

## Part II

### ELECTIONS, ELECTED OFFICIALS, AND COUNCIL MEETINGS

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#### CHAPTER 7: MEETINGS, MOTIONS, RESOLUTIONS, AND ORDINANCES

Meetings, motions, resolutions, and ordinances .....	3
I. Types of council meetings .....	3
A. Annual meeting (first meeting of the year) .....	3
B. Regular meetings .....	4
C. Adjourned meetings .....	4
D. Special meetings .....	5
E. Meetings conducted by interactive television .....	6
F. Telephone or electronic meetings .....	7
G. Emergency meetings .....	8
H. Days and times when meetings cannot be held.....	8
II. Meeting procedures.....	9
A. Quorum .....	9
B. Open meeting law .....	9
C. Citizen involvement .....	16
D. Recording by citizens.....	17
E. Accessibility.....	17
F. Maintaining order.....	17
G. Rules of procedure .....	18
H. Parliamentary procedure .....	19
I. Voting procedures .....	23
J. Role of the mayor and clerk.....	23
K. Minutes of council meetings .....	24
III. Motions, resolutions, and ordinances.....	28
A. Passing motions, resolutions, and ordinances .....	28
B. Differences between motions, resolutions, and ordinances .....	28
C. Ordinances .....	31
IV. Local approval of special laws.....	43
A. Model resolution approving a special law .....	44
V. How this chapter applies to home rule charter cities .....	44

CHAPTER 7

# Chapter 7

## Meetings, motions, resolutions, and ordinances

This chapter reviews the requirements city councils must follow when conducting meetings and passing motions, resolutions, and ordinances. Topics addressed include:

- I. **Types of council meetings.**
- II. **Meeting procedures.**
- III. **Motions, resolutions, and ordinances.**
- IV. **Local approval of special laws.**
- V. **How this chapter applies to home rule charter cities.**

### I. Types of council meetings

See LMC Information Memo *Meetings of City Councils*, Aug. 2007 for more information.

The city council has vast authority to make decisions and operate municipal affairs. The city council, however, can exercise this authority only when it meets as a group. Under state law, there are certain requirements for council meetings.

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

[Minn. Stat. § 412.02, subd. 2.](#)

At its first meeting of the year, sometimes referred to as the annual meeting, the city council must perform certain functions. State law does not set a date for the annual meeting, but council bylaws usually prescribe when it will occur. The annual meeting usually takes place on or shortly after the first Monday in January, which is when the terms of new councilmembers begin. At this first meeting, the council must:

[Minn. Stat. §§ 412.831; 331A.02](#); See also *Newspaper Publication*, LMC Information Memo, April 2005 for more information.

[Minn. Stat. §§ 427.01-.12; 118A.02, subd. 1.](#)

[Minn. Stat. § 412.121.](#)

- Designate a newspaper of general circulation as its official newspaper in which the city will publish ordinances and other matters as required by law.
- Select an official depository, by resolution, for city funds. This must be done within 30 days of the start of the city's fiscal year.
- Elect an acting mayor from among the councilmembers. The acting mayor shall perform the duties of the mayor during the mayor's disability or absence from the city, or, if there is a vacancy, until a successor has been appointed.

City councils should also, on at least an annual basis:

- [Minn. Stat. § 424A.04, subd. 1.](#)

  - Review different council appointments to city boards and commissions. For example, the council must appoint one elected city official and one elected or appointed city official to serve with the city’s fire chief on the board of trustees for the city fire department’s volunteer relief association.
  - Review the council’s bylaws or rules of procedure, and make any necessary changes. An ordinance amendment is necessary if the bylaws are in ordinance form; otherwise a resolution or motion is sufficient.
  - Assign committee duties to members.
- [Minn. Stat. § 412.111.](#)

  - Approve official bonds that have been filed with the clerk.

## B. Regular meetings

[Minn. Stat. § 412.191, subd. 2.](#) No statutes govern the time, place or frequency of city council meetings. Regular meetings of the city council, however, must be held at times and places established by council rules. Councils typically meet once or twice a month in the city hall or at another place in the city.

[Minn. Stat. § 13D.04, subd. 1.](#) The council must keep a schedule of its regular meetings on file at its primary office. The council should also set an alternate day for meetings when the regular meeting day falls on a legal holiday. If the council decides to hold a meeting at a different time or place from that stated in its schedule of regular meetings, it must give the notice required for special meetings.

## C. Adjourned meetings

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

[Minn. Stat. § 412.191, subd. 1.](#) Although a quorum (majority of councilmembers) is necessary in order to conduct business, less than a quorum may adjourn or postpone a regularly organized meeting to a fixed, future time. When the council calls an adjourned meeting to complete pending business, the adjournment should be treated as a recess.

[Minn. Stat. § 13D.04, subd. 4.](#) If the date, time, and place of the adjourned or recessed meeting are announced at an open meeting and the information is recorded in the minutes, no additional public notice is necessary. Otherwise, the notice required for a special meeting is necessary.

## D. Special meetings

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

A special meeting of the council refers to any meeting other than a regular meeting. The council may transact any business within its powers at special meetings. The council should, however, only transact business for which notice has been provided. All statutory provisions governing regular meetings, including the open meeting law, apply to special meetings.

Minn. Stat. § 412.191, subd. 2.

Special meetings may be called by the mayor, by any two members of a five-member council, or by any three members of a seven-member council. Special meetings are called by filing a written statement with the city clerk.

Minn. Stat. § 13D.04, subd. 2.

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

### 1. Notice to the council

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

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

### 2. Notice to the public

Minn. Stat. § 13D.04, subd. 2.

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

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

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

See LMC Information Memo  
*Newspaper Publication*, for  
more information.

In addition to posting notice, the city must also mail or deliver notice to each person who has filed a written request for notice of special meetings with the city. Notice to these individuals must be mailed or delivered at least three days before the meeting. As an alternative to mailing or delivering the notice, the city may publish the notice once in its official newspaper at least three days before the meeting. If there is no city newspaper, notice must be published in a qualified newspaper of general circulation that covers the city.

Minn. Stat. § 645.15.

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

Minn. Stat. § 13D.04, subd. 2 (d).

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

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

Cities may set an expiration date for requests for notices of special meetings, and require people to re-file the request once each year. The city must notify each person of the requirement not more than 60 days before the re-filing is due.

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

If a council committee or other public body meets where a quorum of the councilmembers also attend, the city most likely does not need to give additional notice of a special council meeting as long as proper notice of the committee or other meeting has been given. If councilmembers participate in committee discussions or deliberations, however, additional separate notice of a special council meeting may be required.

Minn. Stat. § 331A.05, subd. 7.

If, through no fault of the city, an error occurs in the publication of a notice, the error generally does not impact the validity of a public meeting.

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

Minn. Stat. § 13D.02.

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

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

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

## F. Telephone or electronic meetings

Minn. Stat. § 13D.021, subd. 1.

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

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

## G. Emergency meetings

Minn. Stat. § 13D.04, subd. 3; IPAD 06-027 (Department of Administration opinion advising that the Breezy Point City Council improperly held an emergency meeting to consider complaints about the city's building inspector); *Slipy v. Rach*, No C5-06-3574 (9<sup>th</sup> Jud. Dist. June 8, 2007) (after the Department of Administration issued its advisory opinion, 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 by the council due to circumstances that, in its judgment, require immediate council consideration. The procedure for notifying councilmembers of emergency meetings is the same as that for special meetings. The public notice requirements, however, are somewhat different. The council must make good faith efforts to provide notice of the emergency meeting to all media that have filed a written request for notice. Notice must be by telephone or by any other method used to notify councilmembers. The notice must include the subject of the meeting. A published or posted notice is not necessary.

Minn. Stat. § 13D.04, subd. 3(f).

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

## H. Days and times when meetings cannot be held

Minn. Stat. § 645.44, subd. 5.

State law defines a set of public holidays when no public business can be transacted except to deal with emergencies. The transaction of public business includes conducting public meetings. The public holidays are: New Year's Day (Jan. 1); Martin Luther King's Birthday (the third Monday in January); Washington's and Lincoln's Birthday (the third Monday in February); Memorial Day (the last Monday in May); Independence Day (July 4); Labor Day (the first Monday in September); Christopher Columbus Day (the second Monday in October); Veterans Day (Nov. 11); Thanksgiving Day (the fourth Thursday in November); and Christmas Day (Dec. 25). All cities have the option, however, of deciding whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. If these days are not designated as holidays, public business may be conducted on them. If a holiday falls on a Saturday, the preceding Friday is considered to be a holiday. If a holiday falls on a Sunday, the next Monday is considered to be a holiday.

Minn. Stat. § 645.15.

The law does not prohibit meetings on weekends. However, the law regulating how time is computed for the purpose of giving any required notice provides that if the last day of the notice falls on either a Saturday or a Sunday, that day cannot be counted. Thus, if notice for a special meeting to be held on a Saturday or Sunday is required, the third day of that notice would need to be provided on the preceding Friday.



Minn. Stat. §§ 204C.03;  
202A.19.

