

City of Excelsior
Notice of Work Session
of the Excelsior City Council

NOTICE IS HEREBY GIVEN that the City Council of the City of Excelsior will hold its regular work session on Monday, March 3, 2025 at 5:30 P.M. in-person at 106 Center Street, Excelsior, MN 55331 – Entrance is located on Center Street. The agenda for the meeting is attached hereto.

Members of the public may attend the work session either in person or by joining via Zoom either online or by telephone at:

Join Zoom Meeting

<https://us02web.zoom.us/j/88526566715>

Meeting ID: 885 2656 6715

One tap mobile

+13052241968,,88526566715# US

+13092053325,,88526566715# US

Dial by your location

- +1 305 224 1968 US

City of Excelsior
City Council Work Session

Agenda

Monday, March 3, 2025

106 Center Street, Excelsior, MN 55331 – Entrance is located on Center Street

5:30 P.M. – 6:30 P.M.

1. CALL TO ORDER/ROLL CALL
2. APPROVAL OF AGENDA
3. NEW BUSINESS
 - a. Verbal Update City Hall
 - b. Council Training with City Attorney
4. ADJOURNMENT

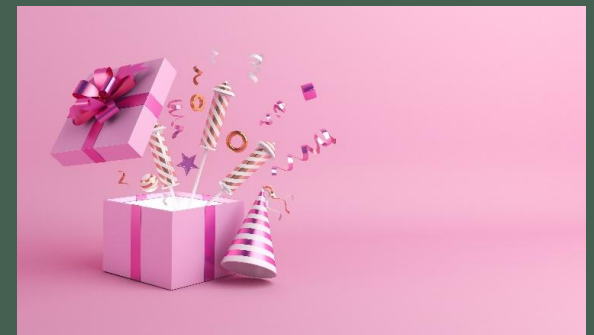
City Council Training

City of Excelsior

- Mary Tietjen, City Attorney
Kennedy & Graven
 - March 3, 2025

AGENDA

- ❑ Open Meeting Law
- ❑ Data Practices
- ❑ Gift Law
- ❑ Conflicts of Interest
- ❑ Council Decision Making
- ❑ Q & A



Open Meeting Law

- Meetings must be open to the public and notice provided
 - Regular meetings and work sessions: per schedule
 - Special meetings: 3-day notice
 - Emergency meetings: as able
- Must be in city limits; accessible room
- Public must have access to agenda materials, unless protected



Open Meeting Law



- What is a “meeting”? Two parts:
 - Gathering of quorum or more of members, and
 - Quorum *receives, decides, or discusses* information on issues related to official business
- Not necessary that action be taken for it to be a meeting
- Not chance or social gatherings
- Usually not seminars/conferences



Open Meeting Law

- Open Meeting Law sometimes **ALLOWS** closed meetings and sometimes **REQUIRES** closed meetings
- Closed meeting examples:
 - Attorney-client privileged discussions, labor negotiation strategy, employee evaluations, discussion of security issues and property transactions



Virtual Meetings



- ❑ Members must be able to hear and see each other and all testimony.
- ❑ Roll call votes.
- ❑ At least 1 member at regular meeting location.
- ❑ Minutes must reflect remote appearance.
- ❑ Meeting notice must include remote location, which must be "open and accessible to the public".
 - ❑ Military/medical exceptions (3x/year)

Serial Meetings



- ❑ What is a serial meeting?
- ❑ A gathering of less than a quorum for the purposes of avoiding a public meeting or fashioning an agreement on an issue done with the intent of avoiding Open Meeting Law requirements.
- ❑ Whether a serial meeting has occurred depends on two factual determinations:
 - ❑ 1. What was the purpose of the meeting?
 - ❑ 2. What was the intent of the elected officials participating in the meeting?

Are Email Threads Serial Meetings?



- Maybe!
 - 2012 Unpublished Court of Appeals decision says “No” (*O’Keefe v. Carter*).
 - 2009 and 2017 IPAD advisory opinions say “Yes”.
- Best practice: Avoid creating email threads that may turn into a “meeting”.
- Reminder: Emails between council members will almost always be public data.

Open Meeting Law: Email, Text, and Social Media



- Email and social media communications can violate OML where a quorum is involved and topic is city business
- State statute allows use of social media for exchanges with all members of the public
- Avoid “reply all” function
- Like email, serial/group texting can violate the OML
- One-way communication is OK; best practice is to communicate through City Manager/staff



Open Meeting Law: Reminders

- ❑ Be prudent with your use of personal devices, email, texting, and social media
- ❑ Save the debate for public meetings
- ❑ Pre- and post- meeting discussions can also be a “meeting”. Limit discussion to unofficial business.
- ❑ Direct communication through City Manager/staff
- ❑ Remember WHY OML exists: transparency!



