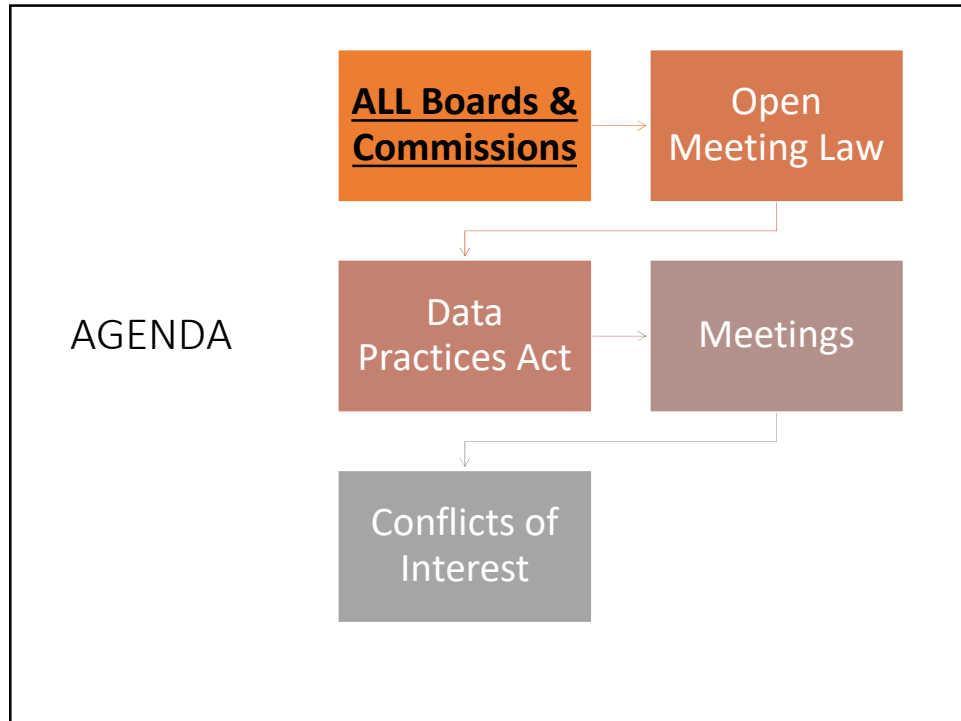
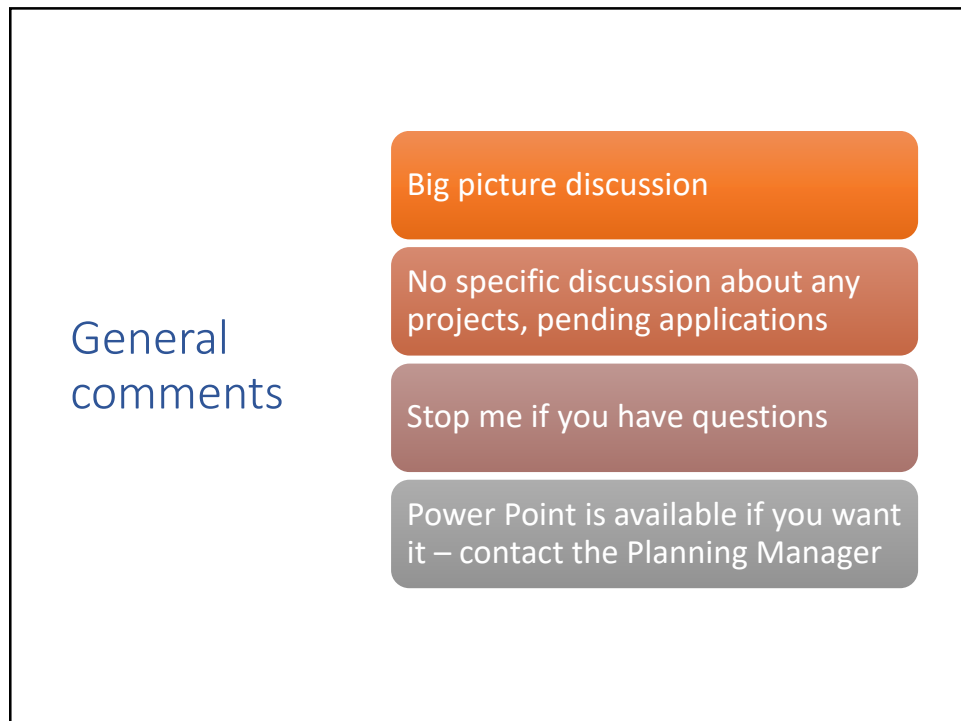


