

Natural Resource Commission Agenda

April 18, 2019 5:30 p.m.

Community Meeting Room - 100 Village Center Drive, Suite 230

North Oaks

NOTE TIME AND LOCATION CHANGE

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of the Agenda**
- 4. Approval of March 21, 2019 Minutes**
- 5. Pollinator Ordinance**
- 6. Review of League of Minnesota Cities Award Application**
- 7. Discussion of Open Meeting Law & NRC's Role in Development**
- 8. Tick Task Force Report**
- 9. Kate Winsor's Report**
- 10. City Update**
- 11. NOHOA/NEST Update**
- 12. Other Business**
- 13. Next Meeting May 16, 2019**

Natural Resources Commission Minutes

March 21, 2018

7:00 P.M.

Call to Order:

Chair Bob Larson called the meeting to order at 7:00 p.m.

Roll Call:

Present: Chair Bob Larson, Vice Chair Kate Winsor, Commissioners David White, Damien LePoutre, Dan McDermott, City Council Liaison Gregg Nelson and NOHOA Liaison Diane Gorder
Staff: City Administrator Mike Robertson and Recording Secretary Debbie Breen.

Commissioners asked that staff advertise for a new Natural Resources Commissioner.

Approval of Agenda:

Commissioner Winsor moved to approve the agenda. Commissioner White seconded. Motion approved unanimously.

Pollinator Resolution Discussion – U of M student Presentation

Four students from the Agriculture Sciences Department from the University of Minnesota were present to request that North Oaks pass a Pollinator friendly resolution. They discussed the state of bees, butterflies, bats and moths, which make up 75% of pollination of all crops. Fifty percent of the world's honeybees were lost last year due human causes and weather, pathogens, pesticides, habitat and loss of food. A pollinator resolution is a set of guidelines on how to treat the landscape in a pollinator friendly way, that can be tailored to fit community's needs. They said that Shoreview had recently passed a similar resolution.

Commissioner White asked if this was typically adopted as resolution or as an ordinance. The students confirmed that it is a non-binding Resolution, more like a pledge. Commissioner McDermott asked if there is any data yet on results from passing the ordinances. They stated it is too soon to determine as it is a world problem and initiatives are just underway and there are over 400 species of bees. Commissioner LePoutre asked if forests like North Oaks is a better source of pollinators, or worse source than a more urban environment. They provided a brochure that shows what works best in a wooded environment.

Mayor Nelson confirmed that the NRC should come up with the Resolution and then propose it to the City Council for approval once NOHOA has given approval. The Commission agreed to move ahead.

Review of Coyote Presentation

Chair Larson gave a summary of the Coyote presentation on March 14th. The State specialists noted that the removal of Coyotes just makes room for others coming in, and said that residents should harass them with loud noises, firecrackers, etc. and that is usually enough to be effective. The overall emphasis of the presentation was on coexisting with coyotes. It was a really good turnout for the presentation and the recording is on the website.

Commission Winsor asked how the City plans to address Coyote inquiries going forward. Administrator Robertson stated they would refer residents to the presentation. The Ramsey County Sheriff's office also recently instructed Deputy Burrell to not shoot coyotes unless there was an imminent threat to life. Chair Larson noted a few people in attendance asked for additional presentations on other nature/wildlife topics. Commissioner White asked if there is a sense of community input on the topic. Robertson stated there have been many sightings reported, but only a few of a more aggressive nature. The City is tracking reports of sightings, and will send out the Deputy or animal control for any direct threats.

Review of Proposed Water Plan

Administrator Robertson noted the Water Plan is part of Camp Plan update to the 2018. He asked the Commissioners if they had any feedback on the plan.

Commissioner Winsor mentioned in Part B of Page 10 – might want to add information on Blandings turtles found in North Oaks. Page 18, section 3 – wondered if salt use should be mentioned as part of water quality. NOHOA Gorder mentioned that Mel's is trying to use more sand and less salt now. Commissioner Winsor asked if Climate change was addressed in document. Administrator Robertson noted that the 100-year rainfall event has been changed from 5.5 inches to 7.0 inches and that future stormwater systems have to be sized accordingly. Commissioner White stated in yesterday's paper there was an article about what happens to the salt used on road, and that it doesn't go away but just settles in the bottom. Robertson stated that there is an alternative to salt, but it is a chemical mixture that is much more expensive. Sand / Salt combination is the cheapest solution. Commissioner LePoutre asked if there was anything specific to Black Lake on page 14 – if not, may need to add since it is important to VLAMO. He suggested inclusion of water willow on Page 10. Robertson stated they will receive the next document to be revised in 2-3 months. NOHOA Gorder mentioned on page 11 top and Page 17 – need to make consistent all the townships involved. Page 11, area 3 – revise to mention North Oaks parks are open to NOHOA members. Page 14 there is mention of the Mississippi water and how much water comes in to the watershed. Page 20 #12 – state NOHOA contractors instead of Public Works officials. Page 26 #5, mention of the environmental commission should be Natural Resource Commission.

Commissioner LePoutre requested the related maps be sent over to NRC and for them to be put on the website. Robertson stated that our City Engineer Sambatek put together the original document and continues to help maintain the document and maps.

Environmental Assessment Worksheet Review

Administrator Robertson said that last month's minutes had a mentioned an environmental impact study. He said that the Commission needs specific reasons to request either an environmental impact study or a revised EAW. Robertson noted that the North Oaks Company has withdrawn their proposed concept plan. Mayor Nelson clarified that the North Oaks Company could return with a new concept plan which proposed some of the same options. At the next Planning Commission meeting, they will be closing the public hearing on the concept plan and just focusing on the applications remaining.

