



AGENDA
PLANNING COMMISSION WORK SESSION

April 17, 2025 - 6:00 PM
City Hall Marion Conference Room

1. Call to Order
2. Planning Commissioner Training
 - a. Planning Commissioner Training by Soren Mattick, partner at Campbell Knutson
3. Adjourn



Memorandum

To: Planning Commission
From: Kris Jenson, Planning Manager
Date: April 9, 2025
Subject: Packet Material for the April 17, 2025 Planning Commission Work Session
Agenda Item: Planning Commissioner training

Campbell Knutson provides the City's legal representation and has prepared Training Materials for the Planning Commission. Soren Mattick, a partner at Campbell Knutson, will attend the work session and present the training materials attached to this memo. The City's planning consultant, Daniel Licht of The Planning Company, will also attend to provide history and background of the City's planning activity.



CAMPBELL KNUTSON
PROFESSIONAL ♦ ASSOCIATION

TRAINING MATERIALS

For

Lakeville Planning Commission

April 2025

I. ROLE OF THE PLANNING COMMISSION

The Municipal Land Use Planning Act provides the authority and uniform procedures for conducting and implementing municipal planning for all cities. The Act was adopted by the legislature in 1965. Comprehensive plans and zoning ordinances must comply with both the substantive and procedural requirements under the Act. City Code and the Municipal Land Planning Act imposes several duties on a Planning Commission:

- A. PREPARATION AND REVIEW OF COMPREHENSIVE PLAN.** The planning commission creates the comprehensive plan and coordinates planning activities with other departments, typically with the help of a planning staff, outside planning consultants and the input of the public through neighborhood meetings and/or public hearings.
- B. COORDINATION AND REVIEW WITH OTHER LOCAL UNITS OF GOVERNMENT.** Planning Commissions must consider the planning activities of adjacent units of government and other affected public agencies.
- C. PERIODIC REVIEW.** The Planning Commission must periodically review the Comp Plan and recommend amendments when necessary.
- D. ADOPTION OF THE COMP PLAN.** The Planning Commission recommends adoption of the Comp Plan or amendments after a hearing preceded by 10 days' publication of notice in the official newspaper. The City Council may not act upon a Comp Plan or amendment until receipt of recommendation by the Planning Commission or until 60 days have elapsed from date amendment was submitted to Planning Commission by Council. After approval by the Planning Commission, the Comp Plan is submitted to the Council for final review and approval by 2/3 vote of the Council.
- E. RECOMMENDATION OF THE PLANNING COMMISSION.** The Planning Commission must study and propose the means of putting the Comp Plan into effect, including zoning, subdivision regulations, official maps, a program of public improvements and services, city renewal and redevelopment, and a capital improvement program.
- F. REVIEW OF LAND ACQUISITIONS AND CAPITAL IMPROVEMENTS.** Once a Comp Plan is adopted, all proposed land acquisitions and capital improvements of the City must go to the Planning Commission for its review and recommendation to Council. The Planning Commission will then submit a written report describing its findings. However, the Council may dispense with this requirement by a 2/3 vote, if it feels no planning issues are involved.
- G. REVIEW OF LAND USE CONTROL MEASURES.** The Planning Commission is responsible for reviewing land use control measures. The Municipal Land Planning Act requires the Planning Commission to review zoning ordinance amendments, subdivision plats and official maps. Public hearings may be held before the Planning Commission, but the Council will make the final determination.