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

## II. Meeting procedures

### A. Quorum

Minn. Stat. § 412.191, subd. 1.

To transact city business in a statutory city, state law requires a quorum (majority) of the councilmembers be present. This minimum may include, but does not have to include the mayor, or, in Standard Plan cities, the clerk. Charter cities, however, may provide that a different number of councilmembers constitutes a quorum.

Minn. Stat. § 645.08(5).

For most other public bodies, a majority of its qualified members constitutes a quorum.

### B. Open meeting law

#### 1. Purpose of the open meeting law

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

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

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

## 2. Groups governed by the open meeting law

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

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

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

## 3. Gatherings governed by the open meeting law

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

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

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

### a. Interviews

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

A 1997 Minnesota Court of Appeals’ decision considered a situation where individual councilmembers conducted separate interviews of candidates for a city position. The district court found that no “meeting” of the council had occurred because there was never a quorum of the council present during the interviews. The court of appeals sent the decision back to the district court for a determination of whether the councilmembers had conducted the interview process in a serial fashion to avoid the requirements of the open meeting law.

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

On remand, the district court found that the individual interviews were not done to avoid open-meeting-law requirements. This decision was also appealed, and the court of appeals, in a 1998 unpublished decision, affirmed the district court’s decision. Cities that want to use this type of interview process with job applicants should first consult their city attorney.

## b. Informational meetings

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

The Minnesota Supreme Court has held that informational seminars about school-board business, which the entire board attends, must be noticed and open to the public. As a result, it appears that any scheduled gatherings of a quorum of a public body must have proper notice and be open, whether or not the public body takes or contemplates taking action. This includes meetings where members receive information that may influence later decisions, but excludes chance or social gatherings. A quorum of members of a public body, however, cannot discuss or receive information on official business in any setting under the guise of a private social gathering.

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

Under certain circumstances, it may be possible for a quorum of the city council to attend a meeting of another public body without violating the open meeting law even though notice of a special council meeting is not provided. For example, when persons constituting a quorum of a city council attended a meeting of the city's planning commission, the Minnesota Court of Appeals ruled there was a violation of the open meeting law—not because of the councilmembers' attendance at the meeting—but because the councilmembers conducted public business in conjunction with that meeting. Based on this decision, the attorney general has advised that mere attendance by additional councilmembers at a meeting of a council committee, held in compliance with the open meeting law, would not constitute a special council meeting requiring separate notice. The attorney general advised, however, that the additional councilmembers should not participate in committee discussions or deliberations absent a separate notice.

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

It is not clear whether the participation of a city council in a training program sponsored by the League of Minnesota Cities to develop various skills would be defined as a meeting under the open meeting law. The determining factor may be whether or not the program includes discussions of specific matters relating to an individual city's business.

## c. Technology

*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983); See LMC Information Memo *Meetings of City Councils*, May 2004 for more information.

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

*Electronic Communications Between Councilmembers*, LMCIT Information Memo.

As a result, city councils and other public bodies should not use e-mail, telephone calls, and other technology to communicate back and forth with other members of the public body when both of the following circumstances exist:

- When a quorum of the council or public body will be contacted regarding the same matter.
- When city businesses is being discussed.

## 4. Open meeting exceptions

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

Minn. Stat. § 13D.05, subd. 1(d)

All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

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

Before closing a meeting under any of the following exceptions, the public body must state, on the record, the specific grounds that permit the meeting to be closed and describe the subject to be discussed. The same notice requirements that apply to open meetings also apply to closed meetings.

### a. Labor negotiations

Minn. Stat. § 13D.03, subd. 1 (b).

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

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

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

Minn. Stat. § 13D.03, subd. 3.

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

### b. Not-public data

Minn. Stat. § 13D.05, subd. 2.

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

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

- Data that would identify victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- Active investigative data created by a law enforcement agency, or internal-affairs data relating to allegations of law enforcement personnel misconduct.
- Educational, health, medical, welfare or mental-health data that are not public data.
- An individual's medical records governed by Minn. Stat. §§ 144.291 – 144.298.

Minn. Stat. §§ 144.291 – 144.298.

Minn. Stat. § 13D.05, subd. 1(d).

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

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

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

### **c. Misconduct allegations or charges**

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

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

### **d. Performance evaluations**

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

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

### e. Attorney-client privilege

Minn. Stat. § 13D.05, subd. 3 (b).

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

A meeting may be closed if permitted by the attorney-client privilege. Meetings between a governmental body and its attorney to discuss active or threatened litigation may only be closed, under the attorney-client privilege, when a balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after a substantive decision on the underlying matter has already 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.

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

Minn. Stat. § 13D.05, subd. 3 (c).

A public body may close a meeting to:

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

See Minn. Stat. § 13.44, subd. 3.

Minn. Stat. § 13D.05, subd. 3 (c).

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

## g. Security reports

Minn. Stat. § 13D.05, subd. 3 (d).

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

## 5. Penalties

Minn. Stat. § 13D.06, subd. 1.

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

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

Minn. Stat. § 13D.06, subd. 2.

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

Minn. Stat. § 13D.06, subd. 4; See LMCIT Risk Management Memo *Open Meeting Law Defense Coverage*, for information about insurance coverage for open-meeting-law violations.

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

Minn. Stat. § 13D.06, subd. 4.

If a party prevails in a lawsuit under the open meeting law, 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 required to give deference to the advisory opinion.

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

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

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

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



Minn. Stat. § 13D.06, subd. 3 (b).

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

Minn. Const. art. VIII, § 5.

*Jacobsen v. Nagel*, 255 Minn. 300, 96 N.W.2d 569 (Minn. 1959).

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

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

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

*Sullivan v. Credit River Township*, 299 Minn. 170, 217 N.W.2d 502 (Minn. 1974); *In re D & A Truck Line, Inc.*, 524 N.W.2d 1 (Minn. Ct. App. 1994); *Lac Qui Parle-Yellow Bank Watershed Dist. v. Wollschlager*, No. C6-96-1023 (Minn. Ct. App. Nov. 12, 1996) (unpublished decision).

Minnesota courts have generally refused to invalidate actions taken at an improperly-closed meeting.

## C. Citizen involvement

Minn. Stat. § 13D.01, subd. 6 (b).

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

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



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

The council should not sample public opinion by asking for a show of hands. The majority opinion of those attending the council meeting does not necessarily represent general public opinion.

## D. Recording by citizens

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

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

## E. Accessibility

Minn. Stat. § 363A.12, subd. 1.  
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 access. A city may also need to make a sign-language interpreter available and make written materials available in large print, Braille or audiocassette for people with sight or hearing impairments.

## F. Maintaining order

Minn. Stat. § 412.191, subd. 2.  
*State v. Occhino*, 572 N.W.2d 316 (Minn. Ct. App. 1997).

Although meetings must be open to the public, individuals who are noisy or unruly do not have the right to remain in council chambers. When individuals abuse their right to be present in the council chamber, the mayor, as presiding officer (subject to being overruled by the council), should order their removal from the room. If the presiding officer fails to act, the council may, by motion, issue such an order. The council has authority to preserve order at council meetings. The council can use necessary force, including use of the marshal or police, to carry out the mandate. If a person is excluded from a meeting, the council should provide an opportunity for the excluded person to give his or her interpretation of the exclusion to a designated city staff member to satisfy any due-process concerns.

If the entire audience becomes so disorderly that it is impossible to conduct a meeting, the mayor should declare the meeting continued to some other time and place. The council may also move for adjournment. No matter how disorderly a meeting may be, it is a legal meeting and any action the council takes in proper form is valid. The council cannot issue contempt citations against individuals whose disorderly conduct disrupts or interferes with the transaction of city business.

## G. Rules of procedure

Minn. Stat. § 412.191, subd. 2.

The city council has the power to regulate its own procedure. While many councils operate without written rules or regulations, written rules facilitate the conduct of city business and reduce the risk of mishandling important matters.

See LMC Information Memo, *Meetings of City Councils*, for suggested bylaws and other rules of procedure.

Council bylaws usually cover issues like the place and time of regular council meetings, the order of business, parliamentary rules governing council procedures, minutes, and standing and special committees.

### 1. Agendas

The bylaws should establish an order of business and a process for placing items on an agenda. Many councils have found the following order of business convenient:

- Call to order
- Roll call
- Approval of minutes from previous meeting
- Consent agenda
- Petitions, requests, and complaints
- Reports of officers, boards, and committees
- Reports from staff and administrative officers
- Ordinances and resolutions
- Presentation of claims (The authorization for paying city claims and bills are often included in the consent agenda.)
- Unfinished business
- New business
- Miscellaneous announcements
- Adjournment

### 2. Consent agenda

By resolution or through bylaws, a council may establish a consent agenda containing routine, non-controversial items that need little or no deliberation. The clerk or the person responsible for placing items on the agenda prepares the consent agenda. By a majority or higher vote, the council can approve all actions on the consent agenda with one vote. If a councilmember objects to an item being placed on the consent agenda, it should be removed and acted on as a separate agenda item.

