
Board of Directors' Guide

Lake Minnetonka Conservation District (LMCD)



An overview of the organization, legal requirements, roles, and business operations to help guide you in a successful leadership role in protecting Lake Minnetonka and all those who use it.

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LMCD Board Director

How it all happens

Congratulations on your appointment to the LMCD Board. The Lake Minnetonka Conservation District is governed by a voluntary Board of Directors composed of one member appointed by the City Councils of the 14 municipalities that border Lake Minnetonka. The Board provides direction for the organization, develops policies and initiatives, and helps build partnerships to conduct the mission of preserving and enhancing the “Lake Minnetonka experience.” Serving on the Board is a great way to guide the future of Lake Minnetonka; and help protect the Lake, the communities, and all those who enjoy it.

This **guide is intended to provide an overview of the organization, member roles, legal requirements, and other operational information** to help orient you in your important leadership role. Please note that this handbook is not all inclusive and may be updated periodically.

Your work makes a difference and is important to the residents, businesses, lake enthusiasts, cities, and all the agencies who are involved in its protection. We anticipate you will find your service meaningful and rewarding. Staff look forward to your participation on the team. If you have questions, please contact the Executive Director. **Thank you and welcome aboard!**

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Visit the LMCD website at www.lmcd.org or contact the LMCD Office to inquire about available resources and information.

Section 1: About the LMCD

So much to know, so little time

The LMCD is a regional governmental agency consisting of fourteen-member cities with a boundary on Lake Minnetonka. Each city appoints a representative to serve on the Board, not only to represent the interest of the city, but keeping the short-term and long-term needs of Lake Minnetonka in mind.

The LMCD was created under Laws 1967, chapter 907 and Laws 1969, chapter 272 and is currently governed by Minn. Stat. §§ 103B.601 to 103B.645. The LMCD is a corporate and political body and a political subdivision of the state, Minn. Stat. § 103B.605. The LMCD is governed by a board composed of members appointed by the governing bodies of the municipalities under Minn. Stat. § 103B.611.

Member Cities Include:

Deephaven, Excelsior, Greenwood, Minnetonka, Minnetonka Beach, Minnetrista, Mound, Orono, Shorewood, Spring Park, Tonka Bay, Victoria, Wayzata, and Woodland.

“The LMCD provides a coordinated, balanced approach to managing Lake Minnetonka, providing consistent standards throughout the lake and eliminating duplication of services for the fourteen-member cities.” It provides a unique governance for a unique lake.

Mission Statement

The mission of the Lake Minnetonka Conservation District is to preserve and enhance the “Lake Minnetonka experience.” This is accomplished by providing leadership in protecting, improving, and managing lake use.

Vision Statement

Lake Minnetonka is a highly valued year-round asset with vibrant aesthetic, recreational, commercial, and natural qualities. These qualities and values will be protected and preserved for present and future generations.

Our Core Values

Accountability | Collaboration | Integrity | Leadership | Quality Results | Stewardship of the Lake

The Strategic Plan

Organizations often have a variety of paths that can be taken as part of doing business. Strategic plans are created to provide direction and ensure organizational alignment so the goals can be accomplished efficiently and effectively by focusing resources. They are useful tools to communicate the organization's goals and actions needed to achieve desired results, providing guidance to leadership and staff.

The LMCD periodically adopts Strategic Plans that often build on previous plans, successes and challenges. The LMCD adopted the Business Plan that includes the organization's Mission, Vision, Core Values, Strategic Priorities, and Outcomes. The Business Plan portion provides the performance measures and action plans established to meet the Strategic Plan. A Dashboard or other mechanism provides a high-level view of the progress made on the strategic priorities. These documents are provided available on the LMCD website.

"We love the Lake—Keep up the good work!" Jack, resident

Expectations At-A-Glance

The following list is an at-a-glance view of the basic board member time and commitments:

- Takes the Oath of Office at the new Directors first meeting, typically the first meeting of February. Completion of the new board of director orientation checklist will establish the preferred communications information.
- Attend two board meetings per month, the second and fourth Wednesdays of the month, at the City of Wayzata Community Room. Typically, there is no second meeting in November and December due to holidays. Other meetings may be cancelled during the year if agenda items can be batched to save time and money.
- Prepare for the meetings by:
 - Reading all agenda items and be ready for discussion at the meetings; and
 - Participating in discussions as appropriate and voting on agenda items.
- Participate in Workgroups as needed.
- Review and respond to license and permit applications and projects in your city.
- Respond to public inquiries regarding Lake concerns and refer to LMCD as appropriate.
- Provide periodic updates to the city about LMCD activities.
- Contact public officials regarding actions, initiatives, and legislation.
- Represent the LMCD's position for inquiries.