II. ZONING: IMPORTANT TOOL TO IMPLEMENT COMPREHENSIVE PLAN

- A. **PURPOSE.** Zoning establishes a land use pattern and the orderly development of various types of districts according to the best use of particular areas of a community. Zoning ordinances may be enacted for the general purposes of preserving and protecting the public health, safety, morals and general welfare. Zoning is the most commonly used technique in implementing the goals and policies of the Comprehensive Plan. It is the legal means to ensure that the goals of the Comprehensive Plan are carried out.
- B. **AUTHORITY.** M.S. § 462.351-.365.
- C. **WHAT ZONING ORDINANCES MAY REGULATE.** The basic land use controls of the City are found in its zoning ordinance, which regulates among other things:
- The location, height, bulk, number of stories, size of buildings and other structure;
 - The percentage of lot which may be occupied, the size of yards and other open spaces;
 - The density and distribution of population;
 - The uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes;
 - The uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation, conservation of shorelands, access to direct sunlight for solar energy systems, flood control or other purposes, and may establish standards and may establish procedures regulating such uses;
- Zoning ordinances are construed by the courts according to their plain meaning and in favor of the property owner.
- D. **ZONING A LEGISLATIVE ACT.** When a City is determining whether to pass or amend a zoning ordinance provision, the City is exercising its legislative authority, in THIS capacity, the City is using its specialized knowledge to developing rules that apply throughout the entire community. When making legislative decisions, a City has broad discretion, and will be given a large amount of deference by a court, should that decision be challenged.
- E. **ZONING MAP.** Zoning ordinances may divide the city into districts or zones of suitable numbers, shape and area. The zoning map will identify the boundaries of the various zoning use districts.
- F. **UNIFORMITY REQUIRED WITHIN ZONING DISTRICTS.** The zoning regulations may vary across different districts, but within each district the regulations must be uniform for each class or kind of building, structure, land or use.

G. PROCEDURES FOR ADOPTING AND AMENDING ZONING ORDINANCES.

- 1. Similar to Amendments of the Comp Plan.** The Planning Commission may submit proposed ordinances to the Council at any time.
- 2. Requests.** Private citizens may also submit requests for zoning amendments using an official City application form. The applicant must pay a fee and provide all materials necessary to fully explain the proposed change. If the applicant is not the fee owner of the affected property, the fee owner must also sign the application form.
- 3. Studies.** After conducting studies to ascertain that the official controls or regulations necessary to implement the Comp Plan, the Planning Commission submits the proposed zoning ordinance to the Council. At this time, the Planning Commission should also consider: a) preparation of a tentative official map; b) proposed subdivision regulations; and c) capital improvement program and any other necessary official controls.
- 4. Notice and Public Hearing Requirements.** After new zoning ordinances or amendments to existing ones have been proposed, the Planning Commission must hold at least 1 public hearing. Notice of the public hearing must be published at least 10 days prior to the hearing date. Written notice of this hearing generally must be mailed to all property owners within 500 feet of the property in question.
- 5. Revisions.** Following the public hearing, the Planning Commission reviews the proposed zoning ordinance or amendment in light of information received at the public hearing and makes any appropriate and reasonable revisions.
- 6. Submission to Council.** The Planning Commission then presents the zoning ordinance or amendment in final draft form along with a report to the Council. The Council may choose to hold another public hearing on the matter.
- 7. 2/3 Vote May be Required.** If the amendment changes the classification from residential to either commercial or industrial, approval requires a 2/3 vote of the Council. All other amendments require a majority vote.
- 6. Publication.** After the Council adopts new zoning ordinances or amendments, the Council must publish or summarize them in the official newspaper.

H. PERMITTED, ACCESSORY AND CONDITIONAL USES

1. Permitted Uses.

- a. Defined as uses that property owners have a right to engage in as provided within the zoning district.
- b. No discretion to deny. It is generally arbitrary and unlawful to deny a building permit for a permitted use, unless the zoning is subsequently changed to prohibit the use.
- c. Normally there is no review by either the Planning Commission or the Council. Rather, the applicant merely applies for a building permit with supporting documentation that the use is permitted.

2. Accessory Uses. Defined as those uses that cannot stand alone and must be accompanied by a principal, permitted use.

3. Conditional Uses. Defined as uses permitted in a zoning district under the zoning ordinance, if certain conditions, designated by the Council or specified in the zoning district, are met.

