

City of Lake Elmo  
City Council Workshop  
3800 Laverne Avenue North  
Lake Elmo, MN 55042

May 24, 2011

6:30 p.m. – 8:30 p.m. (?)

Proposed Agenda \*

1. Role Responsibilities and Functions of Subcommittees
2. Home Occupations Ordinance
3. Commercial Water Rate Review
4. Adjourn

*\*\* A social gathering may or may not be held at the Lake Elmo Inn following the meeting \*\**



## MAYOR & COUNCIL WORKSHOP

DATE:  
**WORKSHOP**  
ITEM #:  
**DISCUSSION**

5/24/11

5/10/2011

21

**AGENDA ITEM:** City Council Subcommittees

**SUBMITTED BY:** Lake Elmo City Council

**THROUGH:** Bruce Messelt, City Administrator

**REVIEWED BY:** Sharon Lumby, City Clerk  
Dave Snyder, City Attorney

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**SUMMARY AND ACTION REQUESTED:** Time has been set aside for the City Council to discuss the roles and responsibilities of Council subcommittees. At present, this item is for information purposes only, as the City Council has the ability to structure itself, as appropriate, within the parameters of State statutes and generally-accepted guidelines and practices.

**BACKGROUND INFORMATION & STAFF REPORT:** In April, 2011 the City Council briefly discussed the roles and responsibilities of Council subcommittees. It was directed at that time that the City Council schedule this item for additional discussion at an upcoming Workshop. To assist the City Council, available materials from the League of Minnesota Cities and guidelines based upon Robert's Rules of Order are attached. The City Attorney and other City Staff will be present to assist the City Council in its deliberation and discussion.

**RECOMMENDATION:** It is respectfully recommended that the City Council discuss the roles and responsibilities of Council subcommittees.

**ATTACHMENTS:** LMNC and related Materials.

**SUGGESTED ORDER OF BUSINESS:**

- Introduction..... Council Member Emmons
- Discussion..... Mayor & City Council
- Public Input, if Appropriate..... Mayor Facilitates
- Comments/Considerations..... Mayor & City Council

## PART II

### ELECTIONS, ELECTED OFFICIALS, AND COUNCIL MEETINGS

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#### CHAPTER 6: ELECTED OFFICIALS AND COUNCIL STRUCTURE AND ROLE

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# Chapter 6

## Elected officials and council structure and role

The cornerstone of city government in Minnesota is the elected city council ("council"). The council fashions the policies that determine a community's present and future well-being. Because people look to their local government for leadership, much of the responsibility for community development falls on the shoulders of city councilmembers.

Although the mayor is a member of the council in statutory cities and the clerk is a member of the council in Standard Plan cities, the mayor and clerk in all cities have some special duties. This chapter will discuss the special aspects of these positions and the council's role in city governance.

### I. Elected officials in general

Minn. Stat. § 412.02, subd. 1;  
Minn. Stat. § 412.191, subd. 1.

Although not all statutory cities have the same elective offices, all must have a mayor and at least three councilmembers. Whether a statutory city elects other officers depends on several factors, including the plan of government under which it operates.

For home rule charter cities, the city's charter specifies the type and number of elected officials.

#### A. Eligibility for office

Minn. Const. art VII, § 6; *See also, Jude v. Erdahl*, 296 Minn. 200, 207 N.W.2d 715 (Minn. 1973).  
Minn. Const. art. VII, § 1.

The Minnesota Constitution sets the qualifications for elective office. To hold elective city office, individuals must be qualified city voters, at least 21 years of age on the date of taking office, U.S. citizens, and residents of the city for at least 30 days prior to the election. An individual who has been convicted of a felony under either state or federal law cannot hold elective office in Minnesota unless the individual's civil rights have been restored.

Minn. Stat. § 351.02(6).  
Minn. Stat. § 412.02, subd. 2a.

If an individual fails to qualify for elective office within the allotted time, the city council may, by resolution, declare a vacancy and proceed to fill it by appointment. Individuals appointed to fill vacancies must also satisfy the requirements for elective office.

Minn. Stat. § 10A.01, subd. 26; Minn. Stat. § 10A.07; Minn. Stat. § 10A.09, subds. 1, 6a.

Elected and some appointed officials of cities with populations over 50,000 located in the seven-county metropolitan area must comply with conflict-of-interest disclosure and economic-interest-reporting requirements. Candidates for elected office must submit statements of economic interest to the city council within 14 days of filing an affidavit of candidacy. Persons accepting employment as public or local officials must file the disclosure statement within 60 days of accepting employment. In both cases, the law requires the filing of supplementary annual reports.

## B. Terms of office

Minn. Stat. § 412.02, subd. 2; Minn. Stat. § 351.02; 2010 Minn. Laws ch. 201, § 59.

A.G. Op. 471-M (Nov. 23, 1999).

Terms of office in statutory cities begin on the first Monday of January following the election. The terms of the old officers in statutory cities end at this time, or as soon after that as the newly elected officers qualify by taking an oath and filing a bond, if one is required. If the newly elected officer refuses or fails to qualify, the incumbent officer continues to hold office until the council declares the office vacant and appoints a successor. The terms of all city councilmembers in charter cities expire on the first Monday in January of the year in which they expire. The length of the various terms of office is provided by statute. The attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

## C. Oath of office

Minn. Stat. § 358.05.

Whether or not officials need a bond, they must take and sign an oath of office before exercising any of their powers. This includes members of councils, boards, commissions, and administrative officers. This applies to appointed as well as to elected officials.

See Minn. Const. art. V, § 6.  
Minn. Stat. § 358.06.

The required oath is: "I, (name) do solemnly swear to support the Constitution of the United States, the Constitution of the State of Minnesota, and to discharge faithfully the duties of the office of (insert brief description of office) of the city of (insert city), Minnesota, to the best of my judgment and ability, so help me God."

Minn. Stat. § 358.08.

If the officer objects to an oath on religious grounds, the word "affirm" can substitute for the word "swear," and the phrase "and this I do under the penalties of perjury" can substitute for the phrase "so help me God."

Minn. Stat. § 358.09;  
Minn. Stat. § 358.10.

Any person with authority to take and certify acknowledgments may administer the oath, including the city clerk, a justice of the peace, a notary public or a register of deeds. The candidate taking the oath must lift his or her hand while reciting the oath. The candidate qualifying for office must take the oath and sign a copy of the oath in the presence of the administering official.

Minn. Stat. § 358.11(3); See "Bonds for City Officials and Employees," *Minnesota Cities*, May-June 2002.

The signed copy should go to the city clerk for filing. City assessors should file their copy with the county auditor. If an officer must also submit a bond, the oath should be attached to the bond and both documents should go to the council for approval and then to the clerk for filing.

## D. Term limits

Minn. Const. art. VII, § 6;  
*Minneapolis Term Limits  
 Coalition v. Keefe*, 535  
 N.W.2d 306 (Minn. 1995).

The Minnesota Constitution establishes the eligibility requirements for public office without authorizing the adoption of additional "eligibility" requirements. Therefore, a charter city may not enact term limits as an eligibility requirement.

## E. Vacancies

Minn. Stat. § 351.02.

Vacancies in an elective office in a statutory or home rule charter city may occur for the following reasons:

### 1. Death

Minn. Stat. § 351.02(1), (8).

The vacancy exists as of the date of death. If the elected officer has not yet begun the term of office, the vacancy exists from the date the term would have started.

### 2. Resignation

Minn. Stat. § 351.02(2); Minn.  
 Stat. § 351.01, subd. 1.

A resigning elected public official must submit a written resignation to the council. After receiving a resignation, the council should pass a resolution stating it has received and accepted the resignation, and declaring that a vacancy exists.

Minn. Stat. § 351.01, subds. 2, 3, 4; See informal A.G. letter opinion dated March 3, 2003 (advising that Minnesota law does not require that a written resignation be "received" by the council during a formal meeting in order to be effective).

Unless the resignation expressly states it is to take effect at a future date, the resignation will be effective when received by the council. If the resignation states it takes effect on a specified date, the vacancy occurs on that date whether or not the council has accepted it. To withdraw a prospective resignation, the resigning officer must submit a written statement of withdrawal in the same manner as the resignation. In order to be effective, the withdrawal must be received before the council accepts the resignation by resolution or before an officer authorized to receive it has issued a written acceptance.

### 3. Removal by operation of law

In most situations, it is not possible to remove statutory elected officials before the end of their terms, for cause or otherwise. Cities should consult with their city attorneys before attempting removal of any elected official.

Statutory city voters have no recall authority. Some home rule charters, however, give voters this option, but there remains some question as to whether this type of charter provision is constitutional.

Minn. Stat. § 351.02(5).  
A.G. Op. 490D (Nov. 18,  
1952); Minn. Stat. § 609.02,  
subd. 2; Minn. Stat. § 609.42.

In certain situations, removal by operation of law can occur. A vacancy occurs if an elected official is convicted of any "infamous" crime. An infamous crime is a felony; that is, a crime for which a sentence of imprisonment for more than one year may be imposed. For example, bribery is a felony. Thus, a bribery conviction would result in the elected official's immediate removal from office. Moreover, any public officer convicted of bribery is forever disqualified from holding public office.

Minn. Stat. § 609.43; Minn.  
Stat. § 609.02, subd. 4.

Misconduct of a public officer or employee, as defined by law, is a gross misdemeanor. Therefore, a misconduct conviction is not an infamous crime, and does not automatically result in an elected official's removal from office.

Minn. Stat. § 351.02(5); Minn.  
Stat. § 358.05; Minn. Const.  
art. V, § 6.  
*See*, Minn. Stat. §§ 609.415-  
.475.

A vacancy does occur, however, when an elected official is convicted of an offense involving a violation of the individual's official oath. Many offenses that are not felonies or "infamous" crimes may involve a violation of an individual's oath and may result in a vacancy upon conviction.

Minn. Stat. § 13D.06, subd. 3.

A vacancy also occurs if a councilmember is found to have intentionally violated the open meeting law on at least three separate occasions. If a court finds a third, separate intentional violation, it must declare the position vacant and notify the appointing authority or clerk.

#### **4. Termination of city residency**

Minn. Stat. § 351.02(4).

A vacancy occurs when a city councilmember ceases to be a resident of the city. Residence is a factual question the council must determine in each case. Voting in the city is only one indication of residence. The office holder's intent and availability to perform official duties are additional criteria that should be considered. A councilmember becomes a non-resident when the property where the councilmember lives is detached from the city.

#### **5. Failure to qualify for office**

Minn. Stat. § 351.02(6).

An elected official may fail to qualify for office by refusing or neglecting to take the oath of office, to give or renew an official bond, or to deposit such oath or bond within the time prescribed by law. This type of vacancy is not automatic. A newly elected official may qualify at any time prior to the council declaring the office vacant.

#### **6. Abandonment**

A.G. Op. 99 (Aug. 26, 1920).

Whether an abandonment of office actually occurs is difficult to determine. The intent of the office holder is the controlling factor. The attorney general, while cautioning that this is a question of fact, has indicated that failure to participate in council activities for three months is sufficient grounds for declaring an abandonment of office.



## 7. 90-day absence rule

Minn. Stat. § 412.02, subd. 2b.

A vacancy in the office of mayor or councilmember may be declared by the council when the office holder is unable to serve in the office or to attend council meetings for a 90-day period because of illness, or because of absence from or refusal to attend council meetings for a 90-day period. If any of the preceding conditions occurs, the council may, by resolution, declare a vacancy and then fill it at a regular or special council meeting. The appointed councilmember will serve for the remainder of the unexpired term, or until the absent councilmember is again able to resume duties and attend council meetings, whichever is earlier. When the absent councilmember is able to resume duties and attend council meetings, the council shall, by resolution, remove the temporary office holder and restore the original office holder.

## 8. Qualifying for a second or incompatible office

See LMC Information Memo, *Official Conflict of Interest* for more information.

If an officer accepts a second office that is incompatible with the first, the first office is automatically vacated. (Section H of this chapter discusses incompatible offices in more detail.)

## 9. Expiration of elected term

Minn. Stat. § 412.02, subd. 2.

Generally, the vacancy occurring at the conclusion of an incumbent's term of office is filled immediately by the successor. If no one has been elected, the incumbent fills the office until the council appoints a successor and that person qualifies for the office.

## 10. Habitual drunkenness

Minn. Stat. § 351.07.

State law provides that the habitual drunkenness of any person holding office is good cause for removal from office.

## F. Filling vacancies

Minn. Stat. § 412.02, subd. 2a.  
A.G. Op. 59a-30 (July 24, 1996).

See "Vacancies on a Statutory City Council," *Minnesota Cities*, Oct. 2000.

While a council might identify and declare the facts giving rise to a vacancy, for all practical purposes they occur automatically and are not based upon any removal action. Because the council must fill vacancies in elective offices, it should determine whether a vacancy exists. After investigating the facts, the council should pass a resolution declaring a vacancy and then fill it as soon as possible.

Minn. Stat. § 412.02, subd. 2a.

A.G. Op. 471-M (Oct. 30, 1986).

State law provides that statutory city councils make the appointment to fill a vacancy, except in the case of a tie vote when the mayor makes the appointment. That means all members of the council, including the mayor, can vote on the appointment. And as long as at least a quorum of the council is present, a majority vote of those present is sufficient to make the appointment.

Minn. Stat. § 412.121; Minn. Stat. § 471.46.

State law does not place any limitation on a mayor's ability to make an appointment in the case of a tie vote. As a result, the mayor can appoint any qualified person willing to fill the vacancy even if that person was not the subject of the original appointment vote. If the vacancy is for the mayor's office and the council casts a tie vote, the acting mayor should make the appointment. The acting mayor may not, however, appoint himself or herself.

Minn. Const. art. VII, § 6.

The council may appoint any individual who is eligible for election to that office. Generally, to be eligible a person must be a U.S. citizen, a resident of the city, and at least 21 years old. The council is not obligated to appoint any candidate previously defeated in an election for the office.

Minn. Stat. § 415.15.  
A.G. Op. 471-M (Dec. 27, 1977).

A retiring councilmember may not vote on the appointment of the successor to that vacancy. A councilmember who is elected mayor, however, may participate in the appointment vote to fill the vacancy in his or her former council position.

Minn. Stat. § 412.02, subd. 2a.

Under certain circumstances, individuals appointed to fill council vacancies serve on a temporary basis, and the city must hold a special election to elect a permanent replacement to fill the vacancy. Two factors determine whether an election is required: first, whether filing has opened for the next regular city election, and second, the length of the unexpired portion of the term at the time of the vacancy. If the vacancy occurs on or after the first day to file as a candidate for the next regular city election or if less than two years remain in the unexpired term, the city does not need to hold a special election, and the appointed person can serve out the remainder of the unexpired term. In the alternative, if the vacancy occurs before the first day to file as a candidate for the next regular city election and more than two years remain in the unexpired term, the city must hold a special election to fill the council vacancy at or before the next regular city election, and the person elected will serve out the remainder of the unexpired term. If the council chooses to hold a special election to fill a vacancy at a time other than at the regular city election, it must first adopt an ordinance specifying the circumstances under which such an election will be held.

Minn. Stat. § 412.02, subd. 2;  
A.G. Op. 471-M (Nov. 23, 1999).

State law generally provides that the terms of elected city officials begin on the first Monday in January following the election. However, the attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

## **G. Councilmembers ineligible to fill certain vacancies**

Minn. Stat. § 471.46.

City councilmembers, including mayors and elected clerks, may not be considered to fill vacancies in other city elective offices if the council has the power to make the appointment to fill the vacancy. This rule applies even if a councilmember resigns the position on the council before the council makes the appointment. An exception to this rule is that the council may appoint one of its members to the office of either mayor or clerk. In such a case, the councilmember being considered for the appointment may not vote.

## H. Special concerns—gift law, conflicts of interest, and incompatible offices

There are several areas that are special concerns for all elected officials and some appointed officers. These include the following:

**Gift law.** City officials are generally prohibited from accepting gifts, although there are a few limited exceptions.

See n. LMC Information  
Memo, *Official Conflict of  
Interest*.

**Conflicts of interest.** Councils are generally prohibited from entering into a contract if one of their councilmembers has an interest in the contract. There are some exceptions to this rule.

**Incompatible offices.** City officials may not hold two offices that are incompatible.

In all three of these areas, the law is complex and whether a violation has occurred is not always clear. And even when a situation does not violate the law, people sometimes still question whether a city official has acted ethically. This section discusses each of the laws in more detail.

### 1. The law prohibiting gifts to city officials

Minn. Stat. § 471.895.

With some exceptions, every gift to any city official is prohibited. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Minn. Stat. § 471.895, subd.  
1(c).

An “interested person” is a person or a representative of a person or association with a direct financial interest in a decision the local official is authorized to make.

Minn. Stat. § 10A.071, subd.  
1; Minn. Stat. § 471.895, subd.  
1(b).

A “gift” means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

Minn. Stat. § 471.895, subd.  
1(d).

A “local official” means an elected or appointed official of a city, or of an agency, authority, or instrumentality of a city.

All members of the city council, appointed boards, commissions, and committees are covered by this law. The definition of an interested person implies that local officials who are authorized to make decisions or recommendations that could impact someone financially are also covered by the law. As a result, top appointed employees are likely covered, such as the manager, administrator, clerk, financial officer, and other department heads. Other covered city employees could include inspectors and people who can make decisions or recommendations about purchasing property, supplies or services. Indeed, it is possible to construct fact situations where almost any public employee can make or recommend actions that could affect someone’s direct financial interest. As a result, many cities interpret the gift law to apply to all city employees.

An interested person under the gift law likely includes anyone who may provide goods or services to a city, such as engineers, attorneys, fiscal advisors, contractors, and sales representatives.

In addition, virtually every resident of the city and anyone doing business in the city could at some time have a direct financial interest in a decision a city official is authorized to make and thus could qualify as an interested person. The following are possible examples where a resident or business owner's financial interest could be affected:

- The levying of property taxes.
- The spreading of special assessments.
- The valuation of property for tax purposes.
- The issuing of a license.
- The zoning of property or granting of a land-use permit.

As a result, any person doing business or residing in the city is potentially an interested person as far as a city councilmember is concerned. Whether a resident or business owner is an interested person, as far as members of boards and commissions are concerned, depends on the types of decisions or recommendations the boards or commissions are authorized to make.

It is important to note that the decision or recommendation a city official is authorized to make does not have to be pending or probable. If an individual could at any time have a direct financial interest in a decision or recommendation that a city official would be authorized to make, that individual would likely be considered an interested person.

Minn. Stat. § 471.895, subd. 3;  
See opinions issued by the MN  
Campaign Finance and Public  
Disclosure Board relating to  
some of these exceptions.

There are a few limited exceptions to the gift law. For example, the following types of gifts are not prohibited:

- Political contributions.
- Services to assist an official in the performance of official duties.
- Services of insignificant monetary value.
- A plaque with a resale value of \$5 or less.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before whom the recipient makes a speech or answers questions as part of a program. (This exception probably permits only the principal speakers at meetings to receive gifts of food or beverage.)

- Gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is offered to or given to the other members of the group.
- Gifts given by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.
- Gifts given by a national or multi-state organization of governmental organizations or officials, if a majority of the dues to the organization are paid from public funds, to attendees at a conference sponsored by that organization if the gift is food or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

The law prohibits gifts to city officials, not to cities. Thus, an interested person can give a gift to a city. If the giver has no control over who will receive the gift and the gift was not targeted to a specific person, perhaps a city official could benefit from that gift. If the person who benefits from the gift has any control over its use, the gift would likely be prohibited. For example, if an interested person gave a city five tickets to a football game, the councilmembers probably could not decide to use the tickets for themselves.

## 2. Conflicts of interest

There are two types of conflicts of interest that a councilmember may encounter: those involving contractual decisions, and those involving non-contractual decisions.

Minn. Stat. § 471.87; Minn. Stat. § 412.311.

