



**City of Newport  
City Council Workshop Meeting Minutes  
May 2, 2013**

**1. ROLL CALL -**

**Council Present** – Tim Geraghty, Tom Ingemann, Bill Sumner, Steven Gallagher, Tracy Rahm

**Council Absent** –

**Staff Present** – Deb Hill, City Administrator; John Neska, Asst. Superintendent of Public Works; Curt Montgomery, Police Chief; Fritz Knaak, City Attorney;

**Staff Absent** - Bruce Hanson, Superintendent of Public Works; Mark Mailand, Fire Chief; Renee Helm, Executive Analyst; John Stewart, City Engineer

**2. DISCUSSION REGARDING THE OPEN MEETING LAW**

Attorney Knaak presented on this item as outlined in the May 2, 2013 City Council Workshop Packet. The items are attached as part of the official minutes.

**3. ADJOURNMENT**

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm  
Executive Analyst



## INFORMATION MEMO

# Meetings of City Councils

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

### RELEVANT LINKS:

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

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

Minn. Stat. § 13D.04, subd. 7.

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

Minn. Stat. § 13D.04, subd. 2.  
Minn. Stat. § 645.44, subd. 5.

## I. Types of meetings and notice requirements

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

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

Public notice generally must be provided for meetings of a public body subject to the open meeting law. The notice requirements depend on the type of meeting. However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied regardless of the method of receipt.

### A. Regular meetings

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

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

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

## RELEVANT LINKS:

Minn. Stat. § 13D.04, subd. 2.

Minn. Stat. § 412.191, subd. 2.

Minn. Stat. § 13D.04, subd. 2.

Minn. Stat. § 412.191, subd. 2. A.G. Op. 471-e (Jan. 22, 1957).

Minn. Stat. § 13D.04, subd. 2. *Rupp v. Mayasich*, 553 N.W.2d 893 (Minn. Ct. App. 1995). IPAD 10-020 (advising that a special-meeting notice must provide detail regarding the purpose of the meeting and that a city's notice that a special meeting would address: "Any Other Business that May Arise" did not comply with the open meeting law).

Minn. Stat. § 13D.04, subd. 2 (b), (c).

See LMC information memo, *Newspaper Publication*, for more information.

Minn. Stat. § 331A.05, subd. 7.

## B. Special meetings

Special meetings are meetings held at a time or place that is different from the regularly scheduled meetings. These are often scheduled to deal with specific items that need to be addressed before the next regular meeting. Generally, any matter can be addressed at a special meeting that can be addressed at a regular meeting if it has been properly noticed. All state laws governing regular meetings, including the open meeting law, apply to special meetings.

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

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

### 1. Notice to council

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

### 2. Notice to public

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

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

## RELEVANT LINKS:

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

Minn. Stat. § 13D.04, subd. 2(d).

Minn. Stat. § 13D.04, subd. 2(c), (f).

Minn. Stat. § 412.191, subd. 2. Minn. Stat. § 13D.04, subd. 3. IPAD 06-027 (advising that a city council improperly held an emergency meeting to consider complaints about the city's building inspector). *Slippy v. Rach*, No. C5-06-3574 (9<sup>th</sup> Jud. Dist. June 8, 2007) (the district court rejected the advisory opinion's conclusion and instead held that the city council's decision to hold the emergency meeting complied with the open meeting law).

Minn. Stat. § 13D.04, subd. 3(f).

In calculating the number of days for providing notice, the first day the notice is given should not be counted, but the last day should be. But if the last day is a Saturday, Sunday, or a legal holiday, that day is omitted from the calculation and the following day is considered the last day. For example, if a special meeting is scheduled for a Thursday, notice has to be given by Monday at the latest to meet the three-day notice provision. In this example, Tuesday is day one, Wednesday is day two, and Thursday is day three. Monday is not included in the time computation. Similarly, if a special meeting is planned for Monday, notice must be given on Friday at the latest; Saturday is day one, Sunday is day two, and Monday is day three. Saturday and Sunday are included in the time computation since they are not the last day of the time period.

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

Cities may set an expiration date for requests for notices of special meetings and require each request to be re-filed once each year. The city must provide each person who has filed a request notice of the requirement to re-file not more than 60 days before re-filing is due.