4. Uses Which Are Not Permitted In Zoning District.

- a. In order for a use to be allowed in a specific zone or use district, it must be listed as a permitted or conditional use in the zoning ordinance, or must be similar enough to such a listed use so as to be included by City staff, Planning Commission or Council interpretation or by application of common sense. (e.g. medical clinic includes a dental clinic but not a veterinary clinic)
- b. No Use Variance May Be Granted.
- c. Applicant Options. If the use is neither permitted or a conditional use in the zone or use district, the applicant can:
 - i. apply for a rezoning to a zone or use district in which it is a permitted or conditional use; OR
 - ii. request that the City amend its zoning ordinance to allow the use as a permitted or conditional use in the zoning or use district where the property is located.

I. INTERIM USES. An interim use is a temporary use until a certain date or until the use is no longer permitted. Interim uses allow activity that, while currently acceptable, may become unacceptable in light of anticipated development. The intent is to allow, for limited period, reasonable utilization of the property when the desired eventual use under the comprehensive plan is not currently reasonable. Authority for an interim use must be provided for in the zoning ordinance along with conditions for the use. Often interim uses are granted for mining activities or agricultural activities in developing areas.

III. CONDITIONAL USE PERMITS

- A. **WHAT IS IT?** A type of land use in a particular district which is presumed to be allowed, but requires special, additional standards and review due to the existence of some aspect of the use which may create a nuisance or place an extraordinary burden on public services. By far, the most commonly litigated zoning matter.
- B. **NEXUS REQUIREMENT.** Courts require that any conditions placed on the conditional use permit to be issued must have a direct connection or a nexus between the problem identified and the condition required as the cure. The need for the conditions must be supported by evidence in the record.
- C. **TIME LIMITS.** Although previously a common practice in many communities, time limits on a conditional use permit are not a permitted condition. A “sunset provision” is not permissible. If a time limit is determined to be necessary, then the use should be identified as an interim use, not a conditional use. A conditional use permit runs with the land forever, regardless of a change in landowner. A CUP need not be “renewed.” CUPs remain in effect for as long as the conditions are observed.
- D. **NOTICE AND HEARING.** State law and City Code requires a public hearing preceded by notice mailed to nearby property owners.
- E. **LIMITED DISCRETION.** The City's discretion is limited in the case of an application for a conditional use permit. The City **MUST** grant the CUP if the applicant has met their statutory burden to satisfy all the conditions. ***RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 78-79 (Minn. 2015).** NEIGHBORHOOD OPPOSITION OR A COUNCIL MEMBER’S OPINION ALONE IS AN INSUFFICIENT BASIS ALONE FOR A DENIAL. If an applicant fails to meet their burden to prove that all conditions for the CUP are satisfied, but they propose mitigating conditions to address any conditions they failed to meet, the City **MUST** consider the proposed mitigation. If the City chooses to reject the proposed mitigation, its decision **MUST** be supported by evidence in the record. *Id.* CUPs are the most commonly litigated zoning matter and Cities lose challenges to a CUP decision more than any other land use approval.
- F. **QUASI-JUDICIAL DECISIONMAKING.** In denying or approving a CUP, a City is exercising quasi-judicial decision-making, in which it is applying specific standards set by the zoning ordinance. This should be contrasted with City legislative decisions, in which the City is engaged in forming public policy, such as the adoption of a comp plan or zoning ordinance. While the courts tend to give great deference to the City when it is acting in its legislative capacity in crafting public policy, the courts give substantially less deference to the City when it exercises quasi-judicial decision-making, e.g. where the public policy has already been established under the zoning ordinance and the inquiry focuses on whether the proposed use is contrary to the general welfare as established in the Zoning Ordinance.