*See LMC Information Memo, Official Conflict of Interest, for more information.*

First, a councilmember of a statutory city may not have a direct or indirect personal, financial interest in any sale, lease or contract they are authorized to make in their official capacity. There are limited exceptions to this law. Unless there is an exception, any contract made in violation of this law is void.

City councilmembers, who knowingly authorize a prohibited contract, even though they do not benefit from it, may be guilty of a crime. The councilmember who would benefit from the contract could also be guilty of a crime if that person entered into it knowing it was prohibited. The contract is void even if the benefiting councilmember did not participate in the discussion of the contract or vote on the contract.

Second, there are also situations where councilmembers may find that they have an interest in a non-contractual decision the council will make. This type of interest does not have to be of a financial nature. These non-contractual matters may include such things as council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested councilmember most likely should abstain from participating in the council discussion and from voting on these issues.

### 3. Incompatible offices

A.G. Op. 358 (Dec. 18, 1970); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923); *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886).

*McCutcheon v. City of St. Paul*, 216 N.W.2d 137 (Minn. 1974).

See LMC Information Memo, *Official Conflict of Interest*, for more information.

See 2010 Minn. Laws ch. 206, §§ 1-2 to be codified at Minn. Stat. § 410.191 and Minn. Stat. § 412.02, subd. 1a.

A.G. Op. 471-M (Dec. 11, 1957).

See *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923);

Minn. Stat. § 471.46; A.G. Op. 256 (Jan. 17, 1935); A.G. Op. 235 (Dec. 31, 1928); A.G. Op. 234 (Dec. 19, 1927).

Incompatible offices are any public offices an individual may not hold simultaneously. The term “office” has been interpreted to include all elected offices and those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor’s approval. Without specific statutory authority government officials cannot hold more than one position if the functions of the positions are incompatible or if the jobs create a conflict between two different public interests. In addition, a new state law expressly prohibits the mayor and councilmembers in both statutory and home rule charter cities from being “employed” by their city. The term “employed” is defined as “full-time permanent employment as defined by the city’s employment policy.” The new law applies to persons elected or appointed to serve as mayor or city councilmember on or after Aug. 1, 2010.

Unless otherwise limited by law, an individual may apply for a job or run for an office that is incompatible with a current position without resigning from the current position. When the individual is elected or appointed to an incompatible office, the individual is considered to have resigned from the first position.

Generally, positions are incompatible when one or more of the following conditions exist:

**If the holder of one position (or the group or board of which the person is a member):**

- Hires or appoints the other.
- Sets the salary for the other.
- Performs functions that are inconsistent with the other.
- Makes contracts with the other.
- Approves the official or fidelity bond of the other.

**If a specific statute:**

- States that certain positions may not be held by one person.
- Requires that the holder may not take another position.
- Requires that the holder devote full-time to the position.

See 2010 Minn. Laws ch. 206, §§ 1-2 (to be codified at Minn. Stat. § 410.191 and Minn. Stat. § 412.02, subd. 1a).

Minn. Stat. § 412.152.  
See LMC Information  
Memo, *Official Conflict  
of Interest*, for more  
information.

State statute allows a statutory city mayor to be the fire chief of an independent, nonprofit firefighting corporation if certain conditions are met. The statute, however, is unclear on several points. For example, it does not address council positions other than the mayor, so there still may be incompatibility concerns. It also appears to be limited to independent, nonprofit fire departments, so city departments (whether volunteer or salaried) are not addressed. Because each city may have a different relationship with its fire department, a city may want to get a legal opinion from its city attorney or from the attorney general before allowing a councilmember to serve as a firefighter with any sort of supervisory powers.

Minn. Stat. § 43A.32, subd.  
2(b).

State law generally allows state employees to hold city offices as long as the positions are compatible. State civil-service employees can hold any local elected office as long as it does not conflict with their regular state employment. The Department of Employee Relations will make the determination of whether a conflict exists.

## I. Publications and Web sites

Minn. Stat. § 10.60, subds. 2,  
3.

The purpose of a city Web site or publication must be to provide information about the duties and jurisdiction of the city or to facilitate access to public services and information related to city responsibilities or functions. A city Web site or publication must not include pictures or other materials that tend to attribute the Web site or publication to an individual or group of individuals instead of to the city. A city publication must not include the words “with the compliments of” or contain letters of personal greeting that promote an elected or appointed official of a city.

Minn. Stat. § 10.60, subd. 3.

A city Web site may not contain a link to a Web-blog or site maintained by a candidate, a political committee, a political party or party unit, a principal campaign committee, or a state committee.

Minn. Stat. § 10.60, subd. 4.

A city Web site or publication may include biographical information about an elected or appointed official, a single official photograph of the official, and photographs of the official performing functions related to the office. There is no limitation on photographs, Web-casts, archives of Web-casts, and audio or video files that facilitate access to city information or services or inform the public about the duties and obligation of the city office or that are intended to promote trade or tourism. A city Web site or publication may include press releases, proposals, policy positions, and other information directly related to the legal functions, duties, and jurisdiction of a city official or organization.

Minn. Stat. § 10.60, subd. 5.

Cities may adopt more restrictive standards for the content of city publications or Web sites.

## II. City council and its powers

It is the duty of the mayor, clerk, and councilmembers to ensure that the city is fulfilling its duties under the law and lawfully exercising its powers.

See Handbook, Chapter 18 for more information about personal liability for official actions.

City officials can sometimes be held personally liable for failing to act or for taking unauthorized actions on the part of the city. To avoid personal-liability lawsuits, city officials should gain a working knowledge of the laws that regulate city government. Whenever there is any doubt about the validity of an action or procedure, city officials should consult their city attorney.

### A. Role of the individual councilmember

Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, it is the council and not individual councilmembers that must supervise administrative officers, formulate policies, and exercise city powers.

Councilmembers should devote their official time to problems of basic policy and act as liaisons between the city and the general public. Councilmembers should be concerned, not only with the conduct of daily affairs, but also with the future development of the city.

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

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

In a statutory city, the mayor or any two councilmembers of a five-member council or any three members of a seven-member council may call a special meeting. Care should be exercised to give proper notice, however.

As individuals, councilmembers have no administrative authority. They cannot give orders or otherwise supervise city employees unless specifically directed to do so by the council. The council, however, has complete authority over all administrative affairs in the city. In Plan B cities, this authority is generally restricted to conducting investigations and establishing policies to be performed by the manager.

Minn. Stat. § 412.101  
(repealed by Laws 2001, ch.  
135, sec. 3).

Under state law that was repealed in 2001, all members of the council, including mayors, were "peace officers." Councilmembers were authorized to suppress any "riotous or disorderly conduct" in the streets or public places of the city. The mayor and individual councilmembers no longer have peace-officer authority.



## B. The council's authority

*Van Cleve v. Wallace*, 216 Minn. 500, 13 N.W.2d 467 (Minn. 1944).

The city council is a continuing body. New members have no effect on the body except to change its membership. This means that all ordinances and resolutions remain in effect until the council alters or rescinds them, or until they expire through their own terms. At any time, the council can change any resolution, ordinance or administrative order whether or not the individuals presently on the council are the same as those serving when the council originally took action.

Minn. Stat. § 306.41.

There are exceptions to this rule. For example, the council cannot dissolve a perpetual-cemetery-maintenance fund. In addition, the council cannot rescind or unilaterally alter any valid contracts. This means the law of contracts applies to the council as it does to any other party. Whether a contract was validly made is a question of fact.

*Reed v. City of Anoka*, 85 Minn. 294, 88 N.W. 981 (Minn. 1902).

The following information outlines the major areas of council authority and responsibility.

### 1. Judging the qualification and election of its own members

Minn. Stat. § 412.191, subd. 2.

The council evaluates the credentials of individuals who are, or who claim to be, members of the council. This power includes certifying election results, determining whether an individual has the necessary qualifications to hold office, and deciding whether a council vacancy has occurred.

### 2. Setting and interpreting rules governing its own proceedings

Minn. Stat. § 412.191, subd. 2.

The council has the following powers:

- To preserve order during its own meetings.
- To establish rules of procedure.
- To compel the attendance of members at meetings and to punish non-attendance. The council does not have the power to remove members from office, but it may punish members by fines or by deducting a part of the absentee's compensation for failure to comply with attendance orders.

See Minn. Stat. § 43A.17, subd. 10 (prohibiting the reduction of councilmembers' salaries because of absences from official duties because of vacation or sickness).

### 3. Exercising all the powers of cities that the law does not delegate to others

Except for powers that the statutes delegate to a specific official or independent board or commission, the council has the authority to exercise all powers given to the city.

#### 4. Legislating for the city

Minn. Stat. § 412.191, subd. 4.

The council may enact ordinances by a majority vote of all its members except where a larger number is required by law. The power to legislate also includes setting administrative policies and otherwise establishing public policy for the city.

Minn. Stat. § 412.231.

The council has the power to declare that violations of any ordinance are a crime and may prescribe penalties for ordinance violations. The statutory city code limits the penalty for ordinance violations to a fine of up to \$1,000 or 90 days in jail, or both.

#### 5. Directing the enforcement of city ordinances

The council directs the enforcement of city ordinances by determining the level of law enforcement, setting qualifications for the police chief and police officers, purchasing certain types of equipment for police use, and by directing and supervising the work of police officers. The city council also directs all departments and employees responsible for the administration of its policies and ordinances in the general administration of their duties. The city council generally should not direct the enforcement efforts of its employees as to particular situations.

#### 6. Appointing administrative personnel

In Standard Plan and Plan A cities, the council has the sole authority to appoint all city employees.

Minn. Stat. § 412.661.

In Plan B cities, the council appoints a city manager, who in turn appoints all city employees. The council may not dictate that the city manager appoint a particular person to city employment. Additionally, the council may not give any orders to employees hired by the manager.

#### 7. Transacting city business

See Minn. Stat. § 412.201;  
Minn. Stat. § 412.211.

The transaction of city business includes a wealth of activities, such as purchasing, executing legal papers, taking bids, letting contracts, making discretionary administrative decisions, and evaluating the work of the administrative departments and personnel.

#### 8. Managing the city's financial operations

Minn. Stat. § 412.241.

The council has full authority over the city's financial affairs, including but not limited to:

Minn. Stat. § 412.251.

Minn. Stat. § 412.701; Minn.  
Stat. § 275.065.

Minn. Stat. § 412.241.

Minn. Stat. § 412.241.

- Levying taxes.
- Adopting a budget.
- Auditing and settling accounts.
- Safekeeping and disbursement of public money.

Minn. Stat. § 118A.02; Minn. Stat. §§ 427.01-.02.

- Borrowing money.
- Designating depositories.

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

## 9. Appointing members of the boards

Minn. Stat. § 412.111.

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

## 10. Conducting the city's intergovernmental affairs

Minn. Stat. § 471.59; Minn. Stat. § 465.58.

The council may make agreements for the joint exercise of powers through agreements with other units of government, appoint people to serve on intergovernmental bodies, conduct city business with state and federal agencies, and participate in intergovernmental programs and the work of municipal associations such as the League of Minnesota Cities.

## 11. Protecting the welfare of the city and its inhabitants

Minn. Stat. § 412.221, subd. 32.

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

## 12. Providing community leadership

In addition to participating in civic events, city officials must provide leadership by promoting new ideas and suggesting new programs to improve the community and its surrounding areas.

## 13. Other specific powers

The city council also has specific powers in the following areas:

Minn. Stat. § 412.221, subds. 3, 28.

**Buildings.** The council has the power to construct or acquire structures needed for city purposes, and to control, protect, and insure public buildings, property, and records. The council also has the power, by ordinance, to regulate the construction of buildings.

Minn. Stat. § 412.221, subd. 5.

**Actions at law.** The council has the power to provide for the initiation or defense of actions in which the city may be interested. The council may employ attorneys for this purpose.

Minn. Stat. § 412.221, subd. 6.

**Streets.** The council has the power to lay out or change streets, parks, and other public grounds. By ordinance, the council may regulate the use of streets and public grounds.

Minn. Stat. § 412.491.

**Parks.** A statutory city may establish, improve, maintain, and manage parks and recreational facilities and, by ordinance, protect and regulate their use.

Minn. Stat. § 412.221, subd. 8.

**Trees.** The council has the power to provide for and, by ordinance, regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.

Minn. Stat. § 412.221, subd. 9.

**Cemeteries.** The council has the power to acquire, hold, and manage cemetery grounds and to sell and convey cemetery lots. By ordinance, the city may regulate cemeteries and the disposal of cadavers.

Minn. Stat. § 412.221, subd. 11.

**Waterworks.** The council has the power to provide for and, by ordinance, regulate the use of wells, cisterns, reservoirs, and other types of water supply.

Minn. Stat. § 412.221, subd. 16.

**Hospital.** The council has the power to establish hospitals.

Minn. Stat. § 412.221, subd. 17.

**Fire prevention.** The council has the power to establish a fire department, appoint its officers and members, and prescribe their duties. The council also has the power, by ordinance, to prevent, control or extinguish fires.

Minn. Stat. § 412.221, subd. 18.

**Naming streets.** The council has the power, by ordinance, to name or rename the streets and public places of the city and to number or re-number the lots and blocks of the city. The council may make and record a consolidated plat of the city.

Minn. Stat. § 412.221, subd. 21.

**Animals.** The council has the power, by ordinance, to regulate the keeping of animals, to restrain their running at large, and to authorize their impoundment and destruction.

Minn. Stat. § 412.221, subd. 22.

**Health.** The council has the power, by ordinance, to provide for the disposal of solid waste, sewage, garbage, and other unwholesome substances.

Minn. Stat. § 412.221, subds. 24, 25.

**Noise and nuisances.** The council has the power, by ordinance, to regulate and prevent noise and to define and provide for the prevention or abatement of nuisances.

Minn. Stat. § 412.221, subd. 25.

**Amusement.** The council has the power, by ordinance, to prevent or license and regulate, billiard tables, bowling alleys, gambling devices, circuses, theatrical performances, amusements, or shows of any kind.

Minn. Stat. § 412.221, subd. 26.

**Vice.** The council has the power, by ordinance, to restrain and punish vagrants, prostitutes, and individuals guilty of lewd conduct.

Minn. Stat. § 412.221, subd. 27.

**Dances.** The council has the power, by ordinance, to license and regulate the operation of public-dance halls and the conduct of public dances.

Minn. Stat. § 412.221, subd. 30.

**Restaurants.** The council has the power to license and regulate restaurants and public-eating places.

Minn. Stat. § 412.221, subd. 31.

**Sewer and water connections.** The council has the power, by ordinance, to require the owner of any property that is abutting or adjacent to any street in which sewer and water mains have been laid to install a toilet in such buildings and connect it with the sewer and water mains.

Minn. Stat. § 412.221, subd. 32.

**General welfare.** The council has the power to provide for the government and good order of the city, the prevention of crime, the protection of public and private property, and the promotion of health, order, and convenience through the enactment of ordinances.

Minn. Stat. § 415.01.

**Township powers.** The council has all the powers given to towns in chapters 365 and 368 of the Minnesota Statutes.

## C. Council committees

Although the statutes do not require the use of committees, some councils find they are helpful in reducing workload. By dividing their membership into several committees, a council enables its members to devote most of their time to specific areas of the city's operations. Each councilmember becomes a relative specialist in these areas and that councilmember's services become of greater value to the council as a whole.

Council action is necessary to establish committees either in the council's bylaws, by special resolution or through a motion.

The council may set up special and standing committees. The council appoints special committees to deal with a single transaction or project. For example, the council might appoint a special committee to study the advisability of purchasing land for a new park. Standing committees concentrate on work that is continuous or repeated from time to time during the year. Many cities, for example, have a standing committee on finance.

Sometimes councils set up their committees on a functional basis. Such committees deal with fire, police, health, public works, welfare or public utilities. This system encourages councilmembers to handle administrative details and, consequently, does not make full and proper use of the city's administrative officers. Thus, councils should try to limit their work to special policy problems or to certain staff or public-relations functions that are not the responsibility of administrative personnel. Examples include committees on auditing, personnel, budget, public reporting, purchasing, and licensing.

Committees may exercise all duties the council has legally assigned to them. They can have authority to conduct investigations and to make recommendations. Committees, however, may not make decisions on behalf of the council. Committees are subject to the same rules as the full council under the open meeting law.

In many cities, it is routine for the council to approve a committee's recommendations if it has done a thorough and competent job. It is important, however, for all councilmembers to be aware of their independent obligation to the city when considering whether to adopt a committee's recommendation. It is only the council's final decision, and not the committee's recommendation, that can bind the city. For example, committees may not enter into contracts or employ workers even if a specific motion of the council delegates such power to them.

## D. Delegation of council power

A.G. Op. 624a-3 (Nov. 2, 1998).

*Muehring v. School Dist. No. 31*, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947); *Jewell Belting Co. v. Village of Bertha*, 91 Minn. 9, 97 N.W. 424 (Minn. 1903); *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Absent specific statutory or charter authority, a city council may not delegate its legislative or quasi-judicial power. In addition, a council may not delegate any administrative power of a discretionary nature. Merely ministerial functions, however, may be delegated to an officer or committee.

### 1. Discretionary and ministerial powers

The courts have not been explicit in describing the meaning of discretionary administrative power. They have, however, provided several rules that offer some basis for distinguishing which powers the council can delegate.

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

Discretionary powers or functions are those that involve the exercise of judgment. Ministerial functions are absolute, fixed, and certain so that no judgment is necessary in fulfilling them.

For example, the approval of a budget is a discretionary function while the signing of legal papers is a ministerial function. There are many tasks, however, for which the difference is largely one of degree. The courts, in these cases, generally differentiate by using a test of reasonableness.

### 2. Administrative standards

Courts generally permit the delegation of administrative power when the council establishes a fixed standard or rule to guide the subordinate. The courts usually permit delegation when the subordinate has reasonable discretion in administering an established standard or rule. Administration of land-use ordinances, building codes, and many other ordinances are examples.

### 3. Making vs. executing the law

Finally, the courts sometimes recognize a distinction between the power to make the law and the authority to execute it. A council cannot delegate the power to make a law, but the council can delegate the authority to execute it.

## E. Salaries of mayor and councilmembers

Minn. Stat. § 415.11; See "Changing City Council Salaries," *Minnesota Cities*, Sept. 2002.

The city council in Second Class, Third Class, and Fourth Class cities establishes, by ordinance, the salaries of the mayor and councilmembers in an amount that the council deems "reasonable." Generally, no change in salary shall take effect until after the next succeeding regular city election.

Minn. Stat. § 415.11,  
subd. 3.

A city council, however, may adopt an ordinance to take effect before the next city election that reduces the salaries of the mayor and councilmembers. The ordinance shall be in effect for 12 months, unless another period of time is specified in the ordinance, after which the reduced salary reverts to the salary in effect immediately before the ordinance was adopted.

Salaries may be an annual or monthly sum, or a per-meeting rate. The ordinance should specify whether the per-meeting rate applies only to regular meetings or to both regular and special meetings.

Minn. Stat. § 43A.17,  
subd. 10.

Cities are prohibited from including provisions for vacation or sick leave in the compensation plan for councilmembers. Cities are also prohibited from reducing the salaries of councilmembers because of absences from official duties because of vacation or sickness.

Minn. Stat. § 415.10.

Iron Range cities have special legislative authority to make per-diem payments to councilmembers up to \$25 per day, not to exceed \$250 per year, for absences from the city while on official city business.

See IRS Publication  
1542—*Per Diem Rates*  
(*For Travel Within the*  
*Continental United*  
*States*); IRS Publication  
463—*Travel,*  
*Entertainment, Gift and*  
*Car Expenses*; IRS  
Publication 15—  
*Circular E, Employer's*  
*Tax Guide.*

Some non-Iron Range cities have sought to pay their councils using per-diem rates. Cities should be careful in this area. A per diem is an expense allowance or an advanced reimbursement for business travel away from home. The IRS has strict guidelines for per-diem pay, including dollar limits above which the per diem must be treated as wages for tax purposes. Cities wishing to establish per-diem rates for councilmembers should consult with their financial advisors or the IRS for further guidance.