**Boards and Commissions
Training**

Presented by
Kori Land,
City Attorney

Intro - me

- Firm:
 - LeVander, Gillen & Miller, P.A. = general practice law firm (circa 1929) focusing 80% of its business on representing cities of various sizes
 - Stillwater, South St. Paul, Cottage Grove, Hastings, Lilydale, Sunfish Lake, LeRoy, South Haven, Darwin, Arden Hills, Fertile and Shell Rock Township
- Experience:
 - Undergrad at Augustana University, law school at William Mitchell
 - Attorney at LeVander since graduating from Law School
 - Over 25 years representing cities





Open Meeting Law
Minn. Stat. §13D.01

All meetings of -

The City; or

A **committee, subcommittee, board,**
department or **commission** of the City,

Must be open to the public.

Meetings

City Council Meetings/Work Sessions	EDA	Downtown Parking Commission
Historic Preservation Commission	Human Rights Commission	Charter Commission
Library Board	Park and Rec Commission	Utilities Commission
Special Service District	Energy Action Commission	Planning Commission

Open Meeting
Law
Minn. Stat.
§13D.02 Subd.
1(a)

Remote Location allowed IF:

- At least one person is in the regular meeting location
- All members and the public can see/hear everyone
- All votes are conducted by roll call
- ~~Remote location is open and accessible to the public~~
- Need at least 3 days' notice (cannot decide at the last minute to be remote)

FAQ

Can all members participate remotely?

- No, at least one member must be in the room

Can I turn off my camera?

- No, all members must be able to see and hear each other

Can I turn off my microphone?

- Yes, as long as you are not speaking

FAQ (cont.)

What if I suddenly get sick or called out of town, can I participate remotely with short notice?

- No, 3 days' advance notice is required

If I don't have 3 days' notice, can I still participate remotely as long as I don't say anything?

- No, if a meeting is televised, you can watch the meeting like any other member of the public

You used to say I had to be in a public place? Is that still a thing?

- No, the legislature removed the requirement that the remote member be in a public place



Open Meeting Law

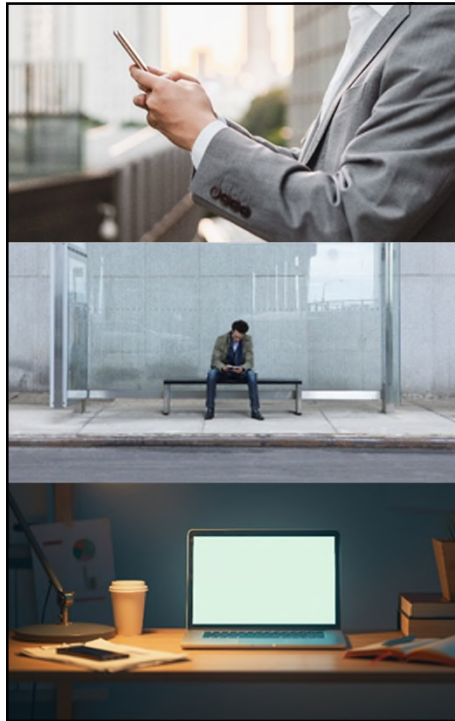
- *Inside the room meetings*

Notice of the date, time, location is posted on the bulletin board and City's website

Meetings

“Meetings” (not defined in the Open Meeting Law) Defined in case law:

- A quorum of the body;
- Discusses, decides, or receives information as a group; and
- Information is related to official business



Open Meeting Law

- *Outside the room meetings*
 - Email
 - Telephone
 - Social media
 - Serial Meetings

Open Meeting Law

When a quorum of the members of a public body subject to the OML want to discuss or decide public business, that discussion or business must occur at a public meeting. *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983). As part of its discussion in *Moberg*, the Supreme Court directed members of a public body not to use serial meetings in groups of less than a quorum to avoid a public hearing or reach an agreement on a particular issue. *Moberg* at 518.

Open Meeting Law

IPAD Opinion 06-017

- Background:
 - City was hiring a new finance director
 - Top candidate declined
 - #2 candidate quit after a week
 - City Administrator conducted a telephone poll of the four council members and asked if they could hire the third candidate
 - Each council member said yes

Open Meeting Law

Quorum of the Council

Discusses, decides or receives information as a group

Information is related to official business

Round robin style of contact, even though by an intervening party, was still considered a violation of the OML.

