

Open Meeting Law & Council Powers

MMCI – Year One
May 6, 2024
Melissa Manderschied
Bloomington City Attorney



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Scan the QR code to check in on your phone
A confirmation email will be sent when you successfully check in.
Scan through the Whova app
From the home page, tap "QR Check-in" under Additional resources.

Year 1: Open Meeting Law
May 6, 2024, 7:45 AM – 10:30 AM



Scan code to check out of your session
Read directions below
DO NOT USE YOUR CAMERA APP

CHECK IN

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WARM UP QUESTIONS

■ **VERSUS GAME**

- Lakes vs. Oceans
- Dogs vs. Cats
- Pancakes vs. Waffles
- Coffee vs. Tea
- Pepsi vs. Coke
- Plain M&M vs. Peanut M&Ms

- How many of you have some knowledge about the topics we're discussing this morning?

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OPEN MEETING LAW

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OPEN MEETING LAW: WHO IS COVERED?

- Governing body of the city
- Any committee, subcommittee or board of a public body
- Examples:
 - City council
 - Personnel committee of city council
 - Planning commission
 - HRA board

Minn. Stat. § 13D.01

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OPEN MEETING LAW: WHAT IS A MEETING?

- General rule: all **meetings** must be open to the public.
- **Types** of meetings: Regular, Special, Emergency
- A meeting is a **quorum** or more of members, at which members receive or discuss information on matter that is or will come before the council

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OPEN MEETING LAW: WHAT IS A MEETING?

- Not a meeting:
 - Chance & social gatherings (if no busn discussed)
 - Phone calls or letters, generally
 - Email can tricky – no “reply all” or serial mtgs
 - Social media*

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OPEN MEETING LAW: WHAT MAKES A MEETING “OPEN”?

- All meetings must be **open to the public**
 - Within city limits
 - Accessible
 - Notice of meeting provided
 - Public Agenda
 - Votes recorded

Minn. Stat. § 13D.01

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OPEN MEETING LAW: REMOTE PARTICIPATION

■ Interactive technology

Minn. Stat. § 13D.02

- All **members** must be able to **see and hear** each other
 - **Public** at regular location must be able to **see and hear** all discussion
 - At least one member must be physically present at regular meeting location
 - All votes conducted by roll call
 - Each remote location must be **open and accessible** to the public (*except ...*)
 - Meeting **notice** includes remote sites
 - To the extent practical, must allow a person to monitor the meeting electronically from a remote location
- **Record** must reflect presence (in person or remote & reason remote)

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OPEN MEETING: NOTICE REQUIREMENTS

- Regular meeting: keep schedule on file at primary office
- Special meeting: 3 days' notice (agenda)
 - Post on principal bulletin board or, if none, usual meeting room
 - Notice states time, place and purpose of meeting
 - Send notice to anyone who asked to be notified; can require person to refile annually but must provide 60 days' notice of the expiration
- Can only discuss items on the agenda

Minn Stat §13D.04

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OPEN MEETING: NOTICE REQUIREMENTS

Minn Stat §13D.04

- Emergency: make good faith efforts to notify media
 - Notice must include the subject of the meeting
 - “Emergency” means circumstances that in the judgment of the public body require immediate consideration
 - Minutes must include specific description of any matters that do not directly relate to the emergency but are discussed at the meeting
- Recessed meeting: no add’ t notice req’d if time and place of continued meeting was est. at first meeting and recorded in minutes
- Closed meeting: same notice as open meeting
- Actual notice: anyone with 24 hours’ notice can’t complain about lack of notice

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OPEN MEETING: AGENDA MATERIALS

- Provide at least one copy of agenda materials in meeting room
 - Includes printed materials that relate to agenda items that are distributed to all members at or prior to the meeting or are available in the meeting room for the members
- Not required to provide materials are classified as not public
- Not required to provide materials relating to agenda items of closed meeting (but NOTE: OML does not change classification under MGDPA)

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QUESTIONS

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MEETINGS THAT **MAY** BE CLOSED

