

City Council Orientation / Training

1. Open Meeting Law
2. Data Practices
3. Conflict of Interest

March 4, 2025

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OPEN MEETING LAW

Minnesota Open Meeting Law (OML)

Minnesota Statutes, Chapter 13D

Requirements	Purposes
Provide advanced notice of meetings of public bodies	Assure the public's right to be informed
Allow public to attend and observe all discussion and testimony	Give public opportunity to observe decision making of public body
	Prohibit secret meetings

Public Bodies Subject to OML

- “Governing body” of a city (i.e. city council)
- Any committee, subcommittee, board, department, or commission of a public body
–(e.g. HRA, EDA, Planning Commission, other City boards and commissions, City Council and Council standing committees)
- Not private organizations—even if they contract with or receive funding from a public body

Public Bodies Not Subject to OML

- Some ad hoc advisory committees, subcommittees or working groups:
 - containing less than a quorum of the public body
 - only having the power to recommend
 - Non-standing committees without a regular meeting date and time

Best Practices: Committees

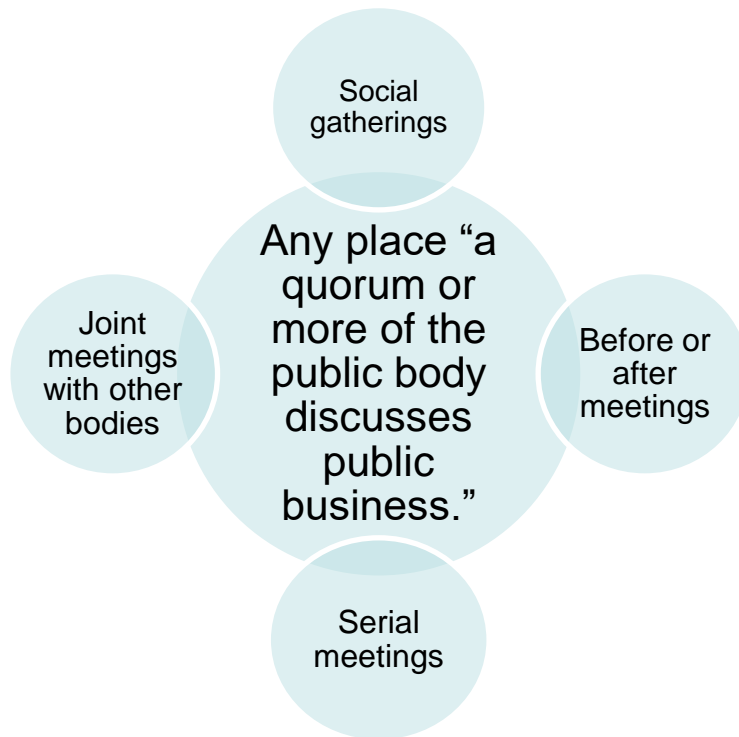
Must either:

1. Comply with OML (i.e. provide proper public notice and access to meetings) OR

2. Make sure:

- no quorum
- purely advisory—power only to recommend
- meet periodically (no regular date or time) and only as needed
- observe few formalities

What is a Meeting?



Serial Meetings

Meetings of less than a quorum held serially (one after another)

OML violation if intended to:

1. Avoid public meetings; and
2. Fashion agreement on an issue

Serial Meetings: Email

Problem	Best Practices
Email or other electronic communications (listserv, blog, website comments, etc.) could violate OML if:	Engage in one-way communication only
• involves quorum; and	Avoid emails to quorum of council
• public business discussed	Have staff distribute information to council Use Bcc: function to avoid “reply to all” inadvertent violation

Serial Meetings: Social Media

- Minn. Stat. § 13D.065:
 - The use of social media by members of a public body does not violate (OML) so 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.

Social Gatherings

Problem	Best Practices
A quorum of a public body attends a banquet, ceremony or similar event	Liberally provide notice for any planned gathering likely to be attended by a quorum
	Do not discuss public business at un-noticed gatherings

Before and After Meetings

Problem	Best Practices
A discussion of public business immediately before or after a meeting expands to include a quorum	A discussion of public business immediately before or after a meeting expands to include a quorum
	Never allow a discussion to expand to include a quorum

Other OML Issues

Meeting Notices

- Regular
- Continued
- Special
- Emergency

Remote meetings

- Individual participation by interactive technology
- Remote meetings by electronic means during emergency

