a special services district.
- Adopt housing improvement area.

**RELEVANT LINKS:**

[Minn. Stat. § 429.061, subds. 1 and 3.](#)

[Minn. Stat. § 429.101.](#)

[Minn. Stat. § 430.01.](#)

[Minn. Stat. § 435.193.](#)

[Minn. Stat. § 435.26.](#)

[Minn. Stat. § 435.44, subd. 1.](#)

[Minn. Stat. § 440.11.](#)

[Minn. Stat. § 440.37.](#)

[Minn. Stat. § 441.48.](#)

[Minn. Stat. § 441.49.](#)

[Minn. Stat. § 441.50.](#)

[Minn. Stat. § 443.015.](#)

[Minn. Stat. § 443.28.](#)

[Minn. Stat. § 443.31.](#)

[Minn. Stat. § 443.35.](#)

[Minn. Stat. § 444.17.](#)

[Minn. Stat. § 447.41.](#)

[Minn. Stat. § 448.54.](#)

[Minn. Stat. § 449.15.](#)

[Minn. Stat. § 450.20.](#)

[Minn. Stat. § 451.07.](#)

[Minn. Stat. § 452.08.](#)

- Authorize partial prepayment of a special assessment.
- Collection of unpaid special charges.
- First class cities: various activities related to parks, parking lots, and pedestrian malls.
- Adopt standards for deferring assessments for senior, disabled, or military persons.
- First class cities: issue certificates of indebtedness for sprinkling streets.
- Establish a sidewalk improvement district.
- Change street name.
- First class city: extend street outside corporate limits.
- Elect to exercise powers granted in Minn. Stat. §§ 441.47-.55 (toll bridges).
- Issue revenue bonds for toll bridges.
- Establish tolls for toll bridges and create fund for certain revenue from toll bridges.
- Assess costs for garbage collection.
- First class cities: establish rates for operation of solid waste facilities.
- First class cities: regulate garbage collection.
- First class cities: impose penalties related to garbage accumulation, collection, or disposition.
- Establish a storm sewer improvement tax district.
- Establish and make rules for operation of nursing home.
- First class cities: adopt penalties for violations relating to parkways.
- Impose license fee on amusement machines.
- First class cities: establish city art commission.
- First class cities: permit public service corporation to use streets to supply utilities.
- First class cities: own, construct, acquire, purchase, maintain, operate, or lease any public utility.

**RELEVANT LINKS:**

[Minn. Stat. § 452.09.](#)

[Minn. Stat. § 458.33.](#)

[Minn. Stat. § 459.14.](#)

[Minn. Stat. § 461.19.](#)

[Minn. Stat. § 462.353.](#)

[Minn. Stat. § 462.353, subd. 4.](#)

[Minn. Stat. § 462.355.](#)

[Minn. Stat. § 462.357, subd. 1e.](#)

[Minn. Stat. § 462.357, subds. 1 and 4.](#)

[Minn. Stat. § 462.358.](#)

[Minn. Stat. § 463.251, subd. 4.](#)

[Minn. Stat. § 465.27. Minn. Stat. § 465.30.](#)

[Minn. Stat. § 465.48.](#)

[Minn. Stat. § 465.74, subd. 5.](#)

[Minn. Stat. § 471.193.](#)

[Minn. Stat. § 471.195.](#)

[Minn. Stat. § 471.345, subd. 7.](#)

[Minn. Stat. § 471.57.](#)

[Minn. Stat. § 471.635.](#)

[Minn. Stat. § 471.985.](#)

[Minn. Stat. § 471.9996, subd. 2.](#)

- First class cities: issue certificates of indebtedness for operation of a public utility.
- First class cities: issue and sell bond to pay for levees.
- Set fees for parking facilities.
- Regulate tobacco.
- Adopt and amend a comprehensive plan.
- Establish planning and zoning fees. (Cities that collect an annual total of \$5,000 or less, however, may simply refer to a fee schedule in their planning and zoning ordinances. The fee schedule may be adopted by ordinance or resolution following public notice and hearing.)
- Adopt an interim ordinance.
- Regulate nonconformities.
- Adopt and amend a zoning ordinance.
- Adopt and amend subdivision regulations.
- Provide for emergency securing of vacant buildings.
- First class cities: adopt survey and map before diversion of stream; appoint appraisers to determine damages for use of eminent domain authority.
- First class cities: prescribe penalties for violation related to diverted channel.
- Grant a district heating franchise.
- Establish and regulate a heritage preservation commission.
- Provide for custody and disposal of unclaimed property.
- Establish prevailing wage and working conditions.
- Establish public works reserve fund.
- Regulate location of firearms dealers.
- Prohibit trespassing for purpose of consuming alcohol or controlled substances.
- Establish rent control.

