



## INFORMATION MEMO

# Meetings of City Councils

*Learn about the open meeting law, taking meeting minutes, scheduling and conducting meetings, including use of parliamentary procedure, audience participation, and regulating attendance of councilmembers. Most principles apply also to city boards, commissions, and other public bodies. Includes table of privileged, subsidiary, and main motions, and links to sample council bylaws.*

### RELEVANT LINKS:

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

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

[Minn. Stat. § 13D.04, subd. 7.](#)

[Minn. Stat. § 412.191, subd. 2.](#) [Minn. Stat. § 13D.04, subd. 1.](#)

[Minn. Stat. § 13D.04, subd. 2.](#) [Minn. Stat. § 645.44, subd. 5.](#)

## I. Types of meetings and notice requirements

A meeting is a gathering of a quorum of public officials to discuss, decide, or receive information on official matters over which they have authority. The city council exercises its authority when it meets as a group. There are certain requirements for council meetings under state law.

A quorum of a public body is the number of people that must be present before a public body can conduct business. A majority of the members of a statutory city council constitutes a quorum. A majority of the qualified members of any board or commission also constitutes a quorum. Home rule charter cities may have different quorum requirements.

A public body that is subject to the open meeting law must generally provide advance public notice of its meetings and hold them open to the public. The notice requirements depend on the type of meeting. However, if a person receives actual notice of a meeting at least 24 hours before it takes place, all notice requirements under the open meeting law are satisfied, regardless of the method of receipt of notice.

### A. Regular meetings

Regular meetings of a statutory city council are held at times established by the council. A council will typically meet once a month on a particular day, although some councils may have regular meetings scheduled more frequently. Home rule charter cities should consult their charters and any council rules concerning the scheduling of regular meetings.

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 day that falls 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 a special meeting.

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

[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. 2. \*Rupp v. Mayasich\*, 533 N.W.2d 893 \(Minn. Ct. App. 1995\). DPO 10-020 \(advising that a special-meeting notice must provide detail regarding the purpose of the meeting and that a city's notice that a special meeting would address: "Any Other Business that May Arise" did not comply with the open meeting law\).](#)

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

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

[Minn. Stat. § 331A.05, subd. 7.](#)

## B. Special meetings

Special meetings are meetings held at a time or place that is different from the regularly scheduled meetings. These are often scheduled to deal with specific items that need to be addressed before the next regular meeting. Generally, any matter that can be addressed at a regular meeting can also be addressed at a special meeting if it has been properly noticed. The council only should transact business for which notice has been provided in the special-meeting notice. All state laws governing regular meetings, including the open meeting law, apply to special meetings.

In statutory cities, 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 special meetings.

### 1. Notice to council

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

### 2. Notice to public

The clerk also must 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 may be published in a qualified newspaper of general circulation that covers the city.

## RELEVANT LINKS:

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

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

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

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

[DPO 13-015.](#)

[Minn. Stat. § 412.191, subd. 2. Minn. Stat. § 13D.04, subd. 3. DPO 06-027 \(advising that a city council improperly held an emergency meeting to consider complaints about the city's building inspector\).](#)

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. 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 provision. 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 time 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 requests for notice of special meetings and require each request to be re-filed once each year. The city must provide each person, who has filed a request, notice of the requirement to re-file the request not more than 60 days before re-filing is due.

If a council committee or other public body meets and a quorum of city councilmembers attend 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 council members participate in the discussions or deliberations, however, an additional separate notice of a special meeting of the city council 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 lack of air conditioning in the regular 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 an emergency meeting is the same as that for a special meeting. The public-notice requirements, however, are different.

## RELEVANT LINKS:

*Slippy v. Rach*, No. C5-06-3574 (9th Jud. Dist. June 8, 2007) (the district court rejected the advisory opinion's conclusion and held that the city council's decision to hold the emergency meeting complied with the open meeting law).

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

[Minn. Stat. § 13D.04, subd. 5.](#)

See section II.F. - *Open meeting law exceptions.*

[Minn. Stat. § 412.02, subd. 2.](#)  
[Minn. Stat. § 205.07, subd. 1a.](#)  
[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 412.831.](#)  
See LMC information memo, [Newspaper Publication](#), for more information.  
[Minn. Stat. § 412.121.](#)  
[Minn. Stat. § 412.831.](#)

The council must make a good faith effort 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.

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 meeting of a public body only may be closed to the public if it meets the requirements of one of the specific exceptions listed in the open meeting law that authorize such closure. 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, the notice requirements for a special meeting apply.

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

There is no date set by statute for the first meeting of the year. In most statutory cities, the date is set by council bylaws establishing rules of procedure for the council. A home rule charter city should consult both its charter and any procedural rules the council has adopted for any requirements regarding the first meeting of the year.

The annual meeting is usually held on or shortly after the first Monday in January, which is when the terms of new councilmembers begin. In the meantime, all previously chosen and qualified councilmembers shall serve until their successors qualify.

The notice required for the annual meeting will depend on whether it occurs at a regularly scheduled meeting or at a special meeting that occurs at a different time and place from the regular meetings.

In statutory cities, the council must do the following at the first meeting of the year:

- Designate an official newspaper.
- Appoint an acting mayor from among the councilmembers. The acting mayor shall perform the duties of the mayor if there is a vacancy in the mayor's position or during the mayor's disability or absence.

## RELEVANT LINKS:

[Minn. Stat. §§ 427.01-.02.](#)  
[Minn. Stat. § 118A.02, subd. 1.](#)  
[Minn. Stat. § 427.09.](#)  
[Minn. Stat. § 412.018.](#)

[Minn. Stat. § 424A.04, subd. 1.](#)

[Minn. Stat. § 412.191, subd. 1.](#)

[Minn. Stat. § 13D.04, subd. 4.](#)

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

- Select an official depository for city funds. (This must be done within 30 days of the start of the city’s fiscal year).

In addition, although not required by statute, many city councils will also do the following at the first meeting of the year:

- 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 council bylaws and make any needed changes.
- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

Home rule charter cities may have additional requirements for their first meeting of the year.

## F. Adjourned meetings

Cities 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 councilmembers in a statutory city) is necessary in order to conduct business, less than a quorum may adjourn or postpone a meeting to a fixed, future time.

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

## G. Meetings conducted by interactive television

A city council meeting may be conducted by interactive television 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.

## RELEVANT LINKS:

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

[Minn. Stat. § 13D.02, subd. 5.](#)

DPO 13-009. See Section II. for more information about the *open meeting law*.

[Minn. Stat. § 13D.021, subd. 1.](#)

If possible, a member of the public should be able 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. 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 define 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 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 section are met.”

## H. Telephone or electronic meetings

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

- The presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines 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.

## 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. - *Adjourned meetings.*

- 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.
- 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. The council is there to regulate the hearing and make sure that people who want to speak get the opportunity to do so. The council does not deliberate or discuss matters during the public-hearing portion of this type of meeting; instead, it listens to the public. Once the public-comment period is finished, the council will often wrap up the meeting.

In order to recess or continue a meeting of this sort, the council should not formally end the public-comment part of the hearing.

There are two types of public hearings, those that are discretionary and those that are required by a specific statute, ordinance, or charter provision.

### 1. Discretionary public hearings

Many city councils will hold public hearings even when they are not legally required to do so. Generally, hearings of this type are for the purpose of allowing 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:

See section I.B. - *Special meetings*.

See [Minn. Stat. § 462.357, subd. 3](#). [Minn. Stat. § 429.031, subd. 1\(a\)](#). [Minn. Stat. § 429.061, subd. 1](#).

[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. 6](#).  
[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. § 462.355, subd. 4](#).

[Minn. Stat. § 645.44, subd. 5](#).

If a discretionary public hearing takes place at a time or place that is different from a regularly scheduled meeting, notice for a special meeting must be provided.

## 2. Required public hearings

When a specific statute, ordinance, or charter provision requires a council to hold a public hearing, the notice requirements must be followed carefully. Often there are special notice requirements that are more substantial than the notice that must be provided for a special meeting. For example, public hearings required for zoning-ordinance amendments and special assessments have special notice requirements.

