

**OFFICE OF THE  
STATE AUDITOR**

**Minnesota Legal Compliance  
Audit Guide for  
Cities**

## ORDER

Pursuant to Minn. Stat. § 6.65, I hereby prescribe the form and scope of the Minnesota Legal Compliance Audit Guide for Cities. The attached audit guide is hereby incorporated in its entirety. The audit guide consists of the following sections:

Page 1-1	Depositories of Public Funds and Public Investments,
Page 2-1	Conflicts of Interest,
Page 3-1	Public Indebtedness,
Page 4-1	Contracting - Bid Laws,
Page 5-1	Claims and Disbursements,
Page 6-1	Examples of Independent Auditor's Reports,
Page 7-1	City Miscellaneous Provisions, and
Page 8-1	Tax Increment Financing.

These sections will comprise the minimum procedures and audit scope for legal compliance for cities in Minnesota.

/s/

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Rebecca Otto  
State Auditor

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## INTRODUCTION

This Legal Compliance Audit Guide was prepared by the Office of the State Auditor pursuant to Minn. Stat. § 6.65, in consultation with representatives from the Attorney General's Office, towns, cities, counties, school districts, and private sector public accountants. The purpose of the task force was to establish minimum compliance guidelines for verification by auditors engaged in the process of auditing political subdivisions of the state.

This guide is divided into specific sections and presented in checklist form to assist the auditor of government units in the verification of statutory compliance. The guide is not meant to be a complete compilation of all laws affecting municipalities or a complete analysis of the laws cited throughout. The checklist is meant to act as a reference guide regarding minimum legal compliance, and municipal auditors must examine, in addition to applicable laws cited in the guide, those laws creating, granting power to, and restricting the municipal entities they are auditing.

Under each section, except for the initial question establishing the transaction covered by the topic heading and except where the explanation of a given question indicates otherwise, all questions should be answered in the affirmative. A negative answer indicates a compliance problem, and the user of the checklist is directed to the statutory section indicated on the left-hand side of the page. If after examination of the appropriate statute, the auditor using this audit guide is still unsure as to whether there has been legal compliance, he or she should check with legal counsel before rendering the opinion on compliance contained at the end of each section.

### AUDITOR'S REPORTS ON COMPLIANCE

Chapter 6 contains five model reports, one of which is to be completed by the auditor following his or her completion of the appropriate compliance sections.

These reports or the language from these reports must be issued as part of the audits of the governmental entities or relief associations.

### PREPARATION OF MINUTES

Auditing for legal compliance will require a review of the minutes of the governing body. In many instances, the minutes will be inadequate histories of the meetings involved. We have, therefore, deemed it appropriate to include below a discussion of minutes, so that in those instances where the minutes are substandard, auditors can provide a standard to assist clients in the future recording of meeting minutes.

Minutes may be defined as a record of the “proceedings” of a deliberative body. Minnesota Statutes Section 0412.151, subd. 1, specifically refers to the clerk recording the “proceedings” of the city council. The Minnesota Attorney General has used the definition of “proceedings” found at Minn. Stat. § 331A.01, subd. 6, in analyzing the clerk’s duties to take minutes. This statute states:

“Proceedings” means the substance of all official actions taken by the governing body of a political subdivision at any regular or special meeting, and at minimum includes the subject matter of a motion, the persons making and seconding a motion, the roll call vote on a motion, the character of resolutions or ordinances offered, including a brief description of their subject matter, and whether defeated or adopted.

While minutes must specifically identify the actions taken by the council, they need not record the discussions of the members and others. At a minimum, the minutes must include the information required by Minn. Stat. ch. 13D [Minnesota Open Meeting Law], unless such information is recorded elsewhere. Minn. Stat. § 13D.01, subd. 4, provides:

The votes of the members of the state agency, board, commission, or department; or of the governing body, committee, subcommittee, board, department, or commission on an action taken in a meeting required by this section to be open to the public must be recorded in a journal kept for that purpose. . . The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

In addition, subd. 5 states, “[t]he journal must be open to the public during all normal business hours where records of the public body are kept.”

The above provision requires that the individual votes of each member of the council on “an action” be specifically recorded except for votes on “payments of judgments, claims, and amounts fixed by statute.”

Having satisfied minimum requirements, the question of how elaborate and extensive the minutes should be is largely a policy matter for determination by the particular body in the exercise of reasonable judgment and discretion. The Attorney General has explained:

...there may be circumstances in which it would be advisable for the town board to provide for the minutes to include information over and above what is necessary to satisfy minimum statutory requirements for a record of its official actions.

Op. Atty. Gen. 851-C, March 5, 1992. For example, the council’s reasons for reaching a particular decision could be crucial in defending a challenge to the action taken. The inclusion of such information may be deemed appropriate under other circumstances, such as where the council determines that the public interest warrants the award of a particular contract to a bidder other than the lowest bidder.

Other examples might be zoning decisions, such as the granting of variances or special use permits.

While the minutes of a governing body should attempt to furnish relevant information over and above bare minimum requirements, they should not, at the same time, be cluttered with unnecessary detail which hampers efforts to review or otherwise utilize them at a later date. Perhaps the best standard to be applied to the preparation of minutes is the one applied by the courts to the publication of official proceedings, i.e., the minutes should be “sufficiently full to fairly set forth the proceedings.” *Ketterer v. Indep. Sch. Dist. No. 1*, 79 N.W.2d 428, 438 (Minn. 1956); *See Op. Atty. Gen. 161-a-20*, Dec. 17, 1970.

## HOME RULE CHARTER CITIES AND STATUTORY CITIES

Our state Constitution provides for the creation of home rule charter cities. Minn. Const. art. XII, § 4. Minnesota Statutes, chapter 410, prescribes the method to create a home rule charter city and the limitations on home rule charter provisions. A home rule charter city may, through its charter, create many of its own rules and limitations as well as related procedural rules.

Statutory cities are cities in which the rights and obligations of the city are prescribed by state statutes. This audit guide was prepared primarily to check for compliance with state statutes. When auditing a home rule charter city, a review of the home rule charter will also be necessary in order to verify legal compliance with the rules unique to that city.

## DESTRUCTION OF RECORDS

Minnesota Statutes, section 15.17, subd. 1, requires all officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations, and other public authorities or political entities within the state to make and preserve all records necessary for “a full and accurate knowledge of their official activities.” The chief administrative officer is responsible for the preservation and care of the agency’s government records, which include all “written or printed books, papers, letters, contracts, documents, maps, plans, computer-based data, and other records made or received pursuant to law or in connection with the transaction of public business.” Minn. Stat. § 15.17, subd. 2. This duty not only prohibits destruction, but requires the custodian to take such steps as are necessary to protect public records from deterioration, mutilation, loss, or destruction. This statute also requires that all records must be delivered to the legal custodian’s successor upon expiration of the term of office or authority. Minn. Stat. § 15.17, subd. 3. Additional provisions regarding data practices are found in the Minnesota Government Data Practices Act, Minn. Stat., ch. 13.

For cities having problems with the storage of obsolete records, Minn. Stat. §§ 138.163-.25 provide relief. Any person who intentionally and unlawfully removes, mutilates, destroys, conceals, alters, defaces or obliterates a public record is guilty of a misdemeanor. Minn. Stat. § 138.225.

Unless a city adopts a records retention schedule (and notifies the Minnesota Historical Society), it may not destroy public records without the permission of the records disposition panel. Applications may be made to the State Archives Department for such permission. For instance, bids with supporting documents received by a city must be kept forever, unless the city (1) adopts the General Records Retention Schedule for Cities, in which case, the city must maintain these records for ten years, (2) adopts its own properly approved records retention schedule, or (3) receives authority to dispose of the records from the records disposition panel.

A city that wishes to adopt the General Records Retention Schedule for Cities can find information on the [State Archives website](#).

For information and assistance in disposing of or transferring government records, contact:

Minnesota Historical Society  
State Archives Department  
345 Kellogg Boulevard West  
St. Paul, Minnesota 55102-1906  
(651) 259-3260

<http://www.mnhs.org/preserve/records/index.htm>

Questions about the Minnesota Government Data Practices Act should be directed to:

Minnesota Department of Administration  
Information Policy Analysis Division  
201 Administration Building  
50 Sherburne Avenue  
St. Paul, Minnesota 55155  
(651) 296-6733  
(800) 657-3721

<http://www.ipad.state.mn.us>

In future years, the *Minnesota Legal Compliance Audit Guide for Cities* will be updated and additional compliance sections may be added. If you have comments or suggestions with regard to future editions, please contact us at:

Office of the State Auditor  
525 Park Street, Suite 500  
St. Paul, Minnesota 55103  
(651) 296-2551  
(651) 296-4755 (Fax)

<http://www.auditor.state.mn.us>

**CITY  
DEPOSITORIES OF PUBLIC FUNDS  
AND  
PUBLIC INVESTMENTS**



# LEGAL COMPLIANCE AUDIT GUIDE

## DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS

### Introduction

Cities may deposit funds only in financial institutions designated by the city council. The governing body may authorize its treasurer or chief financial officer to make such designations. All city funds on deposit must be protected by federal deposit insurance, corporate surety bond or assigned collateral.

