



**CITY ADMINISTRATOR**

City Office Building  
Box 755  
Willmar, Minnesota 56201  
320-235-4913  
FAX: 320-235-4917

**MEMORANDUM**

To: Labor Relations Committee

From: City Administrator Charlene Stevens 

Date: December 6, 2012

Re: **Organizational Assessment**

Attached please find a draft of an RFP for an organizational assessment. If the scope of work is acceptable, I would propose the following schedule:

|                             |                                  |
|-----------------------------|----------------------------------|
| December 18 <sup>th</sup> : | Issue RFPs                       |
| January 7 <sup>th</sup> :   | RFPs Due                         |
| January 22 <sup>nd</sup>    | Award of RFP and work commences. |

I have identified the following firms as potential respondents:

- Fox, Lawson and Associates
- Brimeyer Fursman
- Big River Consulting Group

Fox, Lawson and Associates submitted a proposal to Kandiyohi County. Big River Consulting has been working with the Willmar School District. Brimeyer Fursman was recommended by the League of Minnesota Cities, in addition to Springsted.

The City of Willmar is seeking proposals from firms to provide an organization assessment. The Work Plan is designed to provide information necessary for the City staff and City Council to make decisions on the future of the organization.

### **Objectives:**

The City seeks the following deliverables from the assessment.

- Review of the existing organizational structure and identification of gaps and/or duplication.
- An assessment of the workplace culture. This assessment must involve soliciting feedback from employees.
- Observations and identification of opportunities for intergovernmental cooperation.
- Succession planning - Understanding and review of the length of service of the current employees, and a succession planning process review to focus on development of a plan for the future.
- Recommendations on the current business practices and processes in place.
- An assessment of the City's customer service. This assessment should involve soliciting feedback from a range of community partners.
- Assistance from the proposer in implementing the approved plan.

### **Background:**

The City of Willmar operates with a \$31 M budget of which \$15.2 M is dedicated for general purposes and \$8M for Wastewater Treatment, which operates as an enterprise fund. The City employs approximately 100 FTEs and offers a full range of municipal services. The City also owns the Municipal Utility and Rice Hospital, although neither of those entities is included in the scope of this proposal. Recreation Services are provided through a Joint Powers Agreement with the Willmar Area Public Schools. The City operates under the Weak- Mayor – Strong Council form of government and employees a full time City Administrator.

The City has a long tenured workforce and many pending retirements in next 3 to 5 years. The City is interested in looking at opportunities for restructuring, but also recognizes the importance of an orderly transition and knowledge transfer.

The purpose of conducting the organization analysis is to identify the strengths and weaknesses of the current organizational structure and leadership and develop a roadmap for the future.

### **Requirements of the Proposals:**

- Successful proposals will provide a project schedule, including key milestones.
- Proposals will also describe the methodology to be used to gather the appropriate information.

After approval of the draft assessment and its results by the Respondent will make a final presentation of the findings of the assessment and recommendations to the full City Council at a

regularly scheduled meeting. The final presentation will include a complete summary of all the deliverables listed in the RFP. For the final presentation, Respondent will provide 10 copies in a bound format.

- Please provide 3 references of similar organizational assessments completed. The submission of proposals will also include the company profiles, staffing of the firm, proposed process timeline for completion and any potential statements regarding conflict of interest. Changes to the proposals can be completed upon the written request of either party, but must be approved in writing by both parties. These proposals will be reviewed in an open (not sealed bid) evaluation comparing each of them to the above objectives.
- The City of Willmar retains the right to cancel the request for proposals at any time, and has no obligation to act on any or all of the proposals. This RFP is valid for 60 days from receipt of the proposals.
- After award of the successful proposal, the City and Respondent will work to accomplish the task in an expeditious manner as reflected by the critical path time line submitted with the proposal.
- After approval of the draft assessment and its results by the Respondent, will make a final presentation of the findings of the assessment and recommendations to the full City Council at a regularly scheduled meeting. The final presentation will include a complete summary of all the deliverables listed in the RFP. For the final presentation, Respondent will provide 10 copies in a bound format for the use of the City Council and one unbound copy suitable for making additional copies as the City requires.
- The proposer will also be asked to facilitate or otherwise assist the City in implementation.

### **Right of cancellation**

- At any time during the performance of the work, City of Willmar can choose to terminate the contract with a 30 day notice in writing to the Respondent. The City of Willmar will ask the Respondent to cease work, accumulate billing up to that time and submit to the City of Willmar all work completed to date and the final bill for payment.