Here are some actions that require public hearings:

- Street vacation.
- Annexation by ordinance.
- Local improvement projects that will be paid for with special assessments.
- When special assessments are made to property.
- Purchase and improvement of waterworks, sewers, drains, and storm sewers by storm sewer improvement districts.
- Adoption of a housing redevelopment authority (HRA) enabling resolution.
- Adoption of an economic development authority (EDA) enabling resolution.
- Sale of port authority land.
- Sale of EDA land.
- Increase of levy for an EDA.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- Truth-in-taxation.
- Adoption or amendment of a zoning ordinance.
- Subdivision applications.
- Granting of a conditional use permit.
- Adoption of a charter amendment by ordinance.
- Certain interim ordinances.

There are other situations that may require public hearings. Contact the League for further information if you are unsure about a particular situation.

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

State law defines a set of public holidays when no public business may be transacted except to deal with emergencies. The transaction of public business includes conducting public meetings.



## RELEVANT LINKS:

[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 645.44, subd. 5.](#)

[Minn. Stat. § 202A.19, subd. 1.](#)  
[Minn. Stat. § 204C.03, subd. 1.](#)

[Minn. Stat. § 645.15.](#)

[Minn. Stat. § 13D.01.](#)

[Rupp v. Mayasich, 533 N.W.2d 893 \(Minn. Ct. App. 1995\).](#)  
[St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools, 332 N.W.2d 1 \(Minn. 1983\).](#)

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).
- 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.

In addition, city council meetings may not be held during the following times:

- After 6 p.m. on the evening of a major political party precinct caucus.
- Between 6 p.m. and 8 p.m. on a day when there is an election being held within the city's boundaries.

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 notice falls on either a Saturday or Sunday, that day cannot be counted.

## II. The open meeting law

### A. Purpose

The Minnesota open meeting law generally requires that all meetings of public bodies must be noticed and open to the public. This presumption of openness serves three vital purposes:

- It prohibits actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or detect improper influences.
- It ensures the public's right to be informed.
- It gives the public an opportunity to present its views to the public body.

## RELEVANT LINKS:

See section I. - *Types of meetings and notice requirements*. [Minn. Stat. § 13D.04, subd. 7.](#)

[Minn. Stat. § 13D.01, subd. 6. DPO 08-015. DPO 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.](#)

[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).

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

## 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 it takes place, all notice requirements under the open meeting law are satisfied, regardless of the 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

The open meeting law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body.

Thus, the law applies to meetings of all city councils, planning commissions, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Minnesota Legislature 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 of the 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.

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

## RELEVANT LINKS:

See section II.G.6. for more information about serial meetings.

[Minn. Stat. § 13D.01, subd. 3.](#)

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

[DPO 14-005.](#)  
[DPO 13-012.](#)  
[DPO 14-014.](#)

[The Free Press v. County of Blue Earth, 677 N.W.2d 471 \(Minn. Ct. App. 2004\)](#) (holding that a 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 a closed meeting).

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

[Minn. Stat. § 13D.04, subd. 5.](#)

The open meeting law does not generally apply in situations where less than a quorum of the city 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

There are seven exceptions to the open meeting law that authorize the closure of meetings to the public. Under these exceptions, some meetings may be closed and some meetings must be closed. Before a meeting is closed under any of the exceptions, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

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 open meeting law does not define the phrase "on the record" but the commissioner has advised that the phrase should be interpreted to mean a verbal statement in open session.

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.

All closed meetings, except those closed as permitted by 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.

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, the notice requirements for a special meeting apply.

### 1. Meetings that may be closed

The public body may choose to close certain meetings. The following types of meetings may be closed:

## RELEVANT LINKS:

[Minn. Stat. § 13D.03.](#)  
[DPO 13-012.](#)

[Minn. Stat. § 13D.03.](#) [Minn. Stat. § 13D.01, subd. 3.](#)

[DPO 05-027.](#)  
[DPO 00-037.](#)

[Minn. Stat. § 13D.03, subd. 3.](#)

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

[Minn. Stat. § 13D.05, subd. 3\(a\).](#) [Minn. Stat. § 13D.01, subd. 3.](#)

DPO 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).

### a. Labor negotiations under PELRA

A meeting to consider strategies for labor negotiations, including negotiation strategies or development or discussion of labor-negotiation proposals, may be closed. However, the actual negotiations must be done at an open meeting if a quorum of the council is present.

#### **The following procedure must be used to close a meeting under this exception:**

- The council must decide to close the meeting by a majority vote at a public meeting and must announce the time and place of the closed meeting.
- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- A written record of all people present at the closed meeting must be available to the public after the closed meeting.
- The meeting must be tape-recorded.
- The recording must be kept for two years after the contract is signed.
- The recording becomes public after all labor agreements are signed by the city council for the current budget period.

If an action claiming that other public business was transacted at the closed meeting is brought during the time the tape is not public, the court will review the recording privately. If the court finds no violation of the open meeting law, the action will be dismissed and the recording will be preserved in court records until it becomes available to the public. If the court determines there may have been a violation, the entire recording may be introduced at the trial. However, the court may issue appropriate protective orders requested by either party.

### b. Performance evaluations

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority.

#### **The following procedure must be used to close a meeting under this exception:**

- The public body must identify the individual to be evaluated prior to closing the meeting.
- The meeting must be open at the request of the individual who is the subject of the meeting; so some advance notice to the individual is needed in order to allow the individual to make a decision.

## RELEVANT LINKS:

DPO 14-007, DPO 15-002, and DPO 16-002 (discussing what type of summary is sufficient).

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). DPO 16-003. DPO 17-003.

*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).

Minn. Stat. § 13D.01, subd. 3.

See *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004) (holding that a general statement that a meeting was being closed under the attorney-client privilege to discuss “pending litigation” did not satisfy the requirement of describing the subject to be discussed).

Minn. Stat. § 13D.05, subd. 3(c). *Vik v. Wild Rice Watershed Dist.*, No. A09-1841 (Minn. Ct. App. 2010) (unpublished opinion).

- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- At the next open meeting, the public body must summarize its conclusions regarding the evaluation. The council should be careful not to release private or confidential data in its summary.

### c. Attorney-client privilege

Meetings between the governing body and its attorney to discuss active, threatened, or pending litigation may be closed when the 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 a substantive decision on the underlying matter has been made.

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 action that may give rise to future litigation.

#### **The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- The council should also describe how a balancing of the purposes of the attorney-client privilege against the purposes of the open meeting law demonstrates the need for absolute confidentiality.
- The council must actually communicate with its attorney at the meeting.

### d. Purchase or sale of 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 nonpublic appraisal data.
- Develop or consider offers or counteroffers for the purchase or sale of real or personal property.

## RELEVANT LINKS:

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

DPO 14-014.

DPO 08-001 (advising that a public body cannot authorize the release of a tape of a closed meeting under this exception until all property discussed at the meeting has been purchased or sold or the public body has abandoned the purchase or sale).

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

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

### **The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
- The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.
- A list of councilmembers 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 property must be approved at an open meeting, and the purchase or sale price is public data.

### **e. Security reports**

A meeting may be closed to receive security briefing and reports, to discuss issues related to security systems, to discuss emergency-response procedures and to discuss security deficiencies 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.

### **The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- When describing the subject to be discussed, the council must refer to the facilities, systems, procedures, services or infrastructure to be considered during the closed meeting.
- The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

## **2. Meetings that must be closed**

There are some meetings that the open meeting law requires to be closed. The following meetings must be closed:

## RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 2\(b\)](#), [Minn. Stat. § 13.43, subd. 2\(4\)](#),  
[DPO 03-020](#).

[DPO 14-004](#).

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

[Minn. Stat. § 13D.01, subd. 3](#),  
[Minn. Stat. § 13D.05, subd. 1](#).

Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see [Minn. Stat. § 13D.05, subd. 2\(a\)](#) and section II.F.2.b.

[Minn. Stat. § 13D.05, subd. 2\(a\)](#).

### a. Misconduct allegations

A public body must close a meeting for preliminary consideration of allegations or charges against an individual subject to the public body's authority.

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.