IV. VARIANCES

- A. DEFINED.** A variance is a request to use property in a way not generally permitted by the zoning ordinance, but which may be allowed by the City in special cases only, e.g., by varying one or more of the performance standards, such as lot area, setbacks, lot width or depth.
- B. PRACTICAL DIFFICULTIES.** An applicant must demonstrate the existence of “practical difficulties” before a variance may be granted. "Practical difficulties" means the property owner proposes to use the property in a reasonable manner, but the use is prohibited by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute an undue hardship. Further, variances are only permitted when they are in harmony with the general purposes and intent of the zoning ordinance and when the variances are consistent with the comprehensive plan.
- C. STATUTORY CONSIDERATIONS.** Variances may be granted when:
1. The variance is in harmony with general intent and purpose of the Ordinance.
 2. The variance is consistent with the comprehensive plan.
 3. Applicant establishes that there are practical difficulties with complying with the zoning ordinance. Practical difficulties are:
 - i. property will be used in a reasonable manner.
 - ii. There are circumstances unique to property not caused by landowner.
 - iii. The variance will not alter essential character of locality.
- D. CITY CODE CONSIDERATIONS.** Title 11, Chapter 6 of the Zoning Code controls variances. The primary considerations for variance review under the City’s Ordinance, are as follows:

"Practical difficulties" means that:

- a. The property owner proposes to use the property in a reasonable manner not permitted by this title.
- b. Economic considerations alone do not constitute practical difficulties.
- c. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- d. The following criteria must also be met:
 - i. That the variance would be consistent with the comprehensive plan.
 - ii. That the variance would be in harmony with the general purposes and intent of this title.
 - iii. That the plight of the landowner is due to circumstances unique to the property not created by the landowner.

- iv. That the purpose of the variance is not exclusively economic considerations.
- v. That the granting of the variance will not alter the essential character of the neighborhood in which the parcel of land is located.
- v. That the requested variance is the minimum action required to eliminate the practical difficulty.
- vi. Variances may not be approved for any use that is not allowed under this title for property in the zone where the affected person's land is located.

E. DISCRETION IN GRANTING OR DENYING A VARIANCE FROM ZONING RESTRICTIONS.

- 1. Broad discretion is permitted when denying a request for a variance, but there must be a legally sufficient reason for denial. Written findings of fact should be prepared and adopted concerning the reasons for denial or approval and the facts upon which the decisions is based, based on the statutory requirements.
- 2. The decision cannot be arbitrary.
- 3. A variance is typically required only where there has been an unlawful taking of property, demonstrated by the landowner's inability to put the land to any beneficial use unless the variance is granted.
- 4. Applicant bears the heavy burden to show that a variance is necessary.
- 5. Variances are not permitted for a use not permitted under the ordinance for property in the zone where the affected land is located.

F. PROBLEMS. The approval/denial of variances is often considered one of the greatest land use problems faced by local officials. While some cities strictly adhere to their official controls, granting variances in only those situations required by law, some cities are very liberal in granting variances. The problem arises when a city planning commission and council do not agree on the instances appropriate for granting/denial of a variance. If a City has numerous variance applications, it may be that the City is known for granting variances, or that a change in the City's official control on a particular performance standard should be reviewed for modification. Ideally, it is better to change an official control to reflect the standard set by the City, rather than to continually grant variances to a standard that is not adhered to.

G. Procedures for Variances. Generally, under Section 11-6-7(B) of the City Code, when a complete application and preliminary staff analysis of an application for a major variance is received, the Zoning Administrator must set a time and place for a Planning Commission meeting to consider the application. At least 10 days before the meeting, written notice of the meeting must be mailed to the applicant and property owners within 500 feet of the property in question. The Planning Commission may hold a public hearing after receiving the Planning Commission's report and recommendation if deemed necessary. In such a case, the Planning Commission shall make a recommendation to the City Council for approval or denial of the variance and any conditions necessary to protect the health, safety and welfare, which condition(s) must be directly related to and bear a

rough proportionality to the impact created by the variance. The City Council shall decide whether to approve or deny the request and make recorded finding of facts and may impose any condition necessary to protect the public health, safety, and welfare, which condition(s) must be directly related to and bear a rough proportionality to the impact created by the variance. A decision requires a four-fifths (4/5) vote of the entire council.