## C. Emergency meetings

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

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

## RELEVANT LINKS:

Minn. Stat. § 13D.04, subd. 5.  
See section II-F Open  
meeting law exceptions.

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

Minn. Stat. § 412.831.  
LMC Information Memo,  
*Newspaper Publication*, for  
more information.  
Minn. Stat. § 412.121.  
Minn. Stat. § 412.831.  
Minn. Stat. § 427.01-.02.  
Minn. Stat. § 118A.02, subd.  
1. Minn. Stat. § 427.09.

Minn. Stat. § 424A.04, subd.  
1.

### D. Closed meetings

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

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

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

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

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

- Designate an official newspaper.
- Appoint an acting mayor from among the councilmembers. The acting mayor shall perform the duties of the mayor if there is a vacancy in the mayor's position or during the mayor's disability or absence.
- Select an official depository for city funds. (This must be done within 30 days of the start of the city's fiscal year).

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

- Review different council appointments to city boards and commissions. For example, the council must appoint one elected city official and one elected or appointed city official to serve with the city's fire chief on the board of trustees for a city fire department's volunteer relief association.
- Review council's bylaws and make any needed changes.
- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

**RELEVANT LINKS:**

Minn. Stat. § 412.191, subd. 1.

Minn. Stat. § 13D.04, subd. 4.

Minn. Stat. § 13D.02. IPAD 08-034.

Minn. Stat. § 13D.02. Minn. Stat. § 13D.04.

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

## **F. Adjourned meetings**

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

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

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

## **G. Meetings conducted by interactive television**

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

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

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

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

**RELEVANT LINKS:**

Minn. Stat. § 13D.02, subd. 5.

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

Minn. Stat. § 13D.021, subd. 1.

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

However, the commissioner of the Minnesota Department of Administration has advised that a city council meeting where a city councilmember participated in the meeting through Skype while physically present at a remote location outside Minnesota complied with the statutory authority for conducting meetings through interactive television. After the meeting occurred, a newspaper article suggested that the meeting violated the open meeting law because the remote location of the councilmember was not accessible to the city’s residents. The advisory opinion noted that the meeting met each of the four requirements in the statute and reasoned that the “plain language of the statute does not forbid a member of a public body from ‘attending’ a public meeting at a location ‘open and accessible to the public’ outside of the entity’s geographic area, as long as all other conditions of the section are met.”

## **H. Telephone or electronic meetings**

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

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

**RELEVANT LINKS:**

Minn. Stat. § 13D.021, subd.2.

Minn. Stat. § 13D.021, subd. 3.

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

See section I-F- Adjournd meetings.

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

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

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

## **I. 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 to do so. The council does not deliberate or discuss matters during the public-hearing portion of this type of meeting; instead, it listens to the public. Once the public-comment period is finished, the council will often wrap up the meeting.

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

There are two types of 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**

## RELEVANT LINKS:

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

Minn. Stat. § 412.851.

Minn. Stat. § 414.033, subd. 2b.

Minn. Stat. § 429.031, subd. 1.

Minn. Stat. § 429.061.

Minn. Stat. § 444.18, subd. 3.

Minn. Stat. § 469.003, subd. 2.

Minn. Stat. § 469.093, subd. 1.

Minn. Stat. § 469.065, subd. 2.

Minn. Stat. § 469.105, subd. 2.

Minn. Stat. § 469.107, subd. 2.

Minn. Stat. § 340A.602.

Minn. Stat. § 275.065, subd. 6.

Minn. Stat. § 462.357, subd. 3.

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 462.3595, subd. 2.

Minn. Stat. § 410.12, subd. 7.

Minn. Stat. § 645.44, subd. 5.

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 special meeting. For example, hearings required for zoning-ordinance amendments and special assessments have special notice requirements.

Here are some of the more common required public hearings:

- Street vacation.
- Annexation by ordinance.
- Local improvement projects that will be paid for with special assessments.
- When special assessments are made to property.
- Purchase and improvement of waterworks, sewers, drains, and storm sewers by storm-sewer-improvement districts.
- Adoption of a housing redevelopment authority (HRA) 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.

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

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

The public holidays are:

**RELEVANT LINKS:**

Minn. Stat. § 645.44, subd. 5.

