

TO: All Advisory Commission Members

FROM: Marcia Glick, Robbinsdale City Manager

RE: Social Media Policy
Reference Material on Legal Requirements for Public Officials

The City Council adopted a Social Media Policy on January 2, 2018 which applies to all elected and appointed officials as well as all city employees. The City Council's first review and discussion of social media policy elements was at the November 7, 2017 work session. It aligns with our efforts to provide consistent, timely messaging. It also emphasizes the importance of using the city website as the main resource of information. As each of you serve in an official city capacity, some personal social media posts related to your service as a commissioner may fall under this policy.

The second document covers broader topics including open meeting law, electronic communications, and conflicts of interest. Although not all sections apply to all commissions, you can see the full framework and it may help to explain our administrative requirements. For example the Human Rights Commission has subcommittee meetings; the Planning Commission has a legal role in reviewing development projects and is impacted by the 60 day rule; and everyone needs to be aware that group electronic communication on commission matters, including social media communication, may violate open meeting law.

If you have questions that arise as you read these documents, please feel free to contact me or the staff liaison to your commission. The City Council has asked that all commissioners acknowledge receipt of the policy.

CITY OF ROBBINSDALE SOCIAL MEDIA POLICY

Purpose:

Social networking in government serves two primary functions: to communicate and deliver messages directly to citizens and to encourage citizen involvement, interaction, and feedback. Information which is distributed via social networking must be accurate, consistent, and timely and meet the information needs of the City's customers. Since social media is used for social networking, this policy seeks to ensure proper use of the City of Robbinsdale's social media sites by its representatives.

The City of Robbinsdale wishes to establish a positive and informative social media presence. City representatives have the responsibility to use the City's social media resources in an efficient, effective, ethical and lawful manner pursuant to all existing City and departmental policies. This policy also provides guidelines and standards for city representatives regarding the use of social media for communication with residents, colleagues and all other followers.

As a general philosophy, Robbinsdale will manage its social media presence in a centralized manner. Departments and individual employees shall not create social media accounts themselves that are intended to represent the City of Robbinsdale. The City of Robbinsdale's intent is to increase transparency, reach, immediacy and stakeholder feedback.

The ultimate goal of social media will be to drive residents and visitors to the City of Robbinsdale website. The city's official website, www.robbinsdalemn.com, will remain the city's primary online medium communicating information to the public. The city's "e-notifications" email notification system, available via the city website will remain the city's primary email notification tool.

The best, most appropriate, use of social media for the City of Robbinsdale is as follows:

1. As channels for disseminating time-sensitive information as quickly as possible.
2. As marketing/promotional channels that increase the city's ability to broadcast its messages to the widest possible audience.
3. As a method to educate the public about the city's programs and services.

Policy:

The City of Robbinsdale will determine, at its discretion, how its web-based social media resources will be designed, implemented and managed as part of its overall communication and information sharing strategy. City social media sites may be modified or removed by the City at any time and without notice, as described in this document.

City of Robbinsdale social media accounts are considered a City asset and administrator access to these accounts must be securely administered in accordance with the City's Computer Use policy. The City reserves the right to shut down any of its social media sites or accounts for any reason without notice.

All social media web sites created and utilized during the course and scope of an employee's performance of his/her job duties will be identified as belonging to the City of Robbinsdale, including a link to the City's official web site.

Scope:

This policy applies to any existing or proposed social media website and online community accounts sponsored, established, registered or authorized by the City of Robbinsdale. This policy also covers the private use of the City's social media accounts by all City representatives, including its employees and agents, Council members, appointed board or commission members and all public safety volunteers to the extent it affects the City. Questions regarding the scope of this policy should be directed to the City Manager.

The following guidelines establish best practices for the use of social media for the City of Robbinsdale:

1. The City of Robbinsdale website, www.robbsindalemn.com, will remain the city's primary and predominant internet presence.
2. Wherever possible, content posted to the City of Robbinsdale social media sites should contain links directing users back to the city's official website.
3. All City of Robbinsdale social media sites must comply with all appropriate city policies and standards. Exceptions must be approved by the City Manager.