### 3. Tips for shortening meetings

In addition to the consent agenda, councils may consider the following suggestions to shorten meetings.

Council bylaws may set a closing date for placing items on the agenda. For example, the clerk must receive all requests to include items on the agenda five days before the meeting. This is especially important if councilmembers need to review written material before the meeting. The council might make an exception in emergency situations by a unanimous vote, for example. The council should set a definite time for adjournment and observe this rule.

At some time during the meeting, often at the beginning, many city councils establish a specific time when citizens can present concerns to the council. In such an open forum, the mayor or presiding officer should provide a limited time for each person who wishes to speak. No action should be taken on any of the issues raised. Rather, if appropriate, the issues should be placed on the agenda of a future council meeting.

When the council is going to discuss a major public issue, the bylaws or the council, by resolution, may provide a limited, specific amount of time for each side to express its views. The council may also follow this procedure for all items on the agenda.

## H. Parliamentary procedure

Parliamentary procedure is a system of rules that aid in transacting business. The rules are designed to preserve order, expedite business, and protect the rights of those involved in making decisions. The mayor, as presiding officer, is responsible for guarding against abuse of the procedures. The effective use of parliamentary procedures is the joint responsibility of the mayor and all councilmembers.

Parliamentary rules can be very simple or very complex. The complexity of rules should vary in direct ratio to the size of the group. As the number of people in the group increases, the complexity of the rules should increase. Accordingly, the rules for city councils should be simple. Any attempt to introduce a high degree of formality into the proceedings of a city council will probably reduce its ability to operate effectively.

[Minn. Stat. § 412.191, subd. 2](#)  
(authorizing the city council to regulate its own procedure).

The rules of parliamentary procedure apply to council proceedings only if the council formally adopts such rules in its bylaws. *The New Roberts Rules of Order, Revised* is designed for meetings of large bodies. Rather than adopt these rules as a formal procedure to always follow, a council can agree to informally follow the rules while conducting meetings. An informal application of the rules, together with the common sense of councilmembers, may be the only guidelines many councils need in order to conduct their business in an orderly manner. If a controversial discussion is about to occur, the mayor or a councilmember could move to adopt more formal rules for that particular discussion.

The following discussion introduces a few rules of parliamentary procedure that can simplify the work of the council. The rules are contained in *The New Roberts Rules of Order, Revised*. The council can adopt them by inserting the following clause in the bylaws: “In all points not covered by these rules, the council shall be governed in its procedure by *The New Roberts Rules of Order, Revised* (or some other similar code of parliamentary procedure).”

## 1. Motions

See LMC Information  
Memo, *Meetings of City  
Councils*, for more information.

The council transacts business through motions made by councilmembers. These motions are seconded, at times, and subsequently passed or rejected by council vote. Each motion has different rules. For example, councils can debate some motions while they must vote on others immediately. Some motions require a simple majority for passage; others need a two-thirds majority.

These are the typical steps to make and act on a motion:

- A member of the council addresses the presiding officer.
- The presiding officer recognizes the member.
- The councilmember states his or her motion. (Usually in the following form: “I move . . . text of the motion.”) A motion should always be in positive, rather than negative, terms. For example, if the motion is to deny X a permit, and the council defeats the motion, there may be some confusion as to whether or not X has been granted a permit. Even if the consensus of the council is to deny the permit, the motion should be to grant the permit and the council should then vote it down. The councilmember making a motion does not need to favor it or vote for it. The councilmember may wish to put the issue before the council so a decision can be made.
- If necessary, another councilmember then seconds the motion by saying: “I second the motion.” (Seconds are not needed for meetings of small bodies like city councils unless required in the bylaws.) Neither making a motion nor seconding a motion places it before the council. Only the presiding officer can place the motion before the council by stating the motion.
- The presiding officer repeats the motion or states the question to the council. (When the presiding officer has stated the question, the motion is pending, and it is then open to debate.)
- A discussion follows, if the motion can be debated.
- A councilmember may make subsidiary motions in the same form as the original motion.
- The council votes on the original motion or on any of the subsidiary motions.

- The presiding officer announces the result of the vote on each motion immediately after the vote count is complete.
- A councilmember may not make a second main motion while the council is discussing the first one.
- Any councilmember may, however, make a privileged motion even if a main motion is currently before the council. A privileged motion is one to adjourn, to recess, or to ask a question of privilege—such as to restate the motion or ask for order. In this case, a vote on the privileged motion precedes the one on the main motion.

## 2. Role of the presiding officer

In any group or assembly, the presiding officer has an extra measure of power. As the chair of the meeting, the presiding officer is responsible for guiding the group toward the conclusion of pending business in good time, while also giving major issues enough consideration. To accomplish this, the presiding officer has two special powers:

- The first power is to interpret and apply the rules of procedure. The presiding officer must decide whether motions are proper and in order, whether the body should grant questions of special privilege, and what procedure is proper in any given instance. The presiding officer should maintain order and expel disorderly individuals from the meeting.
- The presiding officer does not have complete freedom in exercising this authority. Any member of the council may appeal the decision of the chair. To do this, a councilmember must say, “I appeal the decision of the chair,” immediately after the chair announces the decision. (Recognition from the presiding officer is not necessary when making an appeal.) The appeal must be seconded, is debatable, and cannot be amended. After the debate, the assembly votes on the chair’s decision. A majority of “yes” votes upholds the decision of the presiding officer, and a majority of “no” votes overrules the decision. A tie vote sustains the ruling. The presiding officer may vote to uphold his or her own ruling. If no one appeals a ruling as soon as the presiding officer makes it, it becomes the rule of the council.
- The presiding officer’s second power is to recognize speakers. The presiding officer may not, however, refuse to receive a motion after recognizing the maker, nor refuse to call for a vote on any motion that has been properly made and seconded. The power to recognize speakers still gives the presiding officer considerable influence over the course of the discussion and, consequently, over the eventual decision on any matter. When the council invites comments from the audience, the presiding officer continues to recognize speakers.

In statutory cities, the mayor, who is the presiding officer, plays a dual role. The mayor presides, makes and seconds motions, and votes on all questions before the council. The mayor usually steps down from the position as chair in order to make a motion. To do this, the mayor turns over the duties of presiding officer to a member of the council. The mayor may then make a motion, and should not assume the duties as presiding officer until the council has taken a final vote or postponed the motion until another time.

### **3. Special motions**

Several motions deserve special consideration. They include the following:

#### **a. The motion to reconsider**

This motion enables a council to set aside a vote it previously took, and to reconsider the matter as though it had not voted on the issue. If the council uses *The New Roberts Rules of Order, Revised*, only a person who originally voted on the prevailing side may move to reconsider. Otherwise, any member may make the motion by saying, “I move to reconsider . . . stating the motion to be reconsidered . . .” The council may debate the motion. If the council passes the motion to reconsider, it must then reconsider the original motion and take another vote. If the council defeats a motion to reconsider, no further action is necessary.

#### **b. A motion to postpone indefinitely**

There is an important difference between the motion to postpone indefinitely and the motion to postpone temporarily. The motion to postpone temporarily is more commonly called a motion to “lay on the table” or “to table.” The motion to postpone temporarily, postpones consideration of the motion until some undetermined, future time. The council may consider a tabled motion whenever a majority of the members decide to do so. A motion to postpone indefinitely, however, is the equivalent to a negative vote on the main motion. An affirmative vote on it may be reconsidered, but not a negative vote. A motion to permanently suppress any future consideration of an issue is not binding on a future council.

#### **c. A motion to limit debate**

A council may limit debate by placing a time limit on it, such as a limit of 15 minutes to consider a particular motion; or limiting the number of people who may speak for and against a certain motion, such as a limit of three speakers in favor and three speakers opposed.

#### **d. The motion to amend**

Councilmembers may offer amendments to a main motion at any time. In addition, it is possible to amend an amendment currently under consideration. Beyond this, councilmembers can offer no further amendments. When a member has made a motion to amend, the vote on the amendment must precede the vote on the original motion. After the council has accepted or rejected the amendment, another vote on the original motion is necessary.

#### **e. The motion to substitute**

This is a motion to replace one motion with another on the same subject. A councilmember may move to substitute a main motion or an amendment to a main motion. One form for making a substitute motion is to say, “I wish to introduce the following substitute motion . . . present the substitute motion . . .” When a substitute motion is before the council, the council must decide which of the two motions, the original motion or the substitute motion, to consider. The council must vote on the question. A “yes” vote favors considering the substitute motion. A “no” vote favors considering the original motion. The council must then discuss and vote on the selected motion.

### **I. Voting procedures**

State law does not regulate the process of council voting. The council may use whatever procedures it prefers, subject to charter provisions in home rule charter cities. The council’s bylaws can include voting rules.

Otherwise, the council may use voice voting or standing voting unless a councilmember calls for voting by ballot. The bylaws can also set the order in which councilmembers vote. Whether the vote is unanimous or not, the minutes must record the name of each councilmember present and his or her vote. Occasionally councils may vote by ballot, such as when eliminating candidates for a city position, until only two options remain. While the law allows for voting by ballot, the procedure must ensure each councilmember’s vote is recorded in the minutes and is open for public inspection.