**Please submit 5 copies of the proposal by 4:00 pm, Wednesday, January 25, 2012 to the following contact:**

City of Willmar

Attn: Charlene Stevens, City Administrator

333 SW 6<sup>th</sup> Street, P.O. Box 755

Willmar, MN 56201

Any questions related to this information can be directed to:

Charlene Stevens - (320) 235-4913 or [cstevens@willmarmn.gov](mailto:cstevens@willmarmn.gov)

## MEMORANDUM

To: Chairperson Ahmann and Labor Committee Members

cc: City Administrator Stevens  
Mayor Frank Yanish

From: Robert T. Scott and Christopher M. Hood

Date: December 6, 2012

Re: Conflict of Interest Policy—Options and Analysis

VIA EMAIL ONLY

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In order to inform the Labor Committee’s consideration of sample conflict of interest policies at its December 12, 2012 meeting, the following memorandum presents our summary analysis of the current rules and regulations applicable to the Mayor and members of the City of Willmar (City) City Council (Council), its boards and commissions, and City employees regarding conflicts of interest, as well as our conclusions and recommendations.

### INTRODUCTION

A potential conflict of interest arises when a public official has a *personal interest in a decision the official is authorized to make*. Currently, City officials and employees are governed, to varying extents, by rules and principles addressing conflicts of interest contained in state statutes, case law, and the City’s Charter. Additionally, City employees are subject to the City’s personnel policy concerning conflicts of interest, which is attached hereto for your reference as Appendix A. We understand that the City does not have a policy in place governing its elected and (non-employee) appointed officials, though such officials remain subject to state law.

An understanding of the current law governing conflicts of interest in Minnesota is necessary to inform the Labor Committee’s consideration of possible policies on the subject. Existing law breaks neatly into two categories: the regulations (and case law interpreting them) governing conflicts in contractual matters and the case law governing non-contractual conflicts.

In the former category, the law tends to be more definitive and straightforward in its application than in the latter category, which necessarily hinges on more subjective determinations. This memorandum does not attempt to address every situation that could be considered to fall under the broad “conflict of interest” label,<sup>1</sup> but rather to convey a general understanding of the status of the existing law governing conflicts of interest in Minnesota in order to inform the Labor Committee’s consideration of whether its policies are adequate.

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<sup>1</sup> In particular, this memorandum does not address prohibited gifts to or political activities by city officials, or incompatibility of offices.

In considering whether to recommend that the City Council enact additional policies or regulations governing conflicts of interest, we recommend that the Labor Committee identify the types of circumstances that have presented, or are likely to present, conflict of interest concerns in the City, and determine whether a new policy (or policies) is required to promote awareness of and compliance with existing law.

## ANALYSIS

### **I. REGULATIONS OF FINANCIAL INTERESTS IN CONTRACTS**

#### **A. General Statutory Prohibition and Exceptions**

##### *1. General Rule*

Under Minnesota statutes, a public officer is prohibited from having a personal financial interest in or from personally benefiting financially from any sale, lease or contract he or she is authorized to make in his or her official capacity. (Minn. Stat. § 471.87.)

This statute does not define the term “public officer”, but according to an interpretation provided by the Minnesota Attorney General, this rule applies to both elected and appointed officials, which would presumably include all members of the Council’s boards and commissions, as well as the City Administrator (and City Attorney). Further, the prohibition applies whether the financial interest is direct or indirect; and the prohibition may *not* be avoided by the interested officer simply abstaining from the decision. *See* A.G. Op. 90-E-5 (Nov. 13, 1969); A.G. Op. 90e-6 (June 15, 1988).

Any official who violates this law is guilty of a gross misdemeanor subject to a fine up to \$3,000 and imprisonment up to one year (*see* Minn. Stat. § 609.0341), and any contract entered into in violation of the law is null and void. Minn. Stat. § 471.87; *City of Chaska v. Hedman*, 53 Minn. 525, 55 N.W. 737 (1893); *Currie v. Sch. Dist. No. 26*, 35 Minn. 163, 27 N.W. 922 (1886); *Bjelland v. City of Mankato*, 112 Minn. 24, 127 N.W. 397 (1910); *Stone v. Bevans*, 88 Minn. 127, 92 N.W. 520 (1902); *City of Minneapolis v. Canterbury*, 122 Minn. 301, 142 N.W. 812 (1913); *Singewald v. Minneapolis Gas. Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966). It is important to emphasize that an interested official’s abstention from voting on (or otherwise participating in the formation of) a contract prohibited by this statute is not sufficient; the prohibition applies even if the interested official abstains.

##### *2. Exceptions*

There are currently 21 specific statutory exceptions to the general rule that operate to allow a City to enter into a contract that would otherwise be prohibited under the general rule of § 471.87. *See* Minn. Stat. § 471.88, included in Appendix B hereto. The exceptions reflect the legislature’s judgment that for certain frequently occurring municipal contractual arrangements, the risk of corruption contemplated by the general prohibition is lacking, or outweighed by the municipality’s operational concerns.