- Labor negotiation strategy **Minn. Stat. §§ 13D.03; 13D.05**
- Performance evaluation of person **who is subject to council authority** (must provide summary at next public meeting)
- Attorney-client privilege – pending or threatened litigation – attorney must participate
- Security briefings; financial decisions must be at open meeting
- Property – to determine asking price if selling real or personal property; to review nonpublic appraisal data; to develop or consider offers or counteroffers for purchase or sale of property

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MEETINGS THAT **MUST** BE CLOSED

- Discussion of data that identifies victims or reporters of certain crimes
- Discussion of active criminal investigative data or law officer misconduct
- Discussion of health data, medical data, etc. under specified statutes
- Preliminary consideration of allegations or charges against an employee who is subject to the public body's authority

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CLOSED MEETINGS: PROCEDURES

- Before closing ANY meeting, **council** (not staff or attorney) must state on the record the specific reason permitting the meeting to be closed and must describe the subject to be discussed
- Consider using resolution with all the details
 - Recording
 - Reopening
 - Reason
 - etc

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CLOSED MEETINGS: PROCEDURES

- For labor negotiation, must announce the time and place of the closed meeting at the public meeting AND must keep written roll of persons who attend, which is public
- For real estate – must identify on public record and on the tape recording the particular property that is the subject of the meeting AND must keep list of persons who attended the meeting, which is public
(NOTE: agreement must be approved at an open meeting)

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CLOSED MEETINGS: PROCEDURES

- Must tape record all closed meetings, except those closed for attorney-client privilege
 - Tapes must be retained for 3 years unless otherwise provided by law
 - Retention for labor negotiation, 2 yrs; security briefing, 4 yrs; real estate, 8 years

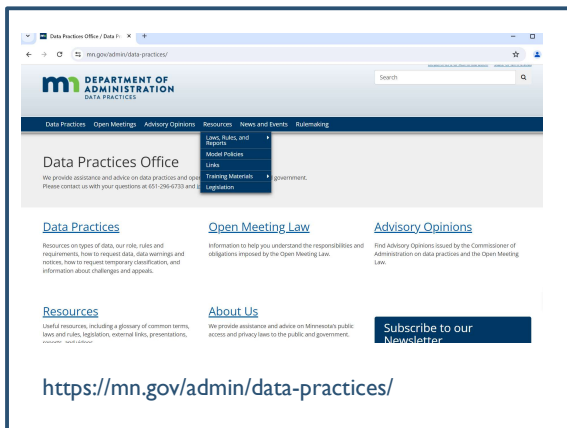
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OPEN MEETING LAW: PENALTIES FOR VIOLATION

- \$300 fine for member who intentionally violates
- Forfeiture of office if a court finds, in three or more actions, intentional violations by the same member
- Attorneys' fees of up to \$13,000 – against a member, if violation was intentional, and against complaining party if the action was frivolous
 - Award of fees against public body is required if the Commissioner of Administration issued a written opinion that the public body did not follow

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WHAT DO I DO WHEN I HAVE AN OML QUESTION?



<https://www.lmc.org/resources/meetings-of-city-councils/>

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WHAT ARE YOUR
KEY TAKEAWAYS?

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BREAK

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COUNCIL POWERS

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CITY CLASSIFICATION & STRUCTURE

- 4 Classes – by population (over 100K, 20-100K, 10-20K and under 10K); statutes provide different powers to different sized cities
- Statutory cities
 - Standard Plan - elected clerk and treasurer or clerk-treasurer
 - Plan A – appointed city clerk
 - Plan B – appointed city manager
- Charter cities – organization determined by charter

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COUNCIL AUTHORITY	
<p>Standard Plan</p> <ul style="list-style-type: none"> • Elected clerk votes • Treasurer does not vote • 3 or 5 council members 	<p>Council has policy making and administrative authority.</p> <p>Council hires and fires personnel.</p>
<p>Plan A</p> <ul style="list-style-type: none"> • City administrator • Appointed clerk • 5 or 7 council members 	

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COUNCIL AUTHORITY	
<p>Plan B</p> <ul style="list-style-type: none"> • Council/manager form • Appointed clerk and treasurer • 5 or 7 council members 	<p>Council has policy-making authority.</p> <p>Manager has administrative authority and hires and fires employees.</p>