Definitions:

Social media are internet and mobile-based applications, websites and functions, other than email, for sharing and discussing information, where users can post photos, video, comments and links to other information to create content on any imaginable topic. This may be referred to as "user-generated content" or "consumer-generated media."

Social media includes, but is not limited to:

- Social networking sites such as Facebook, LinkedIn, Twitter, and online dating services/mobile apps
- Blogs
- Social news sites such as Reddit and BuzzFeed
- Video and photo sharing sites such as YouTube, Instagram, SnapChat, and Flickr

- Wikis, or shared encyclopedias such as Wikipedia
- An ever emerging list of new web-based platforms generally regarded as social media or having many of the same functions as those listed above

As used in this policy, “employees and agents” means all City representatives, including its employees and other agents of the city, such as independent contractors or Council members.

Employee Use:

City employees and agents with administrator access are responsible for managing social media websites. Facilities or departments wishing to have a new social media presence must initially submit a request to the City Manager in order to ensure social media accounts are kept to a sustainable number and policies are followed. All approved sites will be clearly marked as the City of Robbinsdale site and will be linked with the official City website (www.Robbinsdalemn.com). No one may establish social media accounts or websites on behalf of the City unless authorized in accordance with this policy

Administration of all social media web sites must comply with applicable laws, regulations, and policies as well as proper business etiquette.

City social media accounts accessed and utilized during the course and scope of an employee’s performance of his/her job duties may not be used for private or personal purposes or for the purpose of expressing private or personal views on personal, political or policy issues or to express personal views or concerns pertaining to City employment relations matters.

No social media website may be used by the City or any City employee or agent to disclose private or confidential information. No social media web site should be used to disclose sensitive information; if there is any question as to whether information is private, confidential or sensitive, contact the City Manager.

When using social media sites as a representative of the City, employees and agents will act in a professional manner. Examples include but are not limited to:

- Adhering to all City personnel and Computer Use policies
- Using only appropriate language

Be aware that content will not only reflect on the writer but also on the City of Robbinsdale as a whole, including elected officials and other city employees and agents. Consider the following:

- Make sure information is accurate and free of grammatical errors.
- Don’t provide private or confidential information, including names, or use such material as part of any content added to a site.
- Don’t comment negatively on community partners or their services, or use such material as part of any content added to a site.

- Don't provide information related to pending decisions that would compromise negotiations.
- Be aware that all content added to a site is subject to open records/right to know laws and discovery in legal cases.
- Always keep in mind the appropriateness of content.
- Comply with any existing code of ethical behavior established by the City.

Where moderation of comments is an available option, comments from the public will be moderated by City staff, with administrative rights, before posting. Where moderation prior to posting is not an option, sites will be regularly monitored by City staff.

City of Robbinsdale's staff with administrative rights will not edit any posted comments. However, comments posted by members of the public will be removed if they are abusive, obscene, defamatory, in violation of the copyright, trademark right or other intellectual property right of any third party, or otherwise inappropriate or incorrect. The following are examples of content that may be removed by City staff before or shortly after being published:

- Potentially libelous comments
- Obscene or racist comments
- Personal attacks, insults, or threatening language
- Plagiarized material
- Private, personal information published without consent
- Comments totally unrelated to the topic of the forum
- Commercial promotions or spam
- Hyperlinks to material that is not directly related to the discussion

Personal Social Media Use

The City of Robbinsdale respects employees and agents' rights to post and maintain personal websites, blogs and social media pages and to use and enjoy social media on their own personal devices during non-work hours. The City requires employees and agents to act in a prudent manner with regard to website and internet postings that reference the City of Robbinsdale, its personnel, its operation or its property. Employees and agents and others affiliated with the City may not use a city brand, logo or other city identifiers on their personal sites, nor post information that purports to be the position of the City without prior authorization.

City employees and agents are discouraged from identifying themselves as city employees when responding to or commenting on blogs with personal opinions or views. If an employee chooses to identify him or herself as a City of Robbinsdale employee, and posts a statement on a matter related to City business, a disclaimer similar to the following must be used:

“These are my own opinions and do not represent those of the City.”