## RELEVANT LINKS:

[Minn. Stat. § 473.192, subd. 3.](#)

[Minn. Stat. § 473.206.](#)

[Minn. Stat. § 473.4055.](#)

[Minn. Stat. § 475.53, subd. 8.](#)

[Minn. Stat. § 473.811, subds. 4a and 5.](#)

[Minn. Stat. § 475.525, subd. 3.](#)

[Minn. Stat. § 412.191, subd. 4. A.G. Op. 4720 \(July 31, 1959\).](#)

[Minn. Stat. § 412.221, subd. 33.](#)

[Mangold Midwest Co. v. Village of Richfield](#), 274 Minn. 347, 143 N.W.2d 813 (Minn. 1966).

[City of Birchwood Village v. Simes](#), 576 N.W.2d 458 (Minn. Ct. App. 1998).  
[Nordmarken v. City of Richfield](#), 641 N.W.2d 343 (Minn. Ct. App. 2002).

[Press v. City of Minneapolis](#), 553 N.W.2d 80 (Minn. Ct. App. 1996). [State v. Becker](#), 351 N.W.2d 923 (Minn. 1984). [State v. Northwest Poultry & Egg Co.](#), 203 Minn. 438, 281 N.W. 753 (Minn. 1938). [State v. Suess](#), 236 Minn. 174, 52 N.W.2d 409 (Minn. 1952). [State v. Hayes](#), C0-01-241 (Minn. Ct. App. Nov. 6. 2001) (unpublished opinion).

- Metropolitan area cities in aircraft noise zones: regulate building methods to reduce the effect of airport noise.
- Metropolitan area cities: adoption of model ordinances to protect resources.
- Metropolitan area cities: regulate horns, whistles, and warnings of light rail transit vehicles.
- Reserve a portion of unencumbered debt limit related to a solid waste disposal facility.
- Metropolitan area cities: regulate solid waste collection and management.
- Authorize housing and redevelopment authority to issue district heating bonds.

## C. Ordinances

Only the city council has the power to enact ordinances. Generally, ordinances do not need voter approval. The statutes do not authorize a council to seek voter consent to a proposed ordinance or even to ask for an advisory opinion on its desirability. In home rule charter cities, the charter may provide for voter approval of or advisory elections on particular ordinances.

City councils can only deal with subjects that the Legislature has expressly authorized them to act on or that directly relate to a statutory grant of authority. In some areas, statutory cities may enact ordinances on subjects state law already regulates, as long as the ordinances are consistent with state law. But the city's regulation of an area, including those areas where authority may be generally granted in the statutory city code, may be pre-empted if state law has so extensively regulated a particular area of law that it has become solely a matter of state concern.

In addition, councils must adhere to the following general requirements when enacting ordinances:

- An ordinance must not be unconstitutionally vague. Ordinances must be reasonably certain in their terms and set forth objective standards that provide adequate notice of what is required or prohibited.

## RELEVANT LINKS:

[Holt v. City of Sauk Rapids](#), 559 N.W.2d 444 (Minn. Ct. App. 1997). [Cascade Motor Hotel, Inc. v. City of Duluth](#), 348 N.W.2d 84 (Minn. 1984).  
See [City of Eveleth v. Town of Fayal](#), C2-00-1882 (Minn. Ct. App. June 5, 2001) (unpublished opinion).

See cases cited above.

See [Handbook, Chapter 18 Lorchbough v. Township of Buzzle](#), 258 N.W.2d 96 (Minn. 1977). [Pelican Lake Property Owners Ass'n v. County of Crow Wing](#), Nos. C5-98-1549, C3-98-1940 (Minn. Ct. App. Aug. 17, 1999) (unpublished opinion). [Schultz v. Frank](#), No. C1-00-285 (Minn. Ct. App. Aug 1, 2000) (unpublished opinion). [State v. Howard](#), 360 N.W.2d 637 (Minn. Ct. App. 1985).

See [Tips for Writing City Ordinances](#), Minnesota Cities Magazine, Jan.-Feb. 2011.

[LMC General Ordinance](#). Minn. Stat. § 412.191, subd. 4.

[Minn. Stat. § 412.191, subd. 4.](#)

See Part IV-C-3 Publication of ordinances.

- Ordinances must be consistent with the constitution and laws of the United States and Minnesota. (A city ordinance is presumed constitutional so long as it is substantially related to health, safety, or the general welfare. It also must be reasonable; that is, it must be fair, general, and impartial in operation.)
- Ordinances must not limit or deny any common law or constitutional rights.
- Ordinance provisions must not constitute an unreasonable restraint of trade.

