



NORWOOD YOUNG AMERICA ECONOMIC DEVELOPMENT COMMISSION
Wednesday November 18, 2020

6:00 p.m. <https://us02web.zoom.us/j/2334975750>
City Hall Council Chambers, 310 Elm Street West

AGENDA

- 1. Call to Order**
 - A. Pledge of Allegiance
- 2. Adoption of Agenda**
- 3. Approve Minutes**
 - A. October 14, 2020 EDC meeting
- 4. Introductions, Presentations, and Public Comment**

(Citizens may address the Economic Development Commission about any non-agenda item of concern. Speakers must state their name, address, and limit their remarks to three minutes. The Economic Development Commission will take no official action on these items but may refer the matter to staff for a future report or direct that the matter be scheduled for a future meeting.)
- 5. Unfinished Business**
 - A. Elm Street Municipal Parking Lot
 - B. Sunflower Project
 - C. 2021 Goals & Capital Outlay Projects
- 6. New Business**
 - A. Open Meeting Law
 - B. Bidding Process
- 7. Project Updates**
 - A. Carver County CDA – Small Business Emergency Assistance Program
 - B. Small Cities Development Program Grant
 - C. NYA Market Enrichment Grant Program
 - D. Hwy 212 Updates
 - E. Retail Food Study Discussion– Keith Wicks of Wicks & Associates
- 8. Miscellaneous Reports**
 - A. NYA Area Chamber of Commerce Updates
- 9. Upcoming Meetings**
 - A. Next EDC meeting – 6:00 p.m., December 9, 2020
- 10. Adjournment**

Norwood Young America

310 Elm Street West PO Box 59 – Norwood Young America, MN 55368 – (952)467-1800 – www.cityofnya.com

NORWOOD YOUNG AMERICA ECONOMIC DEVELOPMENT COMMISSION
Wednesday, October 14, 2020
6:00 p.m. Zoom Mtg
Minutes

Commission Members Present: Mike Eggers, Carol Lagergren, Mike McPadden, Tonya Noeldner, Connor Smith, Jason Winter

Staff Present: Karen Hallquist (Economic Development/Marketing Director)

Others Present: Julie Wigfield (NYA Area Chamber of Commerce), Stuart Reid (Food Co-op Initiative), Keith Wicks (Wicks & Associates), Bekki Day

1. Call Meeting of City Council to Order:

Chair Noeldner called the meeting to order at 6:00 PM. All members present.

2. Approve Agenda

Motion: ME/MM to approve the agenda. Motion passed 6-0.

3. Approve Minutes of August 12, 2020

Motion: MM/CS to approve minutes as presented. Motion passed 6-0.

4. Introductions, Presentations, and Public Comment

None

5. Unfinished Business

A. Elm Street Municipal Parking Lot

The project started on Wednesday, October 6th. Fritz Bobcat & Landscaping and Bruch Concrete will be completed with the project in one week.

Xcel Energy confirmed that they would be able to add light to the pole on the northwest corner of the parking lot. This would be an additional \$10 per month for service. Staff contacted SLS, Inc. about installing lighting above the mural. Mona Platt, owner of SLS, Inc. confirmed they would pay for all electrical charges going forward for whatever lighting fixture/s are installed. Staff contacted both Xtreme Electric and Norwood Electric for a proposal on lighting installed above the mural.

B. Decorative Streetlights – 200 Block of Main Street – Layout Review

Hallquist shared that she is waiting to hear back from Choice Electric and Xtreme Electric.

C. Business Subsidy Resolution

Hallquist explained that the purpose of a business subsidy resolution is that it gives the City of NYA the authority to assist business development within the city limits by providing economic development incentive programs such as Tax Abatement, Tax Increment Financing (TIF) and support MN DEED programs. In order for a business to receive a subsidy, they also must achieve certain criteria. Commissioners reviewed all aspects of the Resolution No. 2004-50 to ensure compliance with the requirements of State law, specifically Minnesota Statute 116J.993 – Criteria for granting, processing and reviewing applications of business subsidies for private development, and Minnesota Statute 116J.995 – Statutory limitations of business subsidies and public hearing requirements. The review also included options for determining criteria for qualified wage and job creation goals for the development.