#### **The following procedure must be used to close a meeting under this exception:**

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- The meeting must be open at the request of the individual who is the subject of the meeting. Thus, the individual should be given advance notice of the existence and nature of the charges against him or her, so that the individual can make a decision.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.

### b. Certain not-public data

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 the following not-public data is discussed:

- Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.

## RELEVANT LINKS:

Minn. Stat. § 13.32. Minn. Stat. § 13.3805, subd. 1. Minn. Stat. § 13.384. Minn. Stat. § 13.46, subd. 2 or 7. Minn. Stat. §§ 144.291-144.298.

Minn. Stat. § 13D.01, subd. 3. Minn. Stat. § 13D.05, subd.1.

Minn. Stat. § 13D.05, subds. 1(a), 2(a). See section II. F. b.

Minn. Stat. § 13D.05, subd. 2(a). Minn. Stat. § 13.03, subd. 11.

Minn. Stat. § 13D.05, subd. 1(b).

Minn. Stat. § 13D.05, subd. 1(c).

*Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 298 Minn. 306, 215 N.W.2d 814 (Minn. 1974).

- Educational data, health data, medical data, welfare data or mental health data that are not-public data.
- Certain medical records.

### **The following procedure must be used to close a meeting under this exception:**

- The council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

## **G. Common issues**

This section provides an overview of some of the common issues cities face while attempting to comply with the open meeting law.

### **1. Data practices**

Generally, meetings may not be closed to discuss data that is not public under the Minnesota Government Data Practices Act (MGDPA). However, the public body must close any part of a meeting at which certain types of not-public data are discussed.

If not-public data is discussed at an open meeting when the meeting is required to be closed, it is a violation of the open meeting law. Discussions of some types of not-public data may also be a violation of the MGDPA.

However, not-public data may generally be discussed at an open meeting without liability or penalty if both of the following criteria are met:

- The disclosure relates to a matter within the scope of the public body's authority.
- The disclosure is necessary to conduct the business or agenda item before the public body.

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

### **2. Interviews**

The Minnesota Supreme Court has held that a school board must interview prospective employees in open sessions.



## RELEVANT LINKS:

See section II. G. 6. - *Serial meetings*.

*Mankato Free Press v. City of North Mankato*, No. C1-96-100036 (Fifth Jud. Dist. 1996).

*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 decision).

A.G. Op. 63-A-5 (June 13, 1957). See also Minn. Stat. § 13D.01, subd. 1(b) (4).

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

The Supreme Court concluded that the absence of a statutory exception to the open meeting law for interviews indicated that the legislature had decided that such sessions should not be closed. The reasoning would seem to apply to a city council's interview of prospective officers and employees as well, if a quorum is present.

In 1996, a district court found that it was not a violation of the open meeting law for candidates to be serially interviewed by members of a city council in one-on-one closed interviews. In this case, five city councilmembers were present in the same building but each was conducting separate interviews in five different rooms. Because there was no quorum present in any of the rooms, the court found there was no meeting. The decision, however, was appealed.

In 1997, the Minnesota Court of Appeals reversed the district court's decision and remanded the case back to the district court for a factual determination on whether the city used the one-on-one interview process in order to avoid the requirements of the open meeting law. On remand, the district court found that the private interviews were not conducted for the purpose of avoiding public hearings. The case was again appealed. In an unpublished decision, the court of appeals affirmed the district court's decision.

The conclusion that can be drawn from this decision appears to be that if serial meetings involving less than a quorum of a public body are held for the purpose of avoiding the requirements of the open meeting law, it will constitute a violation of the law. Cities that are considering holding private interviews with job applicants should first consult their city attorney.

### 3. Executive sessions

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

### 4. 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 gathering of a quorum of a city council where it receives information about city business must be properly noticed and open to the public, regardless of whether the council takes or contemplates taking action at that gathering.

In addition, 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.

**RELEVANT LINKS:**

[DPO 05-014.](#)

[DPO 07-025.](#)

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

[Sovereign v. Dunn](#), 498 N.W.2d 62 (Minn. Ct. App. 1993). *See also Minnesota Daily v. Univ. of Minnesota*, 432 N.W.2d 189 (Minn. Ct. App. 1988) and *Zahavy v. Univ. of Minnesota*, 544 N.W.2d 32 (Minn. Ct. App. 1996).

[Sovereign v. Dunn](#), 498 N.W.2d 62 (Minn. Ct. App. 1993).

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

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; whether the committee receives public funds or uses public facilities or staff; 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 committees 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 was not a committee that was subject to the open meeting law. This group consisted of members, including city officials, the city council had appointed to develop and review strategies for addressing free-speech concerns relating to a political convention that was going to be held in the city. The commissioner reasoned that the group was not a committee subject to the open meeting law because it did not have any decision-making authority.

City councils also routinely appoint individual councilmembers to act as liaisons between the council and particular groups. These types of groups may be considered a committee that is subject to the open meeting law.

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. 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.

In addition, a separate notice for a special meeting of the city council may also be required if a quorum of the council will be present at a committee meeting and will participate in the discussion.

## RELEVANT LINKS:

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

[St. Cloud Newspapers, Inc. v. District 742 Cmty. Sch., 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 \(Minn. 1983\).](#) See also DPO 10-011 and DPO 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 \(Minn. Ct. App. Dec. 15, 1998\) \(unpublished decision\).](#)

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 because of the councilmembers' attendance at the meeting, but because the councilmembers conducted public business in conjunction with that meeting.

Based on that decision, the attorney general has advised that mere attendance by additional 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 warned, however, that the additional councilmembers should not participate in committee discussions or deliberations absent a separate notice of a special city council meeting.

## 5. Chance or social gatherings

Chance or social gathering of city councilmembers will not be considered a meeting subject to 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 about official city business.

The Minnesota Supreme Court has held that a conversation between two councilmembers over lunch regarding an application for a special-use permit did not violate the open meeting law because a quorum was not present.

## 6. Serial meetings

The Minnesota Supreme Court has noted that meetings of less than a quorum of the public body held serially to avoid public hearings or to fashion agreement on an issue may violate the open meeting law depending on the circumstances.

A Minnesota Court of Appeals' decision also indicates that serial meetings could 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. Although the district court found that no meetings had occurred because there was never a quorum of the council present, the court of appeals remanded the decision back to the district court for a determination of whether the councilmembers had used this interview process for the purpose of avoiding the requirements of the open meeting law.

On remand, the district court found that the private interviews were not conducted for the purpose of avoiding the requirements of the open meeting law. This decision was also appealed, and the court of appeals, in an unpublished decision, agreed with the district court's decision.

## RELEVANT LINKS:

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).

DPO 16-006.

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

DPO 09-020.

A city that wants to hold private interviews with applicants for city employment should first consult with its city attorney.

## 7. Training sessions

Whether the participation of a quorum or more of councilmembers in a training program should be considered a meeting under the open meeting law would likely depend on 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 at effective communication was not a meeting subject to the open meeting law. However, the opinion also stated that if there were to be any discussions of specific city business by the attending members, such as where councilmembers exchange views on the city's policy in granting liquor licenses, such discussions would likely violate the open meeting law.

The commissioner of the Department of Administration has likewise advised that a school board's participation in a non-public team-building session to "improve trust, relationships, communications, and collaborative problem solving among Board members," was not a meeting subject to the open meeting law if the members are not "gathering to discuss, decide, or receive information as a group relating to 'the official business' of the governing body." However, the opinion also advised that if there were to be any discussions of specific official business by the attending members, either outside or during training sessions, it could be a violation of the open meeting law.

## 8. 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 Minnesota Department of Administration has advised that back-and-forth email communication among a quorum of a public body in which official business was discussed violated the open meeting law. However, the opinion also advised that "one-way communication between the chair and members of a public body is permissible, such as when the chair or a staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues."

## RELEVANT LINKS:

*O'Keefe v. Carter*, No. A12-0811 (Minn. Ct. App. Dec. 31, 2012) (unpublished decision). But see DPO 17-005.

Minn. Stat. § 480A.08, subd. 3.

Minn. Stat. § 13D.065.

*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983). See Section II. G.6. - *Serial meetings*. See DPO 17-005.