Robertson noted that an EAW is required whenever more than 80 acres are proposed for development. The EAW done in 1999 is one of the most thorough he has ever reviewed. He reviewed some of the issues that have been brought up about the EAW. With the withdrawal of the concept plan none of these issues rise to the level necessary to require a new or revised EAW.

Commissioner LePoutre requested that the City Attorney review documents closely to make sure the new plan is compatible with what was approved in 1999. Commissioner LePoutre believes that topography maps show water flowing south into Black Lake. Robertson said that the water flows north from Black Lake to Wilkinson Lake.

Commissioner White asked if there's anything in deeds that restricts people from building based on environmental concerns. Robertson said there was nothing in City ordinances.

Public Comment – Susan Hinrichs thanked NRC and city for their review of upcoming project and encouraged the North Oaks Company, NOHOA and City to work together. She shared what she learned from VLAMO regarding wetlands.

Leanne Saveride – mentioned that original plan had road coming off of Sherwood for the Nord parcel.

Mayor Nelson has asked that residents forward any comments to the Planning Commission and the City Council.

City Update:

Grant – Administrator Robertson reported that the City received grant for \$2,750 for removal of oriental bittersweet.

Deer Management – They have been 24 deer removed this year. The City seems to be meeting its target of having less than 8 deer per acre.

Approval of Minutes:

Administrator Robertson asked to correct the February minutes to more accurately reflect the EAW discussion.

Commissioner White moved to correct the February 21, 2019 minutes to state "Motion was made to review the EAW on the proposed East Oaks Development in greater detail".

Commissioner Winsor seconded. Motion unanimously approved with Mayor Nelson abstaining.

Commissioner Lepoutre asked if there was a need to include more information on wildlife importance in the Comp Plan. Robertson clarified that the Comp Plan is a land use document and what he was talking about was a governance issue.

Tick Task Force Report

Commissioner White stated next meeting is Tuesday, April 16th at 7:00 p.m. Commissioner McDermott referenced a publication from White Bear about Lyme disease. He will provide this document to Administrator Robertson for sharing with Tick Task Force.

Kate Winsor's Report

Submitted a North Oaks news article re: Are there any Weeds in My Seeds and a Happy Earth Day article.

NOHOA/NEST Update

NOHOA Liaison Gorder stated Justin Townsend has approval from NOHOA and VLAMO to conduct training at the end of April or early May for residents on identifying oriental bittersweet. Possibly put up signs and conduct seminar and he has offered to take care of anything identified right away. Administrator Robertson mentioned that Emerald Ash Borer was detected in a tree by the St. Paul Water Department Pumphouse. They are going to meet with NOHOA and Rehder Forestry on Monday to discuss an overall management plan.

Other Business

Commissioner McDermott asked if the Commissioners were vulnerable on any decisions made in relation to the Comp Plan or developments. Administrator Robertson stated that as City Commissioners they were covered under the City's liability insurance policy.

Adjournment:

Commissioner White made a motion to adjourn. Commissioner McDermott seconded. The motion was approved unanimously. The meeting ended at 9:15 p.m. Next Meeting is April 18, 2019.

> LEAGUE OF MINNESOTA CITIES <



MULTIPLE POPULATION CATEGORIES TO
SHOWCASE YOUR CITY'S WORK!

2019 TOPICAL AWARD CATEGORY:
Creative Programs and Services in Public Works

Each and every day, city officials throughout the state of Minnesota do outstanding work that promotes quality of life in our communities. Through both individual and team efforts, they make Minnesota cities excellent places to live.

Showcase your city's excellent work—submit your entry today for the League of Minnesota Cities 2019 City of Excellence Awards!

DEADLINE: MAY 6, 2019



ENTRY RULES

Excellence in local government can be defined in many ways. If your city has done one or more of the following, we encourage you to send in an entry:

Improved the quality of a city service.

Developed an effective or innovative way to solve an old or common problem.

Modified a program from another community or organization to fit your needs.

Found a way to save your city money and achieve the same or better results.

Involved citizens or other city staff in making a decision.

This is your chance for statewide recognition—from peers, colleagues, city residents, and the media—for a job well done!

EVALUATION

Entries will be evaluated by a panel of judges selected by the League of Minnesota Cities (LMC). Evaluation of the award entries will include analysis of:

- **Structure**—how the project or program is planned, organized, administered, and evaluated.
- **Goals and results**—demonstration of how goals were achieved.
- **Strengths and weaknesses**—what worked, and what could be improved.
- **Applicability** to other cities as a best practice.

ELIGIBILITY FOR AWARDS

- **General Entry Awards** are divided into three population categories. Cities may submit an entry in their population category, regardless of topic or service area: 4,999 and under; 5,000 to 19,999; 20,000 or more.
- A single award will also be presented in this year's **Topical Award** category, "**Creative Programs and Services in Public Works.**" Cities of all sizes will compete against each other in this category.
- To be eligible, the subject of each entry must be a city-funded and/or city-administered project or program. The project or program must have been initiated and/or implemented between December 2016 and December 2018. Cities may not enter the same project in both the population category and the topical category.

WINNING ENTRIES

- A First Place Award, to include a cash prize of \$1,000, will be awarded to the winner in each General Entry Award population category.
- A single award of \$1,000 will also be presented in this year's Topical Award category. Cities of all sizes will compete against each other in this category.
- If no entries in a given category meet judging standards, or if a category has few competitive entries, judges reserve the right to withhold an award in that category.
- Winning cities will be notified in advance of the LMC Annual Conference—which is happening June 26-28, 2019 in Duluth—and will receive special recognition at the conference.
- **Please plan ahead!** If you are selected as a winner, you will be asked to immediately submit up to 10 high-resolution photographs that will be used in recognition and promotional activities.