Minn. Stat. § 211B.10, subd. 2.

An employer must allow a councilmember to take time off from regular employment to attend council meetings. The time off may be without pay, with pay or made up with other hours as agreed to between the employee and the employer. When the councilmember takes time off without pay, the employer must make an effort to allow the employee to make up the time with other hours when the employee is available. No retaliatory action may be taken by the employer for absences to attend meetings necessitated by reason of the employee's public office.

### III. Mayor

Minn. Stat. § 412.191, subds.  
2, 1.

As the head of the city, the mayor officially speaks for both the council and the community as a whole. In all statutory cities and in most charter cities, the mayor is the presiding officer and a regular member of the council. The mayor has all the powers and duties for the office of councilmember in addition to those of mayor.

In a home rule charter city, the charter spells out the duties and responsibilities of the mayor. This chapter, however, deals with mayors of statutory cities.

Many mayors belong to the Minnesota Mayors' Association (MMA), which is affiliated with the League and holds an annual conference on issues of interest to mayors. Contact the League for more information about the MMA.

## A. Official head of the city

As the official head of the city, the mayor has three important responsibilities:

First, the mayor usually serves as the city's representative before the Minnesota Legislature, federal agencies, and other local governments.

Second, the mayor performs ceremonial duties on behalf of the community. The mayor usually greets important visitors, gives formal and informal talks, and takes part in public events. Because local civic groups frequently ask the mayor to speak, the mayor must be prepared to explain and defend city problems and programs.

A third responsibility is to exert leadership in city affairs. Because the mayors of statutory cities lack significant individual authority, this responsibility frequently calls for tact rather than overt acts of direction or supervisory control.

## B. Executing official documents

Minn. Stat. § 412.191, subd. 4;  
Minn. Stat. § 412.201;  
A.G. Op. 61-J (June 2, 1966).

The mayor of a statutory city must sign ordinances, contracts authorized by the council, and written orders for payment of claims that have been audited and allowed by the council. These are ministerial duties, and the mayor may not refuse to sign if the purpose, approval, and form are legally correct and complete.

## C. Power to make some appointments

The power to appoint usually resides in the council. The mayor has authority to make the following appointments, however, subject to council approval:

Minn. Stat. § 412.501. (The council appoints the members of an advisory park board or commission created under Minn. Stat. § 412.111.)

Minn. Stat. § 134.09, subd. 1;  
Minn. Stat. § 134.195, subd. 2  
(joint school and public library).

Minn. Stat. § 12.25, subd. 1.

Minn. Stat. § 412.221, subd. 16.

Minn. Stat. § 44.04, subd. 1;  
See Minn. Stat. § 419.02, subd. 1 (authorizing the creation of a joint police and fire commission with members appointed by the council).

Minn. Stat. § 469.003, subd. 6.

Minn. Stat. § 469.095,  
subd. 2.

- Park board members.
- Public library board members.
- Emergency management director.
- Hospital board members.
- Some members of the police civil-service commission.
- HRA members.
- EDA members.



The mayor has authority to make the following appointments without needing council approval:

Minn. Stat. § 450.20.

- City art commission members (First Class cities).

Minn. Stat. § 412.02, subd. 2a.

- The mayor also appoints to fill vacancies in elective offices if the council's vote to fill the vacancy is tied.

## D. Presiding officer at council meetings

Minn. Stat. § 412.191, subd. 1.

Plan A and Plan B statutory city councils are usually composed of five members consisting of the mayor and four councilmembers. In a Standard Plan city, the council consists of the mayor, the clerk, and three councilmembers. Any statutory city, however, may adopt a council size of seven following a council ordinance and voter approval at the next general city election.

Minn. Stat. § 412.02, subd. 6.

Minn. Stat. § 412.191, subd. 2.

The mayor serves as presiding officer at council meetings. The mayor generally recognizes speakers for debate and motions, and rules on questions of council procedure. The power to rule on council procedure is especially significant because once rulings are made they are binding on the council, unless the council votes to challenge them.

Minn. Stat. § 412.191, subd. 2;  
See "Mayor's Power to Vote and Make Motions,"  
*Minnesota Cities*, Jan. 2004.

A statutory city mayor can vote on all motions put before the council, but does not have the right to veto council actions. The right of the mayor to make and second motions is implied from the mayor's privilege of voting and taking part in regular council deliberations. The mayor has an obligation to be impartial and objective in conducting the meeting. To maintain this objectivity, many mayors choose to minimize making or seconding motions, and to allow other members of the council to speak before expressing an opinion. Mayors may also call special meetings.

## E. Weed inspector

Minn. Stat. § 18.80, subds. 2, 3.

The mayor is the city weed inspector. The city may appoint one or more assistant weed inspectors. An assistant weed inspector has the same power, authority, and responsibility of the mayor in the capacity of weed inspector.

Minn. Stat. § 18.81, subd. 2.

Local weed inspectors examine all lands, including highways, roads, and alleys, to determine if the landowner has complied with the rules regarding the eradication of noxious weeds. Weed inspectors also issue permits for the transportation of materials infested with noxious, weed-propagating parts. A claim for the expenses of performing the weed inspector's duties is a legal charge against the city.

## F. Election duties

Minn. Stat. § 204C.07, subds. 3, 4.

Mayors of all cities have election duties. At elections where cities will vote on a question, the mayor, upon receiving a written petition signed by at least 25 eligible voters, must appoint one voter for each precinct to act as a challenger of voters in the polling place. A challenger must be present in the polling place during voting hours, and must remain until the votes are counted and the results declared. Challengers cannot attempt to influence voting in any manner.

Minn. Stat. § 204C.31, subd. 1.

Mayors or chairs of the town board from the most populous municipality in each county serve as members of the county-canvassing board. Any member of the canvassing board may appoint a designee to appear at a meeting of the board.

## G. Investigating fires

Minn. Stat. § 299F.04.

In cities without fire departments, the mayor must investigate or have investigated the cause, origin, and circumstances of any fire where damages exceed \$100. The investigation must begin within two days of the fire. The mayor must report the fire to the state fire marshal. Within one week of the fire, the mayor must furnish a written statement to the state fire marshal.

## H. Declaring local emergencies

Minn. Stat. § 12.29, subd. 1.

Only the mayor can declare a local emergency. A local emergency cannot last for more than three days except with the council's consent. A local emergency must receive prompt and general publicity. The clerk must promptly file any order or proclamation declaring, continuing, or terminating the emergency.

Minn. Stat. § 12.29, subds. 2, 3.

A declaration of a local emergency invokes the response and recovery aspects of any local or interjurisdictional disaster plans and may authorize aid and assistance. No interjurisdictional agency or official may declare a local emergency unless expressly authorized by an agreement. An interjurisdictional disaster agency must provide aid and services in accordance with the agreement.

## IV. Clerk and treasurer

See LMC Information Memo, *City Administration: Clerk, Administrator, Manager*, for more information regarding the clerk position.

This section gives an overview of the positions of clerk and treasurer.

## A. Clerk

Minn. Stat. § 412.191, subd. 1; Minn. Stat. § 412.02; Minn. Stat. § 412.151.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8 for more about the Clerk's duties.

The clerk position in a Standard Plan statutory city is an elected office. The clerk serves as a member of the council, as well as fulfilling the other duties of a city clerk prescribed by statute or by the council. Vacancies in the elected clerk position are handled in the same manner as council vacancies.

The clerk position in Plan A and Plan B cities is an appointed office. The clerk does not serve on the council, but is responsible for the duties prescribed by statute and by the council.

## B. Treasurer

Minn. Stat. § 412.141; Minn. Stat. § 412.02.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8, for more about the Treasurer's duties.

The treasurer in a Standard Plan statutory city is also an elected position, but the treasurer does not serve on the council. Vacancies in the elected treasurer position are handled the same as council vacancies.

The treasurer in Plan A and Plan B cities is not an elected office. All treasurers are responsible for those duties prescribed by statute or their city councils.

## C. Combination of clerk-treasurer

Minn. Stat. § 412.02, subd. 3; Minn. Stat. § 412.541, subd. 1; Minn. Stat. § 412.591, subd. 2.

Minn. Stat. § 412.02, subd. 3; Minn. Stat. § 412.591, subd. 2.

Minn. Stat. § 412.591, subd. 3 (In 2005 and after, the threshold amount for requiring an audit is a base of \$150,000, which is adjusted for inflation using the annual implicit price deflator for state and local expenditures as published by the United States Department of Commerce.); Minn. Stat. § 471.697. See *E-Update*, Office of the State Auditor (Feb. 12, 2010).

In statutory cities operating under either the Standard Plan or Plan A, the council may, by ordinance, combine the offices of clerk and treasurer into the office of clerk-treasurer. In Standard Plan cities, the council must adopt the ordinance at least 60 days before the next regular city election. The ordinance does not go into effect until the expiration of the term of the incumbent treasurer, or when an earlier vacancy occurs.

In a Plan A city, the clerk-treasurer is an appointed official and the ordinance generally goes into effect immediately. A Plan A city can abolish the position of treasurer even if an appointed person holds the position. Under either the Standard Plan or Plan A, the council may reestablish separate offices of clerk and treasurer by ordinance.

If the offices of clerk and treasurer have been combined in a Standard Plan or a Plan A city, the council must provide for an audit of the city's financial affairs by the state auditor or a certified public accountant in accordance with minimum procedures prescribed by the state auditor. According to the calculations of the Office of the State Auditor, a city with a population of 2,500 or less and a combined clerk and treasurer must have an annual audit for 2009 if its annual revenue is greater than \$185,000 and must have an audit once every five years if its annual revenue is \$185,000 or less. A city with a population over 2,500 must have an annual audit performed.

## V. Citizen boards and commissions

One way to increase positive feelings about government is to promote citizen involvement. Citywide or neighborhood committees, special project review committees, and even block organizations are some of the committees cropping up in many cities. In many cases, the council has formed or encouraged these citizen committees. The committees have saved time and have made contributions that could only occur through citizen participation.

Councilmembers have found that ignoring citizen concerns can result in their removal from office at the next election, or in the defeat of a program or activity as a result of citizen opposition.

Although city officials cannot, in most cases, delegate decision-making authority to citizen groups, they can use citizens in advisory roles. This technique only works, however, if the council listens to the advice. If the council does not follow the advice of the committee, it should give understandable reasons for taking other action.

When a council forms a citizen-advisory body, it should also establish the ground rules for its activities. The council should also stress that in the absence of clear statutory authority to delegate responsibility, the council must, by law, make the final decisions. State law allows, and in some cases requires, city councils to delegate decision-making power to certain independent boards and commissions.

### A. Independent citizen boards and commissions

A.G. Op. 624a-3 (Nov. 2, 1998); A.G. Op. 1007 (July 8, 1977); A.G. Op. 1001-a (Sept. 15, 1950); A.G. Op. 1001-a (Aug. 27, 1957).

See *Muehring v. School Dist. No. 31*, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947); *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Minn. Stat. § 412.621.

The amount of discretionary power the council can give to independent citizen boards and commissions varies. Absent specific statutory or charter authority, local governing bodies may not delegate their discretionary powers and duties to other persons or bodies, including independent citizen boards and commissions.

In Plan B cities, with the exception of civil-service boards, special boards of review, and possibly the housing and redevelopment authority, there shall be no independent administrative board or commission, except for the purpose of administering a function jointly with another city or political subdivision. The council itself shall perform the duties and exercise the powers of the board of health, and shall govern and administer the library, parks, and utilities as fully as any other municipal function. The council may, however, create boards or commissions to advise the council with respect to any municipal function or activity, or to investigate any subject of interest to the city.

The statutes specifically authorize various independent boards and commissions in other statutory cities. The following is a list of the most common.

### **1. Airport board**

Minn. Stat. § 360.038, subd. 2.

The council may establish, by ordinance or resolution, an airport board. The board shall be vested with authority for construction, enlargement, improvement, maintenance, equipment, operation, and regulation of the airport.

### **2. Civil-service board and commission**

See Handbook, Chapter 9 for more information.

Civil-service commissions can take several different forms depending on the state statute under which the council establishes them.

### **3. Hospital board**

Minn. Stat. § 412.221, subd. 16.

The council has the power to provide hospitals and, by ordinance, to establish a hospital board. Hospital boards may exercise any hospital-management powers conferred by the council. The council may abolish the board by a vote of all five members of the council. The board shall consist of five members appointed by the mayor with council approval for overlapping five-year terms. The council may remove members for cause.

### **4. Housing and redevelopment authority**

Minn. Stat. § 469.003, subds. 1, 2.

A housing and redevelopment authority (HRA) has been created in each city by the Legislature. The HRA may not transact any business or exercise any powers until the city council, by resolution, finds that the city: has substandard, slum or blighted areas that cannot be redeveloped without government assistance; or, has a shortage of decent, safe, and sanitary low-income dwellings. The council may consider such a resolution only after holding a public hearing and meeting publication requirements.

Minn. Stat. § 469.003, subds. 5, 6.

An HRA consists of up to seven members who may be officers and employees of the city. The mayor appoints members with the approval of the council for overlapping five-year terms. In many cities, councilmembers appoint themselves to serve on the HRA; so the council becomes the HRA.

### **5. Intergovernmental boards and commissions**

Minn. Stat. § 471.59; See Handbook, Chapter 17 for more information.

The council may create intergovernmental boards and commissions. A mutual agreement of the cooperating governments will set up the organizational format, powers, and duties of such boards.

## 6. Library board

Minn. Stat. § 134.09.

When a public library is established, except in First Class cities operating under a home rule charter, the mayor of the city, with council approval, shall appoint a board of five, seven, or nine members from among the residents of the city. The number of members shall be determined by resolution or ordinance. The board members shall serve staggered, three-year terms and may be removed for misconduct or neglect.

Minn. Stat. § 134.10.

Library board members serve without pay but may be reimbursed for actual and necessary traveling expenses.

Minn. Stat. § 134.11, subd. 2;  
Minn. Stat. § 134.13.

Once established, the board prescribes its rules of procedure, selects its officers, and controls the library fund. Besides appointing new members to the board, the council has approval of all purchases of land and proposals for the erection of buildings. The board must file an annual report each year with the city council and the Department of Education.

## 7. Park board

Minn. Stat. § 412.501 (Cities may also create advisory park boards and commissions under Minn. Stat. § 412.111).

The council of any city of more than 1,000 population may, by ordinance, establish a park board. The board shall consist of three, five, seven or nine members as determined by resolution or ordinance. The mayor, with council approval, appoints the board members. Members serve three-year overlapping terms and may be removed by the mayor, with the council's consent, for cause after a hearing. Board members receive no compensation, unless the council authorizes it. The board may be dissolved by a unanimous vote of the council.

Minn. Stat. § 412.501; Minn. Stat. § 412.521.

The park board shall maintain, beautify, and care for park property and perform all other acts necessary to carry out its statutory powers. The board must make quarterly reports of its activities to the council, and file an annual statement of receipts and disbursements with the city clerk.

## 8. Recreation board

Minn. Stat. § 471.15.

Recreation is usually a function that is administered by the city council, the park board or the local school board. Any city may operate and expend funds for a public-recreation program and playgrounds, and acquire, equip, and maintain land, buildings or other recreational facilities, including swimming pools.

Minn. Stat. § 471.16.

Generally, a recreation board refers to an independent commission that is established cooperatively by the city council, school board, and park board. The statutes specifically authorize the formation of an intergovernmental commission with representatives from all three bodies.

## 9. Utilities commission

Minn. Stat. § 412.321, subds. 1, 2.

Any statutory city may own and operate facilities for supplying utility service. No gas, light, power, or heat utility may operate until approval by five-eighths of the voters voting on the proposition at a regular or special election.

Minn. Stat. § 412.331; Minn. Stat. § 412.341, subd. 1.

By ordinance, a city may establish a public-utilities commission. Utility commissions must have three council-appointed members who serve overlapping three-year terms. The council may appoint no more than one of its own members to the commission. City residence is not a qualification for membership on the commission unless required by the council.

Minn. Stat. § 412.341, subd. 2;  
Minn. Stat. § 412.351; Minn. Stat. § 412.361.

The commission shall adopt rules for its proceedings, but must hold at least one regular meeting each month. The commission may exercise all of the discretionary administrative authority necessary for the management of the utilities. The council may prescribe a salary for the commissioners and decide, by ordinance, which of the following municipally owned public utilities shall be within the commission's jurisdiction:

- Water.
- Light and power, including any system for the production and distribution of steam heat.
- Gas.
- Sanitary or storm sewer, or both.
- Public buildings owned or leased by the city.
- District heating systems.

Minn. Stat. § 465.70.

Additionally, some Third Class and Fourth Class cities may own and operate a television-signal-distribution system that shall be considered a public utility.

## 10. Municipal power agencies

Minn. Stat. §§ 453.51-.62.

Any two or more cities may form a municipal power agency if each city passes a resolution authorizing an agreement. The purpose of the agency is to secure an adequate, economical, and reliable supply of energy for cities that own and operate a utility for the distribution of electric energy. All agency powers lie with its board of directors and include constructing and acquiring generating and transmission facilities, the power of eminent domain, and the authority to issue bonds and notes. Any city council may, by resolution, exercise any of these powers as if it were a municipal power agency.

## 11. Municipal gas agencies

Minn. Stat. §§ 453A.01-.12.

Any two or more cities owning or operating a utility for the local distribution of gas may form a municipal gas agency if each passes a resolution authorizing the agreement. The purpose is to secure an adequate, economical, and reliable supply of gas for utility customers. The board of directors exercises all agency powers. Any city may, by resolution, exercise any of the powers of a municipal gas agency as if it were an agency.

## 12. Special board of review

Minn. Stat. § 274.01, subd. 2.

The governing body of any city may appoint a special board of review. This special board of review serves at the direction and discretion of the city council. The council determines the number of members, the compensation and expenses to be paid, and the term of office of each member. At least one member of the special board must be an appraiser, realtor or someone familiar with property valuations in the assessment district.

## B. Advisory citizen boards and commissions

Minn. Stat. § 412.111.

Minn. Stat. § 462.354, subd. 1.

Another important link in city governing activities is the work of advisory boards and commissions. These entities are much like the independent or administrative boards and commissions. The city council may create and dissolve them by resolution, appoint people to serve on them, and exercise other powers of general supervision. The council must, however, pass an ordinance to create a planning commission.

There are several differences between independent boards and advisory boards. State statutes establish most independent boards and commissions and give them some discretionary powers. Advisory boards conduct studies and investigations on behalf of the council, and submit reports and recommendations for council consideration. An advisory-board recommendation does not take effect unless the council accepts it by passing an ordinance or resolution.

The council may organize advisory groups in any manner it deems appropriate. The council may find it wise to appoint people who represent various special-interest groups in the city.

An advisory commission may be created by the council for a special purpose, such as for conducting an investigation, and will cease to exist once the purpose of the commission has been achieved.

### 1. Planning commissions

Minn. Stat. §§ 462.351-.364;  
See LMC Information Memo,  
*Planning Commission Guide*

Cities can establish planning commissions by passing an ordinance describing their organization and powers. City officials, such as the mayor, attorney, and engineer, frequently are advisory members.



## 2. Other advisory boards and commissions

Other advisory boards and commissions commonly established by city councils include: industrial commissions, which have power to study the ways and means of attracting more commercial and industrial development to the city; safety councils, which advise the council on safety programs; and intergovernmental agencies, such as a joint-planning commission, which the city sponsors in cooperation with other units of government.

As government has become increasingly complex, cities have used fewer independent or administrative citizen boards and commissions. Instead of diffusing authority for government administration over a number of different agencies, many cities place all authority in the city council. This decision centralizes responsibility for the proper direction of local government affairs and increases voter understanding of government. Frequently, this trend leads to pressures for greater simplification and centralization in administration as well. The council-manager form of government (Plan B) is an answer to this pressure. Administrators, whose duties and functions lie somewhere between those of a manager and those of a clerk, may also help to centralize government.