[Minn. Stat. § 13D.01, subd. 4.](#)

### **J. Role of the mayor and clerk**

Mayors and Standard Plan city clerks have the same powers as councilmembers to make, second, and vote on motions. The mayor does not have a veto, and the mayor generally may not vote twice in order to break a tie. If, however, there is a tie vote in filling a vacancy in elective office, the mayor must break the tie by making the appointment. The mayor presides at council meetings, and the clerk keeps the minutes.

[Minn. Stat. § 412.02, subd. 2a.](#)

In Plan A or Plan B statutory cities, the clerk attends council meetings and records the minutes but may not make, second or vote on motions. In addition, unless the council extends the privilege, the clerk lacks the right to participate in discussions.

## **K. Minutes of council meetings**

[Minn. Stat. § 412.151, subd. 1.](#)

The council must keep a full and accurate record of its actions at every council meeting. In statutory cities, the clerk records the council proceedings in a minute book. In the clerk's absence, the council should delegate the duty of taking minutes for that meeting.

The clerk determines the actual wording of the minutes, unless the council adopts a standard form by motion or specifically directs the clerk to change the wording. The minutes should be written in language the average citizen understands. Reference to numbers of ordinances, resolutions, and other matters should include a brief description of their subject matter.

[A.G. Op. 470-C \(Feb. 18, 1959\).](#)

If the council finds a mistake in the minutes of the previous meeting, the clerk should correct the minutes. If the clerk declines, the council can order the change by motion and a vote. The clerk must then make the change and show in the minutes that the change was made by order of the council.

Once the council has formally approved the minutes of any meeting, they should not be changed under any circumstance. The council can dispense with the reading of the minutes if all councilmembers have received them prior to the meeting.

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

The council must provide books and stationery for keeping minutes. State law requires all cities to keep minutes on a physical medium that is of a quality that will ensure permanent records.

[Minn. Stat. § 412.151, subd. 1.](#)

Because minutes would likely be considered official papers of the city, they should be signed by the clerk. Although not required by law, in many cities the mayor also signs the minutes after they are approved by the council. If the minute book includes only a clipping from the published proceedings, the clerk should sign the clipping even though the signatures of the clerk and mayor are already printed on the clipping. Minute books are public records and must be available for public view at any reasonable time.



## 1. Publication of council minutes

Minn. Stat. §§ 412.191, subd. 3; 331A.01, subd. 10; 331A.08, subd. 3.

After every regular or special meeting, statutory cities with populations over 1,000 (according to the latest federal Census) must publish the official council proceedings or a summary of the official minutes. The summary must include action on motions, resolutions, ordinances, and other official proceedings. The summary must state that the full text of the summary is available for public inspection at a designated location or by standard or electronic mail. As an alternative to publication, the city may mail, at city expense, a copy of the proceedings to any resident upon request. Publication of the council minutes must generally occur within 30 days of the meeting. If the governing body of a political subdivision conducts a regular meeting not more than once every 30 days, however, the governing body need not publish the meeting minutes until 10 days after they have been approved by the governing body. Cities with a population of less than 1,000 are not required to publish the council proceedings but may choose to do so. The publication requirement in state law does not cover home rule charter cities; therefore, charter cities should consult their charter to determine whether it has a publication requirement.

## 2. Content of council minutes

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

The clerk must include the following information in the minutes:

- The members of the public body who are present.
- The members who make or second motions.
- Roll-call vote on motions.
- Subject matter of proposed resolutions or ordinances.
- Whether the resolutions or ordinances are defeated or adopted.
- The votes of each member, including the mayor.

Minn. Stat. § 412.151, subd. 1.

Ordinances, resolutions, and claims considered by the city council do not need to be fully detailed in the minutes if they appear in other permanent records kept by the clerk and can be accurately identified by the description given in the minutes.

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

The Office of the State Auditor has 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 (whether the meeting is a meeting of the governing body or committee, for example).
- 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.

### **3. Making an adequate record**

It is very important to make an adequate record of council decisions and of the factual information on which councilmembers base their decisions. Minutes are the primary record of the decision-making process and are critical if council actions become subject to judicial review.

Council actions are generally classified as either legislative or administrative in nature. The establishment of general policies and procedures is legislative action and is subject to limited judicial review. Courts typically will not substitute their judgment for a council's judgment on these topics.

Administrative or quasi-judicial actions involve the application of a general policy to a specific person or situation. Administrative actions are subject to greater judicial scrutiny, and will be set aside if they are arbitrary, unreasonable or capricious. Therefore, it is important for the council to develop an accurate record and findings.

*Metro 500, Inc. v. City of Brooklyn Park*, 297 Minn. 294, 211 N.W.2d 358 (Minn. 1973); *Inland Constr. Co. v. City of Bloomington*, 292 Minn. 374, 195 N.W.2d 588 (Minn. 1972); *Bank of America, FSB v. City of St. Paul*, No. C7-97-1073 (Minn. Ct. App. Feb. 17, 1998) (unpublished decision).

See also cases cited concerning the necessity of findings in [Handbook, Chapter 14](#) (land-use decisions).

For example, in order for a court to meaningfully review council actions, the minutes must clearly and precisely state the council's finding of facts and how those facts led to the council's decision. Findings of fact serve not only to improve the decision-making process, but also aid in judicial review. The findings are part of the record. When a court reviews council proceedings, it will rely on the records the city actually kept and not on the records the city might have maintained.

#### 4. Parts of the record

When the city council or other public body holds a hearing, the record usually consists of two separate parts: the transcript, which preserves testimony, and the final order or determination. Following is a sample final-order outline for a conditional use permit. The elements of the order reflect the steps taken by a hearing body in arriving at a decision:

- A caption or title, such as, “In the matter of Ms. X’s application for a conditional use permit.”
- A preamble that summarizes the council’s actions at the hearing and states the purpose of the application.
- Findings of fact (individually numbered).
- Conclusions or reasons.
- A decision.
- An opinion (if any).
- A copy of the transcript, tape recording or, at minimum, detailed minutes that include all objections and rulings on them (if any).

When a council prepares precise findings of relevant facts, the result is a well-reasoned decision. When a council can demonstrate its conclusions are consistent with all the facts in the record, its decision is likely to be upheld if judicially challenged. The record should also demonstrate compliance with all constitutional requirements, as well as with all procedural requirements. Often, due-process deficiencies, such as lack of notice, provide grounds for appeal.

## III. Motions, resolutions, and ordinances

### A. Passing motions, resolutions, and ordinances

Any member of the council, including the mayor, may introduce an ordinance or resolution. When ordinances or resolutions are before the council, the council may act upon them at once, refer them to a committee for study and recommendation, postpone consideration to some future time, or take any of the other subsidiary or privileged motion actions. After the council has completed all consideration and discussion of the matter, the presiding officer should read the ordinance or resolution and call for a vote.

If the council decides to refer the matter to a committee, the committee may conduct an investigation and recommend passage of the ordinance or resolution in its original form or in an amended form, or it may reject the ordinance or resolution. Debate on the ordinance or resolution may take place at the time of its introduction, while a committee is considering it, and after the committee has reported its findings and recommendations.

See “Counting the Votes of Council Actions Parts I and II,” *Minnesota Cities* (May 2006, p. 19; June-July, p. 19) for more information.

[Minn. Stat. § 412.191, subd. 4](#) (summary of ordinances).

[Minn. Stat. § 412.851](#) (vacation of streets).

[Minn. Stat. § 412.191, subd. 4.](#)

[Minn. Stat. § 462.357, subd. 2b.](#)

Most resolutions and procedural motions of the council must receive a majority of the votes cast in order to be adopted. To illustrate: if two members of the council vote in favor of a resolution, one votes against it, and two abstain from voting, the resolution passes. State law requires some resolutions to be adopted by more than a majority of those voting on the resolution. For example, a resolution to approve summary publication of an ordinance requires a four-fifths vote of the members of the council. And a four-fifths vote of the members of the council is required to vacate a street.

Ordinances, on the other hand, must be enacted by “a majority vote of all the members of the council,” except where a larger number is required by law. Therefore, on a five-person council, an ordinance would need at least three favorable votes to pass. State law requires a larger number in some circumstances. For example, a two-thirds vote is required to change the classification of land in a zoning district from residential to commercial or industrial.

### B. Differences between motions, resolutions, and ordinances

#### a. Motions

A motion is a matter of parliamentary procedure. Motions generally are made orally and may introduce ordinances and resolutions, amend them, and take any other actions.

## b. Resolutions

*Lindahl v. Indep. Sch. Dist. No. 306*, 270 Minn. 164, 133 N.W.2d 23 (Minn. 1965).

Councils should use resolutions for any action of a temporary, routine, or administrative nature. For example, resolutions should be used to approve contracts and may be helpful to record findings of fact in connection with planning and zoning decisions. Courts may view motions that are approved and recorded to be the equivalent of resolutions. If the council has any doubt as to whether a resolution or an ordinance is necessary to take a particular action, it is generally best to proceed as if the action requires an ordinance.