Participation by Interactive Technology

- All members must be able to see and hear one another and all public testimony
- Public attending at meeting location must be able to see and hear all participating members, including remote participants
- At least one member must be present at the regular meeting location
- All votes must be by roll call
- Each remote location must be open/accessible to the public
 - Except: (up to 3x per year) a member of military may participate from not public location if at a required drill, deployed, or on active duty; or a member has been advised by a health care professional against being in a public place for personal or family medical reasons
- Remote attendance must be reflected in minutes, including name and reason for remote attendance
- If practical, must allow public to monitor from remote location
- All remote meeting sites must be included in the meeting notice, unless the above exception applies

Remote Meetings During Emergency

- Generally, meetings conducted entirely by phone or other electronic means are not allowed at city level
- Exception: during emergency or pandemic, when it is not feasible to meet in the regular meeting location
 - Notice of remote meeting required
 - All members must be able to hear one another and all discussion and testimony
 - If practical, must allow public to monitor meeting from remote location
 - All votes must be by roll call

Minn. Stat. § 13D.021

Closed Meetings

Meetings that must be closed	Meetings that may be closed
Alleged misconduct of employee	Labor negotiations
Certain non-public data (education, health data, etc.)	Employee performance evaluations
Medical Records	Certain real property transactions: <ul style="list-style-type: none">• Develop or consider offers or counter offers to sell or buy• Review appraisals
Alleged victims of sexual assault, domestic violence, maltreatment	Security matters
Active criminal investigations	Attorney-client privilege
Law enforcement officer misconduct	Expressly authorized by statute

Closed Meetings

- Public body must make statement on the record:
 - Providing specific statutory authority permitting a closed meeting
 - Describing the subject to be discussed
- All closed meetings, except those closed by attorney-client privilege, must be recorded and preserved for between 2 and 8 years depending on the subject of the meeting
- Same notice required as for corresponding type of open meeting

OML Violations: Penalties

Individual	Institutional
Intentional violation:	<ul style="list-style-type: none">Reasonable costs, disbursements, attorney fees up to \$13,000
<ul style="list-style-type: none">Personal liability--\$300 fine (city cannot pay)	<ul style="list-style-type: none"><u>No</u> reversal of official actions taken in violation of OML
<ul style="list-style-type: none">3 intentional violations = forfeiture of public office	<ul style="list-style-type: none">Bad pressIncreased scrutiny from public and media

QUESTIONS ON OML?

DATA PRACTICES

Official Records and Public Data

Official Records Act

- Minnesota Statutes, Section 15.17

Records Retention Statute

- Minnesota Statutes, Section 138.17

Data Practices Act

- Minnesota Statutes, Chapter 13; and
Minnesota Rules, Chapter 1205

Official Records Act

- Requires government entities to make and preserve records to document official activities so that the public can understand what the government is doing and why
- Records must be passed on to successors in office
- Records may be stored in any media, not just paper

Records Retention Statute

- Requires government entities to follow a process when retaining and disposing of government records that are no longer needed, which includes:
 - Establishing records retention schedules
 - Preserving records at the State Archives

Minnesota Government Data Practices Act (MGDPA)

- Presumes all government data is public
- Protects rights of data subjects
- Requires government entities to establish policies and procedures to give the public appropriate access to public data
 - e.g., timing to respond to data request and applicable charges for copies
- Requires that data on individuals be accurate, complete, current and secure

What is Government Data?

“Government data” means all data collected, created, received, maintained, or disseminated by any government entity regardless of its physical form, storage media, or conditions of use

– (Minn. Stat. § 13.02, subd. 7)

Where is Government Data?

- Anywhere it is kept—location irrelevant
 - MGDPA not concerned with location of data; not limited to files located at City offices or on City-owned equipment
- Can be in personal email accounts or stored on personal computers

Classification of Data

Data Category	Classification	Meaning of Classification
Data on individuals / Data not on individuals	Public / Public	Available to anyone for any reason
Data on individuals / Data not on individuals	Private / Nonpublic	Only available to: <ul style="list-style-type: none">• Data subjects• Entity individuals who require access or other entities authorized by law• Persons authorized by data subject
Data on individuals / Data not on individuals	Confidential / Protected Nonpublic	<ul style="list-style-type: none">• Only available to entity individuals who require access or other entities authorized by law• Not available to data subject

Not Public Data

Labor relations information

- Nonpublic under Minn. Stat. § 13.37

Civil investigation data (if designated by City Attorney)