ENTRY PROCESS

Submit an entry packet via email or mail that includes a completed entry form, needed information described on the entry form, and any relevant supporting materials. *Please note that entry materials cannot be returned if submitted by mail.*

ENTRY DEADLINE

All entries must be submitted or postmarked by May 6, 2019. Electronic submissions are encouraged.

Questions? Contact Don Reeder at dreeder@lmc.org or (651) 215-4031.

ENTRY FORM

CITY OF EXCELLENCE AWARDS

Please submit the following information for each entry.

Name of city: _____

Name of your nominated project or program: _____

Contact person: _____

Title: _____

Phone number: _____ Email address: _____

1. On a separate page, in 250 words or less, please provide a brief program/project description (to include budget, time frame, goals, collaborations, etc.).
2. Entries in both the General Entry Award and Topical Award categories will be evaluated in terms of project/program structure, project/program goals and results, project/program strengths and weaknesses, and applicability to other cities as a best practice.
3. Entries may include additional supporting documents (e.g., reports, proposals, brochures, maps, newsletters, newspaper clippings, charts or graphs, printed website pages, advertisements, or marketing pieces). Submitting entries on no more than 20 sheets of single-sided paper is helpful to our judging panel. If you choose to submit your packet in a binder, please use binders that are no more than one inch thick.
4. Winners will be notified by the third week of May. **Please plan ahead!** If you are selected as a winner, you will be asked to immediately submit up to 10 high-resolution photographs that will be used in recognition and promotional activities.

In which category are you submitting your entry? (Choose one category—General OR Topical):

General Entry Award (check one population category):

4,999 and under

5,000 to 19,999

20,000 or more

Topical Award: Creative Programs and Services in Public Works

Requirements for General Award Entries:

On a separate page, in 600 words or less, please describe how your city's project/program has accomplished one or more of the following:

- a. Improved the quality of a city service.
- b. Developed an effective or innovative way to solve an old or common problem.
- c. Modified a program from another community or organization to fit your needs.
- d. Found a way to save your city money and achieve the same or better results.
- e. Creatively involved citizens or other city staff in making a decision.

Requirements for Topical Award Entries:

Has your city's public works department recently engaged in a creative collaboration or an innovative way for residents to receive public works services? For example, have you created a new program or service related to street construction and maintenance, or other public transportation systems; drinking water and wastewater processing; or other infrastructure construction and maintenance?

In 600 words or less, please describe your program, service, or initiative and its impact on the community. Please be specific in terms of planning, process, and intended outcomes.

Please note that, by submitting your entry, you are granting the LMC approval to use your entry for promotional purposes. Completed entries must be submitted or postmarked by **May 6, 2019**.

Electronic submissions are encouraged.

Send via email to: Don Reeder at dreeder@lmc.org

Send via mail to: City of Excellence Awards
Attn: Don Reeder, Asst. Director of Communications
League of Minnesota Cities
145 University Avenue West
St. Paul, MN 55103-2044

CLEAR FORM

HONORING EXCELLENCE

2018 City of Excellence Award Winners

POPULATION UNDER 5,000

City of Clarkfield

"Community Child Care Initiative"

POPULATION 5,000 TO 19,999

City of Falcon Heights

"Policing and Inclusion Community Initiative"

POPULATION 20,000+

City of Duluth

"Imagine Canal Park: Cold Front February Kick-Off Celebration"

TOPICAL CATEGORY — PROMOTING LEADERSHIP AND CAREER OPPORTUNITIES IN CITY GOVERNMENT

Cities of St. Louis Park and Bloomington

"Pathways to Policing"

Showcase your city's good work, receive statewide recognition,
and win \$1,000 for your city!

Please submit your entry by May 6, 2019.



**LEAGUE OF MINNESOTA CITIES
CITY OF EXCELLENCE AWARD
250 Word Project Description**

The North Oaks City Council established the Tick Task Force in August, 2015 in response to citizen concerns about the growing presence of Lyme disease in the community. The goal of the Task Force was to learn about the disease and develop recommendations and educational materials which could aid residents in disease prevention. Councilmember Dr. Rick Kingston was appointed to the Task Force as Council liaison. Dr. Brooke Moore was elected Chair of the Task Force.

The Task Force collaborated with specialists from the Minnesota Department of Health and the University of Minnesota School of Public Health to create the North Oaks Integrated Tick Management Program. The program has recommendations for the City, the homeowners' association, and for residents. For the City the recommendation was to increase the efforts to reduce the amount of deer in the community. This recommendation was implemented successfully. For the residents personal protective measures and landscape modifications were recommended, doing tick checks, wearing long pants tucking pants into socks, using tick repellents on clothing and keeping grass short, removing brush and creating a 3-foot barrier between your lawn and any woods. These recommendations were publicized in the local newspaper, home owner's association newsletters, tables at festivals and social media.

Attached are the brochure and disc that were created and disseminated to the residents.

**LEAGUE OF MINNESOTA CITIES
CITY OF EXCELLENCE AWARD
600 Word Program Description**

When the North Oaks City Council established the Tick Task Force in August, 2015 to combat the growing presence of Lyme disease they wanted to see if there were any other actions the City could take beyond trying to remove more deer.

The Tick Task Force reached out to both residents of North Oaks and to various specialists at the State and University of Minnesota. Lyme disease has been recognized in the United States since 1982. Rates have been increasing in recent years.

A survey of the community to determine the extent of Lyme disease was done in the spring of 2016. This survey has been repeated every year since. The response rate to these surveys has varied from 25% to 43%. When the Task Force was formed the incidence of Lyme disease was 5 times that of the surrounding communities. The yearly surveys have shown rates of Lyme disease to be decreasing in North Oaks while state reports have shown increasing incidence in nearby communities.

