



Our Vision

Red Wing thrives as a vibrant, creative river town that values its natural environment, welcomes all people, and unlocks opportunity for everyone.

Our Mission

We strive to create a sustainable, healthy, accessible, resilient, and equitable community where every person feels at home.

Meeting Announcement and Agenda Charter Commission Regular Meeting City Council Chambers, 315 West 4th Street, Red Wing, MN & Virtually Wednesday, June 21, 2023, at 6:00 PM

This meeting will be held in the City Hall Council Chambers and virtually via Webex at the same time. Members of the public can join this meeting either in person at City Hall or virtually. To join this meeting via Webex, [click this link](#). To join via telephone, please dial (415) 655-0001. Enter access code 2556 743 3330 and password 2023 when prompted.

The purpose of the Charter Commission is to consider and recommend amendments, revisions and restatements to the Charter of the City of Red Wing and to perform such other duties as required in accordance with the Constitution and Laws of the State of Minnesota, and Bylaws and rules of the Charter Commission.

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Motion to Excuse Absent Commission Members**
- 4. Approval of Agenda**
- 5. Approval of Minutes**

5.A. Motion to Approve April 26, 2023, Minutes.

- 6. Election of Chairperson and Vice Chairperson**

Chairperson Cook to ask for nominations for Chairperson. Following nominations, Staff Liaison Teri Swanson will announce nominations and ask for a role call vote. The newly elected Chairperson will ask for nominations for Vice Chairperson. Following nominations, Staff Liaison Teri Swanson will announce nominations and ask for a role call vote.

- 7. Public Comment Period**

We are now at the Public Comment segment, where members of the public can speak on topics that are not on the agenda. We welcome all opinions and ideas. We appreciate you stating your

name and please remember that personal attacks may be ruled up out of order. You will have up to three minutes to comment, and we appreciate your time in attending tonight.

8. Motions and General Business

- 8.A. Consider Motion to Approve the 2022 Charter Commission Annual Report. Attached is the annual report. The Charter Commission is asked to review and approve the 2022 Annual Report. Once approved, the report will be forwarded to the District Court and the City Council.
- 8.B. Discuss and Consider a Motion to Recommend to the City Council a Red Wing City Charter Amendment.
The Charter Commission met on June 16, 2021, and September 9, 2021, to discuss and take action relating to amending City Charter Chapter 5, Section 5.03 Council Meetings and Section 5.05 Records. On October 25, 2021, Introduction of Ordinance No. 167, Fourth Series, amending City Charter Chapter 5 was on the Council agenda for consideration. Pursuant to MN Statute 410. 12, Subd. 7, City Council must vote on whether to Introduce Ordinance No. 167, Fourth Series. With Council member Klitzke on a three-month leave of absence effective September 13, 2021, pursuant to the requirement in MN Statute 410. 12, Subd. 7 of an affirmative vote of all members of the City Council, Ordinance No. 167, Fourth Series, could not be approved, but a vote on the ordinance by the Council members in attendance at the meeting complied with the plain meaning of the statute that the Council must "vote" on the ordinance; the motion to introduce failed. Now that there is a full City Council seated, the Charter Commission is being asked if they want to submit an ordinance again to the City Council with the same documentation as provided previously and as included in the attached document.
- 8.C. Review Legislative Changes that Affect the Charter Commissions.
Attorney Kristen Nierengarten to review legislation, if any. No action is needed.
- 8.D. Annual Materials.
The attached materials are provided for your information. No action is needed.
1. City Attorney Material - Legal Considerations for City Officials
 2. Code of Conduct (currently being revised)
 3. Board and Commission Policy (currently being revised)
- 8.E. Consider Motion to Adopt the Charter Commission Regular Meeting Schedule:
Per MN Statutes 410.05 the Charter Commission shall meet at least once during each calendar year. In 2021, the Charter Commission established the third Wednesday in June of each year to be the regular meeting of the Charter Commission. Chairperson Cook has asked that the Charter Commission to consider approving the following meeting schedule, including the third Wednesday of March as a regular meeting, if needed:
- The Third Wednesday in June, per Charter Commission Bylaws.
 - The Third Wednesday in March.

9. Adjournment

Attachments: [Charter Commission Bylaws](#)

Accommodations for signing interpreter, Braille, large print, etc. can be made. Call City Hall at 385.3600 seven days prior to the need. Hearing assistance devices are available during meetings.

**Red Wing Charter Commission
Special Meeting
City Council Chambers
April 26, 2023**

Members Present: Commissioners Randy McLaughlin, Carol Overland, Mallory West, Dan Bender, Ryan Hanson, Terri Cook, Peggy Rehder, Min MartinOakes, Chad Kono, and Michael Johnson

Members Absent: Commissioners Donna Dummer and Terese Bjornstad

Others Present: Teri Swanson, City Clerk / Staff Liaison; Kay Kuhlmann, Council Administrator; Vicki Jo Lambert, Council Liaison; Kristin Nierengarten, City Attorney (remotely)

1. Call to Order

The meeting was called to order at 7:30 p.m. by Vice Chair MartinOakes.

2. Pledge of Allegiance

3. Introduce New Charter Commissioners Michael Johnson and Chad Kono

Commissioners Johnson and Kono were welcomed to the Charter Commission.

4. Motion to Excuse Absent Commission Members

A motion was made by Commissioner McLaughlin, seconded by Commissioner Bender and unanimously carried, to excuse the absences of Commissioners Dummer and Bjornstad.

5. Approval of Agenda

A motion was made by Commissioner Rehder, seconded by Commissioner Overland and unanimously carried, to approve the agenda as presented.

6. Consider Motion to Approve Minutes

A. June 15, 2022, Charter Commission Meeting Minutes.

A motion was made by Commissioner McLaughlin, seconded by Commissioner Cook, to approve the meeting minutes as drafted. It was clarified that the minutes were attached to the agenda packet. A vote was conducted, and the motion carried unanimously.

7. Public Comment Period

Vice Chair MartinOakes reviewed the public comment procedure for a special meeting.

Joseph Blank introduced himself and described why he would like to serve on the Charter Commission.

8. Election of Chairperson

Vice Chair Martin Oakes opened nominations for the position of Chairperson.

Commissioner Johnson nominated Commissioner Cook to serve as Chairperson of the Charter Commission. The nomination was seconded by Commissioner Overland.

Commissioner Rehder asked about the necessity of scheduling of a special meeting at this time and electing a new Chairperson. Staff Liaison Swanson clarified that the Chairperson elected during this special meeting will serve until the upcoming annual meeting in June, at which time another election will be conducted.

Commissioners Rehder and Overland stated their preference for a special meeting to have been scheduled earlier. The process of scheduling a special meeting was reviewed.

There were no other nominations for Chairperson. A roll call vote was conducted, and Commissioner Cook was unanimously elected to serve as Chairperson of the Charter Commission. Chair Cook conducted the remainder of the special meeting.

9. Charter Commission Recommendations for Reappointments and Appointments

Chair Cook provided background information with regard to Charter Commission vacancies. She noted that Commissioners Kono and Overland have completed partial terms and are being recommended for consideration of reappointment.

A. Applications Received.

- 1) **Joseph Blank.**
- 2) **Dean Hove.**
- 3) **Mark Hagen.**
- 4) **John Guerber.**
- 5) **Kyle Knutson.**
- 6) **Alan Quarnstrom.**
- 7) **Janet Brandt.**
- 8) **Ann Vogel.**
- 9) **Thomas Draskowski.**
- 10) **Charles Richardson.**
- 11) **Anne Robertson.**
- 12) **Dean Adams.**

It was noted that three of the applications have been removed from consideration by the Charter Commission, as these applicants (John Guerber, Ann Vogel, and Thomas Draskowski) have been recommended for appointment to the Charter Commission by the City Council along with applicant Jason Snyder.

B. Recommendations for Reappointment.

1) Consider Motion to Recommend to the Chief Judge of the First Judicial District the Reappointment of Chad Kono to a First Term on the Charter Commission – Charter Seat 5.

A motion was made by Commissioner Martin Oakes, seconded by Commissioner Johnson and unanimously carried, to recommend the reappointment of Chad Kono to a first full term on the Charter Commission.

2) Consider Motion to Recommend to the Chief Judge of the First Judicial District the Reappointment of Carol Overland to a Second Term on the Charter Commission – Charter Seat 14.

A motion was made by Commissioner Johnson, seconded by Commissioner Hanson, to recommend the reappointment of Carol Overland to a second term on the Charter Commission. The voice vote was conducted and the motion carried by a vote of 9:1, with Commissioner Rehder dissenting.

C. Recommendations for Appointment.

1) Consider Motion to Recommend to the Chief Judge of the First Judicial District a New Charter Commission Member Appointment to Fill Vacated Charter Commission Seat 8 (Commissioner Olson Seat).

Nominations were opened for this vacancy. Chair Cook and Staff Liaison Swanson reviewed the nomination and voting process. City Attorney Nierengarten provided additional clarification. The process was further discussed and agreed upon by Commissioners.

Commissioner Overland nominated Anne Robertson to be considered for appointment to the Charter Commission. This nomination was seconded by Commissioner Bender.

Chair Cook nominated Charles Richardson to be considered for appointment to the Charter Commission. This nomination was seconded by Commissioner West. There were no other nominations.

A roll call vote was conducted, and Anne Robertson's application will be forwarded to the District Court to be considered for appointment to the Charter Commission.

2) Consider Motion to Recommend to the Chief Judge of the First Judicial District a New Charter Commission Member Appointment to Fill Vacated Charter Commission Seat 9 (Commissioner Bolt Seat).

Nominations were opened for this vacancy. Commissioner Overland nominated Charles Richardson to be considered for appointment to the Charter Commission. The nomination was seconded by Commissioner West.

Commissioner Rehder nominated Kyle Knutson to be considered for appointment to the Charter Commission. This nomination was not seconded, but it was noted that a second is not required. There were no other nominations.

A roll call vote was conducted, and Charles Richardson's application will be forwarded to the District Court to be considered for appointment to the Charter Commission.

10. Official Data Practices Policy of the Charter Commission

A. Consider Motion to Adopt City of Red Wing Data Practices Procedures and Data Inventory Public Document as the Official Data Practices Policy of the Charter Commission.

Chair Cook introduced this item, and Commissioner McLaughlin provided additional information.

A motion was made by Commissioner McLaughlin, seconded by Commissioner Overland, to adopt the City of Red Wing Data Practices Procedures and Data Inventory Public Document as the official data practices policy of the Charter Commission.