Occasional access to personal social media websites during work hours is permitted, but employees and agents must adhere to the guidelines outlined in the City's Employee Handbook. Employees and agents should also review the Data Ownership section of this policy (below).

There may be times when personal use of social media (even if it is off-duty or using the employee's own equipment) may spill over into the workplace and become the basis for employee coaching or discipline. Examples of situations where this might occur include:

- Friendships, dating or romance between co-workers
- Cyber-bullying, stalking or harassment
- Release of confidential or private data; if there are questions about what constitute confidential or private data, contact the City Manager.
- Unlawful activities
- Misuse of city-owned social media
- Inappropriate use of the city's name, logo or the employee's position or title
- Using city-owned equipment or city-time for extensive personal social media use

Each situation will be evaluated on a case-by-case basis because the laws in this area are complex. If you have any questions about what types of activities might result in discipline, please discuss the type of usage with the City Manager

Data Ownership

All social media communications or messages composed, sent, or received on city equipment in an official capacity are the properties of the City and will be subject to the Minnesota Government Data Practices Act. This law classifies certain information as available to the public upon request. The City of Robbinsdale also maintains the sole property rights to any image, video or audio a City employee is asked to capture for City business.

The City retains the right to monitor employee's social media use on city equipment and will exercise its right as necessary. Users should have no expectation of privacy. Social media is not a secure means of communication.

Policy Violations

Violations of the Policy will subject the employee to disciplinary action up to and including discharge from employment.

ORIENTATION FOR PUBLIC OFFICIALS IN MINNESOTA

The information contained herein is intended as a general primer to issues of general applicability for public officials in Minnesota. Specific issues which may arise should be addressed to the appropriate City staff or the City Attorney.

1. Types of Meetings.

- A. Regular Meetings. Regular meetings are those which are regularly scheduled to occur. If a regular meeting falls on a holiday (on which no public business may be conducted), the meeting occurs on the next day which is not a holiday. There is no need to provide notice for a regular meeting if it is being held at the time and place established for regular meetings. The council generally adopts a meeting calendar at its annual meeting in early January to establish its meeting schedule for the upcoming year.
- B. Special Meetings. All meetings which are not regular meetings are special meetings. A special meeting may be called by the council at a regular or special meeting or by the mayor or any two council members between meetings. Three days' notice must be given for a special meeting, except an emergency meeting. Only those agenda items which have been noticed may be discussed at a special meeting. That means that, unlike the case of regular meetings, items may not be added to the agenda of a special meeting at the last minute.
- C. Emergency Meetings. Emergency meetings are those which are called to deal with situations which cannot wait even for three days' notice. They typically involve natural disasters or other imminent threats to public health or safety. Emergency meetings are very rare.
- D. Adjourned Meetings. Any meeting may be adjourned or continued to a later time. No notice of an adjourned or continued meeting is needed so long as the time and place of the continued meeting is established at the meeting and reflected in the minutes.
- E. Work Session Rules. Rules about not taking votes at work sessions and similar constraints on how business is conducted are self-imposed limitations and may be changed by the city council. Under state law, a meeting is a meeting is a meeting.
- F. Quorum. In order for a meeting to take place, a quorum of the council must be present. A quorum is a majority of the council. In the case of a full five-member council, three members are needed for a quorum. If a quorum is not present, there is no meeting and no official business may be conducted.
- G. Ordinances, Resolutions and Motions. All legislative acts of the city must be by ordinance. Ordinances require the affirmative votes of a majority of the full

council (ordinarily, three), regardless of the number of members present. Other actions may be taken by resolution or motion and may be approved by a majority of the quorum. State law requires certain actions to be taken only upon an extraordinary vote of the council. Examples include some zoning amendments, comprehensive plan amendments, vacations of streets or other public easements and the approval of public improvement projects for which no petition has been submitted. Such actions require a vote of 2/3 or 4/5 of the council.

2. **Open Meeting Law. (Minnesota Statutes Chapter 13D)**

A. In General. The Open Meeting Law (OML) requires that meetings involving a quorum of a public body must be open to the public. The OML applies to the city council and to “any committee, subcommittee, board, department, or commission” of the city.