Generally, an exception may only be used when the governing body votes unanimously in favor of the (otherwise prohibited) contract and the interested officer discloses his or her interest therein, though some exceptions impose additional requirements. The examples are set forth in Appendix B and are too many, and impose too many specific requirements, to comprehensively cover here, but it should suffice for the Labor Committee's consideration of this issue to understand a few relevant examples of the types of contracts allowed by the exceptions even when a City officer has an interest therein, which are:

1. The City Council's designation of a bank or savings association as an authorized depository for public funds, or its designation of an official newspaper, subject to certain requirements. (Minn. Stat. § 471.88, subds. 1-2.)
2. Any contract that is not subject to competitive bidding requirements (generally, contracts for goods and services of \$100,000 or less (\$50,000 or less for local improvement projects paid for with special assessments), and contracts for professional services), provided that, among other requirements, it is authorized in advance by the Council by unanimous vote and based on a finding that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere. (Minn. Stat. §§ 471.88, subd. 5; 471.89.)
3. A contract pursuant to which a public officer rents space in a public facility at a market rate. (Minn. Stat. § 471.88, subd. 13.)
4. A City Council member's application for a loan or grant administered by a Housing and Redevelopment Authority (HRA) or Economic Development Authority for property owners within city limits, or an HRA board member's application for a loan or grant that is funded with state or federal funds. (Minn. Stat. § 471.88, subds. 14; 19.)
5. An HRA may take an action which affects the financial interests of a member of the HRA as long as the affected member properly discloses the interest in a timely manner and does not take part in the decision. (Minn. Stat. § 469.009.)

The 21 exceptions provided in § 471.88 apply to all cities, notwithstanding the provisions of any other statute or city charter. This means that the City Council may not enact any policy or regulation that would prohibit the City from entering into a contract pursuant to any of the 21 statutory exceptions, provided the applicable requirements imposed in each exception are adhered to.

## **B. Charter**

The City's Charter contains a similar, but not identical, prohibition on personal financial interests in City contracts to the statutory prohibition discussed above, but broadly extends the prohibition to all City employees as well as the elected and appointed officials covered by the statute:

Any City Officials, Council members, board or commission members, or employees, who have a substantial financial interest, direct or indirect or by reason of ownership of stock in any

corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in their capacity as a City officer or employee in the making of such sale or in the making of or performance of such contract. Those who willfully conceal such a substantial financial interest or willfully violate the requirements of this section shall be guilty of malfeasance in the office or position and shall forfeit their offices or positions. Violation of this section with the knowledge express or implied of the person or corporation contract—with or making a sale to the City shall render the contract or sale voidable by the Council.

City Charter, Section 9.02.<sup>2</sup>

There are several inconsistencies between the respective prohibitions of personal interests in City contracts of the Charter and state statute that require attention. First, though the Charter does not recognize any exceptions to its prohibition of such contracts, Minn. Stat. § 471.88 has preempted local regulations and charter provisions concerning the 21 exceptions to the general statutory prohibition, so the City may enter into any contracts permitted by § 471.88 notwithstanding Section 9.02 of its Charter.

Next, to the extent that the Charter's language could be interpreted to be less restrictive than the statutory prohibition (e.g. "substantial interest" in the Charter compared to (any) "personal interest" in the statute), the statutory prohibition will prevail and apply to the City. Therefore, even though the Charter operates only to give the Council the power to void a contract entered into in violation of its prohibition, any contract entered into by the City in violation of Minn. Stat. § 471.87 is void pursuant to the terms of that statute regardless of whether the Council takes action to void the contract under the Charter provision.

Finally, to the extent that the Charter's language is broader than the statute's, the Charter's language would take precedence (except, as noted above, that the statutory exceptions apply even though the Charter prohibition recognizes no exceptions). Therefore, the Charter's prohibition of all officers and employees from having an interest in a contract with the City applies to the City, even though the statute more narrowly applies only to elected and appointed officials. Similarly, the Charter's language applies to every city officer and employee whether or not the officer or employee plays a role in making contracts, even though the statute only applies when the interested official is authorized to take part in the contracting decision.

## **II. NON-CONTRACTUAL CONFLICTS OF INTEREST**

The laws discussed in the previous section relate only to contracts with interested officials. However, courts in Minnesota follow similar principles to those embodied in such laws in non-contractual situations.

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<sup>2</sup> The recently adopted (but not yet effective) ordinance amending the City's Charter made no changes to Section 9.02.

Any official who has a personal financial interest in an official non-contractual action is generally disqualified from participating in the action. This is especially true when the matter concern's the member's character, conduct or right to hold office, but also applies when an official's own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

The Minnesota Supreme Court has listed several factors to consider in determining if a disqualifying conflict of interest exists in a non-contractual setting:

1. The nature of the decision;
2. The nature of the financial interest;
3. The number of interested official(s);
4. The need for the interested official(s) to make the decision; and
5. Whether other means are available to ensure official(s) will not act arbitrarily to further their own interests (e.g. whether an opportunity for independent review of the decision exists).

*See Township Bd. of Lake Valley Township v. Lewis*, 305 Minn. 488, 234 N.W.2d 815 (1975); *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

Whereas a contract that is prohibited due to a conflict of interest is generally void regardless of whether the interested official participated in the contracting decision, in the context of a non-contractual conflict, the official action will typically be valid so long as the disqualified official does not participate in making the decision, and the required number of non-interested members approve the action.