“Government entity” for the purpose of this section includes cities:

Minn. Stat. § 118A.01, subd. 2. This section does not apply to entities whose investment authority is specified under Minn. Stat. ch. 11A (Investment of State and Pension Assets), or 356A (Public Pension Fiduciary Responsibility). *Id.*

“Public funds” for the purpose of this section means all general, special, permanent, trust, or other funds, regardless of source or purpose, held or administered by a government entity, unless otherwise restricted. Minn. Stat. § 118A.01, subd. 4.

When auditing a city, complete this section to determine if the city has properly invested its funds or deposited its funds in a properly designated depository with appropriate collateral or bond.

**OPEB Trusts** - The assets of a trust created to pay postemployment benefits (giving rise to a liability under GASB Stmt. 45) to employees or officers after their termination of service shall be invested and held as provided in Minn. Stat. § 471.6175.

\*Note: A “city with a population in excess of 200,000 or a county that contains a city of that size” (currently the two largest cities and counties) and the Metropolitan Council have additional investment authority. *See* Minn. Stat. § 118A.07.

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
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<b>Part I. Designation of Depository</b>				
§ 118A.02, subd. 1	A. In the case of a city:			
	1. Has each depository of public funds been designated by the city council, or by city treasurer or chief financial officer, if the council has authorized them to make such a designation?			
§ 118A.01, subd. 3	2. Is each depository one of the following:			
	a. a savings association;			
	b. a commercial bank;			
	c. a trust company;			
	d. a credit union; or			
	e. an industrial loan and thrift company?			

<b>Part II. Insuring or Securing Deposits</b>				
§ 118A.03	A. If a city desires to deposit an amount in excess of deposit insurance, it must obtain a bond or collateral which, when computed at its market value, shall be at least ten percent more than the amount of the excess deposit at the close of the banking day. For the purpose of this section, "banking day" has the meaning given in Federal Reserve Board Regulation CC, 12 C.F.R. § 229.2(f), and incorporates a financial institution's cutoff hour established under Minn. Stat. § 336.4-108. If irrevocable standby letters of credit from Federal Home Loan Banks are used as collateral, the amount must be equal to the amount of the excess deposit at the close of the banking day.			
	B. Review the following general principles of FDIC coverage and complete the spread sheet in this section to determine the amount of the city's funds that are not insured and thus need to be either bonded or collateralized. Deposits held by credit unions are covered by separate deposit insurance rules promulgated by the National Credit Union Administration (NCUA).			
	<p><b>General Principles of FDIC coverage:</b></p> <p>1. Deposits are insured only if the depository is a member of FDIC.</p> <p>2. Deposits in one depository are insured separately from deposits in another depository which is not a branch of the first one. However, a depository and all of the branches associated with it are treated as a single combined depository, and the funds deposited in the branches are aggregated for purposes of insurance coverage.</p>			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	<p>3. The aggregate of a government entity's time/savings accounts, i.e., savings accounts, NOW accounts, and time deposits (CDs), with the same depository are insured up to a total of \$250,000. The aggregate of a government entity's demand accounts, i.e., non-interest and interest-bearing checking accounts, are insured up to a total of \$250,000 and are insured separately from the government entity's time/savings deposits. This separate \$250,000 coverage for demand and time/savings accounts only applies if the depository is in the same state as the government entity.</p> <p>4. A public authority, public corporation, public commission, or special district receives separate insurance coverage from its parent government entity only if its creation is expressly authorized by state statute, government functions have been delegated to it by law, and funds have been allocated for its exclusive use and control. Subordinate or non-autonomous divisions, agencies, or boards do not receive separate insurance coverage.</p> <p>5. Funds held for a special purpose and required by law to be paid to bondholders or beneficiaries such as members of pension funds or relief associations are covered up to \$250,000 per bondholder or beneficiary whether the beneficial interest is vested or not. The fiduciary nature must be indicated on the account name in the bank's records.</p> <p>6. If more than one person is legal or official custodian of funds for a government entity, each custodian having plenary authority (including control) over the funds is separately insured up to \$250,000. Also, if the same person is the custodian of funds for two separate government entities, the funds for the two government entities are separately insured.</p> <p>7. Moneys held by a government entity in trust are insured separately from other government entity funds only <u>if</u> the trust is linked to a written trust agreement, court order or statute, the owner does not retain an interest in the use of the assets, and the interests of beneficiaries are ascertainable and not contingent.</p>			
	<p>C. Was collateral coverage sufficient? (Answer after completing the spreadsheet on page 1-11.)</p>			

**Part III. The Bond and Collateral**

§ 118A.03, subd. 1	A. If a bond was furnished by the depository to the city, answer the following question:			
	1. Was the bond executed by a corporate surety company authorized to do business in the state?			
§ 118A.03, subd. 2	B. If the depository assigned collateral to the city, answer the following questions:			
	1. Was the collateral one of the following:			
	a. U.S. government treasury bills, notes, or bonds;			
	b. issues of a U.S. government agency or instrumentality that are quoted by a recognized industry quotation service available to the government entity;			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	c. a general obligation of a state or local government, with taxing powers, rated "A" or better;			
	d. a revenue obligation of a state or local government, with taxing powers, rated "AA" or better;			
	e. unrated general obligation securities of a local government, with taxing powers, pledged as collateral against funds deposited by that same local government entity;			
	f. an irrevocable standby letter of credit issued by a Federal Home Loan Bank accompanied by written evidence that the Federal Home Loan Bank's public debt is rated "AA" or better by Moody's or Standard and Poor's; or			
	g. time deposits insured by any federal agency?			
§ 118A.03, subd. 7	2. Was the collateral placed for safekeeping:			
	a. In a restricted account at the Federal Reserve Bank; or			
	b. in an account at a trust department of a commercial bank or other financial institution not owned or controlled by the depository?			
	3. Did the government entity approve of the selection of the safekeeping entity?			
§ 118A.03, subd. 4	4. Was the collateral assignment in writing?			
	5. Did the assignment provide that, upon default, the depository shall release the collateral pledged to the government entity on demand, free of exchange or other charges?			
§ 118A.03, subd. 3	C. Collateral pledged must equal at least ten percent more than the uninsured and unbonded amount on deposit at the close of the banking day. If irrevocable standby letters of credit from Federal Home Loan Banks are used, the amount must be equal to the amount of the excess deposit at the close of the banking day. The depository may, at its discretion, furnish both a bond and collateral aggregating the required amount.  For the purpose of this section, "banking day" has the meaning given in Federal Reserve Board Regulation CC, 12 C.F.R. § 229.2(f), and incorporates a financial institution's cutoff hour established under Minn. Stat. § 336.4-108.			
	1. If a bond was obtained or standby letters of credit from Federal Home Loan Banks were pledged, was the amount of excess deposit at the close of the banking day (as defined above) equal to or less than the amount of the bond or standby letters of credit?			
	2. If other collateral was pledged, was the amount of collateral at least ten percent more than the uninsured amount on deposit at the close of the banking day?			
	D. Assignment [Federal Statutory Requirements]			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
[12 U.S.C. § 1823(e)]	1. Was the written assignment approved by the depository's board of directors or loan committee?			
	2. Was the assignment an official record of the depository?			