- Be an ambassador for Lake Minnetonka and LMCD; and
- Respond to staff regarding any inquiries, notice of attendance, or other business.

Overview of Functions

The board has authority and responsibility over several functions. The following is a highlight of those major functions.

1. **Self-governance.** Establishing policies and rules over its own governance such as meeting protocol, communications, appointment of workgroups, etc.
2. **Legislation.** Developing and interpreting ordinances and policies on behalf of Lake Minnetonka. The Board also has the authority to direct the enforcement of these regulations.
 - a. Approval of codes and amendments.
 - b. Review of licenses, permits, variances and similar actions.
 - c. Review of scientific data, legal information, economic, environmental, or other supporting materials and information for decision making.
3. **Personnel.** Appointment of the Executive Director and position structure.
4. **Finances.** Oversee the organization's finances in consulting with staff such as revenues, expenditures, contributions.
5. **Business Transactions.** Oversee general business transactions such as contracts, agreements, and general work activities.
6. **Community Leadership.** Providing leadership in representing the organization to cities, legislators, public agencies, special events, with individuals, and the public.



NEW MEMBER ITEMS

Each new board member will take and sign an **Oath of Office** at the member's first meeting.

In addition, the new board member will complete the LMCD New Board Member

Communications Preference Form. This will establish the preferred public contact information and method of receiving official materials. A copy of the form is included in the Appendix.

A **photo** will be taken for the LMCD website and communications.

“LMCD guides the use and the future of Lake Minnetonka in order to protect the Lake and all those who enjoy it.”

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Section 2: About the Board

Just the basics...

This section is intended to provide the basic information to help with your orientation and transition to the board member role. If you have questions about functions that are not addressed, please contact the Executive Director or Chair.

Board Term

Each of the fourteen cities appoints a Board member to serve the interests of the Lake. The term of the Board Member is three years starting February 1 through January 31st. The city can rescind and reappoint throughout a term if needed.

Board Member Role

- Act as an ambassador for the LMCD and the Lake area community regarding the mission of the LMCD (usage, enjoyment, preservation of the Lake).
- Communicate effectively in all directions: with the LMCD staff; with the Board itself; with the member cities; with the public; other agencies; legislators; and the press when authorized, etc.
- Help strengthen relationships with all Lake area constituents and stakeholders.
- Actively and regularly communicate with your city (city council, mayor, planning commission, city manager/administrator, clerk) to keep them informed and solicit their ideas.
- Attend Board meetings, come prepared, arrive on time, etc.
- Participate actively in Board meeting discussions.
- Step into leadership roles in regular and special projects, as needed.
- Participate in District activities where possible.
- Avoid any conflicts of interest that may arise.
- Encourage monetary or volunteer contributions to Save The Lake.
- Comply with confidentiality requirements and judiciously with sensitive information.



EVOLUTION

As changes occur with the ecology and use of Lake Minnetonka, LMCD initiatives will also evolve to meet the needs of Lake and its stakeholders. As a result, this guide will also be updated periodically to reflect any changes.

Your perspective is important as we establish initiatives to guide the future of Lake Minnetonka. If you have questions or suggestions, please do not hesitate to contact the Chair or Executive Director.

Board Member Expectations

General Expectations

1. Support the LMCD's mission and vision.
2. Serve actively on workgroups of the Board.
3. Attend activities and events sponsored by the LMCD whenever possible.
4. Provide feedback for the Executive Directors performance appraisal and the Board's self-appraisal.
5. Act as an ambassador for the LMCD and the Lake area community.
6. Communicate effectively in all directions: with the LMCD staff, the Board, member cities, the public, other agencies, and the media when authorized.
7. Help strengthen relationships with all Lake area constituents, stakeholders, and legislators.
8. Actively and regularly communicate with the city you represent to keep them informed and solicit their ideas.

Meetings

1. Prepare for and participate in the Board meetings and scheduled workgroup meetings.
2. Ask timely and substantive questions at Board and workgroup meetings consistent with personal conscience, convictions, and ethics.
3. Participate in meetings in a professional manner that respects the diverse opinions of members and the public.
4. Support the majority decision on issues decided by the Board.
5. Maintain confidentiality of the Board's closed sessions and speak for the LMCD and Board only when authorized to do so.
6. Suggest agenda items for Board and Workgroup meetings to ensure that significant policy-related matters are addressed.

Avoiding Conflicts

1. Serve the LMCD rather than any special interest group or constituency.
2. Avoid even the appearance of a conflict of interest that might compromise the Board or the LMCD and disclose any conflicts to the Board in a timely fashion.
3. Never accept or offer any favors or gifts from or to anyone who does business with the LMCD.