Open Meeting Law: Penalties



- ❑ Personal liability/\$300 fine for intentional violations (City/League can't pay)
- ❑ Forfeit office (if intentional violations found in 3 or more separate actions)
- ❑ Court may award reasonable costs, disbursements, and attorney fees (up to \$13,000)
- ❑ Mandatory attorney fees if the City didn't comply with DPO ruling that involves the City

Data Practices



- Data Practices statute governs all data (in any form) maintained by City, including data in possession of Council Members
- General Classifications:
 - Public (available to anyone; public not required to justify request)
 - Private/Non-public (available to data subject and those whose jobs require access; e.g. personnel data)
 - Confidential/protected non-public (not available to public or data subject; e.g. active law enforcement data)

Data Practices



- Public Data on elected officials
 - Name and home address
 - Phone/email address
- Correspondence between elected officials and individuals is “private” but can be made public by either.
- Government Data on Personal Devices
 - Subject to data request
 - Where government data is stored does not matter
- Inform staff of data requests

Data Practices: Criminal and Civil Penalties

- Willful violations and the knowing unauthorized acquisition of nonpublic data is a misdemeanor.
- Willful violation by a public employee is just cause for suspension without pay or dismissal.
- City can be liable to any person who suffers damages due to a violation. If violation is willful, City may pay exemplary damages between \$1,000 - \$15,000. No immunity.
- District court may enjoin practices or compel compliance.

Gift Law



- Minn. Stat. 471.895/City Code (Section 2-35)
- Applies to both elected and appointed officials
- Prohibits local officials from accepting gifts from “interested persons” (persons having a financial interest in a decision)
- May accept donations, which are approved by City Council



Gift Law- No, you aren't royalty.

- ❑ Exceptions – you may accept:
 - Services of insignificant monetary value
 - Plaques or memento recognizing work
 - Trinket or memento costing \$5.00 or less
 - Informational material of unexceptional value



Conflicts of Interest



- State statute/City Code (Sec. 2-34)
- General rule
 - Cannot participate in matters in which you have a personal financial/contractual interest – recusal required
 - Some issues present “appearance” of conflict – recusal is optional; fact analysis
 - Notify staff or City Attorney of possible conflict



Council Decision Making

□ LEGISLATIVE:

- Council has broad discretion; may consider policy issues
- Examples: Comp plan/zoning; ordinance amendments

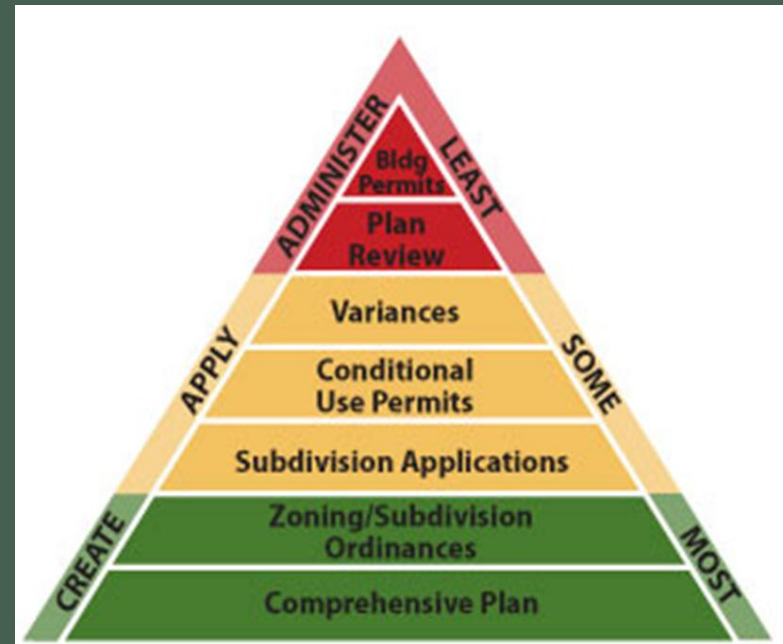
□ QUASI-JUDICIAL:

- Council must apply legal standard to facts; due process rights implicated
- Examples: conditional use permits; variances; revocation of a license

Decision Making Pyramid

Legislative – most discretion and judicial
deference to the City

Quasi-judicial – least discretion and
deference to the City



Quasi-Judicial Role



- Council acts in judge-like role.
- Elements of a quasi-judicial decision:
 - Notice
 - Opportunity to be heard
 - Creating a record of the hearing
 - Impartial decision-maker
- Denial must be based on applicant's inability to meet the legal standard.

Quasi-Judicial Role

- *Continental Property v. Minneapolis (2011)*
 - Developer proposed a mixed-use tower near Loring Park
 - CUP and variances needed
 - Staff and planning commission recommended denial
 - Council denied application 13-0 vote



Quasi-Judicial Role

- Developer sues, claiming due process rights were violated
 - * Developer points to conduct of the council member whose ward was the location of the project
- Developer also claims council's decision was arbitrary and capricious



Quasi-Judicial Role



- Court found that the council's decision was arbitrary because one member:
 - took a position in opposition and exhibited a "closed mind" before the council heard the matter
 - "adopted an advocacy role in opposition to the proposed project" before the council hearing

Quasi-Judicial: What to do?

- As much as possible, avoid advocating a position until all information is presented
- Be cautious of “ex parte” communications, either applicant or opponents
- Disclose!
- Council’s decision is vulnerable if challenged

QUESTIONS?