In contrast, the Minnesota Court of Appeals, in an unpublished decision, has 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 concluded that even if the email messages were 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 decision noted that the substance of the email messages was not important and controversial; instead, it related to a relatively straightforward operational matter. The decision also noted that the town board members did not appear to make any decisions in their email messages.

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 substance of the emails had related to something other than operational matters, for example, if the emails were attempting to build agreement on a particular issue that was going to be presented to the town board at a future meeting.

In 2014, the open meeting law was amended 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 city councilmembers could result in other claims, in addition to open meeting law claims, such as claims of defamation or of bias in decision making.

As a result, councilmembers should make sure that any comments they make on social media are factually correct, and they should not make any comments demonstrating bias on issues that will come before the council in the future for a quasi-judicial decision, such as the consideration of whether to grant an application for a conditional use permit.

It is also important to remember that serial discussions between less than a quorum of a public body that is subject to the open meeting law could violate the open meeting law under certain circumstances.

## RELEVANT LINKS:

[Minn. Stat. § 13.02, subd. 7.](#)

See Handbook, [Records Management](#) for more information about records management.

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

Therefore, city councils and other groups to which the open meeting law applies should take a conservative approach and avoid using letters, telephone conversations, email, and other such technology if the following circumstances exist:

- A quorum of the council 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 are 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 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.

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 councilmembers' email communication 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.

## 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.

## RELEVANT LINKS:

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

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

*Star Tribune Co. v. Univ. of Minnesota Bd. of Regents*, 683 N.W.2d 274, 289 (Minn. 2004).

[Minn. Stat. § 13D.06, subd. 2](#). *O’Keefe v. Carter*, No. A12-0811 (Minn. Ct. App. Dec. 31, 2012) (unpublished decision). [Minn. Stat. § 541.07 \(2\)](#).

[Minn. Stat. § 13D.06, subsd. 1, 4](#).

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

[Minn. Stat. 13D.06, subd. 4](#).

A court or other tribunal must give deference to an advisory opinion. A \$200 fee is required. The Information Policy Analysis Division (IPAD) of the Department of Administration handles these requests.

A public body subject to the open meeting law can request an advisory opinion from the commissioner. In addition, 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. Minnesota 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.

Opinions of the Attorney General are not binding on the courts but are entitled to careful consideration when they are of long standing.

### I. Penalties

An action to enforce the open meeting law 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 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.

A councilmember who intentionally violates the open meeting law can be subject to personal liability in the form of a civil penalty of up to \$300. The city may not pay this penalty. A court may take into account a councilmember’s time and experience in office to determine the amount of the penalty.

In addition, a court may award reasonable costs, disbursements, and attorney fees of up to \$13,000 to the person who brought the violation to court. The court may award costs and attorney fees to a city only if the action is found to be frivolous and without merit. A city may pay for any costs, disbursements, and attorney fees awarded.

If a plaintiff prevails in a lawsuit under the open meeting law, an award of reasonable attorney fees is mandatory if the court determines the public body was the subject of a prior written advisory opinion from the commissioner of the 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.

## RELEVANT LINKS:

[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. \*Claude v. Collins\*, 518 N.W.2d 836 \(Minn. 1994\). \*Brown v. Cannon Falls Township\*, 723 N.W.2d 31 \(Minn. Ct. App. 2006\).](#)

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

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

[Sullivan v. Credit River Township](#), 217 N.W.2d 502 (Minn. 1974). [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 decision). DPO 11-004.

A court is required to give deference to the advisory opinion in a lawsuit brought to determine whether the open meeting law was violated.

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 this chapter in three or more separate actions, the person must be removed from office and may not serve in any other capacity with that public body for a period of time equal to the term of office the person was serving.

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.

The open meeting law does not address whether actions taken at an improper meeting would be invalid. The Minnesota Supreme Court once held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

However, in more recent decisions, Minnesota courts have refused to invalidate actions taken at improperly closed meetings. The Minnesota Supreme Court has noted that the open meeting law does not provide for such a remedy because the open meeting law “does not specify that actions taken at a meeting which is not public shall be invalid.”

## III. Meeting procedures

### A. Agendas

The city clerk generally prepares an agenda for council meetings. The agenda is then given to councilmembers and other interested individuals such as department heads and citizens.

The agenda establishes the order in which the matters will be addressed during the meeting.

Many city councils have found the following order of business convenient:



## RELEVANT LINKS:

- Call to order.
- Roll call.
- Approval of minutes from previous meeting.
- Consent agenda.
- Petitions, requests, and complaints.
- Reports of officers, boards, and committees.
- Reports from staff and administrative officers.
- Ordinances and resolutions.
- Presentation of claims.
- Unfinished business.
- New business.
- Miscellaneous announcements.
- Adjournment.

### **1. Consent agenda**

The consent agenda or consent calendar is used by many city councils to help shorten the length of meetings by using time more efficiently. A consent agenda typically groups together many items that are routine and uncontroversial. Although the council must take action on these items, they do not require further discussion.

Examples of items typically included in a consent agenda are the approval of the minutes, the setting of the next meeting date, approval of routine expenditures, and the final approval of licenses and permits.

The council generally approves all items on the consent agenda with the passage of one motion. If there is any item on the consent agenda that a councilmember feels warrants further discussion, it is removed from the consent agenda and dealt with individually. It may be placed anywhere within the regular agenda.

The consent agenda may be a valuable tool for city councils that have to deal with many routine matters. Some city councils may need to amend their bylaws to allow the use of this procedure.

### **2. Discussing items not on the agenda**

Whether the council can discuss an item that was not included on the agenda is a question that may not have a clear answer. In part, the answer may depend upon the type of meeting and the meeting rules the council has adopted.

Cities should first check any rules the council has adopted and any charter provisions, if the city is a home rule charter city. These local items may give more specific guidance where state law is vague.

## RELEVANT LINKS:

Minn. Stat. § 13D.04, subd. 1.  
Minn. Stat. § 412.191, subd. 2.

Minn. Stat. § 13D.04, subd. 2.  
See section I.B. - *Special meetings*. *Elseth v. Hille*, No. A12-1496 (Minn. Ct. App. May 13, 2012) (unpublished opinion). DPO 10-013.

Minn. Stat. § 13D.04, subd. 3.  
See section I.C. - *Emergency meetings*.

Minn. Stat. § 15.17.

Minn. Stat. § 412.151, subd. 1.  
*Whalen v. Minneapolis Special Sch. Dist. No. 1*, 309 Minn. 292, 245 N.W.2d 440 (Minn. 1976).

See *Make Your Meeting Minutes Count*, Minnesota Cities, Jan.-Feb. 2012.

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

### a. Regular meetings

State statutes do not specifically address the ability of city councils to address items that are not on the agenda at a regular meeting. However, it seems to be common practice for councils to address items that were not originally on the agenda of a regular meeting by providing for a time for miscellaneous items on the agenda.

### b. Special meetings

The open meeting law requires cities to give notice of a special meeting to the public. This notice must include the date, time, place, and purpose of the meeting. At the special meeting, councilmembers should only address the specific issue or issues that the notice lists as the purpose of the meeting.

### c. Emergency meetings

The open meeting law requires that the notice provided for an emergency meeting must include the subject of the meeting. Councils should avoid discussing other topics. The open meeting law also provides that if matters not directly related to the emergency are discussed or acted upon in an emergency meeting, the meeting minutes shall include a specific description of the matters.

## B. Minutes

City officers must keep all records necessary to provide a full and accurate knowledge of their official activities.

A statutory city clerk must keep a minute book. In the clerk's absence, the council should delegate the duty of taking minutes for that meeting. Generally, the clerk has wide discretion as to how to keep the minutes. A verbatim record of everything that was said is not normally required. However, in any case where the law or charter requires a verbatim record, using a tape recorder instead of a court reporter to accomplish that objective is probably valid.

Minutes should be written in language average people 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 to make the correction, the council can order the change by motion and a vote. The clerk must then make the change and show in the minutes that the change was made by order of the council.

