



# City Council Code of Conduct

## Introductory Pledge

The Maple Plain City Council is committed to practicing principles and conducting business in a fair, ethical, and accountable manner to inspire trust in local government. Recognizing these goals, this Code of Conduct is established for all elected officials of the City of Maple Plain. Where applicable, the principles, behavioral guidelines, and legal obligations expressed in this Code of Conduct are also applicable to appointed board and commission members.

Councilmembers must conduct themselves by complying with the following principles, and agree to:

- Comply with the law, including
  - Staying within the City Council's authority
  - Following the open meeting, gift, and conflict of interest laws
- Respect City Council roles and responsibilities when working with staff, boards, and commissions
- Keep current their City Calendar of dates they are not available as to aid in the streamlining of scheduling meetings.
- Be consistent in policy and respect process
- Act and conduct public business in a manner that is consistent with the City's adopted values
- Fulfill the Council's statutory and fiduciary responsibility to act in the best interest of the City, and all its residents, both financially and legally by:
  - Keeping the common good as the highest purpose to focus on achieving constructive solutions for the public benefit
  - Not disclosing private or confidential information of the City, or using that information to advance personal interests
  - Protecting the City's interests and avoiding liability by following the advice of legal counsel

## Compliance and Enforcement

This Code of Conduct expresses the standards of ethical conduct expected of members of the Maple Plain City Council and board and commission members, where applicable. Members themselves have the primary responsibility to assure the public that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of government.

Councilmembers must hold themselves and each other accountable. In the event of a suspected violation of this Code of Conduct, complaints should be submitted to the City Administrator. The resolution and enforcement process includes the following:

- Matters of legal compliance will be referred to the City Attorney
- Matters that potentially conflict with the Code of Conduct but do not rise to a violation of the law will be reviewed by the City Administrator. Potential resolution may include one of the following:

- The City Administrator and one councilmember may review a complaint and findings directly with the councilmember who is alleged to have violated the Code of Conduct.
  - The City Administrator may provide a written notification of the complaint and findings to the City Council.
  - The City Administrator may refer the matter, with any background, to the full City Council for discussion and consideration of action.
- Aside from legal matters, the City Council will be the only entity that determines if a violation or violations of the Code of Conduct have occurred.
- In the event of a violation of the Code of Conduct, the City Council may take action, including the following:
  - Declaration of sufficient findings of a violation of the Code of Conduct
  - A public censure of the member in violation
  - Removal of the member in violation from appointed positions, such as committee, commission, and liaison appointments.

All elected and appointed officials of the City are also subject to and must comply with the City's Sexual Harassment and Respectful Workplace Policies.

## Compliance with the Law

Members must comply with applicable federal laws, state laws, and city ordinances in the performance of their public duties.

### Authority

In statutory cities, powers are granted to the Council as a whole, and not to individual members.

### Open Meeting Law

Public deliberations and processes must be conducted openly and transparently. The Minnesota Open Meeting Law (Minnesota Statutes Chapter 13D) requires that meetings of governmental bodies be open to the public to:

- Prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed about a public board's decisions or to detect improper influences
- Assure the public's right to be informed and observe public meetings

The Minnesota Supreme Court has noted that meetings of less than a quorum of a public body held serially to avoid a public meeting or to fashion an agreement on an issue of public business may violate the Open Meeting Law. Serial meetings must be avoided.

### Gifts and Donations

Gifts from Interested Persons: Under Minnesota Statutes Section 471.895, councilmembers may not receive gifts from any "interested person" in conjunction with their City Council duties.

- A "gift" is defined as money, real or personal property, a service, a loan, forbearance or forgiveness of debt, or a promise of future employment, which is given and received without the giver receiving something of equal or greater value in return.



- “Interested person” means a personal or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make
  - Virtually every resident or person doing business in the City could have a direct financial interest in a decision
- See statute for exemptions

Gifts to the City: City Councilmembers can recommend acceptance of gifts and donations to the City. All gifts and donations to the City must be accepted by Council resolution.

### Logo

Members must not use the City’s name or logo for purpose of endorsing any political candidate or business.

### Conflict of Interest

A conflict of interest occurs when any councilmember who has a “financial interest” in, or who may receive a financial benefit as a result of, any action, or if there is potential for the appearance of conflict of interest, takes part in the official decision on the action. Questions about a potential conflict of interest should be discussed with the City Administrator.

Contractual Conflict of Interest: Minnesota Statute Section 471.87 (with certain exceptions): A public officer who is authorized to take part in any manner in making any sale, lease, or contract in an official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.

Non-Contractual Conflict of Interest: Non-contractual matters may include such things as Council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested councilmember or board or commission member most likely should abstain from participating in the Council discussion and from voting on these issues.

Members who have an actual or potential conflict of interest must:

- Disclose the conflict of interest to the group, and
- Abstain from the official discussion, debate, and vote

This is only a general summary of these laws and obligations that apply to elected and appointed officials. Specific situations or questions should be referred to the City Administrator or City Attorney.

## Roles of Council, Staff, and Commissions

Councilmembers, staff, and board and commission members are all part of a team committed to serving the residents of Maple Plain both today and in the future. To be effective, members must come to meetings with an open mind, think strategically about City issues, and delegate details of implementation to staff. Councilmembers must strive to maintain a culture of trust, respect, and candor as a Council and when working with staff and boards/commissions.

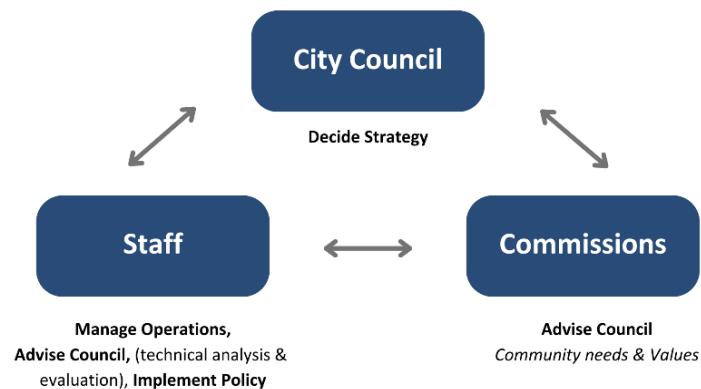


In order to facilitate smooth and efficient meetings, the City Council shall follow Robert's Rules of Order to govern the conduct of its meetings. Additionally, all members shall abide by the guidelines set forth in the Open Meeting Law, ensuring transparency, accountability, and public access to meetings and decisions.

(Open Meeting Law Refer to Appendix A)

(Robert's Rules of Order Refer to Appendix B)

Examples of decisions and actions for each role include the following:



#### City Council:

- Make policy-level decisions. Hire and Terminate Staff, Supervise the City Administrator.
- Approve:
  - Budget and work-related plan
  - Ordinances and policy decisions
  - Variances and rezoning requests
- Appoint representatives to advisory boards and commissions

#### City Administrator and Staff

- Provide best efforts and technical advice to the Council
- Manage operations and staff
- Propose budget and policies
- Carry out Council decisions
- Deliver services
- Equitably enforce codes and policies

#### Advisory Boards and Commissions

- Provide a community perspective
- Propose work plan items



- Advise the Council
- Hold hearings as directed by the Council
- Assist as directed in the work plan with engagement efforts

To act in accordance with the City's adopted values and in a manner that is productive for the body, the City Council adopts the following principles of respectful behavior that apply to all councilmembers and members of boards and commissions. These guidelines are provided to ensure each member's contributions are valued and through the collective contributions of all, the Council will operate most effectively. These guidelines are ideals and singular or occasional actions that are not consistent do not necessarily constitute a violation of this Code of Conduct, however, repeated and/or intentional violations of one or more of these principles may result in City Council action.

#### **Members should STRIVE TO**

- Treat people with courtesy, politeness, and kindness
- Encourage others to express their opinions and ideas
- Listen to what others have to say
- Use the ideas of others to improve decisions and outcomes
- Recognize and respect differences
- Prepare for the issues at hand (read the packet, ask questions prior to the meeting when you are able)
- Focus on the business of the body
- Consider only legally related information in decisions
- Act as a decision-maker, not an advocate

#### **Members should AVOID**

- Speaking over or cutting off another individual's comments
- Insulting, disparaging, or putting down people or their ideas
- Bullying other members by displaying a pattern of belittling, demeaning, judging or patronizing comments
- Violence or the threat of violence will not be tolerated
- Grandstanding – offering their political beliefs or world views unrelated to the matter at hand during discussions
- Distractions, such as cell phone use during meetings.