<b>Part IV. Public Investments</b>				
	A. Were all repurchase agreements and reverse repurchase agreements <u>only</u> entered into with:			
§ 118A.05, subd. 2	1. a financial institution qualified as a depository of public funds;			
	2. any other financial institution which is a member of the Federal Reserve System <u>and</u> whose combined capital and surplus equals or exceeds \$10,000,000;			
	3. a primary reporting dealer in United States government securities to the Federal Reserve Bank of New York; or			
	4. a securities broker-dealer licensed pursuant to chapter 80A, or an affiliate of it, regulated by the Securities and Exchange Commission and maintaining a combined capital and surplus of \$40,000,000 or more, exclusive of subordinated debt?			
§ 118A.06	B. If the city safekeeps investments with a third party:			
	1. Is the city's ownership of all securities in which the fund is invested evidenced by written acknowledgments identifying the securities by the names of the issuers, maturity dates, interest rates, CUSIP numbers, or other distinguishing marks?			
	2. Were investments, contracts, and agreements held in safekeeping with:			
	a. a Federal Reserve Bank;			
	b. any bank authorized under the laws of the United States or any state to exercise corporate trust powers, including, but not limited to, the bank from which the investment is purchased;			
	c. a primary reporting dealer in United States government securities to the Federal Reserve Bank of New York; <u>or</u>			
	d. a securities broker-dealer, or an affiliate of it, that			
	(1) Is registered as a broker-dealer under Chapter 80A or is exempt from the registration requirements;			
	(2) is regulated by the Securities and Exchange Commission; <u>and</u>			
	(3) maintains insurance through the Security Investor Protection Corporation (SIPC) or excess insurance coverage in an amount equal to or greater than the value of the securities held?			
	C. Were the securities sold or pledged under the repurchase agreement or reverse repurchase agreement permissible direct investments under Minn. Stat. § 118A.04 ( <i>see</i> L and M below)?			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	D. Were all reverse repurchase agreements only entered into:			
§ 118A.05, subd. 2	1. for a period of 90 days or less; and			
	2. only to meet short-term cash needs and not to generate cash for investments?			
	E. Were all securities lending agreements (including custody agreements) entered into only with:			
§ 118A.05 subd. 3	1. a financial institution qualified as a depository having an office in Minnesota; or			
	2. a financial institution which is a member of the Federal Reserve System <u>and</u> whose combined capital and surplus equals or exceeds \$10,000,000, <u>and</u> which has an office in Minnesota?			
	F. Did the custodian or entity operating the securities lending program only enter into securities lending transactions with those entities identified in Part IV.A. (above)?			
§ 118A.05, subd. 5	G. Guaranteed investment contracts or agreements			
	1. Were all guaranteed investment contracts or agreements only entered into with an issuer or guarantor that was a U.S. commercial bank, a domestic branch of a foreign bank, a U.S. insurance company, or its Canadian subsidiary, or the domestic affiliates of any of the foregoing?			
	2. Was the issuer's or guarantor's long-term and short-term unsecured debt:			
	a. rated in one of the highest two categories by a nationally recognized rating agency, <u>or</u>			
	b. was the term of the guaranteed investment contract 18 months or less, <u>and</u> was the credit quality of the issuer's short-term unsecured debt rated in the highest category by a nationally recognized rating agency (regardless of the credit quality of the issuer's or guarantor's long-term unsecured debt)?			
	H. Did all guaranteed investment contracts give the city withdrawal rights in the event the issuer's or guarantor's credit quality was downgraded below "A"?			
§ 118A.05, subd. 4	I. Did the city only invest in shares of a Minnesota joint powers investment trust whose investments were restricted to securities described in Minn. Stat. §§ 118A.04 and 118A.07, subd. 7?			
§ 118A.05, subd. 4	J. Mutual Funds - Did the city invest only in shares of an investment company that met the criteria in either 1 or 2 below:			
	1. a. registered under the Federal Investment Company Act of 1940;			
	b. whose shares were registered under the Federal Securities Act of 1933;			
	c. whose fund received the highest credit rating;			
	d. that was rated in one of the highest risk rating categories by at least one nationally recognized statistical rating organization; <u>and</u>			

Minn. Stat. Section	DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS	Yes	No	Workpaper Reference
	e. that only invests in financial instruments with a final maturity no longer than 13 months?			
	2. a. registered under the Federal Investment Company Act of 1940;			
	b. which holds itself out as a money market fund meeting the conditions of SEC rule 21-7; <u>and</u>			
	c. is rated one of the two highest rating categories for money market funds by at least one nationally recognized statistical rating organization?			
§ 118A.05, subd. 4	K. Did the city invest only in units of a short-term investment fund:			
	1. established and administered pursuant to regulation 9 of the Comptroller of the Currency; and			
	2. in which investments are restricted to securities described in Minn. Stat. § 118A.04?			
	L. Were all other funds invested in instruments which met at least one of the following criteria:			
§ 118A.04	1. In governmental bonds, notes, bills, mortgages, and other securities, which were direct obligations or are guaranteed or insured issues of the United States, its agencies, its instrumentalities, or organizations created by an act of Congress, excluding mortgage-backed securities defined as "high risk" (see Section M - Mortgage-Backed Securities);			
	2. In a general obligation of a state or local government with taxing powers which was rated "A" or better by a national bond rating service;			
	3. In a revenue obligation of a state or local government which was rated "AA" or better by a national bond rating service;			
	4. In a general obligation of the Minnesota Housing Finance Agency which was a moral obligation of the State of Minnesota and is rated "A" or better by a national bond rating agency;			
	5. In an obligation of a school district with an original maturity not exceeding 13 months which is (i) rated in the highest category by a national bond rating service or (ii) enrolled in the credit enhancement program pursuant to Minn. Stat. § 126C.55;  [Note: This authority is in addition to and does not limit the authority provided by items 2 and 3, above.]			
	6. In commercial paper issued by a United States corporation or its Canadian subsidiary and that:			
	a. was rated in the highest quality category by at least two nationally recognized rating agencies, and			
	b. matures in 270 days or less;			
§ 118A.04, subd. 5	7. In time deposits fully insured by the Federal Deposit Insurance Corporation;			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
§ 118A.04, subd. 5	8. In bankers' acceptances issued by United States banks;			
§ 118A.04, subd. 7	9. In the city's own temporary obligations issued under Minn. Stat. §§ 429.091, subd. 7 (special assessments), 469.178, subd. 5 (tax increment bonds), or 475.61, subd. 6, <u>or</u>			
§ 136F.91	10. Bonds issued by Minnesota State Colleges and Universities under Minn. Stat. §§ 136F.90 to 136F.98?			
§ 118A.04, subd. 8	Note: A debt service fund can purchase any issue payable from the fund.			
	<b>M. Mortgage-Backed Securities</b>			
§ 118A.04, subd. 2	Cities may only purchase mortgage-backed securities that are direct obligations or guaranteed or insured issues of the United States, its agencies, its instrumentalities, or organizations created by an act of Congress.			
	Mortgage-backed securities purchased shall not be "high risk." Minn. Stat. § 118A.04, subd. 6, states, "high risk mortgage-backed securities" are:			
§ 118A.04, subds. 2 & 6	1. interest-only or principal-only mortgage-backed securities; and			
	2. any mortgage derivative security that:			
	a. has an expected average life greater than ten years; or			
	b. has an expected average life that:			
	(1) will extend by more than four years as the result of an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or			
	(2) will shorten by more than six years as the result of an immediate and sustained parallel shift in the yield curve of minus 300 basis points; or			
	c. will have an estimated change in price of more than 17 percent as the result of an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.			
	3. Were all mortgage-backed securities purchased by the city after August 1, 1993, <u>not</u> "high risk?"			
<b>Part V. Broker Acknowledgement Certification</b>				
§ 118A.04, subd. 9	A. Annually, prior to completing an initial investment transaction with each broker, did the city provide to that broker a written statement of investment restrictions?			
	B. Did the broker acknowledge receipt of the investment restrictions and agree to handle the city's account in accordance with the restrictions?			
	C. Did the city retain documentation of compliance with A and B above?			







**CITY  
CONFLICTS OF INTEREST**

# LEGAL COMPLIANCE AUDIT GUIDE

## CONFLICTS OF INTEREST

### Introduction

Rule: A public officer authorized to take part in the making of a sale, lease, or contract shall not voluntarily have a personal financial interest in the transaction or personally benefit financially from it. Minn. Stat. § 471.87. The following persons are specifically forbidden from having any interest in any contract made by their respective governing bodies:

1. elected officers;
2. town supervisors and town board members;
3. county officials, county deputies, county clerks, and employees of such officials; or
4. school board members.

Exceptions: For practical reasons, the legislature has created certain limited exceptions to the general prohibition found at Minn. Stat. § 471.88. Part I of this questionnaire will assist you in making a determination as to whether an otherwise forbidden transaction fits within any of the statutory exceptions.

For the purposes of this checklist, “interested officer” shall mean a public officer or employee, as listed above, who directly or through his or her spouse (see “Discussion” below) has a prohibited position or interest in either the entity making or the subject matter of the sale, lease, or contract with the city. Examples include:

1. officer;
2. director;
3. employee (see “Discussion” below);
4. partner;
5. owner (complete or partial); or
6. shareholder.

Discussion: The determination as to whether a particular transaction involves an “interested officer” often calls for a judgment on the part of the auditor. A helpful concept to remember for analysis is that it is a conflict of interest to be on both sides of a contract or transaction.

Most problems in this regard arise in the examination of the “interest” the public officer has in the person or entity making the contract with the city. Two frequent problem areas are:

1. Contracts with Officer’s or Employee’s Spouse or Family Member.

It is not a conflict of interest per se for a governing body to contract or otherwise economically transact with a member officer’s spouse or family member. However, if the facts indicate an economic benefit to the member officer as a result of the contract or transaction, a conflict of interest exists. For example, if a husband and wife, one of whom is a public officer, share a common pool of funds and likewise share debts, conflicts may exist because there is benefit to the public officer or employee flowing from the economic benefit to his or her spouse. Likewise, if a governmental officer or employee and his or her spouse, in fact, do not economically benefit from each other, a conflict may not exist. This analysis would apply to all familial relationships. The auditor will need to factually determine whether an emancipated child living away from home has a financial interest with his or her parents.

2. Contracts with Companies in Which the Officer is an Employee.

If the involved governmental officer or employee is simply a company employee without managerial powers and receives the same salary or raise regardless of the company’s contract with the governing body, there probably is no conflict of interest. However, if said officer receives a bonus or commission or other benefit as a result of the contractual transaction between his or her company and the government entity, there is definitely a conflict of interest.

There are numerous aspects to be examined by the auditor in order to understand the totality of interests involved in a given contract or transaction between the governing body and an entity or person with a relationship to a member officer.

If, after review of the facts and applicable statutes, you are still unsure as to whether a particular set of circumstances constitutes a conflict of interest, you should contact an attorney for advice prior to preparing the “Audit Conclusion” at the end of this audit guide section.