Commissioners reviewed the formats of business subsidies for both the City of Waconia and City of Chanhassen. Both cities presented their business subsidies in the format of a formal City Resolution with Business Subsidy Guidelines. The NYA EDC will recommend this same format.

Winters asked if this business subsidy can be provided to all businesses who receive any financial assistance from the City. Lagergren shared that over a business subsidy over \$150,00 would have additional requirements such as job creation and wage goals to meet according to State Statute. Winters asked for additional language in the guidelines to reflect this. "When the City offers a business subsidy of \$150,000 or more the project must achieve one or more of the following objectives. Criteria for business subsidies of less than \$150,000 can be determined by their own program

notification. If a business does not end up qualifying or refuses funds, the next business on a "waiting list" is provided the opportunity.

B. Carver County CDA – Homebased Business Assistance Fund

Hallquist shared that this program is similar in nature to the SBEA Program. The purpose of the Homebased Business Assistance Fund is to provide emergency financial assistance, through a \$5,000 beneficiary payment, to homebased businesses located in Carver County who have been affected by the COVID-19 pandemic.

Applications will be accepted from October 6 to October 16 at 4:30 p.m. Businesses will be notified no later than October 20 if they have been selected for funds, at which time they will work with the Carver County CDA to submit documentation to receive funds.

7. Project Updates

A. Small Cities Development Program Grant

Hallquist shared there are eleven applications being worked on and there have been inquiries from two more businesses. She is waiting to hear if there are any funds available after all of the allowances.

B. NYA Market Enrichment Grant Program

Hallquist shared that another project was approved with several projects completed or in progress. Projects include roofs, inside updates, parking lot. There is still one more \$10,000 grant available for 2020.

C. Highway 212 Construction Marketing Plan

Hallquist shared that information continues to be shared on social media and newsletters. Information is shared as soon as it becomes available from MnDOT.

D. Retail Food Study

Keith Wicks of Wicks & Associates along with Stuart Reid of Food Co-op Initiative joined the meeting. Wicks presented his findings of the Retail Food Study with market feasibility for bringing back a grocer to NYA and suggestions on what the City could do to organize to make this happen. Reid shared about his non-profit organization that assists in the opening of food co-ops. He explained the concept of a community owned food-co-op and how it starts -identifying the need, creating a steering committee, identify priorities or tailor to the needs of the market. A co-op would be a private entity who has a board that makes the financial decisions/commitments. Financial support would come from community investors, fundraising efforts, DEED funding, SBA, CDA support, USDA financing (when available) and potential Carver Co SHIP funding.

Wicks shared that the NYA community could house an 8,000-13,000 sq ft grocer with a recommended business model of a "fresh market" of either a food co-op or independently owned store. Both of these models represent serving smaller communities - fresh produce, meat, dairy, along with tailored products to serve the needs of our local consumers. The report also identifies three sites locations that could house the suggested food co-op or independently owned grocery store. The study gives forecasts to the chosen site. The three sites, in order of potential success according to his study, are:

1. Corner of Faxon Rd/Hwy 212 (Sinclair site)- as this is NYA's strongest commercial district/most diverse mix of commercial activity
2. CR 33/Reform Street (triangle property west side of NYA) – as an emerging commercial district near Kwik Trip, small strip mall, close to school and underpass
3. NYA Strip Mall (east side of NYA) – structure is in place with available space, may be less desirable due to set up and lack of adjacent businesses

Wicks shared timelines of establishing an independent grocer could take up to 18-months and a food co-op up to 3 years. The co-op model takes more time due to the funding process. "Project owner/operator is responsible for about 20% equity investment, e.g. 1,200 member-owners = about \$250,000 equity of estimate \$800,000 equity goal for a \$4m project. The \$550,000 gap is made up by grants and member loans."

Commissioners discussed the "next steps" of this process including starting a steering committee to continue to the research of a food co-op but also continue the quest of an independent grocer. It was suggested to bring the information provided by Wicks and conversation of the EDC to the City Council for discuss and guidance for pursuing a grocer. Staff will follow up with the independent grocer listed in the study and bring back more information on the



TO: Economic Development Commission
FROM: Karen Hallquist, Economic Development Marketing Director
DATE: November 18, 2020
SUBJECT: Unfinished Business

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Elm Street Municipal Parking Lot

The landscaping – including planting of perennials - and cement curbing of the project is completed. Total cost of the landscaping with Fritz Bobcat & Landscaping was \$7,382 and cement curbing with Bruch Concrete for \$3,750 for a total of \$11,132.00. Public Service Director Tony Voigt will be adding two handicap signs within the parking lot and one on the street in front of Chameleon Salon. Parking lot striping and street painting will be completed in the spring.