#### **Working with Staff:**

##### **City Council DOES:**

- Hire, fire, and supervise the City Administrator.
- Set the strategic direction for the city
- Consider and approve budget and related work plan, and monitor performance relative to those items
- Consider and approve policy decisions
- Consider and approve development proposals
- Consider and approve variances and rezoning requests

##### **City Council DOES NOT:**

- Direct the activities of staff, other than the City Administrator
- Individually direct the activities of boards, commissions or other resident groups
- Individually approve policies, projects etc.
- Individually commit City resources or staff to specific causes
- Individually enforce policies, City Code, etc.
- Individually speak or prepare official correspondence on behalf of the City unless



- Appoint citizens to citizen advisory boards and commissions authorized by the City Administrator or City Council.
- Approve and amend work plans

Councilmembers must use the following guidelines working with City staff:

- Respect staff as valued resources and members of our team
- Support the maintenance of a positive and constructive workplace environment for City employees where individual councilmembers, City staff, and the public are free to express their ideas and work to their full potential
- Provide direction to the City Administrator as a body and not direct the work of individual staff members
- Encourage staff to focus on the big picture in reports
- When possible, notify the City Administrator in advance of a Council meeting of questions or requests to pull items from the consent agenda so the appropriate staff can compile the information needed
- Agree that the information they ask of the City Administrator will be shared equally with all councilmembers
- Copy the City Administrator on all communications with staff, including questions

### **Working with Boards and Commissions**

Maple Plain's boards and commissions are established by the City Council and serve as advisors to the Council. Specific board and commission roles are to:

- Investigate matters within the scope of the board or commission or as specifically directed by the Council
- Advise the Council by communicating the viewpoint or advice of the commission
- At the direction of the Council, hold hearings, receive evidence, conduct investigations, and, based on such hearings, evidence, and investigations, make decisions and recommendations to the Council

City Councilmembers shall use the following guidelines working with boards and commissions:

- View boards and commissions as vitally important resources to support our decision-making
- Communicate effectively with boards and commissions to ensure they have the tools to do their work
- Give clear direction as a body and take adequate time to review the result of their deliberations
- Because of the value of the independent advice of boards, commissions, and task forces to the public decision-making process, members of the Council must refrain from using their position to influence the deliberations or outcomes of boards, commissions, and task force proceedings
- Councilmembers will attend board, commission, committee, working group, or task force meetings when appointed by the Council as a City Council Liaison. When councilmembers attend a meeting:



- They are primarily there to listen, observe, and communicate relevant information between the Council and the board or commission.
- They should strive for good communication by reporting to the full Council at the following regular City Council meeting.

### **Working with the Community**

**Residents.** City staff are the first call for help for its residents. Councilmembers should refer residents who have concerns to the City Administrator. If a resident has contacted the City Administrator but is still not satisfied, the councilmember should discuss it with the City Administrator. If a resident receives conflicting information from different councilmembers or staff, that is difficult for the resident and could increase liability for the City.

#### **Business or other interests:**

The purpose of a City Council meeting is to review the information needed to make decisions and vote on matters presented. It is not feasible to conduct all business in a public meeting. Particularly around development projects, business interests might ask a councilmember or commission member to meet outside of a formal meeting to facilitate idea generation about proposals.

The City Council's overarching principles for working with the community, applicable to councilmembers and board and commission members, include:

- Never grant special consideration, treatment, or advantage.
- Respect the sensitivity of personal information.
- Honor established rules regarding public testimony and communicate the rules.
- Make ourselves available to all parties on an equal basis and not advocate for a certain point of view.
- Be cautious about how we participate in meetings or events and not prejudge the issue before the Council has had a chance to deliberate.

These principles help ensure fairness, transparency, and integrity in the council's interactions with the community.

#### **Meeting requests by residents and businesses**

1. **AFTER DECISION:** If a councilmember is invited to a meeting about an issue the Council has decided upon, that member may explain how the Council arrived at that decision
2. **DURING DISCUSSION:** If a councilmember is invited to a meeting about an issue that will be before the Council in the future, the councilmember must uphold the above principles for working with the community, and:
  - a. Must not make a decision about an issue to come before the City Council until the process allows.
  - b. Must be sensitive to the fact that the councilmember is not hearing everyone and give equal consideration to all feedback regardless of the way it was received.
3. **DURING SPECIFIED ENGAGEMENT PROCESS:** If a councilmember meets with a resident during a planned engagement process, they must notify the resident that they are there to listen and



encourage them to participate through the established process to engage. The councilmember should ensure that staff receives any feedback provided by residents.

## Intergovernmental Relations

Members must represent positions approved by the City Council to the best of their ability when working with:

- Legislative bodies
- Federal or state agencies
- Other local governments, such as school boards or counties

If an individual councilmember's opinion differs from the City position or a matter agreed upon by the full Council, members must explicitly state that their opinion does not represent that of the City Council or the City of Maple Plain, nor should they make any inference to the contrary.

## Social Media Use

The term "social media" refers to forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content. Some examples include, but are not limited to, internet-based platforms, such as Facebook, Instagram, X, and YouTube.

**Include an introductory statement in the profile or about section of your account that defines the purpose and topical scope of your page, for example:**

*"This account is intended for personal use only. The views, postings, positions, or opinions expressed on this site are my own and do not represent those of the City of Maple Plain. If you are a citizen of Maple Plain and would like to discuss city business, please go to [mapleplainmn.gov](http://mapleplainmn.gov) or contact me at [official email]."*

## Commenting on City Accounts

The City of Maple Plain uses social media to send and receive messages about City information, services, and related programs with community stakeholders, including employees, vendors, citizens, media, and other members of the public.

- Similar to others who engage with the city on social media, as an elected or appointed official you should understand the City's current guidelines for public participation, which are subject to change as new technology and tools emerge.
- Public comments may be removed from City-administered social media accounts if they contain any one or more of the following:
  - Vulgar, physically threatening, or harassing language
  - Content that promotes, fosters, or perpetuates discrimination based on race, religion, gender, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or other protected status under applicable law



- Inappropriate sexual content or similar links
- Private or otherwise confidential information
- Content that promotes illegal activity or encourages actions that may compromise public safety
- Content that violates a copyright or other legal ownership interest of any other party
- Comments not topically related to the original article or post
- Comments in support of or opposition to political candidates, campaigns, or ballot measures during an election season
- Promoting or advertising a commercial transaction, organization, or event that is not sponsored or in direct relationship with the City
- Organized political activity
- Information that may compromise the safety or security of the public or public systems

### **Use of Personal Accounts**

As a policy-making body, councilmembers are given more latitude than City employees to publicly express thoughts and opinions on local issues. However, as an elected official, you should be aware of additional risks related to your general participation on social media.

**Open Meeting Law.** (Reference available in Appendix A) Communications between a quorum of councilmembers about public business, no matter the forum or time, can constitute a “meeting” to which the Open Meeting Law applies.

Therefore, you should consider the following when using personal social media accounts:

- Remove elected titles from profiles used to identify a personal social media account, and clearly state how constituents should communicate regarding public matters
- Include an introductory statement in the profile or about section of your account that defines the purpose and topical scope of your page, for example:

*“This account is intended for personal use only. The views, postings, positions, or opinions expressed on this site are my own and do not represent those of the City of Maple Plain. If you are a citizen of Maple Plain and would like to discuss city business, please go to [mapleplainmn.gov](http://mapleplainmn.gov) or contact me at [official email].”*

- Redirect information to official government sources and avoid making posts related to your official duties or governmental bodies
- Redirect political dialogue requests to an alternative means of communication (i.e. email, phone, or other preferred social media account).
- Avoid commenting on local issues where other councilmembers are also participating in discussion
- Avoid making posts and/or comments on behalf of the City and/or the City Council



- Avoid making posts and/or comments in your official capacity as an elected or appointed official
- Avoid making posts and/or comments regarding City business

**Minnesota Government Data Practices Act.** State law defines “government data”, potentially subject to public disclosure, as all data collected, created, received, maintained, or disseminated by any government entity, regardless of its physical form, storage media, or conditions of use. Government data includes email, internet posting, text messages, instant messages, and other electronic communications

Therefore, you should consider the following:

- Hide, rather than delete, clearly inappropriate public comments on your personal or official social media account, if possible. In some cases, these comments may still be subject to verification or public disclosure in the future. When in doubt, don’t delete it.
- Avoid responding to inappropriate comments or personal attacks on social media. If the commenter persists, redirect them to an alternate method of communication (i.e. email)
- Be aware that personal social media accounts, depending on its content, may still be subject to the Data Practices Act.