*See LMC Information Memo, City Administration: Clerk, Administrator, Manager, for more information about the manager and administrator positions.*

## VI. How chapter 6 applies to home rule charter cities

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

In the section concerning elected officials, the discussion of statutory city officers does not apply to charter cities, but the portions on eligibility, removal, resignations, and vacancies generally do apply. It may be possible that a charter could specify the particular conduct that would result in removal of a councilmember for nonfeasance of office. The attorney general, however, has advised that a charter provision which provides that a council vacancy would occur if a councilmember did not attend a specified number of meetings would not be valid. A charter may provide for the recall of any elective municipal officer and for removal of the officer by the electors of the city.

If the mayor of a charter city presides at the council meeting, most of the section concerning the mayor applies to charter cities. Otherwise, only the portions dealing with weed inspection, election duties, and other duties apply.

The section concerning the statutory city council and its powers might prove interesting to charter city councilmembers since many of their powers are similar to those of statutory city councils. The laws relating to conflicts of interest and prohibiting gifts to local officials also apply to members of charter city councils, but many charter cities have more restrictive provisions concerning both issues in their charters.

*Minn. Stat. § 410.20; Minn. Const. art. VIII, § 5.*

*A.G. Op. 59a-30 (July 24, 1996); Minn. Stat. § 410.20.*

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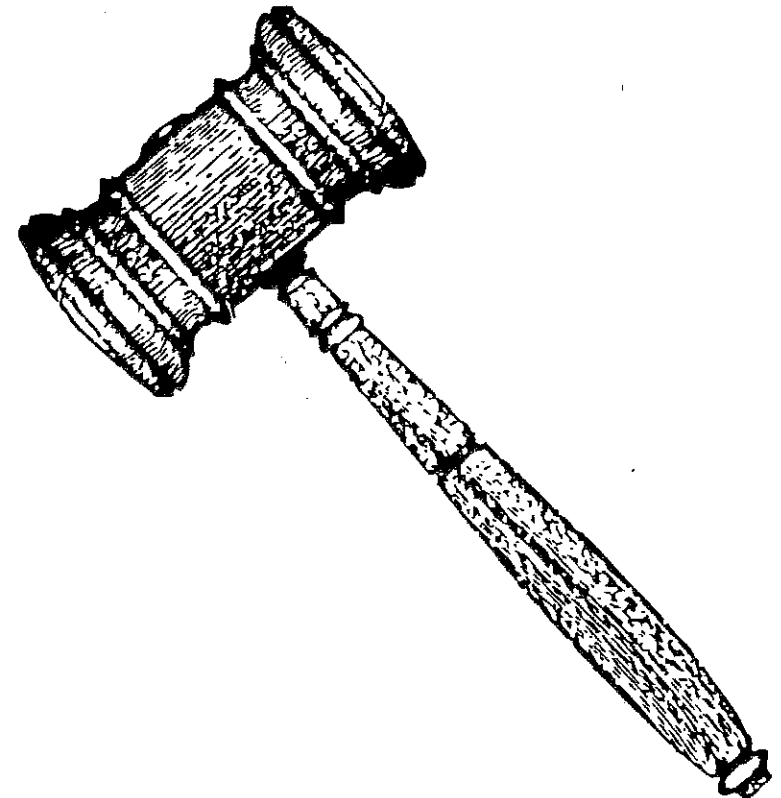
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Betty S. Green, CPP-T PRP

## LET'S APPOINT A COMMITTEE

Standing Committees are established in the bylaws; the bylaws should also grant authority to create Special Committees. It should be noted that except for the imagery involved, there is no discernible difference between a **task force** and a **committee**. (Task Force just sounds more prestigious!)

**The committee may be a body of one or more persons, assigned the responsibility to consider, or to investigate, or to take action - or to do all of these things to accomplish the goals of the committee.**

Committees do much of the work done in organizations, whether it is a Standing Committee or a Special Committee. The committee generally is composed of a chairman with the interest and ability to steer a group and members who actively participate.

### THE COMMITTEE MEETING

The position of committee chairman is important. A good committee chairman will (1) discuss with the committee members the purpose of the committee; (2) explain their responsibilities; (3) mail an agenda to members before meeting; (4) begin the meeting on time; (5) allow the committee at its initial meeting to determine its goal(s) and then establish methods and a timetable to achieve these goal(s); (6) keep the discussion germane to the purpose of the meeting; (7) adjourn on schedule after summarizing action and any tasks to be completed before the next meeting. If necessary, the chairman will mail committee meeting minutes promptly to committee members.

The operation of the committee chairman in a committee meeting is similar to procedure in a small Board meeting. Informality is a key toward getting full discussion. The chairman may participate fully, making motions, voting, leading the discussion, giving guidance to the committee as may be required. Often the chairman will be the member who makes notes on the meeting activities and publishes the report on the committee's activity and progress.

### OUTLINE OF SAMPLE COMMITTEE REPORT

Name of Committee  
Committee Objective  
Committee Goal(s)  
Committee Budget for Year or Project  
Background Information on Committee Research and Operation  
Committee Activity to Achieve Goal(s)  
Committee Recommendation(s)  
Name of Chairman or All Committee Members

## LET'S APPOINT A COMMITTEE (continued)

### THE COMMITTEE REPORT

The committee report should be written, if possible, and should be brief but clear in expression. The report is written in the third person and is seldom addressed or dated. It is signed either by the chairman or by all members of the committee who are in agreement with the report contents.

When making a committee report, the chairman should present the report on behalf of the committee (not from the chairman).

If the committee report is more than a progress report, and requires action, it should consist of two parts:

1. The **report** which consists of background information such as the charge of the committee, how it carried out its charge, the sources of information if other than committee members were involved, and the possible solutions it considered, expressing the opinion of the majority.
2. The **recommendation**, which is the committee proposal for action based on the background information, is moved for adoption by the committee chairman when giving the report.

If approval is required for a recommended action, the action to be taken may be included as part of the commentary in the committee report, but at the end of the report, again repeat the action required in the form of a motion: ***On behalf of the committee, I move that or I move to*** (state the action requiring approval).

A recommendation or motion from a committee needs no second unless it is from a committee of one.



GOVERNING & MANAGING INFORMATION

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# Meetings of City Councils

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140B

August 2008

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# Part I. Introduction

This memo discusses city council meetings. However, much of what is addressed may also apply to city boards, commissions, and other public bodies. Where the discussion is specific to statutory cities, home rule charter cities should consult their charters.

See Part III - *The open meeting law*.

The discussion on the open meeting law applies to all city councils, city boards, commissions, and other public bodies.

## Part II. Meetings and hearings

### A. Meetings

A meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority. The members of the public usually do not speak at a meeting, although some city councils will occasionally recognize a member of the audience.

#### 1. Types of meetings

There are two different types of meetings:

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

- **Regular meetings.** Regular meetings of a statutory city council are held at times established by council rules. 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.
- **Special meetings.** Special meetings are meetings held at times or places that are 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 can be addressed at a special meeting that can be addressed at a regular meeting. There are different types of special meetings, such as emergency meetings and continued meetings, which are discussed in more detail in a later section of this memo.

See Part IV - A - *Who may call a meeting?*

See Part III-E-3-*Emergency meetings*; Part III-E-4-*Recessed or continued meetings*.

#### 2. 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 an ordinance 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.

*Minn. Stat. §§ 412.02, subd. 2;  
645.44, subd. 5.*

The term of office for new statutory city council members begins on the first Monday in January. The first meeting is usually held on or shortly after this date. In the meantime, all previously chosen and qualified council members shall serve until their successors qualify. The first day of a new term in a home rule charter city is generally set by the charter.

The following must be done at the first meeting of the year:

*Minn. Stat. § 412.121.*

*Minn. Stat. § 412.831.*

*Minn. Stat. §§ 427.01-.02;  
118A.02, subd. 1; 427.09.*

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

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

- Review council's 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 in their charters.

## **B. 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 on the issue get the opportunity. 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.

*See Part III - E - Notice  
requirements.*

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 hearings, those that are discretionary and those that are required by a specific statute, ordinance or charter provision.

### **1. Discretionary hearings**

Many city councils will hold public hearings even when 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.

## 2. Required hearings

When a specific statute, ordinance or charter provision requires that the council 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 is needed for a simple special meeting. For example, hearings required for zoning-ordinance amendments and special assessments have special notice requirements.

*See Minn. Stat. §§ 462.357, subd. 3; 429.031, subd. 1(a); 429.061, subd. 1.*

Following are several of the more common matters that require public hearings:

*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. § 462.3593, subd. 2.*

*Minn. Stat. § 410.12, subd. 7.*

- 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.
- Adoption of a housing redevelopment authority (HRA) resolution.
- Adoption of an economic development authority (EDA) enabling resolution.
- Sale of port authority land.
- Sale of EDA land.
- Increase of levy for an EDA.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- 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.

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



## Part III. The open meeting law

*Minn. Stat. § 13D.01.*

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

*Rupp v. Mayasich*, 533 N.W.2d 893 (Minn. Ct. App. 1995).

- To prohibit 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.
- To ensure the public's right to be informed.
- To afford the public an opportunity to present its views to the public body.

See Part III - E - *Notice requirements*; and Part V - B - *Required contents*.

The open meeting law also contains some specific notice and record-keeping requirements, which are discussed in detail in later sections of this document.

### A. Groups to which the law applies

*Minn. Stat. § 13D.01, subd. 1.*

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, advisory boards, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

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

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.

### B. What is a meeting?

There is no statutory definition of the term "meeting" for the purpose of the open meeting law. Minnesota courts have generally ruled that a meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority.

See Part III - I - *Common problems in applying the law*.

Because the term "meeting" has not been clearly defined, the issue of whether or not a meeting has been held must be decided on a case-by-case basis. Some examples of cases are discussed in further detail in a later section of this memo.

## C. Gatherings to which the law applies

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

The open meeting law applies to any gathering of a quorum or more of public officials where the members discuss, decide or receive information as a group on issues relating to the official business of the public body.

*Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).*

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

Thus, the open meeting law would apply to any of the following types of gatherings:

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

*A.G. Op. 63-A-5 (June 13, 1957); Minn. Stat. § 13D.01, subd. 1.*

See Part III - I - Common problems in applying the law.

## D. Exceptions and the procedures to use them

*Minn. Stat. § 13D.01, subd. 3.*

There are some exceptions to the open meeting law. Under certain circumstances, some meetings may be closed. There are also some meetings that must be closed. Before a meeting can be closed under any of the exceptions, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. All closed meetings, except those closed 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.

*Minn. Stat. § 13D.05, subd. 1(d).*

### 1. Meetings that may be closed

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

- **Meetings to consider strategies for labor negotiations under PELRA.**  
Although a meeting to consider strategies for labor negotiations may be closed, the actual negotiations must be done at an open meeting if a quorum of the council is present.

*Minn. Stat. §§ 13D.03; 13D.01,  
subd. 3.*

**Procedure.** The following must be done to use this exception:

- i. Before closing the meeting, the council must decide to close the meeting by a majority vote at a public meeting.
- ii. 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.
- iii. A written roll of all people present at the closed meeting must be available to the public after the closed meeting.
- iv. The meeting must be tape-recorded.
- v. The recording must be kept for two years after the contract is signed.
- vi. 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 it 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.

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

*Minn. Stat. §§ 13D.05, subds. 3(a).  
; 13D.01, subd. 3.*

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

*Minn. Stat. § 13D.05, subd. 3(b).*

*Prior Lake American v. Mader,  
642 N.W.2d 729 (Minn. 2002).*

*Northwest Publications, Inc. v.  
City of St. Paul, 435 N.W.2d 64  
(Minn. Ct. App. 1989).*

- **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 underlying action that may give rise to future litigation.

**Procedure.** The following must be done to use 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.

*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  
statement that a meeting was being  
closed under the attorney-client  
privilege to discuss "pending  
litigation" did not satisfy the  
requirement to "describe the  
subject to be discussed" at the  
closed meeting).*

*Minn. Stat. § 13D.05, subd. 3(c).*

- **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.

*Minn. Stat. § 13D.05, subd. 3(c).*

**Procedure.** The following must be done to use this exception:

- i. Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
- ii. 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.
- iii. A list of council members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
- iv. The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.

*Minn. Stat. § 13D.05, subd. 3(d).*

- **Security Briefings.** 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.

*Minn. Stat. § 13D.05, subd. 3(d).*

**Procedure.** The following must be done to use this exception:

- i. Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. When describing the subject to be discussed, the public body must refer to the facilities, systems, procedures, services or infrastructure to be considered during the closed meeting.
- ii. 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 law requires to be closed. The following meetings must be closed:

*Minn. Stat. §§ 13D.05, subd. 2(b);  
13.43, subd. 2(4).*

- ***Meetings for preliminary consideration of allegations or charges against an individual subject to the public body's authority.*** While the law permits the council to announce that it is closing a meeting to consider charges against an individual, it is still the best practice not to refer to that individual by name. The council should state only that it is closing the meeting to give preliminary consideration to allegations against someone subject to its authority. However, if someone requests the name of the employee who is the subject of the closed meeting, the name will probably have to be furnished since the existence and status of any complaints against an employee are public data.

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

***Procedure.*** The following must be done to use this exception:

- i. 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.
- ii. 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 an informed decision.
- iii. The meeting must be electronically recorded and the recording must be preserved for at least three years after the meeting.
- iv. If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.

(Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see next discussion under ii.)

*Minn. Stat. § 13D.05, subd. 2(a).*

• **Portions of meetings at which any of the following data is discussed:**

i. Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.

ii. Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.

*Minn. Stat. §§ 144.291-144.298.*

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

iv. An individual's medical records governed by sections §§ 144.291 to 144.298.

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

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

## **E. Notice requirements**

*Minn. Stat. § 13D.04.*

Public notice must be given of all meetings of a public body. The notice requirements differ depending on the type of meeting.

*Minn. Stat. § 13D.04, subd. 7.*

However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied, regardless of the method of receipt.

*Minn. Stat. § 412.191, subd. 2.*

It should also be noted that statutory cities have some additional requirements for mailing notice to their council members regarding special meetings. There may also be additional notice requirements for home rule charter cities to consider. These cities should consult their charters for more information.

### **1. Regular meetings**

*Minn. Stat. § 13D.04, subd. 1.*

A schedule of the regular meetings must be kept on file in the city office. If the city decides to hold a meeting at a different time or place, it must give the notice required for a special meeting.

*Minn. Stat. §§ 13D.04; 412.191,  
subd. 2.*

Cities must keep a schedule of the regular meetings of the council on file at the primary office of the council. This requirement can be complied with by posting the regular meeting schedule in a convenient public location.

### **2. Special meetings**

*Minn. Stat. § 13D.04, subd. 2.*

A special meeting is a meeting that is held at a time or location different from that of a regular meeting.

*Minn. Stat. § 13D.04, subd. 2;*  
*Rupp v. Mayasich*, 533 N.W.2d  
893 (Minn. Ct. App. 1995).

A city must post written notice of a special meeting on its principal bulletin board or on the door of its meeting room if it does not have a bulletin board. If notice is posted on a bulletin board, the bulletin board must be located in a place that is reasonably accessible to the public. The notice must give the date, time, place, and purpose of the meeting. It must also be mailed to each individual who has filed a written request for notice of special meetings. As an alternative to posting the notice, the city can publish notice in the official newspaper at least three days before the meeting.

*Minn. Stat. § 412.191, subd. 2.*

In statutory cities, the clerk must mail notice of special meetings to all council members at least one day before the meeting.

*Minn. Stat. §§ 645.15; 331A.08.*

In calculating the number of days for providing notice, do not count the first day that the notice is given, but do count the last day. 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 (unless, of course, it happens to be a Saturday, Sunday or legal holiday).

### **3. Emergency meetings**

*Minn. Stat. § 13D.04, subd. 3;*  
*IPAD 06-027* (advising that the city council of Breezy Point had improperly held an emergency meeting to consider complaints against the city's building inspector); *Slippy v. Rach*, No. C5-06-3574 (9th Jud. Dist. June 8, 2007) (after the advisory opinion from the Dept. of Admin. was issued, the trial court held that the city council's decision to hold the emergency meeting complied with the open meeting law).

An "emergency meeting" is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body. Posted or published notice of an emergency meeting is not required. However, the city must make a good faith effort to notify each news outlet that has filed a written request for notice. Notice must be given by telephone or any other method to notify members of the public body. The notice must include the subject of the meeting.

### **4. Recessed or continued meetings**

*Minn. Stat. § 13D.04, subd. 4.*

No additional notice is needed for a recessed or continued meeting if all of the following criteria are met:

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



## **5. Closed meetings**

*Minn. Stat. § 13D.04, subd. 5.*

*See Part III - D- Exceptions and the procedures to use them.*

The same notice requirements apply to closed meetings as to open meetings. Additionally, advance notice to an individual who will be the subject of such a meeting is needed under certain circumstances (such as to employees who are the subject of performance evaluations or disciplinary proceedings).

## **F. Written materials**

*Minn. Stat. § 13D.01, subd. 6.*

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

## **G. Interactive television meetings**

*Minn. Stat. § 13D.02.*

Meetings may be conducted using interactive television under certain circumstances. When a council meeting is conducted through interactive television, each council member participating in the meeting, wherever he or she is located, is considered present at the meeting for purposes of determining quorum and participation. A meeting may be conducted through interactive television if the following conditions are met:

- All members of the council participating in the meeting, wherever their physical location, can hear and see one another and also hear and see all discussion and testimony presented at any location at which at least one council member is present.
- Members of the public present at the council's regular meeting location can hear and see all discussion, testimony, and council votes.
- At least one member of the council is physically present at the regular meeting location.
- Each location at which a council member is present is open and accessible to the public.
- In addition to the notice required for the meeting, if it was not held through interactive television, the city must also post notice at the regular meeting site and at each of the sites from which a council member will be participating in the meeting.
- If interactive television is used to conduct a meeting, the council must allow a person, to the extent practical, to monitor the meeting electronically from a remote location. The council may require the person to pay for the documented marginal costs that the city incurs as a result of the additional connection.

## H. Telephone or electronic meetings

*Minn. Stat. § 13D.021, subd. 1.*

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

*See Minn. Stat. ch. 12.*

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

*Minn. Stat. § 13D.021, subd. 2.*

Each member of the 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.

*Minn. Stat. § 13D.021, subd. 3.*

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

*Minn. Stat. § 13D.021, subd. 4;  
Minn. Stat. § 13D.04.*

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 is the same as other regular, special or emergency meetings held under the open meeting law.

## I. Common problems in applying the law

There are many situations for which the open meeting law is unclear. This section provides an overview of some of the more common situations and how the law may be applied.

## 1. Data practices

*Minn. Stat. § 13D.05, subds. 1(a), 2(a).*

Generally, meetings may not be closed to discuss data that is not public. However, the public body must close any part of a meeting at which certain types of not-public data are discussed (such as active law enforcement investigative data, police internal affairs data, medical records data, and certain victim, health, medical or welfare data).

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

If not-public data is discussed at an open meeting when the meeting is required to be closed, it is a violation of the open meeting law. Discussions of some types of not-public data may also be a violation of the Minnesota Government Data Practices Act (MGDPA). However, not-public data may generally be discussed at an open meeting without liability or penalty if both of the following criteria are met:

*Minn. Stat. § 13D.05, subd. 1(b).*

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

*Minn. Stat. § 13D.05, subd. 1(c).*

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

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

*See Part III - I - Serial gatherings.*

The Minnesota Supreme Court has held that a school board must interview prospective employees for administrative positions in open sessions. The court said that the absence of a statutory exception indicated that the Legislature had decided that such sessions should not be closed. The reasoning would seem to apply to city council interviews of prospective officers and employees as well, if a quorum is present.

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

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 council members 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.

*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).

In 1997, the Minnesota Court of Appeals reversed the district court's decision and remanded the case back to it 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 agreed.