## RELEVANT LINKS:

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

[Minn. Stat. § 412.151, subd. 1.](#)

[Minn. Stat. § 13D.01, subd. 4.](#)  
[Minn. Stat. § 331A.01, subd. 6.](#)  
[Minn. Stat. § 15.17, subd. 1.](#)  
[Minn. Stat. § 412.151, subd. 1.](#)  
[Minn. Stat. § 412.191, subd. 3.](#)

See Office of the State Auditor, [Statement of Position: Meeting Minutes](#), Jan. 2014.

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. Required contents

The following items must be included 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 votes of each member, including the mayor must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

### 2. Other items that should be in the minutes

The Office of the State Auditor has also 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 (city council, planning committee, etc.)
- 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.

## RELEVANT LINKS:

*Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988).  
*Dietz v. Dodge County*, 487 N.W.2d 237 (Minn. 1992).  
See Handbook, *Comprehensive Planning, Land Use, and City-Owned Land*, section III for more information about findings of fact.

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

### 3. Making a good record

It is important to make a good 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.

Council actions are generally classified as either legislative or administrative. 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 the issuance of a conditional use permit.

Administrative actions are subject to greater judicial scrutiny and will be set aside if they are arbitrary or unreasonable. Therefore, it is important for the council to develop a good record with findings of fact to support this type of decision.

The term "findings of fact" is commonly used to refer to a public body's written explanation supporting a particular decision. Making a record of a city council's findings of fact can help a city defend its decisions if they are challenged.

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 outline of the different parts of a record supporting a city council's decision on an application for a conditional use permit.

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 2.](#) Robert's Rules of Order Newly Revised, p. 355, 11th ed. (2011).

DPO [94-026](#).

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

- A caption or title, such as, “In the matter of Mr. 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.
- Findings of fact (individually numbered).
- Conclusions or reasons supporting the decision.
- A decision.
- A copy of the transcript, tape recording or, at a minimum, detailed minutes including all objections and rulings.

### 4. Approval of minutes by council

Although it is not statutorily required, the council generally approves the minutes at the next council meeting. After the minutes have been approved, they become the official permanent record of the council meeting.

A member of a public body may vote to approve minutes of a meeting even if the member was not at the meeting in person unless a city council has adopted procedural rules that prohibit it.

Robert’s Rules of Order Newly Revised provides that a member’s absence from the meeting for which minutes are being approved does not prevent the member from participating in their correction or appeal.

Someone may request a copy of the minutes before the council approves them. The draft of the minutes is public data, and the clerk must give out such information if someone requests it, but should clarify that the draft minutes have not been officially approved.

### 5. Publication

A statutory city with a population of 1,000 or more must publish the council’s official proceedings or a summary of them in its official newspaper within 30 days after every regular and special meeting. If the city council conducts regular meetings not more than once every 30 days, however, it need not publish the meeting minutes until 10 days after the council has approved them. A less expensive alternative is also available; instead of publishing the minutes, the city may mail a copy, at city expense, to any resident upon request. Statutory cities with a population of less than 1,000 are exempt from both of these requirements. Home rule charter cities should check their charters for any publication requirements.

If a statutory city chooses to publish a summary or condensed version of the official minutes, it must meet the following criteria:

## RELEVANT LINKS:

[Minn. Stat. § 331A.01, subd. 10.](#)

[Minn. Stat. § 412.191, subd. 2.](#)

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

See Appendix A - Table of motions.

[Minn. Stat. § 412.191, subd. 2.](#)

- It must be written in a clear and coherent manner.
- It must avoid the use of technical or legal terms not generally familiar to the public.
- The publication must indicate it is only a summary.
- The publication must indicate the full text of the minutes is available for public inspection at a designated location.

### C. Rules of procedure

The city council has the power to regulate its own procedure. While many city 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.

### D. Parliamentary procedure

The council usually adopts rules or bylaws that govern procedural rules. Adoption of council rules may be supplemented by the use of a standard work on parliamentary procedure, such as Robert's Rules of Order.

Because of the small size of most city councils, procedures at council meetings, particularly in discussions, tend to be quite informal and many cities prefer to keep things simple and use just the basic rules regarding motions and voting, rather than adopting a more complex set of procedures.

The council should follow whatever procedural rules it adopts. Although the council can vote to change or suspend its rules if the occasion calls for it, it is probably better to stick with the adopted rules except on rare occasions.

### E. Audience participation

The people attending a council meeting do not normally take part in the council's discussion at a meeting. Only city councilmembers and the elected city clerk in Standard Plan statutory cities can make motions and vote at council meetings. However, many city councils schedule a portion of their meeting for public comment. This is often referred to as an open forum. During this part of the meeting the chair of the council will recognize members of the audience to speak briefly on topics that concern them.

If a large number of audience members wish to speak, the meeting may not progress efficiently. Likewise, if one person spends a long time expressing his or her view, others may not get the opportunity to present their views. The following sections discuss ways to address some of these problems.

## RELEVANT LINKS:

[834 VOICE v. Indep. Sch. Dist. No. 834, 893 N.W.2d 649 \(Minn. Ct. App. 2017\).](#)

[Minn. Stat. § 412.191, subd. 2.](#)

[Steinburg v. Chesterfield County Planning Comm'n, 527 F.3d 377 \(4th Cir. 2008\).](#)  
[State v. Occhino, 572 N.W.2d 316 \(Minn. Ct. App. 1997\).](#)

### 1. Limiting time

Some councils have addressed this problem by placing a limit on the amount of time audience members are allowed to speak at a meeting. For example, the council may ask people to limit their remarks to no more than three minutes or allow only a specified number of people to speak.

A number of cities have established rules or guidelines that citizens must follow when speaking at a meeting. Often, the speaker must notify the city at least one day in advance so that he or she can be put on the agenda. When a person notifies the city of his or her desire to speak at the meeting, he or she is given a copy of the “rules of conduct,” which lists the time limit for speaking and any other city limitations. This gives the person time to plan his or her speech so it fits within the time limit. The mayor then reminds the speaker of the time limit before the speaker begins to speak. Some cities will have a clock visible to the speakers so they can see when their time for speaking is over.

### 2. Limiting topic

Another option may be to limit the scope of comments to those matters being addressed by the council at the specific meeting.

While this may be a way to focus the meeting on the matters being addressed by the council, it might also keep people from making the council aware of any new issues. Cities considering this approach might need to allow for other ways for people to bring up other topics.

Some cities will establish general rules outlining when citizens may speak at council meetings. Often these guidelines will require that the topic be identified in writing a few days before the actual meeting. The specific topic and the speaker’s name are then put on the agenda. Such procedures are helpful in allowing the council to plan an efficient meeting and to prepare a response to the issue if needed. It also helps to remind the speaker that he or she may only address those issues on the agenda.

### F. Maintaining order

A statutory city council is authorized to preserve order at its meetings. The mayor, as the presiding officer, is also vested with some authority to prevent disturbances.

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

## RELEVANT LINKS:

[Minn. Stat. § 609.72, subd. 1\(2\).](#)  
[State v. Guy](#), 242 N.W.2d 864 (Neb. 1976).  
[State v. Hensel](#), No. 49-CR-13-869 (7th Jud. Dist. Feb. 7, 2014) (state district court opinion denying a motion to dismiss a charge of disorderly conduct for disrupting a city council meeting).

[Minn. Stat. § 412.191, subd. 1.](#)

[Minn. Stat. § 412.191, subd. 2.](#) [Minn. Stat. § 412.121.](#)

[Minn. Stat. § 412.191, subd. 1.](#)

No matter how disorderly the meeting, it will still be a legal meeting and any action taken at it in proper form will be valid.

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

If the mayor is not conducting the meeting in an orderly fashion, there is relatively little the other councilmembers can do to control the action of the presiding officer. However, a majority of the council can force adjournment if they feel it is necessary.

A person who disturbs a lawfully held public meeting may be guilty of disorderly conduct. Any conduct that disturbs or interrupts the orderly progress of council proceedings is a disturbance that may generally be prevented, or punished if an ordinance violation is involved.

## G. Role of Mayor, Clerk, and City Manager

### 1. Mayor

The mayor of a statutory city is a member of the council, and has the same right to vote and make and second motions at meetings as the other council members.