**First Amendment.** More constituents are posting comments on elected official’s personal pages to voice concerns on public issues. Once an elected official’s social media page is opened for political discussion, it is likely transformed into a public forum for speech and debate, instantly granting every user a First Amendment right to comment.

Therefore, you should consider the following:

- Limit open-ended political and City business discussions from your personal social media accounts and redirect dialogue requests to an alternate channel
- When in doubt, don’t block users. Especially those with whom you have previously engaged. If you must, consult with legal counsel first, and then document your actions and reasons for blocking

#### **Posting or commenting on Non-City Public Accounts**

Elected officials may also wish to post or comment on public social media accounts maintained by outside individuals or groups. Because it is more difficult to distinguish whether you are posting your official capacity as a councilmember or as a private citizen in this scenario, you should recognize that your comments or posts may be seen as actions taken on behalf of the City or in your capacity as a City official.

Therefore, in addition to complying with the guidelines above for the use of personal accounts, councilmembers should avoid posting or commenting on any of the following content on public social media groups or accounts that are not sponsored by the City:

- Vulgar, physically threatening, or harassing language, or inappropriate sexual content or links
- Content that promotes fosters, or perpetuates discrimination on the basis of race, religion, gender, marital status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or other protected status under applicable law



- Private or otherwise confidential information
- Information that may compromise the safety or security of the public or public systems

### **Use of Official Accounts**

If you choose to create a social media account to engage with constituents, the best practice is to keep this account distinct and separate from other personal accounts that you maintain.

Elected officials increasingly use social media for reelection purposes as well. However, mixing campaign and constituent communications from the same account could put you at risk for violating laws that prohibit using government resources for political purposes.

Therefore, you should consider the following:

- Make it official – Your account profile, descriptions, and photo should clearly indicate your position as a member of the Maple Plain City Council and your intent to use the account as a way of communicating with constituents
- Your account is a public forum – Your engagement with the public on social media as an elected official establishes your platform as a limited public forum, which affords users the right to comment on the content you publish. It also means that any speech restrictions or censorship is subject to strict scrutiny, and First Amendment activities generally may not be prohibited. So, when in doubt, don't delete it
- Prohibited content is defined by City policy – For consistency, consider managing prohibited content on your accounts in the same way City-administered accounts are managed
- Campaign separately – Councilmembers in office should not use City administered or funded social media accounts for electioneering. It's equivalent to campaigning from the dais during a public meeting, which may violate state law
- Seek guidance – If you are unsure about publishing certain content, or feel you are justified in the removal of content, involve the City Administrator and/or the City Attorney before making a decision

### **Violation of Policy**

This policy is not meant to circumvent or bypass any of the other processes, policies, or laws that apply to the City Council. Social media activity and conduct by Council members should not only comply with these policy terms but all other processes, policies, and laws that may apply as well.



# OPEN MEETING LAW

## 1. Purpose.

The purpose of Minnesota's Open Meeting Law is:

- a.) to prohibit public actions from being taken at secret meetings where it is impossible for the interested public to detect improper influence;
- b.) to ensure the public's right to be informed; and
- c.) to afford the public an opportunity to present its views.

## 2. Who is Subject to the Open Meeting Law? See Minn. Stat. § 13D.01

- All city council, school board, county board and town board meetings and executive sessions (with a few narrow exceptions).
- State agencies, boards, commissions and departments.
- Committee, subcommittee, board, department, or commission meetings of the public body.
- Meetings of governing bodies of local public pension plans.
- Housing and redevelopment authority meetings.
- Economic development agency meetings.

## 3. What is a "Meeting?" See Moberg v. Independent Sch. Dist. No. 281, 336 N.W. 2d 510 (Minn. 1983); St. Cloud Newspapers, Inc. v. District 742 Community Schs., 332 N.W.2d 1 (Minn. 1983).

The Open Meeting Law statute does not define the term "meeting." Minnesota courts have ruled that the Open Meeting Law applies to gatherings of officials where at least a *quorum* is present and issues relating to official business are discussed or information relating to official business is received or action (such as a vote) is taken.

- Examples:
  - chamber of commerce gatherings with councilmembers;
  - staff planning sessions with councilmembers;
  - neighborhood land use gatherings with councilmembers;

- hockey association discussions with councilmembers;
  - field trips;
  - retreats;
  - council meeting with fire department
- Telephone conversations, e-mail, letters among a quorum to create a consensus or decision.
- Applies to deliberations as well as actions.
- Applies to commissions, task forces.
- Applies to serial meetings.
- Applies to “after meeting” meetings and “before meeting” meetings.
- Applies to intergovernmental meetings.
- Does not apply if the gathering is only discussing non-governmental matters (the social or casual gathering).
- Does not apply to generalized training sessions held by the League of Cities.
- Does not apply to less than a quorum where the gathered members have no decision-making authority.
- According to the Attorney General, a quorum of the council may attend a planning commission meeting without notice of a council meeting if the councilmembers just observe and do not participate or discuss.

**4. Electronic Communications.**

- See League memos that follow these materials.

**5. Use of Social Media.**

Minnesota Statute § 13D.065 provides:

The use of social media by members of a public body does not violate this chapter so long as the social media use is limited to exchanges with all members of the general public. For purposes of this section, e-mail is not considered a type of social media.

6. **Interactive Television.**

- Councilmembers must hear and see each other and all discussion and testimony.
- The public at the regular meeting location must hear and see all discussion, testimony, and voting.
- There must be at least one councilmember at regular meeting location.
- Each location where a councilmember is present is “open and accessible to the public.”

7. **What Actions Can/Must be Closed?**

A. **Labor Negotiations** *Minn. Stat. § 13D.03*

The governing body of a public employer *may*, by a majority vote in a public meeting, decide to hold a closed meeting to consider strategy for labor negotiations.

- The time of commencement and place of the closed meeting must be announced at the public meeting.
- Following the closed meeting, a written record of all members present must be made available to the public.
- After all labor contracts have been signed, a tape-recording of the meeting must also be made available to the public.
- If a claim is made that public business, other than labor negotiation strategy, was discussed at the meeting, a court must privately review the tape-recording of the meeting. The tape must be kept for two years after the contract is signed.

B. **Specific Types of Non Public Data** *Minn. Stat. § 13D.05*

The general rule is that meetings cannot be closed to discuss data that is not public. Any portion of a meeting *must* be closed if expressly required by another law or if the following types of data are discussed:

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

- Active investigative data created by a law enforcement agency or internal affairs data relating to allegations of law enforcement personnel misconduct.
- Educational, health, medical, welfare, or mental health data that are not public data under separate statutes.

Data discussed at an open meeting retains its original classification. However, a record of the meeting will be public.

C. Misconduct Allegations or Charges Minn. Stat. § 13D.05, Subd. 2(b)

A public body *shall close* one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If members conclude that discipline is warranted, any subsequent hearings related to the charge or allegation must be open. A meeting must also be open at the request of the individual who is the subject of the meeting.

D. Performance Evaluations Minn. Stat. § 13D.05, Subd. 3(a)

A public body *may* close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body must summarize its conclusions regarding the meeting. A meeting must also be open at the request of the individual who is the subject of the meeting.

E. Attorney-client Privilege Minn. Stat. § 13D.05, Subd. 3(b); *Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64 (Minn.Ct.App.1989); *Star Tribune v. Board of Educ.*, 501 N.W.2d 869 (Minn.Ct.App.1993); *Prior Lake American v. Mader* 642 N.W.2d 729 (Minn. 2002); *Clearwater v. Independent School Dist. No. 166*, 2001 WL 1155706 (Minn.App.); *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn.Ct.App. 2004).

A meeting may be closed if permitted by the attorney-client privilege. This privilege does not extend to a request for general legal advice or opinions.

F. Security Briefings Minn. Stat. § 13D.05, Subd. 3(d)

Meetings may be closed to receive security briefings and reports and emergency response procedures if disclosure of the information would pose a danger to public safety or compromise security procedures or responses.

Financial issues relating to security must be discussed at an open meeting.

Must tape record the closed portion of the meeting and must keep the tape for four years.

G. Appraisals; Developing Offers Or Counteroffers For Purchase Of Real Estate Or Personal Property Minn. Stat. § 13D.04, Subd. 3.