Minn. Stat. § 645.44, subd. 5.

Minn. Stat. § 202A.19, subd. 1.  
Minn. Stat. § 204C.03, subd. 1.

Minn. Stat. § 13D.01.

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

- New Year's Day (Jan. 1).
- Martin Luther King's Birthday (the third Monday in January).
- Washington's and Lincoln's Birthday (the third Monday in February).
- Memorial Day (the last Monday in May).
- Independence Day (July 4).
- Labor Day (the first Monday in September).
- Christopher Columbus Day (the second Monday in October).
- Veterans Day (Nov. 11).
- Thanksgiving Day (the fourth Thursday in November).
- Christmas Day (Dec. 25).

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

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

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

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

## **II. The open meeting law**

### **A. Purpose**

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. It:

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

### **B. Public notice**

## RELEVANT LINKS:

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

Minn. Stat. § 13D.01, subd. 6.  
IPAD 08-015.

Minn. Stat. § 13D.01, subd. 1.

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

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

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

Public notice generally must be provided for meetings of a public body subject to the open meeting law. The notice requirements depend on the type of meeting. However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied regardless of the method of receipt.

### C. Printed Materials

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

### D. Groups governed by the open meeting law

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

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

The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Minnesota Legislature granted these agencies authority to conduct their affairs as private corporations.

### E. Gatherings governed by the open meeting law

There is no statutory definition of the term “meeting” in the open meeting law. The Minnesota Supreme Court, however, has ruled that meetings are gatherings of a quorum or more of the members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.

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

### F. Open meeting law exceptions

**RELEVANT LINKS:**

Minn. Stat. § 13D.01, subd. 3.  
*The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004).

Minn. Stat. § 13D.05, subd. 1 (d).

Minn. Stat. § 13D.05, subd. 1 (d)

Minn. Stat. § 13D.04, subd. 5.

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

There are seven exceptions to the open meeting law. Under these exceptions, some meetings may be closed and some meetings 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

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

## **1. Meetings that may be closed**

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

### **a) Labor negotiations under PELRA**

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

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

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

**RELEVANT LINKS:**

Minn. Stat. § 13D.03, subd. 3.

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.

Minn. Stat. § 13D.05, subd. 3(a).

**b) Performance evaluations**

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

Minn. Stat. § 13D.05, subd. 3(a). Minn. Stat. § 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).

**c) Attorney-client privilege**

*Brainerd Daily Dispatch, LLC v. Dehen*, 693 N.W.2d 435 (Minn. Ct. App. 2005).

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.

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

## RELEVANT LINKS:

*Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64 (Minn. Ct. App. 1989). *Minneapolis Star & Tribune v. Housing and Redevelopment Authority in and for the City of Minneapolis*, 251 N.W.2d 620 (Minn. 1976).

Minn. Stat. § 13D.01, subd. 3.

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

Minn. Stat. § 13D.05, subd. 3(c). *Vik v. Wild Rice Watershed Dist., no. A09-1841* (Minn. Ct. App. 2010). IPAD 08-001.

Minn. Stat. § 13D.05, subd. 3(c).

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

This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed action that may give rise to future litigation.

### **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.

### **d) Purchase or sale of property**

A public body may close a meeting to:

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

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

- 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.
- The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.
- A list of councilmembers and all other persons present at the closed meeting must be made available to the public after the closed meeting.
- The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.

## RELEVANT LINKS:

Minn. Stat. § 13D.05, subd. 3(d).

Minn. Stat. § 13D.05, subd. 3(d).

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

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

### e) Security reports

A meeting may be closed to receive security briefing and reports, to discuss issues related to security systems, to discuss emergency-response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities—if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed, and all related financial decisions must be made at an open meeting.

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

- 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.
- The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

## 2. Meetings that must be closed

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

### a) Misconduct allegations

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

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

- Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.

## RELEVANT LINKS:

Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see II D 2 (b).

Minn. Stat. § 13D.05, subd. 2(a).

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

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

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

- 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 about whether to request that the meeting be open.
- The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.

### b) Certain not-public data

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

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

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

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

## G. Common issues

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

### 1. Data practices

Generally, meetings may not be closed to discuss data that is not public. However, the public body must close any part of a meeting at which certain types of not-public data are discussed.