11. Reminder of Next Meeting Date – June 21, 2023, at 6:00 p.m.

The process of considering agenda items was reviewed.

12. Adjournment

Chair Cook adjourned the meeting at 7:56 p.m.

Red Wing Charter Commission 2022 Annual Report

State Statute requires the Charter Commission meet once per year. The Charter Commission met once in 2022 on June 15, 2022, where the following business was conducted:

1. Commissioner Bolt was elected to serve as Chair of the Charter Commission. He later resigned from the Commission on August 14, 2022, moving out of the area.
2. Commissioner MartinOakes was elected to serve as Vice Chair of the Charter Commission.
3. Recommendations for appointment:
 - a. Michael Johnson was approved by the Charter Commission to be recommended to fill vacated Charter Commission Seat 13, previously held by former Commissioner Jeff Marcus whose term expired.
 - b. Chad Kono was approved by the Charter Commission to be recommended to fill vacated Charter Commission Seat 5, previously held by former Commissioner Kent Laugen who resigned on September 10, 2021.
4. The Charter Commission adopted Resolution No. 2022-1 Amending the Charter Commission Bylaws where changes included the City Clerk as Secretary of the Charter Commission (with no voting authority); liaisons to the Charter Commission may be appointed but are not members of the Charter Commission; any Commissioner may propose appropriate agenda items; established rules for public comment.
5. The Charter Commission adopted City of Red Wing Data Practices Procedures and Data Inventory Public Document as the Official Data Practices Policy of the Charter Commission.

Agenda Item 10

Motions and General Business

A. Action Related to the Charter Commission Recommendation to Amend City Charter Chapter 5, Section 5.03 Council Meetings and Section 5.05 Records.

City Clerk Swanson provided background information. She clarified that Charter Commission members were notified of the public hearing by email.

City Attorney Mace reviewed statutory requirements relating to Charter amendments. She indicated that a unanimous affirmative vote of all Council Members and the Mayor would be required to approve a Charter amendment recommended by the Charter Commission. She noted that this would not be possible at this time, due to the current leave of absence of a Council Member. She stated that a vote would need to take place within one month.

1. Public Hearing.

Council President Becky Norton opened the Public Hearing at 7:49 p.m.

Patricia Allende De Jung, Red Wing resident, Ward 2, expressed concerns that the proposed amendment would not open opportunities for public comment and participation.

Carol Overland, 1110 West Avenue, Red Wing, summarized Charter Commission discussion of this item. She noted the difference between a Charter amendment and policy revisions. She clarified that the proposed amendment would require a public comment period during special Council meetings specific to the item(s) to be addressed. She referenced Resolution No. 7698 relating to the Rules of Order and Procedure.

Alan Muller, 1110 West Avenue, Red Wing, referenced communication that he submitted to the City Council on October 11. He commented that it is easier to change verbiage than it is to change behavior. He spoke in support of public participation and more transparency relating to committee meetings and Board and Commission meetings. He described Resolution No. 7698 as a small step in the right direction.

No one else spoke during the Public Hearing. A motion was made by Council Member Dean Hove, seconded by Council Member Kim Beise and unanimously carried, to close the Public Hearing. The Public Hearing was closed at 8:00 p.m.

2. Consider Motion to Introduce Ordinance No. 167 Amending City Charter, Chapter 5, Sections 5.03 Council Meetings and 5.05 Records.

A motion was made by Council Member Erin Buss, seconded by Council Member Evan Brown, to introduce Ordinance No. 167. Council Member Buss indicated that she intended to vote "present," as the motion cannot be unanimously approved.

Council Member Dean Hove expressed concerns regarding some of the wording of Ordinance No. 167. He stated that he is not opposed to public input and suggested ways to accomplish this. He commented that ad hoc committees sometimes discuss sensitive issues. He also provided examples of Council discussions and actions that occur during special meetings.

Council Member Evan Brown spoke in support of making the process more open. He suggested addressing concerns through policy changes, as opposed to Charter amendments. He expressed concerns about the language of proposed Ordinance No. 167.

Council President Becky Norton referenced legal and privacy considerations. She suggested additional dialogue about ways to make the process better.

A roll call vote was requested. Council Members Hove, Norton, Brown, and Beise voted nay; Council Member Buss voted present. Four nays; one present; motion failed.

B. Action Related to Rules of Order.

1. Remove from Table.

A motion was made by Council Member Dean Hove to remove this item from the table. The motion was seconded by Council Member Evan Brown, a vote was conducted, and the motion carried unanimously.

2. Consider Motion to Adopt Resolution No. 7698 A Resolution Adopting Rules of Order and Procedures for the City Council in Accordance with the City Charter, Section 5.04.

Administrator Kuhlmann provided background information and referenced the goal of the Charter Commission's discussion to encourage public comment. She clarified that the language of Resolution No. 7698 reflects the current practice.

Council President Becky Norton opened the meeting for public comment regarding this item.

Carol Overland suggested allowing public comment during special meetings and committee meetings, adding that the meeting chair has the ability to manage the process.

Alan Muller referenced his suggested revisions to Resolution No. 7698 that would allow public comment during special meetings and committee meetings.

Council President Norton summarized Council discussion of this topic and referenced the staff report in this regard.



To: Honorable Mayor and City Council Members
From: Kay Kuhlmann, City Council Administrator; Teri Swanson, City Clerk
Meeting Date: October 25, 2021
Agenda Item Number: **10.A.**

Title

Public Hearing on Charter Commission Recommendation to enact a City Charter amendment by ordinance amending City Charter, Chapter 5, Section 5.03 Council Meetings and Section 5.05 Records.

Purpose

To hold a Public Hearing on the Charter Commission Recommendation to enact a City Charter amendment by ordinance amending City Charter, Chapter 5, Section 5.03 Council Meetings and Section 5.05 Records.

Attachments

- Proposed Ordinance No. 167, Fourth Series
- Public Hearing Notice
- Commissioner Overland Recommendation from September 9, Charter Commission meeting.

Background

- The Charter Commission met on June 16, 2021, and heard from resident Alan Muller who suggested changes to the City Charter such as:
 - a. "All meetings of Red Wing committees, boards, commissions, etc., shall as a matter of course have "public comment" as an agenda item, and allow reasonable opportunity for public statements on matters generally and those coming before the body."
 - b. "All City Council and other committees, boards, commissions, etc. whether standing or ad-hoc, shall be listed in an up-to-date manner on the City web site, including membership, prior notice of meetings in the same manner as the Council itself, and minutes of previous meetings."
 - c. "Copies of agendas and other documents available to members during meetings shall be made available to the public as well."

At that meeting, Charter Commission members were asked to provide proposed changes to Staff Liaison Teri Swanson to be included in the September 9, 2021, Charter Commission meeting packet for discussion and consideration.

Two Commissioners provided information for the September 9, 2021, Charter Commission meeting. Commissioner Overland provided proposed changes to Chapter 5, Sections 5.03 Council Meetings and Section 5.05 Records. Chair McLaughlin provided his research and recommendation.

- On September 9, 2021, the Red Wing Charter Commission approved revisions to the City Charter in the form of amendments to Chapter 5, Section 5.03 Council Meetings and Section 5.05 Records.
- At the September 13, 2021, City Council meeting, the Council approved a three-month leave of absence for Council Member Klitzke.
- At the September 27, 2021, City Council meeting, the Council approved a public hearing to be held on October 25 to consider a recommendation of the Charter Commission to enact a Charter amendment by ordinance, amending City Charter, Chapter 5, Section 5.03 Council Meetings and Section 5.05 Records.

Discussion

There are four ways in which a charter may be amended. (1) the first way is initiated by the Charter Commission recommending that the Council amend the Charter by ordinance, which ultimately must be approved by all members of the Council, (2) the second way is the Charter Commission proposing an amendment which must be submitted to the voters if the procedural requirements of the statute are met; (3) the third way is initiated by a number of voters signing and filing a petition with the Charter Commission wherein they propose to amend the charter; and (4) the fourth way is by the Council proposing an amendment by ordinance subject to charter commission review. The second or third methods would only be necessary if the vote on the proposed charter amendment ordinance was not unanimous under the first method. The current process before the Council is the first method.

Our normal process for modifying the City Charter has been a presentation to the Council on the proposed changes and a request for the Council to set the public hearing date. Next steps are publish notice of the public hearing on October 2, 2021; hold the public hearing on October 25, 2021, and consider first reading of the proposed change.

Per MN Statute 410.12, Subd. 7, within one month of receiving a recommendation to amend the charter by ordinance, the city must publish notice of a public hearing on the proposal and the notice must contain the text of the proposed amendment. The city council must hold the public hearing on the proposed charter amendment at least two weeks but not more than one month after the notice is published. Within one month of the public hearing, the city council must vote on the proposed charter amendment ordinance. The ordinance is enacted if it receives an affirmative vote of all members of the city council and is approved by the mayor and published as in the case of other ordinances. An ordinance amending a city charter shall not become effective until 90 days after passage and publication or at such later date as is fixed in the ordinance.

Thus, based on MN Statute 410.12, Subd. 7, the City Council is required to take a vote on the proposed charter amendment ordinance within one-month of the public hearing. However, in order to pass, the proposed charter amendment must be approved by *all* members of the City Council. Council Member Klitzke is on a three-month leave of absence effective September 13,

2021. Accordingly, the proposed charter amendment cannot pass because under Statute, it must be voted on prior to Council Member Klitzke's return and thus cannot be approved by all members of the City Council.

Staff anticipates that the Charter Commission will want to discuss Council's action. Any feedback from the Council on what is proposed would be helpful. The Charter Commission has several options, including amending their proposal and sending new Charter language back to the City Council for consideration.

Recommended Action

City staff recommends that pursuant to MN Statute 410.12, Subd. 7, City Council must vote on whether to Introduce Ordinance No. 167, Fourth Series. With Council Member Klitzke on a three-month leave of absence effective September 13, 2021, pursuant to the requirement in MN Statute 410.12, Subd. 7 of an affirmative vote of all members of the City Council, Ordinance No. 167, Fourth Series, cannot be approved, but a vote on the ordinance by the Council members in attendance at the meeting will comply with the plain meaning of the statute that the Council "must vote" on the ordinance.

Ordinance No. 167, Fourth Series

AN ORDINANCE AMENDING CHAPTER 5 OF THE RED WING CITY CHARTER

SECTION 1. The City Charter is hereby amended by inserting the underlined language as shown below:

Chapter 5, City Council

...