- Minn. Stat. § 13.39

Social Security numbers

- Private under Minn. Stat. § 13.355

Attorney-client privileged data

- Minn. Stat. § 13.393

Nonpublic / Private data

Security information

- Nonpublic / private under Minn. Stat. § 13.37

Law enforcement data

• Minn. Stat. § 13.82

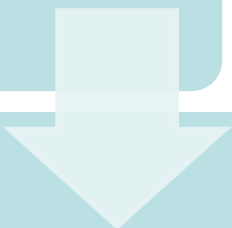
Trade Secret data

- Nonpublic / private under Minn. Stat. § 13.37

Many other classifications

Personnel Data

All data on employees is presumed to be private data on individuals under Minn. Stat. § 13.43, except . . .



Certain basic information is public: (name, job title, salary, value and nature of benefits, data of first and last employment, existence of complaints or charges of misconduct, final disposition of discipline and data documenting reasons for discipline)

Elected and Appointed Officials

- Data about applicants for appointment to a public body are private data, except that the following data are public:
 - (1) name;
 - (2) city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
 - (3) education and training;
 - (4) employment history;
 - (5) volunteer work;
 - (6) awards and honors;
 - (7) prior government service;
 - (8) any data required to be provided or that are voluntarily provided in an application for appointment to a State multimember agency; and
 - (9) veteran status.

Minn. Stat. § 13.43, Subd. 3 (a)

Elected and Appointed Officials

- Once an individual is appointed, the following additional data are public:
 - (1) residential address;
 - (2) either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
 - (3) first and last dates of service on the public body;
 - (4) the existence and status of any complaints or charges against an appointee;
 - (5) upon completion of an investigation of a complaint or charges against an appointee, the final investigative report, unless access would jeopardize an active investigation.

Minn. Stat. § 13.43, Subd. 3 (b)

- Notwithstanding the above, any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.

Minn. Stat. § 13.43, Subd. 3 (c)

Elected and Appointed Officials

- Financial disclosure statements of elected or appointed officials which are required and filed with the City are public data on individuals.

Minn. Stat. § 13.43, Subd. 1.

- Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient.

Minn. Stat. § 13.43, Subd. 2

OML / Data Practices Act

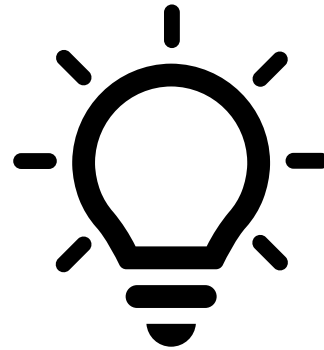
- Private/not public data may still be discussed at public meetings without liability to the public body if necessary to conduct public business
- Private/not public data retain their classification even if discussed in a public meeting

MGDPA Violations

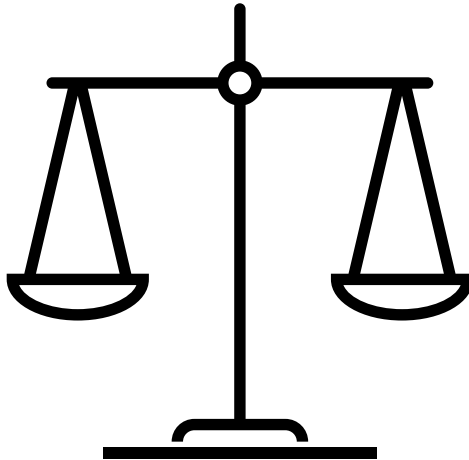
- Civil remedies:
 - Damages
 - Actual damages resulting from violation
 - Costs and reasonable attorneys fees
 - Exemplary damages (penalty in the case of a willful violation) from \$1,000 (minimum) to \$15,000 (maximum)
 - Injunction
 - Court order to comply with MGDPA requirements
- Criminal Penalties
 - Willful / knowing violators guilty of misdemeanor

QUESTIONS ON DATA PRACTICES?