### LMC Sample Resolution

In its traditional form a resolution begins with a “whereas” clause or clauses explaining the reason for the action, followed by the substance of the resolution beginning with “Therefore, be it resolved” or some similar phrase distinguishing the action from “The council ordains” enacting clause of an ordinance. In more recent practice, the preamble is omitted and the material setting out the reason for the action is given as a separately numbered section or sections of the body of the resolution.

## c. Ordinances

*See., Hanson v. City of Granite Falls*, 529 N.W.2d 485 (Minn. Ct. App. 1995).

Any council enactment that regulates people or property and provides a penalty if violated should be adopted in the form of an ordinance. As a result, the council must pass, in ordinance form, all police regulations for public health, morals, economic well-being, welfare, and safety. Ordinance regulations should be of general application within the city, and of a permanent and continuing nature.

[Minn. Stat. §§ 609.0332; 609.034](#) (increased the maximum fine to \$1,000 (misdemeanors) and \$300 (petty misdemeanors)).

Violations of an ordinance may be specified in the ordinance to be either a misdemeanor or a petty misdemeanor. State law establishes the maximum penalty for each violation. The maximum penalty for a misdemeanor is a \$1,000 fine or imprisonment for up to 90 days, or both. The maximum penalty for a petty misdemeanor is a \$300 fine. If an ordinance does not provide for the penalty of imprisonment, individuals prosecuted for its violation are not entitled to a jury trial.

[State v. Weltzin](#), 618 N.W.2d 600 (Minn. Ct. App. 2000).

State law requires city councils to adopt ordinances to take certain actions, including the following:

[Minn. Stat. § 412.022, subd. 1.](#)

- Establish a four-year term for mayor.

[Minn. Stat. § 412.02, subd. 6.](#)

- Combine the office of clerk and treasurer.

[Minn. Stat. § 412.221, subd. 6.](#)

- Regulate the use of streets and other public grounds to prevent encumbrances or obstructions, and to require the owners or occupants of buildings and the owners of vacant lots to remove any snow, ice, dirt or rubbish from sidewalks, and to assess the cost of removal against the owners.

[Minn. Stat. § 412.221, subd. 8.](#)

- Regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.

- Minn. Stat. § 412.221, subd. 11. • Regulate the use of wells, cisterns, reservoirs, waterworks, and other means of water supply.
- Minn. Stat. § 412.221, subd. 12. • Regulate the location, construction, and use of piers, docks, wharves, and boat houses on navigable waters, and to maintain public docks and warehouses.
- Minn. Stat. § 412.221, subd. 14. • Regulate tourist camps and automobile parking facilities.
- Minn. Stat. § 412.221, subd. 16. • Establish a hospital board and authorize it to establish a separate fund in the city treasury.
- Minn. Stat. § 412.221, subd. 17. • Prevent, control or extinguish fires.
- Minn. Stat. § 412.221, subd. 18. • Name or rename streets and public places, number and renumber the lots and blocks of the city, and make and record a consolidated plat of the city.
- Minn. Stat. §§ 412.221, subd. 19; 330.025. • License and regulate transient merchants, dealers, hawkers, peddlers, solicitors, and canvassers. (Cities can no longer license auctioneers.)
- Minn. Stat. § 412.221, subd. 20. • License taxis and automobile rental agencies.
- Minn. Stat. § 412.221, subd. 21. • Regulate animals, including the keeping of animals, running of animals at large, and impounding of animals.
- Minn. Stat. § 412.221, subd. 22. • Establish various health regulations, including establishing a board of health.
- Minn. Stat. § 412.221, subds. 23, 24. • Regulate nuisances, and noise and disorder.
- Minn. Stat. § 412.221, subd. 25. • Regulate amusements.
- Minn. Stat. § 412.221, subd. 26. • Restrain vice.
- Minn. Stat. § 412.221, subd. 27. • Regulate public dances.
- Minn. Stat. § 412.221, subd. 28.  
Minn. Stat. § 16B.62. • Regulate the construction of buildings. (The city may only adopt regulations found in the state building code.)
- Minn. Stat. § 412.221, subd. 30. • License and regulate restaurants.
- Minn. Stat. § 412.221, subd. 31. • Require sewer connections.
- Minn. Stat. § 412.221, subd. 32. • Provide for the governance and good order of the city; the prevention of vice; the prevention of crime; the protection of public and private property; the benefit of residence; trade and commerce; and the promotion of health, safety, order, convenience, and the general welfare.
- Minn. Stat. § 412.331. • Create a utility commission.
- Minn. Stat. § 412.501. • Create a park board if the city's population is more than 1,000.
- Minn. Stat. § 415.11. • Set the salaries for mayor and councilmembers.

Minn. Stat. §§ 462.354 (planning commission and board of adjustment); 462.357 (zoning); 462.358 (subdivision controls).

Minn. Stat. § 462.353, subds. 4, 4a.

9 McQuillin *Municipal Corporations* § 26.32.10 (3<sup>rd</sup> ed Revised 1995).

- Adopt zoning and land-use controls, including establishing a board of adjustment and appeals and a planning commission.
- Establish planning and zoning fees. (Cities that collect an annual cumulative total of \$5,000 or less, however, may simply refer to a fee schedule in their planning and zoning ordinances. The fee schedule itself may be adopted by ordinance or by resolution following public notice and hearing.)
- Adopt license fees.

## C. Ordinances

Minn. Stat. § 412.191, subd. 4; A.G. Op. 4720 (July 31, 1959).

Minn. Stat. § 412.221, subd. 33.

*Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (Minn. 1966).

*City of Birchwood Village v. Simes*, 576 N.W.2d 458 (Minn. Ct. App. 1998); *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002).

32 Dunnell Minn. Digest *Municipal Corporations* §§ 5.00-5.12 (4<sup>th</sup> ed. 1996).

*Press v. City of Minneapolis*, 553 N.W.2d 80 (Minn. Ct. App. 1996); *State v. Becker*, 351 N.W.2d 923 (Minn. 1984); *State v. Northwest Poultry & Egg Co.*, 203 Minn. 438, 281 N.W. 753 (Minn. 1938); *State v. Suess*, 236 Minn. 174, 52 N.W.2d 409 (Minn. 1952); *State v. Hayes*, C0-01-241 (Minn. Ct. App. Nov. 6, 2001) (unpublished decision).

Only the city council has the power to enact ordinances. In almost all instances, ordinances do not need voter approval. The statutes do not authorize a council to seek voter consent to a proposed ordinance or even to ask for an advisory opinion on its desirability. In home rule charter cities, the charter may provide for voter approval of or advisory elections on particular ordinances.

City councils can only deal with subjects that the Legislature has expressly authorized them to act on or that directly relate to a statutory grant of authority. In some areas, statutory cities may enact ordinances on subjects state law already regulates, as long as the ordinances are consistent with state law. But the city's regulation of an area, including those areas where authority may be generally granted in the statutory city code, may be pre-empted if state law has so extensively regulated a particular area of law that it has become solely a matter of state concern.

In addition, councils must adhere to the following general requirements when enacting ordinances:

- An ordinance must not be unconstitutionally vague. Ordinances must be reasonably certain in their terms and set forth objective standards that provide adequate notice of what is required or prohibited.

*Holt v. City of Sauk Rapids*, 559 N.W.2d 444 (Minn. Ct. App. 1997); *Cascade Motor Hotel, Inc. v. City of Duluth*, 348 N.W.2d 84 (Minn. 1984).

See *City of Eveleth v. Town of Fayal*, C2-00-1882 (Minn. Ct. App. June 5, 2001) (unpublished decision).

See cases cited above.

See *Handbook, Chapter 18* for more information.

*Lorshbough v. Township of Buzzle*, 258 N.W.2d 96 (Minn. 1977); *Pelican Lake Property Owners Ass'n v. County of Crow Wing*, Nos. C5-98-1549, C3-98-1940 (Minn. Ct. App. Aug. 17, 1999) (unpublished decision).

*Schultz v. Frank*, No. C1-00-285 (Minn. Ct. App. Aug 1, 2000) (unpublished decision); *State v. Howard*, 360 N.W.2d 637 (Minn. Ct. App. 1985).

LMC Sample Ordinance  
Minn. Stat. § 412.191, subd. 4.

- Ordinances must be consistent with the constitution and statutes of the United States and Minnesota. (A city ordinance is presumed constitutional so long as it is substantially related to health, safety, morality or the general welfare. It also must be reasonable; that is, it must be fair, general, and impartial in operation.)

- Ordinances must not limit or deny any common-law or constitutional rights.
- Ordinance provisions must not constitute an unreasonable restraint of trade.

When adopting an ordinance, city officials should be aware that the city must follow any procedures established in the ordinance and that the city might be liable for not enforcing its ordinance. However, if the language of the ordinance does not make its enforcement mandatory, the city may have discretion not to enforce it. Cities should not adopt or retain an ordinance they do not intend to enforce. The council can adopt an ordinance to respond to a pre-existing problem or nuisance, and the city may generally prosecute a person who violates an ordinance after it has been adopted even if the person began the activity prior to the existence of the ordinance.