While the majority of the Task Force recommendations were to change resident behavior, they also recommended an increased focus on removal of deer. The City responded by increasing its trapping efforts and by hiring the USDA to shoot deer in non-residential areas. Due to these changes the City succeeded in increasing the removal rate from a five-year average of 75 deer to 133 deer in 2017.



HANDBOOK FOR MINNESOTA CITIES

**Chapter 7
Meetings Motions Resolutions and
Ordinances**

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RELEVANT LINKS:

See Proclamation, Governor Mark Dayton, State of Minnesota, Oct. 7, 2016 (recognizing the second Monday in October as Indigenous Peoples Day). Note: State statute refers to this holiday as Columbus Day.

Minn. Stat. § 645.44, subd. 5.

Minn. Stat. § 645.44, subd. 5.

Minn. Stat. § 645.15. See Section I-B for more information about notice for special meetings.

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

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

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

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

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

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

State law does not prohibit meetings on weekends. However, state 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. For example, 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.

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.

Therefore, if a school district is holding a special election on a particular day, no other unit of government totally or partially within the school district may hold a meeting between 6 p.m. and 8 p.m. Meetings are also prohibited after 6 p.m. on the day of a major political precinct caucus.

II. Open meeting law

A. Purpose

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

RELEVANT LINKS:

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

Quast v. Knutson, 150 N.W.2d 199, 200 (Minn. 1967) (holding that a school board violated the open meeting law when it held a meeting in a room located 20 miles outside the school district.). DPO 18-003.

Minn. Stat. § 13D.01, subd. 6. DPO 08-015. DPO 17-006. DPO 18-003. DPO 18-011. DPO 13-015 (noting that the open meeting law “is silent with respect to agendas; it neither requires them nor prohibits them”).

Minn. Stat. § 13D.01, subd. 6.

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

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

B. Public notice

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

C. Location

The Minnesota Supreme Court has held that, to satisfy the statutory requirement that meetings of public bodies shall be open to the public, “it is essential that such meetings be held in a public place located within the territorial confines of the [public body] involved.”

D. Printed materials

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

This requirement does not apply to materials classified by law as other than public or to materials relating to the agenda items of a closed meeting.

E. Groups governed by the open meeting law

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 a public body or of any committee, subcommittee, board, department, or commission of a public body to be open to the public. For example, the governing bodies of local public pension plans, housing and redevelopment authorities, economic development authorities, and city-created corporations are subject to the open meeting law.

RELEVANT LINKS:

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

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

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

See Section II-G-4 for more information about serial meetings.

Minn. Stat. § 13D.05, subd. 1(d).

Minn. Stat. § 13D.01, subd. 3.

DPO 14-005. DPO 13-012. DPO 06-020. DPO 14-005. See *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004)

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

F. Gatherings governed by the open meeting law

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

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

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 to avoid the requirements of the open meeting law may be found to violate the law, depending on the specific facts.

G. Open meeting law exceptions

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

All closed meetings (except those closed under 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.

Before closing a meeting under any of the following exceptions, a city council must make a statement on the record that includes the specific grounds that permit the meeting to be closed and describes the subject to be discussed.

The commissioner of the Minnesota Department of Administration has advised that a member of the public body (and not its attorney) must make the statement on the record. The commissioner has also advised that citing the specific statutory authority that permits the closed meeting is the simplest way to satisfy the requirement for stating the specific grounds permitting the meeting to be closed.

RELEVANT LINKS:

(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).

Minn. Stat. § 13D.04, subd. 5.

Minn. Stat. § 13D.03, subd. 1 (b).
DPO 13-012.
Minn. Stat. §§ 179A.01-25.

Minn. Stat. § 13D.03, subds. 1(d), 2.
DPO 05-027.
DPO 00-037.

Minn. Stat. § 13D.03, subd. 3.

Minn. Stat. § 13D.05, subd. 2.

Both the commissioner and the Minnesota Court of Appeals have concluded that something more specific than a general statement is needed to satisfy the requirement of providing a description of the subject to be discussed.

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

1. Labor negotiations

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 conducted pursuant to Minnesota Statutes sections 179A.01 to 179A.25. The council must announce the time and place of the closed meeting at the public meeting.

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.

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

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

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.

RELEVANT LINKS:

Minn. Stat. §§ 144.291-298.

Minn. Stat. § 13D.05, subd. 1(d).

Minn. Stat. § 13D.05, subd. 1(b), (c).
DPO 09-012.

Minn. Stat. § 13D.05, subds. 1(d), 2(b).
DPO 03-020. (Advising that when a meeting is closed under this exception, Minn. Stat. § 13.43, subd. 2 requires the government entity to identify the individual who is being discussed.)

DPO 14-004.

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.
- Certain medical records.

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

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

3. Misconduct allegations or charges

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

The commissioner of the Minnesota Department of Administration has advised that a city could not close a meeting under this exception to consider allegations of misconduct against a job applicant who had been extended a conditional offer of employment. The job applicant was not a city employee. The commissioner reasoned that the city council had no authority to discipline the job applicant or to direct his actions in any way; therefore, he was not "an individual subject to its authority."

RELEVANT LINKS:

DPO 10-001.
Minn. Stat. § 13.43.

Minn. Stat. § 13D.05, subs. 1(d), 3(a). See DPO 14-007, DPO 15-002, and DPO 16-002 (discussing what type of summary satisfies the open meeting law).

DPO 05-013 (advising that a government entity could close a meeting under this exception to discuss its contract with an independent contractor when that contractor is an individual human being).