Other Statutory References to Conflicts of Interest. In addition to the general statutory prohibition on conflicts of interest cited in the checklist, auditors should be aware that other statutory prohibitions and requirements exist with regard to certain types of municipal entities:

<u>Persons/Entities</u>	<u>Statute</u>
Public and local officials of metropolitan governmental units (as defined by Minn. Stat. § 10A.01, subs. 35, 22, and 24)	§ 10A.07
Housing and Redevelopment Authorities (commissioners and employees)	§ 469.009
Economic Development Authorities (commissioners and employees)	§ 469.098

Minn. Stat. Section	<b>CONFLICTS OF INTEREST</b>	Yes	No	Workpaper Reference
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<b>Part I. Contracts Generally</b>
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§ 471.87	- Unless a statutory exception applies, 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 therefrom.			
	- The city council contract for goods or services with an interested officer only by unanimous vote. <i>See A, infra.</i> In addition to the unanimous vote, one of the statutory exceptions must apply. <i>See B, infra.</i>			
§ 471.88, subd. 1	A. Contract for Goods or Services/Unanimous Approval			
	1. If there were any sales, leases, or contracts between the city council and an interested officer, was each contract a contract for goods or services? <u>and</u>			
	2. If there were any sales, leases, or contracts between the city council and an interested officer, did the city council approve the transaction by unanimous vote?			
	Note: In general, all <u>members</u> present must vote in order to produce a unanimous vote; except that the interested officer may abstain (as a practical matter).			
	B. Statutory Exceptions			
§ 471.88, subd. 2	1. Designation of Bank or Savings Association  If the transaction involved the designation of a bank or savings association as an authorized depository for public funds and as a source of borrowing:			
	a. Did the interested officer disclose to the city council that he or she was a director or employee of the bank or savings association?			
	b. Was such disclosure entered into the minutes of the city council's meeting prior to the first designation of the bank or savings association as a depository or at the time of the interested officer's election, whichever was later?			
§ 471.88, subd. 3	2. Designation of Official Newspaper			
	If a transaction involved the designation of an official newspaper or publication of official matters therein:			
	a. Was the newspaper in which the officer had an interest the only newspaper complying with statutory or charter requirements relating to designation or publication?			
§ 471.88, subd.4	3. Stockholder of Cooperative Association  If the transaction involved a contract with a cooperative association:			
	a. Was the officer a shareholder or stockholder and not an officer or manager of the cooperative association?			

Minn. Stat. Section	<b>CONFLICTS OF INTEREST</b>	Yes	No	Workpaper Reference
§ 471.88, subd. 5	4. Contracts That Do Not Need to Be Bid			
	If an interested officer entered into a contract for goods and services with the city council:			
	a. Was the contract one that did not need to be bid?			
	(See discussion of contracts that are subject to bidding on page 4-1			
§ 471.89, subd. 2	b. Did the city council, prior to performance of the contract, authorize the contract by adopting a resolution setting forth the essential facts and determining that the contract price was as low or lower than the price at which the commodity or service could be obtained elsewhere?			
§ 471.89, subd. 3	c. Prior to payment of the contract, did the interested officer file with the city council an affidavit stating:			
	(1) the name of the officer and office held;			
	(2) an itemization of the commodity or services furnished;			
	(3) the contract price;			
	(4) the reasonable value;			
	(5) the interest of the officer in the contract;			
	(6) that to the best of his/her knowledge and belief the contract price was as low or lower than the price at which the commodities or services could have been obtained from other sources?			
§ 471.89, subd. 2	d. If the contract was entered into under emergency conditions, did the city council adopt such a resolution prior to payment of the claims in which the facts of the emergency are also stated?			
§ 471.88, subd. 6	5. Contract with Fire Department			
	If the city council entered into a contract with a fire department in which an interested officer was a member:			
	a. Was the fire department a volunteer fire department?			
	b. Was the contract for payment of compensation or payment of retirement benefits?			

Minn. Stat. Section	CONFLICTS OF INTEREST		Yes	No	Workpaper Reference
§ 471.88, subd. 6a	6. Contract with Volunteer Ambulance Service				
	Was the contract with a volunteer ambulance service for the payment of compensation to its members or for payment of retirement benefits to these members?				
§ 471.88, subd. 12	7. Contract for Construction Materials or Services				
	If an interested officer contracted with the city to provide construction materials or services, or both:				
	a. Was the contract done by a sealed bid process?				
	b. Does the city have a population of 1,000 or less according to the last federal census?				
	c. When the question of the contract came before the city council for consideration, did the officer refrain from voting?				
§ 471.88, subd. 13	8. Contract for Renting Space				
	If a public officer rented space in a public facility, was the rate commensurate with that paid by other members of the public?				
§ 471.88, subd. 15	9. Contract or Franchise Agreement for Utilities				
	If the city has entered into a contract or franchise agreement with a utility for the provision of utility services and the council member is an employee of the utility:				
	a. Did the council member abstain from voting on any official action relating to the contract or franchise agreement?				
	b. Did the council member disclose the reason for the abstention in the official minutes of the council meeting?				
§§ 412.311; 471.88	10. Conflicts of Interest: All Other Contracts or Transactions If there were any contracts or transactions between an interested officer and the city council, were the contracts or transactions included in the exceptions above (B1-9)?				
	Note: If your audit involves a port authority, a public housing authority, a municipal band, a housing and redevelopment authority, an economic development authority, or a community action program or private consultant, review subdivisions 7, 9, 10, 11, or 14 of Minn. Stat. § 471.88 for additional exceptions.				





**CITY  
PUBLIC INDEBTEDNESS**

# LEGAL COMPLIANCE AUDIT GUIDE

## PUBLIC INDEBTEDNESS

### Introduction

The power of a city to incur indebtedness is governed by statutory and home rule charter provisions.

Each type of borrowing instrument may be governed by different statutes. Therefore, it is essential that the auditor examine the specific statutes or charter provisions that are applicable to the particular borrowing transaction.

This questionnaire is intended only to highlight certain general provisions of the Minnesota statutes relating to indebtedness and is not intended to cover all questions that may be pertinent.

**Which of the following types of borrowing has the municipality been involved with during the past year? Please check all forms of borrowing that have either been issued or redeemed during the past year or which are currently outstanding at year-end.**

	During the Year	
	<u>Issued</u>	<u>Outstanding</u>
<b>LONG-TERM BORROWING:</b>		
General Obligation Bonds (Minn. Stat. ch. 475)		
Revenue Bonds (Minn. Stat. ch. 475)		
General Obligation Revenue Bonds (Minn. Stat. ch. 475)		
Capital Notes Home Charter Cities (Minn. Stat. § 410.32)		

	During the Year	
	<u>Issued</u>	<u>Outstanding</u>
<b>SHORT-TERM BORROWING:</b>		
Tax Anticipation Certificates (Minn. Stat. 412.261)		
Orders Not Paid for Want of Funds (Minn. Stat. § 412.271, subd. 3)		
Loans Funded or Secured Under United States Agriculture Department Programs (Minn. Stat. § 465.73)		
Temporary Improvement Bonds (Minn. Stat. § 429.091, subd. 5)		
Emergency Certificates of Indebtedness (Minn. Stat. § 475.754)		
Certificates of Indebtedness (Minn. Stat. §§ 412.301)		
Reverse Repurchase Agreements/Securities Lending Agreements (Minn. Stat. § 118A.05)		
Conditional Sales Contract/Contract for Deed (Minn. Stat. §§ 412.221, 465.71)		
Lease Purchase Agreements (Minn. Stat. § 465.71)		
Emergency Debt Certificates (Minn. Stat. § 475.755)		

Minn. Stat. Section	PUBLIC INDEBTEDNESS		Yes	No	Workpaper Reference
<b>Part I. Answer the following questions with respect to all types of indebtedness that were issued during this fiscal year:</b>					
§ 475.51, et. seq.	A. Was city council approval obtained for new debt issued during this fiscal year?				
§ 475.58, subd. 2	B. For debt funding or refunding obligations issued under Minn. Stat. § 475.58, subd. 2:				
	1. Did the entity's outstanding gross debt exceed 1.62% of its estimated market value?				
	2. Was a listing of the indebtedness to be funded or refunded prepared by the treasurer and recording officer and filed in the office of the recording officer?				
§ 475.58 subd. 2	3. Was the resolution, stating the amount of bonds to be issued and referring to the listing of indebtedness to be funded or refunded, published in the legal newspaper once each week for two successive weeks?				
	Note: Refunding obligations may be authorized by Minn. Stat. § 475.67 for which the notice required here is not applicable.				
	C. Considering the issuance of the obligations, will the net debt (as defined in Minn. Stat. § 475.51, subd. 4) of the municipality not exceed the net debt limit as is applicable below:				
§ 475.53, subd. 1	1. For cities other than cities of the first class, does the net debt not exceed three percent of the estimated market value of taxable property in the municipality?				
§ 475.53, subd. 3	2. For cities of the first class, does the net debt not exceed two percent of the estimated market value of all taxable property within the city?				
	a. If no, does the net debt not exceed three and two-thirds percent of the estimated market value of all taxable property within the city and does the city charter allow this higher net debt limit?				
§ 475.58, subd. 1	D. Was the request to issue the obligations submitted for approval at an election?				
§ 475.58, subd. 4	1. If so, were the proceeds only spent:				
	a. (1) for the purposes stated in the ballot language; or (2) to pay, redeem, or defease obligations and interest, penalties, premiums, and costs of issuance of the obligations; and				
	b. were none of the proceeds spent for a different purpose or for an expansion of the original purpose without approval by a majority of the electors voting on the question of changing or expanding the purpose of the obligations?				