Section 5.03 Council Meetings

On the first Tuesday after the first Monday in January following a City General Election, the Council shall hold its organizational meeting after the newly elected officers having qualified take the oath of office and assume the duties thereof. Thereafter, the Council shall meet at such times each month as may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any three members of the Council may call special meetings of the Council. Notice shall be published in the legal newspaper and on the city website. The Council shall operate with the understanding that public comment is to be encouraged, and each regular Council meeting shall include a section for general public comment, and regular and special Council meetings allow public comment specific to agenda items at that time on the agenda.

Unless there is an emergency for the meeting, notice of the meeting shall be at least three days in advance or otherwise as required by law, and an electronic copy of the proposed agenda and supporting materials for each regular or special meeting will be made available to each member. Unless an emergency is declared by a three -fourths vote of the Council, no other business shall be transacted at a special meeting than that which is designated in the call and matters relating thereto. Meetings of the Council and the Minutes and records thereof shall be open to the public in the manner provided by State law, full recording shall be archived on city website, and the Council shall not meet in closed or executive session unless allowed by State law.

...

Section 5.05 Records

The appointed clerical officer shall keep a record of the proceedings of the Council, and records shall be posted on the city's website. The votes of Council Members shall be recorded in accordance with law.

...

SECTION 2: Effective Date. This ordinance shall be in full force and effect 90 days after its adoption and publication in accordance with the City Charter and Minnesota Statutes section 410.12, subdivision 7.

Introduced the ____ day of _____, 2021

Adopted the ____ day of _____, 2021

Becky Norton, Council President

ATTEST:

Teri L. Swanson, MCMC, City Clerk

(Seal)

Presented to the Mayor at _____ .m. on this ____ day of _____, 2021.

Approved this ____ day of _____, 2021

Michael Wilson, Mayor

**NOTICE OF PUBLIC HEARING
PROPOSED AMENDMENT TO CITY CHARTER
City of Red Wing
County of Goodhue
State of Minnesota**

NOTICE IS HEREBY GIVEN that the Red Wing City Council will hold a public hearing on Monday, October 25, 2021, at approximately 6:00 p.m. at the Red Wing City Hall in the Council Chambers at 315 West 4th Street, Red Wing, Minnesota. The purpose of the hearing is to consider the recommendation of the Charter Commission to enact a charter amendment by ordinance. The hearing is called pursuant to Minnesota Statutes 410.12, Subd. 7.

The proposed charter amendment amends Chapter 5, City Council. The amendment is as follows with the underlined language being proposed as new:

Chapter 5, City Council

...

Section 5.03 Council Meetings

On the first Tuesday after the first Monday in January following a City General Election, the Council shall hold its organizational meeting after the newly elected officers having qualified take the oath of office and assume the duties thereof. Thereafter, the Council shall meet at such times each month as may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any three members of the Council may call special meetings of the Council. Notice shall be published in the legal newspaper and on the city website. The Council shall operate with the understanding that public comment is to be encouraged, and each regular Council meeting shall include a section for general public comment, and regular and special Council meetings allow public comment specific to agenda items at that time on the agenda.

Unless there is an emergency for the meeting, notice of the meeting shall be at least three days in advance or otherwise as required by law, and an electronic copy of the proposed agenda and supporting materials for each regular or special meeting will be made available to each member. Unless an emergency is declared by a three -fourths vote of the Council, no other business shall be transacted at a special meeting than that which is designated in the call and matters relating thereto. Meetings of the Council and the Minutes and records thereof shall be open to the public in the manner provided by State law, full recording shall be archived on city website, and the Council shall not meet in closed or executive session unless allowed by State law.

...

Section 5.05 Records

The appointed clerical officer shall keep a record of the proceedings of the Council, and records shall be posted on the city's website. The votes of Council Members shall be recorded in accordance with law.

...

Copies of the proposed charter amendment in ordinance form are on file and available for public inspection at the offices of the City of Red Wing, 315 West Fourth Street, Red Wing, Minnesota.

All interested persons may appear at the hearing and present their views orally at the hearing or in writing prior to the meeting.

Teri L. Swanson, MCMC, City Clerk
City of Red Wing, Minnesota

Date: **September 28, 2021**

Publish once in the Republican Eagle: **October 2, 2021**



CHARTER

Chapter 5

City Council

Section 5.01 Council and Quorum

The Council Members shall constitute the City Council and shall elect a President and Vice President from their membership. A majority of the membership holding office shall constitute a quorum to transact business, but a smaller number may recess or adjourn from time to time and compel the attendance of absent members.

Section 5.02 Presiding Officers

The President or in his/her absence the Vice-President shall preside at all meetings and rule on all matters of procedure. The City Council may elect a President Pro Tem who shall have the powers, duties, and responsibilities of the President in the absence of the President and Vice-President. If no President Pro Tem is elected, the member present with the most seniority in office shall be deemed the President Pro Tem.

Section 5.03 Council Meetings

On the first Tuesday after the first Monday in January following a City General Election, the Council shall hold its organizational meeting after the newly elected officers having qualified take the oath of office and assume the duties thereof. Thereafter, the Council shall meet at such times each month as may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any three members of the Council may call special meetings of the Council. Notice shall be published in the legal newspaper and on the city website. The Council shall operate with the understanding that public comment is to be encouraged, and each Council meeting shall include a section for general public comment and for comment specific to agenda items at that time on the agenda.

Unless there is an emergency for the meeting, notice of the meeting shall be at least three days in advance or otherwise as required by law, and an electronic copy of the proposed agenda and supporting materials for each regular or special meeting will be made available to each member. Unless an emergency is declared by a three-fourths vote of the Council, no other business shall be transacted at a special meeting than that which is designated in the call and matters relating thereto. Meetings of the Council and the Minutes and records thereof shall be

open to the public in the manner provided by State law, full recording shall be archived on city website, and the Council shall not meet in closed or executive session unless allowed by State law.

Section 5.04 Rules of Procedure

The Council shall determine its own rules and order of business. It may punish members for misconduct. Unexcused absence from three consecutive regular Council meetings shall be grounds for removal of any Council Member.

Council officers serve at the pleasure of the Council and may be removed by a super majority vote of the Council for any reason. Any member of the Council may move for the removal of a council officer if: (1) they placed the item on the Council agenda by at least noon of the Wednesday before that meeting; (2) before placing the item on the agenda, they had provided the Council officer proposed for removal with the reason for the motion; (3) there has been an opportunity for the Council officers to discuss the reason; and, (4) the reason for the removal is stated with the motion. If a motion for the removal of a Council officer is seconded, the Council officer sought to be removed has the right to respond to the motion before any debate on the motion. In the event that a Council officer is removed, the Council will immediately fill that office.

Section 5.05 Records

The appointed clerical officer shall keep a record of the proceedings of the Council, and records shall be posted on the city's website. The votes of Council Members shall be recorded in accordance with law.

Section 5.06 Ordinances Resolutions and Motions

Except as otherwise provided in this Charter, all legislation shall be by ordinance. A roll call shall be taken on all ordinances, resolutions, and the levying of any taxes. The minutes shall clearly delineate those voting in favor and those voting against all motions or other actions. An affirmative vote of a majority of the membership holding office shall be required for the adoption of any ordinance or resolution except as otherwise provided in this Charter or by State or Federal law.

Section 5.07 Procedure on Ordinances

The enacting clause of all ordinances shall be the words, "The City Council of the City of Red Wing does ordain". Every ordinance shall be presented in writing and shall embrace a single subject, which shall be expressed in the title. No ordinance, except an emergency ordinance, shall be adopted on the same day it was introduced and at least three days shall pass between its introduction and passage.

Section 5.08 Emergency Ordinances

An emergency ordinance is an ordinance necessary for the immediate preservation of the public peace, health, morals, safety, or welfare in the emergency as defined and declared in a preamble thereto, and is adopted by a majority of the Council Members holding office. No prosecution shall be based upon the provisions of any emergency ordinance until 24 hours after

the ordinance has been filed with the clerical officer and posted in three conspicuous places within the City or until the ordinance has been published, unless the person charged with the violation had actual notice of the passage of the ordinance prior to the act or omission complained of.

Section 5.09 Procedure on Resolutions

Every resolution shall be presented in writing or read in full before a vote is taken thereon.

Section 5.10 Signing and Publication of Ordinances and Resolutions

Every ordinance or resolution adopted by the Council shall be signed by the presiding officer of the Council, and attested by the clerical officer. Every ordinance shall be published at least once in the official newspaper. In the case of lengthy ordinances, or ordinances which include charts or maps, if the City Council determines that publication of the title and a summary of an ordinance would clearly inform the public of the intent and effect of the ordinance, the Council may, by two-thirds vote of its members, direct that only the title of the ordinance and a summary be published, as required by State law, with notice that a printed copy of the ordinance is available for inspection by any person. A copy of the entire text of the ordinance shall be posted in the community Library and in any other public location which the Council designates.

Prior to the publication of the title and summary, the Council shall approve the text of the summary and determine that it clearly informs the public of the intent and effect of the ordinance. The publishing of the title and summary shall be deemed to fulfill all legal publication requirements as completely as if the entire ordinance had been published. To the extent and in the manner provided by State law, an ordinance may incorporate by reference a Statute of Minnesota, a state administrative rule or a regulation, a code, or an ordinance or part thereof without publishing the material referred to in full. All ordinances and resolutions with the Affidavit of Publication shall be recorded by the clerical officer in a separate book. The record of any ordinance or resolution, or a duly certified copy of the record, shall be evidence of adoption passage, approval, and publication.

Section 5.11 Mayor's Veto of Ordinances and Resolutions

Every ordinance or resolution shall be delivered to the Mayor within 48 hours from the time of adoption of the ordinance or resolution by the City Council. The 48-hour deadline excludes Saturday, Sunday, or a legal holiday, in which event the period runs until 5:00 p.m. on the next day that is not a Saturday, a Sunday, or a legal holiday. Within 96 hours from the time of adoption of the ordinance or resolution by the City Council, the Mayor shall either approve the ordinance or resolution by delivering the signed ordinance or resolution to the clerical officer or veto the ordinance or resolution by delivering a veto with written objections concerning the ordinance or resolution to the clerical officer. The 96-hour time frame excludes Saturday, Sunday, or a legal holiday, in which event the period runs until 5:00 p.m. on the next day that is not a Saturday, a Sunday, or a legal holiday. If the Mayor fails to deliver a veto with written objections to an ordinance or resolution within the time period specified above, the ordinance or resolution shall be deemed in effect without the approval of the Mayor. If the ordinance or resolution is vetoed within the time and manner specified above, the vetoed ordinance or resolution may be reconsidered by the City Council. If, upon reconsideration, the City Council

shall pass the ordinance or resolution by two-thirds vote of the City Council, then the ordinance or resolution shall be in full force and effect without approval of the Mayor.