V. TIME LIMITS

- A. 60 DAY RULE.** The legislature enacted an ordinance limiting the time in which a local unit of government has to act upon certain land use related applications. Within 60 days of submittal of an application, cities are required to approve or deny the request, or the request is deemed approved. This section does not apply to subdivisions applications, which operate under a separate timeframe of 120 days for approval of a preliminary plat and 60 days to review and approve a final plat (M.S. § 462.358).
- B. INCOMPLETE APPLICATION.** The 60 days does not begin to run until the application is complete, but the determination that an application is incomplete must be made within 15 days of its submission by written notice to the applicant or the 60 day period will begin regardless of the incomplete application.
- C. EXTENSIONS.**
 - 1. Automatic 60-Day Extension.** Within the 60-day period, an automatic extension of no more than 60 days can be obtained by providing the applicant written notice of the reason for the extension and specifying the additional time needed.
 - 2. Applicant Approval.** Other extensions are available only with the applicant's written approval.
- D. APPLICATION TO PLANNING COMMISSION.** In light of the 60-day time limit for final council action, it is important for the Planning Commission to act well within the 60 day period to allow ample time for Council review.
- E. DENIALS IN WRITING.** If a City denies a land use request, it must state in writing the reasons for the denial at the time of the denial or at the next meeting (provided it is within the 60 day time-period). It must also state the reasons for denial on the record and provide the applicant a written statement of the reasons for the denial. The written statement must be consistent with the reasons stated in the record. Because of the foregoing requirement, it is helpful for the City Council if the Planning Commission adopts written findings of fact for its decisions, particularly for recommendations of denial that can be reviewed by the City Council and modified for the City Council's decision.

VI. PUBLIC HEARINGS

A. TYPE OF HEARINGS.

1. Statutory
2. Informational

B. PURPOSE. The purpose of a hearing is to give public input. In many instances the hearing is not only a statutory requirement, it is an ordinance requirement.

C. STATUTORY. An example of public hearings related to planning which are required by statute:

- Amending Zoning Ordinance (Minn. Stat. 462.357, Subd. 3)
- Amending Comprehensive Plan (Minn. Stat. 462.355, Subd. 2)
- Approving Preliminary Plats (Minn. Stat. 462.358, Subd 3b)
- CUP's (Minn. Stat. 462.3595, Subd. 2 / Minn Stat 462.357, Subd. 3)
- IUP's (Minn. Stat. 462.3597, Subd. 3 / Minn Stat 462.357, Subd. 3)

D. NOTICE. Each statute specifies the type of notice that is required, who it must be sent to, and when it must be sent. Can't simply be an agenda item.

E. DUE PROCESS. The concept of “procedural due process” is a constitutional protection, which constrains the government from depriving an individual of a liberty or property interests without granting that individual notice and an opportunity to be heard "at a meaningful time and in a meaningful manner."

F. IMPARTIALITY. To provide a fair hearing, commission members should disclose at any hearing prior meetings or contact with applicants, opposition groups, and citizens and also disclose what was learned. It is also important to keep an open mind and not to make any commitment or announce how you will vote.

“The district court found that Councilmember Goodman, who took part in making the council's decision: “took a position in opposition and exhibited a closed mind with regard to [CPG's] proposed project prior to hearing [CPG's] appeal”; “adopted an advocacy role in opposition to [CPG's] proposed project well before she discharged her quasi-judicial duties”; and “was clearly involved in an effort not only to assist to organize and mobilize neighborhood opposition to the project, but also to sway the opinions of her fellow council members.” The court also noted that “the opinion of the council member in whose ward a project is proposed is given substantial weight” by other members of the council. We therefore conclude that the city council's decision was arbitrary and capricious”
Continental Property Group v. Minneapolis (Mn. Ct. App. 2011).

