

# Open Meetings

The City Attorney's Office

## Complying with Chapter 19 of the Wisconsin Statutes

### Notice

The City must give the public prior notice of the time, date and place of every meeting of all governmental bodies, including the Common Council, its standing committees and all its boards and commissions. The notice must also include the agenda items to be discussed. If an item is not included on the publicly noticed agenda, it cannot be discussed. Notice of a meeting must be given at least 24 hours, excluding Sundays and holidays, before the meeting, unless such notice is impossible or impractical.

Best practice is to publish notice in advance of 24 hours whenever possible. Questions about agendas and public notice should be directed to the City Clerk's Office or the City Attorney's Office.



### Meetings

Under Wisconsin law, a meeting happens whenever a sufficient number of members of a body "convene" for the purpose of exercising its responsibilities, powers or duties. For the Common Council, a sufficient number of Alderpersons is 5. For standing committees, a sufficient number of Alderpersons is 3. A body can "convene" in person, digitally, and even telephonically. Meetings do not include any social or chance gatherings that are not intended to circumvent the law. To be on the safe side, the City Clerk's Office frequently posts notices of "informal gatherings" when it is likely that multiple members of a body may attend the same event.

### Quorum

A quorum of Alderpersons must be present at a meeting of the Common Council or its standing committees to take action on any item properly noticed. The Wauwatosa Code of Ordinances defines a quorum of the Common Council as 11 Alderpersons. A quorum of the standing committees is 5 Alderpersons. For all other boards and commissions, unless defined differently by rule, a quorum is a majority of members.

Short a few members at a properly noticed meeting? A group can still meet to discuss properly noticed items, but no action may be taken.

### Closed Sessions

Virtually all of the business conducted by the Common Council, its standing committees and all its boards and commissions must be conducted publicly at properly noticed meetings. Under Wisconsin law, closed sessions may only be used for limited types of discussions. A full list of permissible topics can be found in Wisconsin Statutes section 19.85. Items for closed session must still be publicly noticed and must be publicly marked for a possible closed session discussion. It is essential that items discussed in a closed session remain confidential.

**Wisconsin law operates under the presumption that all work of a governmental body should be done in public and that all meetings should be held open to the public.**

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### Beware Of Walking Quorums

Members of a government body can violate the open meetings law by communicating in walking quorums about City business outside of properly noticed meetings. A walking quorum is a series of gatherings among separate groups of members, each less than a quorum size, who tacitly or explicitly agree to act or vote in a certain manner in numbers sufficient to determine a course of action.

Forward and Reply All features in emails can result in walking quorums. To avoid this, staff recommends use of Bcc when emailing multiple members of a body.



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### Electronic Communications

During meetings communications between members about items on the agenda must occur publicly. Interactive electronic communications between members can be considered meetings depending on the number of participants, the number of communications, the time frame of communications and the extent of conversation-like interactions. Failure to properly notice those electronic communication and to allow for public viewing is a violation of the open meetings law.

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### Citizen Participation

Wisconsin law ensures the right of the public to attend and observe open session meetings. The law does not require a body to allow the public to speak or actively participate. Typically the Common Council does not take public comments at meetings unless a public hearing has been scheduled. Citizen participation is more common at meetings of the standing committees. Committee chairs frequently set the ground rules for citizen participation at their respective meetings. Public participation at board and commission meetings is similarly dependent on their own operating rules and the nature of the agenda items up for discussion.

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### Recording

As long as recording does not disrupt a meeting, members of the public are allowed to record or film open-session meetings.



Governmental bodies must make reasonable efforts to accommodate any person who wants to record, film or take photographs during the meeting, as long as there is no interference with the conduct of the meeting or the rights of the participants.

The open meetings law does not require a governmental body to permit recording of an authorized closed session. If a body does choose to record a closed session, it should be aware that the recording is not automatically exempt from disclosure under public records law.

# Public Records

## The City Attorney's Office

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### Requesters

Generally any person has the right to request any record from the City, with very few exceptions. Requesters are not required to identify themselves and they do not need to provide a reason for their request.

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### Custodians

Alderspersons are custodians of their own records. That means that each Aldersperson is responsibly for maintaining their own records as defined by Wisconsin law. The easiest way to accomplish this is to use your city email account to conduct all city business. That way city staff can assist in archiving and locating records. The city has no other means by which to archive your records, so you must be sure to retain any and all other records pursuant to the city's record retention policy.

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### Records

Records includes any material on which written, drawn, printed, spoken, visual, or electronic data is recorded or preserved. In addition to more traditional documents, records include audio and video files, data in databases, emails, social media, and text messages. Records do not include purely personal property.

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### Personal Accounts

The content of a record determines whether or not a record is a public record, not the medium, format or location. In other words, it doesn't matter what accounts you are using to conduct city business. All city business, regardless of how or where conducted, is subject to the public records law. Best practice is to use personal accounts for personal business and professional accounts for city business. As the custodian of your own records, you will be responsible for conducting a careful search of ANY account that may have information responsive to a public record request.