Minn. Stat. § 13D.05, subd. 3 (b).
Brainerd Daily Dispatch, LLC v. Dehen, 693 N.W.2d 435 (Minn. Ct. App. 2005).
Prior Lake American v. Mader, 642 N.W.2d 729 (Minn. 2002).
Northwest Publications, Inc. v. City of St. Paul, 435 N.W.2d 64 (Minn. Ct. App. 1989).
Minneapolis Star & Tribune v. Housing and Redevelopment Authority in and for the City of Minneapolis, 251 N.W.2d 620 (Minn. 1976).
DPO 14-005. DPO 14-017.
DPO 16-003. DPO 17-003.

Minn. Stat. § 13D.05, subd. 3 (c).

Minn. Stat. § 13.44, subd. 3.

The commissioner has also advised that a tape recording of a closed meeting for preliminary consideration of misconduct allegations is private personnel data under Minn. Stat. § 13.43, subd. 4, and is accessible to the subject of the data but not to the public. The commissioner noted that at some point in time, some or all the data on the tape may become public under Minn. Stat. § 13.43, subd. 2.

For example, if the employee is disciplined and there is a final disposition, certain personnel data becomes public.

4. Performance evaluations

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must identify the individual to be evaluated before closing the meeting.

At its next open meeting, the public body must summarize its conclusions regarding the evaluation. This type of meeting must be open at the request of the individual who is the subject of the meeting. If this type of meeting is closed, it must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

5. Attorney-client privilege

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

6. Purchase or sale of real or personal property

A public body may close a meeting to:

- Determine the asking price for real or personal property to be sold by the public body.
- Review confidential or protected nonpublic appraisal data.

RELEVANT LINKS:

Minn. Stat. § 13D.05, subd. 3 (c).

Vik v. Wild Rice Watershed Dist., No. A09-1841 (Minn. Ct. App. Aug. 10, 2010) (unpublished opinion) (holding that this exception authorizes closing a meeting to discuss the development or consideration of a property transaction and is not limited to the discussion of specific terms of advanced negotiations). DPO 08-001. DPO 14-014.

Minn. Stat. § 13D.05, subd. 3 (d).

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

- Develop or consider offers or counteroffers for the purchase or sale of real or personal property.

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 only after all real or personal property discussed at the meeting has been purchased or sold, or after the public body has abandoned the purchase or sale. The real or personal property that is being discussed must be identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. The actual purchase or sale of the real or personal property must be approved at an open meeting, and the purchase or sale price is public data.

7. Security reports

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.

H. Common issues

1. Interviews

The Minnesota Supreme Court has ruled that a school board must interview prospective employees for administrative positions in open sessions. The court reasoned that the absence of a statutory exception indicated that the Legislature intended such sessions to be open.

As a result, a city council should conduct any interviews of prospective officers and employees at an open meeting if a quorum or more of the council will be present.

RELEVANT LINKS:

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

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

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

DPO 08-007.
DPO 13-015.

DPO 05-014.



The Minnesota Court of Appeals considered a situation where individual councilmembers conducted separate, serial interviews of candidates for a city position in one-on-one closed interviews. The district court found that no “meeting” of the council had occurred because there was never a quorum of the council present during the interviews.

However, the court of appeals sent the case back to the district court for a determination of whether the councilmembers had conducted the interview process in a serial fashion to avoid the requirements of the open meeting law.

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

2. Informational meetings and committees

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 or more of a city council must be properly noticed and open to the public, regardless of whether the council takes or contemplates taking action at that gathering. This includes meetings and work sessions where members receive information that may influence later decisions.

Many city councils create committees to make recommendations regarding a specific issue. Commonly, such a committee will be responsible for researching the issue and submitting a recommendation to the council for its approval. These committees are usually advisory, and the council is still responsible for making the final decision. This type of committee may be subject to the open meeting law. Some factors that may be relevant in deciding whether a committee is subject to the open meeting law include: how the committee was created and who are its members; whether the committee is performing an ongoing function, or instead, is performing a one-time function; and what duties and powers have been granted to the committee.

For example, the commissioner of the Minnesota Department of Administration has advised that “standing” committees of a city hospital board that were responsible for management liaison, collection of information, and formulation of issues and recommendations for the board were subject to the open meeting law.

RELEVANT LINKS:

DPO 07-025.

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

Thuma v. Kroschel, 506 N.W.2d 14 (Minn. Ct. App. 1993). DPO 16-005.

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

The advisory opinion noted that the standing committees were performing tasks that relate to the ongoing operation of the hospital district and were not performing a one-time or “*ad hoc*” function.

In contrast, the commissioner has advised that a city’s Free Speech Working Group, consisting of citizens and city officials appointed by the city to meet to develop and review strategies for addressing free-speech concerns relating to a political convention, was not subject to the open meeting law. The advisory opinion noted that the group did not have decision-making authority.

It is common for city councils to appoint individual councilmembers to act as liaisons between the council and particular council committees or other government entities. The Minnesota Court of Appeals considered a situation where the mayor and one other member of a city council attended a series of mediation sessions regarding an annexation dispute that were not open to the public.

The Court of Appeals held that the open meeting law did not apply to these meetings concluding “that a gathering of public officials is not a ‘committee, subcommittee, board, department or commission’ subject to the open meeting law unless the group is capable of exercising decision-making powers of the governing body.”

The Court of Appeals also noted that the capacity to act on behalf of the governing body is presumed where members of the group comprise a quorum of the body and could also arise where there has been a delegation of power from the governing body to the group.

If a city is unsure whether a meeting of a committee, board, or other city entity is subject to the open meeting law, it should consult its city attorney or consider seeking an advisory opinion from the commissioner of the Minnesota Department of Administration.