Sunflower Project

NYA resident Lexi Eggers has talked with the founder of Fish Sunflowers and is proceeding with the project on private property.



TO: NYA Economic Development Commissioners
FROM: Karen Hallquist, Economic Development Marketing Director
DATE: November 18, 2020
SUBJECT: 2021 Goals and Capital Outlay Projects

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The NYA City Council has approved the following Capital Outlay expenses in the Economic Development budget for 2021:

- \$8,000 – Mural – Historic Downtown Young America
- \$3,000 – Underpass art project
- \$14,000 – Industrial Blvd Business & Tacoma West Industrial Park signage, Historic Walking Tour
- \$25,000 Total

The following items are included in the EDC budget as Line Item Descriptions:

- \$1,000 - Welcome/New Business Packets (Operating Supplies)
- \$5,000 – Potential Hotel Study \$5,000 (Professional Fees/Studies)
- \$15,000 - Drone/Video/Photography Services (Professional Services)

The City Council has also approved \$20,000 to the Revolving Loan Fund which would be dedicated to the Market Enrichment Grant Program for two grants for up to \$10,000 each with a 20% contribution. Businesses eligible must be in the RC-1 Residential/Neighborhood Commercial, C-2 General Commercial and C-3 Downtown Districts.

Commissioners are to review the attached 2021 Goals for their approval.

Norwood Young America



more than a place. it's home.

Norwood Young America Economic Development Commission 2021 Goals

1. **Develop opportunities for new businesses and expansions for current businesses**
 - a. Utilize updated Commercial Market Study and Retail Food Study for pursuing a local grocer
 - b. Increase marketing for the Tacoma West Industrial Park
 - i. Social media
 - ii. Updated marketing materials
 - iii. Increase visual awareness of the Industrial Park and the businesses on Industrial Blvd by investing in location signage
 - c. Increase marketing for vacant commercial properties
 - i. Use GIS mapping capabilities to create an interactive map with available sites
 - ii. Communication with owners on the details of the property
 - iii. Social media
 - d. Improve communication with all building owners and realtors by:
 - i. Making sure they are on the city newsletter list
 - ii. Brainstorming with them about building use
 - iii. Asking for their perceived impediments to occupancy
 - iv. Asking for their preferences for the types of business that could be conducted in the empty storefronts, and appoint a committee or recruit volunteers to seek out such businesses
 - e. Improve EDC Commissioner's knowledge of the scope of business opportunities by including, in the monthly meeting packets, a list of available building sites, properties for sale, and redevelopment sites, and also monthly Secretary of State notices of newly formed businesses in NYA. Share any such public information with the Chamber Executive Director and Chamber Board to assist the Chamber's outreach efforts.
 - f. Identify small-scale, or occasional, or incubator, business ideas used in other cities; seek existing business owners' and property owners' opinions on the topic; conduct further research to determine feasibility and potential funding; and report.
2. **Increase outreach and enhance relations with current businesses**
 - a. Provide financial access to businesses grant opportunities
 - i. Work with Carver County CDA Economic Development Manager Elise Durbin
 - ii. Work with Carver County CDA SCDPG Advisor Brenda Lano
 - iii. Communicate with Open to Business and local banks
 - iv. Share information about Minnesota DEED and the United States Small Business Administration, and their respective website resources
 - b. Celebrate Small Business Week, Manufacturer's Week and any other SBA endorsed recognitions
 - c. Continue to communicate with property owners and businesses that express concerns about problem properties, alleged zoning violations, inadequate inspections of rental properties, and illegal activities.
 - d. Continue monthly ribbon cutting welcomes with the NYA Area chamber of Commerce
 - e. Continue to encourage City's participation, involvement in, presence at, or support of, community events
 - f. Celebrate anniversaries of local businesses
 - i. Research longevity of businesses
3. **Continue to assess, accomplish and add goals to the adopted Downtown Redevelopment Implementation Plan**
4. **Market Norwood Young America to current and new residents and businesses**
 - a. Continue online presence through Facebook, website, Twitter
 - b. Continue collaboration with Carver County CDA in its county wide tourism planning efforts
 - c. Increase Live technology options on Local Access Channel
 - d. Create a mural in the Historic Downtown Young America
 - e. Create a community video
 - f. Create professional photos of the NYA area community
 - g. Research and work with the Willkommen Heritage Center to create a Historical Walking Tour