## RELEVANT LINKS:

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

Minn. Stat. § 13D.05, subd. 1(b).

Minn. Stat. § 13D.05, subd. 1(c).

*Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 298 Minn. 306, 215 N.W.2d 814 (Minn. 1974).  
See section II -G -6- Serial meetings.

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

*Mankato Free Press v. City of North Mankato*, 563 N.W.2d 291 (Minn. Ct. App. 1997).  
*Mankato Free Press v. City of North Mankato*, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

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:

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

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

## 2. Interviews

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

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

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

## RELEVANT LINKS:

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

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

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

IPAD 07-025.

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

The conclusion that can be drawn from 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

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

### 4. Informational meetings and committees

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

Many city councils create committees to make recommendations regarding a specific issue. Commonly, such a committee will be responsible for researching the issue and submitting a recommendation to the council for its approval. These committees are usually advisory, and the council is still responsible for making the final decision. This type of committee may be subject to the open meeting law.

For example, the attorney general has advised that an advisory panel of the State Arts Council that was charged with making recommendations regarding which individuals and organizations should be funded for artistic projects was a committee subject to the open meeting law.

In contrast, the commissioner of the Minnesota Department of Administration has advised that a city's Free Speech Working Group consisting of members, including city officials, that the city council appointed to develop and review strategies for addressing free-speech concerns relating to a political convention that was going to be held in the city was not subject to the open meeting law. The commissioner primarily based this decision on the fact that the committee did not have decision-making authority.

City councils routinely appoint individual councilmembers to act as liaisons between the council and particular committees. These types of committee meetings may be subject to the open meeting law and a notice of a committee meeting may be required. In addition, a separate notice for a special city council meeting may also be required if a quorum of the council will be present at the meeting and will participate in the discussion.

## RELEVANT LINKS:

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

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

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

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

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

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

For example, when a quorum of a city council attended a meeting of the city's planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law, not because of the councilmembers' attendance at the meeting, but because the councilmembers conducted public business in conjunction with that meeting. Based on that decision, the attorney general has advised that mere attendance by additional councilmembers at a meeting of a council committee held in compliance with the open meeting law would not constitute a special city council meeting requiring separate notice. The attorney general warned, however, that the additional councilmembers should not participate in committee discussions or deliberations absent a separate notice of a special city council meeting.

### 5. Chance or social gatherings

Chance or social gathering of city councilmembers will not be considered a meeting subject to the open meeting law as long as there is not a quorum present, or, if a quorum is present, as long as the quorum does not discuss, decide, or receive information on official city business.

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

### 6. Serial meetings

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

A Minnesota Court of Appeals' decision also indicates that serial meetings could violate the open meeting law. The Minnesota Court of Appeals considered a situation where individual councilmembers conducted separate, serial interviews of candidates for a city position in one-on-one closed interviews. Although the district court found that no meetings had occurred because there was never a quorum of the council present, the court of appeals remanded the decision back to the district court for a determination of whether the councilmembers had used this interview process for the purpose of avoiding the requirements of the open meeting law.

On remand, the district court found that the private interviews were not conducted for the purpose of avoiding the requirements of the open meeting law. This decision was also appealed, and the court of appeals, in an unpublished decision, agreed with the district court's decision. A city that wants to hold private interviews with applicants for city employment should first consult with its city attorney.

## RELEVANT LINKS:

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

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

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

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

## 7. Training sessions

Whether the participation of a quorum or more of councilmembers in a training program should be defined as a meeting under the open meeting law would likely depend on whether the program includes a discussion of general training information or a discussion of specific matters relating to an individual city.

The attorney general has advised that a city council's participation in a non-public training program devoted to developing skills 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.

## 8. Technology

It is not clear how the open meeting law applies to technology, including email or telephone calls. Although the open meeting law does not specifically address the use of email, telephone calls, and other technology it is possible that any form of communication between councilmembers or members of other public bodies could violate the open meeting law under certain circumstances.

An unpublished 2012 decision by the Minnesota Court of Appeals concluded that email communications are not subject to the open meeting law because they are written communications and are not a "meeting" for purposes of the open meeting law.

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

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

**RELEVANT LINKS:**

*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983).  
See LMCIT Information Memo *Electronic Communications Between Council Members*. See Section II.-G.-6. Serial meetings.