B. Definition of Meeting. A “meeting” is a gathering of a majority of the members of the body at which official business is discussed. It is not necessary that action be taken for a gathering to constitute a meeting. A meeting does not include chance or social gatherings as long as public business is not discussed. Telephone calls, emails, or letters could constitute a meeting if the members are using this type of communication in a serial manner as a means of deciding city matters outside the public view. It is permissible for members to lobby and consult with each other one on one, but decisions on city business must be made publicly.

C. Closed meetings. In some cases, meetings must or may be closed. Meetings may be closed only if closure is expressly authorized by statute or permitted by the attorney-client privilege. Before closing a meeting, the council or commission must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. Usually, closed meetings must be audio recorded and the tape kept for a minimum period of time. (This does not apply to attorney-client privileged meetings.)

A meeting must be closed to discuss preliminary allegations or charges against an employee: if it involves a discussion of active investigation or internal affairs data; or when there is discussion of data that would identify victims or reporters of criminal sexual conduct, domestic abuse or maltreatment of minors or vulnerable adults.

A meeting may be closed to evaluate the performance of an employee; discuss labor negotiation strategies and proposals; consider the sale or purchase of real estate; or receive attorney-client advice relating to pending or threatened litigation.

D. Notice. A schedule of the regular meetings of a public body must be kept on file at its primary offices. If the body decides to hold a regular meeting at a time or place different from the time or place stated in its schedule of regular meetings, it

must give the same notice of the meeting that is provided for a special meeting. Notice of special meetings must be posted at least three days before the meeting and include the date, time, place, and purpose of the meeting. For an emergency meeting, no notice is required but good faith efforts to notify the news media and other parties requesting notice must be made.

- E. Votes. Votes of the members of the body on an action taken in a meeting required to be open to the public must be recorded in a journal kept for that purpose. (This is typically accomplished through the meeting minutes.) The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute. The journal must be available to the public during normal business hours.
- F. Access to meeting materials. The public must have access to all materials provided to the public body before, during, or after the meeting and pertaining to the items on the agenda. This does not include materials classified as non-public by law.
- G. Violations. Intentional violations of the OML may subject an individual to personal liability in the form of a civil penalty up to \$300. If a person has been found to have intentionally violated the OML three or more separate times involving the same governing body, that person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office the person was then serving.
- H. Use of E-mail. With respect to the OML, e-mail is fundamentally no different from any other form of communication. Care must be exercised, however, to be sure that a quorum or more of the council or commission does not use e-mail to communicate with each other outside of a meeting. As noted above, one-on-one, serial email communication can constitute a violation of the OML.
- I. Social Media. Use of social media by members of a public body does not violate the OML so long as the social media is limited to exchanges with all members of the general public. (In this context, email is not considered social media.)

3. Data Practices Act. (Minnesota Statutes Chapter 13)

- A. Governing Law. The Minnesota Government Data Practices Act (“MGDPA”) governs all data maintained by the city. Data includes all data, information or documentary material, regardless of physical form, characteristics, storage media or conditions of use, made by or received by a city. Data relating to city business stored on personal electronic devices owned by council members (computers, cell phone, etc.) is also subject to the MGDPA.
- B. Classifications. The MGDPA establishes the following classifications of data:

1. **Public** - accessible to anyone.
2. **Private/nonpublic** - accessible to the person who is the subject of the data and to the governmental entity.
3. **Confidential/protected nonpublic** - accessible only to the governmental entity.
4. **Protected nonpublic** – not on an individual and not public or accessible to the subject of the data.
5. **Not Public** – any government data classified as confidential, private, nonpublic or protected nonpublic.

C. Requirements. The three basic requirements of the MGDPA are:

1. The city must allow a person to see and make copies of data when the law gives the person the right to such access;
2. The city must not allow unauthorized persons to have access to data that is not public; and
3. The city must appoint a “Responsible Authority” to ensure that the requirements of the MGDPA are satisfied.