Notice for a special meeting of the city council may be needed if a quorum of the council will be present at a committee meeting and will be participating in the discussion. For example, when a quorum of a city council attended a meeting of the city’s planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law not because the councilmembers simply attended the meeting but because the councilmembers conducted public business in conjunction with that meeting.

Based on this decision, the attorney general has advised that mere attendance by councilmembers at a meeting of a council committee held in compliance with the open meeting law would not constitute a special city council meeting requiring separate notice.

RELEVANT LINKS:

St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools, 332 N.W.2d 1 (Minn. 1983). *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983). *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757 (Minn. 1982). DPO 18-003 (advising dinner that a quorum of a city council attended did not violate open meeting law).

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983). DPO 10-011. DPO 06-017.

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

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

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

The attorney general cautioned, however, that the additional councilmembers should not participate in committee discussions or deliberations absent a separate special-meeting notice of a city council meeting.

3. Social gatherings

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

4. Serial meetings

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

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

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

5. Training sessions

It is not clear whether the participation of a quorum or more of the members of a city council in a training program would be defined as a meeting under the open meeting law.

RELEVANT LINKS:

A.G. Op. 63a-5 (Feb. 5, 1975). DPO 16-006.

A.G. Op. 63a-5 (Feb. 5, 1975). DPO 16-006.

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983). DPO 17-005 (advising communication through a letter violated the open meeting law).

DPO 09-020. DPO 14-015.

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

The determining factor would likely be whether the program includes a discussion of general training information or a discussion of specific matters relating to an individual city.

The attorney general has advised that a city council’s participation in a non-public training program devoted to developing skills was not a meeting subject to the open meeting law. The commissioner of the Department of Administration has likewise advised that a school board’s participation in a non-public team-building session to “improve trust, relationships, communications, and collaborative problem solving among Board members,” was not a meeting subject to the open meeting law if the members are not “gathering to discuss, decide, or receive information as a group relating to ‘the official business’ of the governing body.”

However, the opinion also advised that if there were to be any discussion of specific official business by the attending members, either outside or during training sessions, it could be a violation of the open meeting law.

6. Telephone, email, and social media

It is possible that communication through telephone calls, email, or other technology could violate the open meeting law. The Minnesota Supreme Court has indicated that communication through letters and telephone calls could violate the open meeting law under certain circumstances.

The commissioner of the Department of Administration has advised that back-and-forth email communications among a quorum of a public body that was subject to the open meeting law in which the members commented on and provided direction about official business violated the open meeting law.

However, the commissioner also advised that “one-way communication between the chair and members of a public body is permissible, such as when the chair or staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues.”

In contrast, an unpublished opinion by the Minnesota Court of Appeals concluded that email communications are not subject to the open meeting law because they are written communications and are not a “meeting” for purposes of the open meeting law.

The decision also noted that, even if email communications are subject to the open meeting law, the substance of the emails in question did not contain the type of discussion that would be required for a prohibited “meeting” to have occurred.

RELEVANT LINKS:

The court of appeals noted that the substance of the email messages was not important or controversial; instead, the email communications discussed a relatively straightforward operational matter. The decision also noted that the town board members did not appear to make any decisions in their email communications.

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

Minn. Stat. § 13D.065.

The open meeting law was amended in 2014 to provide that “the use of social media by members of a public body does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public.” Email is not considered a type of social media under this law.

The open meeting law does not define the term “social media,” but this term is generally understood to mean forms of electronic communication, including websites for social networking like Facebook, LinkedIn, and MySpace as well as blogs and microblogs like Twitter through which users create online communities to share information, ideas, and other content.

It is important to remember that the use of social media by councilmembers could still be used to support other claims against a city or city officials, such as claims of defamation or of conflict of interest in decision-making. As a result, councilmembers should make sure that any comments they make on social media are factually correct and should not comment on issues that will come before the council in the future for a quasi-judicial hearing and decision, such as the consideration of whether to grant an application for a conditional use permit.

See II-G-4 - *Serial meetings*.

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

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

RELEVANT LINKS:

Minn. Stat. § 13.02, subd. 7.

Another thing councilmembers should be careful about is which email account they use to receive emails relating to city business because such emails likely would be considered government data that is subject to a public-records request under the Minnesota Government Data Practices Act (MGDPA).

The best option would be for each councilmember to have an individual email account that the city provides and city staff manage. However, this is not always possible for cities due to budget, size, or logistics.

If councilmembers don't have a city email account, there are some things to think about before using a personal email account for city business. First, preferably only the councilmember should have access to the personal email account. Using a shared account with other family members could lead to incorrect information being communicated from the account, or incoming information being inadvertently deleted. Also, since city emails are government data, city officials may have to separate personal emails from city emails when responding to a public-records request under the MGDPA.

Second, if the account a city councilmember wants to use for city business is tied to a private employer, that private employer may have a policy that restricts this kind of use.

Even if a private employer allows this type of use, it is important to be aware that, in the event of a public-records request under the MGDPA or a discovery request in litigation, the private employer may be compelled to have a search done of a councilmember's email communications on the private employer's equipment or to restore files from a backup or archive.

What may work best is to use a free, third-party email service, such as gmail or Hotmail, for your city account and to avoid using that email account for any personal email or for anything that may constitute an official record of city business since such records must be retained in accordance with the state records-retention requirements.

See Handbook, *Records Management*, for more information about records management.

I. Advisory opinions

1. Department of Administration

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

Minn. Stat. § 13.072, subd. 1 (b). See Minnesota Department of Administration, *Data Practices for an index of advisory opinions*.

RELEVANT LINKS:

See [Requesting an Open Meeting Law Advisory Opinion](#).