IPAD 09-020.

Minn. Stat. § 13.072, subd. 1(b). See IPAD for an index of advisory opinions by topic.

See Requesting an Open Meeting Law Advisory Opinion from IPAD

Minn. Stat. § 8.07. See index of Attorney General Advisory opinions from 1993 to present.

Likewise, serial discussions between less than a quorum of a public body subject to the open meeting law that are used to deliberate matters that should be dealt with at an open meeting could also violate the open meeting law. Therefore, city councils and other groups to which the open meeting law applies should take a conservative approach and avoid using letters, telephone conversations, email, and other such technology if the following circumstances exist:

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

The commissioner of the Minnesota Department of Administration has issued an opinion advising that email communication in which a quorum of a public body discussed official business violated the open meeting law. However, the opinion also advised that one-way communication between the chair and members of a public body is permissible under the open meeting law, for example, when the chair or a staff member sends meeting materials through email to all board members, as long as no discussion or decision-making takes place.

**H. Advisory opinions**

**1. Commissioner of the Minnesota Department of Administration**

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

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

**2. Minnesota Attorney General**

The Minnesota Attorney General is authorized to issue written advisory opinions to city attorneys on “questions of public importance.”

**RELEVANT LINKS:**

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

Minn. Stat. § 541.07 (2).

Minn. Stat. § 13D.06, subds. 1, 4.

Minn. Stat. § 13D.06, subd. 4.  
See LMCIT Information Memo, *Defense Cost Reimbursement Coverage For Open Meeting Law and Bankruptcy Lawsuits*, for information about insurance coverage for lawsuits under the open meeting law.

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

Minn. Stat. § 13D.06, subd. 4 (d). *Coalwell v. Murray*, No. C6-95-2436 (Minn. Ct. App. Aug. 6, 1996) (unpublished decision).

Minn. Stat. § 13D.06, subd. 3.  
*Claude v. Collins*, 518 N.W.2d 836 (Minn. 1994).  
*Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. Ct. App. 2006).

Minn. Stat. § 13D.06, subd. 3 (b) and (c).

## I. Penalties

An action to enforce the open meeting law may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. In an unpublished decision, the court of appeals concluded that this broad grant of jurisdiction authorized a member of a town board to bring an action against his own town board for alleged violations of the open meeting law.

This same decision also concluded that a two-year statute of limitations applies to lawsuits under the open meeting law.

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

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

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

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

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

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

## RELEVANT LINKS:

*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). IPAD 11-004.

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

However, in more recent decisions, Minnesota courts have refused to invalidate actions taken at improperly closed meetings. In an unpublished decision, the court stated that “even a violation of the open meeting law will not invalidate actions taken at that meeting.”

## III. Meeting procedures

### A. Agendas

The city clerk generally prepares an agenda for council meetings. The agenda is then given to councilmembers and other interested individuals such as department heads and citizens. The agenda establishes the order in which the matters will be addressed during the meeting.

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

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

#### 1. Consent agenda

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

Minn. Stat. § 204C.03. Minn. Stat. § 202A.19.

Minnesota election law provides that meetings are prohibited between 6 p.m. and 8 p.m. on any election day, including a local general or special election. Thus, if a school district is holding a special election on a particular day, no other unit of government totally or partially within the school district may hold a meeting between 6 p.m. and 8 p.m. Meetings are also prohibited after 6 p.m. on the day of a major political precinct caucus.

## II. Open meeting law

See LMC information memo, Meetings of City Councils, for more information about the open meeting law.

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

### A. Purpose

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

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

### B. Public notice

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

Public notice generally must be provided for meetings of a public body subject to the open meeting law. The notice requirements depend on the type of meeting. However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied regardless of method of receipt.

### C. Printed materials

Minn. Stat. § 13D.01, subd. 6. IPAD 08-015.

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

## D. Groups governed by the open meeting law

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

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

*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 electric power agency is not subject to the open meeting law because the Legislature has granted these agencies authority to conduct their affairs as private corporations.

## E. Gatherings governed by the open meeting law

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

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

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

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

See Section II. E. 4. For more information about serial meetings.

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

## F. Open meeting law exceptions

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

Minn. Stat. § 13D.05, subd. 1(d).