For the purposes of this Section, a "legal holiday" is as defined in the City of Red Wing Personnel Policy Manual.

The Mayor shall have only one hour after adoption of an emergency ordinance to approve and sign or veto the emergency ordinance. If the Mayor does not deliver an approved or vetoed emergency ordinance within one hour from the time of adoption by the City Council, the emergency ordinance shall be deemed in effect without the approval of the Mayor. For the purposes of an emergency ordinance, deliver means to hand to the recipient or electronically transmit the approval or veto to the recipient. If the emergency ordinance is vetoed by the Mayor within one hour from the time of adoption, the emergency ordinance shall be immediately reconsidered by the City Council. If, upon reconsideration, the City Council shall pass the emergency ordinance again, then the emergency ordinance shall be in full force and effect without approval of the Mayor. For purposes of this Section, "delivered" shall mean:

- 1) Handed to the recipient;
- 2) Mailed to the recipient at an address designated by the recipient or at the last known address of the recipient;
- 3) Deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the recipient is not available, for delivery as promptly as practicable, to the recipient at an address designated by the person or at the last known address of the recipient; or
- 4) Transmitted by electronic communication. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.
- 5) An item is delivered by mail when deposited in the United States mail with sufficient postage affixed or when deposited for delivery by a nationally recognized delivery service after having made sufficient arrangements for payment by the sender. An item is deemed received when it is delivered in the manner specified above.

Section 5.12 When Ordinances and Resolution Take Effect

Resolutions and emergency ordinances shall take effect immediately upon its approval by the Mayor or at such later date as is fixed in it. Every other ordinance shall take effect 14 days after adoption and publication of the ordinance or summary of the ordinance or at such later date as is fixed therein or required by State law. Every ordinance and resolution adopted by the voters of the City shall take effect immediately upon certification of the election results, or at such later time as is fixed therein.

Section 5.13 Amendment and Repeal of Ordinances and Resolutions

Every ordinance or resolution repealing a previous ordinance or resolution or section or subdivision thereof shall give the applicable section, subdivision, or paragraph of the City Code, or the number (if any) and the title of the uncodified ordinance or resolution to be repealed in whole or in part. No ordinance or resolution or section or subdivision thereof shall be amended by reference to the title alone, but such an amending ordinance or resolution shall set forth each section or subdivision to be amended and shall clearly indicate new matter and old matter to be omitted in the case of partial amendments.

Section 5.14 Revision and Codification of Ordinances

The City shall revise, rearrange, and codify its ordinances with such additions and deletions as may be deemed necessary by the Council. Such ordinance code shall be published in book, pamphlet, or continuously revised loose-leaf form, and copies shall be made available by the Council at the office of the clerical officer for general distribution to the public free or at a reasonable charge. Publication in such a code shall be a sufficient publication of the ordinance provision not previously published if a notice that copies of the codification are available at the office of the clerical officer is published in the official newspaper for at least two successive weeks.

Section 5.15 Acquiring and Selling Property

The City Council may acquire such real and personal property as the purposes of the City may require by purchase, gift, devise, condemnation, lease, or otherwise, and may hold, manage, control, sell, convey, lease, or otherwise dispose of such property as its interest require. It may also sell, convey, lease, or otherwise dispose of property for a nominal consideration to encourage and promote industry and provide employment for citizens, as its interest require. The approval of any sale of real property owned by the City or purchase of any real property shall be by resolution.

Section 5.16 Expenditures for Goods or Services

Every expenditure by the City Council for goods and services of a value in excess of \$1 shall be by resolution, with the exception of construction projects. For construction projects estimated to exceed \$1 the first expenditure of the project shall be by resolution, but any further expenditures may be done by motion.

**RUPP, ANDERSON, SQUIRES
& WALDSPURGER, P.A.**



333 South Seventh Street, Suite 2800
Minneapolis, MN 55402
Office (612) 436-4300
Fax (612) 436-4340

www.raswlaw.com

LEGAL CONSIDERATIONS FOR CITY OFFICIALS

City of Red Wing 2023

By: Amy E. Mace

Amy.Mace@raswlaw.com

THE OPEN MEETING LAW

I. Purposes of the Open Meeting Law

Minnesota Statutes chapter 13D, also known as the Open Meeting Law (“OML”), was passed in the 1950s. It has been amended several times over the years, but its general aim—to prevent public bodies from dissolving into executive sessions to discuss controversial issues—has remained the same.

The Minnesota Supreme Court has discussed the purposes of the OML as follows:

- A. To prohibit actions from being taken at secret meetings where it is impossible for the public to be fully informed and/or detect improper influences. Lindahl v. Indep. Sch. Dist. No. 306 of Hubbard County, 133 N.W.2d 23 (Minn. 1965).

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel. ©2023 Rupp, Anderson, Squires & Waldspurger, P.A.

- B. To protect the public’s right to be informed. Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis County, 215 N.W.2d 814 (Minn. 1974).
- C. To guarantee the public a forum to present its views to the public body. Sullivan v. Credit River Twp., 217 N.W.2d 502 (Minn. 1974).

II. Meetings Subject to the Open Meeting Law

The law applies to all meetings of the City Council, and in general, meetings of City commissions and boards. Although the OML does not include a definition of a “meeting,” the Minnesota Supreme Court has defined a meeting under the OML as a “gathering of a quorum or more members of the governing body . . . at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.” Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

- A. A majority of the public body constitutes a quorum. See Moberg.
- B. Even if a quorum of the public body is present, “chance or social gatherings” are not covered by the law. The social gathering, however, cannot be used to conduct official business unless the notice requirements discussed below have been met. St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983); Moberg.
- C. The law does not apply to telephone conversations or letters between less than a quorum of members. See, e.g., Minnesota Educ. Ass’n v. Bennett, 321 N.W.2d 395 (Minn. 1982).
- D. Courts have cautioned that serial meetings of less than a quorum may be found to violate the law if the facts and circumstances indicate the purpose was to avoid the requirements of the law or to reach an agreement on an issue before the public meeting. Moberg.
- E. The Minnesota Supreme Court has rejected the argument that a discussion between two board members, outside of an open meeting, about a matter pending before the board is an absolute or automatic violation of the law. Moberg. The Court noted that public officials have a duty to persuade each other in an attempt to resolve issues, and the public benefits from this, so long as the discussion is not “designed to avoid public discussion altogether, to forge a majority in advance of public hearings on an issue, or to hide improper influences such as the personal or pecuniary interest of a public official.” Moberg, 336 N.W.2d at 518.

- F. An advisory opinion from the Minnesota Department of Administration's Data Practices Office ("DPO") concluded that email communication between board members constituted a meeting, which was required to be public. Adv. Op. 09-020. A non-member sent an email to the Advisory Board of the Metro Gang Strike Force raising several issues and asking the Board to issue a press release. Seven members replied and copied the rest of the Board members. Based on their comments, the Chair issued a press release and emailed the Board that he had taken such action. The DPO concluded that the conduct of the Board constituted a meeting because a quorum of the Board, in addition to receiving information, commented on and provided direction to the Chair on a matter relating to official business of the Board. The DPO noted that one-way communication between the Chair and other members is permissible, such as when meeting materials are sent via email, as long as no discussion or decision-making ensues.
- G. An advisory opinion from the DPO concluded that when a quorum of a Township Board attended a county planning commission meeting and heard and discussed matters also before the Board, this constituted a special meeting of the Board. Adv. Op. 16-005. The Board should have posted written notice of the time, date, place and purpose (i.e., a quorum of Board Supervisors will attend the [County] Planning Commission meeting on [date] at [time] for [purpose]).
- H. An advisory opinion from the DPO concluded that a school board violated the OML when a quorum of the school board was present at a school board committee meeting, which was noticed as a committee meeting but not as a full school board meeting. Adv. Op. 19-012. The DPO stated that each group identified in Minnesota Statutes section 13D.01, subdivision 1 (e.g., governing body of a school district or city and any committee of a public body), is independently subject to the notice requirements of the OML. The DPO concluded that once the fourth school board member was present (creating a quorum) to discuss, decide, or receive information as a group relating to the official business of the school board, the committee meeting also became a meeting of the school board that needed to be noticed as a regular or special school board meeting. In this matter, the fourth school board member engaged in a discussion with the committee members, including whether items had been presented to the school board, an exchange about one-time funding, and a potential form to use to present information to the school board.
- I. An advisory opinion from the DPO concluded that it would not be a violation of OML if a quorum of board members met privately with a facilitator in

sessions designed to “improve trust, relationships, communications, and collaborative problem solving among Board members,” if they are not “gathering to discuss, decide, or receive information as a group relating to ‘the official business’ of the governing body.” Adv. Op. 16-006. The DPO did caution that, while the goal of the gatherings was not for Board members to exchange views on substantive decisions, incidental discussions of public business would constitute a meeting subject to the OML. Therefore, the Board members must avoid any issues specific to its official business during the sessions.

- J. An advisory opinion from the DPO concluded that a City Council’s two-day goal-setting session, at which the City Council discussed its long-term vision for the City and prioritized goals and action steps, constituted a meeting for purposes of the OML. Adv. Op. 18-003. The DPO’s opinion is consistent with Minnesota precedent finding that workshops or retreats specifically related to a particular city’s business are considered meetings under the OML. The DPO further opined that, because the goal-setting session was a meeting, convening the goal-setting session outside the territorial jurisdiction of the City Council violated the OML. The DPO explained that the City Council “effectively removed themselves from the people that they serve, thus undermining the public policy intent of the OML” to provide for open and public access to meetings.
- K. The Minnesota Court of Appeals has limited the law’s application to those committees possessing decision-making authority on behalf of the governing body. The Minnesota Daily v. Univ. of Minnesota, 432 N.W.2d 189 (Minn. App. 1988).
 - 1. Decision-making authority will be presumed where members of the committee constitute a quorum of the governing body. Sovereign v. Dunn, 498 N.W.2d 62 (Minn. App. 1993).

III. Notice Requirements

The notice requirements of the OML vary depending on the type of meeting: regular, special, emergency, and recessed/continued.