When adopting an ordinance, city officials should be aware that the city must follow any procedures established in the ordinance and that the city might be liable for not enforcing its ordinance. However, if the language of the ordinance does not make its enforcement mandatory, the city may have discretion not to enforce it. Cities should not adopt or retain an ordinance they do not intend to enforce. The council can adopt an ordinance to respond to a pre-existing problem or nuisance, and the city may generally prosecute a person who violates an ordinance after it has been adopted even if the person began the activity prior to the existence of the ordinance.

## 1. Form, content, and adoption of ordinances

Because ordinances have the force and effect of law, their form is important. While the law does not require an attorney to draft ordinances, those who do draft ordinances should have a sound understanding of the law. The city should consult an attorney to help prepare its ordinances or to review them before they are adopted.

Ordinances must meet certain requirements and follow a certain form. Charter cities should also look to their own charter provisions for requirements about adopting ordinances.

The procedural requirements for the adoption of ordinances in statutory cities are found in state law that provides in part that all ordinances must be:

- Approved by a majority of all members of the council, except where a larger number is required by law.
- Signed by the mayor and attested by the clerk.
- Published once in the official newspaper. There is an exception that allows for summary publication under certain circumstances.

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 412.231.](#)  
[Minn. Stat. § 169.89, subd. 2.](#)  
[Minn. Stat. § 609.02, subds. 3, 4a.](#)  
[Minn. Stat. § 609.0332.](#)  
[Minn. Stat. § 609.034.](#)

### **a. Title**

Every ordinance should have a title that briefly yet adequately describes its contents. The phrases: “repealing ordinances inconsistent herewith” and “providing penalties for the violation thereof” should not be part of the title.

### **b. Number**

Each ordinance should have an identifying number as part of its title.

### **c. Findings and purpose**

An ordinance should provide an explanation or findings of fact stating the reasons and authority for adopting the ordinance and describing its purpose.

### **d. Enacting clause**

All ordinances, after a suitable title, should begin substantially in this form: “The City Council of \_\_\_\_\_ ordains. . .”

### **e. Body**

The text of the ordinance should be written in clear and brief terms. If definitions are helpful, they should be contained in one beginning section. The sections should be short to make subsequent amendments easier and cheaper. All sections and subsections should have a number and an identifying word or short title.

### **f. Repeal**

If prior ordinances are to be repealed, a section to this effect should be included. Each ordinance to be repealed should be specifically referred to by number, title, and adoption date.

### **g. Penalty**

This section is for enforcement purposes. Cities may impose maximum penalties for misdemeanors of a \$1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of \$300. Certain traffic offenses may only be prosecuted as petty misdemeanors.

## RELEVANT LINKS:

[A.G. Op. 477-b-34 \(Sept. 20, 1962\). A.G. Op. 59-a-9 \(April 13, 1957\).](#)

[Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 412.191, subd. 4. Minn. Stat. § 599.13. \*City of Akeley v. Nelson\*, No. C4-02-915 \(Minn. Ct. App. Nov. 25, 2003\) \(unpublished opinion\). \*Union Pub. Serv. Co. v. Village of Minneota\*, 212 Minn. 92, 2 N.W.2d 555 \(Minn. 1942\).](#)

### **h. Closing**

The closing should read: “Passed by the (name of city) Council this (date) day of (month), (year).” If the council wants an effective date later than the date of publication, this section should state the effective date.

### **i. Maps**

If the ordinance refers to maps and they are an integral part of the ordinance, they must be included in the published ordinance. Because it is expensive to publish maps, a city may choose to omit all reference to the map in the ordinance and rely instead on word descriptions. The city then could prepare a separate, unofficial map.

### **j. Deliberation**

The council should discuss the ordinance according to the council’s rules before passing it, even though failing to abide by these rules probably would not invalidate an ordinance if it meets statutory requirements. The statutes do not specify that an ordinance in a statutory city must have a certain number of readings, nor do they require the council to consider it at more than one meeting. Unless the council has rules to the contrary, it may pass an ordinance at the same meeting at which it is introduced.

### **k. Passage**

Except where the statutes require a larger majority, ordinances in statutory cities must receive a majority vote of all the members of the council to pass. This means, in effect, if the council has five members, at least three councilmembers must vote in favor of an ordinance.

Both the clerk and the mayor in Standard Plan cities have the power to vote on ordinances. The mayor has no veto power.

### **l. Attestation**

After the council passes an ordinance, the mayor and the clerk must sign it. The clerk should also affix the city seal to it. If either the mayor or clerk refuses to sign the ordinance, a court order can require them to do so if the court finds that the ordinance is legal.

## RELEVANT LINKS:

*Uniform Public Service Co. v. Village of Minneota*, 212 Minn. 92, 2 N.W.2d 555 (Minn. 1942).