- h. Promote quality of life attributes (i.e. Willkommen Heritage Center, NYA Library, Parks, townball, festivals, murals, community gardens, Music in the Park, etc.)
 - i. Maximize affordable opportunities for promotions in print, advertising media and radio
 - j. Continue monthly City newsletters
 - k. Continue to explore, with the CDA, the concept of a Carver County Real Estate Exposition
5. Enhance partnerships with Carver County and local schools
- a. Work with the local schools to create artwork opportunities within the new underpass
 - b. Determine whether the Commission: (i) should have a role in or presence at Central High School's annual College and Career Fair; (ii) or should have a role in or presence at Central High School's Annual Awards Banquet.
 - c. Investigate a collaborative opportunity with the high school and local businesses, to create a training, apprenticeship, and/or hiring pipeline program
6. Continue and investigate the enhancement of relationships and partnerships with:
- a. NYA Area Chamber of Commerce
 - b. American Legion & Auxiliary
 - c. VFW & Auxiliary
 - d. Norwood Young America Beyond the Yellow Ribbon Campaign
 - e. NYA Community Improvement Program
 - f. NYA Lions
 - g. NYA West Carver Lions
 - h. Faith organizations
 - i. District 108 Community Education
 - j. Carver County Sheriff's Department
 - i. "Coffee with a Cop"
 - k. Arts Consortium of Carver County
 - l. Willkommen/Carver County Historical Society

For Commissioner Review and Approval



TO: Economic Development Commission
FROM: Karen Hallquist, Economic Development Marketing Director
DATE: November 18, 2020
SUBJECT: New Business

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Open Meeting Law

The MN Open Meeting Law requires government meetings be open to the public. The attached documents, provided by City Attorney Jay Squires, discuss the groups and types of meetings covered by the Open Meeting Law, reviews the requirements of and exceptions to the law, and penalties for the violations. In addition, the information includes explanation on Acceptance of Gifts.

The City of NYA requests that all Commissioners review the Open Meeting Law documents and/or previews an Open Meeting Law session presented by Mr. Squires. Staff will email a link to this presentation.

Bidding Process

Attached is a copy of the summary bidding and quote process that was reviewed at the October 26, 2020 City Council Work Session. This guide is to be utilized for future projects for all commissions.

No action required. Discussion only.

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



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LEGAL CONSIDERATIONS FOR CITY OFFICIALS

City of Norwood Young America

September 12, 2019

By: Jay T. Squires

THE OPEN MEETING LAW

I. Purposes of the Open Meeting Law

Minnesota Statutes section 13D.01, also known as the Open Meeting Law, 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 Open Meeting Law as follows:

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today 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 discussed in the presentation or addressed in this outline, you should consult your legal counsel.

- 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. Lyndale v. Independent Sch. Dist. No. 306, 133 N.W.2d 23 (1965).
- B. To protect the public's right to be informed. Channel 10 v. Independent Sch. Dist. No. 709, 215 N.W.2d 814 (1974).
- C. To guarantee the public a forum to present its views to the public body. Sullivan v. Prairie River Township, 270 N.W.2d 502 (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 Open Meeting Law does not include a definition of a "meeting," the Minnesota Supreme Court has defined a meeting under the Open Meeting Law 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. Independent Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983)

- A. A majority of the Board constitutes a quorum.
- 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 v. District 742 Cmty. Schs., 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., MEA 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 Information Policy Analysis Division (“IPAD”) concluded that email communication between board members constituted a meeting, which was required to be public. 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. IPAD 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. IPAD 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. The Minnesota Court of Appeals has limited the law’s application to those committees possessing decision-making authority on behalf of the governing body. Minnesota Daily v. Univ. of Minnesota, 432 N.W.2d 189 (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 Open Meeting Law 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(a). 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. 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).