Fiduciary Responsibility

1. Exercise prudence and sound fiscal practices with the Board in the control of and transfer of LMCD funds.
2. Read and understand the LMCD's financial statements and audit reports and otherwise help the Board fulfill its fiduciary responsibility.

Fund Raising

1. Support the Save the Lake fund raising activities.

Staff Role

One role of the Executive Director and other staff is to carry out the execution of the applicable laws and policies for the organization. In cases where a potential violation could occur, staff will take preventive actions to make sure a violation does not occur. Please note that while the intentions are good-- to protect board members and the organization-- written communications tend to sound less personable so contact the Executive Director if you ever have concerns.

Another role of the staff is to ensure sufficient information is provided for the Board to make a reasonable decision about the matter. Depending on the complexity of the situation (environment, atypical shoreline, navigation, lake safety, riparian rights, etc.), the agenda item may be large. Additional staff time may be requested to provide the Board with the requested information. At times, legal counsel will be required to provide a legal opinion. Communication can be challenging based on the various ways individuals process information. If you have suggestions, please inform the Executive Director.

At times, an item needs to be completed in a prompt manner prior to the next available Board meeting. Staff may check with the Board Chair, or Workgroups for a timely recommendation. Where imminent health and life safety hazards exist, staff will consult with legal counsel and determine how best to approach a situation in a way to minimize damages. In those situations, contacts will be made with the Chair and information will be provided to the Board as soon as possible. Further, all efforts will be made to keep the Board informed of sensitive or potentially sensitive issues. Board Directors should contact the staff prior to Board meetings if there is a question about an agenda item or if additional items would like to be introduced at the board meeting. This presents a more efficient process and use of time for the Board.

Board Officers

There are four officers of the Board - Chair, Vice Chair, Secretary, and Treasurer. Each officer has certain responsibilities as established by the Bylaws and other policies.

- **Chair.** The Chair runs the meetings and works with the Executive Director on the Agenda items. The Chair works with the Executive Director to ensure the organization operates smoothly and meets its obligations. The chair also mentors Board members and acts as a primary Board spokesperson in external LMCD communications.
- **Vice Chair.** The Vice Chair will assume the duties of the Chair in the Chair's absence or upon request including leading Board Meetings. The Vice Chair may also be charged with special projects.
- **Secretary.** The Secretary reviews documents of the LMCD to ensure they are in general compliance with LMCD mission. The Secretary may also assist in reviewing the minutes prior to the Board review. The Secretary is back up to the Treasurer and will sign checks and assume

other duties as needed.

- **Treasurer.** The Treasurer reviews general financial recordkeeping for revenues and expenditures. The treasurer signs the checks along with the Executive Director twice a month to ensure bills are paid within 30 days as required by GASB accounting standards. Further, the Treasurer works with the Executive Director on financial matters, including budget and investments.

Workgroups

The Board periodically may choose to establish workgroups to assist in the review of topics. When the Board desires to have additional information gathered on a particular issue or a specific task performed, the Chair may ask for volunteers to gather the information or assist in performing the tasks. Workgroups undertake ministerial or administrative tasks to assist the LMCD mostly in response to the fact the LMCD has limited staff. This small group of volunteers are not formally established, and are focused on completing a particular task, are not delegated any authority, are purely advisory back to the Board, and typically dissolve once the task is completed.

If you would like to participate in a Workgroup, please contact the Board Chair. While appointments are typically made during the beginning of the year, requests and adjustments may be made throughout the year or as needed. Other Workgroups may be created as needed. A summary of the current Workgroups is provided below.

Administrative, Prosecution, and Litigation Counsel

The LMCD receives legal counsel and services through contracts with various firms or agencies. These entities help the LMCD to carry out the overall functions of the Board.

- **General Civil Counsel.** The civil attorney attends Board meetings, advises the Board and staff on legal matters associated with regulations, policies, and general operations.
- **Prosecution Attorney.** The prosecuting attorney prosecutes cases through the Hennepin County Court System associated with citations issued for violations of LMCD ordinances or other violations on the Lake, mostly misdemeanors and some petty misdemeanors. Formal Complaints may be issued by LMCD staff and the Hennepin County Sheriff's Office Water Patrol. In addition, the Water Patrol may issue citations for behavior on the Lake for County or State Law as well. Prosecution cases include but are not limited to dock related violations, navigational hazards such as speeding or no wake violations, boating while intoxicated, littering, noise, and other LMCD code violations. Felony cases are handled by the Hennepin County Attorney's Office.
- **Litigation Counsel.** The LMCD uses the services of the League of Minnesota Insurance Trust (LMCIT) to process insurance claims regarding claims made against the LMCD.