[Minn. Stat. § 412.151, subd. 1.](#) [Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 412.191, subd. 4.](#) [Minn. Stat. § 331A.02.](#) [Minn. Stat. § 331A.04.](#) See LMC information memo, *Newspaper Publication*, for more information.

[Minn. Stat. § 331A.05, subd. 2\(c\).](#) [A.G. Op. 277b-4 \(Feb. 11, 1986\).](#)

[Minn. Stat. § 412.191, subd. 4.](#)

### m. Effective date

Unless otherwise specified within the ordinance, an ordinance becomes effective after its publication in the official newspaper. Before an ordinance takes effect, it may be revoked or repealed by the city council by motion, resolution, or ordinance.

## 2. Ordinance book

Each statutory city must maintain an ordinance book containing copies of all ordinances passed by the council. Every ordinance must be recorded in the ordinance book within 20 days of its publication.

The ordinance book is a public record and is evidence in court. If the clerk uses printed copies of the ordinance clipped from the newspaper, a printer's affidavit should be attached to each ordinance in the book.

The city should have a numbering system adequate for indexing its ordinances. In most small cities where there are few ordinances, chronological order is satisfactory. When the number of ordinances is large or when the city is recodifying its ordinances, a more complicated system of decimal numbers might be advisable.

## 3. Publication of ordinances

The following publication requirements apply to statutory cities.

Every ordinance must be published once in the city's official newspaper. To qualify as an official newspaper, the newspaper must be a legal newspaper under state statute, and the council must have designated it as the city's official newspaper. Cities usually publish ordinances separately. If the city publishes them in full as part of the minutes, the publication meets all statutory requirements.

An ordinance must be published within 45 days after being passed. Failure to publish within 45 days, however, will not necessarily invalidate the ordinance.

A statutory city council may publish a summary of a lengthy ordinance. Publishing the title and summary shall be deemed to fulfill all legal publication requirements as completely as if the entire ordinance had been published. In order to do this, the city council must do the following:

- The council must determine that publication of the title and a summary of the ordinance would clearly inform the public of the intent and effect of the ordinance.

## RELEVANT LINKS:

See [Minn. Stat. § 331A.01, subd. 10.](#)

- The council must approve summary publication by a four-fifths vote of its members.
- The title and summary must conform to Minn. Stat. § 331A.01, subd. 10.
- The summary must include notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the city clerk and at any other location designated by the council or by standard or electronic mail.
- The council must approve the text of the summary prior to its publication, and determine that it clearly informs the public of the intent and effect of the ordinance.
- A copy of the entire text of the ordinance must be posted in the community library or, if no library exists, in any other public location designated by the council.
- The text of the summary must be published in a font type no smaller than brevier or eight-point type.
- Proof of the publication must be attached to and filed with the ordinance.

It is advisable to use summary-publication authority in cases where the public interest in doing so is clear, as in the case of a lengthy and complex zoning ordinance where the length of the actual ordinance obscures its content, and where maps and descriptions of procedures can clarify the meaning. Another example might be an annexation ordinance containing legal property descriptions where a summary identifying the property by using popularly understood location points like a street or watercourse line would better inform the public of its purpose and intent.

*W.H. Barber Co. v. City of Minneapolis*, 227 Minn. 77, 34 N.W.2d 710 (Minn. 1948).

Errors in the publication of an ordinance may affect its validity. If the error is minor so that the correct meaning is clear from the context, the error has no effect on the ordinance's validity. When the error is more substantial, however, the ordinance provision containing the error is ineffective and void.

[Minn. Stat. § 331A.05, subd. 6.](#)

In home rule charter cities, the charter can impose additional or special requirements for the publication of ordinances.

[Minn. Stat. § 462.36.](#)  
[Minn. Stat. § 507.093.](#) *Bruce Township v. Schmitz*, No. A15-1163 (Minn. Ct. App. May 31, 2016) (unpublished opinion).

## 4. Recording

A certified copy of every ordinance, resolution, map, or regulation relating to subdivisions, conditional use permits, and official maps must be filed with the county recorder. Failure to record an ordinance, resolution, map, regulation, variance or order shall not affect its validity or enforceability.

## RELEVANT LINKS:

[Minn. Stat. § 471.62.](#)

[Minn. Stat. § 471.62.](#)

See also *Raymond v. Baehr*, 163 N.W.2d 51 (Minn. 1968) (holding a city may also incorporate a “public record” by reference in an ordinance).

[Minn. Stat. § 471.62.](#)

[A.G. Op. 59-a-9 \(July 18, 1967\).](#)  
[A.G. Op. 59-a-9 \(March 27, 1956\).](#)

## 5. Adoption by reference

Statutory and charter cities can reduce costs for publication when adopting certain complicated regulatory codes in ordinance form by using the process of adoption by reference. In effect, cities can adopt certain regulations by passing and publishing an ordinance that identifies the statute or other rule by name. Cities may only adopt regulations by reference on subjects about which they have authority to legislate.