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.04, subd. 6(a).

There are two general exceptions: 1) data classified as non-public under the Government Data Practices Act; and 2) data relating to matters discussed at a closed meeting. See Minn. Stat. § 13D.05, subd. 1(c).

V. 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, subd. 1(a) and (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. The recording must be available to the public after all contracts are settled for the current budget period. Id., subd. 2(b).

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) and 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.

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.

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.

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. City of Prior Lake, 642 N.W.2d 729 (Minn. App. 2002).

5. Acquisition/Sale of Land

A meeting may be closed in conjunction with discussions surrounding the acquisition or sale of land, 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 infrastructure 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 may be closed where the following types of data are discussed:

- a. Data identifying victims or reporters of criminal sexual conduct, domestic abuse, maltreatment of minors or maltreatment of vulnerable adults.
- b. Active investigation data relating to child abuse or neglect. See definition in Minn. Stat. § 13.82.
- 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 defined as not public data under the Government Data Practices 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 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.

VI. Good Collective Decision-making

A. The Role of the Council

1. The Council is the legislative body – it sets the mission and vision.
2. The Council adopts policy – ordinances, new programs, the budget and levy.
3. Staff administers and implements policy.
4. Staff manages the day to day activities of the City.

B. Avoiding Prejudgment Allegations

1. Due Process
2. The Continental Properties cases

C. Preserving the Distinction Between Your Position as an Individual Resident and Council Member

1. Individual Council members do not check their private opinions at the gates of City Hall.
2. The public can be easily confused by statements of opinion and belief expressed by a Council member – is the statement a personal position, or that of the City or Council?
3. Disclaimers and qualifiers should be considered.

VII. Penalties for Violations

A. Civil Penalty

Each person who intentionally violates the Open Meeting Law 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 Open Meeting Law, the member could be removed. Minn. Stat. § 13D.06, subd. 3(a).

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 Open Meeting Law 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, 524 N.W.2d 721 (Minn. 1994).

DATA PRACTICES ACT

I. DATA PRACTICES

- A. Applicable Laws.** The Minnesota Government Data Practices Act ("MGDPA") presents a maze of legal challenges. With the increasing use of technology, municipalities are facing additional challenges such as how to maintain and respond to requests for electronic data, including email messages, text messages, and other data stored on smartphones, iPads, and computers.

1. **Minnesota Government Data Practices Act.** The MGDPA is a state law that applies to all state agencies, political subdivisions and statewide systems. This law governs the collection, creation, storage, maintenance, dissemination and access to government data. The public policy behind the MGDPA is to provide the public with access to data which is the basis for, and the product of, governmental decisions. Accordingly, government data are presumed to be accessible by the public for inspection and copying unless they fall within a recognized exception to the Act. *See* Minn. Stat. § 13.01; *see also* Minn. Stat. § 13.03, subd. 1.
2. **Definition of “Government Data.** “Government data” means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use. Minn. Stat. §13.02, subd. 7. “Storage media” includes all forms of electronic data. The subject matter and content of government data determines who is entitled to have access to the data.
 - a. **Must be recorded.** In order to be “government data” under MGDPA, information must be recorded in some form.
 - (1) In *Keezer v. Spickard*, 493 N.W.2d 614 (Minn. App. 1992), a plaintiff sued a county for releasing private data about him. The claim was based upon a conversation between two county employees that was overheard by a citizen. Keezer did not recover on his claim because the information had never actually been recorded and so never became government data. The mere fact that government employees had heard or were aware of the information did not cause it to become government data.
 - (2) *Once recorded, data become government data regardless of their physical form, storage media, or the conditions of the data’s use.* Minn. Stat. § 13.02, subd. 7; *see also* Minn. Rules, Part 1205.0200, subp. 4. This is true under both the MGDPA and the Records Retention Act (Minn. Stat. § 138.17). The Records Retention Act requires that data or information be created or received in connection with the transaction of public business in order to be subject to its records retention requirements.