The implication of this decision appears to be that if serial meetings 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

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

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

### 4. Committees and liaisons

*A.G. Op. 10-b* (July 3, 1975).

The attorney general has advised that citizen advisory panels that are appointed by a governing body are also subject to the open meeting law.

Many city councils create committees to make recommendations to the council. Commonly, such committees will be responsible for researching a particular area and submitting a recommendation to the council for its approval. Such committees are usually advisory, and the council is still responsible for making the final decision.

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

*Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. Ct. App. 1993); *IPAD 07-025*

City councils routinely appoint individual council members to act as liaisons between the council and particular committees. These types of meetings may also be subject to the open meeting law if the committee contains a quorum or more of the council or has decision-making authority. In addition, notice for a special council meeting may be needed if a quorum of the council will be present at the meeting and participating in the discussion.

*Thuma v. Kroschel*, 506 N.W.2d 14 (Minn. Ct. App. 1993); *A.G. Op. 63a-5* (Aug. 28, 1996).

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 council members' attendance at the meeting, but because the council members conducted public business in conjunction with that meeting. Based on that decision, the attorney general has advised that mere attendance by additional council members at a meeting of a council committee held in compliance with the open meeting law would not constitute a special council meeting requiring separate notice. The attorney general warned, however, that the additional council members should not participate in committee discussions or deliberations absent a separate notice of a special city council meeting.

## 5. Chance or social gatherings

*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).

Chance or social gatherings of a quorum are not considered meetings under the open meeting law and are therefore exempt from it. However, a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a social gathering.

*Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757 (Minn. 1982).

In 1982, the Minnesota Supreme Court held that a conversation between two council members 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 gatherings

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

Also see Part III - I - *Interviews and Technology trouble*.

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

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. In short, this type of situation is a circumvention of the statute. As such, council members should avoid this type of practice.

A 1997 Minnesota Court of Appeals' decision also indicates that serial meetings could violate the open meeting law. In this decision, the court looked at a situation where the members of a city council conducted individual interviews of candidates for a city position in separate rooms. 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 council members had used this interview process for the purpose of avoiding the requirements of the open meeting law.

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

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 a 1998 unpublished decision, agreed. A city that wants to hold private interviews with applicants for city employment should first consult with its city attorney.

## 7. Training sessions

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

The attorney general has advised that a city council's participation in a non-public training program devoted to developing skills is not covered by the open meeting law. However, the opinion also stated that if there were to be any discussions of city business by the attending members, either outside or during the training session, it could be seen as a violation of the open meeting law.

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

See Part III - I - *Serial gatherings*.

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

See Electronic Communications Between Council Members, LMCIT Information Memo.

## 8. Technology trouble

The open meeting law does not address situations that may occur as a result of communication through telephone calls, letters, e-mail or similar technology. The Minnesota Supreme Court found that the open meeting law did not apply to letters or to telephone conversations between less than a quorum. While it is possible that a similar decision might be reached concerning the use of e-mail and other forms of technology, it should be stressed that if a quorum of members are involved in the communication, it would likely be considered to be a violation of the open meeting law.

In addition, serial discussions between less than a quorum of the council that are used to deliberate matters that should be dealt with at an open meeting would likely violate the open meeting law. Therefore, city councils and other groups to which the open meeting law applies should not use letters, telephone conversations, e-mail, and other such technology if the following circumstances exist:

- A quorum of the council is involved.
- Information relating to official city business is being discussed.

## J. Intentional violations of the open meeting law

*Minn. Stat. § 13D.06, subds. 1,4.*

A public officer who intentionally violates the open meeting law can be fined up to \$300. This fine may not be paid by the public body. In addition, a court may also award reasonable costs, disbursements, and attorney fees up to \$13,000 to the person who brought the violation to court.

*Minn. Stat. 13D.06, subd. 4.*

If a plaintiff prevails in a lawsuit under the open meeting law, a court shall award reasonable attorney fees 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. A court is also required to give deference to the advisory opinion in a lawsuit brought to determine whether the open meeting law was violated.

*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).

If a public official is found to have intentionally violated this chapter in three or more separate actions, the public official must be removed from office and may not serve in any other capacity with that public body for a period of time equal to the term of office the person was serving. However, removal is only required if the conduct constitutes malfeasance or nonfeasance.

*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).

*Minn. Stat. § 13D.06, subd. 4(c).*

The statute 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. In an unpublished decision, the court stated that “even a violation of the open meeting law will not invalidate actions taken at that meeting.”

A public body may pay any costs, disbursements or attorney fees incurred by or awarded against any of its members for an action under the open meeting law.

## **Part IV. Scheduling meetings**

### **A. Who may call a council meeting?**

*Minn. Stat. § 412.191, subd. 2.*

A special meeting may be called by the mayor of a statutory city. Additionally, a special meeting may be called by any two members of a five-member council or three members of a seven-member council. The special-meeting request should be in writing and be filed with the clerk.

Home rule charter city councils may have additional limitations and powers regarding special meetings in their charters.

### **B. When meetings may not be scheduled**

City council meetings may not be held at any of the following times:

*Minn. Stat. § 202A.19, subd. 1.*

*Minn. Stat. § 204C.03, subd. 1.*

- 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.

*Minn. Stat. § 645.44, subd. 5.*

- On any legal holiday. (Note: Legal holidays include: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. However, political subdivisions have the option of determining whether Columbus Day and the Friday after Thanksgiving are holidays. If it is determined that Columbus Day and the day after Thanksgiving are not holidays, a meeting may be scheduled on these days.)

Home rule charter cities may have additional prohibitions in their charters as to when meetings may be scheduled.

## Part V. Minutes

*Minn. Stat. § 15.17.*

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

### A. Responsibility for taking minutes

*Minn. Stat. § 412.151, subd. 1.*

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

A statutory city clerk must keep a minute book. Generally, he or she 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.

### B. Required contents

The following items must be included in the minutes:

*Minn. Stat. §§ 13D.01, subd. 4; 331A.01, subd. 6; 15.17, subd. 1.*

*Minn. Stat. §§ 412.151, subd. 1; 412.191, subd. 3; 331A.01, subd. 6.*

*Minn. Stat. §§ 331A.01, subd. 6; 412.151, subd. 1; 412.191, subd. 3.*

*Minn. Stat. §§ 331A.01, subd. 6; 412.151, subd. 1.*

*Minn. Stat. §§ 331A.01, subd. 6; 412.191, subd. 3.*

*Minn. Stat. §§ 13D.01, subd. 4; 331A.01, subd. 6; 412.151, subd. 1; 412.191, subd. 3.*

- 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 each member, including the mayor.

Home rule charter cities may have additional requirements in their charters.



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

*Swanson v. City of Bloomington*,  
421 N.W.2d 307 (Minn. 1988).

*Dietz v. Dodge County*, 487  
N.W.2d 237 (Minn. 1992).

Although not generally required by statute, several court decisions suggest that including certain information in the minutes can help to defend a city's action should a lawsuit occur. The following types of data are examples of information that should be included in the minutes:

- **Findings of fact.** Case law requires them for land-use decisions and some personnel decisions.
- **The council's conclusions.** Case law requires them for land-use decisions and some personnel decisions.
- **The specific reasons behind the council's conclusions.** Examples would include such things as the economical, social, political or safety factors that were considered when the council made a particular decision.
- **Signature of clerk and mayor.** Because minutes would likely be considered official papers of the city, they should be signed by the clerk. And although the law does not require it, in many cities the mayor also signs the minutes after they are approved by the council.

*Minn. Stat. § 412.151, subd. 1.*

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

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.
- 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.

## **D. 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.

Problems sometime arise when someone requests a copy of the minutes before they have been approved by the council. The clerk must give out such information if someone requests it, but should make it clear that the minutes will not be officially approved until the next meeting.

*Minn. Stat. § 412.191, subd. 3.*

If the city publishes or mails the minutes, the council has two options. First, it may wait to publish them until after council approval. Second, the published minutes may include a notation that they are unofficial.

## E. Publication

*Minn. Stat. §§ 412.191, subd. 3*  
*Minn. Stat. 331A.08, subd. 3.*

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:

*Minn. Stat. § 331A.01, subd. 10.*

- 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.

## Part VI. Holding meetings

### A. Parliamentary procedure

*Minn. Stat. § 412.191, subd. 2.*

A statutory city council has the power to regulate its own procedure. Home rule charter cities may have similar provisions in their charters or the charter may spell out how meetings are to be conducted.

See Part VII - *Table of motions* and  
Part VIII - *Model bylaws*.

Procedural rules are usually provided for in the rules or bylaws adopted by the council. 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.

Whatever rules the council adopts, it should follow them. 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.

## **B. Preserving order**

*Minn. Stat. § 412.191, subd. 2.*

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.

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 and duty 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 council members can do to control the action of the presiding officer. However, a majority of the council can force adjournment whenever they feel it is necessary.

*Minn. Stat. § 609.72, subd. 1(2).*

*State v. Guy, 242 N.W.2d 864 (Neb. 1976).*

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 be prevented, or punished if an ordinance violation is involved, without infringing on constitutional rights.

## **C. Participation in meetings**

### **1. Mayor**

*Minn. Stat. § 412.191, subd. 1.*

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.

*Minn. Stat. §§ 412.191, subd. 2; 412.121.*

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**

*Minn. Stat. § 412.191, subd. 1.*

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 council members. Like the mayor, the clerk in a Standard Plan city is able to make and second motions.

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**

*Minn. Stat. § 412.651, subd. 5.*

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

## **4. Council members with disqualifying interests**

See Official Conflict of Interest, LMC Information Memo, May 2004 for more information.

Sometimes, a council member may have a personal interest in a matter that the council must address, like licenses, zoning matters, special assessments or actual contracts. If it is determined that an individual council member has such an interest, the individual might be disqualified from participating in the decision.

*Minn. Stat. § 471.88.*

*Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (Minn. 1967).

Under some circumstances, state statutes require that the interested council member abstain from voting. Under other circumstances, the law is less clear. However, a Minnesota Supreme Court decision suggests that an officer with a disqualifying interest should abstain from voting even when not expressly required under the statutes.

## **5. Audience participation**

See Part II - Meetings and hearings.

Audience members are not normally able to take an active part in the council's discussion at a meeting. Only the council can make motions and vote at a council meeting. Audience members may not speak unless they have been recognized by the chair.

Many city councils have scheduled a portion of their meeting for public comment. These are often referred to as "open forums." During this part of the meeting, the chair of the council will recognize members of the audience to speak briefly on topics that concern them.

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.

### **(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. At the time that the 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.

## **6. Voting**

*Minn. Stat. § 13D.01, subd. 4.*

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 council member (including the mayor) must also be recorded on each appropriation of money, except for the payment of judgments, claims, and amounts fixed by statute.

A.G. Op. 471e (Sept. 18, 1962);  
A.G. Op. 471e (Aug. 20, 1962).

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.

## (1) Counting votes

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).

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.

### i. 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.

*Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).*

- **Achieving a quorum.** A majority of the members of a statutory city council shall constitute a quorum. Obviously, when all members are present, a quorum has been achieved.
- **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.
- **Most ordinances.** A simple majority vote of an entire statutory city council is needed to pass most ordinances, regardless of the number of council members 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.
- **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:

*Minn. Stat. § 462.357, subd. 2.*

*Minn. Stat. § 462.355, subd. 3.*

*Minn. Stat. § 462.354, subd. 1.*

*Minn. Stat. § 462.356, subd. 2.*

- 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.

*Minn. Stat. § 471.88.*

See Official Conflict of Interest,  
LMC Information Memo, May  
2004.

*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.*

- Contracts that are allowed even though one of the officers has a personal financial interest. Generally, a council member 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, the interested officer must abstain from voting, but it is probably advisable for him or her to refrain from participating in the 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.

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

## ii. Vacancies

*State v. Hoppe*, 194 Minn. 186,  
260 N.W. 215 (Minn. 1935) *A.G. Op.*  
63-b-14 (Jan. 14, 1970) **Error!**  
**Bookmark not defined.**; *A.G. Op.*  
161-A-20 (July 3, 1974).

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.

*Minn. Stat. §§ 412.191, subd. 1;*  
*64S.08(5).*

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



- **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.

*A.G. Op. 63a-11 (Oct. 20, 1966).*

- **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.

### iii. Absences

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

A council member'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.

*Minn. Stat. §§ 412.191, subd. 1; 645.08(5).*

- **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 council members 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.

*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).*

- **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 except those where 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.

*Minn. Stat. § 412.191, subd. 4.*

- **Most ordinances.** The absence of a council member 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 council member is absent, it would still take a majority of the entire council (or three votes) to pass the ordinance.
- **Situations where statutes require extraordinary votes.** The absence of a member 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.

#### iv. Abstentions

Sometimes a council member 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 council member 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.

- **Achieving a quorum.** Whether or not a council member abstains would not appear to have an effect on whether or not a quorum exists, and the meeting may be held.

*A.G. Op. 161-A-20 (June 3, 1987);  
A.G. Op. 471-M (Oct. 30, 1986).*

**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.

- **Most ordinances.** An abstention by one or more council members 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 council member 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.

*Ram Dev. Co. v. Shaw*, 309 Minn. 139, 244 N.W.2d 110 (Minn. 1976).

- **Situations where statutes require extraordinary votes.** An abstention by one or more council members 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.

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

Council members 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.

Although council members 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 council member has a personal interest in the matter.

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

*Minn. Stat. §§ 13D.02; 13D.021*

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.

##### **i. Voting by proxy**

Sometimes council members 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 council member to vote by proxy. Home rule charter cities may find permission in their charters.

##### **ii. Voting by phone**

*Minn. Stat. § 13D.021.*

Likewise, unless there is a health pandemic or an emergency, state law does not authorize a council member to phone in his or her vote or participate in the meeting by conference call, or other electronic means.

### **7. Agendas**

City clerks generally prepare agendas for council meetings. The agendas are then given to council members and other interested individuals such as department heads and citizens. The agenda establishes the order in which the matters are to be addressed during the meeting.

#### **(1) Consent agenda**

The consent agenda or consent calendar is used by many city councils to help shorten the length of the meetings by using time more efficiently. A consent agenda typically groups together many items that are routine and not controversial. 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 council member 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 that is being held and the type of meeting rules the council has adopted.

Cities should first check any rules that have been adopted by the council and any charter provisions, if the city is a home rule charter city. These local items may give more specific guidance where the statutes are vague.

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

*Minn. Stat. § 13D.04, subd. 2.  
See Part III - E - Notice  
requirements.*

*Minn. Stat. § 13D.04, subd. 3.  
See Part III - E - Notice  
requirements.*

- **Regular meetings.** The statutes are basically silent on the ability of the council 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 through a miscellaneous item on the agenda.
- **Special meetings.** A city must give notice of a special meeting to the public. This notice must include the date, time, place, and purpose of the meeting. Since the notice of the meeting should announce its purpose, council members should deal only with that specific issue.
- **Emergency meetings.** Although these types of meetings are very rare, the law seems to be clear. The law requires that notice must include the subject of the meeting. The law also states that if matters not directly related to the emergency are discussed or acted upon in an emergency meeting, the meeting minutes shall include a specific description of the matters. Surprisingly, the statute seems to give the council more leeway to take up other matters at an emergency meeting than at other types of meetings. However, discussion of topics other than the emergency should be avoided.

In conclusion, it is advisable for city councils to only deal with the specific items on the agenda for all but regular meetings. Council members may lose a great deal of credibility with the public if people believe they are trying to circumvent the law.

## **D. Attendance of council members**

It is important for all council members 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.

*Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).*

In statutory cities, a majority of all the council members 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 in their charters.

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

*Minn. Stat. § 211B.10, subd. 2.*

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. 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 council member 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**

*A.G. Op. 471-E (Jan. 21, 1942).*

The attorney general has indicated a city council could reprimand a council member 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 council member, it won't necessarily compel the council member to attend meetings.

#### **b. Compelling attendance**

*Minn. Stat. § 412.191, subd. 2.*

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.

*Minn. Stat. ch. 586.*

It might be possible to compel the attendance of a council member 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 council members or a citizen. However, city officials should consult with their city attorney before considering this approach.

#### **c. Council pay**

*Minn. Stat. § 43A.17, subd. 10.*

State law prohibits cities from diminishing a council member'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 council members are entitled to receive that pay whether or not they attend meetings.

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.

#### **d. Fines**

*Minn. Stat. § 412.191, subd. 2.*

A system of fines may be an option a statutory city council could use to punish a council member 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 council member's salary for absences that are the result of illness or vacation.

#### **e. Temporary replacement of council members**

*Minn. Stat. § 412.02, subd. 2b.*

Statutory cities have an option to temporarily replace a council member under certain circumstances. A vacancy in the office of mayor or council member 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.

*Minn. Stat. § 410.33.*

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**

*A.G. Op. 450-A-11 (March 6, 1957).*

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.

*A.G. Op. 434-A-2 (July 14, 1955);*  
Also see previous section.

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 council member must be absent in order for the office to be considered permanently vacant.

*A.G. Op. 434-A-2 (July 14, 1955).*

If the city council believes that the absent council member has abandoned the office, it can pass a resolution making this finding. The council should first give the absent council member 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**

*Minn. Stat. § 609.43.*

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 council members.

*Minn. Stat. § 351.02.*

This type of remedy may be an extreme measure. Conviction may constitute a violation of the council member'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.

# **E. Meeting room**

## **1. Smoking**

*Minn. Stat. §§ 144.414, subd 1;  
144.412.*

The Minnesota Clean Indoor Air Act prohibits smoking at a public meeting. This law protects employees and the general public from the hazards of secondhand smoke by eliminating smoking in public places, places of employment, public transportation, and at public meetings.

*Minn. Stat. § 144.416.*

A city must make reasonable efforts to prevent smoking in the public place by posting appropriate signs, by any other appropriate means, and by asking any person who smokes in an area where smoking is prohibited to refrain from smoking, and, if the person does not refrain from smoking after being asked to do so, asking the person to leave. If the person refuses to leave, the city shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.

*Minn. Stat. § 144.417, subds. 2, 3.*

People who violate this law are guilty of a petty misdemeanor. Additionally, the state commissioner of health, a local health board or any affected party may pursue a court order to enjoin repeated violations.

*Minn. Stat. § 144.417, subd. 4.*

Nothing in the Minnesota Clean Indoor Air Act prohibits a statutory or home rule charter city from adopting and enforcing more restrictive measures to protect individuals from secondhand smoke.

## **2. Accessibility**

*Minn. Stat. § 363A.12.*

*42 U.S.C. §§ 12101-12213.*

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.

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

*A.G. Op. 63a-5 (Dec. 4, 1972).*

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 member may prohibit dissemination or broadcast of the tape.

*Minn. Stat. §§ 13.03, subd. 1 ;  
13.02, subd. 7; 13D.03, subd. 2(b).  
See Part III - D - Exceptions and  
the procedures to use them.*

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. If the tape is of a closed meeting, it is generally not available to the public. Tapes of meetings that have been closed to consider labor negotiations under PELRA will become public after all labor contracts are signed for the current budget period.

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.



*Minn. Stat. § 13D.03, subd. 1(d)*  
See Part III - D - *Exceptions and*  
*the procedures to use them.*

All closed meeting, 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.

*42 U.S.C. §§ 12101-12213.*

See Part VI - E - Meeting  
room.

Many cities broadcast their council meetings over cable television. Such broadcasts may need to be closed-captioned or signed in order to be accessible for those with hearing impairments. It is unclear whether this cost should be paid by the city or the cable company. Cities should consult their cable franchise agreements for clarification.