Cities may adopt the following by reference:

- Minnesota statutes.
- State agency administrative rules or regulations.
- The state building code and the uniform fire code.
- Codes (or parts of codes) prepared for general distribution in printed form as a standard or model by any governmental, trade, or professional association on the subject of building construction (limited to the state building code), plumbing, electrical wiring, flammable liquids, sanitary provisions, public health, safety or welfare.
- Compilations or regulations or standards prepared by regional and county planning agencies on the subject of planning, zoning, subdivision regulation, and housing regulation.

All other statutory publication requirements apply to the ordinance that incorporates another statute, rule, ordinance, or code by reference. In addition, prior to publication or posting, at least one copy of the incorporated statute, rule, ordinance, or code must be marked as the official copy and filed in the clerk’s office for public use and examination. The clerk must furnish a copy of any incorporated statute or code to any person upon request. The clerk may levy a charge sufficient to cover the cost of providing the copy.

Codes, statutes, rules, regulations, and ordinances the council adopts by reference remain effective in their original form until changed or repealed by the council.

The city, when adopting the code by reference, most likely cannot stipulate that any future revisions by the issuing agency will be automatically incorporated by the city. If the city wishes to incorporate changes made by the issuing agency, the best practice would be for the city to pass an amending ordinance.

**RELEVANT LINKS:**

[LMC Sample Amending Ordinance.](#)

## **6. Alteration of ordinances**

### **a. Amendment**

The council must follow the same procedures for amending an ordinance as those followed for passing the ordinance. After the amendment is passed by a majority of all members of the council, it must be attested to, published, and included in the ordinance book. In addition, the form of the amendment should be like new ordinances with respect to title, enacting clause, body, closing, and signatures. The council cannot change an ordinance by resolution. Instead, it must pass an amending ordinance.

If the ordinance is short or if the changes are numerous, the council will usually re-pass the entire ordinance in its amended form, repealing the old ordinance in a separate section. An optional form would be to title the new ordinance as an amendment, and then recite the entire ordinance as it would read after amendment.

If the ordinance to be amended is so long that the cost of publishing it in its entirety would be prohibitive, the council may pass an amending ordinance that sets forth only the sections that will change. The council may include several amendments to the same ordinance in different sections of the same amending ordinance. The council should label an amending ordinance as such, and should state the ordinance and sections in the proposed changes.

The council should avoid the practice of amending a single word or picking out a single sentence from a paragraph. This practice frequently leads to confusion. A better practice is to reprint the section or subsection in full as it would read after amendment.

If the council wishes to re-number its present ordinances, it may pass a re-numbering ordinance. The city must publish the re-numbering ordinance, but it does not have to include the text of the old ordinances.

### **b. Repeal**

A city may repeal an ordinance only by passing another ordinance stating the title, number, subject, and date of the ordinance being repealed. The ordinance must explicitly state it is repealing the ordinance.

To repeal an ordinance, the council must follow the same requirements for adopting ordinances. The council can repeal any number of ordinances in a single repealing ordinance.

## RELEVANT LINKS:

Frequently, when a council passes a new ordinance or revises an ordinance, the new ordinance will contain provisions that are inconsistent with or replace similar provisions in an existing ordinance. Some cities insert a provision in the new ordinance repealing any or all ordinances or portions of ordinances inconsistent herewith. A better practice is to repeal, by name and number, any inconsistent provisions of former ordinances. If this is impractical, it is best to say nothing about the repeal of inconsistent ordinance provisions since the new ordinance automatically supersedes all inconsistent provisions in existing ordinances.

## 7. Codification of ordinances

### a. Purposes of codification

Citizens have a right to know what their government requires of them. This is a fundamental, due process right in our legal system. If a citizen is to know the law on a particular matter, he or she must first know where to find it.

If a citizen is interested in knowing the city's current law on a particular matter, where does the search begin? In the book covering the minutes for the last 65 years? In the clerk's files? In the basement of city hall? Depending on the current state of affairs in the particular city, the answer to any or all of these questions could be "yes."

In assessing the need for codification, a city should begin by asking the following questions: What condition are the ordinances in? Are they organized in one place? Are they properly indexed? Are they cross-referenced? Are they up-to-date? Are they internally consistent? Are they in compliance with state and federal laws? Are they complete?

A codification of city ordinances allows city officials to respond affirmatively to all of these questions. A proper codification project encompasses all of the following:

- Identification of conflicting ordinances, and repeal or re-drafting of inconsistent or unclear ordinance provisions.
- Removal of archaic and unconstitutional ordinances.
- Development of a system that facilitates access to the city's laws and provides for continuous updating.
- Development of comprehensive indexing and cross-referencing.
- Review of the entire body of city ordinances for omissions.
- Organization of city ordinances into an easy-to-use reference book known as the city code.