- b. **Data derived from government data.** The Minnesota Supreme Court recognized the *Keezer* holding in *Navarre v. South Washington County Schools*, 652 N.W.2d 9 (Minn. 2002), finding that because an individual's mental impressions cannot be inspected or copied, it follows that they do not constitute government data." *Id.* at 25. However, the Court also held that "the disclosure of mental impressions derived directly from personnel data recorded in some physical form or storage media, or derived directly from complaints or charges against the employee, is private data on individuals."
4. **Data Classifications.** The three types of data that generally arise in the educational setting are public data, private data, and confidential data.
 - a. **Public data on individuals:** data which the public may access because no state or federal law or regulation denies such access. Minn. Stat. § 13.02, subd. 15.
 - b. **Private data on individuals:** data which the public may not access under the law, but which is accessible to the subject of the data. Minn. Stat. § 13.02, subd. 12.
 - c. **Confidential data on individuals:** data which neither the public nor the subject of the data may access. Minn. Stat. § 13.02, Subd. 3; *see also* Minn. Rules, part 1205.0200, subp. 3.
- B. **Right to Access Data.** An individual who is the subject of private government data may access such data and contest its accuracy or completeness. Minn. Stat. § 13.04. Any person may access data that are classified as "public."
- C. **Deadlines for Responding to Requests for Data.** The time frame for responding to a request for data depends on the nature of the data being requested.
 1. **Subject of the data.** When an individual requests access to private data of which he or she is the subject, or a parent requests access to data on a minor child, the school district must provide access to the data **within ten (10) days**, exclusive of excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. Minn. Stat. § 13.04, subd. 3.

- a. “Data on individuals” means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual. Minn. Stat. §13.02, subd. 4.
 - b. The definition of “individual” includes a parent or guardian, or one acting as a parent or guardian in the absence of a parent or guardian, where the subject of the data is a minor or a person adjudged mentally incompetent. This means that the parent of a minor shares with the minor his/her right of access to all government data concerning the minor. Minn. Stat. 13.02, subd. 8.
2. **Public data.** When an individual requests access to public data, a municipality must reply **within a reasonable time**. Minn. Stat. § 13.03, subd. 1 & 3(c); Minn. R. 1205.0300. The definition of “reasonable time” may vary on a case by case basis depending on the complexity of the data request. However, a municipality should try to fulfill the request as soon as reasonably possible.
3. **Data must be easily accessible.** “The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use.” Minn. Stat. 13.03, subd. 1.
- a. The Department of Administration has repeatedly addressed the “reasonableness” requirement in its advisory opinions. When compliance has been delayed due to the complexity of finding voluminous data, the Department has most commonly relied upon the language cited above for concluding that the governmental unit failed to keep records in an accessible manner to facilitate timely access.
 - b. Does your municipality store electronic communications in a manner that makes them easily accessible?
 - (1) Email messages sent from private accounts?
 - (2) Text messages?

(3) Tweets?

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).

The statute does not specify that abstention from voting would remedy what would otherwise be a conflict of interest. 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. 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.

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.

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 v. Coon Creed Watershed Dist., 153 N.W.2d 209, 219 (Minn. 1967); E.T.O. 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;
- 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 that the interested officials will not act arbitrarily to further their own interests (e.g., the opportunity for review).

¹ The procedures in Minnesota Statutes section 471.89 must still be followed, or the contract may be void.

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.

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 that 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 public official may not accept gifts from a person or a representative of a person or association that has a direct financial interest in decisions that 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, that is given and received without the giver receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071, subd. 1(b).

II. Exceptions

A public 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. 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.
- E. A trinket or memento costing \$5 or less.
- F. Information 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 by a family member.

RASW: 50181



Date: October 26, 2020
To: Mayor Lagergren and Members of the City Council
From: Finance Committee
Re: Bidding and Quote Process for Minnesota municipalities

Based on our conversations at the last Council workshop meeting and after reading several guidance documents from the League of Minnesota Cities, the following information has been summarized:

Contracts include any agreement entered in by a municipality for the sale and purchase of supplies, materials, equipment, or the rental thereof, or the construction, alternation, repair or maintenance of real or personal property.

| Type of Contract | Guidelines | Award Options |
|--------------------------------------|--|---|
| Contracts over \$175,000 | Competitive bidding process | Award based on sealed bids to lowest responsible bidder * Award based on best value criteria shared on RFP ** |
| Contracts from \$25,000 to \$175,000 | Competitive bidding process Direct negotiation with at least two quotes, if possible, kept on file for at least one year | Award based on sealed bids to lowest responsible bidder * Award based on quotes to lowest responsible bidder * |
| Contracts less than \$25,000 | Direct negotiation with at least two quotes, if possible, kept on file for at least one year Buy or sell on the open market | Award based on quotes to lowest responsible bidder * |

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* **Lowest responsible bidder** allows for factors such as the bidder's financial responsibility, integrity, skill and ability, and the likelihood that the bidder will do satisfactory work.