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COUNCIL AUTHORITY - POWERS

- **Specific** – e.g., power to contract/lay out streets
- **General** – power to provide for protection of public and private property and promotion of health, safety, order, convenience and general welfare of the public
- **Express** – provided by statute or charter
- **Implied** – necessarily implied from express powers

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LIMITATIONS ON POWERS

- Constitutional
 - Separation of church & state, free speech, property rights, equal protection
- Preemption by state or federal law
 - Noise, employee residences
- Regulation by state or federal law
 - Competitive bidding, veterans' preference
- Delegation of power

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COMPETITIVE BIDDING LAW

- Sales/purchase of supplies, materials, equipment, improvement to real or personal property – **Ask:** Does this Law apply?
- Does not apply to services or real estate
- \$25,000 or below – quotes or open market
- Over \$25,000 but not \$175,000 – sealed bids or direct negotiation based on at least 2 quotes
- \$175,000 or over – sealed bids
- Award to **lowest, responsible** bidder Minn. Stat. § 471.345

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COMPETITIVE BIDDING: EXCEPTIONS

- Purchase from state contract
- Purchase from national purchasing cooperatives
- Electronic bidding
- Best value contracting
- Used public safety equipment
- Construction manager at risk (CM@R)*
- Several other exceptions Minn. Stat. § 471.345

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PUBLIC PURPOSE EXPENDITURES

- Public money may be used only for public purposes
 - In general, cannot **donate** money
 - E.g., gifts to Lions, paying claims when city not liable, no gift cards
- Statutory authority for some similar types
 - E.g., food shelves (465.039), artistic organizations (471.941), donations of surplus equipment (471.3459)
- Adopt a policy on expenditures (wellness/ee recog)
- Mix of public and private purposes – public must outweigh

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QUESTIONS

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PUBLIC IMPROVEMENTS: ASSESSMENTS

Chapter 429 allows cities to pay for public improvements by specially assessing benefited properties

Positives

- Provides a source of payment other than general taxes
- Those who benefit, pay

Concerns

- Assessments cannot exceed the “benefit” (increase in market value caused by the improvement)
- Owner has right to appeal, and benefit can be difficult to prove
- Very specific procedure that must be followed

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PUBLIC IMPROVEMENTS

- Alternatives* to special assessments:
 - Connection charges
 - Storm water utility and water utility
 - Utility fund pays for part of street improvement
 - General tax levy

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LICENSING & PERMITS

- Fees cannot be a tax (calculate costs to city)
- State law limits some authority to license – e.g., setting maximum fees
- Liquor licenses
 - Greatest discretion to approve or deny
 - May be more restrictive than state law
 - Must treat licensees similarly
 - May control location and number

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LAND USE

Minn. Stat. § 462.357

- Authority to zone is governed by state law
- Constitutional limit: regulation cannot cause a “taking”
 - Physical invasion
 - Denial of all economic use
 - Balancing of economic impact, investment-backed expectation of property owner, and nature of the regulation

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LAND USE (CONT.)

- Council's action must be reasonable, based on rational basis
 - *Opposition* of neighbors *alone* is not enough
- Must adopt written findings for denial
- Variances
 - Practical difficulties, reasonable
 - Circumstances unique to property, not caused by owner
 - Effect on character of neighborhood

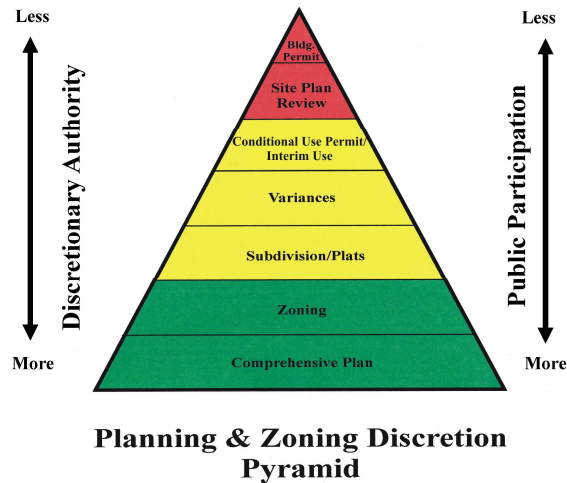
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LAND USE (CONT.)

