

Council Meeting: May 14, 2026	Prepared By: Jay Tobin, City Administrator
Topic: Open Meeting Law Discussion	Action Required: Discussion

Summary

In consultation with members of the City Council, staff has brought forward questions about what constitutes a serial meeting in violation of the Open Meeting law and what steps should be taken to avoid such meetings. This memo is offered from the City Attorney as guidance in response to each.

Serial Meetings

The Minnesota Open Meeting Law, Minn. Stat. Chapter 13D requires that meetings of the City Council be open to the public, unless the meeting qualifies for specific exception and the Council complies with the requirements of exercising such exception.^[1] Courts and the Minnesota Department of Administration have consistently interpreted the law broadly and in favor of public access.

Interpretations of Open Meeting Law compliance are always very factually specific. Courts take particular interest in attempting to identify and prohibit communication which occurs with an intent to circumvent the law.^[2] However, courts have generally recognized the right of two members of a five member board to discuss city business, provided those members are not given decision making authority to conduct city business and further provided that the discussion is limited to less than a quorum of the entire body of the board.^[3] Discussion is generally interpreted the same whether it occurs via email, text messaging, telephonically, or in-person communication.^[4]

Practically, this presents members of the City Council with an option to discuss a City matter with another single member of the Council, outside of an open meeting, provided that neither member involved in that discussion has or thereafter does discuss the same or a substantially similar matter with a different member of the Council. Should a party to such a conversation communicate about substantially the same topic with a different member of the Council, this action may be interpreted as a “serial meeting” outside of the public eye and in violation of the Open Meeting Law. This is because a quorum of the Council will have sequentially communicated about the topic, outside of an open meeting or an exception thereto.

Avoiding Serial Meetings

Serial meetings often occur due to the communicating members' unawareness of other discussions about a given matter. The most effective means of combating this reality is with disciplined communication among members when discussing City matters, outside of an open meeting. Chance social encounters and discussions unrelated to City matters are not prohibited by the Open Meeting Law. However, if a member desires to discuss a City matter with another member while outside of an open meeting, the communicating members should initially disclose/inquire whether either has spoken with another member about the topic. If either member has engaged in prior discussions on the topic with a different member, the conversation should immediately cease until it can be resumed in an open meeting. If neither member has had prior discussions about the matter, the two members may discuss. However, both should thereafter avoid participating in similar discussions with other members (unless in an open meeting) and should immediately disclose their inability to discuss the matter, if engaged by a different member about the topic.

Electronic communication among members must be disciplined in the same way. This is sometimes more challenging because members do not have the same opportunity to verbally communicate a warning to another member to avoid the topic. However, a member who receives messages about a topic already discussed with another member should not engage in electronic discussions with the additional member and may simply not reply or reply that he or she is unable to respond for this reason. As a best practice, it is ideal for such communications between members to start with an inquiry about whether the recipient is free to discuss the matter, before including any statement of position or thoughts on the subject. Members are also empowered to share data with the entire Council in preparation for a meeting by forwarding materials to staff for dissemination to the entire Council. However, responsive communications should be reserved for an open meeting discussion.

It can also sometimes be unclear what constitutes the same or substantially similar topic. There is little bright-line guidance for this question as each analysis is factually specific. However, the Council should presume that a Court will not favor communication which appears intended to poll a quorum of the Council, pre-determine an outcome, or otherwise circumvent a public discussion of a City business matter, and will likely liberally construe whether a given topic discussed by a quorum of the Council was the same or substantially similar if it appears intended to accomplish one of these goals.

Staff recommends that the Mayor and Council Members discuss these and any other Open Meeting Law concerns during the council meeting as the City Attorney is present to respond to legal implications, practice options, and particular guidance.

[1] Minn. Stat. 13D.01 subd. 1-2

[2] See *Mankato Free Press Co. v City of North Mankato*, 563 N.W.2d 291 (Minn. App. 1997)

[3] See, for example, *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993)

[4] See *Moberg v. Independent School Dist No. 281*, 336 N.W.2d 510 (Minn. 1983), See also Minn. Dept. of Admin. Advisory Op. 08-015

Financial/Budget

N/A

Recommendation

Mayor and Council Members discuss Open Meeting Law with legal guidance from City Attorney.

Council Action

Recommend that Mayor and Council Members discuss Open Meeting Law with legal guidance from City Attorney.