Courts tend to hold public officials to a higher standard in when a governing body acts in a quasi-judicial capacity (as opposed to a legislative capacity). As due process requires an impartial decision making process, no member of a governing body who has a personal interest may take part in a quasi-judicial determination, and the participation of such a member may render the body's decision void.

Given the wide variety of issues that come before city councils, the application of the above-summarized principles to a given situation is highly dependent on the unique facts of each such situation, and is not susceptible of the the type of mechanical analysis characteristic of the contractual conflict of interest regulations discussed in the previous section. Suffice it to say for purposes of the Labor Committee's consideration of this issue that non-contractual disqualifying conflicts of interest seem to arise most frequently in the context of land use and zoning decisions, when a member of the decision making body owns real property that would be affected by a decision of the body, and licensure issues, when a member of a governing body applies for a license issued by that body. In such situations, our experience has been that application of the above principles to any given situation tends to yield a clear answer to whether an official's personal interest is significant enough that the official would be disqualified from participating in the decision. Of course, officials are always free to voluntarily abstain from participating in and/or voting on issues in which there may be a perception that a conflict of interest exists, even if the perceived conflict would not disqualify the official from participation/voting under law.

### III. CITY'S EXISTING POLICIES

Section 2.9 of the City's Personnel Policies makes clear to City employees that "(i)t is the responsibility of every employee to be constantly vigilant to perceive the dangers inherent in situations that give rise to a conflict of personal interests with the public interests of the City," and further directs employees to "recognize conflict situations when they occur, disclose them immediately," and "discuss questionable situations with supervisors."

Subsections of this policy prohibit City employees from using or attempting to use their employment for personal gain, engaging in self-dealing, accept gifts from the public, or misappropriate confidential information gained in the course of their employment or City property and resources for personal benefit.

This policy is generally consistent with the statutes, case law and charter provision discussed above, though it could be improved to include a definition of the term "conflict of interest" and to provide more specific guidance on employees' obligations in contractual matters. This policy does not apply to elected or appointed officials (with the exception of officials who are employees).

#### SUMMARY, CONCLUSION AND RECOMMENDATIONS

The state statutes governing conflicts of interest by city officials in contractual matters are extensive, leave little room for local governments to supplement the state's regulations, and apply to the City without regard to any contradictory charter provision or ordinance. Moreover, the legal principles applied by courts in non-contractual settings appear to be appropriate and sufficiently flexible to be reasonably applied in a wide variety of situations that might confront elected and appointed city officials as they execute the duties of their offices. Therefore, our first recommendation is that any conflict of interest policies ultimately adopted by the City reflect the requirements of state law, as well as the City's Charter.

We have preliminarily reviewed sample conflict of interest policies collected by Chairperson Ahmann from the cities of Brainerd, Minneapolis, San Jose, California and Toronto, Ontario. We note initially that some of these policies apply only to elected officials, others apply only to employees, and some apply to both employees and elected officials. Our experience dealing with these issues is that the role of employees typically play in preparing matters for the consideration of the City Council (or a board or commission) differs significantly from the role of the Council (or other body) in deliberating and making decisions such that separate policies for employees and elected and appointed officials are warranted and would be most practical.

For this reason, we recommend the Labor Committee consider this issue in two steps. First, we recommend the Committee review the City's Personnel Policy 2.9 and determine whether it should be updated, and if so, direct Flaherty & Hood, P.A. to prepare a revisions to the policy consistent with the Committee's direction. As noted above, we recommend that the policy be improved to, at a minimum, include a definition of the term "conflict of interest" and to provide more specific guidance on employees' obligations in contractual matters, though we would of course follow any additional direction from the Committee.

Second, we recommend that the Labor Committee consider whether it would be in the City's interest to develop and adopt a separate conflict of interest policy applicable to elected and appointed officials, and if so, direct Flaherty & Hood, P.A. to prepare a draft policy consistent with the Committee's direction. If the Committee wishes to pursue such a policy, our suggestion would be to use the Brainerd policy as a starting point, as it appears to have been carefully crafted with Minnesota law in mind and, unlike the Minneapolis policy, applies only to elected and appointed officials. If there are specific provisions from the Minneapolis, San Jose, or Toronto (or any other) policies that the Committee feels would be appropriate for Willmar, we can certainly incorporate such provisions into the draft policy as well.

We look forward to continuing to work with the Labor Committee and/or City Council on this issue. In the meantime, should you have any questions or require additional information, please contact us at (651) 225-8840.

RTS-CMH

2.9. Conflict of Interest

It is the responsibility of every employee to be constantly vigilant to perceive the dangers inherent in situations that give rise to a conflict of personal interests with the public interests of the City. Perfect avoidance of all conflicts of interest is not possible, but Willmar citizens expect and deserve the kind of loyalty and ethical consciousness that will motivate employees to recognize conflict situations when they occur, disclose them immediately, and endeavor to resolve them.