D. Public access. The Responsible Authority must permit any person to inspect and copy public data at reasonable times and places, and, upon request, provide information regarding the data’s meaning. If a person requests access for the purpose of inspection, the city may not assess a charge or require the requesting person to pay a fee to inspect data. The Responsible Authority may require that a person requesting copies of the data pay the actual costs incurred in providing those copies. The city cannot ask for the identity of the requester except to clarify the request and cannot ask the reason for the request.

E. Denying access. If the Responsible Authority denies access to government data to any requesting person, the reasons for that denial may be provided orally at the time of the denial of the request and must be provided in writing shortly after the denial of the request. The Responsible Authority shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

F. Penalties for Violation of the MGDPA. The MGDPA provides the following penalties:

1. Action for damages. A person who suffers damage as the result of a violation of the MGDPA may sue for damages, plus costs and reasonable

attorneys' fees. If the violation was willful, the person may also be entitled to punitive damages of \$100 to \$10,000 for each violation.

2. Action to compel compliance. Any aggrieved person may bring an action to require the city to comply with the MGDPA. The person may recover costs and reasonable attorneys' fees. If the action is frivolous, however, the court may award costs and reasonable attorneys' fees to the city.
3. Criminal charges. A person who willfully violates the MGDPA is guilty of a misdemeanor.
4. Discipline. A public employee who willfully violates the MGDPA may be suspended without pay or discharged.

G. Selected Examples of Public and Not Public Data. The following types of data are those that members of a public body often encounter and that raise data privacy concerns:

1. Personnel Data. Most information that the city collects or maintains about its employees, volunteers, and applicants for employment is *private data* on individuals. This includes, among other things, performance evaluations, disciplinary matters that are not final, and charges that do not result in discipline. The following information, however, is public:

- a. As to *employees, volunteers, and independent contractors* of the city:

name; employee identification number, which must not be the persons's social security number; actual gross salary; salary range; contract fees; actual gross pension; value and nature of employer-paid fringe benefits; basis for and amount of any added remuneration, including expense reimbursement; job title and bargaining unit; job description; education and training background; previous work experience; date of first and last employment; existence and status of complaints or charges (but not the nature of the charge); final disposition of disciplinary action (which occurs when rights to have the decision reviewed by grievance or arbitration proceedings have been exercised or have lapsed); terms of any agreement settling an employment dispute; work location; work telephone number; badge number; honors and awards received; payroll time sheets (but not portions which show reasons for use of sick or medical leave).

- b. As to *applicants (current and former) for employment*:

veteran status; relevant test scores; rank on eligible list; job history; education and training; work availability; and names of finalists for a position.

c. As to *applicants for appointment to a public body*:

name; city of residence (except when the appointment has a residency requirement that requires the entire address to be public); education and training; employment history; volunteer work; awards and honors; prior government service; any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minn. Stat. §15.0597; and veteran status.

d. *Once an individual is appointed to a public body*, the following additional items of data are public:

residential address; either a telephone number or email address where the appointee may be reached or both at the request of the appointee; first and last dates of service on the public body; the existence and status of any complaints or charges against an appointee; and upon completion of an investigation of a complaint or charge, the final investigative report is public, unless access to the data would jeopardize an active investigation.

e. All other data is private data and generally may only be released to the person who is the subject of the data or to city staff whose jobs require access.

2. Civil investigative data. Data collected in connection with a pending civil legal action is classified as confidential, which means that access is restricted to those government staff persons whose jobs require access. Usually this means the city attorney and city administrator.

3. Labor relations information. Management's positions on economic and non-economic items that have not been presented during collective bargaining or interest arbitration, including information specifically collected or created to prepare management's position in the negotiations, are classified as confidential in order to protect labor negotiation strategies.

4. Correspondence with individuals. Correspondence between elected officials and individuals is private data on individuals but may be made public by either the elected official or the individual. This applies if the individual is communicating on behalf of himself or herself personally but not if the individual is representing a business, organization or other entity. If a

council or commission member provides correspondence to city staff, the staff will treat the correspondence as private unless specifically directed by the member to treat it as public data.