A. Regular Meetings

A public body must keep a schedule of its regular meetings on file at its primary office. Minn. Stat. § 13D.04, subd. 1. If a regular meeting is going to be held at a time or place different than listed on its schedule, the public

body must provide notice of the meeting in the same manner as for a special meeting. Id.

B. Special Meetings

Notice of a special meeting must be posted three days in advance of the meeting. Minn. Stat. § 13D.04, subd. 2(b). Three days means 72 hours. The notice must state the date, time, place and purpose of the meeting, and it must be posted on the City's principal bulletin board. Id. subd. 2(a). The principal bulletin board has to be located in a place that is "reasonably accessible to the public." Rupp v. Mayasich, 533 N.W.2d 893 (Minn. App. 1995). If there is no principal bulletin board, it must be posted on the door of the regular meeting room. Minn. Stat. § 13D.04, subd. 2(a).

Notice of the special meeting must also be mailed or otherwise delivered to each person who has filed a written request for notice of special meetings. Id. subd. 2(b). In the alternative, the public body can publish notice in the official newspaper three days before the special meeting. Id. subd. 2(c).

While a public body may add (or remove) topics from consideration at a regular meeting (where the notice required does not include listing the "purpose"), it cannot do so at a special meeting. Adv. Op. 19-006. A notice for a special meeting must identify the purpose and the public body must limit the discussion to that purpose. Id. (city council violated the OML when it discussed and acted on three items that it failed to identify in its special meeting notice).

C. Emergency Meetings

An emergency meeting is defined as a meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body. Minn. Stat. § 13D.04, subd. 3(e).

Notice of the emergency meeting shall be given by telephone or by any other reasonable method to members of the public body. Id. subd. 3(b).

The public body must also make a good faith effort to provide notice to news media that have filed a request for notice of emergency meetings if the request includes the news medium's telephone number. Id. subd. 3(a).

D. Recessed or Continued Meetings

Published or mailed notice is unnecessary for a recessed or continued meeting as long as the time and place of the meeting were established during the previous meeting and recorded in the previous meeting's minutes. Minn. Stat. § 13D.04, subd. 4(a).

E. Closed Meetings

The same notice requirements apply to a regular, special, or emergency meeting that is closed. Minn. Stat. § 13D.04, subd. 5.

IV. Materials for the Meeting

At least one copy of the agenda and any other written materials that are: 1) distributed to all members at the meeting; 2) distributed to all members before the meeting; or 3) available to all members in the meeting room must also be available in the meeting room for public inspection while the public body considers the subject matter. Minn. Stat. § 13D.01, subd. 6(a).

There are two general exceptions: 1) data classified as non-public under the Minnesota Government Data Practices Act; and 2) data relating to matters discussed at a closed meeting. See id. subd. 6(b).

An advisory opinion from the DPO concluded that materials handed out to a Township Board by a presenter had to be available to the public in the meeting room, even if those materials were included in a prior meeting packet and read aloud at the meeting. Adv. Op. 18-011.

V. Meetings During Pandemic or Chapter 12 Emergency

A. Interactive Technology Defined. In 2021, the legislature included a definition of “interactive technology” in the OML and replaced the previously used phrases—“other electronic means” and “interactive television”—with “interactive technology” throughout the OML. “Interactive technology” means “a device, software program, or other application that allows individuals in different physical locations to see and hear one another.” Minn. Stat. § 13D.001, subd. 2.

B. Conditions. Meetings may be conducted by *telephone or interactive technology* if certain conditions are met. Minn. Stat. § 13D.021, subd. 1.

1. The presiding officer, chief legal counsel, or chief administrative officer for the affected governing body must determine that an in-person meeting (or a meeting conducted by interactive technology under section 13D.02—see section VI) is “not practical or prudent *because of a health pandemic or an emergency declared under chapter 12.*”
2. All members of the body participating in the meeting, wherever their physical location, *can hear one another and can hear all discussion and testimony*;
3. Members of the public present at the regular meeting location *can hear all discussion and testimony and all votes* of the members of the body, “*unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration*”;
4. At least one member of the body, chief legal counsel, or chief administrative officer is *physically present* at the regular meeting location, “*unless unfeasible due to the health pandemic or emergency declaration*”; and
5. All votes are conducted by roll call, so each member’s vote on each issue can be identified and recorded.
 - a. The DPO noted that actions that are typically taken by unanimous consent are still subject to this roll call vote requirement.

C. Quorum. All members who attend by telephone or interactive technology are present for quorum purposes. Minn. Stat. § 13D.021, subd. 2.

D. Remote Monitoring. If telephone or interactive technology is used to conduct a meeting, to the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location. Minn. Stat. § 13D.021, subd. 3. The law used to allow the public body to require the person making such a connection pay for the documented additional cost that the body incurred as a result of the additional connection. The legislature removed this language in 2021, so the public body can no longer require this payment.

E. Notice. If telephone or interactive technology is used to conduct a meeting, the public body must provide notice of the regular meeting location, of the fact that some members may participate by telephone or interactive technology, and of the details for monitoring remotely per paragraph D above. Minn. Stat. § 13D.021, subd. 4. Otherwise, the same notice

requirements discussed earlier in section III apply to a regular, special, or emergency meeting that is conducted by telephone or interactive technology. Id.

- F. Public Comment.** *If attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration and the public body's practice is to offer a public comment period at in-person meetings, members of the public shall be permitted to comment from a remote location during the public comment period of the meeting, to the extent practical.* Minn. Stat. § 13D.021, subd. 5.
- G.** An advisory opinion from the DPO concluded that a board did not comply with Minnesota Statutes section 13D.021 when, solely in order to reach a quorum, a member participated by telephone at two meetings. Adv. Op. 18-018. Per section 13D.021, a public body may conduct meetings by telephone if certain conditions are met, the threshold requirement being that there is a health pandemic or declared emergency under chapter 12. Minnesota Statutes section 12.03, subdivision 1e, defines "declared emergency" as "a national security or peacetime emergency declared by the governor under section 12.31." Thus, the board could not conduct its meetings by telephone, under section 13D.021, unless it determined that it was warranted due to a health pandemic or declared emergency.
- H.** Another advisory opinion from the DPO noted that there is currently not a mechanism in the OML for public body members to hold in-person meetings while limiting public attendance to electronic monitoring. Adv. Op. 21-003. In that matter, a school board invoked its right to hold its meetings virtually under Minnesota Statutes section 13D.021 due to the COVID-19 pandemic and declared state of emergency. The board chair determined that in-person meetings were not practical or prudent because of the current health pandemic. Members of the public were limited to attending the meetings remotely. On four occasions, however, a quorum of the school board attended the meetings in person. The DPO concluded the school board did not comply with the OML when a quorum of the school board held in-person meetings while the public was limited to remote attendance. The presence of a quorum of the school board in person rendered the meetings in-person meetings, negating the option to meet remotely pursuant to section 13D.021. Thus, if a public body determines in-person meetings are not practical or prudent under section 13D.021, a quorum or more of the members cannot gather for the meeting in-person. Also, public bodies cannot decide that it is feasible for a quorum of the board to meet in-person, but unfeasible to have the public attend in person.

VI. Participation in Meetings by Interactive Technology

A. Conditions. Members of a public body can attend and participate in meetings by *interactive technology* if certain conditions are met. Minn. Stat. § 13D.02, subd. 1(a).

1. All members of the body participating in the meeting, wherever their physical location, *can hear and see one another and can hear and see all discussion and testimony* presented at any location at which at least one member is present;
2. Members of the public present at the regular meeting location *can hear and see all discussion and testimony and all votes* of the members of the body;
3. *At least one member of the body is physically present* at the regular meeting location;
4. All votes are conducted by roll call so each member's vote on each issue can be identified and recorded; and
 - a. Actions that are typically taken by unanimous consent are still subject to this roll call vote requirement.
5. *Each location* at which a member of the body is present *is open and accessible to the public.*

B. Location Not Open or Accessible to the Public. A meeting satisfies the requirements of paragraph A above, even though a member of the public body participates from a location that is not open or accessible to the public (see paragraph A.5.), if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public, **and:**

1. **Military members.** The member is serving in the military and is at a required drill, deployed, or on active duty; **or**
2. **Medical reasons in state of emergency.** The member has been advised by a health care professional against being in a public place for personal or family medical reasons. This clause only applies when a state of emergency has been declared under section 12.31, and expires 60 days after the removal of the state of emergency. Minn. Stat. § 13D.02, subd. 1(b)(1)-(2).

- C. Quorum.** All members who attend by interactive technology are present for quorum purposes. Minn. Stat. § 13D.02, subd. 2.
- D. Remote Monitoring.** If interactive technology is used to conduct a meeting, to the extent practical, a public body must allow a person to monitor the meeting electronically from a remote location. Minn. Stat. § 13D.02, subd. 3. The law used to allow the public body to require the person making such a connection pay for documented marginal costs that the public body incurred as a result of the additional connection. The legislature removed this language in 2021, so the public body can no longer require this payment.
- E. Notice.** If interactive technology is used to conduct a meeting, the public body must provide notice of the regular meeting location and notice of any location where a member of the public body will be participating in the meeting by interactive technology, except for the locations of members participating pursuant to paragraph B above. Minn. Stat. § 13D.02, subd. 4. Otherwise, the same notice requirements discussed earlier in section III apply to a regular, special, or emergency meeting that is conducted by interactive technology. Id.
- F. Record.** The minutes for a meeting conducted by interactive technology must reflect the names of any members appearing by interactive technology and state the reason or reasons for the appearance by interactive technology. Minn. Stat. § 13D.02, subd. 6.

VII. Closing a Meeting

A meeting cannot be closed simply because private or confidential data will be discussed, unless one of the exceptions discussed below is met. So long as the meeting is not required to be closed, private data can be discussed in public without liability or penalty if the disclosure relates to a matter within the scope of the public body’s authority and is reasonably necessary to conduct the public body’s business. Minn. Stat. § 13D.05, subds. 1(a), (b).

A. Valid Reasons to Close a Meeting

1. Labor Negotiations

A meeting may be closed to discuss strategy for labor negotiations, but the closed meeting must be tape recorded and the tape retained for two years after the contract is signed. Minn. Stat. § 13D.03, subds. 1(b), 2(a)-(b). The recording must be available to the public after all contracts are settled

for the current budget period. Id. subd. 2(b). The OML does not mandate how public bodies make recordings “available” to the public. Adv. Op. 21-004. The DPO stated public bodies may decide how to best implement this requirement but that posting the recordings on a website or providing access upon request certainly satisfies the requirement. Id.