Quasi-Judicial vs. Legislative

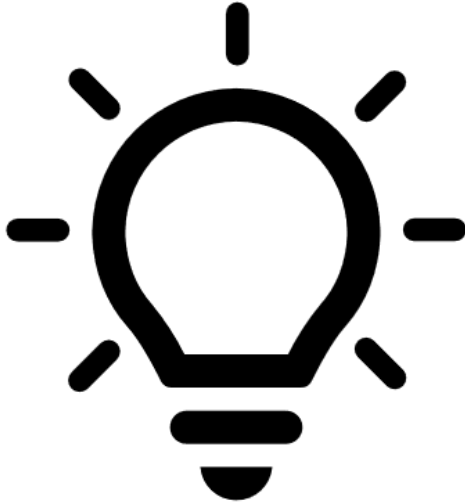


Quasi-Judicial



- Law already made
- “Judge like”
- Looking to determine facts
- Apply the law to the facts
- Fairness
- Transparency

Legislative



- New ideas
- Making up the law or changing it
- Looking to determine what is best for the community
- Participation
- Transparency

Quasi-Judicial vs. Legislative

- Memorandum available at:
 - <https://www.ci.northfield.mn.us/DocumentCenter/View/12080/Quasi-judicial-process-and-ex-parte-communications?bidId=>

CONFLICT OF INTEREST – EX PARTE COMMUNICATION

What is an Ex Parte Communication?

- In Latin, ***Ex Parte*** means:
 - Literally, “from one side/party only”
 - Implies one side is present and the other side is not present or is underrepresented
- Ex parte communications are generally considered to be contacts, whether oral or written, which occur outside a public meeting/hearing process and which seek to influence the decision-making body and/or individual members regarding a decision coming before that body.

Ex Parte Communications & Arbitrary/Capricious standard

A decision is arbitrary and capricious if the decision-maker "relied on factors it is not permitted or intended to consider."

-*Continental Property Group, Inc. v. City of Minneapolis*

Ex parte communications are a way for factors not part of the record to enter into the decision-making process

On balance, limiting ex parte communications with a good policy protects the values of the City, prevents challenge on arbitrary/capricious grounds, and still allows for participation in many ways, just not *all* ways.



Concerns with Ex Parte Communications

- Ex Parte communications give the appearance, real or imagined, of a decision being one-sided, biased or prejudiced, and therefore, full due process is not provided to the public or parties.
- Can prejudice the minds of decision-makers and result in conflicts of interest.
- Prevents full disclosure of information to all interested parties involved in a matter.
- Violates the public's right to know and participate in the process.
- Prevents a complete record.
- Can invalidate a decision if challenged.
- Can negatively impact the integrity of the process and public confidence in decisions.

City Ex Parte Communication Policy

- The City has adopted an ex parte communication policy, Policy 1.10, to address the foregoing concerns.
- The full policy is available at:

<https://www.northfieldmn.gov/DocumentCenter/View/18841/110-Ex-Parte-Communications-Policy?bidId=>

Policy Basics

- Applies to:
 - City Council
 - Planning Commission
 - Zoning Board of Appeals
 - Heritage Preservation Commission, and
 - Any other City board or commission undertaking quasi-judicial proceedings

Ex Parte Defined

- Ex parte communications shall mean contacts, whether oral or written, direct or indirect, which occur outside a public meeting/hearing process regarding a quasi-judicial proceeding made between individuals seeking to influence the decision of the government body and individual members of the government body in which such member discusses the merits/substance of a pending quasi-judicial proceeding, which may or will be subject to a vote by the government body.
- Such contacts/communications include, but are not limited to:
 - meetings, phone calls, letters, text messages, emails, or other like communications,
 - with proponents or opponents of, or other interested persons in, an application or other action that may or will be voted upon by the government body
 - regarding the substance of a quasi-judicial proceeding
 - outside the publicly noticed meeting/hearing process
 - at which representatives of only one party/position to the quasi-judicial proceeding are present and
 - who are seeking to influence a member's opinion on a quasi-judicial matter, which may or will be subject to the member's vote.

Quasi-judicial and Pending Defined

- **Quasi-judicial proceeding** shall mean a matter upon which the government body through the **investigation/analysis and consideration/weighing of facts and evidence** applied to specific statutory and/or City Code based **criteria or standards determines the legal rights**, duties or privileges of specific parties in a public meeting/hearing or other contested case/appeal proceeding over which the government body has jurisdiction.
- **Pending shall mean that the requisite documentation necessary to initiate a quasi-judicial proceeding** (e.g., a completed land use application meeting the requirements of Minnesota Statutes, section 15.99) has been properly and timely completed, and submitted and/or filed with or by the applicable government body, along with the required filing fee, if any, pursuant to the applicable City Code and/or state law governing the respective quasi-judicial proceeding.

Covered Quasi-judicial Proceedings

- Conditional use permits;
- Nonconforming uses;
- Re-zoning a single property(ies) based upon a property owner land use application (Note: re-zoning multiple properties or district changes not related to a land use application is not quasi-judicial);
- Subdivision applications;
- Variances;
- Certificates of appropriateness;
- Contested cases;
- License determinations and enforcement actions; and
- Appeals.