Open Meeting Law

“The Commissioner will also take this opportunity to remind members of public bodies that the OML requires that public business be conducted in public. *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1, 4-5 (Minn. 1983). While it may be appropriate for the city administrator to inform council members that a City employee has resigned, the better process would be to convene a special meeting of the Council to discuss what the appropriate next step(s) are in the hiring process. Avoiding public scrutiny of a decision by having a city employee serially contact Council members is the type of conduct that was of concern to the Supreme Court in *Moberg*.”



Open
Meeting Law

Email is no different than the telephone game, especially if you hit: “Reply All”



Open Meeting Law



OML Pop Quiz:



Can my
Commission share
a document using
Googledocs so
others can
collaborate on it?

Open Meeting Law

Apply the test:

- Quorum of the commission
- Discusses information as a group
- Related to official business

Open Meeting Law

IPAD Opinion 09-020

Background:

- Metro Gang Strike Force (MGSF) was operated by a Joint Powers Board that consisted of 13 Board members made up of law enforcement agencies around the metro area (Mpls., St. Paul, Ramsey County, Henn. County, Brooklyn Park, etc.) with the goal of addressing gangs and gang violence

Open Meeting Law

7 of the Board members interacted by email on a subject by hitting "Reply All"

Open Meeting Law violation?

Open Meeting Law

IPAD decided:

- A quorum of the Board expressed an opinion about the matter (7 of 13 responded)
- The matter was discussed and received by the group (all were sent the email)
- The matter was characterized as “a matter of high importance” in the emails (official business)

Open Meeting Law

- *Lessons Learned:*

- Email/phone calls/texts/instant messaging should be used:
 - To receive information from the City (one-way communication)
 - Between 2 (or 3) members only, without forwarding or copying each other

You cannot use any form of communication to talk to each other outside of a meeting if a quorum is involved and it relates to your official business

Summary of Open Meeting Law

Officials cannot talk to each other about City business unless they are in a public meeting

- No serial meetings (Chair polls the members)
- No email meetings

No closed-door meetings with the applicant

- Limited exceptions for Closed meetings

Open Meeting Law

Penalties

- \$300 for each occurrence & attorney's fees (up to \$13,000)
- Removal from office for 3 or more violations
- *Public humiliation*



DATA PRACTICES ACT

- Minn. Stat. Chapter 13

GENERAL RULE:

All data is public unless it fits under an exception.

Data Practices Act

- *Data* = All data collected, created, received, maintained or disseminated by the City, regardless of its physical form, storage media or conditions of use.
- Examples:
 - Documents you consider/review at meetings
 - Audio tapes & Video recordings (of meetings)
 - Computer storage media (external drives or storage devices) related to your business
 - Emails
 - Text messages

Data Practices Act

All cities are required to have a Responsible Authority and a Compliance Officer to administer the Act.

When asked for data, refer all people to the Responsible Authority (City Clerk). DO NOT provide the data yourself.

Data Practices Act

Remember:

1. What you put in writing, documents that you possess, internal electronic files you keep about official business could be subject to a data practices request.
2. You should not be responsible for keeping this data.
3. *Never write anything that would embarrass you or the City.*



YOUR Meetings

Roberts Rules of Order

- Adopt Agenda
- Follow the Agenda
 - Open Subject Matter
 - Staff Report
 - Public Hearing (if appropriate)
 - Questions from Board to Staff (to clarify, address issues raised during PH)
 - Chair will request a Motion and 2nd
 - Further Discussion
- Vote
 - Roll Call Vote (each person by name) if controversial
 - Voice Vote ("all those in favor") if appears unanimous or clear consensus



Meetings

- Get caught in the weeds
 - Focus too much on the details (color of the door, location of the garage, code violations on the property)

Focus only on the bigger picture (does it comply)



Meetings

- Focus on things outside your scope and authority
 - Business plans/operations
 - Interior layout
 - Cost of construction
 - Bike racks, open space (things you don't require)





Meetings

- Want more information than what is available at the meeting.

Should you...

- Look it up during the meeting
- Text others asking for more information

Meetings

The information you receive may not be reliable (Dr. Google)

You may be misinterpreting the information you find (reading too fast)

You are not paying attention to the meeting if you are doing research (distracted)

You are blindsiding staff ("stump the staff")

We don't do math at the table (don't redesign or reengineer the site at the meeting)



Meetings

Better idea:

- Continue the matter and ask Staff to find out the answers or research it between meetings; or
- Punt to the Council without a recommendation – THAT'S OK!