A majority vote is required to close the meeting, and a written roll must be taken of the members and other persons present at the closed meeting. Id. subds. 1(b), 1(d). The written roll must be made available to the public after the closed meeting. Id. subd. 1(d).

2. Preliminary Consideration of Charges Against an Employee

A meeting must be closed for preliminary consideration of allegations or charges against an employee. Minn. Stat. § 13D.05, subd. 2(b). The meeting must be open if the employee requests that it be open. Id. If the meeting is closed, it must be tape recorded. Id. subd. 1(d).

If the public body concludes that discipline may be warranted as a result of the allegations or charges, future meetings related to the allegations or charges must be open. Id. subd. 2(b).

3. Performance Evaluations

A meeting may be closed to evaluate an employee’s performance. Minn. Stat. § 13D.05, subd. 3(a). The meeting must be open if the employee requests that it be open. Id. Before the meeting is closed, the employee must be identified. Id. If the meeting is closed, it must be tape recorded, and at the next open meeting, the public body must summarize its conclusions regarding the evaluation. Id. subds. 1(d), 3(a).

The DPO deemed the following statements to be insufficient to fulfill the public bodies’ statutory obligation to summarize their conclusions regarding the evaluations:

- a. “[The board] discussed the [the employee’s] strengths and weaknesses.”
- b. “As a result of that review, strengths were noted and areas of improvement were defined. The board developed goals regarding communication and leadership.”

- c. “Areas of growth were identified and [the employee’s] evaluation is an ongoing process.”
- d. Regarding an evaluation that was conducted at a workshop, “I wasn’t at the actual workshop because I was out of town. But I’ll summarize what I think happened and you guys can affirm it. Basically we talked about [the City administrator’s] performance, her strengths, weaknesses, where she needs improvement. Overall, I think it was satisfactory.” Two council members responded, “Nope, that’s about right” and “That’s pretty close.”

Adv. Op. 14-007.

4. Attorney-Client Privilege

A meeting may be closed if permitted by the attorney-client privilege. Minn. Stat. § 13D.05, subd. 3(b). The extent of the privilege for closing an open meeting, however, is not as broad as the privilege itself.

Generally, a meeting may be closed to discuss matters pertaining to pending or threatened litigation. A meeting cannot be closed to seek general legal advice that is basic to the deliberative process of any public body.

The Minnesota Court of Appeals has seemingly limited the ability to close meetings under the attorney-client privilege to only those circumstances where the public body can demonstrate that there is an absolute need to discuss the matter outside the public arena. See Prior Lake American v. Mader, 642 N.W.2d 729 (Minn. 2002).

5. Acquisition/Sale of Land or Personal Property

A meeting may be closed in conjunction with discussions surrounding the acquisition or sale of land or personal property, but detailed procedures must be followed. Minn. Stat. § 13D.05, subd. 3(c).

6. Security Briefing

A meeting may also 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 that information would pose a danger to public safety or compromise security

procedures or responses. Minn. Stat. § 13D.05, subd. 3(d). However, financial issues related to security matters must be discussed and all related financial decisions must be made during open session. Id.

Before closing the meeting, the public body must describe the subject to be discussed and refer to the facilities, systems, procedures, services or infrastructures to be considered during the closed meeting. Id. The closed meeting must be tape recorded, and the tape preserved for at least four years. Id.

7. Discussion of Certain Types of Data

Any portion of a meeting must be closed where the following types of data are discussed:

- a. Data identifying alleged victims or reporters of criminal sexual conduct, domestic abuse, maltreatment of minors or maltreatment of vulnerable adults.
- b. Active investigative data. See definition in Minn. Stat. § 13.82, subd. 7.
- c. Internal affairs data relating to allegations of misconduct of law enforcement personnel.
- d. Educational data, health data, medical data, welfare data and/or mental health data that are not public data under the Minnesota Government Data Practices Act and other specified statutes, and/or an individual's medical records under the Minnesota Health Records Act. Minn. Stat. § 13D.05, subd. 2(a).

B. Procedures for Closed Meetings

During the open portion of the meeting, the public body must state on the record the specific basis for closing the meeting and describe the subject matter that will be discussed in the closed portion of the meeting. Minn. Stat. § 13D.01, subd. 3. The specific basis should not include any non-public data.

Materials reviewed in a closed meeting should not be distributed to the public. The meeting minutes should simply state that a closed meeting was held and the basis for closing the meeting.

No business can be conducted during a closed meeting – all business must be conducted when the public body reconvenes in open session.

VIII. Use of Social Media

Minnesota Statutes section 13D.065 states that the use of social media by members of a public body does not violate the OML so long as the social media use is limited to exchanges with all members of the general public. Note that for purposes of this section, email is not considered a type of social media. Apart from this exclusion, however, social media is not defined.

Practically, this means that members of a public body may comment on issues on a blog, on Twitter, or on Facebook without fear of violating the OML so long as the exchanges are with all members of the general public, which requires the general public to have access to that particular type of social media.

Public body members should refrain from engaging in discussions about official business over social media that include a quorum or more of public body members.

IX. Penalties for Violations

A. Civil Penalty

Each person who intentionally violates the OML can be fined up to \$300 for each violation, and the penalty cannot be paid by the municipality. Minn. Stat. § 13D.06, subd. 1.

B. Removal

If a member of a public body is involved in three separate violations of the OML, which are proven in three separate actions, the member could be removed. Minn. Stat. § 13D.06, subd. 3(a); Brown v. Cannon Falls Twp., 723 N.W.2d 31 (Minn. App. 2006).

C. Costs and Attorneys' Fees

A court may award up to \$13,000 for the plaintiff's costs and attorneys' fees. Minn. Stat. § 13D.06, subd. 4(a). The municipality may, but is not required to, pay the award. Id. subd. 4(c).

D. Defense Costs

A municipality is not required to reimburse members for the cost of defending an OML claim under the Municipal Tort Liability Act because it is not an action for damages. Minn. Stat. § 466.07; Kroschel v. City of Afton, 512 N.W.2d 351 (Minn. App. 1994) rev'd on other grounds, 524 N.W.2d 719 (Minn. 1994).

CONFLICTS OF INTEREST

I. Statutory Conflict of Interest

Minnesota Statutes section 471.87 specifies that a public officer who is authorized to take part in any manner in making any sale, lease, or contract in that officer's official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. This section applies to city officials, and would include contracts involving the purchase or sale of any property by or to the city (a direct conflict of interest). See also Red Wing City Code § 2.15, subd. 2.

The statute does not specify that abstention from voting would remedy what would otherwise be a conflict of interest. Op. Atty. Gen. 90E-6 (Jun. 15, 1988); Op. Atty. Gen. 90-E-5 (Nov. 13, 1969). Instead, the language is "who is authorized to take part in any manner in making . . ." Minn. Stat. § 471.87.

Violation of the statute is a gross misdemeanor, but all elements must be present: 1) the interest must be voluntary; 2) the interest must be financial; and 3) there must be a sale, lease or contract.

Examples of transactions that have been prohibited include:

- A. A public body's contract with a newspaper in which one member was an interested party.
- B. Compensating a member of a county welfare board for services as an appraiser.
- C. County's contract for testing cattle with a commissioner who was a veterinarian.

There is a list of exceptions in section 471.88. Refer to the list when questions arise. In these circumstances, the interested officer is to disclose their interest at the earliest stage and abstain from voting or deliberating on any contract in which they have an interest. The exceptions only apply when a unanimous vote of the

remaining members of the public body approves the contract. The following are some of the exceptions:

- A. The designation of an official newspaper in which a member is an interested party, when it is the only newspaper complying with the statutory requirements relating to the designation.
- B. A contract with a cooperative association of which a member is a share/stockholder but not an officer or manager.
- C. A contract for which competitive bids are not required by law.¹
- D. The public body may apply for and accept a state or federal grant for housing, community, or economic development in which a member may benefit, if the member abstains from voting on measures related to the grant.
- E. Loans or grants to a member from a local development organization. If a member applies for a loan or grant, the member must disclose as part of the official minutes of a public meeting of the governmental unit that the member has applied for a loan or grant.

II. Common Law Conflict of Interest

Conflicts of interest under the common law are broader than the statutory conflicts of interest and may exist where a statutory conflict of interest does not. The purpose of the common law rule is to ensure that a decision will not simply be an arbitrary reflection of a member's own selfish interests. Lenz v. Coon Creek Watershed Dist., 153 N.W.2d 209, 219 (Minn. 1967). See also Red Wing City Code § 2.15, subd. 2.

A conflict of interest exists under the common law when a public official has any "direct interest" in the outcome of a matter before the public body. See, e.g., Lenz, 153 N.W.2d 209, 219; E.T.O., Inc. v. Town of Marion, 375 N.W.2d 815 (Minn. 1985). Courts have generally interpreted a "direct interest" as a financial interest.

The following factors are considered by courts to determine whether a conflict of interest exists:

- A. The nature of the decision to be made;

¹ If the City enters into this type of contract, the procedures in Minnesota Statutes section 471.89 must still be followed, or the contract may be void. Section 471.89 requires that the City authorize the contract in advance by adopting a resolution setting out the essential facts and determining that the contract price is as low or lower than the price at which the commodity or services could be obtained elsewhere. In addition, the interested officer must file an affidavit with the clerk of the governing body providing information regarding the contract and the officer's interest in the contract.

- B. The nature of the pecuniary interest;
- C. The number of interested officials participating in making the decision;
- D. The need, if any, to have interested officials make the decision; and
- E. The other means available, if any, to ensure the interested officials will not act arbitrarily to further their own interests (e.g., the opportunity for review). Lenz, 153 N.W.2d 209, 219.

If a common law conflict of interest exists, the member is prohibited from voting on the matter. However, unlike statutory conflicts of interest, a common law conflict of interest is cured by abstaining from a vote on the matter. See Op. Atty. Gen. Dec. 5, 2002; Op. Atty. Gen. 90E-6 (Jun. 15, 1988).

III. How to Avoid Conflicts of Interest

Public officials should expect to be the subject of regular public scrutiny. As such, public officials must accept restrictions on their conduct that might be viewed as burdensome to the ordinary citizen. For example, public officials must avoid impropriety and the appearance of impropriety. While there is no test for what constitutes the appearance of impropriety, ask whether a person aware of the facts might reasonably entertain a doubt that the public official would be able to act with integrity, impartiality, and competence.