Ex Parte Communications Prohibited

- In the interest of maintaining fair and impartial quasi-judicial proceedings and avoiding bias or undue influence, or the appearance of bias or undue influence in such proceedings,
- public officials shall refrain from engaging in prohibited ex parte communications related to the merits or substance of any quasi-judicial proceeding,
- pending before the City Council, Planning Commission, Zoning Board of Appeals, Heritage Preservation Commission, and any other City board or commission undertaking quasi-judicial proceedings.

Exclusions

- Ex parte communications shall not include the following:
 - City employees.
 - Communications regarding legislative matters and other like matters.
 - Written communications regarding a quasi-judicial proceeding delivered to City staff for distribution to all members and made part of the public hearing packet.
 - Site visits by members provided that all members are able to, and do have the opportunity to, conduct such visits to gather facts and without any reasonably unnecessary contact with project proponents or opponents, or others seeking to have ex parte communication with a member.

Exclusions

- Ex parte communications shall also not include the following:
 - **Incidental or minor contacts**/communications
 - whereby a member **does not unreasonably engage** in a discussion of the substance/merits of a quasi-judicial proceeding,
 - but rather merely **provides general information**/documentation a member receives to City staff for circulation to all members, or
 - provides general information or reasonably necessary communication regarding
 - the date or information, or
 - location of a quasi-judicial proceeding, or
 - similar information, or
 - otherwise encourages an interested person to attend and/or give testimony at a quasi-judicial proceeding.

Procedure for Responding to Ex Parte Communications

- In the event any member is contacted by any proponents or opponents, or other persons interested in a quasi-judicial proceeding, or any of their respective representatives (collectively “interested persons”), under circumstances where the member has reason to believe that an ex parte communication related to a quasi-judicial proceeding will or may occur, such member shall:
 - communicate to such interested person that the member cannot discuss the merits/substance of the quasi-judicial matter other than at the publicly noticed meeting/hearing on the subject.
 - Members are encouraged to recommend to all such interested persons that they attend such meeting/hearing and to publicly express their views, or
 - that such interested persons otherwise direct questions and/or oral or written comments to City staff for distribution to all members.

Disclosure of Ex Parte Communications/Abstention

- When a prohibited ex parte communication, in the opinion of the involved member, has reasonably been determined by such member to have occurred, the member shall:
 - Promptly notify the presiding officer and City staff, and shall divulge the occurrence and substance of such communication on the record at the public meeting to which such communication pertains.
 - If, in the opinion of that member, an ex parte communication has caused such member to become biased in connection with any public vote on a quasi-judicial matter, such member shall:
 - refrain from participation in any discussion of such matter before the government body, and
 - recuse/abstain from voting upon the matter.

Violations

- Subject to applicable law and city charter, any violation, intentional or unintentional, of this policy by a covered public official may be cause for appropriate disciplinary action, which may be initiated by the mayor or any two council members in consultation with the city administrator, including but not limited to:
 - Coaching;
 - Counseling;
 - Verbal or written warning;
 - Removal from the board or commission; and/or
 - Such other actions as may be necessary or appropriate under the circumstances or as required by applicable law.

QUESTIONS ON EX PARTE COMMUNICATIONS?

Conflict of Interest

- Types
 - Contractual
 - Minnesota Statutes, Section 471.87
 - “Except as authorized in section 123B.195 or 471.88, a public officer
 - who is authorized to take part in any manner
 - in making any sale, lease, or contract
 - in official capacity
 - shall not voluntarily have a personal financial interest in that sale, lease, or contract or
 - personally benefit financially therefrom.”
 - Non-contractual

Contractual Conflicts

Statute generally prohibits City from entering into contract in which a councilor has a personal financial interest

Exceptions: (e.g. official newspaper, competitive bidding not required, renting public facilities, employed by a bank making loans, etc.)