The following sections include representative examples of conflict of interest situations which may occur in public employment. Since all possible situations may not be anticipated, it is the responsibility of every employee to exercise careful judgment and to discuss questionable situations with supervisors.

2.9.1. Personal Gain No employee of the City shall use or attempt to use his/her employment position to secure or accept benefits, privileges, exemptions or advantages for themselves, their family, or an organization with which they are associated.

2.9.2. Outside Employment The City recognizes that it is neither proper or desirable that there be any interference with the private or personal business of employees during off-work hours. However, in order to insure that conflicts of interest with outside employment do not arise, such situations shall require prior disclosure to supervisors by the employee and investigation by the proper City authority to determine if a conflict does exist.

2.9.3. Self Dealing No employee of the City shall engage in any activity, become employed or affiliated for personal gain with any agency or organization which is or may become subject to the control, regulation, inspection, review, audit, or enforcement authority of the City by that individual; nor may that individual approve or execute a purchase obligation on behalf of the City with any firm or organization with which they are affiliated.

2.9.4. Acceptance of Gifts No employee of the City shall directly or indirectly receive or agree to receive any payment, compensation, gift, reward, gratuity, favor, service, employment, promise of future employment, or other benefit from any source other than the City for services or any activity which is part of the normal duties of that official or employee. Any such gifts or compensation shall be disclosed to supervisors for

consideration of an exception. Exceptions to this provision may include: personal gifts of nominal value; plaques or similar mementos recognizing individual service such as to a charitable cause; payment of expenses for travel or meals, not to exceed actual expenses, which are not reimbursed by the City; and honoraria or expense reimbursement for papers, presentations, or appearances made by officers or employees on their own time for which they are not compensated by the City.

2.9.5. Use of Confidential Information No appointed official or employee of the City shall use or allow the use of confidential information obtained in their normal employment capacity to further their own or other private interests, and shall not accept outside employment or involvement in a business or activity that will require use or disclosure of such information.

2.9.6. Use of City Property No appointed official or employee of the City shall use or allow the use of work time, supplies, equipment or other City property to further their own private interest or in any capacity not in the interests of the City.

Supervisory Responsibility Supervisors and Department Directors should be constantly aware of conflicts, potential conflicts, and the appearance of conflicts, and are responsible to insure that all employees are made aware of this policy and are advised of its requirements. Questions of conflict of interest should be submitted immediately to supervisors.

Employee Responsibility All appointed officials and employees are responsible to conduct themselves in accordance with this policy; to develop and maintain an attitude of awareness of those situations in which an appearance of a conflict of interest might arise; and to strive at all times to avoid not only actual conflicts, but also the appearance thereof. Conflict of interest situations, actual and apparent, shall be disclosed to superiors immediately upon discovery.

**471.87 PUBLIC OFFICERS, INTEREST IN CONTRACT; PENALTY.**

Except as authorized in section 471.88, 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. Every public officer who violates this provision is guilty of a gross misdemeanor.

**History:** *1951 c 379 s 1; 1955 c 41 s 1; 1986 c 444*

471.88 MS 1957 [Repealed, 1961 c 651 s 2]

**471.88 EXCEPTIONS.**

Subdivision 1. **Coverage.** The governing body of any port authority, seaway port authority, economic development authority, watershed district, soil and water conservation district, town, school district, hospital district, county, or city, by unanimous vote, may contract for goods or services with an interested officer of the governmental unit in any of the following cases.

Subd. 2. **Bank or savings association.** In the designation of a bank or savings association in which the officer is interested as an authorized depository for public funds and as a source of borrowing, no restriction shall apply to the deposit or borrowing of any funds or the designation of a depository by such authority or governmental unit in any bank or savings association in which a member of an authority or officer of a governmental unit shall have an interest if such deposited funds are protected in accordance with chapter 118A; provided, however, that any member or officer having such an interest shall disclose that the member is a director or employee of the bank or savings association, which disclosure shall be entered upon the minutes of the authority or governmental unit, such disclosure shall be made when such bank or savings association is first designated as a depository or as a source of borrowing, or when such member or officer is elected whichever is later, and such disclosure shall serve as notice of such interest and need not be made with each successive transaction.

Subd. 3. **Official newspaper.** The designation of an official newspaper, or publication of official matters therein, in which the officer is interested when it is the only newspaper complying with statutory or charter requirements relating to the designation or publication.

Subd. 4. **Cooperative association.** A contract with a cooperative association of which the officer is a shareholder or stockholder but not an officer or manager.

Subd. 5. **Contract with no bids required.** A contract for which competitive bids are not required by law.

Subd. 6. **Contract with volunteer fire department.** A contract with a volunteer fire department for the payment of compensation to its members or for the payment of retirement benefits to these members.

Subd. 6a. **Contract with volunteer ambulance service.** A contract with a volunteer ambulance service for the payment of compensation to its members or for the payment of retirement benefits to these members.