Contracts for Services and Volunteers

With limited staffing, the LMCD depends on contracts, agreements, and volunteers to help achieve its mission. Contracts have included, but are not limited to, Hennepin County Sheriff's Office Water Patrol, AIS functions, building and room leases, and other services as needed. Volunteers help with the installation and maintenance of solar lights, boater safety education, review of public education documents, assistance in installing public signs, Starry Trek, and other important activities for the lake.



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Section 3: The Budget

The buck stops, and starts, here.

The LMCD budget is based on a calendar year, January 1st through December 31st. However, the planning begins in March of the previous year and is adopted and sent to the member cities by July 1st for the following year. It can be challenging to obtain accurate estimates of costs of services, grants, insurances, and other operational costs since many organizations do not begin their budget process until later in the year. The process includes significant financial analysis by staff and board members throughout the year. A copy of the budget is included in the Appendix as well on the LMCD website.

The overall budget consists of two account funds- General (Administration, AIS, equipment replacement) and Save the Lake (STL) briefly described as follows:

- **General.** This fund account includes the overall administrative duties such as strategic planning, lake initiatives, AIS initiatives, public education, emergency response, contracts, grants, licenses, permits, service requests, inquiries, equipment replacement, and general business operations.
- **STL.** This fund account includes revenues from contributions. This fund account supports public education such as the boater safety classes, solar lights navigation program, supplementary public safety for water patrol, and special projects to promote safety and lake ecology.
- The purpose of Save the Lake is to further advance the mission of the LMCD by engaging residents and businesses in fundraising and functions to ensure a safe and responsibly managed lake.
- Contributions have been used for navigation channel solar lights, lake photos, boater safety classes, dedicated emergency response services and grants. Grants are typically requested at the end of the year to be used for the next year in areas such as environment, education, or safety. The board determines the amount of funds that can be used each year.

Revenues

The primary sources of revenue are from a levy from the fourteen-member cities as prescribed by (and much lower than allowed by) state law, license and permit fees, grants, contributions, and miscellaneous revenue. The amount of grants for AIS programs has decreased in the past few years, yet the need continues to grow.

Expenses

The organization is a service organization providing for administrative expenses for administering regulatory functions such as lake management planning, inspections, managing inquiries, responding to complaints and concerns, and other initiatives to protect the lake and all those who use it. Other expenses include capital expenses for solar lights, contracts for inspections, and other projects.

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MEETING PARTICULARS

HEAR YE, HEAR YE

Meetings are typically held at the Wayzata City Hall. Every audio/visual system has its quirks. To be heard clearly, please speak 8 to 12 inches in front of the microphone. The room audio is quieter than the video broadcasted so if you are too close to microphone, the video is loud and fuzzy.

BOARD PACKETS

Internet access is available to LMCD members at Wayzata City Hall during the meeting. The passcode will be provided to you during orientation and upon request.

Packets are typically available on the website and the link emailed to the Board the Friday before the board meeting. Some prefer to download the packet materials to a mobile device prior to the meeting. Some members also receive a hard copy in the mail.

Section 4: Meetings

The place to be, or not to be.

This section provides a summary of the types of meetings you may experience during your service on the Board. It also provides a summary of the dos and don'ts according to public meeting laws, when you should and should not be participating in a meeting, and some consequences.

Overview

The LMCD meetings have been structured to better meet the needs of the customer and LMCD business. Two meetings are typically held each month. The public meeting dates for the year are approved by the Board at the beginning of the year. A copy of the Public Meeting Calendar is included in the Appendix and available on the website.

Meeting Dates. Regular board meetings occur on the second and fourth Wednesday of each month. Meeting schedules may change during holidays such as in November and December where one meeting is typically held each month. At times, agenda items may be clustered to eliminate a few meetings to save time and money.

Meeting Times. The meetings are comprised of two parts, each of which is technically considered a separate meeting. The first is a work session that generally starts at 6:00 pm. The purpose of this meeting is to discuss matters informally, receive updates and training, for staff to seek direction from the Board, or to allow a more in-depth discussion of a topic. The Board may give staff direction, but the Board does not take formal action at a work session. Work sessions are not videotaped, but minutes are recorded for public information.

The second part is the formal business meeting that starts at 7:00 pm. The purpose of this meeting is for the Board to conduct the business of the LMCD. The business meeting is videotaped and aired.

Board packets are typically emailed and/or provided by a hard copy mailed upon request the Friday before the meeting. In some cases, agenda items may be delivered after the main Board packet. Depending on the meeting agenda, staff may be preparing items for the board meeting several weeks or the week prior to the meeting. Work session materials may be provided at the meeting. Some informational items may be provided in the board meeting folders for convenience but may not be part of the board meeting materials.

Special Meetings

If the Board needs to meet at a different date, time, or place other than scheduled, a special meeting is called. These meetings may only occur after at least three days' posted notice and the scope of these meetings are limited to the specific purpose or purposes identified in the notice. Notices for these meetings are placed on the LMCD website and posted in the lobby at the LMCD Office.