## 1. Form, content, and adoption of ordinances

Because ordinances have the force and effect of law, their form is important. While the law does not require an attorney to draft ordinances, those who do draft ordinances should have a sound understanding of the law. The city should consult an attorney to help prepare its ordinances or to review them before they are adopted.

Ordinances must meet certain requirements and follow a certain form. Charter cities should also look to their own charter provisions for requirements about ordinance enactment. The procedural requirements for the adoption of ordinances in statutory cities are found in Minn. Stat. § 412.191, subd. 4. This statute provides in part that all ordinances must be:

- Approved by a majority of all members of the council, except where a larger number is required by law.



See Part III-C- 3, *Publication of ordinances*

- Signed by the mayor and attested by the clerk.
- Published once in the official newspaper. There is an exception that allows for summary publication under certain circumstances.

#### **a. Title**

Every ordinance should have a title that briefly yet adequately describes its contents. The phrases: “repealing ordinances inconsistent herewith” and “providing penalties for the violation thereof” should not be part of the title.

#### **b. Number**

Each ordinance should have an identifying number as part of its title.

#### **c. Enacting clause**

Minn. Stat. § 412.191, subd. 4.

All ordinances, after a suitable title, should begin substantially in this form: “The City Council of \_\_\_\_\_ ordains. . .”

#### **d. Body**

The text of the ordinance should be written in clear and brief terms. If definitions are helpful, they should be contained in one beginning section. The sections should be short to make subsequent amendments easier and cheaper. All sections and subsections should have a number and an identifying word or short title.

#### **e. Repeal**

If prior ordinances are to be repealed, a section to this effect should be included. Each ordinance to be repealed should be specifically referred to by number, title, and adoption date.

#### **f. Penalty**

Minn. Stat. § 412.231.

Minn. Stat. § 169.89, subd. 2.

Minn. Stat. §§ 609.02, subds. 3, 4a; 609.0332; 609.034.

This section is for enforcement purposes. Cities may impose maximum penalties for misdemeanors of a \$1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of \$300. Certain traffic offenses may only be prosecuted as petty misdemeanors.

#### **g. Closing**

This should read: “Passed by the *(name of city)* Council this *(date)* day of *(month)*, *(year)*.” If the council wants an effective date later than the date of publication, this section should state the effective date.

## h. Maps

A.G. Op. 477-B-34 (Sept. 20, 1962); A.G. Op. 59-A-9 (April 13, 1957).

If the ordinance refers to maps and they are an integral part of the ordinance, they must be included in the published ordinance. Because it is expensive to publish maps, a city may choose to omit all reference to the map in the ordinance and rely instead on word descriptions. The city then could prepare a separate, unofficial map.

## i. Deliberation

See 4 McQuillin *Municipal Corporations* § 13.42 (3<sup>rd</sup> ed Revised 1995).

The council should discuss the ordinance according to the council's rules before passing it, even though failing to abide by these rules probably would not invalidate an ordinance if it meets statutory requirements. The statutes do not specify that an ordinance in a statutory city must have a certain number of readings, nor do they require the council to consider it at more than one meeting. Unless the council has rules to the contrary, it may pass an ordinance at the same meeting at which it is introduced.

## j. Passage

Minn. Stat. § 412.191, subd. 4.

Except where the statutes require a larger majority, ordinances in statutory cities must receive a majority vote of all the members of the council to pass. This means, in effect, if the council has five members, at least three councilmembers must vote in favor of an ordinance. Both the clerk and the mayor in Standard Plan cities have the power to vote on ordinances. The mayor has no veto power.

## k. Attestation

Minn. Stat. §§ 412.191, subd. 4; 599.13; *City of Akeley v. Nelson*, No. C4-02-915 (Minn. Ct. App. Nov. 25, 2003) (unpublished decision).

*Union Pub. Serv. Co. v. Village of Minneota*, 212 Minn. 92, 2 N.W.2d 555 (Minn. 1942).

After the council passes an ordinance, the mayor and the clerk must sign it. The clerk should also affix the city seal to it. If either the mayor or clerk refuses to sign the ordinance, a court order can require them to do so if the court finds that the ordinance is legal.

## l. Effective date

*Uniform Public Service Co. v. Village of Minneota*, 212 Minn. 92, 2 N.W.2d 555 (Minn. 1942).

Unless otherwise specified within the ordinance, an ordinance becomes effective after its publication in the official newspaper. Before an ordinance takes effect, it may be revoked or repealed by the city council by motion, resolution or ordinance.

## 2. Ordinance book

Minn. Stat. §§ 412.151, subd. 1; 412.191, subd. 4.

Each statutory city must maintain an ordinance book containing copies of all ordinances passed by the council. Every ordinance must be recorded in the ordinance book within 20 days of its publication.

The ordinance book is a public record and is evidence in court. If the clerk uses printed copies of the ordinance clipped from the newspaper, a printer's affidavit should be attached to each ordinance in the book.

The city should have a numbering system adequate for indexing its ordinances. In most small cities where there are few ordinances, chronological order is satisfactory. When the number of ordinances is large or when the city is recodifying its ordinances, a more complicated system of decimal numbers might be advisable.

### 3. Publication of ordinances

The following publication requirements apply to statutory cities.

Minn. Stat. §§ 412.191, subd. 4; 331A.02; 331A.04; LMC Information Memo, *Newspaper Publication*.

Every ordinance must be published once in the city's official newspaper. To qualify as an official newspaper, the newspaper must be a legal newspaper under state statute, and the council must have designated it as the city's official newspaper. Cities usually publish ordinances separately. If the city publishes them in full as part of the minutes, the publication meets all statutory requirements.

Minn. Stat. § 331A.05, subd. 2(c); A.G. Op. 277b-4 (Feb. 11, 1986).

An ordinance must be published within 45 days after being passed. Failure to publish within 45 days, however, will not necessarily invalidate the ordinance.

Minn. Stat. § 412.191, subd. 4.

A statutory city council may publish a summary of a lengthy ordinance. Publishing the title and summary shall be deemed to fulfill all legal publication requirements as completely as if the entire ordinance had been published. In order to do this, the city council must do the following:

- The council must determine that publication of the title and a summary of the ordinance would clearly inform the public of the intent and effect of the ordinance.
- The council must approve summary publication by a four-fifths vote of its members.
- The title and summary must conform to Minn. Stat. § 331A.01, subd. 10.
- The summary must include notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the city clerk and at any other location designated by the council or by standard or electronic mail.
- The council must approve the text of the summary prior to its publication, and determine that it clearly informs the public of the intent and effect of the ordinance.
- A copy of the entire text of the ordinance must be posted in the community library or, if no library exists, in any other public location designated by the council.

See Minn. Stat. § 331A.01, subd. 10.

- The text of the summary must be published in a font type no smaller than brevier or eight-point type.
- Proof of the publication must be attached to and filed with the ordinance.

It is advisable to use summary-publication authority in cases where the public interest in doing so is clear, as in the case of a lengthy and complex zoning ordinance where the length of the actual ordinance obscures its content, and where maps and descriptions of procedures can clarify the meaning. Another example might be an annexation ordinance containing legal property descriptions where a summary identifying the property by using popularly understood location points like a street or watercourse line would better inform the public of its purpose and intent.

*W.H. Barber Co. v. City of Minneapolis*, 227 Minn. 77, 34 N.W.2d 710 (Minn. 1948).

Errors in the publication of an ordinance may affect its validity. If the error is minor so that the correct meaning is clear from the context, the error has no effect upon the ordinance's validity. When the error is more substantial, however, the ordinance provision containing the error is ineffective and void.

[Minn. Stat. § 331A.05, subd. 6.](#)

In home rule charter cities, the charter can impose additional or special requirements for the publication of ordinances.

## 4. Recording

[Minn. Stat. § 462.36.](#)

A certified copy of every ordinance, resolution, map or regulation relating to subdivisions, conditional use permits, and official maps must be filed with the county recorder. Failure to record an ordinance, resolution, map, regulation, variance or order shall not affect its validity or enforceability.

## 5. Adoption by reference

[Minn. Stat. § 471.62.](#)

Statutory and charter cities can reduce costs for publication when adopting certain complicated regulatory codes in ordinance form by using the process of adoption by reference. In effect, cities can adopt certain regulations by passing and publishing an ordinance that identifies the statute or other rule by name. Cities may only adopt regulations by reference on subjects about which they have authority to legislate.

[Minn. Stat. § 471.62.](#)

Cities may adopt the following by reference:

- Minnesota statutes.
- State department administrative rules or regulations.
- The state building code and the uniform fire code.
- Codes (or parts of codes) prepared for general distribution in printed form as a standard or model by any governmental, trade, or professional association on the subject of building construction (limited to the state building code), plumbing, electrical wiring, flammable liquids, sanitary provisions, public health, safety or welfare.