## Part VII. Table of motions

(Note: Also see discussion under Part VI – A. Parliamentary procedure)

There are three basic types of motions: privileged motions, subsidiary motions, and main motions. Privileged motions take precedence over subsidiary motions; subsidiary motions take precedence over main motions. The following charts of motions are listed in order of precedence and are based upon *Robert's Rules of Order Newly Revised*, 10th Edition (2000):

*Chart A: Privileged motions—A privileged motion is a motion that does not relate to the business at hand. Such a motion usually deals with items that require immediate consideration.*

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
<b>Fix a time to adjourn.</b>	✓			✓	Majority	✓
<b>To adjourn.</b>	✓				Majority	
<b>Recess.</b> (A motion to take an intermission.)	✓			✓	Majority	
<b>Raise a question of privilege.</b> (A motion referring to a matter of personal concern to a member. Examples are asking to have the heat turned up, the windows opened, less noise, or requesting that the motion be stated again.)		✓			Usually, no vote is taken. The chair decides.	
<b>Call for the orders of the day.</b> (Forces the consideration of a postponed motion.)		✓			Usually, no vote is taken. The chair decides.	

**Chart B: Subsidiary motions**—A subsidiary motion is a motion that assists the group in disposing of the main motion.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Lay on the table. (To postpone discussion temporarily.)	✓				Majority	
Previous question or call for the question. (To stop debate and force an immediate vote.)	✓				2/3	✓
Postpone to a definite time.	✓		✓	✓	Majority	✓
Commit or refer. (A motion to refer to a smaller committee.)	✓		✓	✓	Majority	If group has not begun consideration of a question.
Amend.	✓		✓	✓	Majority	Y
Postpone indefinitely.	✓		✓		Majority	Affirmative vote only

**Chart C: Main motions**—A main motion is a formal proposal that is made by a member that brings a particular matter before the group for consideration or action.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Any general motion, resolution, or ordinance.	✓		✓	✓	Majority	✓
Take from the table.	✓				Majority	
Reconsider. (To reconsider a motion already passed/defeated.)	✓	✓	✓		Majority	
Appeal or challenge a ruling of the chair.	✓	✓	Depends		Majority	✓
Rescind. (A motion to strike out a previously adopted motion, resolution, bylaw, etc.)	✓		✓	✓	Varies, based on motion	Negative vote only

# Part VIII. Model bylaws

(Note: Also see discussion under Part VI - Holding Meetings)

Resolution No. \_\_\_\_\_

A RESOLUTION ESTABLISHING RULES FOR THE ORGANIZATION AND PROCEDURE OF THE CITY COUNCIL OF \_\_\_\_\_

The city council of *(name of city)* resolves as follows:

WHEREAS, the city council of *(name of city)* has power to regulate its own procedure under Minn. Stat. § 412.191, subd. 2.

NOW THEREFORE, the city council of *(name of city)* has determined that its rules of organization and procedure are as follows.

## Section 1. Meetings

**Subdivision 1. Regular meetings.** Regular meetings of the city council shall be held on the *(day)* of each calendar month at *(time)* p.m. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. The city clerk shall maintain a schedule of regular meetings. This schedule shall be available for public inspection during regular business hours at the city clerk's office. All meetings, including special emergency meetings, shall be held in the city hall.

*Comment: Specify the day and time in the blanks, e.g., "the first Tuesday" of each month at "8:00 p.m." In statutory cities, the time and frequency of council meetings is a matter of council discretion. Home rule charter cities may have other requirements in their charters.*

**Subd. 2. Special meetings.** The mayor or any two *(three, if a seven-member council)* members of the council may call a special meeting of the council upon at least 24 hours written notice to each member of the council. This notice shall be delivered personally to each member, or left at the member's usual place of residence with some responsible person. Similar written notice shall be mailed at least three days before the meeting date to those who have requested notice of such special meetings. This request must be in writing and be filed with the city clerk, designating an official address where notice may be mailed. Such request will be valid for one year.

*Comment: In cities with a five-member council, two members may call a special meeting. In cities with a seven-member council, three members may call a special meeting. The procedure specified here conforms to the requirements of the open meeting law. Although the statute permits notice to be mailed to council members, personal delivery is preferable.*

**Subd. 3. Emergency meetings.** The mayor or any two council members *(three council members if a seven-member council)* may call an emergency meeting when circumstances require the immediate consideration of a matter by the council. Notice may be in writing personally delivered to council members or may be in the form of personal telephone communication. Notice must include the date, time, place, and purpose of such a meeting. Where practical, the clerk shall make an effort to contact news gathering organizations that have filed a request to receive notice of special meetings.

*Comment: This procedure conforms to the open meeting law. The meeting must be a true emergency and must not be simply a ruse to get around the more stringent notice requirements of special meetings. Posted or published notice is not required, although it is a good idea to post such notice.*

**Subd. 4. Initial meeting.** At the first regular council meeting of January of each year, the council shall do the following:

- 1) Designate the depositories of city funds;
- 2) Designate the official newspaper;
- 3) Choose an acting mayor from the council members who shall perform the mayor's duties during the mayor's absence, disability from the city or, in case of vacancy in the office of mayor, until a successor has been appointed and qualifies;
- 4) Appoint necessary officers, employees, and members of boards, commissions, and committees.

*Comment: In some cities, an organizational meeting is held on the first Monday of January. If this is done, the council may wish to change the language of the first sentence accordingly. It is not really necessary to specify what should be done at an organizational meeting, but if it is included in the rules, it will serve as a reminder. Home rule charter cities may have additional requirements in their charters.*

**Subd. 5. Public meetings.** Except as otherwise provided in the open meeting law, all council meetings, including special, emergency, and adjourned meetings and meetings of all council committees shall be open to the public.

*Comment: The open meeting law requires open meetings with very few exceptions. Special care is needed in order not to violate this statute when dealing with employment issues.*

## **Section 2. Presiding officer**

**Subdivision 1. Who presides.** The presiding officer shall be the mayor. In the absence of the mayor, the acting mayor shall preside. In the absence of both, the clerk shall call the meeting to order and shall preside until the council members present at the meeting choose one of their number to act temporarily as presiding officer.

*Comment: This provision may need adaptation for a home rule charter city where the mayor is not a member of the council.*

**Subd. 2. Procedure.** The presiding officer shall preserve order, enforce the rules of procedure herein prescribed and determine without debate, subject to the final decision of the council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the council shall be conducted in accordance with *Robert's Rules of Order, Newly Revised, 10th Edition*.

**Subd. 3. Appeals.** Any member may appeal to the council from a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain his or her ruling, but no other council member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present.

*Comment: This is covered by Robert's Rules, but it may be desirable to cover the matter in council rules so members are aware of the possibility of appeal. A majority or tie vote sustains the decision of the chair. When the presiding officer is a member of the council, he or she can vote on the appeal.*

**Subd. 4. Rights of presiding officer.** The presiding officer may make motions, second motions, or speak on any question except that on demand of any council member the presiding officer shall pass the chair to another council member to preside temporarily.

## **Section 3. Minutes**

**Subdivision 1. Who keeps.** Minutes of each council meeting shall be kept by the clerk or in the clerk's absence, the deputy clerk. In the absence of both, the presiding officer shall appoint a secretary pro tem.

Ordinances, resolutions, and claims need not be recorded in full in the minutes if they appear in other permanent records of the clerk and can be accurately identified from the description given in the minutes.

*Comment: In a home rule charter city, the subdivision should conform to any applicable charter provisions.*

**Subd. 2. Approvals.** The minutes of each meeting shall be reduced to typewritten form, shall be signed by the clerk, and copies shall be delivered to each council member as soon as practicable after the meeting. At the next regular meeting following such delivery, approval of the minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the council. If there is an objection, the council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

**Subd. 3. Publication.** The clerk shall publish a condensed version of the official minutes within 30 days of a regular or special meeting, which includes a summary of the action on motions, resolutions, ordinances, and other official proceedings. If the city council does not meet more than once every 30 days, the publication does not need to occur until ten days after the council has approved the minutes.

#### **Section 4. Order of business.**

**Subdivision 1. Order established.** Each meeting of the council shall convene at the time and place appointed. Council business shall be conducted in the following order:

- 1) Call to order
- 2) Roll call
- 3) Approval of minutes
- 4) Public hearings
- 5) Petitions, requests, and communications
- 6) Ordinances and resolutions
- 7) Reports of officers, boards, committees
- 8) Unfinished business
- 9) New business
- 10) Miscellaneous
- 11) Adjournment

*Comment: The order of business will vary considerably from one place to another. The order set forth here is merely illustrative. In some cities, citizens may address the council at some specified time during the meeting. If this practice is to be followed, an item entitled "Comments and suggestions from citizens present" can be added.*

**Subd. 2. Varying order.** The order of business may be varied by the presiding officer, but all public hearings shall be held at the time specified in the notice of the hearing.

**Subd. 3. Agenda.** The clerk shall prepare an agenda of business for each regular council meeting and file a copy in the office of the clerk not later than (number) days before the meeting. The agenda shall be prepared in accordance with the order of business and copies shall be delivered to each council member and to (others) as far in advance of the meeting as time for preparation will permit. No item of business shall be considered unless it appears on the agenda for the meeting or is approved for addition to the agenda by a unanimous vote of the council members present.

*Comment: In smaller cities, it may not be necessary to prepare a formal agenda for each meeting. However, an agenda does inform the council members and citizens of the matters*

which will come before the council and also helps to make certain that all business that needs to be transacted will be considered. Preparation of the agenda should follow a definite schedule, so that anyone desiring to submit a matter for council consideration will know when it should be given to the clerk. Deadlines for inclusion of items should allow sufficient time for the clerk to prepare the agenda. Some have suggested that the clerk should be allowed one or two working days for this purpose. In some cities, copies of the agenda are also furnished to the city attorney, department heads, the news media, and the public.

**Subd. 4. Agenda materials.** The clerk shall see that at least one copy of printed materials relating to agenda items is available to the public in the meeting room while the council considers their subject matter. The agenda item shall not be considered unless this provision is complied with. This section does not apply to materials that are classified as other than public under the Minnesota Government Data Practices Act or materials from closed meetings.

*Comment: The open meeting law subjects a council member who intentionally violates this requirement to a civil penalty of up to \$300. This provision of the ordinance places responsibility with the city clerk to see that the materials are available when the law requires it. The provision relating to the clerk is optional, there is no such provision in the statute.*

## **Section 5. Quorum and voting.**

**Subd. 1. Quorum.** At all council meetings a majority of the elected council members shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The council may punish non-attendance by a fine not exceeding \$ (dollar amount) for each absence from any meeting unless a reasonable excuse is offered.

*Comment: This quorum requirement is fixed for statutory cities by Minn. Stat. § 412.191, subd. 1 and is usually the same in home rule charter cities. The provision that establishes a fine for non-attendance is authorized by the statutory provision empowering the council to punish non-attendance. (Minn. Stat. § 412.191, subd. 2.) Home rule charters usually give the council similar authority.*

**Subd. 2. Voting.** The votes of the members on any question may be taken in any manner, which signifies the intention of the individual members, and the votes of the members on any action taken shall be recorded in the minutes. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute. If any member is present but does not vote, the minutes, as to that member's name, shall be recorded as an abstention.

*Comment: The requirement that each vote be recorded on actions taken and on appropriations is taken verbatim from the open meeting law, Minn. Stat. § 13D.01. The last sentence dealing with vote abstentions is optional. Some rules require the member to vote unless excused by a majority (or a supermajority) of the other members.*

**Subd. 3. Votes required.** A majority vote of all members of the council shall be necessary for approval of any ordinance unless a larger number is required by statute. Except as otherwise provided by statute, a majority vote of a quorum shall prevail in all other cases.

*Comment: In statutory cities, state law requires that a majority of all council members approve an ordinance, Minn. Stat. § 412.191, subd. 4. Most home rule charters have similar requirements, which sometimes extend to resolutions as well. In home rule charter cities, the last sentence may appropriately begin, "Except as otherwise provided by statute or charter."*

## **Section 6. Ordinances, resolutions, motions, petitions, and communications.**

**Subd. 1. Readings.** Every ordinance and resolution shall be presented in writing. An ordinance or resolution need not be read in full unless a member of the council requests such a reading.

*Comment: In statutory cities, the council may pass an ordinance at the same meeting at which it is introduced, but requiring that the ordinance be first brought up at least a week before it is*

*adopted seems desirable even though a council may still be able to pass a valid ordinance without meeting the two-reading requirement. Most charters require at least two readings except in emergency ordinances.*

**Subd. 2. Signing and publication proof.** Every ordinance and resolution passed by the council shall be signed by the mayor, attested by the clerk, and filed by the clerk in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance.

**Subd. 3. Repeals and amendments.** Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

**Subd. 4. Motions, petitions, communications.** Every motion shall be stated in full before the presiding officer submits it to a vote and shall be recorded in the minutes. Every petition or other communication addressed to the council shall be in writing and shall be read in full upon presentation to the council unless the council dispenses with the reading. Each petition or other communication shall be recorded in the minutes by title and filed with the minutes in the office of the clerk.

*Comment: The statutory city code does not define ordinances, resolutions, and motions, nor indicate in most cases where the council should use them. An ordinance should be used for regulatory legislation, including any which includes provisions for a penalty of fine or imprisonment. The local improvement code requires many of the procedural steps to be made by resolution. Otherwise, councils frequently take most administrative action by motion. Proceedings simply in the form of a motion duly adopted and entered in the minutes are frequently held to be equivalent to a resolution and probably this is sufficient for most administrative acts.*

## **Section 7. Committees.**

**Subd. 1. Committees designated.** The following committees shall be appointed by the council at the first regular council meeting in January of each year:

- 1) Auditing committee
- 2) Personnel committee
- 3) Purchasing committee
- 4) Public-reporting committee

*Comment: This committee structure is illustrative only. In the absence of specific charter provisions, which are rare, the council determines the number and kind of committees. In general, the council should not set up committees on the basis of line functions, e.g., streets, since this is likely to involve them in administrative matters. In some small cities with no administrative staff this may, however, be unavoidable. It is better to have as few standing committees as possible, and set up special committees on particular subjects when necessary. Instead of setting forth the committee structure, some rules provide: "The council may create such committees, standing or special, as it deems necessary. Committees shall consist of as many members and perform such duties, as the council may require." In some cities, the council itself appoints the committees, although selection by a group is often difficult.*

**Subd. 2. Referral and reports.** Any matter brought before the council for consideration may be referred by the presiding officer to the appropriate committee or to a special committee that the presiding officer appoints for a written report and recommendation before it is considered by the council as a whole. A majority of the members of the committee shall sign the report and file it with the clerk prior to the



council meeting at which it is to be submitted. Minority reports may be submitted. Each committee shall act promptly and faithfully on any matter referred to it.

**Section 8. Suspension or amendment of rules.**

These rules may be suspended or amended only by a two-thirds vote of the members present and voting.

Passed by the city council of (*name of city*) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk



## MAYOR & COUNCIL WORKSHOP

DATE: 8/9/11  
**WORKSHOP**  
ITEM #1  
**DISCUSSION**

**AGENDA ITEM:** Home Occupation Ordinance

**SUBMITTED BY:** Kyle Klatt, Planning Director

**THROUGH:** Bruce Messelt, City Administrator

**REVIEWED BY:** Planning Commission  
Kelli Matzek, City Planner

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**SUMMARY AND ACTION REQUESTED:** Pursuant to direction from the City Council to further review the proposed Home Occupation Ordinance at a workshop meeting, Staff is requesting that the Council devote a portion of its next workshop to further review of proposed revisions to the Home Occupation Ordinance. The recommended direction/action on this item is as follows:

***“Motion to direct Staff to prepare a formal ordinance amendment for consideration at a future City Council meeting”***

**BACKGROUND INFORMATION:** A more detailed Staff report prepared for a previous City Council meeting is attached for consideration by the City Council. Also attached to this report are two versions of the draft Home Occupation Ordinance:

- One version that represents a summary of proposed ordinance provisions drafted by two members (one existing and one former) of the City Council.
- The version that was recommended for approval by the Planning Commission.

**RECOMMENDATION:** Based upon the above background information and attached staff report, it is recommended that the City Council provide additional direction to Staff by undertaking the following action:

***“Motion to direct Staff to prepare a formal ordinance amendment for consideration at a future City Council meeting”***

**ATTACHMENTS:**

1. Staff report from May 24, 2011
2. Draft Home Occupation Ordinance – Planning Commission Version
3. Draft Home Occupation Ordinance – City Council Version
4. Home Occupation Timeline
5. April 11, 2011 Planning Commission Minutes

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item.....City Administrator
- Report/Presentation ..... Planning Director
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate..... Mayor Facilitates
- Council Discussion.....Mayor & City Council
- Council Action/Director ..... Mayor Facilitates



## MAYOR & COUNCIL WORKSHOP

DATE: 5/24/11

**WORKSHOP**

ITEM #: 2

**DISCUSSION**

**AGENDA ITEM:** Draft Home Occupation Ordinance

**SUBMITTED BY:** Kelli Matzek, City Planner

**THROUGH:** Kyle Klatt, Acting City Administrator

**REVIEWED BY:** Planning Commission

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**SUMMARY AND ACTION REQUESTED:** The City Council is respectfully requested to review the attached ordinances that have been drafted to regulate home occupations and to provide Staff with direction on how to proceed with revisions to the draft Ordinance. In 2004, the City Council gave an outline of information to staff with main topics to be covered under a draft ordinance. Since then, the Planning Commission has revisited and discussed this topic and suggested a departure from the original points supplied by the City Council. At the September 14, 2010 workshop meeting, the City Council was provided the alternate recommendation by the Planning Commission and considered the proposed draft. However, after further discussions, the City Council directed staff to move forward with a draft Home Occupation ordinance which differed from that recommended by the Planning Commission and instead followed the original direction.

The Planning Commission minutes from the update dated April 11, 2011 is attached. The points of concern expressed regarding the original direction are as follows:

- That the ordinance as proposed by the City Council would be too restrictive for certain types of home offices (i.e. those that have customers but otherwise have no other impacts).
- That the proposed ordinance is not business friendly and would discourage new businesses from locating in Lake Elmo.

A point of concern expressed regarding the Planning Commission's recommended ordinance was the impact of traffic from business trips for a home occupation in a more compact residential neighborhood.

**BACKGROUND INFORMATION:** Staff is providing the Council with a Timeline of the Home Occupation Ordinance, 2006 proposed Home Occupation regulations from Council Members Smith and DeLapp and Ordinance No. 08-027.

The main discrepancies between the Planning Commission's recommended Ordinance and the 2006 regulations proposed by Council Members Smith and DeLapp fall upon 9 principle items:

Item	Planning Commission Recommendations	2006 City Council Directions
<b>Classifications</b>	2 Classifications: Home offices and Home Based Businesses	1 Classification
<b>Business Vehicles</b>	3 (to include employees) allowed on site at any onetime for Home Based Businesses. Must comply with city parking regulations	1 pickup truck or van allowed
<b>Equipment</b>	No limit	Limited by those normally found at a residence
<b>On Premise Sales</b>	Home Offices: not permitted. Home Based Businesses: not regulated but limited by customer visits (5 per day)	Not permitted
<b>Employees</b>	Home Office: no non-resident employees. Home Based Businesses: 2 non-resident employees	No non-resident employees
<b>Customer Visits</b>	Home Office: Not permitted. Home Based Businesses: 5 per day	Not permitted
<b>Accessory Buildings</b>	Office/Business allowed to operate within.	Not allowed to operate within
<b>Storage</b>	Within residential/garage/accessory building structures/	Enclosed and limited to 100sqft
<b>Infrequent Sales</b>	Twice a year no more than 3 days in length	Twice a year no more than 6 days in length

**STAFF REPORT:** The Home Occupation Ordinance is currently out of date. It is only referenced in the definition section of the City Code, does not address garage sales or merchandise sales, and provides no review process to evaluate how intrusive a Home Occupation is on surrounding property. Now that more and more individuals are beginning to use Home Occupations, it is becoming a necessity to update Lake Elmo's regulation in order to provide better guidance on the proper usage of Home Occupations.

**RECOMMENDATION:** Based upon the above background information and staff report, it is recommended that the City Council discuss the discrepancies between City Council recommended regulations and those recommended by the Planning Commission. Staff is seeking direction on moving forward with the Home Occupation Ordinance.