There are many statutes dealing with ethics in government, and all of them seek to ensure public confidence in public officials is not eroded by irresponsible or improper conduct by public officials. The Minnesota Campaign Finance and Public Disclosure Board provides advisory opinions on matters dealing with ethics. See Minn. Stat. § 10A.02, subd. 12(a). Selected advisory opinions may be found online at www.cfboard.state.mn.us/ao.

ACCEPTANCE OF GIFTS

I. General Prohibition

A local official may not accept gifts from a person or a representative of a person or association that has a direct financial interest in decisions the official is authorized to make. Minn. Stat. §§ 471.895, 10A.071. A gift is defined as money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, which is given and received without the giver

receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071, subd. 1(b). See also Red Wing City Code § 2.15, subd. 2.

II. Exceptions

A local official may accept the following:

- A. “Contributions” – defined as anything of monetary value given or loaned to a candidate or committee for a political purpose. A contribution does not include a service provided without compensation by an individual. See Minn. Stat. § 211A.01, subd. 5.
- B. Services to assist in the performance of official duties, including, but not limited to, providing advice, consultation, information and communication in connection with legislation and services to constituents.
- C. Services of insignificant monetary value.
- D. A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause.
- E. A trinket or memento costing \$5 or less.
- F. Informational material of unexceptional value.
- G. Food or a beverage given at a reception, meal, or meeting away from the official’s place of work by an organization before whom the official appears to make a speech or answer questions as part of a program.
- H. Gifts given because of a recipient’s membership in a group, so long as the majority of the group members are not local officials and other members of the group receive or are offered equivalent gifts.
- I. Gifts given by a family member, unless the gift is given on behalf of someone who is not a family member.
- J. Food or beverage given to national or multistate conference attendees at a reception or meal. The majority of dues paid to the national or multistate organization of governmental organizations or public officials must be paid from public funds and an equivalent gift must be given or offered to all other attendees. Minn. Stat. § 471.895, subd. 3.

City of Red Wing City Council and City Advisory Boards and Commissions Code of Conduct

City of Red Wing City Code Section 2.15: Code of Conduct.

Purpose.

The Mayor and City Council of the City of Red Wing determines that a code of conduct for its members, as well as the members of the various advisory boards and commissions of the City of Red Wing, is essential for the public affairs of the city. By eliminating conflicts of interest and providing standards for conduct in city matters, the city council hopes to promote the faith and confidence of the citizens of Red Wing in their government and to encourage its citizens to serve on its council and boards and commissions.

Standards of Conduct.

No elected official or a city advisory board or commission member may knowingly:

- a. Violate the open meeting law.
- b. Participate in a matter that is before the city council or relevant board that affects the person's financial interests or those of a business with which the person is associated, unless the effect on the person or business is no greater than on other members of the same business classification, profession, or occupation.
- c. Use the person's public position to secure special privileges or exemptions for the person or for others.
- d. Use the person's public position to solicit personal gifts or favors.
- e. Use the person's public position for personal gain.
- f. Except as specifically permitted pursuant to Minnesota Statute 471.895, accept or receive any gift of substance, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or any other form, under circumstances in which it could be reasonably expected to influence the person, the person's performance of official action, or be intended as a reward for the person's official action.
- g. Disclose to the public, or use for the person's or another person's personal gain, information that was gained by reason of the person's public position if the information was not public data or was discussed at a closed session of the city council or committee.
- h. Disclose information that was received, discussed, or decided in conference with the city's legal counsel that is protected by the attorney-client privilege unless a majority of the city council has authorized the disclosure.

Except as prohibited by the provisions of Minnesota Statute Section 471.87, there is no violation of item b. of this section for a matter that comes before the council, board, or commission, if the member of the council, board, or commission publicly discloses the circumstances that would violate these standards and refrains from participating in the

discussion and vote on the matter. Nothing herein shall be construed to prohibit a contract with an elected or appointed official under the circumstances described under Minnesota Statute Section 471.88, if proper statutory procedures are followed.

Complaint, Hearing.

Any person may file a written complaint with the City Clerk alleging a violation of the aforementioned standards of conduct. The complaint must contain supporting facts for the allegation. The city council may hold a hearing after receiving the written complaint or upon the council's own volition. A hearing must be held only if the city council determines (1) upon advice of the city attorney, designee, or other attorney appointed by the council, that the factual allegations state a sufficient claim of a violation of these standards or rise to the level of a legally-recognized conflict of interest, and (2) that the complaint has been lodged in good faith and not for impermissible purposes such as delay. The city council's determination as to whether to hold a hearing must be made within 30 days of the filing of the allegation with the city clerk, if possible. The council may grant an extension to this 30-day timeline if additional time is needed to adequately investigate the complaint. If the council determines that there is an adequate justification for holding a hearing, the hearing must be held within 30 days of the city council's determination. The purpose of the hearing is to provide the person accused with the opportunity to be heard. If, after the hearing, the council finds that a violation of a standard has occurred or does exist, the council may, at the same meeting or a future meeting, censure the person, refer the matter for criminal prosecution, request an official not to participate in a decision, remove an appointed member of a board or commission from office, and/or any other action within the council's authority that the council deems appropriate.



Board and Commission Policy

BACKGROUND

The City Council, through the Charter, has the authority to establish advisory boards and commissions. The following are those currently established: Airport Board, Advisory Planning Commission, Arts & Culture Commission, Harbor Commission, Heritage Preservation Commission, Human Rights Commission, Library Board, Sister Cities Commission, Sustainability Commission, and Youth Commission.

Except for the Advisory Planning Commission and the Charter Commission, the Council has authority to create advisory boards or commissions as it deems appropriate. Each city in Minnesota must have an Advisory Planning Commission and each city that is organized as a Home Rule City must have a Charter Commission.

In addition to the advisory boards listed above, the Council has created two boards of authority. They are the Housing and Redevelopment Authority and the Port Authority, collectively referred to as "authority boards." Each has been created by resolution and falls under the guidelines of the State's empowering statutes. Please see Special Agency Provisions of this policy for further details.

The City, through an estate gift, has received the T.B. Sheldon Theatre and is required, through the terms of the gift, to have an Auditorium Board. The board, to be known as The T. B. Sheldon Auditorium Board, was created through a city ordinance. Please see Special Agency Provisions of this policy for further details.

All board and commission appointments will be made by the Mayor with confirmation from the City Council with the exception of the Charter Commission and the Harbor Commission.

The purpose and overview of each Board and Commission is described in the Overview of Boards and Commissions document. This policy does not apply to Joint Powers Boards.

PURPOSE

The purpose of this policy is to set forth the organizational structure of the Council's advisory boards and commissions, the Auditorium Board, and the two authority boards.

ORGANIZATION OF BOARDS, COMMISSIONS, AND AUTHORITIES

- A. Each board and commission is authorized to have a maximum number of members.
- B. The terms of board and commission members are three years expiring on December 31, unless specified by the Charter or state statutes or other controlling documents. (The Housing and Redevelopment Authority Board, T.B. Sheldon Auditorium Board, and Charter Commission are the exceptions).
- C. Persons interested in being a board or commission member must complete an application and return it to City Hall. Applications are available and can be submitted online at the City of Red Wing's website at www.red-wing.org. Paper applications can be filled out and mailed or delivered to City Hall. The application will be forwarded to the Mayor or responsible party for consideration.
- D. Except where provided in the City Charter and the City Code, board and commission members must be residents of the City of Red Wing for at least six months. The Mayor will direct the City Administration staff to confirm the residency of each applicant through one of the following means:
- Election roster
 - Utility billing
 - State ID
 - Affidavit signed by a Red Wing resident that includes the address of the individual signing the affidavit, the applicant's address, and the affiant's sworn statement that the applicant has lived in Red Wing for at least six months.
- If staff are unable to confirm an applicant's residency through these methods, staff may look at additional factors as noted in Chapter 2, Section 2.08, Subd. 4 of the City Code, including, but not limited to, other evidence that demonstrates the individual lives within the City limits. The applicant has the burden to provide proof of residency to City Administrative staff.
- E. Each board member or commissioner is eligible to serve two terms.
- F. Board or commission members may be appointed to serve a partial term.
- G. For boards and commissions with three-year terms, a board and commission partial term is defined as fewer than 18 months. A term of 18 months or more will be considered a complete term. Boards and commissions with longer terms, such as the Housing and Redevelopment Authority Board and the T.B. Sheldon Auditorium Board, will define partial terms as half of the regular term.
- H. Board or commission members can return to two full additional terms if they are off for at least 12 months.
- I. Board and commission members can only serve on one advisory board at a time with

the exception of the Charter Commission. Any member of the Charter Commission can also serve at the same time on any other advisory board of the city.

- J. The Charter Commission is a statutory obligation for all Home Rule Cities. Minnesota Statutes Section 410.05, Subdivision 1 describes the appointment process. Subdivision 2 describes the terms of the Commissioners. Each Charter Commissioner serves a four-year term.
- K. One member of the Library Board can be a resident of rural Goodhue County.
- L. Two Airport Board members can be residents of Pierce or Goodhue County.
- M. The Harbor Commission consists of up to seven members. Three Harbor Commissioners will be appointed by the Port Authority President and confirmed by the Port Authority Board, and three Harbor Commissioners will be appointed by the Mayor and confirmed by the City Council. The seventh commissioner will be appointed by the Mayor and confirmed by the City Council and by the Port Authority Board.
- N. Members of the Human Rights Commission, Sister Cities Commission, and Sustainability Commission may be drawn from within the limits of the Independent School District 256. The number of nonresident members must not constitute a quorum or more of the commission or board.
- O. Board and commission members will receive no compensation for service to the city. Authorities can determine compensation without City Council authorization. Board and commission members serving a minimum of one full term will receive a nominal gift for their service at the end of their term(s) of service.
- P. Board and commission members will be appointed to their position by the Mayor and confirmed by the City Council, per the City Charter, with the exception of the Charter Commission.
- Q. The Charter Commission consists of not less than seven and no more than fifteen members. The City Council can appoint up to seven members and the Charter Commission can appoint up to eight members.
- R. City Administration staff will maintain the official board, commission, or authority membership list, which contains appointment and reappointment dates, term expiration dates, and designation of appointment body, if applicable.
- S. Each board and commission will have a staff liaison which is appointed by the Council Administrator.
- T. The City Attorney will be the legal counsel to each board and commission unless specifically authorized by the City Council to seek outside legal aid. The Charter

Commission can elect, per state statute, to spend up to \$1,500 to employ an attorney and other personnel to assist in amending or revising the City Charter.