Minn. Stat. Section	PUBLIC INDEBTEDNESS		Yes	No	Workpaper Reference
§ 475.58, subd. 1	2	If not, was this issuance exempt from approval by the electors for one of the following reasons:			
		It represented an obligation characterized as:			
	a.	any unpaid judgment against the municipality;			
	b.	refunding obligations;			
	c.	an improvement or improvement program, the obligation for which is payable wholly or partly from the proceeds of special assessments levied upon property specially benefited by the improvement or by an improvement within the improvement program or from tax increments, including obligations which are the general obligations of the municipality, if the municipality is entitled to reimbursement in whole or in part from the proceeds of such special assessments or tax increments and not less than 20 percent of the cost of the improvement or the improvement program is to be assessed against benefited property or is to be paid from the proceeds of federal grant funds or a combination thereof, or is estimated to be received from tax increments.			
	d.	an obligation which is payable wholly from the income of revenue producing conveniences;			
	e.	an obligation exempt from electoral approval by the terms of the home rule charter;			
	f.	exempt under the provisions of a law which permits the issuance of obligations of a municipality without an election;			
	g.	an obligation to fund pension or retirement fund liabilities of a municipality pursuant to Minn. Stat. § 475.52, subd. 6;			
	h.	issued under Minn. Stat. §§ 469.1813 to 469.1815 (property tax abatement authority bonds), if the bonds are not used for a purpose prohibited under § 469.176, subd. 4g, para. (b);			
§ 475.58, subd. 1 (10)	i.	issued to fund postemployment benefit liabilities pursuant to Minn. Stat. § 475.52, subd. 6, of a municipality, other than a school district, <u>and</u> were the liabilities limited to:			
		(1) satisfying the requirements of Minn. Stat. § 471.61, subd. 2b (insurance continuation); and			
		(2) other postemployment benefits, which the municipality no longer provides to employees hired after a date before the obligations are issued?			
§ 475.755	j.	issued under Minn. Stat. § 475.755 (emergency debt certificates)?			
§ 475.58, subd. 3a	k.	issued to refund existing debt of an indoor ice arena that is used predominantly for youth athletic activity as provided in Minn. Stat. § 475.58, subd. 3a;			
§ 475.58, subd. 3b	l.	issued for street reconstruction and bituminous overlays, and were the conditions of Minn. Stat. § 471.58, subd. 3b met?			

Minn. Stat. Section	<b>PUBLIC INDEBTEDNESS</b>	Yes	No	Workpaper Reference
§ 400.101	m. issued for solid waste management purposes?			
	Examples are:			
	(1) for acquisition or betterment of solid waste facilities, closure, or postclosure;			
	(2) contingency costs, related transmission facilities, or property or property rights for the facilities.			
§ 475.58, subd. 1a	E. If the issuance of obligations for the same purpose and in the same amount has previously been proposed to the electors and voted down, did this election take place at least 180 days after the first election?			
	F. If this is the third request for the same purpose and in the same amount, did this election take place at least one year after the second election?			
§ 475.60, subds. 2 & 3	G. Was the sale of these obligations in accordance with the public notice and public sale requirements of Minnesota statutes?			
§ 475.60, subd. 2	1. If no, was the sale exempt from public sale due to any of the following reasons:			
	a. obligations issued under the provisions of a home rule charter, or under a law specifically authorizing a different method of sale or authorizing them to be issued in such a manner as the council/board may determine;			
	b. obligations sold by the municipality in an amount not exceeding the total sum of \$1,200,000 in any 12-month period;			
	c. except for those issued by a school board, obligations issued in anticipation of the collection of taxes or other revenues appropriated for expenditure in a single year, if sold in accordance with the most favorable of two or more proposals solicited privately;			
	d. obligations sold to any board, department, or agency of the United States of America or the State of Minnesota, in accordance with the rules of the board, department, or agency;			
	e. obligations issued to fund pension and retirement fund liabilities under Minn. Stat. § 475.52, subd. 6; obligations issued with tender options under Minn. Stat. § 475.54, subd. 5a; crossover refunding referred to in Minn. Stat. § 475.67, subd. 13; and any issue of obligations comprised in whole or in part of obligations bearing interest at a rate or rates which vary periodically referred to in Minn. Stat. § 475.56;			
	f. obligations to be issued for a purpose, in a manner, and upon terms and conditions authorized by law, if the city council, on the advice of bond counsel or special tax counsel, determines that interest on the obligations cannot be represented to be excluded from gross income for purposes of federal income taxation;			
	g. obligations issued in the form of an installment purchase contract, lease purchase agreement, or other similar agreement;			

Minn. Stat. Section	<b>PUBLIC INDEBTEDNESS</b>	Yes	No	Workpaper Reference
	h. obligations sold under a bond reinvestment program; or			
	i. obligations which the city council determines shall be sold by private negotiation if the municipality has retained an independent financial advisor?			
§ 475.55, subd. 1	H. Were all obligations signed manually by one officer of the municipality or by a designated authenticating agent?			
§ 475.65	I. Did the treasurer account for the receipt and disbursement of the proceeds of the issue, for the use named in the resolution, in a separate fund or account in the official financial records of the municipality?			
§ 475.61, subd. 2, & § 475.62	J. Was the appropriate information reported to the county auditor for all new issues of indebtedness so that the county register could be updated? (Information to include: the purpose and date of the issue; the number, denomination, interest rate, and maturity date of each bond; place and time of payment of principal and interest; and the amount of the tax levied for the payment thereof.)			
§ 471.69	K. Limitation on Outstanding Warrants and Orders			
	1. For statutory cities, did the city <u>not</u> contract debt, or issue any warrant or order in anticipation of taxes levied or to be levied, in excess of:			
	- the average amount actually received from tax collections for the last three years, plus			
	- ten percent?			
	The Minn. Stat. § 471.69 limitations do not apply to government entities wherein the mineral net tax capacity exceeds 25 percent of its net tax capacity.			
<b>Part II. Answer only the questions below that relate to the specific types of debt that were issued during the current fiscal year:</b>				
§ 475.61, subd. 1	A. GENERAL OBLIGATION BONDS:			
	1. Did the city, prior to delivery of the obligations, levy by resolution a direct general ad valorem tax upon all taxable property to be spread each year of the obligations?			
	2. For all cities, were the levies specified and such that if collected in full they, together with estimated collections of special assessments and other revenues pledged for payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments on the obligations when due?			
§ 410.32	B. CAPITAL NOTES: (Applicable for home rule charter cities) (If capital notes were issued under Minn. Stat. § 412.301, go to Part II.L., below.)			
	1. Were the capital notes issued within applicable city debt limits?			

Minn. Stat. Section	<b>PUBLIC INDEBTEDNESS</b>	Yes	No	Workpaper Reference
	2. Were the notes issued to purchase “capital equipment,” which means public safety equipment, ambulance and other medical equipment, road construction and maintenance equipment, and other capital equipment and computer hardware and software, whether bundled with machinery or equipment or unbundled together with application development services and training related to the use of the computer hardware or software, having an expected useful life at least as long as the term of the notes?			
	3. Are the notes payable in not more than ten years?			
	4. Does the total principal amount of the notes issued in a fiscal year not exceed .03 percent of the estimated market value of the taxable property in the city?			
	5. Has a tax levy been made for the payment of the principal and interest on the notes in accordance with Minn. Stat. § 475.61, as in the case of bonds?			
	6. Were the notes approved by an affirmative vote of two-thirds of the city council?			
§ 412.261	C. TAX ANTICIPATION CERTIFICATES: (Statutes relating to statutory cities only)			
	1. Does the total of all certificates issued against any fund for any year with interest thereon until maturity, together with all orders outstanding against the fund, not exceed the total current taxes for the fund uncollected at the time of issue plus the cash on hand in the fund?			
	2. If certificates have been issued against the anticipated tax levy for any fund, have unpaid orders outstanding against the fund been redeemed from the proceeds of the certificates?			
	3. Are the certificates negotiable, payable to the order of the payee, and do they have a definite due date?			
	4. Are the certificates due and payable no later than the first day of April of the year following the year of issuance?			
	5. Were the certificates sold for not less than par and accrued interest?			
	6. Do the certificates bear interest not to exceed seven percent?			
	7. Does each certificate state upon its face the fund for which the proceeds of the certificate shall be used, the total amount of the certificates issued against the fund, and the total amount embraced in the tax levy for that fund?			
	8. Are the proceeds of the taxes assessed on account of the fund against which the certificates are issued and the full faith and credit of the city irrevocably pledged for the redemption of the certificates in the order of issuance against the fund?			
§ 412.271, subd. 3	D. ORDERS NOT PAID FOR WANT OF FUNDS: (For statutory cities)			
	1. For statutory cities, are orders marked “not paid for want of funds” being paid by the treasurer in the order of their presentation?			