All closed meetings (except those closed under the attorney-client privilege exception) 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.01, subd. 3.  
 Minn. Stat. § 13D.04, subd. 5.  
*See The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004); (holding that the county's statement that it was closing a meeting under the attorney-client privilege to discuss "pending litigation" did not satisfy the requirement of describing the subject to be discussed at the closed meeting).

Before closing a meeting under any of the following exceptions, the public body must state, on the record, the specific grounds that permit the meeting to be closed and describe the subject to be discussed. The same notice requirements that apply to open meetings also apply to closed meetings. For example, if a closed meeting takes place at a regular meeting, the notice requirements for a regular meeting apply. Likewise, if a closed meeting takes place as a special meeting or as an emergency meeting, the notice requirements for a special meeting or an emergency meeting would apply.

## 1. Labor negotiations

Minn. Stat. § 13D.03, subd. 1 (b).

The city council may, by majority vote in a public meeting, decide to hold a closed meeting to consider its strategy for labor negotiations, including negotiation strategies or developments or discussion of labor-negotiation proposals. The council must announce the time and place of the closed meeting at the public meeting.

Minn. Stat. § 13D.03, subds. 1 (d), 2.

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

Minn. Stat. § 13D.03, subd. 3.

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

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

Minn. Stat. § 13D.05, subd. 2.

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

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

- Data that would identify victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- Active investigative data created by a law-enforcement agency, or internal-affairs data relating to allegations of law-enforcement-personnel misconduct.

Minn. Stat. §§ 144.291-.298.

Minn. Stat. § 13D.05, subd. 1(d).

Minn. Stat. § 13D.05, subd. 1(b), (c).

Minn. Stat. § 13D.05, subds. 1(d), 2 (b).

Minn. Stat. § 13D.05, subds. 1(d), 3 (a). *See* "Employee Discipline and the Open Meeting Law," *Minnesota Cities*, Sept. 1997 for more information.

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

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

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

### 3. Misconduct allegations or charges

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

### 4. Performance evaluations

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must identify the individual to be evaluated prior to closing the meeting. At its next open meeting, the public body must summarize its conclusions regarding the evaluation. This type of meeting must be open at the request of the individual who is the subject of the meeting. If this type of meeting is closed, it must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

## 5. Attorney-client privilege

Minn. Stat. § 13D.05, subd. 3 (b).

*Brainerd Daily Dispatch, LLC v. Dehen*, 693 N.W.2d 435 (Minn. Ct. App. 2005); *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002); *Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64 (Minn. Ct. App. 1989); *Minneapolis Star & Tribune v. Housing and Redevelopment Authority in and for the City of Minneapolis*, 251 N.W.2d 620 (Minn. 1976).

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

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

Minn. Stat. § 13D.05, subd. 3 (c).

A public body may close a meeting to:

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

Minn. Stat. § 13.44, subd. 3.

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

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

## 7. Security reports

Minn. Stat. § 13D.05, subd. 3 (d).

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

## G. Common issues

### 1. Interviews

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

The Minnesota Supreme Court has ruled that a school board must interview prospective employees for administrative positions in open sessions. The court reasoned that the absence of a statutory exception indicated that the Legislature intended such sessions to be open. As a result, a city should conduct any interviews of prospective officers and employees at an open meeting if a quorum or more of the city council will be present.

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

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

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

### 2. Informational meetings and committees

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

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

Many city councils create committees to make recommendations regarding a specific issue. Commonly, such a committee will be responsible for researching the issue and submitting a recommendation to the council for its approval. These committees are usually advisory, and the council is still responsible for making the final decision. This type of committee may be subject to the open meeting law.

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

For example, the attorney general has advised that an advisory panel of the State Arts Council that was charged with making recommendations regarding which individuals and organizations should be funded for artistic projects was a committee subject to the open meeting law.

IPAD 07-025.

In contrast, the Commissioner of the Department of Administration has advised that a city's Free Speech Working Group consisting of people including city officials appointed by the city to meet to develop and review strategies for addressing free-speech concerns relating to a political convention that was going to be held in the city was not subject to the open meeting law. The Commissioner primarily based its decision on the fact that the Group did not have decision-making authority.