Meetings

- Chair of the meeting has the duty to control the meeting.
- Can redirect the discussion if they think it is outside the scope
- Can call for a motion when issues are getting too contentious, have been thoroughly exhausted or when there is silence
- Sometimes you lose – accept it and move on (don't belabor the point)



Minutes of Meetings

Minutes are a summary of the record, not a verbatim recitation of the meeting

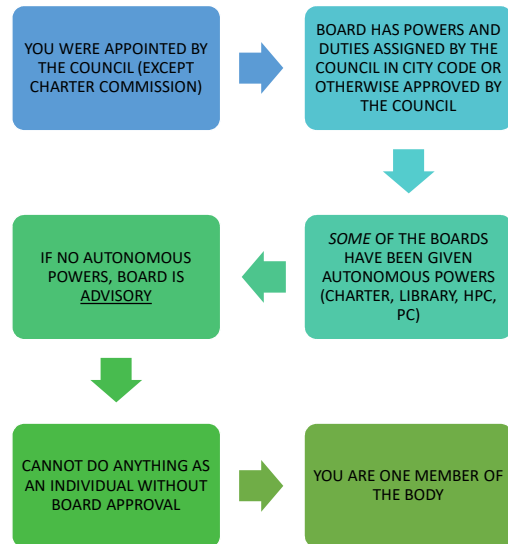
1. A record of the meeting must be kept
2. The record reflects attendance, agenda items and actions taken
3. If it was a public hearing, then the facts that led to the decision need to be in the record (i.e. Staff reviewed their report, there was discussion)
4. If it is general discussion that led to an action: "There was general discussion about whether the city needed to add trash cans downtown. Motion was made by X and seconded by Y that there should be more trash cans and Z was asked to talk to the City Clerk about how to do it. Motion passed 4-0"
5. Who brought up the topic or exactly what was said is not important. If the message is correct, don't get hung up on the words AND you don't get to add words you meant to say. (even if they make more sense than what you said)

FAQ

- Why do we have to be so formal?
 - *Professional* – you are a public body and have a responsibility to conduct yourselves in a professional manner
 - *Orderly meeting* – respectful, not talking over each other, easier to keep minutes
 - *Clear decisions* – minutes, record keeping are clear if the meeting is conducted pursuant to a process



Roles and Responsibilities



Example #1

Human Rights Commission Board Chair wants to send out a survey to the public soliciting feedback on day care costs in the City to see if this is an issue that the Commission should address. She prepares the survey on behalf of the Commission and puts it on her FB page.

Is that ok?

Example #1

- No, any official action by a Board or Commission must...
 - Be authorized by the Board/Commission and the Council
 - Be on the City's official websites, social media sites, not an individual Board members

Example #2

Commission has various projects it is undertaking and assigns Board members to subcommittees, always making sure it is less than a quorum. Board only meets quarterly, so Chair of Commission wants to make sure the subcommittees are prepared for the upcoming meetings and emails them for an update.

Is that ok?

Example #2

- No, this is likely an open meeting law violation
 - Subcommittee has less than a quorum
 - Adding the Chair to the discussion likely puts the message/information/topic being discussed over the quorum threshold

Example #3

Commissioner offers to do a monthly column in the local newspaper about City government. Newspaper wants to use the title of the commissioner in the column.

Is that ok?

Example #3

- No, unless ...
 - The Commissioner has been given the authority to do so by the Board/Commission and the City Council; and
 - The published article has been approved by the City prior to publication

Charter Commission



Charter is the local framework for a City's form of government

- Duties:

To continue to study the Charter and Government and to recommend amendments to the Charter when necessary to tailor the Charter to the City's individual needs and desires.

- Form of Government = Mayor-Council Plan
- Filling Vacancies on the Council
- Procedures for Council
- City Administrator's powers and duties
- Budget Preparation/Passage/Enforcement
- Franchises
- Utilities

Downtown Parking Commission

Duties:

- Make recommendations to the Council about the management of downtown parking
- Obtain public comments about parking improvement projects
- Explore options to make the parking system financially self-sustaining
- Other duties as assigned



HPC

Duties:

- Research and identify potential heritage sites
- Designate lands, places, buildings, districts as a local heritage site
- Keep a list of historic properties
- Hear applications on demo and design permits for the downtown district, neighborhood conservation district and heritage preservation sites
- Hear Heritage Preservation use variances
- Perform public education on historic preservation



Human Rights Commission

Purpose: Advise the Council to ensure all citizens have an equal opportunity in those human rights areas protected by the law. (race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation)

Duties:

- Study and review programs and policies to help the Council to create equal opportunity and eliminate discrimination and inequalities.
- Advise and aid the City Council in implementing recommendations regarding:
 - Programs about the State Human Rights Act.
 - Programs about affirmative action.
 - Programs about providing equal opportunity and eliminating barriers.
 - Programs designed to alleviate community tension.