Subd. 7. **Contract with municipal band.** A contract with a municipal band for the payment of compensation to its members.

Subd. 8. [Repealed, 1992 c 380 s 8]

Subd. 9. **Import, export, trade; port commissioner.** When a port authority commissioner or economic development authority commissioner is engaged in or employed by a firm engaged in the business of importing or exporting or general trade, it shall be lawful for the authority to do business with the commissioner or the commissioner's employer provided that in the fixing of any rates affecting shippers or users of the terminal facility, said commissioner shall not vote thereon.

Subd. 10. **Import, export, trade; seaway port.** When a seaway port authority commissioner is engaged in or employed by a firm engaged in the business of importing or exporting or general trade, it shall be lawful for the authority to do business with the commissioner or the commissioner's employer provided that in the fixing of any rates affecting shippers or users

of the terminal facility, said commissioner shall not take part in the determination of, except to testify, nor vote thereon.

Subd. 11. **Bank loans or trust services.** When a commissioner of any public housing, port authority, or economic development authority is employed by a bank engaged in making loans or performing trust services involving real or personal property affected by any plan or such housing or port authority, no restriction shall apply to any such loans made or trust services performed by said bank if the commissioner shall disclose the nature of such loans or trust services of which the commissioner has personal knowledge, which disclosure shall be entered upon the minutes of such authority.

Subd. 12. **Population of 1,000 or less.** An officer of a government unit may contract with the unit to provide construction materials or services, or both, when the sealed bid process is used and the unit has a population of 1,000 or less according to the last federal census. The officer may not vote on the question of the contract when it comes before the governing body for consideration.

Subd. 13. **Rent.** A public officer may rent space in a public facility at a rate commensurate with that paid by other members of the public.

Subd. 14. **Local development organization.** (a) For the purposes of this subdivision:

(1) "local development organization" means a housing and redevelopment authority, economic development authority, community action program, port authority, or private consultant; and

(2) "government unit" has the meaning given in section 471.59, subdivision 1.

(b) When a local development organization administers a loan or grant program for individual property owners within the geographical boundaries of a government unit by an agreement entered into by the government unit and the local development organization, an officer of the government unit may apply for a loan or grant from the local development organization. If an officer applies for a loan or grant, the officer must disclose as part of the official minutes of a public meeting of the governmental unit that the officer has applied for a loan or grant.

Subd. 15. **Franchise agreement.** When a home rule charter or statutory city and a utility enter into a franchise agreement or a contract for the provision of utility services to the city, a city council member who is an employee of the utility is not precluded from continuing to serve as a city council member during the term of the franchise agreement or contract if the council member abstains from voting on any official action relating to the franchise agreement or contract and discloses the member's reason for the abstention in the official minutes of the council meeting.

Subd. 16. [Renumbered 123B.195]

Subd. 17. **Federal or state grant programs.** The governing body may apply for and accept a state or federal grant for housing, community, or economic development in which a public officer may benefit, if the public officer abstains from voting on measures related to the grant.

Subd. 18. **Small cities in St. Louis County; certain federal funding programs.** If a city with a population of 5,000 or less in St. Louis County administers a loan or grant program with community development block grant funds or federal economic development administration funds for property owners within the geographic boundaries of the city, the city may make a grant or loan from these funds to a public officer of the city who applies, if the public officer first discloses, as part of the official minutes of a meeting of the city, that the public officer has applied for the funds and the public officer abstains from voting on the public officer's application.

Subd. 19. **Loan for HRA officer, if disclosed.** If a city or county housing and redevelopment authority, or an agency having the powers of a city or county housing and redevelopment authority, administers a loan or grant program with state or federal funds, the authority may make a grant or loan from these funds to a public officer of the authority who applies, if the public officer first discloses, as part of the official minutes of a meeting of the authority, that the public officer has applied for the funds and the public officer abstains from voting on the public officer's application.

Subd. 20. **Township supervisor is employee of contractor.** A township may enter into a contract governed by section 471.345, even if a township supervisor is an employee of the contractor as long as the supervisor had no role in preparing the contractor's bid or negotiation for the contract with the township. The supervisor is not precluded from continuing to serve as a township official during the term of the contract if the township supervisor abstains from voting on any official action relating to the contract and discloses the supervisor's reason for the abstention in the official minutes of the township meeting.

Subd. 21. **Contract with no bids required.** Notwithstanding subdivision 1, a local school board may contract with a class of school district employees such as teachers or custodians where the spouse of a school board member is a member of the class of employees contracting with the school board and the employee spouse receives no special monetary or other benefit that is substantially different from the benefits that other members of the class receive under the employment contract. A school board invoking this exception must have a majority of disinterested school board members vote to approve the contract, direct the school board member spouse to abstain from voting to approve the contract, and publicly set out the essential facts of the contract at the meeting where the contract is approved.