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### Filling Requests

A request may be verbal or in writing and the city cannot require the use of a particular form. No magic words are required, the request must simply describe the records requested and be reasonably specific as to the time and subject matter. If you don't understand a request, contact the requester in writing and request a clarification. Only records that exist at the time of the request must be produced, you should not create new records responsive to a request. If there are no responsive records, inform the requester. There are very few legal basis on which record requests can be outright denied. If you received a request where you believe the public interest in disclosure is outweighed by public policy against disclosure please contact the City Attorney's Office for assistance. Likewise, if you believe information in a record is subject to redaction, please contact the City Attorney's Office.

**Under Wisconsin law, almost everything is considered a record and presumed to be available to the public. It is a crime in the State of Wisconsin to destroy or conceal public records.**

# Ethics

## The City Attorney's Office

### Wauwatosa Code of Ordinances Chapter 2.05

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#### Purpose

The purpose of Chapter 2.05 of the Wauwatosa Code of Ordinances is to establish guidelines for ethical standards of conduct for all city officials and employees. The chapter sets forth actions that are contrary to the best interests of the city and requires the disclosure of financial and other interests in matters affecting the city. You should also familiarize yourself with Wisconsin State Statutes sections 19.59, 946.10 and 946.18, which all apply to local elected officials.

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#### Gifts

You may neither give nor receive anything of value if it could reasonably be expected to influence your action, inaction, judgment or vote. You also may not accept rewards for any action or inaction. It is not a conflict of interest for you to receive gifts of inconsequential value or gifts that are given to you independent of your position as an official.

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#### Private Benefit

You may not use your public position to obtain financial interest or anything of value for yourself, your family, or any organizations with which you may be affiliated. From time to time city business may intersect with your personal business. When this happens, you must publicly disclose the nature and extent of your interests before participating in the discussion.

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#### Recusal

If the intersection of personal business with city business could result in a financial gain or anything of value for yourself, your immediate family, or any organization with which you are affiliated, you are prohibited from informally or formally discussing or acting on that item.

Should such a situation arise in a public meeting, you should withdraw from the meeting while that item is being discussed. If the meeting is not public, you must leave the room while the item is addressed. This situation occasionally presents itself and you should not feel uncomfortable for having to recuse yourself. Your recusal lends integrity to the process.

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#### Confidential Information

As an alderperson you will be privy to confidential information related to the city and its business. Disclosure of confidential information could disadvantage the city as it conducts its business and at times could implicate the health, safety and well-being of residents. You are prohibited from disclosing confidential information, especially if that disclosure is to gain something of value or to advance a financial, personal or private interest.

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#### Life As An Alderperson

As an alderperson, your authority and influence is realized only when the Common Council acts as a body. As an individual, your rights and privileges in the City of Wauwatosa are the same as any other resident. City staff is committed to making your time on the Council a success, so when in doubt, ask!

**Confidential ethics opinions may be obtained by contacting the City Attorney's Office.**

# Social Media

## The City Attorney's Office



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### Create a separate Facebook page (not profile)

Elected officials are strongly encouraged to separate personal from professional social media accounts, so that city-related matters and all public records generated from those posts are easily archived and not intermingled with personal posts. Your page should be publicly accessible. You should not block anyone from your page.

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### Archive your accounts

The benefits of having a PAGE is that the page will be accessible to anyone. (No one has to request to see your content.) Pages can also be adequately archived for public records law purposes. Personal profiles do not have this same ability. Pages also have messenger features to easily respond to constituents. Your role as an elected official is subject to records requests. You are responsible for archiving your social media.

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### Be aware of where you are posting from your personal profile vs. professional page

You might be tagged by a neighbor in an online conversation. The tag might be to your personal profile. If the topic is city business, we recommend responding from your professional page, so that records are with that professional page.

If other elected officials start talking in the same thread, be aware of open meeting laws or walking quorums. It is best practice to respond in the thread and say something like, "Thanks for your comment. Because of Open Meeting Laws, I cannot comment here, but I invite you to attend the upcoming meeting where we can talk more."

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### Comment moderation

Government maintained social media pages which permit public comments are public forums under the First Amendment. It is critical to adopt a social media policy because, in the absence of such policy, any restriction on speech (e.g., deleting comments) will likely violate the First Amendment.

If you plan to moderate comments, you should have a social media policy. We can provide you a template social media policy. When you create a social media policy, you must uniformly enforce it.

Respect the right to free speech – including unfavorable criticism. Use the comment as an opportunity to invite a constituent to a meeting or participate in an upcoming topic.

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### Key Takeaways

- ✓ If you want your social media account to remain "personal," don't use it for official purposes. Have a plan to maintain your own records.
- ✓ Be aware of where you're posting, so you're not violating Open Meeting Laws.
- ✓ Don't block users or delete comments just because someone criticizes you.
- ✓ Have a social media policy, make it public, and follow it consistently. If you limit what your followers can comment, the limits should be reasonable, viewpoint-neutral, and enforced consistently.