Human Rights Commission (cont.)

- Attempt to conciliate, *within its authority*, all grievances involving discrimination occurring within the City and make all appropriate reports to the City Council and State Department of Human Rights.
- Advise Independent School District No. 834 on matters relating to human rights.





Library Board

Created as an Association in 1859, then transferred to the City, then codified in state law, Charter and ordinance:

- The Library Board has charge of the operation of the City library and of the expenditures of all library funds

But it is still a public body that is regulated by the OML, Data Practices, Free Speech (which has become a sticky wicket).

Parks & Rec Commission

Duties:

- Review the Comp. Plan for park facilities and open space
- Visit City parks and keep informed of current recreation programs
- Recommend methods to stimulate positive public interest in parks
- Recommend methods of discouraging vandalism and destruction of parks
- Serve as a forum for citizen input about parks
- Promote coordination with the school district serving the City about shared uses of parks
- Encourage dissemination of information to garden clubs, athletic groups and civic organizations
- Recommend capital improvements to the City Council
- Review development proposals when requested to ensure compliance with policies, ordinances, park requirements
- Recommend items to be included in the park and recreation annual budget.



Utilities Commission

Duties:

- Review public utility future needs in the Comp. Plan
- Review user fees, connections charges and other public utility fees annually
- Review public utilities maintenances plans and policies
- Review development proposals for conformance with public utility plans, as requested
- Recommend system improvements



Special Service District Board



Duties:

- Advise the city council in connection with the design, construction, maintenance and operation of improvements and the types of special services
- Review and comment on any proposal by the city council regarding they types of services or special service charges in the district *before* the adoption of such proposal.

Energy Action Commission

Duties:

- Continuously design and implement communication and outreach campaigns based on the energy goals, including increasing renewable energy, sharing income-qualified assistance, and supporting business energy efficiency.
- Create a volunteer group of energy ambassadors to support the distribution of energy opportunities to residents.
- Explore the feasibility of on-site solar for Stillwater municipal infrastructure.
- Provide resources and education to support residents who want to install solar on their properties.
- Share funding opportunities to defray energy costs for residents.
- Collaborate with orgs to incorporate energy efficiency into business programs.
- Increase energy efficiency in Stillwater municipal buildings and community institutions.



Planning Commission

...too many things

CONFLICTS OF INTEREST



CONFLICTS OF INTEREST

You cannot have a direct or indirect personal or financial interest in any matter upon which you can make a decision.

Conflicts of Interest

You or someone you know will benefit from this decision personally or professionally

- In the form of money
- In the form of approval
- Politically



Conflicts of Interest

Examples:

- Application is for you or your business
- Applicant is a client of your business
- Your neighbor is applying
- Your sister is applying



Conflicts of Interest

Your neighbor is applying for variance

- Not fatal but it is a conflict

Applicant is a client of your business

- Not fatal but it is a conflict



Conflicts of Interest

What should you do (best practice)?

1. Disclose the conflict
2. Do not participate in the discussion or the vote
3. Leave the room during the discussion and vote

If you wonder if you have a conflict, contact Staff in advance so it can be determined prior to the meeting.



Gifts

General Rule:

City Officials cannot accept *gifts* from *interested persons.*



Gifts

01

City Official = Elected
or Appointed officer

02

Gift = Money, personal
property, real
property, service,
loan, forgiveness of
debt

03

Interested Person =
Anyone living or doing
business in the City
who is or could be
impacted by a
decision you make

Conflicts of Interest

- Exceptions:

- Campaign contributions
- Plaque
- Trinket or item costing \$5 or less
- Food or beverage at a reception or meeting where the City official is giving a speech or answering questions
- Gifts between family members

Gifts

No cars,
boats, ATVs

No trips

No
Timeshares

No Gift
Baskets at
Christmas

No Free Lunch

Nothing over
\$5 in value



←Yes No→



CONTACT INFORMATION



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