Meetings may be closed:

- to determine the asking price for real or personal property to be sold by the city
- to review appraisal data
- to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before closing the meeting, the council must identify on the record the real or personal property that will be discussed.

Must tape record the closed meeting and must keep the tape for eight years after the date of the meeting. Must keep a list of the persons at the closed meeting. The list of those present is available after closed meeting.

Must make the tape available after the city buys or sells the property or the city abandons the sale or purchase.

Actual sale or purchase and purchase price must be approved at an open meeting; vote to sell or purchase must be at an open meeting.

H. Keeping Tapes of Closed Meetings Minn. Stat. § 13D.05, Subd. 1(d)

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.

8. Legal Meetings - Notice and Agenda Issues. Minn. Stat. § 13D.04

- A schedule of the *regular meetings* of a public body shall be kept on file at its primary offices. If a regular meeting is to be held at a time or place different from that stated in the schedule of regular meetings, the public body shall give notice as provided for a “special meeting.”
- For a *special meeting* the public body shall post written notice of the date, time, place and purpose of the meeting on the principal bulletin board of the public body or on the door of its usual meeting room. Publication is an alternative.

- For an *emergency meeting* the public body shall make a good faith effort to provide notice to each news medium that has filed a written request for notice.
- All notice requirements apply to closed meetings.
- In statutory cities, the mayor may call a meeting or two of the five-person council may call a meeting.
- Possible use of interactive television
- A “recessed” meeting does not have to be renoticed as long as the time and place of the recessed meeting were established and recorded at the previous meeting.

9. **Procedures for Closing a Meeting.** *Minn. Stat. § 13D.01, Subd. 3*

- The body must first meet in open
- The body must announce why the meeting is to be closed (the exception that allows a closed meeting)
- The body must identify who will attend the closed meeting
- The body must specifically describe the matter to be discussed at the meeting vs. merely identifying the issues. *See The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn.Ct.App. 2004).
- 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.

10. **Remedies and Penalties.** *Minn. Stat. § 13D.06; Claude v. Collins*, 518 N.W.2d 836 (Minn 1994).

- Any person who intentionally violates the Open Meeting Law is subject to personal liability in the form of a civil penalty of up to \$300.
- If a person has been found to have intentionally violated the Open Meeting Law three or more times involving the same governing body, such person shall forfeit the right to serve on the governing body for a period of time equal to the term of office that was being served.
- A court may award costs and attorney’s fees of up to \$13,000 to any party in an action under the Open Meeting Law. Specific intent must be found.

- The court shall award reasonable attorney fees to a prevailing plaintiff who has brought an action under this section if the public body that is the defendant in the action was also the subject of a prior written opinion issued under section 13.072, and the court finds that the opinion is directly related to the cause of action being litigated and that the public body did not act in conformity with the opinion. The court shall give deference to the opinion in a proceeding brought under this section.

## **11. Other Citizen Rights Under Open Meeting Law.**

### Right to Know When the Public Body Meets

- Regular meeting (schedule at City Offices)
- Special meeting (three days posted and mailed notice or delivered notice)
- Emergency meeting (notification of news media)

### Right to Convenient Location

- Accessible
- Generally, must be in city corporate limits

### Right to Watch and be Present

- Open meeting law (public right to be present)
- All meetings of the Council shall be open to the public (*Minn. Stat. § 412.191, Subd. 2*)

### Right to Know How the Public Body Voted

- Record votes in journal
- Votes taken in public

### Right to Know What Supporting Material the Public Body Had in Front of It

- Available at meeting
- Rule does not apply to confidential data or closed meeting information

### Right to Have a Summary Record of Council Minutes – or Else Publish Them – or Else Mail to Those Who Have Requested

- Within 30 Days After Meeting
- Distribution at City Expense
- Rule Does Not Apply to Cities of Less Than 1,000 Population

## Right to Have Ordinances Published

- Minn. Stat. § 421.191, Subd. 4
- Minn. Stat. Chp. 331A

## **12. Update and Review of Relevant Caselaw.**

### Canons of Construction

- *Prior Lake American v. Mader*, 642 N.W.2d 729 (2002)
- *Merz v. Leitch*, 342 N.W.2d 141 (1984)
- *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1 (1983)

### Social Gatherings

- *Berglund v. City of Maplewood*, 173 F.Supp.2d 935 (D.Minn.2001)
- *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1 (1983)
- *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757 (1982)

### Generalized Legal Advice

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

### Serialized Meetings

- *Mankato Free Press v. City of Mankato*, 563 N.W.2d 291 (Minn.Ct.App. 1997); Department of Administration Advisory Opinion 09-020

### Councilmembers Attending Committee Meetings

- *Op.Atty.Gen., 63a-5, August 28, 1996* (re City Council of Ely)

### No Delegated Authority to Act

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

### Attorney – Client Privilege

- *Demming v. Housing and Redevelopment Authority of Duluth*, 847 F.Supp. 130 (1994)
- *Minneapolis Star Tribune v. Housing and Redevelopment Authority In and For City of Minneapolis*, 310 Minn. 313, 251 N.W.2d 620 (1976)
- *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002)

- *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn.Ct.App. 2004)
- *City Pages v. State of Minnesota, et al*, 655 N.W.2d 839 (Minn.Ct.App. 2003).
- *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435 (Minn.Ct.App. 2005)

#### Purpose of Open Meeting Law

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

#### General Training Session

- *Op.Atty.Gen., 63a-5, Feb. 5, 1975*

#### Whether Ex-Officio Meeting is Really a Meeting

- *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1 (1983)
- *Minnesota Educ. Ass'n v. Bennett*, 321 N.W.2d 395 (1982)

#### Meeting of a Public Body

- *Star Tribune Company, et al v. University of Minnesota Board of Regents, et al.*, 2004 WL Minn. Jul 15, 2004.

#### Right To Record Meeting

- The public can record open meetings as long as it doesn't disrupt the proceedings.  
Minnesota Attorney General Opinion 63a-5 (December 4, 1972)

#### Public Accessible Location

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

#### Whether Every Communication Is a Meeting

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

# Electronics and the Elected

By Greg Van Wormer

**W**hen running for office, it's a given that some aspects of your private life will become more public. Once you're elected, this becomes even more apparent, and as it relates to technology it may become more public than you ever thought it would.

As a city councilmember dealing with official city business, a whole new set of rules and regulations covers your actions. You've probably seen a lot of the information in this article elsewhere and there's a reason for that: it's important.

E-mail can be a convenient way to communicate, but there are a number of possible problems to watch out for in this area.

**Potential Open Meeting Law problems.** For starters, you need to make sure you don't hold a serial meeting via e-mail. Consider the following scenario: Let's say a quorum of your city council is three councilmembers. The city clerk sends out the agenda for the upcoming council meeting.

You notice an item on the agenda regarding a joint powers agreement for fire coverage with the city of Mosquito Heights. You forward this e-mail to councilmember Anderson, and write that you have concerns about Mosquito Heights having enough equipment to truly cover your city. Anderson agrees with you, adds her comments, and sends it to councilmember Herkimer. Once that happens, this e-mail exchange could be considered a meeting and could be in violation of the Open Meeting Law. Best advice is to treat electronic communication regarding city business as one-way.

**Your e-mail account.** Another thing to be careful of is the account where you receive e-mail related to city business since such e-mails are considered government data. The best option is for

each councilmember to have his or her own e-mail account provided by the city, and handled by city staff or contracted staff. However, this is not always feasible for cities due to budget, size, or logistics.

If you don't have a city e-mail account, there are some things to think about before using your personal e-mail address for city business. First, who has access to that account? Preferably, just you. Using a shared account with other family members could lead to incorrect information being communicated from the account, or incoming information being inadvertently deleted. Also, since city e-mails are government data, city officials may have to separate personal and city e-mails.

Second, is the account you want to use for city business tied to your employer? Most likely your employer has a policy that restricts this kind of use. However if your employer allows this type of use, be aware that in the event of a freedom of information request, or litigation request, your employer may be compelled by law to have a search done of your e-mail or, worst case, restore files from a backup or archive. While technically possible, it might not sit well with an employer.

What may work best is to utilize a free third-party e-mail service, such as g-mail or Hotmail, for your city account, and avoid using that e-mail account for anything that may constitute an official record of city business since such records must be retained in accordance with state retention requirements. (For more information about what constitutes an official record, see the Minnesota Historical Society's guide *Managing Your Government Records*, available at [www.mnhs.org/preserve/records/recordsguidelines/guidelines.html](http://www.mnhs.org/preserve/records/recordsguidelines/guidelines.html).)