**ATTACHMENTS:**

1. Draft Home Occupation Ordinance – City Council Version
2. Draft Home Occupation Ordinance – Planning Commission Version
3. Home Occupation Timeline
4. April 11, 2011 Planning Commission Minutes

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item .....Planning Staff
- Report/Presentation .....Planning Staff
- Questions from Council to Staff ..... Mayor Facilitates
- Public Input, if Appropriate ..... Mayor Facilitates
- Council Discussion ..... Mayor & City Council
- Council Action/Director..... Mayor Facilitates

**CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**ORDINANCE NO. 08-\_\_\_\_\_**

**AN ORDINANCE ADDING HOME OCCUPATION REGULATIONS TO  
THE CITY CODE**

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to eliminate existing definitions as follows:

~~**HOME OCCUPATION.** Any gainful occupation or profession engaged in by the occupant, only, of a dwelling when carried on within a dwelling unit or in an accessory building, provided that no signs other than those normally utilized in a residential district are present, no stock in trade is stored on the premises, that no over the counter retail sales are involved, and entrance to the home occupation is or can be gained from within the structure. Uses include professional office, hairdressing, or teaching limited to 3 students at any time, and similar uses. A **HOME OCCUPATION** shall not be interpreted to include barber shops, beauty shops, tourist homes, restaurants, disorderly house as defined by M.S. § 609.33, Subd. 1, as it may be amended from time to time, or similar uses. No **HOME OCCUPATION** shall be permitted that creates the need for more than 3 parking spaces at any given time in addition to the parking spaces required by the occupants. **HOME OCCUPATIONS** shall not be carried on except between the hours of 7:00 a.m. and 10:00 p.m.~~

**SECTION 2.** The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to add the following definitions in alphabetical order with the already existing definitions:

**Garage Sales.** Any isolated or occasional display and sale of used personal property or home-crafted items conducted on residential premises by the occupant of the residential property. Garage sales shall include rummage sales, basement sales, yard sales, porch sales, craft sales, and seasonal boutiques. Garage sales are limited to no more than two (2) sales per calendar year at any one property. Such sale cannot exceed three (3) consecutive calendar days.

**Home Based Business.** A home occupation that does not meet the definition of home office either because it allows non-resident employees, additional parking, or customer visits.

**Home Occupation.** Any occupation, profession or trade engaged in by the occupant of a residential dwelling unit, which is clearly incidental and secondary to the residential use of the premises and does not change the character of said premises. There are two types of home occupations: home offices and home based businesses.

**Home Office.** A home occupation which consists primarily of an office or home crafts. It includes, but is not limited to, receiving or initiating correspondence, such as phone calls, mail, fax, or e-mail; preparing or maintaining business records; word or data processing; and telephone, mail order, and off-premise sales.

**Merchandise Parties.** Private parties held for the purpose of soliciting sales. Merchandise parties shall include but not be limited to Tupperware, Mary Kay, and Avon parties. Merchandise parties shall be limited to no more than six (6) sales per year from a residential dwelling unit.

**SECTION 3. The City Council of the City of Lake Elmo hereby adds 154.112: Land Usage; Chapter 154: Zoning Code, by adding the following language:**

**§ 154.112 Home Occupations.**

(A) **Purpose and Intent.** The City of Lake Elmo recognizes the desire and/or the need of some citizens to use their residences for business activities. The City also recognizes that the use of residences for limited business purposes may result in a reduction of vehicle trips on City streets as well as economic benefit to City residents. It is therefore the purpose and intent of this Section to allow the use of residences for limited business purposes while regulating such business use in a manner that precludes such business use from becoming a nuisance to neighboring residential property owners, and while preserving the distinction between residential and commercial zoning districts.

(B) **Home Based Business and Home Office.** Permits responsive to this Section shall be applicable to Home Based Businesses, but not to Home Offices, as both are defined by Section 150 of this City Code.

(C) **Administrative Enforcement.**

(1) **Home Based Business Permit.** Any Home Based Business shall require a "Home Based Business Permit." Permits shall not run with the land and shall not be transferrable. A complete application, including the signature of the property owner, shall be submitted to the City. The planning department may impose such conditions on the granting of a Home Based Business Permit as may be necessary to carry out the purpose and provisions of this Section.

(2) **Review.** The planning department shall approve or deny Home Based Business Permit applications upon receipt of a complete application. If the permit is denied, the planning department will send a written notice of denial to the applicant. The written notice will indicate the reason(s) for denial and a description of the applicant's appeal rights as indicated in section 31.10

(D) **Home Office Performance Standards.** Home Offices must meet the following Performance Standards:



(1) **Residency.** A full-time resident of the property must conduct the home office.

(2) **Impact on Adjacent Properties.** The Home Office shall have no adverse effect on adjacent properties which shall include but is not limited to traffic or offensive noise, light, odor, dust, electro-magnetic interference or other noxious substances, as may be defined elsewhere in the City Code.

(3) **Exterior Appearance.** There shall be no exterior evidence, including signs advertising the home occupation, that a building is being used for any purpose other than as a residential dwelling or permitted accessory structure.

(4) **Number of Businesses.** More than one Home Office is allowed, however the combined impact shall be considered when evaluating if it meets the requirements of a Home Office.

(5) **Non-resident Employees.** No non-residents may work on the site.

(6) **Customer Visits to Site.** The general public shall not come to the premises in question for purposes pertaining to the conduct of the Home Office.

(7) **Deliveries to Site.** No more than six (6) delivery/pickup trips per week. Delivery vehicles shall not be larger than a typical residential delivery truck.

(8) **Storage.** Any merchandise or stock in trade sold, repaired, or displayed shall be stored entirely within the residential structure, garage, or an accessory building.

(E) **Home Based Business Performance Standards.** Review of applications for Home Based Business Permit and subsequent determinations regarding revocation of a Home Based Business Permits shall be based on the initial and continued compliance of a Home Based Business on the following Performance Standards:

(1) **Residency.** A full-time resident of the property must conduct the business.

(2) **Impact on Adjacent Properties.** The Home Based Business shall have no adverse effect on adjacent properties which includes but is not limited to traffic or offensive noise, light, odor, dust, electro-magnetic interference or other noxious substances, as may be defined elsewhere in the City Code.

(3) **Exterior Appearance.** There shall be no exterior evidence, including signs advertising the home occupation, that a building is being used for any purpose other than as a residential dwelling or permitted accessory structure.

(4) **Number of Businesses.** More than one Home Based Business is allowed, however the combined impact shall be considered when evaluating the terms of the Home Based Business Permit.

(5) **Non-resident Employees.** Not more than two (2) non-residents may work on the site.

(6) **Business Vehicles.** A maximum of three (3) business vehicles may be on site at any time, and the vehicles must be parked off-street at all times. No parking shall replace the required parking of the residents. Said vehicles must be in compliance with section 154.095 in the City Code regarding the maximum size of vehicles permitted to be parked in residential zones.

(7) **Customer Visits to Site.** Permitted only where specified by the Home Based Business Permit, and shall be limited to a maximum of five (5) per day.

(8) **Deliveries to Site.** No more than six (6) delivery/pickup trips per week. Delivery vehicles shall not be larger than a typical residential delivery truck.

(9) **Storage.** Any merchandise or stock in trade sold, repaired, or displayed shall be stored entirely within the residential structure, garage, or an accessory building.

(10) **Off-Street Parking.** When customer site visits are specifically allowed by the Home Based Business Permit, adequate Off-Street Parking must be provided for customers and for those who reside on the premises. All required parking spaces shall be in compliance with section 154.095 in the City Code.

(11) **Hours of Operation.** Home Based Businesses can only have non-resident employees at the site, deliveries to the site, or customer visits to the site between the hours of 7:00 a.m. to 10:00 p.m. seven (7) days a week.

(F) **Exceptions.** Home Occupations do not pertain to Agricultural Sales, Garage Sales, Licensed Residential Facilities, or Merchandise Parties.

#### **SECTION 4. Effective Date**

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

#### **SECTION 5. Adoption Date**

This Ordinance No. 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_ 2011, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

\_\_\_\_\_  
Mayor Dean Johnston

ATTEST:

\_\_\_\_\_  
Bruce Messelt  
City Administrator

This Ordinance No 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2011.

**CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**ORDINANCE NO. 08-\_\_\_\_**

**AN ORDINANCE ADDING HOME OCCUPATION REGULATIONS TO  
THE CITY CODE**

**SECTION 1.** The City Council of the City of Lake Elmo hereby adds 154.112: Land Usage; Chapter 154: Zoning Code, by adding the following language:

**§ 154.112 Home Occupations.**

(A) **Purpose and Intent.** The purpose of this section is to maintain the character and integrity of residential areas and to provide a means through the establishment of specific standards and procedures by which home occupations can be conducted in residential neighborhoods without jeopardizing the health, safety, and general welfare of the surrounding neighborhood.

(B) **General Provisions:**

(1) No home occupation shall produce light, glare, noise, odor, vibration, smoke, dust, heat, or hazardous or toxic material shall not be produced, stored, or kept on the premises that will in any way have an objectionable effect upon adjacent or nearby property.

(2) No equipment shall be used in the home occupation which will create electrical interference to surrounding properties.

(3) Any home occupation shall be clearly incidental and secondary to the residential use of the premises, should not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.

(4) No home occupation shall require internal or external alterations or involve construction features not customarily found in dwellings except where required to comply with local and state fire and police recommendations.

(5) There shall be no exterior storage of equipment or materials used in the home occupation.

(6) Vehicles associated with a home occupation shall be limited to one automobile, pick-up truck, or van on the premises.

(7) The home occupation shall be conducted using only equipment or machinery that is normally found at a residence.

- (8) The home occupation shall meet all applicable fire and building codes.
- (9) There shall be no exterior display or exterior signs which are visible from outside the dwelling.
- (10) All home occupations shall comply with the provisions of the city code.
- (11) No home occupation shall be conducted between the hours of 10:00 p.m. and 7:00 a.m., unless said occupation is contained entirely within the principle building, excluding attached garage space and will not require any off street parking facilities.
- (12) No commodity shall be sold on the premises, excluding party based sales.
- (13) No persons other than those who customarily reside on the premises shall be employed.
- (14) The general public shall not come to the premises in question for purposes pertaining to the conduct of the home occupation.
- (15) All home occupations shall be conducted entirely within the principle dwelling excluding the attached garage space, and may not be conducted in an accessory building.
- (16) The home occupation shall not require storage of over 100 square feet.

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## Home Occupation Timeline

- April 11, 2011 – Planning Commission was updated with City Council's direction at September meeting
- September 14, 2010 – City Council reviewed recommendation by Commission, directed staff to proceed with Council's original ordinance direction
- July 20, 2010 – City Council removed the item from the agenda and asked for it to be discussed at a workshop.
- July 6, 2010—City Council tabled decisions for all members to be present.
- June 28, 2010—Planning Commission recommended approval of the Home Occupation Ordinance to the City Council
- April 12, 2010—Planning Commission made the following recommendation with regard to Home Occupations:
  - Home Occupations will be defined by two subtypes: Home Offices and Home Based Businesses.
  - Home Based Businesses should have a Home Based Business Permit that is monitored by the staff using an application procedure.
  - Home Offices should be regulated by performance standards.
  - Exceptions to the Home Occupation Ordinance should include garage sales, licensed facilities, and agricultural sales.
  - A Garage Sale provision should be added to the definition section.
- March 22, 2010—Planning Commission made the following suggestions with regard to Home Occupations:
  - They suggested separate regulations and definitions for home offices and home based businesses and wanted to return to the old planning commission draft as a starting point.
  - Degree of storage should not be limited for any home occupation.
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  - Discussed the definition currently in use and suggested splitting it into two categories: home based business, and home office
  - Discussed difference between seasonal and year long businesses
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  - Discussed Shoreview Ordinance and created a table
  - Discussed accessory structures
  - Discussed licensing
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Planning Director Klatt said if the city wanted to go to a form based code, parts of this proposed ordinance could change or go away completely. He asked the commission to also review a draft purpose section for each district.

Commissioner Williams suggested keeping Rural Residential and Residential Estate zoning districts separate as they have different lot size requirements.

Planning Director Klatt asked the commission to consider if they would want to see additional land in the Neighborhood Conservation category which allows one and a half acre lots. He said the Comprehensive Plan (NC) currently does not allow for additional properties that are not already guided for NC. He suggested consideration of recreating an updated Open Space Preservation (OP) District. He identified low, medium and high density residential districts with density ranges provided for discussion purposes.

Commissioner Williams said the proposed 3.5 to 6 units is not low density. He said that would exclude anything less than three units per acre and it should be looked at in more detail. He said the R-2 district allows too much variable as a developer will always push for the highest density allowed. He said the VR language is very general, but should include a maximum density.

Planning Director Klatt said the numbers are to start discussions and he has found in his experience that developers go towards the lower end of density requirements while cities push for higher densities to meet objectives.

Commissioner Williams said he thinks mention of public investment in the Mixed Use and Central Business category should be removed as the city should not be making that commitment.

#### **Business Item – Home Occupation Ordinance Update**

Planner Matzek briefly updated the commission on the previous work done on the home occupation ordinance. She said the City Council received the commission's recommendation, but chose to move forward with their original direction.

Commissioner Fliflet said it does not make sense that the ordinance proposed by the City Council would not allow a tax consultant to do so from home.

Commissioner Hall said the Council proposed ordinance is not business friendly and discourages instead of encourages businesses to locate in Lake Elmo. He asked if the City Council's Economic Development Subcommittee would like any volunteer advisory members.

Commissioner Haggard said her neighborhood is more compact and a home occupation could have a greater impact on her neighborhood, especially if there were multiple businesses on the same road.

Chairman Van Zandt said the city needs to think of who creates the taxes and it is not the people who leave this city.

**Business – Amending Storm Water and Erosion and Sediment Control**

Planner Matzek said the ordinance is proposed to have minor clarifying revisions. She said the AUAR ~~would also have a minor amendment to reflect this new change,~~ but that is a more administrative process.

Commissioner Williams suggested taking out the text “and discretion” from Sections 150.287 B and C.

Commissioner Fliflet suggested the Best Management Practices are subjective and this gives the engineer additional flexibility.

M/S, Bidon/Fliflet, move to approve the changes as recommended by staff.

M/S/P, Williams/Hall, move to amend the motion to remove “and discretion” from Sections 150.287 B and C. Vote: 6:2. Bidon and Fliflet against.

The commission voted on the original motion as amended. Vote: 6:2. Bidon and Fliflet against.

**Business Item – I-94 Stakeholder Meeting (Held March 31<sup>st</sup>)**

Planner Matzek said 36 people attended a stakeholder meeting regarding the area guided for future sewered development south of 10<sup>th</sup> Street. She said the City Engineer and herself presented information on existing conditions and took questions; the meeting went well.

**Updates**

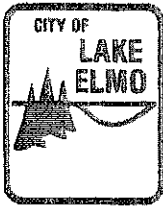
Planning Director Klatt said there were no City Council updates.

**Adjournment**

The meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Kelli Matzek  
Planner



## MAYOR & COUNCIL WORKSHOP

DATE: 5/24/11  
**WORKSHOP**  
ITEM #: 2  
**DISCUSSION**

**AGENDA ITEM:** Draft Home Occupation Ordinance

**SUBMITTED BY:** Kelli Matzek, City Planner

**THROUGH:** Kyle Klatt, Acting City Administrator *VKL*

**REVIEWED BY:** Planning Commission

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**SUMMARY AND ACTION REQUESTED:** The City Council is respectfully requested to review the attached ordinances that have been drafted to regulate home occupations and to provide Staff with direction on how to proceed with revisions to the draft Ordinance. In 2004, the City Council gave an outline of information to staff with main topics to be covered under a draft ordinance. Since then, the Planning Commission has revisited and discussed this topic and suggested a departure from the original points supplied by the City Council. At the September 14, 2010 workshop meeting, the City Council was provided the alternate recommendation by the Planning Commission and considered the proposed draft. However, after further discussions, the City Council directed staff to move forward with a draft Home Occupation ordinance which differed from that recommended by the Planning Commission and instead followed the original direction.

The Planning Commission minutes from the update dated April 11, 2011 is attached. The points of concern expressed regarding the original direction are as follows:

- That the ordinance as proposed by the City Council would be too restrictive for certain types of home offices (i.e. those that have customers but otherwise have no other impacts).
- That the proposed ordinance is not business friendly and would discourage new businesses from locating in Lake Elmo.

A point of concern expressed regarding the Planning Commission's recommended ordinance was the impact of traffic from business trips for a home occupation in a more compact residential neighborhood.

**BACKGROUND INFORMATION:** Staff is providing the Council with a Timeline of the Home Occupation Ordinance, 2006 proposed Home Occupation regulations from Council Members Smith and DeLapp and Ordinance No. 08-027.

The main discrepancies between the Planning Commission's recommended Ordinance and the 2006 regulations proposed by Council Members Smith and DeLapp fall upon 9 principle items:

Item	Planning Commission Recommendations	2006 City Council Directions
<b>Classifications</b>	2 Classifications: Home offices and Home Based Businesses	1 Classification
<b>Business Vehicles</b>	3 (to include employees) allowed on site at any onetime for Home Based Businesses. Must comply with city parking regulations	1 pickup truck or van allowed
<b>Equipment</b>	No limit	Limited by those normally found at a residence
<b>On Premise Sales</b>	Home Offices: not permitted. Home Based Businesses: not regulated but limited by customer visits (5 per day)	Not permitted
<b>Employees</b>	Home Office: no non-resident employees. Home Based Businesses: 2 non-resident employees	No non-resident employees
<b>Customer Visits</b>	Home Office: Not permitted. Home Based Businesses: 5 per day	Not permitted
<b>Accessory Buildings</b>	Office/Business allowed to operate within.	Not allowed to operate within
<b>Storage</b>	Within residential/garage/accessory building structures/	Enclosed and limited to 100sqft
<b>Infrequent Sales</b>	Twice a year no more than 3 days in length	Twice a year no more than 6 days in length

**STAFF REPORT:** The Home Occupation Ordinance is currently out of date. It is only referenced in the definition section of the City Code, does not address garage sales or merchandise sales, and provides no review process to evaluate how intrusive a Home Occupation is on surrounding property. Now that more and more individuals are beginning to use Home Occupations, it is becoming a necessity to update Lake Elmo's regulation in order to provide better guidance on the proper usage of Home Occupations.

**RECOMMENDATION:** Based upon the above background information and staff report, it is recommended that the City Council discuss the discrepancies between City Council recommended regulations and those recommended by the Planning Commission. Staff is seeking direction on moving forward with the Home Occupation Ordinance.

**ATTACHMENTS:**

1. Draft Home Occupation Ordinance – City Council Version
2. Draft Home Occupation Ordinance – Planning Commission Version
3. Home Occupation Timeline
4. April 11, 2011 Planning Commission Minutes

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item .....Planning Staff
- Report/Presentation .....Planning Staff
- Questions from Council to Staff ..... Mayor Facilitates
- Public Input, if Appropriate ..... Mayor Facilitates
- Council Discussion ..... Mayor & City Council
- Council Action/Director..... Mayor Facilitates

**CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**ORDINANCE NO. 08-\_\_\_\_\_**

**AN ORDINANCE ADDING HOME OCCUPATION REGULATIONS TO  
THE CITY CODE**

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to eliminate existing definitions as follows:

~~**HOME OCCUPATION.** Any gainful occupation or profession engaged in by the occupant, only, of a dwelling when carried on within a dwelling unit or in an accessory building, provided that no signs other than those normally utilized in a residential district are present, no stock in trade is stored on the premises, that no over the counter retail sales are involved, and entrance to the home occupation is or can be gained from within the structure. Uses include professional office, hairdressing, or teaching limited to 3 students at any time, and similar uses. A **HOME OCCUPATION** shall not be interpreted to include barber shops, beauty shops, tourist homes, restaurants, disorderly house as defined by M.S. § 609.33, Subd. 1, as it may be amended from time to time, or similar uses. No **HOME OCCUPATION** shall be permitted that creates the need for more than 3 parking spaces at any given time in addition to the parking spaces required by the occupants. **HOME OCCUPATIONS** shall not be carried on except between the hours of 7:00 a.m. and 10:00 p.m.~~

**SECTION 2.** The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to add the following definitions in alphabetical order with the already existing definitions:

**Garage Sales.** Any isolated or occasional display and sale of used personal property or home-crafted items conducted on residential premises by the occupant of the residential property. Garage sales shall include rummage sales, basement sales, yard sales, porch sales, craft sales, and seasonal boutiques. Garage sales are limited to no more than two (2) sales per calendar year at any one property. Such sale cannot exceed three (3) consecutive calendar days.