Minn. Stat. Section	PUBLIC INDEBTEDNESS	Yes	No	Workpaper Reference
§ 465.73	E. USDA RURAL BUSINESS-COOPERATIVE SERVICE, RURAL HOUSING SERVICE, OR OTHER AGENCY OF THE USDA: (For town halls, city halls, fire halls, and fire equipment only, or libraries or child care facilities if otherwise authorized by law--applicable to cities, counties, and towns)			
	1. Is the amount borrowed from the USDA Rural Business-Cooperative Service, Rural Housing Service, or other USDA agency, within the \$450,000 statutory limit?			
§ 475.754	F. EMERGENCY CERTIFICATES OF INDEBTEDNESS: (For cities, counties, and towns)			
	1. Do the certificates of indebtedness mature within three years?			
	2. Do the certificates of indebtedness bear interest at a rate not in excess of the allowable rate?			
	3. Are the certificates and interest thereon payable from taxes levied within existing limitations or from other available revenue?			
§ 471.3455	G. PUBLIC SAFETY EQUIPMENT - Certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease. (Statutory or home rule charter cities, counties, towns, special taxing districts, or any other political subdivision that acquires public safety equipment.)			
	- "Public Safety Equipment" means vehicles and specialized equipment used by a fire department in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response.			
	- If the local government issued certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease, did the term not exceed 15 years?			
§ 412.301	H. CERTIFICATES OF INDEBTEDNESS: (Statutory cities and towns) CAPITAL NOTES: (Statutory cities) (For home rule charter cities, <i>see</i> Part II.B, above.)			
	Statutory cities may issue capital notes and certificates of indebtedness to purchase public safety equipment, ambulance and other medical equipment, road construction and maintenance equipment, and other capital equipment and computer hardware and software, whether bundled with machinery or equipment or unbundled together with application development services and training related to the use of the computer hardware and software, having an expected useful life at least as long as the certificates or notes.			
	1. If such capital notes or certificates of indebtedness were issued, are they payable in not more than ten years?			
	2. For certificates or notes issued under Minn. Stat. § 412.301, was the issuance of the certificates or notes approved by the voters at an election?			
	If not, were the following criteria met:			
	a. The amount of the certificates or notes to be issued does not exceed 0.25 percent of the estimated market value of taxable property in the city; or			
	b. The city council resolution determining to issue these certificates or notes was published in the official newspaper, and no petition for an election was filed with the clerk before the expiration of a ten-day period?			

Minn. Stat. Section	PUBLIC INDEBTEDNESS	Yes	No	Workpaper Reference
	Published resolution required only if costs exceed 0.25 percent of market value of taxable property in the city or town.			
	3. Was a tax levy made for the payment of the principal and interest on the certificates or notes?			
§ 412.221	I. CONTRACT FOR DEED/CONDITIONAL SALES CONTRACT: (Applicable to statutory cities)			
	1. Is the seller of the property confined to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price?			
	2. Is the purchase payable over a period of time not to exceed five years?			
	3. Was the contract approved by the voters at an election?			
	a. If not, was the issue exempt from election because of one of the following reasons:			
	(1) the contract price of the property to be purchased does not exceed 0.24177 percent of the estimated market value of the city or town; or			
	(2) the council or board resolution determining to purchase property by such a contract was published in the official newspaper, and no petition for an election was filed with the clerk before the expiration of a ten-day period?			
§ 475.755	J. EMERGENCY DEBT CERTIFICATES			
	- If at any time during a fiscal year the receipts of a statutory or home rule charter city are reasonably expected to be reduced below the amount provided in the city's budget when the final property tax levy to be collected during the fiscal year was certified and the receipts are insufficient to meet the expenses incurred or to be incurred during the fiscal year, the city council may authorize and sell certificates of indebtedness to mature within two years or less from the end of the fiscal year in which the certificates are issued.			
	- The maximum principal amount of the certificates that it may issue in a fiscal year is limited to the expected reduction in receipts plus the cost of issuance. The certificates may be issued in the manner and on the terms the governing body determines by resolution.			
	1. If emergency debt certificates were issued, was the maturity date within two years of the end of the fiscal year in which they were issued?			
	2. Was the principal amount of the certificates limited to the expected reduction in receipts plus the cost of issuance?			
	3. Did the city council levy taxes for the payment of principal and interest on the certificates in accordance with section 475.61?			
	4. To the extent that the city issued certificates under Minn. Stat. § 475.755 to fund an unallotment or other reduction in its state aid, did the local government <u>not</u> use the special levy authority for aid reduction under section 275.70, subd. 5 (22), or a similar or successor provision; <u>and</u>  Did it instead use the special levy authority for the repayment of indebtedness under Minn. Stat. § 275.70, subd. 5, clause (2), in order to levy under Minn. Stat. § 475.61 to fund repayment of the certificates with a levy that is not subject to levy limits?			



**CITY  
CONTRACTING - BID LAWS**

## LEGAL COMPLIANCE AUDIT GUIDE

### CONTRACTING - BID LAWS

#### Introduction

A municipality entering into an agreement for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property must abide by the statutes relating to contracting and bidding.

Each contract must be approved by the appropriate authority, as authorized by statute or charter, within the municipality.

Complete the questionnaire to determine if the city conformed to the contracting and bidding statutes.

Minn. Stat. § 471.345, the Uniform Municipal Contracting Law, was established to provide dollar limits for all municipalities upon contracts which shall or may be entered into on the basis of competitive bids, quotations, or purchase or sale in the open market. Vendors may now submit bids, quotations, and proposals electronically in a form and manner required by the municipality. Minn. Stat. § 471.345, subd. 18. Generally, the following thresholds apply:

1. For contracts over \$100,000 – sealed bids, solicited by public notice and subject to the particular requirements of the governmental subdivision.
2. For contracts from \$25,000 to \$100,000 – sealed bids or direct negotiation, with two quotations whenever possible.
3. For contracts of \$25,000 or less – open market or quotations (with at least two contract quotations, if practicable).

In addition, Minn. Stat. § 471.345, subs. 16 and 17, allow municipalities to purchase supplies, materials, and equipment using an electronic reverse auction process; and to sell supplies, materials, and equipment which is surplus, obsolete, or unused using an electronic selling process.

Best value procurement is a process based on competitive proposals (as an alternative to bids) that awards the contract to “the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in [Minn. Stat. § 16C.28, subd. 1b] and described in the solicitation document.” Minn. Stat. § 16C.28, subd. 1(a)(2). Before administering best value procurement procedures, personnel must be trained in the best value RFP process. *See* Minn. Stat. § 16C.28, subd. 1d.

In 2013, the Minnesota Legislature enacted Minn. Stat. § 471.3457. This statute authorizes local governments to implement programs to provide bid preferences to designated veteran-owned small businesses, as provided in Minn. Stat. § 375.771, in awarding service contracts and contracts as defined in Minn. Stat. § 471.345.

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
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Part I. Uniform Municipal and Contracting Law				
	A Generally, for all municipalities:			
§ 471.345	The estimated contract amount determines whether sealed bids or quotations are required. Vendors may submit bids, quotations, and proposals electronically in a form and manner required by the municipality.			
	1. Contracts over \$100,000 (sealed bids or best value procurement)			
	a. Sealed bids			
§ 471.345, subd. 3	(1) Have all contracts estimated to exceed \$100,000 been let on sealed bids?			
	(2) Have the bids been solicited by public notice?			
Minn. Stat. §§ 15.17, 138.17	(3) Were bids preserved and on file if the appropriate records retention period has not expired? (See Introduction section entitled "Destruction of Records," pages iii - iv, and the city's records retention schedule.)			
Minn. Stat. §§ 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	b. Best value procurement alternative			
§ 16C.28, sub. 1	If a best value procurement procedure was used as an alternative:			
Minn. Stat. §§ 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	(1) Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1(c)	(2) Did the solicitation document state the relative weight of price and other selection criteria?			
	(3) Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			
	(4) If an interview of the vendor's or contractor's personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c).			

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
	2. Contracts from \$25,000 to \$100,000 can be made on sealed bids, by direct negotiation based on quotations, or through best value procurement.			
§ 471.345, subd. 4	a. Sealed bids or quotations			
	(1) Have contracts estimated to exceed \$25,000 but not to exceed \$100,000 been let on sealed bids or negotiated quotes?			
	(2) If sealed bids were used, were the requirements of A.1. met?			
	(3) If quotations were used and obtaining two or more quotes was possible, were two or more quotes obtained?			
	(4) If quotations were used, were the quotations kept on file for at least one year?			
Minn. Stat. §§ 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	b. Best value procurement alternative			
§ 16C.28, sub. 1	If a best value procurement procedure was used as an alternative:			
Minn. Stat. §§ 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	(1) Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1(c)	(2) Did the solicitation document state the relative weight of price and other selection criteria?			
	(3) Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			
	(4) If an interview of the vendor's or contractor's personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c).			