**Social media exposure.** Another area of concern is social media. The first

thing you want to check is whether your city has a policy on the use of social media. If not, it's probably a good idea to get one implemented. Even if your city doesn't plan on using social media, it's important to document exactly what the city's policy is; otherwise, you could have unauthorized social media sites popping up.

For example, the parks department director could create a Facebook page for the department using a personal Facebook account. Later, the same person could leave the city's employment, start a "gentlemen's club," and use the same Facebook account he used for the parks department page. It could then look like the city's parks department was connected to the new gentlemen's club. This is probably not something city officials would want to see.

Another potential problem is the same one discussed earlier regarding e-mail: make sure you don't have a potential serial meeting via social media. Similar to the e-mail example, you post a status on Facebook that you're really excited about the proposed pooper scooper ordinance. Fellow councilmember Anderson comments that she agrees, and councilmember Herkimer clicks the "like" button. Again, you've most likely held a meeting in potential violation of the Open Meeting Law. An easy way to avoid that from happening is to not comment on city business in social media or, if you do, don't allow other comments.

As you communicate electronically, just remember to operate similarly to how you would face to face, following the same rules, and if you have a question about whether something is appropriate, it probably isn't. ■

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# Open Meeting Law and Electronic Communications

By Ann Gergen

E-mail correspondence can be an unintentional conduit for city officials to violate the Minnesota open meeting law (OML), Minn. Stat. §13D. Cities should implement policies related to how and when councilmembers or committee members are allowed to communicate through e-mail or other electronic means as a way to avoid violating the law and incurring penalties.

The basic requirement of the OML is that meetings of at least a quorum of the city council or one of its committees to discuss city business must be publicized and open to the public, subject to a few exceptions. A primary purpose of the law is to ensure deliberations about city business take place publicly, followed by a final and public decision.

The law applies to any discussion about city business, not just voting or official actions, and to any gathering of a quorum of the council or committee. In most cities, a quorum is three or more council or committee members.

Violating the OML carries with it penalties, including personal liability for up to \$300 per occurrence and forfeiture of office for officials who intentionally violate the law three times. Reasonable costs and attorney fees can also be awarded if the court finds specific intent to violate the law.

The OML has a number of tricky aspects—not the least of which results from increasing reliance on e-mail communication between council or committee members.

It's easy to imagine where a quorum might gather—coffee at the local café, pre- or post-meeting discussions, or a community celebration are all common spots for councilmembers to meet. There are also some not-so-obvious ways a quorum might meet, for instance in a serial meeting. Councilmember A talks to councilmember B; B talks to councilmember C, and C talks to A.

Another is through written correspondence, or conference calls. These scenarios would create concern if the group discussed city business.

E-mail makes a serial meeting easier by allowing council or committee members to forward messages. Imagine one councilmember e-mailing another to suggest the pros and cons of a particular city decision. The recipient forwards the e-mail, along with his or her comments and interpretations. Even if the last councilmember to receive the e-mail doesn't reply, the three members have discussed city business outside a public forum. A violation could be found where serial e-mailing is used to reach a decision.

Many cities are moving toward electronic meeting packets, often sent via e-mail attachment. This one-way distribution of information is fine in terms of the OML. City officials should start to get concerned, though, when one or more councilmembers "reply to all" to respond to the content of the materials, or otherwise begin an e-mail discussion about the packet. This can begin to look a lot like non-public discussion of city business.

One suggestion is that councilmembers never communicate to one-another using e-mail, but instead treat e-mail as a way to receive information from the clerk or administrator. If a councilmember has information to share via e-mail, he or she might send it to the clerk and ask for it to be distributed by the clerk to everyone else (by e-mail or in paper form). Using the clerk for information distribution is probably a safer alternative than councilmembers communicating directly by e-mail.

If councilmembers are engaged in e-mail discussions, it's wise to do so only between two members. A "no forwarding" rule might be a good way to ensure the OML isn't unintentionally violated through e-mail.

Finally, be careful when councilmembers participate in a listserv or any chatroom sort of forum. Because these distribution lists may include a quorum of the council, one councilmember's comments will be viewed by other members. If the topic has to do with city business and another councilmember replies to the listserv, it could prove problematic under the OML. Again, the city might consider a "no reply" rule, or perhaps have councilmembers send ideas for postings or responses to the clerk or administrator to manage.

Remember, too, that official city committees are subject to the same open meeting requirements and should be similarly educated about correct e-mail use.

Regardless of precautions, there may be times when councilmembers find themselves accused of violating the OML, perhaps by unintentionally engaging in one of these sorts of conversations. One way to diffuse concern is to immediately release copies of all e-mail correspondence to anyone who wants to see it. While this doesn't negate the possible violation, it shows good faith and lack of specific intent to violate the law.

E-mail exchanges tend to be treated less formally than other written correspondence or in-person meetings, but create the same sorts of open meeting concerns. It's important to educate city elected officials about the OML requirements and provide guidelines for e-mail exchanges. If you'd like additional information, check with your city attorney or contact the League.

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CONNECTING & INNOVATING  
SINCE 1913

RISK MANAGEMENT INFORMATION  
**ELECTRONIC COMMUNICATIONS  
BETWEEN COUNCIL MEMBERS**

E-mail correspondence can be an unintentional conduit for city officials to violate the Minnesota Open Meeting Law. This memo outlines some points elected officials and members of city committees and boards should be aware of to avoid inadvertently violating the Open Meeting Law.

**The Open Meeting Law**

Under the Minnesota Open Meeting Law, Minn. Stat. §13D, meetings of at least a quorum of the city council or one of its committees to discuss city business must be publicized and open to the public, subject to a few exceptions. A primary purpose of the law is to make sure information and deliberations about city business are available to the public.

The law applies to any discussion about city business, not just voting or official actions, and to any gathering of a quorum of the council or committee. In most cities a quorum is three or more council or committee members.

It's easy to imagine situations where a quorum might gather – coffee at the local café, pre- or post-meeting discussions, a wedding reception or community celebration are all common spots for councilmembers to meet. There are also some not-so-obvious ways a quorum might meet, for instance in a serial meeting – imagine Council Member A talks to Council Member B, B talks to Council Member C, and C talks to A. Another is through written correspondence, or through telephone conference calls. Any of these scenarios would create an open meeting concern if the group discussed city business.

Violating the open meeting law carries with it penalties including personal liability for up to \$300 per occurrence and forfeiture of office for officials who intentionally violate the law three times. Reasonable costs and attorney fees can also be awarded if the court finds specific intent to violate the law.

**Electronic communications and the Open Meeting Law**

The Minnesota Open Meeting Law has a number of tricky aspects, not the least of which results from increasing reliance on e-mail communication between council or committee members.

E-mail makes a serial meeting easier by allowing council or committee members to forward messages from one person to the next. Imagine one Council Member e-mailing another to suggest the pros and cons of a particular city decision. The recipient forwards the e-mail to another

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

Council Member, along with his or her own comments and interpretations.

Even if the last Council Member to receive the e-mail doesn't reply to either the originator or the Council Member who forwarded the message, the three members have still discussed city business outside a public forum. A violation could be found where serial e-mailing is used to reach a decision.

Many cities are moving toward electronic meeting packets for councils and committees, often sent via e-mail attachments. This sort of one-way distribution of information is fine in terms of the Minnesota Open Meeting Law, remembering that any materials relating to the agenda items of a meeting distributed to members must also be made available to the public as well.

City officials should start to get concerned, though, when one or more Council Members use the "reply to all" feature in e-mail to respond to the content of the meeting materials, or otherwise begin a discussion by e-mail about the packet. This can begin to look a lot like non-public discussion of city business.

### Suggestions

One suggestion is that Council Members never communicate to one-another using e-mail, but instead treat e-mail only as a way to receive information from the city clerk or administrator. If a Council Member has information to share via e-mail with the rest of the group, he or she might send it to the clerk and ask for it to be distributed from the clerk to everyone else (by e-mail or in paper form).

Using the clerk as the clearinghouse for information distribution is probably a safer alternative than having Council Members communicate directly, although it doesn't completely eliminate concerns about violating the open meeting law. Even this clearinghouse concept could provide opportunity for three or more Council Members to exchange opinions about city business, so it's important that the city clerk be aware of and watch for possible issues. Finally, this model would still present problems in Standard Plan cities, where the clerk is also a member of the council.