Emergency Meetings

In the case of a natural disaster or other threats to public health, safety, or welfare, the Board may hold an emergency meeting to allow it to respond to the emergency. Fortunately, the Board has not often encountered the need to hold emergency meetings and can usually address even urgent matters by calling a special meeting.

Executive/Closed Meetings

In limited circumstances the Board may hold a closed meeting to discuss issues that are confidential and nonpublic. The Board is allowed to hold a closed meeting when specific statutory authority is identified to allow the meeting to be closed under the circumstances. These meetings are closed to the public, but usually must be recorded and the recording kept for eight years. Closed meetings are typically limited to attorney-client discussions when there is litigation (these meetings are not recorded), or for certain personnel matters such as a performance review of the Executive Director. The discussion must be limited to the reason the closed session is called.

Public Hearings

By LMCD code, certain licenses and activities require a public hearing. Conducting public hearings is part of the due process that must be afforded applicants and the public as part of the licensing and enforcement actions taken by the Board. A notification is published in the official newspaper at least 10 days prior to the Board meeting of the public hearing and in most cases, notice is also mailed to owners within a certain distance from the applicant's property. The purpose of the public hearing is to allow the applicant to present its request, afford an opportunity for the public to state their support or concerns, and for the Board to ask questions of the applicant. The Board has the option to continue a hearing if

needed, otherwise it will often vote to give the staff direction to prepare an order either approving or denying the application for review and action at the next meeting. There is a time limit on when the LMCD must take decisive action on an application (60 days, but that may be extended up to 120 days) so there is only a limited opportunity to continue the consideration of an application before needing to decide. The applicant may also request a time extension in writing. Often times, the staff may receive last-minute information to present to the Board as part of the public hearing and comment process. Information will be presented as soon as possible, but more information may be needed in order to review and address the new submittals with the Board and legal counsel.

Open Meeting Law

The Open Meeting Law (OML) provides legal requirements for the notification and public access to public meetings. The main premise is that public business must be conducted in public. Most meetings must be open to the public and include public notice. There are a few exceptions such as discussing litigation, attorney/client confidentiality, personnel matters, and similar. The OML applies when there is a quorum or more of the board to discuss, decide, or receive information regarding LMCD business whether by phone, email, in person or other communication. Violations of the OML may result in personal fines, removal from the Board, public relation issues, and/or organizational fines. LMCD staff will often blind copy the Board to prevent accidental “reply all” incidents. If an individual emails the entire or multiple members of the Board, it is recommended that any response is sent only back to the individual and copied to the Executive Director. Depending on the situation, the Executive Director may compile the responses for Board review. All Board and Workgroup information should be routed through the LMCD staff to avoid potential OML violations.

Meeting Notification

The regular meetings of the Board are set out in a schedule that is available in the office and on the website. All special meetings of the Board must be posted for at least three days. These notices must include the date, time, place, and purpose of the meeting. For situations where several Board members may attend a workgroup meeting or at an event, additional notice may be required to ensure the OML violation does not inadvertently occur.

Information that Boards Members wish to share should be distributed through the Executive Director to ensure the OML is not violated. The following information from the LMCD attorney relates to situations where the Open Meeting Law may apply to the exchange of emails among Board Members.

Phone or Email Messages Among Board Directors

The OML requires that discussions occurring among a quorum or more of members about LMCD business occur at a properly noticed public meeting, with some limited exceptions. While the OML focuses on gatherings of a quorum or more, it is

recognized that a gathering of a quorum can occur just as easily through electronics means as through the proverbial smoky backroom meeting. What this means is that a quorum or more of the Board, must avoid “discussing,” through the exchange of emails, LMCD business. To avoid incidental quorums, the following recommendations relate to this issue:

1. If a director would like to share something with the entire Board, it should be sent to the Executive Director so it can be distributed by staff to the Board.
2. Do not “reply all” to messages sent to the entire Board. If there is a comment to be made, send it to the Executive Director and a decision can be made about how best to address the comment (e.g., schedule a discussion for an upcoming Work Session). The Executive Director will typically discuss options with the Board Chair.
3. An exchange of messages between less than a quorum of the Board is ok, if the exchange does not turn into a serial meeting (which is discussed next). However, this is frowned upon since emails can inadvertently become serial.
4. The forwarding of messages to other Board members with the idea that the message will then be forwarded on to other Board members can result in a violation if the communication ends up involving a quorum or more of the Board. This type of “pass it on” message can constitute a serial meeting that violates the OML because it results in a group trying to form a consensus outside of a meeting even though a quorum is not communication together at any one time.
5. Serial meetings may be described as two types: (1) domino type of meetings where one person talks to another, who in turn talks to another, etc. about the same topic; and (2) wheel and spoke meetings where one person contacts each member individually to talk about an issue. Both types of exchanges need to be avoided, whether they occur by email, phone, or in person.