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
	3. Contracts estimated to be \$25,000 or less may be made either upon quotation, in the open market, or through best value procurement.			
§ 471.345, subd. 5	a. If quotations were used, are they on file?			
Minn. Stat. §§ 412.311, subd. 2, and 471.345, subsd. 3a, 4a, and 5	b. Best value procurement alternative			
§ 16C.28, sub. 1	If a best value procurement procedure was used as an alternative:			
Minn. Stat. §§ 412.311, subd. 2, and 471.345, subsd. 3a, 4a, and 5	(1) Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1(c)	(2) Did the solicitation document state the relative weight of price and other selection criteria?			
	(3) Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			
	(4) If an interview of the vendor's or contractor's personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c).			
§ 471.345, subd. 16	B. Reverse Auction Purchase			
	If the municipality contracted to purchase using an electronic purchasing process:			
	1. Was the purchase a purchase of supplies, materials, or equipment, and <u>not</u> a contract for services or a service contract as defined in Minn. Stat. §§ 16C.02, subsd. 16 and 17; and			
	2. Was the electronic process a purchasing process in which vendors competed to provide the supplies, materials, or equipment at the lowest selling price in an open and interactive environment?			
§ 471.345, subd. 17	C. Electronic Sale			
	If the municipality contracted to sell using an electronic selling process:			
	1. Was the sale a sale of supplies, materials, or equipment which was surplus, obsolete, or unused; and			



Minn. Stat. Section	CONTRACTING - BID LAWS		Yes	No	Workpaper Reference
	2.	Was the electronic process a selling process in which purchasers competed to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment?			
§ 331A.12	D	Website publication - Transportation Contracts [For Transportation contracts, publication on the website may be used in place of or in addition to any other required form of publication, if certain requirements are met.]			
		If publication on the website was used in place of other required forms of publication:			
	1.	Did the city council designate this manner of publication (on the city's website) at the meeting at which it designated its official newspaper?			
	2.	Had the city annually published notice (in a qualified newspaper and on the website) that the political subdivision would publish any advertisements for bids on its website?			
	3.	Did the city post the information on its website in substantially the same format and for the same period of time as required for publication in an official newspaper or other print publication?			
	4.	Did the city ensure that a permanent record of publication is maintained in a form accessible by the public?			
§ 331A.03, subd. 3	E	Alternative Dissemination of Bids and Requests			
		If, as an alternative to publishing them in a newspaper, a city disseminated solicitations of bids, requests for information or requests for proposals by using a Website or recognized industry trade journals:			
	1.	Did the city simultaneously publish, either in minutes or separately, in a notice published in the official newspaper, a description of all solicitations or requests so disseminated, along with the means by which the disseminations occurred?			
	2.	Was the dissemination by alternative means in substantially the same format and for the same period of time as a publication in a qualified newspaper?			
	3.	For the first six months after the city designated an alternative means of dissemination, did it continue to publish solicitation of bids, requests for information, and requests for proposals in the official newspaper in addition to the alternative method?			
	4.	Did the publication in the official newspaper indicate where to find the designated alternative method?			
§ 331A.01, subd. 11		<b>Note:</b> "Recognized industry trade journal" means a printed or digital publication or Website that contains building and construction news of interest to contractors in this state, or that publishes project advertisements and bids for review by contractors or other interested bidders in its regular course of business.			

Minn. Stat. Section	CONTRACTING - BID LAWS		Yes	No	Workpaper Reference
§ 471.345, Subd. 15	F. If the city contracted for the purchase of supplies, materials, or equipment without regard to competitive bidding requirements, was the purchase through the State of Minnesota's cooperative purchasing venture or a national municipal association's purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations?				
§ 471.345, Subd. 15	G. For each contract for the purchase of supplies, materials, or equipment over \$25,000, did the city consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source				
	<b>Note:</b> Exceptions to the competitive bidding requirements of Minn. Stat. § 471.345 exist for water tank service contracts, procurement from economically disadvantaged persons, shared hospital or ambulance service purchasing, fuel contracts for generation of municipal power, procurement from rehabilitation facilities, energy efficient projects, solid waste contracts, and town road construction or maintenance contracts based on terms of county contracts for adjoining roads. If a contract you audit falls into one of these categories, review the relevant exceptions to see if its criteria are met. <u>See</u> Minn. Stat. §§ 471.345, subs. 5b, 8, 10, 11, 12, 13, and 19; and 400.04.				
§ 16C.285	H. Responsible Contractor Requirement  For each construction contract in excess of \$50,000, awarded pursuant to a lowest responsible bidder or best value process, did the successful contractor submit a verification of compliance signed under oath by an owner or officer verifying compliance with the minimum criteria set forth in Minn. Stat. § 16C.285, subdivision 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subdivision 4)?				
§ 471.35	I. Other Considerations				
	1. Specifications on contracts. If sealed bids were solicited, were the specifications written so as not to exclude all but one type or kind of supplies or equipment?				
	2. Interest in contract. (See Conflicts of Interest Section, page 2-1.)				
§ 574.26	3. Contractor's performance and payment bonds. Contractors doing public work are required to give both a performance bond and a payment bond in an amount not less than the contract price if the contract is more than \$100,000.				
	a. Were bonds received for all contracts greater than \$100,000?				
	b. Were the amounts sufficient?				
§ 574.261, subd. 1a	Note: If the project is under \$50,000, contractor may provide for irrevocable bank letter of credit in place of a performance bond provided the letter of credit is subject to the same conditions as a performance bond.				

Minn. Stat. Section	CONTRACTING - BID LAWS			Yes	No	Workpaper Reference	
§ 471.6161	J. Group Insurance						
	Any city that provides group insurance for 25 or more employees must comply with certain bidding requirements in contracting for or renewing said insurance.						
	1. Was the request for proposals (RFP) in writing?						
	2. Did the RFP include:						
	a. the coverage to be provided;						
	b. the criteria for evaluation of proposals; and						
	c. the aggregate claims record for the appropriate period?						
	3. Was the RFP notice placed in a newspaper or trade journal at least 21 days before the final date for submitting proposals?						
	4. Was a written rationale explaining the city's decision prepared prior to entering into a contract?						
	5. Was the term of the contract five years or less, including extensions?						
§ 471.3455	K. Public Safety Equipment Purchase or Lease (applies to statutory or home rule charter cities, counties, towns, special taxing districts or any other political subdivision that acquires public safety equipment.)						
	If equipment was acquired pursuant to this statute without competitive bidding or proposals:						
	1. Was the public safety equipment <u>used, and</u>						
	2. was the equipment "public safety equipment," defined as vehicles and specialized equipment used by a fire department, as defined in Minn. Stat. § 299N.01, subdivision 2, in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response, <u>and</u>						
	3. was the equipment clearly and legitimately limited to a single source of supply?						
§471.425, subd. 4a	L Did each contract between the city and a prime contractor require the prime contractor to pay subcontractors within ten days of receipt of payment from the government entity or pay interest at the rate of 1½ percent per month or any part of a month?						
§270C.66	M Withholding Affidavit/Certificate (Applies to all political subdivisions.)						
	Before making final settlement with any contractor under a contract requiring the employment of employees for wages by said contractor and by subcontractors, did the entity obtain a certificate by the Commissioner of Revenue that the contractor or subcontractor has complied with the withholding requirements of Minn. Stat. § 290.92 (either Form IC134 or a Contractor's Withholding Affidavit Confirmation)?						

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
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<b>Part II. Laws Relating Specifically to Cities</b>				
§ 412.311	A. Statutory Cities			
	1. Advertisement for Bids.			
	a. Was the request for bids published at least once in the official newspaper? (For alternative methods, <u>see</u> section I.D., above.)			
	b. Was the notice published at least ten days in advance of the last date for submission of bids?			
§§ 365.37; 415.01	2. If there was no notice given or sealed bids solicited, did a special emergency exist?  (A special emergency is a situation requiring immediate action essential to the health, safety, or welfare of the town.)			
	3. Was the contract awarded to the lowest responsible bidder?			
§§15, 17	4. If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes?			

<b>Part III. Audit Conclusion</b>
<p>The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to contracting and bidding.</p> <p>Conclusion:</p>

**CITY  
CLAIMS AND DISBURSEMENTS**

## **LEGAL COMPLIANCE AUDIT GUIDE**

### **CLAIMS AND DISBURSEMENTS**

#### Introduction

Municipal transactions involving an account, claim, or demand made for any property or service which can be itemized in the ordinary course of business and disbursements of municipal funds are covered in this section.

“Municipality” for the purposes of this section includes statutory cities and home rule charter cities of the second, third, or fourth class; local social services agencies; or park districts.

In addition, Minn. Stat. § 471.425 (Prompt Payment of Local Government Bills), applies to any home rule charter or statutory city.