*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 also routinely appoint individual councilmembers to act as liaisons between the council and particular council committees. These committee meetings may also be subject to the open meeting law. In addition, notice for a special meeting of the city council may be needed if a quorum of the council will be present at the meeting and will be 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 the councilmembers attended the meeting—but because the councilmembers conducted public business in conjunction with that meeting.

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

### 3. Social gatherings

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

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

#### 4. Serial gatherings

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

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

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

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

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

#### 5. Training sessions

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

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

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 was not a meeting subject to the open meeting law. However, the opinion also advised that if there were to be any discussions of specific city business by the attending members, either outside or during training sessions, it could be a violation of the open meeting law.

#### 6. Technology

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

It is not clear how the open meeting law applies to technology, such as e-mail or telephone calls. Although the law does not specifically address the use of email, telephone calls, and other technology, it is possible that any form of communication between councilmembers or members of other public bodies could violate the open meeting law under certain circumstances.

*O’Keefe v. Carter*, No. A12-0811 (Minn. Ct. App. Dec. 31, 2012) (unpublished decision).

An unpublished 2012 decision by the Minnesota Court of Appeals concluded that email communications are not subject to the open meeting law because they are written communications and are not a “meeting” for purposes of the open meeting law.

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

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

*LMCIT risk management memo,  
Electronic Communications  
Between Councilmembers,  
IPAD 09-020.*

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

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

## H. Advisory opinions

### 1. Commissioner of the Minnesota Department of Administration

Minn. Stat. § 13.072, subd. 1 (b). See IPAD for an index of advisory opinions by topic.

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

See Requesting an Open Meeting Law Advisory Opinion from IPAD.

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

### 2. Minnesota Attorney General

Minn. Stat. § 8.07. See index of Attorney General Advisory Opinions from 1993 to present.

The Minnesota Attorney General is authorized to issue written advisory opinions to city attorneys on "questions of public importance."

## I. Penalties

Minn. Stat. § 13D.06, subd. 1.

*Claude v. Collins*, 518 N.W.2d 836 (Minn. 1994).

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

Minn. Stat. § 13D.06, subd. 2.

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

Minn. Stat. § 13D.06, subd. 4. See LMCIT risk management memo, Open Meeting Law Defense Coverage, for information about insurance coverage for open-meeting-law violations.

The court may also award reasonable costs, disbursements, and attorney fees of up to \$13,000 to any party in an action alleging a violation of the open meeting law. The court may award costs and attorney fees to a defendant only if the action is found to be frivolous and without merit. A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members.

Minn. Stat. § 13D.06, subd. 4.

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

Minn. Stat. § 13D.06, subd. 4 (d). *Coalwell v. Murray*, No. C6-95-2436 (Minn. Ct. App. Aug 6, 1996) (unpublished decision).

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

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

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

Minn. Stat. § 13D.06, subd. 3 (b).

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

Minn. Const. art. VIII, § 5. *Jacobsen v. Nagel*, 255 Minn. 300, 96 N.W.2d 569 (Minn. 1959).

Under the Minnesota Constitution, the Legislature may provide for the removal of public officials for malfeasance or nonfeasance. To constitute malfeasance or nonfeasance, a public official's conduct must affect the performance of official duties and must relate to something of a substantial nature directly affecting the rights and interests of the public.

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

*Sullivan v. Credit River Township*, 299 Minn. 170, 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); *Quast v. Knutson*, 276 Minn. 340, 150 N.W.2d 199 (Minn. 1967).

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

The open meeting law does not address whether actions taken at a meeting that does not comply with its requirements would be valid. Minnesota courts have generally refused to invalidate actions taken at an improperly closed meeting. But the Minnesota Supreme Court has held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

### III. Meeting procedures

#### A. Citizen involvement

Minn. Stat. § 13D.01, subd. 6.

Any person may observe council meetings. In fact, the council should encourage citizen attendance to help raise awareness of the city’s problems and help create support for programs suggested by the council. Citizens must be able to hear the discussion at a meeting, and must be able to determine who votes for or against a motion. One copy of the agenda and of all materials made available to the council should be made available to the audience unless doing so would violate the Minnesota Government Data Practices Act.

Minn. Stat. § 412.191, subd. 2.

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

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

#### B. Recording and broadcast of meetings

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

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