**History:** 1961 c 651 s 1; 1965 c 806 s 1-4; 1969 c 26 s 1; 1973 c 123 art 5 s 7; 1977 c 55 s 1-3; 1978 c 651 s 1; 1979 c 20 s 1; 1986 c 399 art 2 s 38-40; 1986 c 400 s 38-40; 1986 c 444; 1Sp1986 c 3 art 2 s 41; 1991 c 65 s 1,2; 1992 c 380 s 7; 1992 c 522 s 42,43; 1993 c 224 art 9 s 43; 1996 c 471 art 7 s 18; 1998 c 269 s 1; 2001 c 7 s 90; 2001 c 132 s 1,2; 2002 c 356 s 1; 2003 c 119 s 1; 1Sp2003 c 23 s 27; 2004 c 139 s 1; 2005 c 80 s 1; 2008 c 176 s 1

## INTRODUCTION

The first edition of this parliamentary procedure book, published in 1950, was a turning point in parliamentary procedure. Written by the noted parliamentarian Alice Sturgis, it challenged the notion that deliberative meetings should be conducted only by procedures established in the nineteenth century. It declared that rules should be simplified as much as possible and should be explained in understandable language. **In short, it was a challenge to *Robert's Rules of Order*.**

The response was gratifying. Several justices of the U.S. Supreme Court, and the parliamentarians of the U.S. Senate and House of Representatives, as well as officials of the American Bar Association and many other organizations, endorsed the book. Typical was the comment of Erwin Griswold, Dean of the Harvard University Law School, who noted that such classics as *Jefferson's Manual*, *Cushing's Manual*, and *Robert's Rules of Order* "are often technical, cryptic, and really intelligible only to specialists. Moreover, they are dated, and do not reflect current practices with full accuracy. This book has the great merit of combining clarity and readability with sound and well-conceived procedures appropriate to the present time."

In 1988, after the death of Alice Sturgis, the publishers asked the American Institute of Parliamentarians to prepare a third edition, reflecting current thinking and practices and the name of the book was changed. Instead of *Sturgis Standard Code of Parliamentary Procedure*, **it was changed to *The Standard Code of Parliamentary Procedure***, reflecting the fact that it no longer represented the opinions of just one individual, but rather the collective wisdom and experience of many experts in the field.

In the fourth edition a number of subjects have been more fully explained, some minor changes have been made, and several inconsistencies have been rectified.

### The Purpose of Parliamentary Law

**The purpose of parliamentary procedure is to facilitate the transaction of business and to promote cooperation and harmony.** The philosophy of parliamentary law is constructive-to make it easier for people to work together effectively and to help organizations and members accomplish their purposes.

Technical rules should be used only to the extent necessary to observe the law, to expedite business, to avoid confusion, and to protect the rights of members.

Two basic procedural rules have developed to assure that the simplest and most direct procedure for accomplishing a purpose is observed. **First, motions have a definite order of precedence**, each motion having a fixed rank for its introduction and its consideration. **Second, only one motion may be considered at a time.**

### Equality of Rights

**All members have equal rights, privileges, and obligations.** Every member has an equal right to propose motions, speak, ask questions, nominate, be a candidate for office, vote, or exercise any other privilege of a member. Every member also has equal obligations.

The presiding officer should be strictly impartial and should act promptly to protect the equality of members in the exercise of their rights and privileges.

### Majority Decision

**The majority vote decides.** The ultimate authority of an organization is vested in a majority of its members. This is a fundamental concept of democracy.

A primary purpose of parliamentary procedure is to determine the will of the majority and see that it is carried out. By the act of joining a group, a member agrees to be governed by the vote of its

majority. Until the vote on a question is announced, every member has an equal right to voice opposition or approval and to seek to persuade others. After the vote is announced, the decision of the majority becomes the decision of every member of the organization. It is the duty of every member to accept and to abide by this decision.

When the members of an organization select officers, boards, or committees, and delegate authority to them, this selection and delegation should be by the democratic process of majority vote.

### **Minority Rights**

**The rights of the minority must be protected.** Democratic organizations always protect certain basic rights belonging to all members. The right to present proposals, to be heard, and to oppose proposals are valued rights of all members, although the ultimate authority of decision rests with a majority, except when a higher vote is required. The members who are in the minority on a question are entitled to the same consideration and respect as members who are in the majority.

The minority of today is frequently the majority of tomorrow. A member of the majority on one question may be in the minority of the next. The protection of the rights of all members, minority and majority alike, should be the concern of every member. The rights of absentees also must be protected.

### **The Right of Discussion**

**Full and free discussion of every proposition presented for decision is an established right of members.** Each member of the assembly has the right to speak freely without interruption or interference provided that the rules are observed. The right of members to “have their say,” or to “have their day in court,” is as important as their right to vote.

### **The Right to Information**

**Every member has the right to know the meaning of the question before the assembly and what its effect will be.** The presiding officer should keep the pending motion clearly before the assembly at all times and, when necessary, should explain it or call on some member to do so. Any motion and its effect should be explained if there are members who do not understand it. Members have the right to request information on any motion they do not understand so that they may vote intelligently.