VII. PLANNING COMMISSION & COUNCIL APPROVAL REQUIREMENTS

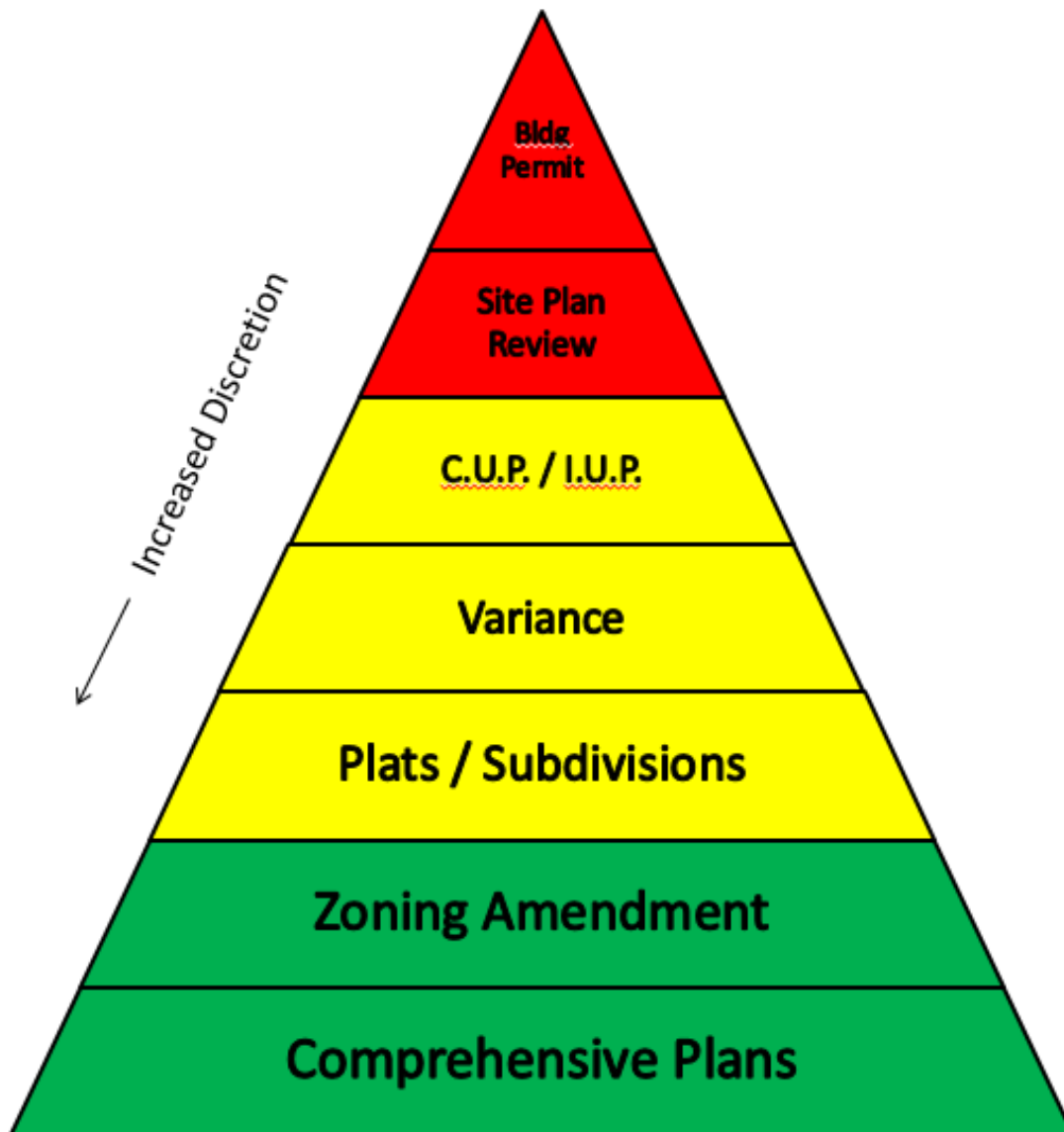
	Legislative or Quasi-Judicial	Planning Commission Action	City Council Action	CC Votes Required
CUP	Quasi-Judicial	Findings of Fact & Recommendation to Council	Resolution & Permit	Majority Quorum
IUP	Quasi-Judicial	Findings of Fact & Recommendation to Council	Resolution & Permit	Majority Quorum
Zoning Code Amendment	Legislative	Findings of Fact & Recommendation to Council	Ordinance	Majority Council ¹
Variance	Quasi-Judicial	Findings of Fact & Recommendation to Council	Resolution	Majority Council ²
Comp Plan Amendment	Legislative	Recommendation to Council	Resolution	Two-Thirds Council
Preliminary Plat Approval	Quasi-Judicial	Findings of Fact & Recommendation to Council	Resolution	Majority Quorum
Final Plat Approval	Quasi-Judicial	None	Resolution	Majority Quorum