## RELEVANT LINKS:

For more information about [Codification](#) contact Amber Eisenschenk, LMC Research Attorney at 800-925-1122 or 651-281-1227.

Actual codes vary from the very simple to the very complex, depending partly on the size, age, and functions of the city. The simplest codes are compilations of all the ordinances currently in effect in the city, including the original title, number, enacting clauses, and concluding clause and signatures for each ordinance. Others codes re-number the ordinances to fit a subject-matter classification. Some other codes include new material adopted for the first time; in fact, in many instances, the whole code is adopted as new ordinance material even though much comes from existing ordinances in the same or slightly altered form.

A well-drafted city code helps a city operate efficiently and effectively. Ordinances are grouped together by subject, not by the chronological order in which they were passed. This eliminates the need to sort through stacks of loose ordinances to find a regulation on a particular subject.

Cities have a number of options for completing a codification of ordinances. Occasionally, the city attorney or city clerk will do the codification, but in many cases competing demands on their time make it difficult for them to undertake the project. Cities can also hire private consulting firms that specialize in charter revision and ordinance codification.

The League of Minnesota Cities, in consultation with its codification consultant, American Legal Publishing Corporation, provides codification services to cities. Most Minnesota cities that have codes use the League's service. The service is designed to provide each city with a customized city code that meets the needs of that particular city. The League, in consultation with American Legal Publishing Corporation, provides the following services as part of its codification service:

- Sorting, integrating, and organizing all current ordinances.
- Reviewing all ordinances and making suggestions about bringing them into compliance with current state and federal laws.
- Simplifying and using gender-neutral language.
- Suggesting new ordinances.
- Numbering all sections to allow the easy insertion of future amendments.
- Submitting a full-text draft for city review and approval.
- Delivering multiple copies of the final code with a detailed table of contents and complete index. Options are available for electronic editions of the code with full text search capacity and Internet support of the city code with links to the city's designated website and to the League's website.
- Updating existing codes by incorporating new ordinances into the code.

## RELEVANT LINKS:

For more information about the Minnesota [Basic Code](#), contact Amber Eisenschenk, LMC Research Attorney at (800) 925-1122 or (651) 281-1227.

[Minn. Stat. § 415.02.](#)

[Minn. Stat. § 412.191, subd. 4.](#)

[LMC Sample Ordinance Adopting a City Code.](#)

[Minn. Stat. § 462.357, subd. 3.](#)

[LMC Sample Notice of Hearing Regarding Adoption of a City Code.](#)

[Minn. Stat. § 462.357, subd. 3.](#)

[Minn. Stat. § 461.19.](#)

[Minn. Stat. § 412.191, subd. 4.](#)

The League also has available for purchase a basic city code for Minnesota cities, which can be customized by the League's codification service to meet the needs of individual cities.

### **b. Codification procedures**

The city council has authority to codify any general or special laws, ordinances, resolutions, rules, and bylaws in force in the city.

An ordinance adopting a city code must be approved at a meeting of the city council. For statutory cities, an ordinance adopting the city code must be passed by a majority vote of all the members of the council, unless it includes material that must be adopted by a larger number. If your code, for example, amends any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial, a two-thirds majority vote of all members of the city council is required to adopt that portion of the code.

Whether a notice of hearing regarding adoption of a city code is required to be given to certain persons or to be published depends on the contents of the code. Published notice is generally not required for statutory cities to adopt a code unless the code contains a zoning ordinance or amendments to a zoning ordinance, or if the code includes a new ordinance or major revisions to an existing ordinance, which, if adopted as a separate ordinance or as an amendment to a separate ordinance, would require published notice. Some city charters require a notice of hearing regarding adoption of a code to be published.

Mailed, written notice is required in at least two circumstances. First, if a code contains an amendment from a previous ordinance that changes zoning-district boundaries affecting an area of five acres or less, written mailed notice must be given to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates at least 10 days before the day of the hearing. Second, if the code contains amendments to a previous ordinance relating to the sale of tobacco, or if it adopts the League's model tobacco ordinance, written notice must be mailed to all licensed tobacco retailers in the city at least 30 days before the meeting at which the ordinance or amendments to the ordinance will be considered.

Once the ordinance adopting the code has been passed, the ordinance must be published in the manner required by law for statutory cities or by the city charter if applicable. For statutory cities, the ordinance takes effect on the date of publication unless otherwise specified in the ordinance.