### **Fairness and Good Faith**

**All meetings must be characterized by fairness and by good faith.** Trickery, overemphasis on minor technicalities, dilatory tactics, indulgence in personalities, and railroading threaten the spirit and practice of fairness and good faith. **If a meeting is characterized by fairness and good faith, a minor procedural error will not invalidate an action that has been taken by an organization.** But fraud, unfairness, or absence of good faith may cause a court to hold any action invalid.

Parliamentary strategy is the art of using legitimately the parliamentary principles, rules, and motion to support or defeat a proposal.

### **Proposal of a Motion by a Member**

A motion must be stated in the form “I move that ...,” which means “I propose that...,” followed by a statement of the proposal which the member wishes to bring before the assembly, for example: “I move that this organization purchase a site for a new headquarters building.”

The enacting clause “I move...” is the only correct wording for introducing a motion. It gives notice to the presiding officer and to the assembly that the speaker is submitting a proposal for decision.

Awkward forms such as “I move you” or “I make a motion that” are incorrect. Statements beginning “I propose” or “I suggest” should not be recognized as motions. The presiding officer should inquire of the member making such a statement, “Do you wish to state your proposal as a motion?” Aside from an occasional brief explanatory remark, no discussion is permissible until the presiding officer states the motion to the assembly.

The proposer of a lengthy, complicated, or important motion should prepare written copies of it and give them to the presiding officer and to the secretary. The presiding officer may require that the maker of such a motion submit it in writing.

### **Seconding a Motion**

After proposing the motion another member may, without waiting for recognition, say, “I second the motion” or just “Second.” Seconding a motion merely indicates that the member wishes the motion to be considered by the assembly; it is not necessarily an endorsement of the motion.

If the motion is not seconded, the presiding officer inquires: “Is there a second to this motion?” A motion sometimes fails to receive a second because the meaning of the motion is not clear to the members. In such a case, the presiding officer should restate the motion more clearly and ask again if there is a second. If there is no response, the chair may declare: “Since there is no second, the motion is not before the assembly,” and proceed to other business.

Routine motions, such as approving the minutes, are frequently put to vote without waiting for a second. If any member objects to the lack of a second, the presiding officer must call for one.

## Chapter 4

### CLASSIFICATION OF MOTIONS

#### Classes of Motions

Motions are classified into *five groups* according to their purposes (page 268) and characteristics:

- Main motions
- Restorative main motions
- Subsidiary motions
- Privileged motions
- Incidental motions

#### Main Motions

Main motions are the most important and most frequently used. The main motion is the foundation of the conduct of business. Its purpose is to bring substantive proposals before the assembly for consideration and action. After it is stated by the presiding officer, the main motion becomes the subject for deliberation and decision.

#### Restorative Main Motions

There are five main motions that have specific names and are governed by somewhat different rules. They are referred to as restorative main motions because unlike other main motions, they do not present a new proposal but concern actions that were previously taken. The most frequently used are:

- Amend a previous action
- Ratify
- Reconsider
- Rescind
- Resume consideration (take from the table)

#### Subsidiary Motions

Subsidiary motions alter the main motion, or delay or hasten its consideration. Consequently, they are subsidiary to it. Subsidiary motions are usually applied to the main motion, but some of them may be applied to certain other motions.

The most frequently used subsidiary motions are:

- Postpone temporarily (lay on the table)
- Close debate
- Limit or extend debate
- Postpone to a certain time
- Refer to a committee
- Amend

#### Privileged Motions

Privileged motions have no direct connection with the main motion before the assembly. They are motions of such urgency that they are entitled to immediate consideration. They relate to the members and to the organization rather than to particular items of business. Privileged motions would be main motions but for their urgency. Because of their urgency, they are given the privilege of being considered ahead of other motions that are before the assembly.

The privileged motions are:

- Adjourn
- Recess
- Question of privilege



**CITY ADMINISTRATOR**

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**MEMORANDUM**

To: Labor Relations Committee

From: City Administrator Charlene Stevens 

Date: December 6, 2012

Re: **Committee Structure**

At Councilmember Ahmann's request, I used the Minnesota Manager's Listserve to inquire about how other cities in Minnesota structure their council committees or chairmanships. The responses are attached.

Please let me know if you would like additional information.

| City           | Response  |
|----------------|---|
| Morris         | City Manager form of government, no standing committee. Mayor does appoint liaisons to other committees, i.e. Planning Commission, Park Board, etc. |
| St. Michael    | May only hold the Chair position for 2 years in a 5 year period.  |
| Plymouth       | Maximum of two consecutive years, not to exceed six years.  |
| Marshall       | No term limits  |
| Isanti County  | Rotation of committees  |
| Wyoming        | Disbanded committees is 2003 in favor of full council workshops.  |
| New Ulm        | No standing committees  |
| Waconia        | Rotates membership  |
| Falcon Heights | No set policy, Chair selected by the committee  |