The mayor is the presiding officer of the meeting. In the absence of the mayor, the acting mayor must perform the duties of the mayor. The acting mayor is chosen at the first meeting of each year.

In some charter cities, the mayor might abstain from voting or participating unless there is a deadlock. This practice can help to preserve the neutrality of the chair of the meeting. However, counting votes at a meeting where a member abstains can sometimes be tricky.

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

### 2. Clerk

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



## RELEVANT LINKS:

[Minn. Stat. § 412.651, subd. 5.](#)

[Minn. Stat. § 13D.01, subd. 4.](#)

[A.G. Op. 471e \(Sept. 18, 1962\).](#) [A.G. Op. 471e \(Aug. 20, 1962\).](#)

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

For more information on counting votes see “Counting the Votes on Council Actions (Part I and Part II),” Minnesota Cities (May, June-July, 2006); and “Voting Riddles,” Minnesota Cities (April 2007).

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

In Plan A or Plan B statutory cities, the clerk is not a member of the council, and therefore, cannot vote or participate in council proceedings. Again, home rule charter cities may have different provisions in their charters.

### 3. City managers

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

### 4. Voting

City councils meet to discuss matters relating to city business and to make decisions for the city. When a matter is brought to a vote, the votes must be recorded in the minutes. The vote of each individual councilmember (including the mayor) must also be recorded on each appropriation of money, except for the payment of judgments, claims, and amounts fixed by statute.

Because of this requirement, city councils may not vote by secret ballot on matters addressed at council meetings unless the vote can be taken in such a manner that would comply with the statute’s requirement.

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

#### a. Counting votes

Most of the time, a city council acts by majority vote; however, sometimes a simple majority vote is not enough for a matter to pass. Depending upon the matter before the council, more votes may be needed. Likewise, a home rule charter city may have additional requirements in its charter.

#### (1) Entire council is present

When the entire council is present and all members vote, it is generally simple to determine if a matter has passed.

#### (a) Achieving a quorum

A majority of the members of a statutory city council shall constitute a quorum.

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 462.357, subd. 2.](#)

[Minn. Stat. § 462.355, subd. 3.](#)

[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 462.356, subd. 2.](#)

[Minn. Stat. § 471.88.](#)  
See LMC information memo,  
*Official Conflict of Interest.*

[Minn. Stat. § 429.031, subds. 1, 2.](#)

[Minn. Stat. § 410.12, subds. 6, 7.](#)

[Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 412.501.](#)

[Minn. Stat. § 412.851.](#)

[Minn. Stat. § 412.221, subd. 16.](#)

Obviously, when all members are present, a quorum has been achieved.

### **(b) Motions and resolutions**

A majority of the quorum is needed to pass most motions and resolutions. Since most statutory cities have a five-member council, this means that three votes are normally needed if all members are present and voting. In a statutory city with a seven-member council, it would take at least four votes to pass most motions or resolutions if all members are present and voting.

### **(c) Most ordinances**

A simple majority vote of an entire statutory city council is needed to pass most ordinances, regardless of the number of councilmembers present. This means that three votes are needed to pass an ordinance in a city with a five-member council. In a statutory city with a seven-member council, four votes are needed to pass most ordinances. However, some ordinances require more than a simple majority vote.

### **(d) Situations where statutes require extraordinary votes**

Several statutes require more than a simple majority to take certain kinds of actions. The following are some examples:

- Adoption or amendment of zoning ordinances that change existing zoning from residential to commercial or industrial.
- Adoption or amendment of comprehensive plans.
- Abolishment of a planning agency.
- Some capital improvements and acquisition or disposal of real property if the city has a comprehensive plan.
- Contracts that are allowed even though one of the officers has a personal financial interest. Generally, a councilmember may not have a financial interest in a city contract. However, the statutes allow certain exceptions to this rule. If such a contract is permitted under an exception, the statute requires that it be approved by unanimous vote of the council. In some cases, state law specifically requires an interested officer to abstain from voting, but it is probably advisable for an interested officer to abstain from discussion and voting, regardless of whether the statute specifically requires it.
- Some local improvements that will be paid for with special assessments.
- Some types of charter amendments.
- Summary publication of ordinances in statutory cities.
- Abolishing or changing the size of a statutory city park board.
- Some street vacations.
- Abolishment of a hospital board.

## RELEVANT LINKS:

*State v. Hoppe*, 194 Minn. 186, 260 N.W. 215 (Minn. 1935). [A.G. Op. 63-b-14 \(Jan. 14, 1970\)](#). [A.G. Op. 161-A-20 \(July 3, 1974\)](#).

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

[Minn. Stat. § 412.191, subd. 4.](#)

[A.G. Op. 63a-11 \(Oct. 20, 1966\)](#).

*Tracy Cement Tile Co. v. City of Tracy*, 143 Minn. 415, 176 N.W. 189 (Minn. 1919).

Home rule charter cities may have other supermajority vote requirements in their charters.

### **(2) Vacancies**

A vacancy temporarily reduces the size of the council; therefore, when there is a vacancy on a five-member council, the entire council consists of four people. For actions that require approval by a specified portion of the council, the required number of votes is calculated using the current number of seats that are filled.

#### **(a) Achieving a quorum**

Since a majority of a statutory city council is needed to achieve a quorum, a vacancy can affect the number of members that must be present in order to hold a meeting. One vacancy on a five-member council would not reduce the number of members needed to achieve a quorum (since both a majority of five and a majority of four is three).

However, if there were two vacancies on a five-member council, the council would consist of three members and a majority of the council would be two members.

#### **(b) Motions and resolutions**

Since most motions and resolutions must be approved by a majority of those present at a meeting, a vacancy generally will have the same effect as an absence. A majority of those present must vote to approve in order for most motions and resolutions to pass.

#### **(c) Most ordinances**

Since most ordinances must be approved by a majority of the entire council, vacancies on the council can affect the number of votes needed to pass an ordinance. For example, if there were two vacancies on a five-member council, the entire council would consist of three members. In this case, a majority of the entire council would be two rather than three.

#### **(d) Situations where statutes require extraordinary votes**

If a statute or charter provision requires a specific number of votes (rather than a percentage of the council), the vacancy probably won't affect the required numbers of votes.

### **(3) Absences**

A councilmember's absence from a meeting does not affect the number of votes needed if a statute requires an affirmative vote by a specified portion of the entire council.

## RELEVANT LINKS:

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

*Jensen v. Indep. Consol. Sch. Dist. No. 85*, 160 Minn. 233, 199 N.W. 911 (Minn. 1924).  
[A.G. Op. 471-M \(Oct. 30, 1986\)](#).  
[A.G. Op. 161-A-20 \(June 3, 1987\)](#).  
[Minn. Stat. § 645.08\(5\).](#)

[Minn. Stat. § 412.191, subd. 4.](#)

### **(a) Achieving a quorum**

Absences can certainly affect the ability of a city council to achieve a quorum, since a majority of a statutory city council is needed to achieve a quorum. For example, if one or two members of a five-member council are absent, the three remaining councilmembers would constitute a quorum. However, if three members are absent, the remaining two members would not be able to hold a meeting because a quorum would not be present.

### **(b) Motions and resolutions**

Since most motions and resolutions must be approved by a majority of those present in order to pass, an absence can affect the number of votes needed. The general rule is that if a quorum is present, a majority of the quorum can pass any action unless a statute or charter provision requires a larger number. The fewer members present, the fewer needed to constitute a majority.

For example, if two members of a five-member council are absent, the remaining three constitute a quorum. A 2-1 vote is sufficient to pass most motions at such a meeting. However, if all five members are present, at least three votes would be needed to pass the same motion.

### **(c) Most ordinances**

The absence of a councilmember from a meeting does not affect the number of votes needed if the statutes require that a specified portion of the entire council is needed to approve an action. For example, it takes a majority of the entire council to pass an ordinance in a statutory city. In most statutory cities, a majority is three votes. If one councilmember is absent, it would still take a majority of the entire council (or three votes) to pass the ordinance.

### **(d) Situations where statutes require extraordinary votes**

The absence of a councilmember will not affect the number of votes needed if a statute requires approval by a specific number of votes or a certain portion of the entire council.