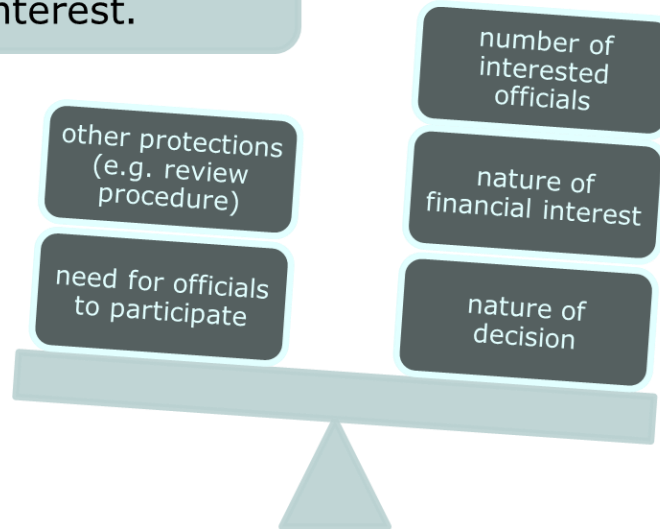
Consequences: contracts entered into in violation of statutory prohibition are void (even if interested officer abstains)

Penalties: any member who knowingly approved contract is guilty of gross misdemeanor (not just the interested officer)

Non-contractual Conflicts

When the official's interest is so distinct from the public's interest that the official cannot fairly represent the public interest.

Factors to balance:



City Code of Ethics

- [Sec. 2-121. - Definitions.](#)
- [Sec. 2-122. - Declaration of policy.](#)
- [Sec. 2-123. - Sanctions.](#)
- [Sec. 2-124. - Applicability of division.](#)
- [Sec. 2-125. - Responsibilities of public office.](#)
- [Sec. 2-126. - Fair and equal treatment.](#)
- [Sec. 2-127. - Conflict of interest.](#)
- [Sec. 2-128. - Public disclosure.](#)

Sec. 2-127.(a) – Contractual Conflict

- Personal financial interest in sale, lease or contract with city. Any public official who has a personal financial interest in any sale, lease, or contract with the city shall make such interest known to the city council and shall be bound by state law, Minn. Stat. §§ 471.87 through 471.89, in determining how to resolve such a conflict of interest.
- Pursuant to Northfield City Charter, section 15.3 and Minn. Stat. § 412.311, except as provided in Minn. Stat. §§ 471.87 through 471.89, no public official shall be directly or indirectly interested in any contract made between the city and another party or parties or have a personal financial interest in or personally benefit financially therefrom.
- Every public officer who violates Minn. Stat. § 471.87 is guilty of a gross misdemeanor.

Sec. 2-127.(b) – Other Conflicts

- In addition to section 2-127 (a), any public official who engages in any business or transaction or has a financial or other personal interest, direct or indirect, including an interest arising from blood, adoptive, or marriage relationships, organizational or contractual affiliations, or close business or personal associations, which interest is incompatible with the proper discharge of the public official's official duties in the public interest or would tend to impair the public official's independence of judgment or action in the performance of official duties shall:
 - refrain from participation in any discussion, in or outside of any public meeting, of such matter before the government body of which the public official is a member, and
 - shall at the meeting recuse and abstain from discussion and voting on the matter upon which the public official has a conflict of interest.
 - Disqualification is not called for, however, if discussion and action by a public official will not affect the public official more than any other member of the general public similarly situated as the public official on the subject matter.

Sec. 2-127.(c) – Disclosure of Confidential Information

- Public officials shall observe the dictates of the Minnesota Government Data Practices Act (Minn. Stat. Ch. 13) and related laws with reference to confidentiality of information.
- No public official shall use any "not public data" to advance the financial or other private interest of the public official or others.

Sec. 2-127.(d) – Gifts and Favors

- Public officials shall comply with Minn. Stat. § 471.895, which prohibits gifts to local officials. This section shall not make unlawful or unethical any practice allowed under Minn. Stat. Ch. 211B or related laws.

Gift ban

General rule: local officials may not receive a gift from any "interested persons"

A **gift** is anything of value given and received without the giver receiving something of equal or greater value in return

An **interested person** is anyone (or his/her representative) that has a direct financial interest in a decision that a local official is authorized to make

Exceptions: services to assist in performance of official duties; services of insignificant monetary value; a plaque or memento in recognition of service; a trinket / memento costing \$5 or less; food or beverage given at a reception or meeting, etc.

QUESTIONS ON CONFLICT OF INTEREST?

Summary

Open Meeting Law

- Avoid discussions of City business outside of properly noticed public meeting
- Be especially careful with email

Data Practices Act

- Keep City data segregated from personal data
- Refer all requests for data to Responsible Authority

Conflicts of Interest

- Be aware of any situations involving distinct financial interest
- Disclose potential conflicts as soon as possible and follow advice

OTHER QUESTIONS?

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