- U. Boards or commissions may have adult and/or student advisory members. Advisory members will be appointed by the Mayor and confirmed by the City Council, to serve terms consistent with the board or commission they are appointed to. Advisory student appointees will be on a June 1 – May 31 annual term. Advisory members are non-voting members, are not counted for purposes of a quorum, and may live outside of the city limits.
- V. The City Council Administrator serves as an ex-officio member on all boards, commissions, and authorities and, as such, is not counted for the purpose of determining a quorum and does not have the right to vote.
- W. Board and Commission members may be issued iPads to utilize Granicus for agenda preparation/distribution efficiency. Members may access Granicus on personal iPads. It will be up to the City to determine which boards and commissions are issued iPads. Distribution will depend on the size of the agenda and materials, the frequency of meetings, and the budget.

PROCEDURES FOR BOARDS AND COMMISSIONS

- A. On the fourth Thursday in February of each year, the City will honor each outgoing board or commission member who has served at least a full term with a nominal gift. The Mayor and/or Council President will award the gift at a recognition event. Boards and commissions should not accept gifts from the public with the exception of the Sister Cities Commission. The Sister Cities Commission can accept gifts from Red Wing's sister cities or its delegates. Sister Cities Commission members can accept nominal gifts from sister cities delegations. No other gifts from the City of Red Wing will be accepted by board and commission members.
- B. In the first month of appointment, all new board and commission members will receive orientation materials from the staff liaison, including the current roster of members for the board or commission they have been appointed to, rules the board or commission operates under, and this Board and Commission Policy.
- C. At the first regular meeting of the calendar year, each board and commission will consider the following items:
 - 1. Swear in any new members
Swearing in of new members shall be done by the Mayor. In the Mayor's absence, the Council liaison shall swear in the new members. In the Mayor's and Council liaison's absence, the staff liaison may swear in the new members. Certificates, once signed, should be filed in the office of the City Clerk.

2. Election of Chairperson and Vice Chairperson

Boards and commissions have the right to elect or appoint additional positions such as a secretary or subcommittee chair. Individuals can only hold the position of Chair or Vice Chair for a maximum of two consecutive years.

3. Adoption of rules of order

The City Council will adopt rules of order at its organizational meeting. Following their adoption, boards and commissions will be asked to adopt Rules of Order and Procedures that are similar to the City Council's adopted Rules of Order and Procedures. Please refer to the most current Rules of Order and Procedures for specifics.

4. Creation of an annual work plan

Each board and commission should discuss in January its goals for the upcoming year. This can be done in a regular meeting or at a separate meeting. Part of the discussion should be the anticipated use of funds within the budget set for the board or commission in the current year. Educational opportunities in the form of conferences, programs, or training are permissible budget items for boards and commissions limited to funds available in the respective budgets.

5. Notice of Board and Commission Training

Each year the City will conduct board and commission training for all members on pertinent public laws and/or applicable policies or procedures. The City will determine the contents of such training and how the training will take place.

- D. Agendas, minutes, and supporting materials for all regular meetings, special meetings, and workshops will be prepared for each board and commission with consultation between the board or commission chair and staff liaison.
- E. The staff liaison will be required to post 72 hours' notice of all regular meetings, special meetings, and workshops. These notices will be sent to administration for distribution and posting.
- F. Minutes and agendas for all regular meetings, special meetings, and workshops will be sent to all board and commission members at least three days (72 hours) prior to the meeting date. The Mayor and City Council will receive the board and commission packet at the same time as board and commission members via email.
- G. Board or commission members are expected to attend the majority of regular and special meetings and workshops. However, unavoidable conflicts occur, especially with boards and commissions that are very active, and/or have a significant workload that may drive special meetings. Board and commission members who have unavoidable absences shall contact the staff liaison to request an excused absence. Excused absences will be granted to all members who contact the staff liaison in advance of the

meeting. Members who miss three consecutive meetings that are unexcused, and/or miss 50 percent of regularly scheduled meetings and workshops in a 12-month period will be contacted by the staff liaison. The staff liaison will keep an attendance roster and monitor absences.

- H. The advisory commissions and boards of the Council are not subject to the Open Meeting Law (OML) because the Council has not authorized them to make any decisions on behalf of the City or the Council, and they do not consist of a quorum or more of elected officials. The Red Wing Council authorizes advisory commissions and boards to conduct their meetings in-person or virtually without complying with the OML requirements related to virtual meetings. The advisory commissions and boards, however, are expected to comply with the following procedures: allow public access to their meetings, either virtually or in-person; post notice of meetings 72 hours in advance of the meeting; ensure minutes of each meeting are prepared; committees must be less than a quorum; any gathering of board or commission members outside of a meeting must be less than a quorum unless noticed accordingly; and serial meetings or communications are prohibited. (Please note that the Port Authority, the Housing and Redevelopment Authority, the T. B. Sheldon Auditorium Board, and the Charter Commission are subject to the OML.)
- I. All regular and special board and commission meetings will take place in the Red Wing City Council Chambers or virtually as determined by the board or commission and will be broadcast live on Channel 6, the local government access channel, and streamed live on the City's website. Recordings of meetings will be rebroadcast on Channel 6 and may be viewed any time on the City's website. In the event a board or commission meeting in which action is to be taken is moved off-site, the meeting shall be digitally recorded, unless approved by the City Council or if it is physically impossible or impractical to do so. All board and commission workshops will be audio recorded.

SPECIAL AGENCY PROVISIONS

- The Port Authority and Housing and Redevelopment Authority (HRA) have taxing authority.
- The Port Authority Board was established in 1985 per Enabling Resolution No. 2226 adopted by the Red Wing City Council on July 8, 1985, and amended February 12, 1996, (per Resolution No. 3643) pursuant to Minnesota Statutes Section 469.081; and amended March 8, 1999, (per Resolution No. 4185); and amended July 12, 2010, (per Resolution No. 6136); and amended August 22, 2011, (per Resolution No. 6312); and amended May 12, 2014, (per Resolution No. 6685); and amended November 28, 2016, (per Resolution No. 7030).
- On June 28, 2011, the Red Wing City Council adopted Resolution No 6291, approving legislation in laws of Minnesota 2011, Chapter 17, Section 1, changing the length of a term for a Port Authority member from six years to three years, which applied retroactively to all terms beginning on or after January 1, 2011.

- The Housing and Redevelopment Authority was established in 1966 per Resolution adopted by the Red Wing City Council at a meeting held on March 3, 1966, pursuant to Minnesota Statutes Section 469.003. Each board member serves a five-year term as established by state law.
- The T. B. Sheldon Auditorium Board was established by Resolution of October 7, 1904, and subsequently amended in 1985 by Ordinance No. 12, Third Series. Each board member shall hold office for a term of five years for up to three successive terms. Terms start on the first of January.
- The Port Authority, HRA, and Sheldon Auditorium can set rules of order different than the City Council but will have rules on file that were approved by their respective boards.
- The Sheldon Auditorium Board and both authority boards can elect to have a separate attorney. Employees of the Sheldon Auditorium Board and Port Authority Board have access to the City Attorney because they are city employees.
- The Port Authority, HRA, and Sheldon Auditorium can receive funds on their own behalf without City Council approval.

ROLE OF THE COUNCIL LIAISON

The Council President shall appoint Council Members to serve as liaisons to all boards and commissions. Council Members are not voting members of boards and commissions, with the exception of the Port Authority.

The appointments will occur at the first meeting of the regular City Council meeting following the organizational meeting. The appointments can be changed by the City Council President, based on a request of the Council Member or for non-observance of the guidelines listed below.

- Council liaisons are held to the same attendance standard as board and commission members (see Page 5, Section G).
- Council liaisons are expected to sit at the table of the board or commission.
- Council liaisons are expected to participate in the discussion and offer suggestions on how to work effectively with the City Council.
- Council liaisons are expected to relay issues to the City Council as requested by the Chair of the board and commission.

ROLE OF THE STAFF LIAISON

Each board and commission will have a staff liaison, and each staff liaison will have a job description. Each staff liaison will be appointed by the Council Administrator for each board and commission. Each staff liaison will support its board or commission by providing clerical support, processing financial requests, notifying members of training opportunities, coordinating all legal questions, and generally providing guidance. All work projects

anticipated by the board and commission must be approved as a work project by the staff liaison's supervisor. Staff is expected to follow the guidelines listed below:

- Staff liaisons are expected to attend all of their assigned board or commission meetings and if they cannot, they must find a staff replacement to attend the meeting.
- Staff liaisons shall cause minutes of the meetings to be kept and in all cases approved minutes shall be electronically filed in Laserfiche.
- Staff liaisons will work with the chair of the board or commission to create the agenda for the monthly meeting and/or workshop and distribute the agenda and minutes at least three days (72 hours) prior to the board or commission meeting.
- Staff liaisons are expected to provide support and information to the board or commission, but not participate in the debate of issues or vote on any issues.
- Staff liaisons are responsible to get action items from boards and commissions on the City Council agenda in a timely manner.
- Staff liaisons are responsible for processing all financial transactions, including reimbursements and payment authorizations.

ADVISING CITY COUNCIL

Each board and commission is to advise the City Council on matters that fall within their responsibilities. Council liaisons shall report during the "Board and Commission" portion of the City Council agenda. Boards and commissions are encouraged to provide the City Council with formal reports on a scheduled basis, whether that is quarterly or semi-annually, etc. All agenda items must be submitted the week prior to the City Council meeting.

EDUCATION AND ADVOCACY

Each board and commission may educate the public and may take a specific position on issues that fall within their mission statement. Positions of boards and commissions may or may not be adopted by the City Council. Unless the City Council provides express permission, any advocacy position of a board or commission may not be portrayed as the position of the City Council or the City of Red Wing.

Boards and commissions may use city funds for the purpose of educating the public, if funds are available in the board's or commission's budget. In educating the public, boards and commissions must present the information as a neutral educator and refrain from any type of endorsement of a certain viewpoint. They cannot use city funds to advocate a position on any issue without City Council approval.

FACILITY USE

Boards and commissions may use City facilities for educational purposes at no cost. To do so, the board and commission should reserve the facility through their staff liaison. A board or commission may reserve City facilities for advocacy purposes only upon prior City Council approval. For such advocacy purposes, the board or commission must reserve the facility in the same manner as any other private group or individual, including paying the general facility rental fee; not utilizing taxpayer dollars.