### **(4) Abstentions**

Sometimes a councilmember who is present at a meeting will choose not to vote on a matter before the council. In some home rule charter cities, a mayor might not vote unless there is a tie. If a councilmember or mayor does not vote, it is recorded in the minutes as an abstention. How the abstention should be considered can sometimes depend upon the reason for the member's abstention.

## RELEVANT LINKS:

[A.G. Op. 161-A-20 \(June 3, 1987\). A.G. Op. 471-M \(Oct. 30, 1986\).](#)

[Minn. Stat. § 412.191, subd. 4.](#)

[Ram Dev. Co. v. Shaw, 309 Minn. 139, 244 N.W.2d 110 \(Minn. 1976\).](#)

[1989 Street Improvement Program v. Denmark Township, 483 N.W.2d 508 \(Minn. Ct. App. 1992\).](#)

### **(a) Achieving a quorum**

Whether or not a councilmember abstains would not appear to have an effect on whether or not a quorum exists, and the meeting may be held.

### **(b) Motions and resolutions**

Generally, a motion or resolution is passed if the majority of those voting vote in favor of it. It's not entirely clear, however, if a court would apply this rule to the extreme case where a quorum is present but because of abstentions the number of affirmative votes is less than a majority of the quorum. Again, it may depend upon the reason behind the abstention.

### **(c) Most ordinances**

An abstention by one or more councilmembers does not reduce the number of votes needed if a statute or charter provision specifies a certain number of votes.

For example, in a statutory city with a five-member council, three affirmative votes are needed to pass most ordinances; two "yes" votes and three abstentions are not enough.

However, if the abstention is required because a councilmember is disqualified from voting (such as when one member has a personal interest in the matter being considered by the council), the abstention is treated like a vacancy. In this type of situation, the size of the council is temporarily reduced.

### **(d) Situations where statutes require extraordinary votes**

An abstention by one or more councilmembers does not reduce the number of votes needed if the statutes require the affirmative vote of a specific number or proportion of the entire council. For example, in a case where a seven-member board attempted to pass a zoning amendment that required a two-thirds vote of its members, three members abstained and four voted in favor of the amendment. The court ruled that this vote was not sufficient to pass the ordinance.

### **(e) Councilmembers who have a disqualifying interest**

Councilmembers who have a disqualifying interest are generally excluded when counting the number of votes needed to approve an action by a supermajority vote. An example of such a situation was a local improvement project where two town board members owned property that was going to be assessed for the improvement. The court found it was proper for the two to abstain in this case, and that three affirmative votes were sufficient to meet the four-fifths majority vote requirement.

## RELEVANT LINKS:

[Minn. Stat. § 13D.02.](#) [Minn. Stat. § 13D.021.](#)

[Minn. Stat. § 13D.021.](#)  
[Minn. Stat. § 13D.02.](#)  
[DPO 13-009.](#)

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

[Minn. Stat. § 211B.10, subd. 2.](#)

Although councilmembers may be tempted to abstain from voting on a controversial matter, they should remember that the abstention will ultimately tend to pass or defeat the matter. The best advice is to avoid the kinds of problems that can arise from abstentions and vote, unless an abstention is required because a councilmember has a personal interest in the matter.

### **b. Long-distance voting**

Although the open meeting law permits meetings to be held by interactive television, and in the case of a health pandemic or an emergency, permits meetings to be held by telephone or other electronic means, the use of other types of technology have not yet been authorized.

#### **(1) Voting by proxy**

Sometimes councilmembers who are not able to be at a meeting want to vote on a matter that will be addressed at the meeting.

State law does not permit a statutory city councilmember to vote by proxy. Home rule charter cities may find permission in their charters.

#### **(2) Voting by phone**

Likewise, unless there is a health pandemic or an emergency, state law does not authorize a councilmember to phone-in a vote or to participate in the meeting by conference call, or other electronic means unless it satisfies the requirements for use of interactive television.

## **H. Attendance of councilmembers**

It is important for all councilmembers to attend their city council meetings. When members are absent from a meeting, it can be difficult for the council to conduct business. Such difficulties can include the inability of the council to achieve a quorum, the difficulty in getting the needed number of votes to approve an action, and the difficulty in counting votes.

In statutory cities, a majority of all the councilmembers constitutes a quorum. This means that at least three members of a five-member council or four members of a seven-member council must be present in order for the council to hold a meeting. Home rule charter cities may have different quorum requirements.

### **1. Time off from employment**

An elected official must be given time off from employment to attend meetings that are required because of the office. The time off may be with or without pay.

**RELEVANT LINKS:**

[A.G. Op. 471-E \(Jan. 21, 1942\).](#)

[Minn. Stat. § 412.191, subd. 2.](#)

[Minn. Stat. ch. 586.](#)

[Minn. Stat. § 43A.17, subd. 10.](#)

If the time off is without pay, the employer must make an effort to allow the person to make up the hours at another time when he or she is available. An employer cannot retaliate against an employee who must take time off to attend such meetings.

## **2. Non-attendance**

Sometimes, a city council will find that a councilmember is not attending council meetings. The absences may be due to a variety of reasons, such as illness, extended vacations, or refusal to attend. Whatever the reason, such extended absences can make it difficult for the council to do its job. This section discusses some of the things city councils can consider to remedy this type of problem.

### **a. Reprimands**

The attorney general has indicated a city council could reprimand a councilmember for missing meetings.

The council would do this by passing a resolution. While such a reprimand might create political pressure and embarrassment for the absent councilmember, it won't necessarily compel the councilmember to attend meetings.

### **b. Compelling attendance**

State law authorizes a statutory city council to compel the attendance of its members and punish them for non-attendance. Unfortunately, it is not clear how this power should be exercised.

It might be possible to compel the attendance of a councilmember through a mandamus action, which is a court order to force a public officer to perform a specific duty of his or her office. This type of remedy may be pursued by the city, individual councilmembers, or a citizen. However, city officials should consult with their city attorney before considering this approach.

### **c. Council pay**

State law prohibits cities from diminishing a councilmember's pay for absences because of illness or vacation. As a result, if the council's salary is set at a monthly or annual salary, the councilmembers are entitled to receive that pay if they fail to attend meetings because of illness or vacation.

On the other hand, it might be possible to set council compensation on a per-meeting basis. It should be noted that this state statute has not yet been interpreted by the courts or the attorney general.

## RELEVANT LINKS:

[Minn. Stat. § 412.191, subd. 2.](#)

[Minn. Stat. § 412.02, subd. 2b.](#)

[Minn. Stat. § 410.33.](#)

[A.G. Op. 450-A-11 \(March 6, 1957\).](#)

[A.G. Op. 434-A-2 \(July 14, 1955\).](#) [Minn. Stat. § 412.02, subd. 2b.](#)

### **d. Fines**

A system of fines may be an option a statutory city council could use to punish a councilmember for non-attendance. If a city wants to use this approach, it should adopt an ordinance or rule establishing a system of fines for missing meetings. However, as discussed above, a city cannot diminish a councilmember's salary for absences that are the result of illness or vacation.

### **e. Temporary replacement of councilmembers**

Statutory cities have an option to temporarily replace a councilmember under certain circumstances. A vacancy in the office of mayor or councilmember may be declared by the council if either of the following occurs:

- An officeholder is unable to serve in the office or attend council meetings for a 90-day period because of illness.
- An officeholder refuses to attend council meetings for a 90-day period.

If either of these conditions occurs, the council may declare a vacancy to exist and fill it at a regular or special council meeting. The vacancy may be filled for the remainder of the unexpired term or until the person is able to resume duties and attend council meetings, whichever is earlier. When the person is able to resume duties and attend council meetings, the council shall by resolution remove the temporary officeholder and restore the original officeholder.

Home rule charter cities may use the same procedure described in this statute if their charter is silent on the matter.

### **f. Abandonment of office**

Continued failure to attend council meetings may be grounds for a city council to find that an office has been abandoned and declare that the office is vacant. The attorney general has described abandonment as a form of resignation, and indicated that the officer's intent is a key issue in determining whether there has been an abandonment of the office.

