



Meetings of City Councils

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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. § 462.3595, 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).

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

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.

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.

Minn. Stat. § 13D.05, subd. 1(d).

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.

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:

- i. The public body must identify the individual to be evaluated prior to closing the meeting.
- ii. 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.
- iii. 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.
- iv. The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- v. 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:

- i. 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.
- ii. 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.
- 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. §§ 144.291-144.298.

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.

Minn. Stat. § 13D.04, subd. 5.

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

5. Closed meetings

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.

8. Technology trouble

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

See Part III - I - *Serial gatherings*.

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.

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

See [Electronic Communications Between Council Members](#), LMCIT Information Memo.

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).

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.

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).

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.”

Minn. Stat. § 13D.06, subd. 4(c).

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.

- After 6 p.m. on the evening of a major political party precinct caucus.

Minn. Stat. § 204C.03, subd. 1.

- 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; 645.08(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.

- **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.

Minn. Stat. § 13D.04, subd. 2.

See Part III - E - Notice requirements.

- **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.

Minn. Stat. § 13D.04, subd. 3.

See Part III - E - Notice requirements.

- **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, subs. 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
Fix a time to adjourn.	✓			✓	Majority	✓
To adjourn.	✓				Majority	
Recess. (A motion to take an intermission.)	✓			✓	Majority	
Raise a question of privilege. (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.	
Call for the orders of the day. (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