SHARING INFO

Internal. If you would like to share information with the board, send the information to the Executive Director for distribution, communicating any requested period or urgency.

Attendance. Let staff know if you are unable to attend a Board meeting. It is important to have a quorum, especially when a customer or the public is depending on a decision.

Specific Items. At times, prompt response is required from a board member to meet deadlines and/or achieve the desired results. This is often indicated by “high priority” designation or a requested by date. If schedules are conflicting, please let staff know.

Section 5: Communications

How to explain that thingamajig

Effective communications, including engagement of stakeholders, is an important part of creating a high-performance organization. Communicating that *thingamajig* is more challenging than ever due to the multiple communication avenues and scope of stakeholders. A highlight of communication avenues is provided below. Please note initiatives may change or evolve resulting in changes.

Board Member Contact Information

Certain Board Member information is included in the LMCD materials such as the website, handouts, etc. The name, photo, representative city, and contact information may be required during orientation. A new Board member will receive an LMCD email address, with various options for accessing. Board Members should use the LMCD email for all LMCD related activity to make use of the advanced security system and prevent potential security risks. Forwarding emails to a personal email account may compromise the security of the forwarded email. Board Members should report any changes in their status to staff during their term.

Communication Avenues

The LMCD has several ways to communicate with its stakeholders. Methods include the website, www.lmcd.org; a newsletter; presentations; on demand videos of the Board Meetings; special events: emails and social media established in 2016 including a Facebook page www.facebook.com/lakeminnetonkaconservationdistrict; Twitter page www.twitter.com/LakeMtkaCD, handouts, reports, media releases, and often through day to day customer contacts.

Report to Cities

It is recommended to meet periodically with your city, to present budget, materials, events, activities, and specific items to the city. Periodically, reports will be made available by LMCD to share with your city. Information should be consistent with the LMCD messaging.

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Section 6: Understanding State Law

How to stay out of jail

While you may not end up in jail for most violations (larger contracts maybe), violations of state law may result in fines to the organization, individual fines, and negative public relations. Therefore, it is important to understand some of the most common types of concerns associated with the LMCD business operations. The following is a summary of these items.

Open Meeting Law

Refer to Meeting Section

Public Gift Law

While the LMCD is not expressly named as being subject to the range of laws that apply to cities, it often makes sense to abide by those requirements. As such, the gift law is an area that should be considered from both a legal and public relations perspective. The following is a legal opinion based on the gift law for local government agencies.

Under the gift law, an elected or appointed official of a county or city or of an agency, authority, or instrumentality of a county or city is prohibited from accepting a gift from an interested person. (Mn Stat. § 471.895, subd. 1 and 2) This prohibition applies to the appointed members of the LMCD because they are appointed by a city. Much like a planning commission member would be prohibited from receiving a gift as they are appointed by the city council, a member of the LMCD is also appointed by a city council and therefore is an appointed official. In addition, the members are subject to recall by the cities. The ability to remove sitting members creates a stronger link between the LMCD and the cities, suggesting the members are appointed city officials.

As an appointed official under the gift law, LMCD members are prohibited from receiving gifts from an “interested person.” An interested person is defined as “person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.” For the LMCD this would include any person or organization that could have business before the LMCD. For the gift law to apply, an interested person does not need to have a matter pending before the LMCD. Rather, if the interested person could at any time have a direct financial interest in a decision or recommendation of the LMCD, that individual would be considered an interested person under the gift law.

There are a few limited exceptions to the gift law. The following types of gifts are permitted under the Minn. Stat. § 471.895, subd. 3:

- Political contributions.
- Services to assist an official in the performance of official duties.
- Services of insignificant monetary value.
- A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before whom the recipient makes a speech or answers questions as part of a program. (This exception permits only the principal speakers at meetings to receive gifts of food or beverage.)
- Gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is offered to or given to the other members of the group.
- Gifts between family members, unless the gift is given on behalf of someone who is not a member of that family.
- Food or beverages given by a national or multi-state organization of governmental organizations or officials at a reception or meal to attendees at a conference sponsored by that organization if most of the dues to the organization are paid from public funds and an equivalent gift is given or offered to all other attendees.

There are further limitations on gifts from lobbyists for appointed or elected officials from cities with a population of greater than 50,000 and are located within the seven-county metropolitan area. Minn. Stat. §§ 10A.071, 10A.01, subd. 22 and 24. For those metropolitan governmental units, the same gift restrictions apply to lobbyists as apply to interested persons under the gift law.