## RELEVANT LINKS:

[Minn. Stat. § 340A.408, subd. 3a.](#)

[Minn. Stat. § 415.021.](#)

[Minn. Stat. § 415.02.](#) [Minn. Stat. § 599.13.](#)

[Minn. Stat. § 412.231.](#)  
[Minn. Stat. § 609.02, subds. 3, 4a.](#) [Minn. Stat. § 609.034.](#)  
[Minn. Stat. § 609.0332.](#)

[Minn. Stat. § 412.861, subd. 1.](#) [Minn. Stat. § 484.87, subd. 3.](#)

In some codes, provision is made for all fees to be adopted in a fee schedule adopted by a new ordinance that is not codified. This makes it possible to amend the fee schedule periodically without the need to make changes in the code.

Notice of hearing on the ordinance establishing a fee schedule need not be given if the fees in the schedule are the same as they were under the ordinances that are being codified. If the fee increases are to be included in the ordinance establishing or amending the fee schedule, written notice of the hearing should be mailed at least 30 days before the hearing at which the ordinance is to be considered, to all persons who hold business licenses in the city whose license fees are to be increased. This is required for liquor-license fees, and it is a good idea for other types of business-license fees as well.

The hearing on the ordinance adopting the fee schedule can be held at the same time as the hearing on the adoption of the code. If not held at that time, it should be held soon after the hearing on the ordinance adopting the code. The ordinance adopting the code should also provide that until the fee schedule is adopted, existing fees continue until they are amended.

The city may print and publish a code in book, pamphlet, or newspaper form. Newspaper publication is not necessary if the city prints a substantial number of copies of the code for general distribution to the public. A copy of any ordinances adopted by the city must be furnished to the county law library or its designated depository. A city, upon request, shall be reimbursed a reasonable charge by the county library for a copy furnished.

A city council may declare, by ordinance, that the codification is prima facie evidence of the city's law. After three years, the compilation and publication of any codification book or pamphlet is conclusive proof of the regularity of the ordinances' adoption and publication.

## 8. Prosecution responsibilities

The city council has the power to declare the violation of any ordinance to be a crime and to prescribe penalties. The maximum penalty for a misdemeanor is a fine of \$1,000 or imprisonment for 90 days, or both. The maximum penalty for a petty misdemeanor is a fine of \$300.

All prosecutions for ordinance violations are brought in the name of the city upon complaint and warrant as in other criminal cases. The city may hire an attorney, including the county attorney, for this purpose.

**RELEVANT LINKS:**

[Minn. Stat. § 412.861, subd. 1.](#)

If the accused is arrested without a warrant, a written complaint must be made. The accused must then plead guilty or not guilty, and a warrant shall be issued and served by either the sheriff or a police officer.

[Minn. Stat. § 412.861, subd. 2.](#)

The city may have the sheriff or a city police officer serve an ordinance violator with a warrant for the arrest. City police officers, however, cannot serve criminal warrants outside the city limits.

[Minn. Stat. § 484.87 subd. 2.](#)  
[Minn. Stat. § 388.051, subd. 2.](#)

The complaint must describe the violated ordinance at least by section and number or chapter. When the complaint describes ordinances in this manner, the court considers them general laws that do not need proof in evidence.

In Hennepin and Ramsey Counties, the attorney for the city in which the violation is alleged to have occurred prosecutes all violations of state laws (except as provided below and in Minn. Stat. § 388.051, subd. 2), including violations which are gross misdemeanors, and violations of municipal charter provisions, ordinances, rules, and regulations.

[Minn. Stat. § 484.87 subd. 2.](#)

In Hennepin and Ramsey Counties, the county attorney prosecutes criminal violations if either of the following occurs:

[Minn. Stat. § 484.87 subd. 2.](#)

- The county attorney is specifically designated by law as the prosecutor for the particular violation charged.
- The alleged violation is of state law and is alleged to have occurred in a city whose population according to the most recent federal decennial census is less than 2,500 and whose governing body has accepted prosecution by the county attorney under this statute by majority vote, and if the defendant is cited or arrested by a member of the staff of the sheriff of Hennepin County or by a member of the State Patrol. A city seeking to use the county attorney under this statute, shall notify the county board at least 60 days prior to the adoption of the board's annual budget.

[Minn. Stat. § 484.87 subd. 2.](#)

[Minn. Stat. § 484.87 subd. 2.](#)  
[Minn. Stat. § 388.051, subd. 2.](#)

In Anoka, Carver, Dakota, Scott, and Washington Counties, violations of state law that are petty misdemeanors, misdemeanors, or gross misdemeanors (except as provided in Minn. Stat. § 388.051, subd. 2) must be prosecuted by the attorney for the city where the violation is alleged to have occurred. The city may enter into an agreement with the county board and the county attorney to provide prosecution services for any criminal offense.

All violations of a city ordinance, charter provision, rule, or regulation must be prosecuted by the attorney for the city that promulgated it or by the county attorney with whom the city has contracted to prosecute these matters.