If Council Members are engaged in direct e-mail discussions, it's probably best to limit it to only two members. A "no forwarding and no copying" rule might be a good way to make sure the Minnesota Open Meeting Law isn't unintentionally violated through e-mail conversation.

Finally, be careful when Council Members participate in a listserv or any chatroom sort of forum. Because these distribution lists may include a quorum of your council, one Council Member's comments on the listserv will be viewed by other members. If the topic has to do with city business and another Council Member replies to the listserv, it could prove problematic under the Minnesota Open Meeting Law.

Again, the city might consider a "no reply" sort of rule when it comes to these resources, or perhaps have Council Members send ideas for postings or responses to the city clerk or administrator to manage. Remember, too, that official city committees are subject to the same open meeting requirements and should be similarly educated about correct e-mail use.

Regardless of precautions, there may be times when Council Members find themselves accused of violating the Minnesota Open Meeting Law, perhaps having unintentionally engaged in one of these sorts of conversations. One way to diffuse some concern is to immediately release copies of all e-mail correspondence to anyone who wants to see it. While this doesn't negate the possible violation, it shows good faith and lack of specific intent to violate the law.

#### Draft guidelines for electronic communications between Council Members

Cities might decide to develop policies clarifying appropriate or preferred email use by and between Council Members. Even if a city doesn't formally adopt a policy, the guidelines here might be helpful for any elected official or city board member to follow.

The purpose of these draft guidelines is to suggest how members of city councils and other city committees might communicate via email and electronic means. A city should review these draft guidelines along with its normal operating procedures, consult with the city attorney and determine the best course of action.

Ann Gergen 11/07

**Guidelines for  
Electronic Communications between Council Members  
in the City of \_\_\_\_\_**

These guidelines apply to all members of the city council and all members of council and city committees, commissions, sub-committees, etc. in the City of \_\_\_\_\_.

For purposes of these guidelines, reference to Council Members includes members of all other city committees and groups subject to the Open Meeting Law. Reference to the council shall include all such groups and meetings.

For purposes of these guidelines, "electronic means" means email, instant messaging, chatrooms, and related electronic conversation.

For purposes of these guidelines, "city clerk" means the city clerk, manager, administrator or his/her designee.

These guidelines apply regardless of whether the Council Member is using a city-provided email address and account, his/her personal email address or account, or one provided by his/her employer.

Meeting materials

Electronic communication of meeting materials should generally be conducted in a one-way communication from the city clerk to the council.

- Council Members may receive agenda materials, background information, and other meeting materials via email attachment or other electronic means (such as file sharing) from the city clerk.
- If a Council Member has questions or comments about materials received, s/he should inquire via electronic means directly back to the city clerk. A Council Member should not copy other committee members on his/her inquiry.
- If the clarification is one of value to other Council Members, the city clerk may send follow-up materials or information to the council.

Materials relating to agenda items of a meeting must also be made available to the public at the meeting.

#### Communication during council meetings

- Council Members should not communicate with one another via electronic means during a public meeting.
- Council Members should not communicate with any member of city staff via electronic means during a public meeting.
- Council Members are encouraged not to communicate with the public via electronic means during a public meeting.

#### Communication outside of council meetings

- Council Members should generally act with caution when using electronic means to communicate with one another, being mindful of the Minnesota Open Meeting Law.
- If a Council Member wishes to share information with other members, s/he should do so through the city clerk. The Council Member may request the city clerk distribute materials to others. The communication should not invite response to or discussion between any Council Members, including replies to the person making the distribution request. This should be considered a method for providing one-way information to other members of the council. Again remember that materials relating to agenda items for city business must be provided to the public at the meeting.
- If a Council Member wishes to address only one other member through electronic means on any topic related to city business, s/he can do so directly, but should be mindful of the following:
  - One-to-one communication is ideal.
  - The recipient of an electronic message or inquiry should reply only to the sender, should not copy others on the reply and should not forward the original email to other Council Members.
  - The sender of an electronic message should not forward or copy the recipient's reply to any other Council Member.
- If a Council Member receives an electronic communication from any source related to city business and distributed to multiple Council Members (i.e. an email sent to the entire council from a member of the public; or an email sent to three Council Members from a local business), s/he should reply only to the sender. The reply should not be copied to all on the original distribution or forwarded to any other Council Member.
- If a Council Member receives listserv distributions, electronic newsletters, or participates in electronic discussion forums where other Council Members are also likely to participate

(such as chat rooms), the Council Member should not reply to any distribution or comment so that the reply is copied to the entire distribution group, or any part of the group that might include other Council Members. The Council Member should instead respond only to the sender of any message or inquiry.

Classification and Retention of electronic communications

- Regardless of whether electronic communication by a Council Member is taking place on a city-provided computer, home computer or other computer system, classification of information as public, private or other is governed by the Minnesota Government Data Practices Act (Minn. Stat. Chapt. 13) and should be treated accordingly.
- Council Members should retain electronic communications in keeping with city policies and procedures, whether such communication takes place on a city-provided computer, home computer or other computer system.

Ann Gergen 12/04

# Managing Your City's Electronic Records

By Ann Gergen

**T**he Data Practices Act, Minn. Stat. Chapt. 13, provides that unless classified otherwise all government data collected, created, stored or maintained by a city are public and accessible. Government data is almost any information the city possesses, including electronic documents. In addition, Minn. Stat. Chapt. 15 and Chapt. 138 establish requirements for retaining city records depending on subject matter and the city's adopted retention schedule. Like government data, government records include information in any format.

The overlap between data practices and records retention is critical. Records retention laws dictate what a city *must* keep. The Data Practices Act requires that whatever is kept be made public, subject to a few exceptions. Information that is not a government record may still be government data. If you keep more than what is required by Chapt. 15 or 138 (something many cities do for operational reasons), you may have to produce it on request.

In a lawsuit, just about anything is fair game whether or not it's an official record or government data. If the document exists, it could be discoverable. One of the most difficult, time-consuming and expensive city efforts is sorting through electronic information for only relevant and public data on a topic.

Managing city data can be confusing, and is complicated by questions about electronic records, data backups, and information management. Here are some questions to ask:

*Are e-mails government data?* Most e-mail is just conversation between employees. These are generally not government records, and don't need to be kept unless they serve as official record or government action. An example is taking public comment via e-mail on a proposed development in the city.

Although most e-mails are not official government records, they are subject to the Data Practices Act. E-mail kept on a computer or the city's network will have to be made public on request. Accordingly, it's a good idea to keep non-official e-mail for only a short time. This can be a challenge if city staff use e-mail as a way to manage tasks. But any city that's had to go through thousands of old e-mails in order to produce information will tell you it's worth making the change.

You might want to maintain separate backup schedules, procedures, and systems for e-mail. These backups should be stored for a short time—60 to 90 days—then destroyed. This practice might suggest employee-level training about managing e-mail. It will defeat the policy if employees stop deleting e-mail for fear that the deleted files can't be restored and they won't be able to manage their work tasks.

*Should I keep paper copies of all city records?* Records retention laws require you designate the official record, be it paper or electronic. If your official record is paper, be sure you have a process to print and maintain those records. If you designate an electronic version as your official record, take appropriate steps to maintain it in accordance with your retention schedule. Some electronic media, like 3½-inch floppy disks, may not be reliable enough to meet storage requirements. The State Archives Division of the Minnesota Historical Society has several memos on digital document storage.

*What about going to a paperless office?* This is perhaps the most practical, long-term solution for city records. Getting there will require careful consideration of relevant laws and city information management.

It's especially important to think about data backups. If all city information—public and private, and even

unofficial records or communication—gets backed up to the same place, it can be very expensive to later sort the information. If the city were to get a request for "all records related to XYZ development," the city would have to find all current and backup files, then sort out the relevant topic and eliminate any private information. A city could easily spend thousands of dollars and hundreds of hours doing this.

*What if I have city information on my home computer?* If the information is an official government record, it needs to be maintained according to the city's records retention schedule. Even if it's not an official record, it's probably still government data under the Data Practices Act and public just like any other document. The city should have a policy to address how employees or councilmembers working at home transmit electronic records to the city for management along with all other city documents.

*What else should I consider?* Effectively managing city electronic records might require significant changes to the city's computer network and networking policies, including information backup procedures. It might also require education efforts for technology staff, as well as anyone using e-mail and anyone creating or maintaining any city data, information or documents.