5. Property complaint data. The identities (names, addresses and other identifying information) of persons who register complaints with the city concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential data.

H. All government data collected, created, received, maintained or disseminated by the city is public, unless classified by state statute or federal law as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The Responsible Authority must maintain records containing government data in such a manner and condition as to make them easily accessible for convenient use.

I. The MGDPA and the Open Meeting Law Work Together.

1. Printed materials. The requirement that copies of written materials be made available to the public at open meetings does not apply to materials that contain data classified as not public. City staff should identify for the council or commission any agenda materials that are not public so that the members do not unintentionally violate the MGDPA.
2. Discussing not public data at public meetings. Except in the situations enumerated above, a meeting may not be closed on the ground that not public data will be discussed. Data that is not public may be discussed at an open meeting (other than the a meeting that is required to be closed), and it will not result in a violation of the MGDPA **if**: (1) the data being discussed relates to a matter within the scope of the authority of the public body; and (2) discussion of the data is reasonably necessary to conduct the business or agenda item before the meeting. An example would be a city council's discussion of its response to a notice of violation concerning the city's administration of a tax increment financing district made by the Minnesota Office of the State Auditor.
3. Working together. Whenever possible, council or commission members should consult with the city attorney prior to a public meeting if they have questions about the classification of data and whether it is appropriate to discuss the data at a public meeting.

4. Gift Law. (Minnesota Statutes Section 471.895)

A. In General. An interested person may not make a gift to a local official, and a local official may not accept a gift from an interested person.

1. A “gift” includes money, real or personal property, a service, a loan, 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.
2. An “interested person” is someone who has a direct financial interest in a decision that a local official is authorized to make.
3. The term "local official" includes council members and members of boards and commissions and at least high ranking city staff members.

B. Exceptions. There are a few limited exceptions, including the following:

1. Campaign contributions.
2. Services to assist the local official in the performance of official duties, such as providing advice, consultation, information and communication in connection with legislation, and services to constituents.
3. Services of insignificant monetary value; plaques or similar mementos recognizing individual services in a field of specialty or to a charitable cause.
4. Trinkets or mementos costing \$5.00 or less.
5. Food or beverages given in connection with a speech. In general, this exception permits only principal speakers at meetings to receive food or beverages.
6. Informational material of unexceptional value.
7. Gifts given to members of a group, the majority of whose members are not local officials and an equivalent gift is given or offered to the other members of the group.
8. Gifts given by family members of the recipient, unless the gift is given on behalf of someone who is not a member of that family.
9. Gifts given by a national or multistate organization of governmental organizations or public officials, of which the dues to the organization are primarily paid from public funds, to attendees at a conference sponsored by that organization, as long as the gift is food or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

C. Social exceptions. There are no “social exceptions,” so gifts such as wedding gifts are prohibited unless the gift is from a formally organized group of which the city official is one of many members. However, the group cannot be a group that is limited by invitation. Also, gifts from family members are permitted.

5. **Conflicts of Interest.**

- A. In General. City council or commission members may not participate in matters in which he or she has a personal financial interest.
- B. Contract Matters. A public officer who is authorized to take part in any manner in making any sale, lease or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease or contract or personally benefit financially therefrom. There are a few exceptions noted below.
- C. Non-Contract Matters. Five factors must be examined to determine whether there is a disqualifying interest in non-contract situations (issuance of a license or permit, for example):
 - 1. The nature of the decision being made.
 - 2. The nature of the financial interest.
 - 3. The number of interested officials making the decision.
 - 4. The need, if any, for the interested official to make the decision.
 - 5. Other means available to review the decision to ensure that the official does not act in his or her own interest.
- D. Examples of personal financial interest.
 - 1. An official who owns property abutting a public street proposed to be vacated may not participate in the street vacation proceedings.
 - 2. An official owning property across from a bar may not participate in a liquor license renewal decision for the bar.
- E. Examples of no conflict of interest.
 - 1. An officer of a bank where a zoning applicant did 90 percent of its business is not barred from participating in the decision where the applicant's project would be financed through another bank.
 - 2. An official is not disqualified from voting on a zoning ordinance change because the official's brother is employed by a corporation interested in the change.
 - 3. A member of a planning commission who is a financially-contributing member

of a church is not disqualified from voting on a variance application requested by the church.