- Compilations or regulations or standards prepared by regional and county planning agencies on the subject of planning, zoning, subdivision regulation, and housing regulation.

[Minn. Stat. § 471.62.](#)

All other statutory publication requirements apply to the ordinance that incorporates another statute, rule, ordinance or code by reference. In addition, prior to publication or posting, at least one copy of the incorporated statute, rule, ordinance or code must be marked as the official copy and filed in the clerk's office for public use and examination. The clerk must furnish a copy of any incorporated ordinance or code to any person upon request. The clerk may levy a charge sufficient to cover the cost of providing the copy.

[A.G. Op. 59-a-9 \(July 18, 1967\).](#)

[A.G. Op. 59-a-9 \(March 27, 1956\).](#)

Codes, statutes, rules, regulations, and ordinances the council adopts by reference remain effective in their original form until changed or repealed by the council. The city, when adopting the code by reference, most likely cannot stipulate that any future revisions by the issuing agency will be automatically incorporated by the city. If the city wishes to incorporate changes made by the issuing agency, the best practice would be for the city to pass an amending ordinance.

## 6. Alteration of ordinances

### a. Amendment

The council must follow the same procedures for amending an ordinance as those followed for passing an ordinance. After the amendment is passed by a majority of the council, it must be attested to, published, and included in the ordinance book. In addition, the form of the amendment should be like new ordinances with respect to title, enacting clause, body, closing, and signatures. The council cannot change an ordinance by resolution. Instead, it must pass an amending ordinance.

[LMC Sample Amending Ordinance](#)

If the ordinance is short or if the changes are numerous, the council will usually re-pass the entire ordinance in its amended form, repealing the old ordinance in a separate section. An optional form would be to title the new ordinance as an amendment, and then recite the entire ordinance as it would read after amendment.

If the ordinance to be amended is so long that the cost of publishing it in its entirety would be prohibitive, the council may pass an amending ordinance that sets forth only the sections that will change. The council may include several amendments to the same ordinance in different sections of the same amending ordinance. The council should label an amending ordinance as such, and should state the ordinance and sections in the proposed changes.

The council should avoid the practice of amending a single word or picking out a single sentence from a paragraph. This practice frequently leads to confusion and the possible invalidation of an entire section of an ordinance. A better practice is to reprint the section or subsection in full as it would read after amendment.

If the council wishes to re-number its present ordinances, it may pass a re-numbering ordinance. The city must publish the re-numbering ordinance, but it does not have to include the text of the old ordinances.

## **b. Repeal**

A city may repeal an ordinance only by passing another ordinance stating the title, number, subject, and date of the ordinance being repealed. The ordinance must explicitly state it is repealing the ordinance. To repeal an ordinance, the council must follow the same requirements for adopting ordinances. The council can repeal any number of ordinances in a single repealing ordinance.

Frequently, when a council passes a new ordinance or revises an ordinance, the new ordinance will contain provisions that are inconsistent with or replace similar provisions in an existing ordinance. Some cities insert a provision in the new ordinance repealing any or all ordinances or portions of ordinances inconsistent herewith. Such a clause is a waste of time and print. A better practice is to repeal, by name and number, any inconsistent provisions of former ordinances. If this is impractical, it is best to say nothing about the repeal of inconsistent ordinance provisions since the new ordinance automatically supersedes all inconsistent provisions in existing ordinances.

## **7. Codification of ordinances**

### **a. Purposes of codification**

Citizens have a right to know what their government—whether national, state or local—requires of them. This is a fundamental, due-process right in our legal system. If a citizen is to know the law on a particular matter, he or she must first know where to find it.

If a citizen is interested in knowing the city’s current law on a particular matter, where does the search begin? In the book covering the minutes for the last 65 years? In the clerk’s files? In the basement of city hall? Depending on the current state of affairs in the particular city, the answer to any or all of these questions could be “yes.”

In assessing the need for codification, a city should begin by asking the following questions: What condition are the ordinances in? Are they organized in one place? Are they properly indexed? Are they cross-referenced? Are they up-to-date? Are they internally consistent? Are they in compliance with state and federal laws? Are they complete?

A codification of city ordinances allows city officials to respond affirmatively to all of these questions. A proper codification project encompasses all of the following:

- Identification of conflicting ordinances, and repeal or re-drafting of inconsistent or unclear ordinance provisions.

- Removal of archaic and unconstitutional ordinances.
- Development of a system that facilitates access to the city's laws and provides for continuous updating.
- Development of comprehensive indexing and cross-referencing.
- Review of the entire body of city ordinances for omissions.
- Organization of city ordinances into an easy-to-use reference book known as the city code.

Actual codes vary from the very simple to the very complex, depending partly on the size, age, and functions of the city. The simplest codes are compilations of all the ordinances currently in effect in the city, including the original title, number, enacting clauses, and concluding clause and signatures for each ordinance. Others codes re-number the ordinances to fit a subject-matter classification. Some other codes include new material adopted for the first time; in fact, in many instances, the whole code is adopted as new ordinance material even though much comes from existing ordinances in the same or slightly altered form.

A well-drafted city code helps a city operate efficiently and effectively. Ordinances are grouped together by subject, not by the chronological order in which they were passed. This eliminates the need to sort through stacks of loose ordinances to find a regulation on a particular subject.

Cities have a number of options for completing a codification of ordinances. Occasionally, the city attorney or city clerk will do the codification, but in many cases competing demands on their time make it difficult for them to undertake the project. Cities can also hire private consulting firms that specialize in charter revision and ordinance codification.

The League of Minnesota Cities, in consultation with its codification consultant, American Legal Publishing Corporation, provides codification services to cities. Most Minnesota cities that have codes use the League's service. The service is designed to provide each city with a customized city code that meets the needs of that particular city. The League, in consultation with American Legal Publishing Corporation, provides the following services as part of its codification service:

- Sorting, integrating, and organizing all current ordinances.
- Reviewing all ordinances and making suggestions about bringing them into compliance with current state and federal laws.
- Simplifying and using gender-neutral language.
- Suggesting new ordinances.
- Numbering all sections to allow the easy insertion of future amendments.

For more information contact Duke Addicks, LMC Special Counsel at 800-925-1122 or 651-281-1221.

- Submitting a full-text draft for city review and approval.
- Delivering multiple copies of the final code with a detailed table of contents and complete index. Options are available for electronic editions of the code with full text search capacity and Internet support of the city code with links to the city's designated web site and to the League's web site.
- Updating existing codes by incorporating new ordinances into the code.

For more information contact Duke Addicks, LMC Special Counsel at (800) 925-1122 or (651) 281-1221.

The League also has available for purchase a basic city code for Minnesota cities, which can be customized by the League's codification service to meet the needs of individual cities.

## **b. Codification procedures**

[Minn. Stat. § 415.02.](#)

The city council has authority to codify any general or special laws, ordinances, resolutions, rules, and bylaws in force in the city.

[Minn. Stat. § 412.191, subd. 4.](#)

[LMC Sample Ordinance Adopting a City Code](#)

An ordinance adopting a city code must be approved at a meeting of the city council. For statutory cities, an ordinance adopting the city code must be passed by a majority vote of all the members of the council, unless it includes material that must be adopted by a larger number. If your code, for example, amends any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial, a two-thirds majority vote of all members of the city council is required to adopt that portion of the code.

[Minn. Stat. § 462.357, subd. 3.](#)

[LMC Sample Notice of Hearing](#)

Whether a notice of hearing regarding adoption of a city code is required to be given to certain persons or published depends on the contents of the code. Published notice is generally not required for statutory cities to adopt a code unless the code contains a zoning ordinance or amendments to a zoning ordinance, or if the code includes a new ordinance or major revisions to an existing ordinance, which, if adopted as a separate ordinance or as an amendment to a separate ordinance, would require published notice. Some city charters require a notice of hearing regarding adoption of a code to be published.

[Minn. Stat. § 462.357, subd. 3.](#)

Mailed, written notice is required in at least two circumstances. First, if a code contains an amendment from a previous ordinance that changes zoning district boundaries affecting an area of five acres or less, written mailed notice must be given to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates at least 10 days before the day of the hearing.

[Minn. Stat. § 461.19.](#)

Second, if the code contains amendments to a previous ordinance relating to the sale of tobacco, or if it adopts the League's model tobacco ordinance, written notice must be mailed to all licensed tobacco retailers in the city at least 30 days before the meeting at which the ordinance or amendments to the ordinance will be considered.



Minn. Stat. § 412.191, subd. 4.

Once the ordinance adopting the code has been passed, the ordinance must be published in the manner required by law for statutory cities or by the city charter if applicable. For statutory cities, the ordinance takes effect on the date of publication unless otherwise specified in the ordinance.

In some codes, provision is made for all fees to be adopted in a fee schedule adopted by a new ordinance that is not codified. This makes it possible to amend the fee schedule periodically without the need to make changes in the code.

Minn. Stat. § 340A.408, subd. 3a.