**Home Based Business.** A home occupation that does not meet the definition of home office either because it allows non-resident employees, additional parking, or customer visits.

**Home Occupation.** Any occupation, profession or trade engaged in by the occupant of a residential dwelling unit, which is clearly incidental and secondary to the residential use of the premises and does not change the character of said premises. There are two types of home occupations: home offices and home based businesses.

**Home Office.** A home occupation which consists primarily of an office or home crafts. It includes, but is not limited to, receiving or initiating correspondence, such as phone calls, mail, fax, or e-mail; preparing or maintaining business records; word or data processing; and telephone, mail order, and off-premise sales.

**Merchandise Parties.** Private parties held for the purpose of soliciting sales. Merchandise parties shall include but not be limited to Tupperware, Mary Kay, and Avon parties. Merchandise parties shall be limited to no more than six (6) sales per year from a residential dwelling unit.

**SECTION 3.** The City Council of the City of Lake Elmo hereby adds 154.112: Land Usage; Chapter 154: Zoning Code, by adding the following language:

**§ 154.112 Home Occupations.**

(A) **Purpose and Intent.** The City of Lake Elmo recognizes the desire and/or the need of some citizens to use their residences for business activities. The City also recognizes that the use of residences for limited business purposes may result in a reduction of vehicle trips on City streets as well as economic benefit to City residents. It is therefore the purpose and intent of this Section to allow the use of residences for limited business purposes while regulating such business use in a manner that precludes such business use from becoming a nuisance to neighboring residential property owners, and while preserving the distinction between residential and commercial zoning districts.

(B) **Home Based Business and Home Office.** Permits responsive to this Section shall be applicable to Home Based Businesses, but not to Home Offices, as both are defined by Section 150 of this City Code.

(C) **Administrative Enforcement.**

(1) **Home Based Business Permit.** Any Home Based Business shall require a "Home Based Business Permit." Permits shall not run with the land and shall not be transferrable. A complete application, including the signature of the property owner, shall be submitted to the City. The planning department may impose such conditions on the granting of a Home Based Business Permit as may be necessary to carry out the purpose and provisions of this Section.

(2) **Review.** The planning department shall approve or deny Home Based Business Permit applications upon receipt of a complete application. If the permit is denied, the planning department will send a written notice of denial to the applicant. The written notice will indicate the reason(s) for denial and a description of the applicant's appeal rights as indicated in section 31.10

(D) **Home Office Performance Standards.** Home Offices must meet the following Performance Standards:

(1) **Residency.** A full-time resident of the property must conduct the home office.

(2) **Impact on Adjacent Properties.** The Home Office shall have no adverse effect on adjacent properties which shall include but is not limited to traffic or offensive noise, light, odor, dust, electro-magnetic interference or other noxious substances, as may be defined elsewhere in the City Code.

(3) **Exterior Appearance.** There shall be no exterior evidence, including signs advertising the home occupation, that a building is being used for any purpose other than as a residential dwelling or permitted accessory structure.

(4) **Number of Businesses.** More than one Home Office is allowed, however the combined impact shall be considered when evaluating if it meets the requirements of a Home Office.

(5) **Non-resident Employees.** No non-residents may work on the site.

(6) **Customer Visits to Site.** The general public shall not come to the premises in question for purposes pertaining to the conduct of the Home Office.

(7) **Deliveries to Site.** No more than six (6) delivery/pickup trips per week. Delivery vehicles shall not be larger than a typical residential delivery truck.

(8) **Storage.** Any merchandise or stock in trade sold, repaired, or displayed shall be stored entirely within the residential structure, garage, or an accessory building.

(E) **Home Based Business Performance Standards.** Review of applications for Home Based Business Permit and subsequent determinations regarding revocation of a Home Based Business Permits shall be based on the initial and continued compliance of a Home Based Business on the following Performance Standards:

(1) **Residency.** A full-time resident of the property must conduct the business.

(2) **Impact on Adjacent Properties.** The Home Based Business shall have no adverse effect on adjacent properties which includes but is not limited to traffic or offensive noise, light, odor, dust, electro-magnetic interference or other noxious substances, as may be defined elsewhere in the City Code.

(3) **Exterior Appearance.** There shall be no exterior evidence, including signs advertising the home occupation, that a building is being used for any purpose other than as a residential dwelling or permitted accessory structure.

(4) **Number of Businesses.** More than one Home Based Business is allowed, however the combined impact shall be considered when evaluating the terms of the Home Based Business Permit.



(5) **Non-resident Employees.** Not more than two (2) non-residents may work on the site.

(6) **Business Vehicles.** A maximum of three (3) business vehicles may be on site at any time, and the vehicles must be parked off-street at all times. No parking shall replace the required parking of the residents. Said vehicles must be in compliance with section 154.095 in the City Code regarding the maximum size of vehicles permitted to be parked in residential zones.

(7) **Customer Visits to Site.** Permitted only where specified by the Home Based Business Permit, and shall be limited to a maximum of five (5) per day.

(8) **Deliveries to Site.** No more than six (6) delivery/pickup trips per week. Delivery vehicles shall not be larger than a typical residential delivery truck.

(9) **Storage.** Any merchandise or stock in trade sold, repaired, or displayed shall be stored entirely within the residential structure, garage, or an accessory building.

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(11) **Hours of Operation.** Home Based Businesses can only have non-resident employees at the site, deliveries to the site, or customer visits to the site between the hours of 7:00 a.m. to 10:00 p.m. seven (7) days a week.

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Mayor Dean Johnston

ATTEST:

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Planning Director Klatt asked the commission to consider if they would want to see additional land in the Neighborhood Conservation category which allows one and a half acre lots. He said the Comprehensive Plan (NC) currently does not allow for additional properties that are not already guided for NC. He suggested consideration of recreating an updated Open Space Preservation (OP) District. He identified low, medium and high density residential districts with density ranges provided for discussion purposes.

Commissioner Williams said the proposed 3.5 to 6 units is not low density. He said that would exclude anything less than three units per acre and it should be looked at in more detail. He said the R-2 district allows too much variable as a developer will always push for the highest density allowed. He said the VR language is very general, but should include a maximum density.

Planning Director Klatt said the numbers are to start discussions and he has found in his experience that developers go towards the lower end of density requirements while cities push for higher densities to meet objectives.

Commissioner Williams said he thinks mention of public investment in the Mixed Use and Central Business category should be removed as the city should not be making that commitment.

#### **Business Item – Home Occupation Ordinance Update**

Planner Matzek briefly updated the commission on the previous work done on the home occupation ordinance. She said the City Council received the commission's recommendation, but chose to move forward with their original direction.

Commissioner Fliflet said it does not make sense that the ordinance proposed by the City Council would not allow a tax consultant to do so from home.

Commissioner Hall said the Council proposed ordinance is not business friendly and discourages instead of encourages businesses to locate in Lake Elmo. He asked if the City Council's Economic Development Subcommittee would like any volunteer advisory members.

Commissioner Haggard said her neighborhood is more compact and a home occupation could have a greater impact on her neighborhood, especially if there were multiple businesses on the same road.



Chairman Van Zandt said the city needs to think of who creates the taxes and it is not the people who leave this city.

**Business – Amending Storm Water and Erosion and Sediment Control**

Planner Matzek said the ordinance is proposed to have minor clarifying revisions. She said the AUAR would also have a minor amendment to reflect this new change, but that is a more administrative process.

Commissioner Williams suggested taking out the text “and discretion” from Sections 150.287 B and C.

Commissioner Fliflet suggested the Best Management Practices are subjective and this gives the engineer additional flexibility.

M/S, Bidon/Fliflet, move to approve the changes as recommended by staff.

M/S/P, Williams/Hall, move to amend the motion to remove “and discretion” from Sections 150.287 B and C. Vote: 6:2. Bidon and Fliflet against.

The commission voted on the original motion as amended. Vote: 6:2. Bidon and Fliflet against.

**Business Item – I-94 Stakeholder Meeting (Held March 31<sup>st</sup>)**

Planner Matzek said 36 people attended a stakeholder meeting regarding the area guided for future sewered development south of 10<sup>th</sup> Street. She said the City Engineer and herself presented information on existing conditions and took questions; the meeting went well.

**Updates**

Planning Director Klatt said there were no City Council updates.

**Adjournment**

The meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Kelli Matzek  
Planner



## MAYOR & COUNCIL COMMUNICATION

Workshop 5-24-11

DATE: 5/17/2011

REGULAR

ITEM #:

DISCUSSION

13 2

**AGENDA ITEM:** Commercial Water Rate Review

**SUBMITTED BY:** Tom Bouthilet, Finance Director

**REVIEWED BY:** Bruce Messelt, City Administrator *BAW*

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**SUMMARY AND ACTION REQUESTED:** It is respectfully requested that the City Council receive and discuss staff's evaluation of proposed alternatives to the City's water rate structure to potentially address identified concerns with respect to large commercial water users. If appropriate, the City Council may wish to consider the following:

***"Move to direct City Staff to prepare a new ordinance, approving the amended 2011 fee schedule."***

**BACKGROUND INFORMATION:** On April 19th, 2011, the City Council directed Staff to evaluate and prepare for Council review possible changes to the City's Water rate structure to potentially address identified concerns with respect to large Commercial water users. The current Water Conservation rate structure has been in place since December, 2009. Some large commercial water users have reported significant increases in water bills, despite increased conservation efforts.

**STAFF REPORT:** The City has identified that most of the large commercial water establishments have separate irrigation meters in the southwest part of the City. Conversely, there is only one large user that has an irrigation meter in the Old Village. The City is charged a surcharge by the State for all water used in excess of the water consumed in January during the summer months. During the summer of 2010, this accounted for 25.3 million gallons or 24% of the total used in the entire year. The Southwest commercial establishment accounted for 6.6 million gallons during quarter ending August, 2010.

A majority of the surveyed northern metro cities use the same Increasing Block Rates structure that this City adopted in December, 2009. One variation is the City of Roseville, which has a rate for fewer than 30,000 and a separate summer/winter fee for gallons consumed over 30,000 gallons.

Some of the identified potential alternatives to Conservation Rates include the following:

Seasonal Rates: The rate per unit increases in the summer to encourage the efficient use of water during peak demand periods caused by outdoor water uses. Seasonal rates can take the form of a surcharge added to the normal rate or a separate fee schedule for winter and summer period.

Individualized Goal Rate (Water Budget Rate): A rate with tailored allocations developed for each customer. The rate increase as the allocation is used or exceeded by the customer. The allocation is generally based on winter or January use.

Excess Use Rates: Cost per unit increases greatly above established level, in order to trigger a strong price signal that discourages excessive use. This rate is similar to an increasing block rate but with much higher charges for the larger volume blocks.

Of the alternatives identified by either the survey or research, staff recommends Council consideration of continuing with a modified existing rate structure, but perhaps capping the gallons used to 150,000 gallons. All domestic water consumed above 150,000 gallons would revert to the City's Bulk water rate of \$3.26/one thousand gallons.

However, it is suggested that the domestic water customer would have to demonstrate little or no irrigation use or install a separate irrigation meter (to continue to incentivize conservation related to irrigation usage). The new Commercial structure would be as follows:

0 – 15,000 Gallons	\$3.11
15,001 – 30,000 Gallons	\$3.26
30,001 – 50,000 Gallons	\$3.77
50,001 – 80,000 Gallons	\$5.00
80,001 – 150,000 Gallons	\$6.63
150,000+	\$3.26 (Domestic, non-irrigation usage only)

Under this scenario, nine customers are identified at potentially benefitting from a domestic cap at 150,000 Gallons. The net revenue reduction would be \$5,258.30 to the Utility for the utilized September 2010 billing period, or an approximate 9.7% reduction in revenues for that period.

**RECOMMENDATION:** It is recommended that the City Council receive and discuss staff's evaluation of proposed alternatives to the City's water rate structure to potentially address identified concerns with respect to large commercial water users. If appropriate, the City Council may wish to consider the following, with or without specific changes or additional considerations:

***“Move to direct City Staff to prepare a new ordinance, approving the amended 2011 fee schedule [as agreed upon at tonight's meeting].”***

**ATTACHMENTS:** Analysis of Possible Domestic Usage Cap

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation.....Finance Director
- Questions from Council to Staff..... Mayor Facilitates
- Public Input..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion..... Mayor Facilitates
- Action on Motion..... Mayor & City Council

OPTION A

City of Lake Elmo  
Water Comparison 2009 / 2010

Sep-09	Sep-09	Sep-09	Sep-10	Sep-10	Amount	%	2010 DIFF	OPTION B*	OPTION C**
Domestic	Irrigation	Amount	Domestic	Irrigation	Billed	Change		Commercial	Commercial
		\$/1000 gals						Domestic Only	Hotels, Restaurant High Vol.
								3-Tier then	3-Tier then
								Bulk Rate	Bulk Rate
								REV Change	REV Change
318,000	277,000	\$1,894.50	358,000	220,000	\$ 3,396.50	5.88	208,000	\$1,952.38	\$ 1,952.38
4,000	400,000	\$1,302.40	6,000	383,000	\$ 2,352.55	6.05		\$1,371.95	\$ (1,444.12)
32,000	325,000	\$1,156.70	33,000	131,700	\$ 805.65	4.89		\$703.93	\$ (980.60)
509,800		\$1,605.38	464,900		\$ 2,841.60	6.11	314,900	\$1,523.52	\$ (1,318.08)
887,400	425,624	\$4,120.37	887,400	383,061	\$ 7,897.50	6.22	737,400	\$4,209.80	\$ (3,687.70)
33,000	967,000	\$3,150.00	38,000	529,000	\$ 3,406.60	6.01		\$1,906.32	\$ (1,500.28)
26,279	487,166	\$1,641.67	39,479	287,526	\$ 1,842.49	5.63		\$1,294.89	\$ (547.60)
23,000		\$121.30	37,000	583,000	\$ 3,753.90	6.05		\$2,250.05	\$ (1,503.85)
	1,031,000	\$4,206.48		867,000	\$ 3,771.45	4.35		\$2,886.57	\$ (884.88)
15,000	1,849,000	\$6,377.10	204,000	954,000	\$ 7,166.50	6.19	54,000	\$3,940.98	\$ (3,225.52)
33,000	1,159,000	\$3,745.20	43,000	432,000	\$ 2,794.60	5.88		\$1,681.80	\$ (1,112.80)
	377,000	\$1,193.70		290,000	\$ 1,704.75	5.88		\$1,005.55	\$ (699.20)
	211,000	\$679.10		209,645	\$ 1,182.44	5.64		\$743.59	\$ (438.85)
154,000		\$502.40	174,000		\$ 950.75	5.46	24,000	\$575.19	\$ (375.56)
250,823		\$802.55	260,226		\$ 1,511.22	5.81	110,226	\$856.29	\$ (654.93)
111,000		\$369.10	172,000		\$ 937.75	5.45	22,000	\$568.67	\$ (369.08)
378,800		\$1,199.28	197,800		\$ 1,105.45	5.59	47,800	\$652.78	\$ (452.67)
139,930	214,000	\$756.58	125,37	287,000	\$ 1,748.49	5.84		\$713.81	\$ (1,034.68)
197,000		\$635.70	192,000		\$ 1,067.75	5.56	42,000	\$633.87	\$ (433.88)
204,000		\$657.40	125,000		\$ 632.25	5.06		\$415.45	\$ (216.80)
3,368,032	7,722,790	\$ 36,116.91	3,244,342	5,556,932	\$ 50,870.19	5.78	1,560,326	\$ 29,887.39	\$ (20,982.80)
						77%		\$ 14,913.48	\$ (11,961.54)

\*Option B Rate Structure consists of Three Tiers and thereafter bulk rate applied to gallons used above 50,000

\*\*Option C High Volume Users; Rate Structure consists of Three Tiers and thereafter bulk rate applied to gallons used above 50,000

City of Lake Elmo 2011 Fee Schedule		
Development, Service, Building, Etc.	2011	Escrow or Additional Charge
Accessory Bldg Forward of Primary Structure	\$80.00	
Administrative / Fines	\$0.00	
Amateur Radio Antenna	\$875.00	
Appeal (to Board of Adjustment and Appeals)	\$150.00	
Assessment Search	\$25.00	
Building Demolition		
First 1000 Square Feet	\$105.00	Plus 5.00 Surcharge (State Mandated)
Each Additional 1000 sq feet or portion thereof	\$11.00	Plus 5.00 Surcharge (State Mandated)
Burning Permits		
Residential	\$45.00	
Commercial	\$80.00	
Illegal Burn	\$100.00	
Comprehensive Plan Amendment	\$1,300.00	
Conditional Use Permit (CUP)	New \$1,050.00	Wireless Communication Facilities Escrow \$6,000.00
<new or amended>	Amended \$500.00	Flood Plain Ordinance Escrow \$500.00
CONTRACTOR LICENSE FEES		
Blacktopping	\$75.00	
Excavator License	\$75.00	
Heating and A/C	\$75.00	
Sign Installer	\$50.00	Sign Reinspection Fee \$25.00
Solid Waste Hauler	\$120.00	
Tree Contract	\$70.00	
COPY SERVICES		
Copies (B&W)	\$0.35	
Copies (B&W) 11 X 17	\$1.00	
Copies (Color)	\$0.50	
Copies (Color) 11 X 17	\$2.00	
City Map - colored	\$3.15	
City Street Maps 36 X 40	\$20.00	
GIS / Engineering Maps		
Existing Maps	\$5.00	Provided electronically or paper
Custom (Per Hour rate)	\$70.00	Provided electronically or paper
Plan Size Maps Larger than 11 X 17	\$20.00	
Development Standards Specification & Details	\$55.00	
Code Book	\$160.00	
Sections 1, 2, 4, 6-12, 14	\$12.00	
Section 3	\$52.00	
Section 5 and 13	\$27.00	
Comprehensive Plan	\$125.00	
OP Ordinance	\$12.00	
Parks Plan	\$80.00	
Culverts in Developments with Rural Section	\$160.00	
Dog License	\$20.00	
Service Dogs License (dogs with special training to assist individual with disabilities)	\$5.00	Renew on expiration of rabies vaccination
Unlicensed dog (first impound)	\$60.00	Plus Boarding Fee-20.00/Day
Licensed dog (first impound)	\$42.00	Plus Boarding Fee-20.00/Day
Cat Impound (first impound)	\$42.00	Plus Boarding Fee-20.00/Day
Subsequent dog/cat impound	\$85.00	Plus Boarding Fee-20.00/Day
Duplicate License or Tag	\$1.00	
Driveway		
Residential	\$70.00	Plus 5.00 Surcharge (State Mandated)
Commercial	\$160.00	Plus 5.00 Surcharge (State Mandated)
Easement Encroachment	\$100.00	Staff & Recording Fee
Electronic Fund Withdrawal / Bill Payment	Fee & Transaction Charge	
Excavating and Grading	\$125.00	Erosion Control Bond, Escrow, or Letter of Credit: \$1500.00 per acre.
False Alarm		
1 to 3 False alarms		
In excess of 3 up to and including 6 false alarms within a twelve (12) month period		
Residential	\$110.00	
Commercial	\$315.00	