Whether an office has actually been abandoned is a question of fact that must be determined on a case-by-case basis. The attorney general has said that mere absence by itself does not mean that the office has been abandoned. Following a 90-day period, the office may be declared vacant and the officer replaced on a temporary basis. There are no clear guidelines as to how long a councilmember must be absent in order for the office to be considered permanently vacant.



## RELEVANT LINKS:

[A.G. Op. 434-A-2 \(July 14, 1955\).](#)

[Minn. Stat. § 609.43.](#)

[Minn. Stat. § 351.02.](#)

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

[Minn. Stat. § 363A.12.](#)  
[42 U.S.C. §§ 12101-12213.](#)  
See U.S. Department of Justice, Civil Rights Division, *The ADA and City Governments: Common Problems* (2008).  
*Bahl v. Ramsey County*, 695 F.3d 778 (8th Cir. 2012).  
*Loye v. Dakota County*, 625 F.3d 494 (8th Cir. 2010).

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

[Minn. Stat. § 13.03, subd. 1.](#)  
[Minn. Stat. § 13.02, subd. 7.](#)  
[Minn. Stat. § 13D.03, subd. 2\(b\).](#)

If the city council believes that the absent councilmember has abandoned the office, it can pass a resolution making this finding. The council should first give the absent councilmember notice and an opportunity to be heard. A city council that is considering declaring an office vacant due to abandonment should first consult with its city attorney.

### **g. Criminal penalties**

It is a gross misdemeanor for a public officer to intentionally fail to perform a known mandatory, nondiscretionary, ministerial duty of his or her office. It is arguable that attending council meetings might fall into this category of duties for councilmembers.

This type of remedy may be an extreme measure. Conviction may constitute a violation of the councilmember's oath of office, which would result in the office being vacant. Again, a city council that is considering this remedy should first consult with its city attorney.

## **I. Meeting room**

### **1. Smoking**

The Minnesota Clean Indoor Air Act prohibits smoking at a public meeting to protect city employees and the public from the hazards of secondhand smoke. This prohibition also applies to the use of electronic cigarettes.

### **2. Accessibility**

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 mobility impairments, will be able to reach. Cities may also need to have individuals sign for people with hearing loss and have written materials available in large print, Braille or audio cassette for people with sight impairments.

## **J. Broadcasting and recording of meetings**

The attorney general has advised that the public may tape record a meeting if it will not have a significantly adverse effect on the order of the meeting or impinge on constitutionally protected rights. Neither the public body nor any councilmember may prohibit dissemination or broadcast of the tape.

A city may tape record or videotape a meeting. The tape is a city record and must be kept in accordance with the city's record-retention policy. As a city record, such a tape must also be made available to the public if it contains public data.

## RELEVANT LINKS:

Minn. Stat. § 13D.05, subd. 1(d).  
See Part II.F. – *Open meeting law exceptions*.

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 (8th Cir. 2012).  
*Loye v. Dakota County*, 625 F.3d 494 (8th Cir. 2010).

Minn. Stat. § 412.191, subd. 2.

U.S. Const. amend. 1.  
Minn. Const. art. 1, § 16.

*Bogen v. Doty*, 598 F.2d 1110 (8th Cir. 1979).

Even though video tapes and sound recordings may indicate verbatim what occurred at a meeting, they are not the official record of the meeting. The approved minutes are the official record of the meeting.

All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless a different time period is 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. Such 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.

## K. Prayer and city council meetings

City councils sometimes start their meetings with a prayer or religious invocation offered by someone who is not on the council. Courts generally refer to this as "legislative prayer." City councils have authority to choose whether to include legislative prayer at their meetings. City councils that want to set a serious tone for their meetings could also consider some other ceremonial act, such as reciting the Pledge of Allegiance, as an alternative to opening their meetings with legislative prayer.

The use of legislative prayer raises two main constitutional issues: first, whether it violates the First Amendment to the U.S. Constitution, which prohibits the government from establishing a religion; and second, whether it violates the provisions in the Minnesota Constitution providing for the right to exercise one's religious beliefs without infringement.

The 8th Circuit U.S. Court of Appeals has held that a county board's practice of opening its meetings with legislative prayer did not violate either the U.S. Constitution or the Minnesota Constitution.

**RELEVANT LINKS:**

[\*Town of Greece, N.Y. v. Galloway\*, 134 S. Ct. 1811 \(2014\).](#)

[\*Town of Greece, N.Y. v. Galloway\*, 134 S. Ct. 1811 \(2014\).](#)

[\*Town of Greece, N.Y. v. Galloway\*, 134 S. Ct. 1811 \(2014\).](#)

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[\*Town of Greece, N.Y. v. Galloway\*, 134 S. Ct. 1811 \(2014\).](#)

The Court of Appeals noted that the county’s use of legislative prayer served a secular or non-religious purpose of establishing a solemn atmosphere and serious tone for its meetings.

The U.S. Supreme Court has held that a town board’s practice of opening its meetings with legislative prayer did not violate the Establishment Clause of the First Amendment to the U.S. Constitution. The Supreme Court reasoned that the Establishment Clause must be read with an understanding of its historical tradition and noted that the men who wrote the U.S. Constitution “considered legislative prayer a benign acknowledgment of religion’s role in society.”

The Supreme Court noted several factors that supported its decision to uphold the town board’s use of legislative prayer. First, it noted that the prayer occurred at the beginning of the meetings instead of during the decision-making part of the meetings. Likewise, city councils that choose to include legislative prayer should limit it to the beginning of their meetings. This practice will help reduce the chances that an individual attending a meeting will feel pressured to participate in the prayer because of a concern that the failure to do so may affect how the council will act on a specific decision affecting that individual, such as whether to approve a variance, license, or contract.

Second, the Supreme Court noted that the elected officials were the intended audience of the legislative prayer and found this acceptable. If city councils decide to include legislative prayer at the beginning of their meetings, it is best to view it as a benefit to the city council, not to other meeting attendees.

Third, the Supreme Court noted that participation in the town board’s legislative prayer was voluntary. City councils that include legislative prayer in their meetings also should be careful not to require the public to participate in the prayer and should not criticize anyone who chooses not to bow his or her head, stand, or otherwise engage in the prayer.

Fourth, the Supreme Court noted that the town board “at no point excluded or denied an opportunity to a would-be prayer giver.” City councils that include legislative prayer at their meetings also should not discriminate against any prayer givers based on their religious beliefs and should make efforts to ensure that prayer givers represent a diversity of religious beliefs.

The Supreme Court upheld the town clerk’s practice of using the local business directory to contact churches seeking volunteer ministers to offer legislative prayer at town meetings. The Supreme Court reasoned, “So long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing.”

**RELEVANT LINKS:**

*Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014).

*Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014).

*Marsh v. Chambers*, 463 U.S. 783 (1983).  
*Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014). *Bogen v. Doty*, 598 F.2d 1110 (8th Cir. 1979).

Fifth, the Supreme Court noted that the town board “neither reviewed the prayers in advance of the meetings nor provided guidance as to their tone or content.” The town board’s opening prayers were overwhelmingly Christian in content. But the Supreme Court held that legislative prayer does not need to be nonsectarian, or not identifiable with any one religion, reasoning that adopting such a requirement would not be consistent with the history of legislative prayer and would force the town board to act as a censor of religious speech. City councils that include legislative prayer in their meetings generally should not tell prayer givers what they can or cannot say in their prayers.

However, there are likely some reasonable limits on the content of legislative prayer. The Supreme Court indicated, for example, that legislative prayers that consistently criticize nonbelievers, threaten damnation, or preach conversion do not accomplish an acceptable legislative purpose, and therefore, may raise constitutional concerns. The Supreme Court noted that the town board’s use of legislative prayer served the acceptable legislative purpose of setting a solemn and respectful tone for its meetings.

Finally, it may be constitutional to pay a person to offer legislative prayer. Courts have looked to the history of such a practice, noting that Congress and many state legislatures have paid persons to offer legislative prayer. While this may be more common practice at higher levels of government, the more typical practice for cities is to use unpaid volunteers to offer legislative prayers.