** **Best value option** must have criteria listed in the RFP and can be used on one project per year or 20% of the total yearly projects, whichever is more. Best value should be based on:

- Quality of performance on previous contracts
- Timeliness of performance on previous contracts
- Level of customer satisfaction on previous contracts
- Record of performing projects on budget and ability to minimize cost overruns
- Ability to minimize change orders
- Ability to prepare appropriate project plans
- Technical capabilities
- Qualification of key personnel
- Ability to assess and minimize risk

Frequently asked questions:

Why is this process important?

The intent of this bidding/quote process is to:

- *ensure city taxpayers receive the benefit of the lowest obtain-able price from a responsible contractor;*
- *provide contractors a level playing field on which to compete for city contracts;*
- *limit the discretion of contract making officials in situations that are susceptible to fraud, favoritism or other abuse.*

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What specific steps can be taken to keep purchases and contracts free from antitrust problems?

- *Use competitive bids or quotations even when the law does not require them.*
- *Avoid using vendor-furnished specifications that might unnecessarily limit competitive bidding. When consultations prepare bid specifications, they generally should not bid on the contract.*
- *Avoid purchasing from a company in which a councilmember or other city decision maker in the purchasing process has an interest (this is also prohibited under the state's conflict of interest laws).*
- *Avoid informal, unrecorded communications with suppliers.*
- *Do not accept gifts from suppliers (something generally prohibited by the state gift law).*
- *Be sure that when performance bonds or bid bonds are required, they are either legally necessary or are for the purpose of ensuring responsible bidders. Bond requirements can serve as a restriction on bidders and may not be necessary when purchasing standard materials.*
- *Be wary of giving local vendors preference in public purchasing when it limits competition. This does not mean cities must avoid contracting with a local vendor when all other things are equal. Likewise, if the bidder's location has an impact on the contract's cost (such as for delivery charges or repairs), it may be an important factor to consider when determining the lowest responsible bidder.*
- *Emphasize non-restrictive specifications that facilitate competitive bidding.*

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TO: Economic Development Commission
FROM: Karen Hallquist, Economic Development Marketing Director
DATE: November 18, 2020
SUBJECT: Project Updates

Carver County CDA – Small Business Emergency Assistance

The City is still waiting for a final report of total business participation and assistance finances from Carver County CDA. As of November 9, 2020, the City of NYA was able to provide \$120,900 in CARES Act money to 13 awardees within city limits.

Small Cities Development Grant Program

The following properties have submitted applications for the Small Cities Development Program Grant. They are all currently working with Brenda Lano, Carver Co CDA and Metro West Inspections on their scope of work and bidding process.

- 15 2nd Ave SE – CPS Holdings (Strong) Waconia Dodge – PROJECT COMPLETE
- 115 Main St – CPS Holdings (Strong) Waconia Dodge – PROJECT COMPLETE
- 124 W Elm St – Trusted Insurance (old Debner Insurance bldg.)
- 201 Main St E – Ernst Holdings (blue apts on corner of Main/2nd Ave)
- 216 Main St E – Ernst Holdings (rental/comm bldg.)
- 105 Main St E – Northside Grill
- 210 Elm St W – On Point Nutrition – A&B Investments
- 325 Elm St W – The Pour House
- 224 Elm St W – Quilting Grounds
- 224 Main St E – Laundromat
- 224 Main St E – Rentals

The original Small Cities award for the City of NYA was \$556,000. To date, approximately \$495,000 of the award has been dedicated to projects at the properties listed above. There is approximately \$61,000 remaining monies for other properties in the C-3 Downtown Districts.

NYA Market Enrichment Grant Program

The following properties have submitted applications for the NYA Market Enrichment Grant Program. All properties but one (was for \$9,600) were approved for the \$10,000 with their 20% contribution.

- 503 N Faxon Rd - Smith Oil & Tire

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