In conclusion, while the gift law does not expressly limit gifts to LMCD members, a conservative reading of the statutes suggests that the members are subject to the gift law. Because the members are appointed by a city, the LMCD members are considered local officials under the statute. Therefore, receiving gifts from "interested persons" should be avoided. While an argument could be made that because the LMCD is a separate political entity the gift law does not apply, the legal opinion is that LMCD members should refrain from receiving gifts from any person that would have an interest in a potential action that would come before the LMCD. There is simply no way to know how the courts would rule on such an issue, but they will rule in favor of the public and to preserve integrity of local governments.

Therefore, it is best for the LMCD members to presume the gift law applies to them.

Conflict of Interest Law

There are two types of conflicts of interest that need to be avoided. If you think there might be a potential conflict of interest, please contact the Executive Director or the LMCD attorney for clarification. If there is a conflict of interest, you must not participate in the vote for that item. A summary of the types of conflicts is provided below.

1. **Statutory Conflicts:** Any official who is authorized to take part in making any sale, lease, or contract on behalf of a public agency is prohibited from having a direct or indirect personal financial interest in the sale, lease, or contract. A simple example of this type of conflict is the LMCD contracting with a business owned by a Board Member.
2. **Common Law Conflicts:** A Board Member needs to avoid participating in deciding for the Board when the Member has a direct interest in the matter. A list of factors is considered in determining whether there is a direct interest such as nature of the decision, nature of the pecuniary interest, and whether there are enough officials to make the decision. A simple example of this type of conflict is a Board Member submitting a license application to the LMCD. These conflicts do not always involve a financial interest but reflect the idea that if a Board Member has a direct interest in a matter before the Board (not merely the general interest that all Board Members have in protecting the Lake), then that Board Member needs to abstain from voting on that matter.

If a potential or actual conflict of interest exists:

1. Disclose the interest as soon as possible.
2. Seek guidance from the Executive Director and LMCD attorney if needed.
3. Do not participate as a member of the Board in discussions leading up to the decision. You may be allowed to speak about the issue in your personal capacity at a public hearing, but not from the Board dais.
4. Do not attempt to influence other members regarding the decision.
5. Do not vote or take any other official action relating to the decision.

Exceptions. There are limited exceptions to the conflict-of-interest rules. The following exceptions are permitted under certain circumstances:

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 for construction materials or services, if the contract is let by a sealed bid process and the city has a population of 1,000 or less.

6. A contract to rent space in a public facility to a public officer at a rate like that paid by other renters.
7. An application for a grant offered by a local development organization.

There are several additional limited exceptions under Minn. Stat. § 471.88.

Identifying potential conflicts of interest can become complicated so do not hesitate to ask for assistance from the Executive Director and the LMCD attorney.

Violation. A contract that has been made by or with a conflicted member or members 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. Minn. Stat. § 471.87.

Data Practices Law

The LMCD, its staff and Board Members, are required to comply with the state law regarding data practices requests. The Minnesota Data Practices Act regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities. Government data is defined broadly to include all data collected, created, received, maintained, or disseminated by any government entity regardless of its physical form, storage media or conditions of use. Data classified as public must be available for inspection or copying as appropriate. Data is classified as either public or various forms of nonpublic. The maximum amount that can be charged for processing data is prescribed by state law.

What Qualifies as Government Data?

Data generated or received by Board members will be considered government data subject to the DPA if:

- It was created or used in the person's capacity as a board member; and the data relates to LMCD business; and
- Government data can include e-mails, text messages, notes, information on personal computers, cell phones, and in personal notepads.

Purely personal (i.e., non-LMCD business) communications are not government data. However, LMCD related information stored on a personal device or system can be searched for and considered public. Therefore, board members should store all LMCD information on public information systems such as the LMCD email system.

What is the Records Retention Act?

The records retention act requires the retention and preservation of government records according to a specified time frame. Government records include all data, regardless of physical form or characteristics, made or received by a board member pursuant to law or in connection with the transaction of public business by the board member.

It prohibits the destruction of government records except in accordance with a records retention schedule approved by the state. It does not include private messages, multiple copies of the same documents, and other records not related to official business (e.g., junk mail).

What is a Litigation Hold?

In case of a lawsuit, the LMCD, including its Board Members, will need to retain data related to the suit and any scheduled destruction of such data must be suspended. The Executive Director will send information to the Board if any litigation hold is implemented.

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Section 7: Regulatory Functions

Protecting the lake, public health, safety, and welfare

The LMCD Board adopts a code of ordinances to protect Lake Minnetonka, as well as the public's health, safety, and welfare. A copy of the code is included in the Appendix, along with any current policies.