¹ The amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of Council.

² Per City Code Section 11-6-7

VIII. PUBLIC DISCRETION IN THE LAND USE PROCESS

Public Discretion in the Land Use Process



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IX. OPEN MEETING LAW

- A. OPEN MEETINGS.** Pursuant to Minnesota Statutes § 13D.01 - .07, almost all meetings of the City Council must be open to the public. A meeting exists when a quorum of the city council is together and:

1. Make a decision concerning city business; or
2. Discuss city business; or
3. Obtain information on city business.

Be wary of serial communications: do not use the “reply all” function in emails. If a discussion occurs on social media, then that discussion must be open for participation by the public.

- B. OTHER ELECTRONIC COMMUNICATION.** Serial communication occurs when one councilmember consults another, who consults another, and so forth. This is not permitted under the Open Meeting Law. One of the main goals of the Open Meeting Law is to ensure that deliberations take place in a public setting.

1. It is not advisable to substantively discuss City matters via text message even with one other councilmember. Text messaging and/or other electronic communication to other councilmembers during a meeting about City matters is also not permitted. Be careful about engaging in discussions on your personal devices. Discussions about city matters are generally public data, subject to mandatory retention periods and accessible to the public upon request. Deliberations and discussions must occur in a public forum.
2. Similarly, a quorum of members having a discussion about public business on social media, such as in the comment section of a private Facebook page, could constitute a meeting in violation of the Open Meeting Law. Minn. Stat. §13D.065.

- C. PENALTIES.** If a court finds that an individual intentionally violated this open meeting law, penalties include:

1. Individual fine of \$300.00 per occurrence for an intentional violation, which may not be paid by the City.
2. Three intentional violations in three separate actions can result in removal from office.
3. Additional costs and attorney's fees may be imposed up to \$13,000.00. The City may pay this amount.

X. CONFLICTS OF INTEREST

- A. CONTRACTS.** Under Minn. Stat. §471.87, with limited exceptions, a council member may not have a personal financial interest in a sale, lease, or contract with the City. This law applies to all public officers who are "authorized to take part in any manner in making any sale, lease, or contract in official capacity." Exceptions and special approval procedure may be available in a given fact situation. Simply abstaining from voting is not enough. Violation of this prohibition is a crime.
- B. NON-CONTRACTS.** The general rule is that any official who has a personal financial interest in a non-contract action is disqualified from participating in the action. Courts evaluate certain factors to determine when a conflict requires disqualification. These include:
- the nature of the decision being made
 - the nature of the financial interest
 - the number of interested officials
 - the need, if any, for the interested official to make the decision
 - other means available, if any, such as an opportunity for review of the decision, that serves to insure that the officials will not act arbitrarily to further their selfish interests.
- C. BEST PRACTICE.** If you have an actual or potential financial interest in a decision to be made, disclose the conflict, abstain from voting, and do not participate in the discussion. If you have any concerns, discuss them with the city attorney. Avoid even the appearance of a conflict.
- D. ABSTAINING.** Abstaining means to refrain from a vote. In this case, a member of a body would be present at the meeting but would not partake in discussion or voting of the issue before the body.