A good place to start is by talking to the person responsible for maintaining your city's computer system and thinking about how you would respond to data requests. Be sure to discuss data practices and records retention concerns with your city attorney, or call the League. For further advice, check with the Minnesota Historical Society, State Archives division at: [www.mnhs.org](http://www.mnhs.org).

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### Advisory Opinion 09-020

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2009). It is based on the facts and information available to the Commissioner as described below.

#### **Facts and Procedural History:**

On May 26, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated May 22, 2009, from John Borger, an attorney. In his letter, Mr. Borger asked the Commissioner, on behalf of his client, the *Star Tribune*, to issue an advisory opinion on whether the Metro Gang Strike Force (MGSF) Advisory Board had violated the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D. Mr. Borger submitted the \$200.00 fee required by section 13.072.

The Commissioner accepted Mr. Borger's request and in a letter to Manila Shaver, MGSF Advisory Board Chair, notified Mr. Shaver of her intent to issue the opinion and gave the members of the Board an opportunity to explain their position. Mr. Shaver replied, in a letter dated June 11, 2009. Subsequently, the Commissioner notified Mr. Borger and Mr. Shaver that she would not issue an opinion because the MGSF had been dissolved. (The Commissioner refunded Mr. Borger's fee.)

Mr. Borger asked the Commissioner to reconsider her decision, because the Board was still in operation, even though the MGSF was not. The Commissioner agreed, and Mr. Borger resubmitted his request on July 17, 2009, along with the \$200.00 fee.

In response, IPAD notified Mr. Shaver that the Commissioner intended to issue this opinion, in a letter dated July 27, 2009, and again gave the members of the Board an opportunity to explain their position. Mr. Shaver responded again, in a letter dated August 12, 2009.

The Commissioner also invited Rodney Bartsh, Chair of the Gang and Drug Oversight Council, which oversees the Board, to submit comments. Mr. Bartsh did not provide any comments. A summary of the facts follows.

The MGSF and its Advisory Board were established by the Gang and Drug Oversight Council, as part of its duty to "establish multijurisdictional task forces and strike forces to combat gang and drug crime." (See section 299A.641, subdivision 3.) The MGSF was organized as a joint powers entity, whose 13 Advisory Board members are the chief law enforcement officers, or their designees, of all parties to the Joint Powers Agreement. (See MGSF Advisory Board Bylaws, Section IV.)

On April 7, 2009, a Star Tribune editorial writer sent an email to (then) MGSF Assistant Commander James Heimerl, seeking his perspective on an issue that was the subject of an April 5, 2009, newspaper article, about which she intended to write an editorial. She asked for a response by the following afternoon "for deadline purposes."

According to documentation Mr. Borger provided, at 1:40 p.m. on April 8, Deputy Chief Rob Allen of the Minneapolis Police Department sent an email, with an attached letter, to Mr. Shaver and 33 others, including all Advisory Board members/member-designees. In the email, which Mr. Allen addressed to his 'colleagues,' he asked them to review the attached letter, stating '[t]here is some time critical information that I think can help prevent further issue with MGSF operations if we act quickly enough.' In the letter, Mr. Allen raised several issues and wrote, "I would like the board to consider issuing a statement similar to" a paragraph he drafted and included.

According to copies of the emails Mr. Borger submitted, between 2:50 and 4:29 p.m., seven Advisory Board members (or their designees) replied to Mr. Allen (and copied other Board members, including Mr. Shaver) with the following comments, listed in chronological order:

1. The Sheriff and I looked your memo and the proposed statement over. We like the idea of having this statement on record . . . . If you get consensus on it, we recommend [Mr. Shaver], on behalf of the MGSF Board, take action today and release it.
2. Chief . . . and I reviewed your memo and endorse your recommendation and the immediate action by the board suggested by [commenter #1.]
3. In my view the statement is a good idea and reflects a solidarity on the part of the board. I also feel that as chair of the MGSF Board, Chief Shaver is the person the statement should come from.
4. You did a nice job [in the statement.]
5. I agree with the others.
6. I support the statement and agree [Mr. Shaver] as the chair of the MGSF would be the appropriate person to deliver the message.
7. I support the statement and agree that Chief Shaver as the chair of the MGSF would be the appropriate person to deliver the message.

At 5:00 p.m., Mr. Shaver issued a press release, which consisted of the verbatim statement Mr. Allen proposed in his email to Board members and two additional introductory sentences. Mr. Shaver then emailed the Advisory Board that he had taken that action.

#### **Issues:**

Based on Mr. Borger's request, the Commissioner agreed to address the following issues:

1. Is the Advisory Board for the Metro Gang Strike Force a public body that must comply with the Open Meeting Law, Minnesota Statutes, Chapter 13D?
2. Did the members of the Advisory Board for the Strike Force comply with the OML when they exchanged certain email messages relating to the activities of the Strike Force?

**Discussion:**

*Issue 1. Is the Advisory Board for the Metro Gang Strike Force a public body that must comply with the Open Meeting Law, Minnesota Statutes, Chapter 13D?*

In his comments to the Commissioner, Mr. Shaver wrote: "(t)he OML applies to any 'board' of a 'public body.' Minn. Stat. § 13D.01, subd. 1(c)(3). As MGSF Bylaws acknowledge, the Advisory Board is subject to the OML."

*Issue 2. Did the members of the Advisory Board for the Strike Force comply with the OML when they exchanged certain email messages relating to the activities of the Strike Force?*

Minnesota Statutes, section 13D.01, subdivision 1, states: "[a]ll meetings, including executive sessions, must be open to the public." The Legislature did not define "meeting" in the OML; however, the Minnesota Supreme Court described the "quorum rule:"

'Meetings' subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of the governing body . . . at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body. *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).

In his comments to the Commissioner, Mr. Borger wrote:

Because more than a quorum of the Advisory Board participated in the communications and a majority of the board expressly approved issuing the statement, it amounted to a 'virtual meeting' that violated the OML. The OML allows a non-physical 'meeting' of a public body only in very limited circumstances [See Minnesota Statutes, section 13D.021]. . . .

It is immaterial that Mr. Shaver might have issued a press release on his own authority, without any action by the Advisory Board. That is simply not what happened. . . . Mr. Allen expressly requested action by the Advisory Board. All board members received that request. Discussion among board members addressed whether there was a 'consensus' on the requested action. Points of discussion included whether there should be a press release at all, what the release should say, and who should issue the press release. A majority of the board members expressly approved the request . . . . That surely constitutes 'transacting public business' under the standard of *St. Cloud Newspapers, Inc.*, 332 N.W.2d 1, 6 (Minn. 1983). . . . What happened was that a

quorum of the Advisory Board, 'as a group, discuss[ed] . . . [and] receive[d] information on official business.' [See *Moberg*, 336 N.W.2d at 518.]

Mr. Shaver responded first on June 11, 2009; he modified his comments to the Commissioner in his August 12, 2009 response.

In his June 11, 2009, comments, Mr. Shaver wrote:

- I cannot speak on behalf of the Board on this matter as our Board has not met to discuss this issue. Our next meeting is on June 30<sup>th</sup>, almost two weeks beyond the June 17<sup>th</sup> deadline you provided.
- As Chair, I cannot control the independent actions of the Board or individual Board member [sic] outside an official meeting.
- In this incident I did not initiate the original e-mail or distribute it. I did distribute to the Board a copy of a news release, which is part of my day-to-day duties as chair.

In his August 12, 2009, comments, Mr. Shaver wrote:

The situation is analogous to a city council member alerting officials with administrative responsibilities to issues requiring immediate attention or offering other unsolicited input regarding day-to-day municipal business. Deputy Chief Allen's letter, and its distribution by e-mail, did not violate the OML. See *Moberg*, 336 N.W.2d at 518 . . . . He was simply disseminating information to all Board members alerting them about a matter of high importance.

....

The e-mail from Deputy Chief Allen was a single Board member's opinion that a response was required. The communication in the other e-mails represented individuals offering their opinion that I should act on the matter immediately. References to the 'Board' or 'MGSF' in these e-mail communications stem from the fact that any routine actions performed by the Chair were done 'on the Board's behalf,' as specified by the MGSF Bylaws. . . .

With respect to Mr. Shaver's assertion that he issued the news release as part of his day-to-day duties, the Commissioner respectfully disagrees. Mr. Shaver characterized the subject of the email Mr. Allen sent as "a matter of high importance" to the Advisory Board. Seven of the Advisory Board members, more than a quorum, expressed their opinions to all other Board Members about whether the Board should act, what action it should take and who should act on the Board's behalf.