To supplement the code, public education materials and internal documents are developed to educate stakeholders about the requirements and ensure consistent interpretation and application. Some current public educational materials are included in the Appendix or may be available on the website.

"I would like to express my gratitude for working with us on this project... This is a great example of working collaboration between the LMCD and the community" Tom, Multiple Dock Representative

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Section 8: Appendix

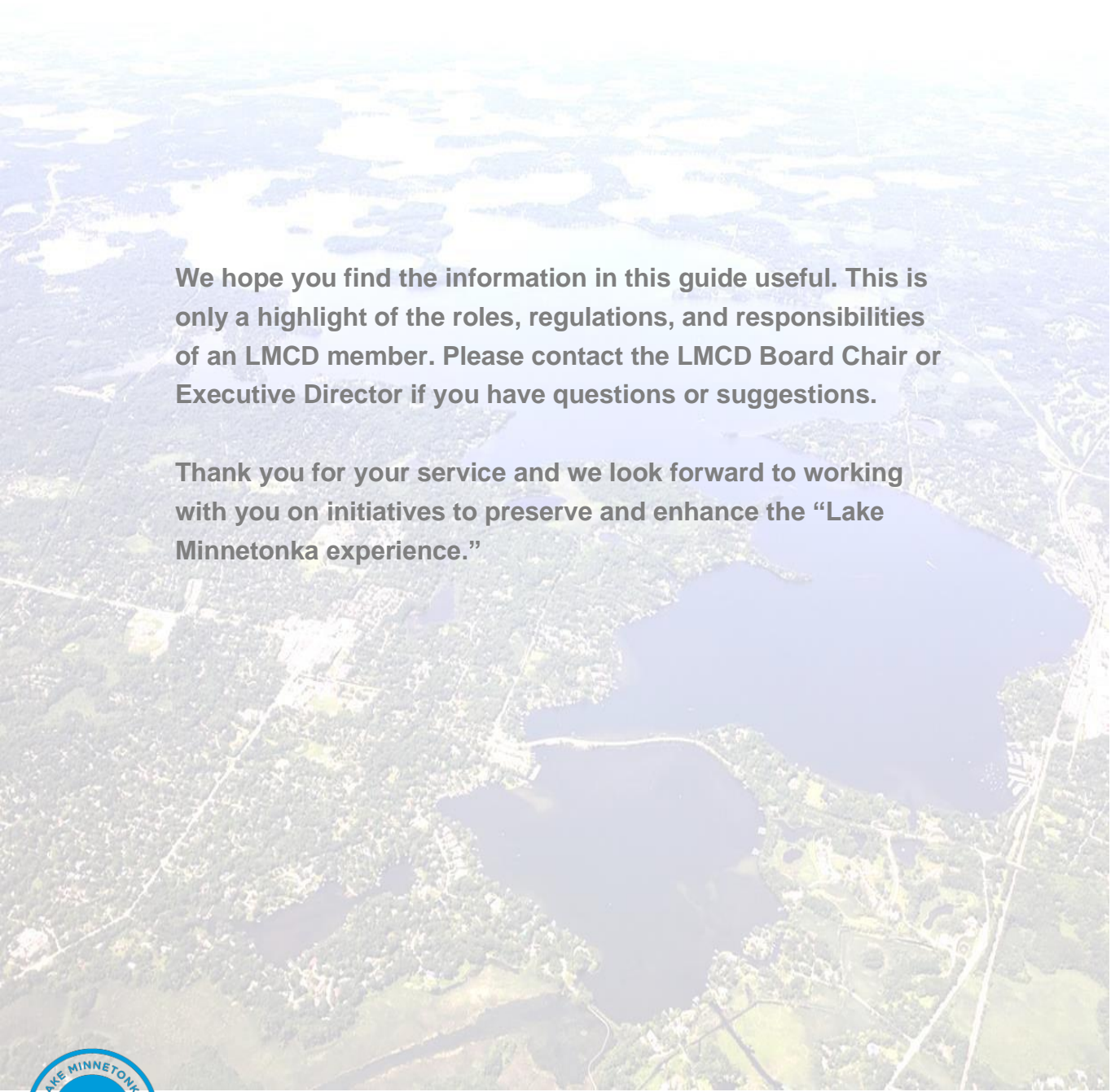
Just have to have.

See Table of Contents.

Section 9: Additional Resources

Just can't get enough.

At times, the Board or public may refer to studies or reports. If you wish to know more history and information, please visit the website at www.lmcd.org or contact the LMCD Office.



We hope you find the information in this guide useful. This is only a highlight of the roles, regulations, and responsibilities of an LMCD member. Please contact the LMCD Board Chair or Executive Director if you have questions or suggestions.

Thank you for your service and we look forward to working with you on initiatives to preserve and enhance the “Lake Minnetonka experience.”



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