- Non-conforming use
 - Must allow to continue and replace, but not expand
- Subdivisions
 - May require land dedication for streets, parks, wetlands, utilities
 - For parks, may require cash in lieu of land
 - Dedication must be roughly proportionate to impact of development

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LAND USE: LEVELS OF DISCRETION



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LAND USE (CONT.)

Minn. Stat. § 15.99

- 60-day Rule – state law
 - Applies to zoning and septic systems
 - Does not apply to subdivisions
 - Extension up to total of 120 days
 - Applicant can agree to longer extension
 - Failure to act results in automatic approval

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NUISANCES

- Public vs private nuisance
- Create standards (some governed by state law – natural landscaping)
- Can “abate” with process
- Collect **expenses** with taxes
- Cannot eliminate non-conforming uses
- Hazardous buildings governed by state law
- Proactive vs reactive enforcement
- Caution: weaponized code enforcement

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CRIMES

- Council can adopt ordinances with criminal penalties
- Create to fit community
- Query: will criminal prosecution remedy the situation?
- Maximum penalty is misdemeanor
 - \$1,000 fine and/or 90 days in jail

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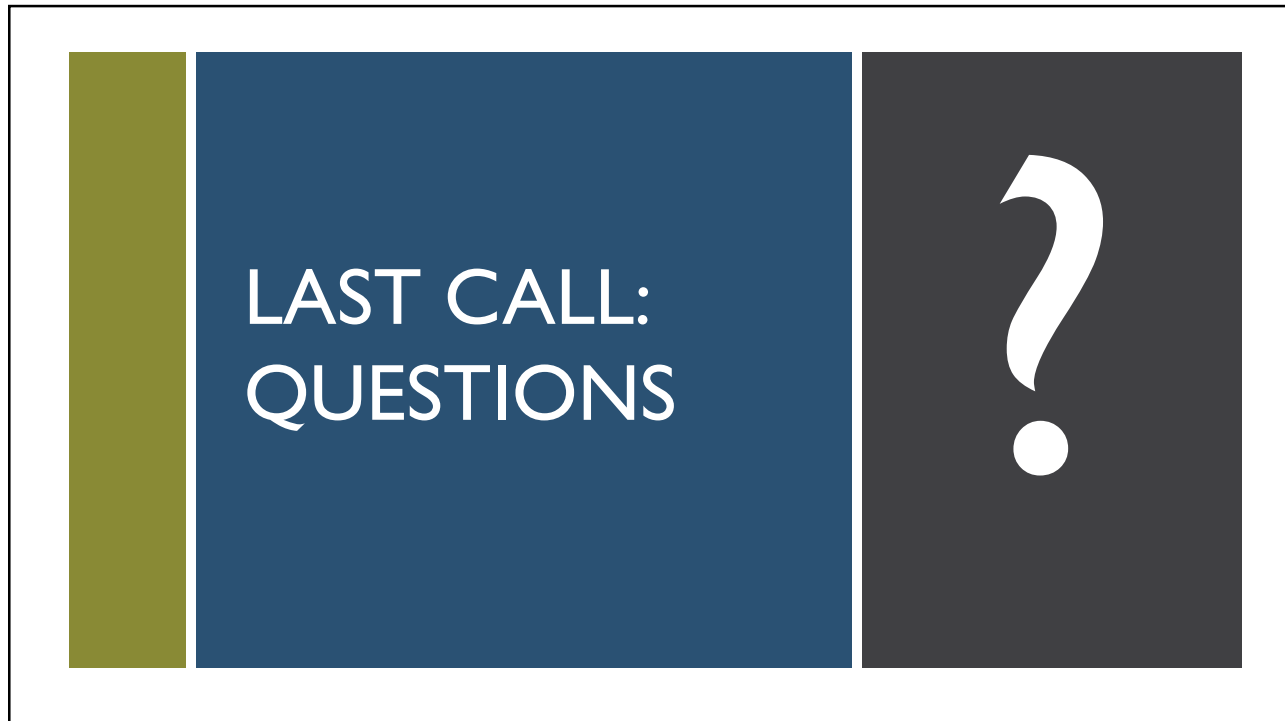
WHAT ARE
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TAKEAWAYS?