Notice of hearing on the ordinance establishing a fee schedule need not be given if the fees in the schedule are the same as they were under the ordinances that are being codified. If the fee increases are to be included in the ordinance establishing or amending the fee schedule, written notice of the hearing should be mailed at least 30 days before the hearing at which the ordinance is to be considered, to all persons who hold business licenses in the city whose license fees are to be increased. This is required for liquor license fees, and it is a good idea for other types of business license fees as well.

The hearing on the ordinance adopting the fee schedule can be held at the same time as the hearing on the adoption of the code. If not held at that time, it should be held soon after the hearing on the ordinance adopting the code. The ordinance adopting the code should also provide that until the fee schedule is adopted, existing fees continue until they are amended.

Minn. Stat. § 415.021.

The city may print and publish a code in book, pamphlet or newspaper form. Newspaper publication is not necessary if the city prints a substantial number of copies of the code for general distribution to the public. A copy of any ordinances adopted by the city must be furnished to the county law library or its designated depository. A city, upon request, shall be reimbursed a reasonable charge by the county library for a copy furnished.

Minn. Stat. §§ 415.02; 599.13.

A city council may declare, by ordinance, that the codification is prima facie evidence of the city's law. After three years, the compilation and publication of any codification book or pamphlet is conclusive proof of the regularity of the ordinances' adoption and publication.

## 8. Prosecution responsibilities

Minn. Stat. § 412.231.

Minn. Stat. §§ 609.02, subds. 3, 4a; 609.034; 609.0332.

The city council has the power to declare the violation of any ordinance to be a crime and to prescribe penalties. The maximum penalty for a misdemeanor is a fine of \$1,000 or imprisonment for 90 days, or both. The maximum penalty for a petty misdemeanor is a fine of \$300.

Minn. Stat. §§ 412.861, subd. 1; Minn. Stat. § 484.87, subd. 3.

All prosecutions for ordinance violations are brought in the name of the city upon complaint and warrant as in other criminal cases. The city may hire an attorney, including the county attorney, for this purpose.

- Minn. Stat. § 412.861, subd. 1. If the accused is arrested without a warrant, a written complaint must be made. The accused must then plead guilty or not guilty, and a warrant shall be issued and served by either the sheriff or a police officer. The city may have the sheriff or a city police officer serve an ordinance violator with a warrant for the arrest. City police officers, however, cannot serve criminal warrants outside the city limits.
- Minn. Stat. § 412.861, subd. 2. The complaint must describe the violated ordinance at least by section and number or chapter. When the complaint describes ordinances in this manner, the court considers them general laws that do not need proof in evidence.
- Minn. Stat. § 484.87 subd. 2;  
Minn. Stat. § 388.051, subd. 2. In Hennepin and Ramsey counties, the attorney for the city in which the violation is alleged to have occurred prosecutes all violations of state laws (except as provided below and in Minn. Stat. § 388.051, subd. 2), including violations which are gross misdemeanors, and violations of municipal charter provisions, ordinances, rules, and regulations.
- Minn. Stat. § 484.87 subd. 2. In Hennepin and Ramsey counties, the county attorney prosecutes criminal violations if either of the following occurs:
- Minn. Stat. § 484.87 subd. 2.
- The county attorney is specifically designated by law as the prosecutor for the particular violation charged.
- Minn. Stat. § 484.87 subd. 2.
- The alleged violation is of state law and is alleged to have occurred in a city whose population according to the most recent federal decennial census is less than 2,500 and whose governing body has accepted prosecution by the county attorney under this statute by majority vote, and if the defendant is cited or arrested by a member of the staff of the sheriff of Hennepin County or by a member of the State Patrol. A city seeking to use the county attorney under this statute, shall notify the county board at least 60 days prior to the adoption of the board's annual budget.
- Minn. Stat. § 484.87 subd. 2.;  
Minn. Stat. § 388.051, subd. 2. In Anoka, Carver, Dakota, Scott, and Washington counties, violations of state law that are petty misdemeanors, misdemeanors or gross misdemeanors (except as provided in Minn. Stat. § 388.051, subd. 2) must be prosecuted by the attorney for the city where the violation is alleged to have occurred. The city may enter into an agreement with the county board and the county attorney to provide prosecution services for any criminal offense. All violations of a city ordinance, charter provision, rule, or regulation must be prosecuted by the attorney for the city that promulgated it or by the county attorney with whom the city has contracted to prosecute these matters.

Minn. Stat. § 484.87 subd. 3;  
Minn. Stat. §§ 609.52; 609.535;  
609.595; 609.631; 609.821.

In all counties except Hennepin, Ramsey, Anoka, Carver, Dakota, Scott, and Washington counties, violations of state law that are petty misdemeanors or misdemeanors must be prosecuted by the attorney of the city where the violation is alleged to have occurred, if the city has a population greater than 600. If a city has a population of 600 or less, it may, by resolution of the city council and with the approval of the board of county commissioners, give the duty to the county attorney. In cities of the first, second, and third class, gross misdemeanor violation of sections 609.52, 609.535, 609.595, 609.631, and 609.821 must be prosecuted by the attorney of the city where the violation is alleged to have occurred. The city may enter into an agreement with the county board and the county attorney to provide prosecution services for any criminal offense. All violations of a municipal ordinance, charter provision, rule, or regulation must be prosecuted by the attorney for the city that promulgated it, regardless of its population, or by the county attorney with whom the city has contracted to prosecute these matters.

Minn. Stat. §§ 484.84 ; 484.90  
subd. 6.

For all counties, except Hennepin County, the court administrator pays fines and penalties to the county treasurer of the county in which the funds were collected. On or before the last day of each month, the county treasurer shall pay over to the treasurer of each city within the county all fines or penalties for parking violations for which complaints and warrants have not been issued and one third of all fines or penalties collected during the previous month for offenses committed within the city from persons arrested or issued citations by officers employed by the city or provided by the city by contract. An additional one third of all fines or penalties shall be paid to the city providing prosecution of offenses of the type for which the fine or penalty is collected occurring within the city, imposed for violations of state statute or of an ordinance, charter provision, rule, or regulation of a city whether or not a guilty plea is entered or bail is forfeited.

There is one exception to this division of money. Under the state law relating to fines and forfeited bail money from state patrol traffic arrests, the division of fines is as follows:

Minn. Stat. § 299D.03, subd. 5  
(a).

- If the arrest occurs within a city and the city attorney prosecutes the offense and the defendant pleads not guilty, one third of the money goes to the city, one third to the county, and one third to the state.

Minn. Stat. § 299D.03, subd. 5  
(a).

- In all other cases, three eighths of the money goes to the county, five eighths to the state, and none to the city.

## IV. Local approval of special laws

Minn. Const. art. XII, § 2;  
Minn. Stat. § 645.021.

Under the Minnesota Constitution, any law that affects a single unit of local government or a group of such units must name the unit or units. Also, the law generally does not take effect until a majority of the city council passes a resolution approving it. Unless otherwise required by the special law, the usual procedural requirements apply to resolutions. Publication is not necessary.

Local approval is necessary except for the following cases:

- [Minn. Stat. § 645.023, subd. 1.](#) • A law enabling one or more local government units to exercise authority not granted by general law.
- [Minn. Stat. § 645.023, subd. 1.](#) • A law bringing a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.
- [Minn. Stat. § 645.023, subd. 1.](#) • A law that applies to a single unit or a group of units with a population of more than one million people.

[Minn. Stat. § 645.021, subd. 3.](#) When local action is necessary to approve the special law, the city must file a certificate of approval with the secretary of state. The secretary of state usually furnishes the city with certificate forms when the city receives notice of the passage of the special law. The local unit must approve the special law by the first day of the next regular session of the legislature in order for it to take effect.

[Minn. Stat. § 645.02.](#) Special laws take effect the day after the city files the certificate of approval unless the special law provides otherwise.

A model resolution form is printed below:

## A. Model resolution approving a special law

Resolution approving Laws of Minnesota, *(year)*. Ch. *(Chapter number and section, if applicable)*.

WHEREAS, Laws of Minnesota *(year)*, Ch. *(chapter number and section)*, entitled "An Act" requires approval by a majority of the city council before it becomes effective.

BE IT RESOLVED by the city council of *(city)*, that Minn. Laws *(year)*, Ch. *(chapter number and section)*, is hereby approved. Adopted by the council this *(date)* day of *(month)*, *(year)*.

Mayor

City Clerk

Official seal

## V. How this chapter applies to home rule charter cities

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

The section on types of council meetings generally only applies to statutory cities, although the sections discussing meetings held by interactive television, telephone or electronic meetings, and emergency meetings apply to all cities. The portions that discuss the open meeting law apply to all cities. The sections on agendas, parliamentary procedures, and making an adequate record apply to all cities, except that in some charter cities, mayors may not be members of the council, may not vote except in the case of a tie, and may have veto power.

The section on motions, resolutions, and ordinances generally applies only to statutory cities. Home rule charter cities may have different requirements on these subjects in their charters.

The section on local approval of special laws, applies to all cities. Under the provisions of this law, charters could not be amended by special law without local approval except for the specific, limited instances.