F. What to do. When in doubt, check with the city attorney. If a conflict of interest exists:

1. Disclose the interest as soon as possible.
2. Do not participate in discussions leading up to the decision.
3. Do not attempt to influence other members regarding the decision.
4. Do not vote or take any other official action relating to the decision.

G. Exceptions. There are limited exceptions to the conflict of interest rules in contract matters. Exceptions are permitted in the following circumstances with the unanimous approval of the other members:

1. Designation of a bank or savings association.
2. Designation of an official newspaper.
3. A contract for goods or services that is not required to be competitively bid.
4. A contract with a volunteer fire department for payment of wages or retirement benefits to its members.
5. A contract to rent space in a public facility to a public officer at a rate similar to that paid by other renters.
6. An application for a grant offered by a local development organization.

There are several additional limited exceptions under Minnesota Statutes, Section 471.88. Contact the city attorney with questions.

H. Special Procedure. In general, if a contract with an official is permitted under one of the exceptions in the law, the council or commission or must do the following:

1. Approve the contract by unanimous vote; and,
2. The interested officer should abstain from voting on the matter.

In some circumstances, the interested officer should also disclose his or her interest in the matter and have that information recorded in the public record. Additionally, in certain circumstances, the interested officer not only should abstain from voting on the matter but **must** abstain from voting on the matter.

- I. Incompatible Offices. A public officer may not hold two positions if the two positions' functions are incompatible with one another. Offices are incompatible if one position hires or appoints the other, performs functions which are inconsistent with the other, makes contracts with the other or approves the official bond of the other.
 - J. Violations. Any contract that has been made illegally is void. In addition, every public officer who violates the conflict of interest law can be found guilty of a gross misdemeanor, be fined up to \$3,000, and imprisoned for up to one year.
6. **60 Day Rule (Minnesota Statutes, section 15.99).** [Planning Commission]
- A. Application. Any written request (application) related to zoning, septic systems, watershed district review, soil and watershed district review or extension of the MUSA for a permit, license or other governmental approval is subject to the 60 day rule.
 - B. Deny or Automatic Approval. The law operates in such a way that if the city does not deny an application within the allowed time period, the application is deemed automatically approved.
 - C. Receipt of Application. Upon receipt of an application subject to the 60 day rule, the city, through its staff or consultants, has 15 business days to determine if the application is complete. Completeness is determined by reference to a pre-established list of required submissions. The city must notify the applicant within that period if any required submission items are missing. The 60 day period begins to run only after all required items have been submitted. If all required items were submitted initially or the city fails to notify the applicant within 15 days, the application will be deemed complete and the 15 days will begin as of the date of initial submission.
 - D. Extension. The city is allowed to extend the time period for up to an additional 60 days (120 days total) if it reasonably needs additional time to process the application. The city must notify the applicant in writing and must state the reasons for the extension and its anticipated length before the expiration of the initial 60 days. Extension beyond 120 days requires the consent of the applicant.
 - E. Denials. Denials must be made within the established time period to avoid automatic approval. Reasons for denial must be stated in writing at the time of denial. If the written reasons for denial are not adopted at the same meeting (for example, a resolution must be prepared), it must be adopted at the following meeting and before the expiration of the 60 days or extension.
 - F. Failure to Achieve Majority for Approval. In some cases, it is not possible to achieve the required majority for approval of an application. This happens in the

case of a tie vote or when less than a required extraordinary majority is achieved. In such cases, state law allows the council's action to constitute a denial (thus avoiding automatic approval) but only if those voting against the matter state on the record at the time their reasons for denial. Those reasons will be the reasons the city will have to use in its defense if the denial is challenged.

- G. Other Time Deadlines. The 60 day rule does not apply to all common land use applications. For example, subdivisions (plats) have a 120-day deadline for preliminary approval and an additional 60 days for final approval. Although such applications are not subject to the technical details of the 60 day rule, good practice is to adhere to those rules as closely as possible.