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RESOURCES

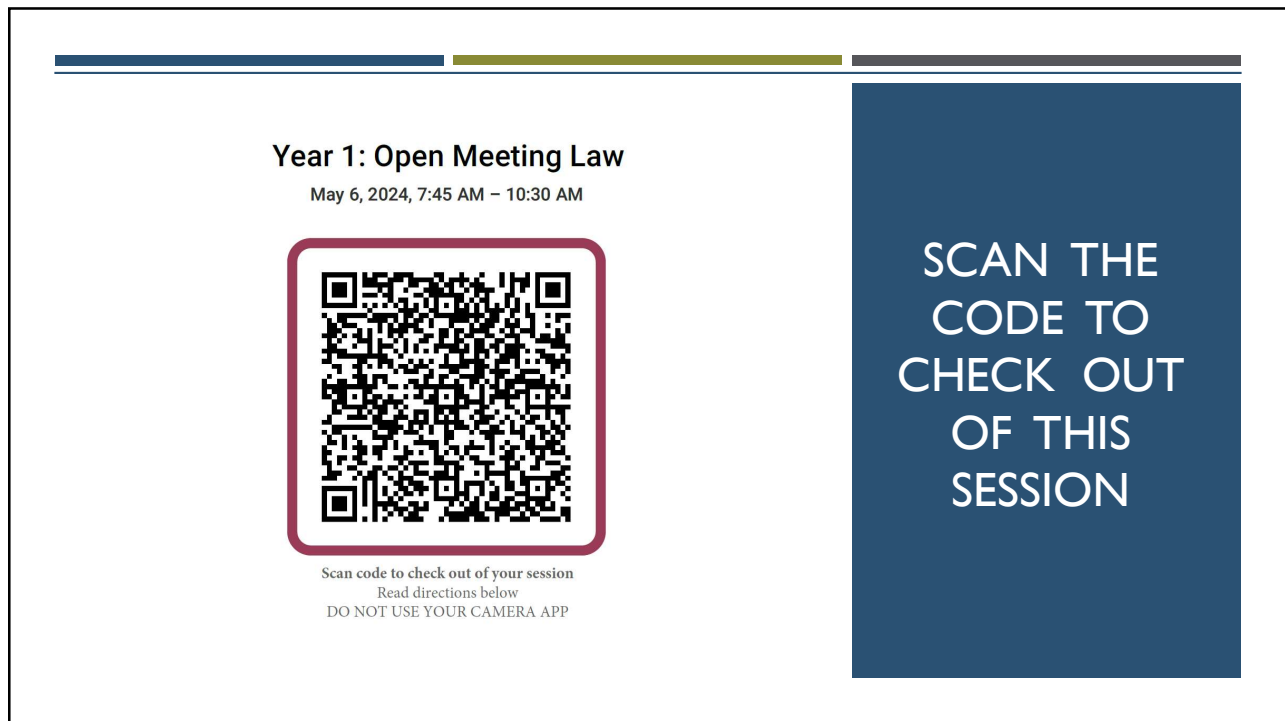
- LMC Info Memo on Meetings of City Councils (Mayor's Handbook)
- LMC Handbook
- LMC Info Memo on Public Purpose Expenditures
- LMC Info Memo on Competitive Bidding Requirements in Cities
- LMC Special Assessment Guide
- LMC A Good Start To Good Governance

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A slide with a white border. On the left is a vertical olive green bar. The main area is split into two sections: a dark blue section on the left containing the text "LAST CALL: QUESTIONS" in white, and a dark grey section on the right containing a large white question mark.

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A slide with a white border and a decorative header consisting of three horizontal bars in blue, olive green, and grey. The main content is on a white background. At the top center, it reads "Year 1: Open Meeting Law" followed by "May 6, 2024, 7:45 AM - 10:30 AM". Below this is a large QR code enclosed in a red rounded square. Underneath the QR code, it says "Scan code to check out of your session", "Read directions below", and "DO NOT USE YOUR CAMERA APP". On the right side, there is a dark blue vertical rectangle containing the text "SCAN THE CODE TO CHECK OUT OF THIS SESSION" in white.

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