Mr. Shaver stated that Mr. Allen's email was permissible under *Moberg*, because it is permissible for members of a public body to receive information "through the mail." In *Moberg*, the Court stated that in a situation in which a quorum or more of a public body received written information as a group, but did not read and discuss it, there was no violation of the OML. In that situation, the Court wrote, "... such distribution was functionally equivalent to receiving

information through the mail, which is permissible, and there was no danger of forming group consensus because no information was actually received until material was read and no discussion occurred." *Moberg* at 511. The Court made its ruling in 1983, long before email was a common means of communication.

Here, a quorum of the Advisory Board, in addition to receiving information, commented on and provided direction to Mr. Shaver on a matter relating to the official business of the Board. The Commissioner is aware that Minnesota courts have not ruled definitively on this issue. However, given the facts here, the Commissioner believes that per *Moberg* and *St. Cloud Newspapers, Inc.*, the conduct of the Advisory Board constituted a meeting, which was required to be public, and as such is impermissible under the OML.

If Mr. Allen had sent his suggestion only to Mr. Shaver, and if Mr. Shaver had taken action without consulting a quorum of the Board, then, in the Commissioner's view, that conduct would be permissible. It seems reasonable that one-way communication between the chair and members of a public body is permissible, such as when the chair or staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues.

The Commissioner urges the Legislature to provide guidance in the OML on issues arising from the widespread use of email and other forms of communication. It would be helpful to clarify specifically what kinds of email communications are permissible

#### Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues that Mr. Borger raised is as follows:

1. The Advisory Board for the Metro Gang Strike Force is a public body that must comply with the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D.
2. Members of the Advisory Board for the Strike Force did not comply with the OML when they exchanged certain email messages relating to the activities of the Strike Force.

Signed:

Sheila M. Reger

Sheila M. Reger  
Commissioner

Dated:

September 8, 2009

## ROBERTS RULES CHEAT SHEET

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Adjourn	"I move that we adjourn"	No	Yes	No	No	Majority
Recess	"I move that we recess until..."	No	Yes	No	Yes	Majority
Complain about noise, room temp., etc.	"Point of privilege"	Yes	No	No	No	Chair Decides
Suspend further consideration of something	"I move that we table it"	No	Yes	No	No	Majority
End debate	"I move the previous question"	No	Yes	No	No	2/3
Postpone consideration of something	"I move we postpone this matter until..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move that this motion be amended by..."	No	Yes	Yes	Yes	Majority
Introduce business (a primary motion)	"I move that..."	No	Yes	Yes	Yes	Majority

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Object to procedure or personal affront	"Point of order"	Yes	No	No	No	Chair decides
Request information	"Point of information"	Yes	No	No	No	None
Ask for vote by actual count to verify voice vote	"I call for a division of the house"	Must be done before new motion	No	No	No	None unless someone objects
Object to considering some undiplomatic or improper matter	"I object to consideration of this question"	Yes	No	No	No	2/3
Take up matter previously tabled	"I move we take from the table..."	Yes	Yes	No	No	Majority
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	Yes	Yes	Only if original motion was debatable	No	Majority
Consider something out of its scheduled order	"I move we suspend the rules and consider..."	No	Yes	No	No	2/3
Vote on a ruling by the Chair	"I appeal the Chair's decision"	Yes	Yes	Yes	No	Majority

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

## PROCEDURE FOR HANDLING A MAIN MOTION

**NOTE:** Nothing goes to discussion without a motion being on the floor.

### Obtaining and assigning the floor

A member raises hand when no one else has the floor

- The chair recognizes the member by name

### How the Motion is Brought Before the Assembly

- The member makes the motion: *I move that (or "to") ...* and resumes his seat.
- Another member seconds the motion: *I second the motion* or *I second it* or *second*.
- The chair states the motion: *It is moved and seconded that ... Are you ready for the question?*

### Consideration of the Motion

1. Members can debate the motion.
2. Before speaking in debate, members obtain the floor.
3. The maker of the motion has first right to the floor if he claims it properly
4. Debate must be confined to the merits of the motion.
5. Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

### The chair puts the motion to a vote

1. The chair asks: *Are you ready for the question?* If no one rises to claim the floor, the chair proceeds to take the vote.
2. The chair says: *The question is on the adoption of the motion that ... As many as are in favor, say 'Aye'.* (Pause for response.) *Those opposed, say 'Nay'.* (Pause for response.) *Those abstained please say 'Aye'.*

### The chair announces the result of the vote.

1. *The ayes have it, the motion carries, and ...* (indicating the effect of the vote) or
2. *The nays have it and the motion fails*

### WHEN DEBATING YOUR MOTIONS

1. Listen to the other side
2. Focus on issues, not personalities
3. Avoid questioning motives
4. Be polite

# HOW TO ACCOMPLISH WHAT YOU WANT TO DO IN MEETINGS

## MAIN MOTION

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that \_\_\_\_\_."

## AMENDING A MOTION

You want to change some of the wording that is being discussed.

- After recognition, "Madame Chairman, I move that the motion be amended by adding the following words \_\_\_\_\_."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words \_\_\_\_\_."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words, \_\_\_\_\_, and adding in their place the following words \_\_\_\_\_."

## REFER TO A COMMITTEE

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, "Madame Chairman, I move that the question be referred to a committee made up of members Smith, Jones and Brown."

## POSTPONE DEFINITELY

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, "Madame Chairman, I move to postpone the question until \_\_\_\_\_."

## PREVIOUS QUESTION

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam President, I move the previous question."

## LIMIT DEBATE

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question.

- After recognition, "Madam President, I move to limit discussion to two minutes per speaker."

## **POSTPONE INDEFINITELY**

You want to kill a motion that is being discussed.

- After recognition, "Madam Moderator, I move to postpone the question indefinitely."

## **POSTPONE INDEFINITELY**

You are against a motion just proposed and want to learn who is for and who is against the motion.

- After recognition, "Madame President, I move to postpone the motion indefinitely."

## **RECESS**

You want to take a break for a while.

- After recognition, "Madame Moderator, I move to recess for ten minutes."

## **ADJOURNMENT**

You want the meeting to end.

- After recognition, "Madame Chairman, I move to adjourn."

## **PERMISSION TO WITHDRAW A MOTION**

You have made a motion and after discussion, are sorry you made it.

- After recognition, "Madam President, I ask permission to withdraw my motion."

## **CALL FOR ORDERS OF THE DAY**

At the beginning of the meeting, the agenda was adopted. The chairman is not following the order of the approved agenda.

- Without recognition, "Call for orders of the day."

## **SUSPENDING THE RULES**

The agenda has been approved and as the meeting progressed, it became obvious that an item you are interested in will not come up before adjournment.

- After recognition, "Madam Chairman, I move to suspend the rules and move item 5 to position 2."

## **POINT OF PERSONAL PRIVILEGE**

The noise outside the meeting has become so great that you are having trouble hearing.

- Without recognition, "Point of personal privilege."
- Chairman: "State your point."
- Member: "There is too much noise, I can't hear."

## COMMITTEE OF THE WHOLE

You are going to propose a question that is likely to be controversial and you feel that some of the members will try to kill it by various maneuvers. Also you want to keep out visitors and the press.

- After recognition, "Madame Chairman, I move that we go into a committee of the whole."

## POINT OF ORDER

It is obvious that the meeting is not following proper rules.

- Without recognition, "I rise to a point of order," or "Point of order."

## POINT OF INFORMATION

You are wondering about some of the facts under discussion, such as the balance in the treasury when expenditures are being discussed.

- Without recognition, "Point of information."

## POINT OF PARLIAMENTARY INQUIRY

You are confused about some of the parliamentary rules.

- Without recognition, "Point of parliamentary inquiry."

## APPEAL FROM THE DECISION OF THE CHAIR

Without recognition, "I appeal from the decision of the chair."

### Rule Classification and Requirements

Class of Rule	Requirements to Adopt	Requirements to Suspend
Charter	Adopted by majority vote or as proved by law or governing authority	Cannot be suspended
Bylaws	Adopted by membership	Cannot be suspended
Special Rules of Order	Previous notice & 2/3 vote, or a majority of entire membership	2/3 Vote
Standing Rules	Majority vote	Can be suspended for session by majority vote during a meeting
Modified Roberts Rules of Order	Adopted in bylaws	2/3 vote