[Minn. Stat. § 8.07. See index of Attorney General Advisory Opinions from 1993 to present.](#)

[Minn. Stat. § 13D.06, subd. 1.](#)

[Claude v. Collins, 518 N.W.2d 836 \(Minn. 1994\).](#)

[Minn. Stat. § 13D.06, subd. 2. O’Keefe v. Carter, No. A12-0811 \(Minn. Ct. App. 2012\) \(unpublished opinion\).](#)

[Minn. Stat. § 13D.06, subd. 4. See LMC information memo, LMCIT Liability Coverage Guide, for information about insurance coverage for lawsuits under the open meeting law.](#)

[Minn. Stat. § 13D.06, subd. 4.](#)

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

2. Attorney General

The Minnesota Attorney General is authorized to issue written advisory opinions to city attorneys on “questions of public importance.” The Attorney General has issued several advisory opinions on the open meeting law.

J. Penalties

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 consider a councilmember’s time and experience in office to determine the amount of the civil penalty.

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.

In an unpublished decision, the Minnesota Court of Appeals concluded that this broad grant of jurisdiction authorized a member of a town board to bring an action against his own town board for alleged violations of the open meeting law. This same decision also concluded that a two-year statute of limitations applies to lawsuits under the open meeting law.

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.

If a party prevails in a lawsuit under the open meeting law, an award of reasonable attorney fees is mandatory if the court determines that the public body was the subject of a prior written advisory opinion from the commissioner of the Minnesota 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.

RELEVANT LINKS:

Minn. Stat. § 13D.06, subd. 4
(d). *Coatwell v. Murray*,
No. C6-95-2436 (Minn. Ct.
App. Aug 6, 1996)
(unpublished decision).
Elseth v. Hille, No A12-
1496 (Minn. Ct. App. May
13, 2013) (unpublished
opinion).

Minn. Stat. § 13D.06, subd. 3
(a). *Brown v. Cannon Falls
Twp.*, 723 N.W.2d 31 (Minn.
Ct. App. 2006). *Funk v.
O'Connor*, No. A16-1645
(Minn. July 18, 2018).

Minn. Stat. § 13D.06, subd. 3
(b).

Minn. Const. art. VIII, § 5.

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

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

*Sullivan v. Credit River
Twp.*, 299 Minn. 170, 217
N.W.2d 502 (Minn. 1974).
*Hubbard Broadcasting, Inc.
v. City of Afton*, 323 N.W.2d
757 (Minn. 1982). *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
opinion). DPO 11-004.

Quast v. Knutson, 276 Minn.
340, 150 N.W.2d 199 (Minn.
1967).

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

If a person is found to have intentionally violated the open meeting law in three or more separate, sequential 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.

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.

Under the Minnesota Constitution, the Legislature may only 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.

"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 a violation, good faith is relevant in determining whether a violation amounts to nonfeasance.

The open meeting law does not address whether actions taken at a meeting that does not comply with its requirements would be valid. Minnesota courts have generally refused to invalidate actions taken at an improperly closed meeting because this is not a remedy the open meeting law provides.

But the Minnesota Supreme Court has held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

RELEVANT LINKS:

Minn. Stat. § 13D.01, subd. 6.

DPO 08-015. DPO 17-006. DPO 18-003. DPO 18-011.

Minn. Stat. § 412.191, subd. 2.

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

Minn. Stat. § 13.03, subd. 1.
Minn. Stat. § 13.02, subd. 7.

Minn. Stat. § 13D.05, subd. 1(d). See Part II-F for more information about the exceptions to the open meeting law.

III. Meeting procedures

A. Citizen involvement

Any person may observe council meetings. In fact, the council should encourage citizen attendance to help raise awareness of the city's problems and help create support for programs suggested by the council.

Citizens must be able to hear the discussion at a meeting, and must be able to determine who votes for or against a motion.

One copy of any printed materials relating to the agenda items of the meeting that have been distributed or made available to all members of the council must 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 mayor or presiding officer, but the council can overrule this decision. The council can, through a motion, decide to hear one or more speakers from the audience.

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

B. Recording and broadcasting of meetings

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.

Cities may also choose to record council meetings. The recording is a government record that must be kept in compliance with the city's records-retention policy. It must also be made available to the public if it contains public data.

All closed meetings, except meetings closed under the attorney-client privilege, must be electronically recorded at the city's expense. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

Tick Task Force Minutes

16 April 2019

Attendees: Brooke Moore, MD, MPH (chair), Councilman Rick Kingston, Bob Larson (NRC representative), David White (NRC representative)

League of Minnesota Cities Nomination

- Rick Kingston and Brooke Moore reported that Mike Robertson is submitting an application to the League of Minnesota Cities for the “City of Excellence Award” recognizing the Tick Task Force efforts to educate residents about tick borne illnesses. Mike has provided a draft of the application to Rick and Brooke for review. The application is due 5/6/2019. Once edited by Rick and Brooke it will be forwarded to the NRC for approval.

4th annual tick survey

- Unfortunately, Polco and the City have not yet been able to convert the Survey Monkey tick survey to their software. Because of concern that the tick season is upon us, and not wanting for 2019 cases to be confused with 2018 cases, the decision was made to move forward with using Survey Monkey again this year, with a goal of using the Polco software for the 5th annual survey. The link to the survey will be published in the upcoming issue of NO News. Brooke will ask NOHOA and the City to include the link in their weekly email blasts, and will post it to the NOHOA and City Facebook pages. The survey will remain open until the end of May.