**RELEVANT LINKS:**

[Minn. Stat. § 484.87, subd. 3.](#)  
[Minn. Stat. § 609.52.](#) [Minn. Stat. § 609.535.](#) [Minn. Stat. § 609.595.](#) [Minn. Stat. § 609.631.](#) [Minn. Stat. § 609.821.](#)

In all counties except Hennepin, Ramsey, Anoka, Carver, Dakota, Scott, and Washington counties, violations of state law that are petty misdemeanors or misdemeanors must be prosecuted by the attorney of the city where the violation is alleged to have occurred, if the city has a population greater than 600. If a city has a population of 600 or less, it may, by council resolution and with the approval of the board of county commissioners, give the duty to the county attorney.

In cities of the first, second, and third class, gross misdemeanor violations of sections 609.52, 609.535, 609.595, 609.631, and 609.821 must be prosecuted by the attorney of the city where the violation is alleged to have occurred. The city may enter into an agreement with the county board and the county attorney to provide prosecution services for any criminal offense.

All violations of a municipal ordinance, charter provision, rule, or regulation must be prosecuted by the attorney for the city that promulgated it, regardless of its population, or by the county attorney with whom the city has contracted to prosecute these matters.

[Minn. Stat. § 484.90, subd. 6.](#)

In all cases prosecuted in district court by an attorney for a city for violations of state statute, or of an ordinance, or charter provision, rule or regulation of a city (except for cases prosecuted in Hennepin County and Ramsey County), the court administrator pays fines and penalties to the state treasury and it is generally distributed as follows: (1) 100 percent of all fines or penalties for parking violations for which complaints and warrants have not been issued to the treasurer of the city or town in which the offense was committed; and (2) two-thirds of all other fines to the treasurer of the city or town in which the offense was committed and one-third credited to the state general fund.

There is an exception to this division of fines and penalties under the state law relating to fines and forfeited bail money from state patrol traffic arrests. In these cases, the division of fines is as follows:

[Minn. Stat. § 299D.03, subd. 5 \(a\).](#)

- If the arrest occurs within a city and the city attorney prosecutes the offense and the defendant pleads not guilty, one-third of the money goes to the city, one-third to the state's general fund, and one-third is distributed as designated by state law between the Minnesota grade crossing safety account and the state trunk highway fund.

[Minn. Stat. § 299D.03, subd. 5 \(a\).](#)

- In all other cases, three-eighths of the money goes to the state's general fund, five-eighths is distributed as designated by state law between the Minnesota grade crossing safety account and the state trunk highway fund, and none to the city.

## RELEVANT LINKS:

[Minn. Const. art. XII, § 2.](#)  
[Minn. Stat. § 645.021.](#)

[Minn. Stat. § 645.023, subd. 1.](#)

[Minn. Stat. § 645.023, subd. 1.](#)

[Minn. Stat. § 645.023, subd. 1.](#)

[Minn. Stat. § 645.021, subd. 3.](#)

[Minn. Stat. § 645.02.](#)  
See LMC Sample Resolution  
[Approving a Special Law.](#)

## V. Local approval of special laws

Under the Minnesota Constitution, any law that affects a single unit of local government or a group of such units must name the unit or units. Also, the law generally does not take effect until a majority of the city council passes a resolution approving it. Unless otherwise required by the special law, the usual procedural requirements apply to resolutions. Publication is not necessary.

Local approval is necessary except for the following cases:

- A law enabling one or more local government units to exercise authority not granted by general law.
- A law bringing a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.
- A law that applies to a single unit or a group of units with a population of more than one million people.

When local action is necessary to approve the special law, the city must file a certificate of approval with the secretary of state. The secretary of state usually furnishes the city with certificate forms when the city receives notice of the passage of the special law. The local unit must approve the special law by the first day of the next regular session of the legislature in order for it to take effect.

Special laws take effect the day after the city files the certificate of approval unless the special law provides otherwise.

## VI. How this chapter applies to home rule charter cities

Several sections of this chapter may be useful to charter cities.

The section on types of council meetings generally only applies to statutory cities, although the sections discussing meetings held by interactive television, telephone or electronic meetings, and emergency meetings apply to all cities. The portions that discuss the open meeting law apply to all cities.

The sections on agendas, parliamentary procedures, and making an adequate record apply to all cities, except that in some charter cities, mayors may not be members of the council, may not vote except in the case of a tie, and may have veto power.

**RELEVANT LINKS:**

The section on motions, resolutions, and ordinances generally applies only to statutory cities. Home rule charter cities may have different requirements in their charters.

The section on local approval of special laws, applies to all cities. Under the provisions of this law, charters could not be amended by special law without local approval except for the specific, limited instances.