University of Minnesota Pollinator Project

- David White presented about the work NRC is doing with a group of college and graduate students to draft a resolution to curb the harming of pollinators. Brooke had responded to some of their questions in an email sent on 4/2/2019. “NOHOA at the recommendation of the tick task force and the Minnesota mosquito control district contracts with a professional company each year (I believe Adam’s) for targeted application of acaricides. They use their own proprietary blend. They are careful to apply during times that should have the least impact on pollinators. We’ve also encouraged NOHOA, where possible, to make permanent landscape modifications so that acaricide use is limited. Please let me know if you need anything else.”

Ancillary benefits of decreased deer population?

- Rick Kingston raised the question, “Are there other ancillary benefits of decreasing the deer population?”. He had heard someone say it has decreased the spread of buckthorn by decreasing transmission of consumed berries. We also wondered if there have been fewer car vs deer incidents. Rick will look into finding answers to these questions.

Future efforts

- Monthly articles in NO News during tick season
- Contact Julie Heiden from NO Preschool to see if they do any education for families about ticks.

Next meeting: Tuesday 7/16/2019 7pm Community Room

Tick Season is coming!

Since North Oaks is part of the higher risk area in Minnesota for tick-transmitted diseases, it is important for residents to know what to look for and how to protect themselves. The Minnesota Department of Health (MDH) has been monitoring reported cases of Lyme disease and other tick-transmitted diseases and conducting field studies to clarify the risk picture across the state.

Most of the tick-transmitted diseases in Minnesota are carried by the blacklegged tick (formerly deer tick). This tick is most common in forested and brushy parts of Minnesota. On your property, most ticks will be in those wooded areas. However, low numbers might also live on the shaded parts of mowed lawns or around ornamental plantings. The ticks have three life stages (larvae, nymphs, and adults) and feed on blood once at each stage. Adult ticks are abundant during the spring months as soon as the snow melts and come out again in the fall. The smaller nymphs are most active from mid-May through mid-July. Larvae are out at the same time as the nymphs but more commonly feed on mice, chipmunks, and other small mammals. These mammals carry the disease agents, which are readily passed to the ticks as the ticks feed on them. The adult female ticks and immature nymphs commonly feed on people and are able to transmit any disease agents they are carrying while they feed.

Blacklegged ticks in our area are known to carry seven disease agents. Lyme disease is the most commonly reported tick-transmitted disease in Minnesota and across the country and is caused by two different bacteria, including one species that was first discovered recently in Minnesota. Anaplasmosis is almost as common and can cause severe illness. Less common diseases include babesiosis, ehrlichiosis, hard tick relapsing fever, and Powassan disease. In Minnesota, nearly half of adult blacklegged ticks and a quarter of the nymphs are infected with one or more disease agents. Lyme disease bacteria are most common in ticks (about 40% of adult ticks and 20% of nymphs are infected) and the other disease agents are generally found in less than 10% of ticks. There is much overlap in the symptoms from this confusing list of diseases. During the summer months, any illness with symptoms like an expanding rash, fever, muscle and joint aches should be evaluated by a doctor.

Tick-transmitted disease prevention is best achieved by preventing tick bites. Repellents containing permethrin are applied to clothing and provide weeks of effectiveness in keeping most ticks off of people. DEET-based repellents can be applied to skin and provide shorter-term protection. Frequent tick checks are also important. Blacklegged tick nymphs are hard to see (they will look like a tiny black scab on a person) but prompt tick removal often prevents the transmission of disease agents. Reducing the number of ticks on your property is also feasible but beyond available space in this update. Please visit the MDH tickborne diseases webpage for further information on ticks as well as the diseases and their prevention:
<http://www.health.state.mn.us/divs/idepc/dtopics/tickborne/index.html>

MEMO

Date April 17, 2019
To: Natural Resources Commission
From: City Administrator Mike Robertson
Re: City Update

Grant – The Oriental Bittersweet grant contract is signed. We will receive \$2,062 up front and \$688 after we have completed all the paper work once the project is done. We must perform at least \$2,000 in in-kind services, no more than \$1,000 in personnel costs and no more than \$1,000 in educational materials. We should discuss ideas for how we will reach these in-kind numbers. No costs before the date the grant was signed (4/16) will be allowed.

Tree Seedling Give-a-Way – The DNR will ship our seedlings on Monday, May 6 so they should be here on Wednesday or Thursday of that week. The Garden Club sale is Saturday, May 11.

Deer Management – The deer count finished at 24, 21 shot and 3 trapped. The massive snows of February brought removal efforts to a halt. Once the snow started to break up the trappers went out a few nights but gave up when they saw little sign of deer movement. Its pretty clear that we have achieved our goal for deer density in North Oaks at this moment. We should talk about whether we even need to trap next year. We took 41 deer last year and 133 in 2016-2017. We spent \$52,000 in 2016 and \$35,500 in 2017. Last year's figures are being audited now but it looks like its under \$20,000.

Weed Management – We are tentatively set for the week after July 4th for weed removal on Pleasant Lake.

I had a meeting with Stephanie MacNamara who is the Superintendent of the Vadnais Lake area water management organization.

I am the North Oaks representative to the VLAWMO Tech committee.

I asked if she was aware of the concept plan that the North Oaks Company is proposing for the NORD area.

She said that they have been working with Gary Eagles from the North Oaks Company.

She did not mention any problems that they had but would not give an opinion on this project because their protocol requires an official submission before an opinion is given, which has not been done yet.

Once the plan is officially submitted they next have to do a study to determine if this plan has the minimum amount of impact on the wetland.

The North Oaks Company is also required to get approval from:

The Ramsey County Board of Sewer and Water also referred to as BOWSER.

The Minnesota Department of Natural Resources

And the Army Corp of Engineers

In conclusion I believe the wetlands are being protected.

BOB LARSON