Minn. Stat. Section	CLAIMS AND DISBURSEMENTS		Yes	No	Workpaper Reference
<b>Part I. General Provisions</b>					
§ 471.38, subd. 1	A. Has every person or the person's agent claiming payment put such claim in writing (which includes an electronic transaction record) by items?				
	B. Has each declaration for payment (described below) been signed to the effect that such account, claim, or demand is just and correct and that no part of it has been paid?				
§ 471.38, subd. 2	Note: The provisions of this section do not apply to any claim or demand for an annual salary or fees of jurors or witnesses, fixed by law, nor to the salary or wages of any employee whose salary or wages have been fixed on an hourly, daily, weekly, or monthly basis, by the governing board of the municipality, and which is now authorized by law to be paid on a payroll basis.				
§ 471.391, subd. 1	<p>Declaration Form - The declaration is sufficient if in the following form: "I declare under the penalties of law that this account, claim or demand is just and correct and that no part of it has been paid."</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Signature of Claimant)</p>				
§ 471.391, subd. 2	The check or order-check by which the claim is paid may have printed on its reverse side, above the space for endorsement thereof, the following statement: "The undersigned payee, in endorsing this check (or order-check) declares that the same is received in payment of a just and correct claim against the city, and that no part of it has heretofore been paid." When endorsed by the payee named in the check or order-check, such statement shall operate and shall be deemed sufficient as the required declaration of the claim.				
§ 471.392	C. Any person who willfully and falsely makes the declaration provided for is guilty of a felony.				
§ 471.425, subd. 2	D. Prompt Payment of Local Government Bills				
	- Standard payment period is:				
	- 35 days from receipt for city councils that meet at least once a month;				
	- 45 days from receipt of goods or services or invoice, whichever is later, for city councils that do not meet at least once per month; and				
	- 45 days from receipt for joint powers entities.				
§ 471.425, subd. 2	1. Were all bills paid within the time period set by the terms of the contract or within the standard payment period?				
§ 471.425, subd. 4	- The city must pay interest on bills not paid in a timely manner. The interest rate is 1½ percent per month or part of a month. The minimum monthly interest on a bill of \$100 or more is \$10.				

Minn. Stat. Section	<b>CLAIMS AND DISBURSEMENTS</b>	Yes	No	Workpaper Reference
§ 471.425, subd. 4	2. For bills paid after the time period set by the contract or the standard payment period, did the city calculate and pay interest as required by law?			
	Note: The interest penalties in these questions do not apply to good faith disputes.			
§ 471.381	<b>Part II. Electronic or Wire Transfer</b>			
	A. If the city used electronic or wire transfers to pay claims or make investments:			
	1. Were the electronic identifiers used to authenticate or validate this government action approved by the governing board?			
	2. Had the city established policies and procedures to ensure the validity of the electronic approvals?			
<b>Part III. Claims and Disbursements - Statutory Cities</b>				
§ 412.271, subd. 1	A. For all disbursements made on orders, were the orders drawn by the mayor and clerk upon the treasurer?			
	B. Have all claims been audited and allowed by the city council, <u>except</u> when issued for payment of judgments, salaries, and wages previously fixed by the council or by statute, principal and interest on obligations, rent and other fixed charges, the exact amount of which has been previously determined by contract authorized by the council or as provided in E and F below, or if the city has delegated authority to approve claims under Minn. Stat. § 412.271, subd. 8?			
§ 412.271, subd. 2	C. Claims and Payment			
	1. Payroll			
	a. If the city used an electronic time recording system, did the city council adopt policies to ensure that the timekeeping and payroll methods used are accurate and reliable?			
	b. If the city did not use an electronic time recording system:			
	(1) Has the clerk maintained a payroll record giving the name of each employee and the number of hours or days worked by each?			
	(2) Has the timekeeper, supervisor, or other officers or employees having knowledge of the facts, signed a declaration indicating the facts recited on the payroll are correct to the best of the declarant's information and belief?			
	(3) Have the claims for payroll been signed in proper form or declaration under Minn. Stat. § 412.271, subd. 2?			



Minn. Stat. Section	<b>CLAIMS AND DISBURSEMENTS</b>	Yes	No	Workpaper Reference
	2. Other claims for payment for goods or services.			
	a. Was the claim prepared in written items (where possible in the ordinary course of business)?			
	b. Has a declaration for payment been signed that the claim is just and correct and no part of it has been paid, <u>or</u> was the declaration made by endorsement as provided in Minn. Stat. § 412.271, subd. 3?			
§ 412.271, subd. 3	D. Endorsement of Claims			
	1. Has the clerk endorsed each claim with either “disallowed” or “allowed in the sum of \$_____,” if approved in whole or in part and specifying the items rejected, if any?			
	2. Has each order been drawn so that when signed by the treasurer it became a check?			
	3. Has each order presented to the treasurer and not paid for want of funds been so marked and paid in order of its presentation with interest from the date of presentation?			
§ 412.271, subd. 4	E. Immediate Payment of Claims			
	1. Have all claims based on contract paid prior to a council meeting been signed by a majority of the council and formally approved at the next council meeting?			
§ 412.271, subd. 5	F. Imprest Funds			
	1. Has a custodian been appointed for each imprest fund?			
	2. Has money for the imprest fund been transferred from the general fund?			
	3. Have all claims been itemized and presented to the council at the next council meeting after payment has been made?			
	4. Has the council issued orders covering imprest fund claims?			
	5. Have all claims been approved in full and/or has the custodian replaced the difference for which he or she is personally responsible?			

**Part IV. Independent Board Powers--Statutory Cities  
(Utility and Park Boards)**

§ 412.271, subd. 6	A. Has any independent board, which is authorized to disburse funds without the approval of the council, met the requirements of Minn. Stat. § 412.271, subs. 4 and 5 (found as Part III.E. and III.F., above)?			
	Note: In reviewing the above subdivisions with regard to independent boards, the term “council” shall be considered to be the “board or commission” and the money for the fund may be obtained from any undedicated fund under its jurisdiction.			

Minn. Stat. Section	<b>CLAIMS AND DISBURSEMENTS</b>	Yes	No	Workpaper Reference
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<b>Part V. Delegation of Authority to Pay Claims - Statutory Cities</b>
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§§ 412.271, subd. 8	A. Did the city council delegate its authority to pay certain claims made against the city by adopting a resolution authorizing a specified city administrative official to pay the claims that meet the standards and procedures established by the council?			
	B. Does the city council have adequate internal accounting and administrative control procedures to ensure the proper disbursement of public funds, including regular and frequent review of the city administrative officials' actions by the council?			
	C. Was a list of all claims paid under the procedures established by the city council presented to the council at the next regularly scheduled meeting after payment of the claim? <u>and</u>			
	Is the city one which prepares annual audited financial statements which have been attested to by an independent certified public accountant, public accountant, or the state auditor?			

<b>Part VI. Payments With Credit Cards - For Cities</b>
---------------------------------------------------------

§ 471.382	A. If a city officer or employee made a purchase on behalf of the city by credit card:			
	1. Had the city council authorized the use of the credit card by the officer or employee;			
	2. Was the officer or employee otherwise authorized to make a purchase on behalf of the city; and			
	3. Did the purchase otherwise comply with all statutes, rules, and city policies applicable to city purchases?			
	B. If a city officer or employee made a purchase by credit card that was not approved by the city council, was the officer or employee held personally liable for the amount of the purchase?			



**CITY**  
**EXAMPLES OF INDEPENDENT AUDITOR'S REPORTS**

## LEGAL COMPLIANCE AUDIT GUIDE

### EXAMPLES OF INDEPENDENT AUDITOR'S REPORTS

Minnesota Legal Compliance	
Cities	6-2
Cities - <i>Government Auditing Standards</i>	6-3
Combined Report	
Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	6-4

Independent auditor's report for cities. (Note: Eliminate this paragraph from the report)

## MINNESOTA LEGAL COMPLIANCE

### Independent Auditor's Report

(City Council)  
(City)

We have audited, in accordance with auditing standards generally accepted in the United States of America, the financial statements of (*list of opinion units*) of \_\_\_\_\_ as of and for the year ended \_\_\_\_\_, and the related notes to the financial statements which collectively comprise the \_\_\_\_\_'s basic financial statements, and have issued our report thereon dated \_\_\_\_\_.

The *Minnesota Legal Compliance Audit Guide for Cities*, promulgated by the State Auditor pursuant to Minn. Stat. § 6.65, contains seven categories of compliance to be tested: contracting and bidding, deposits and investments, conflicts of interest, public indebtedness, claims and disbursements, miscellaneous provisions, and tax increment financing. Our audit considered all of the listed categories, <sup>1</sup>except that we did not test for compliance with the provisions for (identify area not tested) because (state reasons for excluding any areas.)

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Cities*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

- If legal compliance findings are reported, use the following wording:

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Cities*, except as described in the Schedule of Findings and Questioned Costs as items (*list related finding reference numbers*). However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

This report is intended solely for the information and use of those charged with governance and management of \_\_\_\_\_ and the State Auditor and is not intended to be and should not be used by anyone other than these specified parties.

(Signature)  
(Date)

Independent auditor's report for cities conducted under *Government Auditing Standards*.  
(Note: Eliminate this paragraph from the report.)

## MINNESOTA LEGAL COMPLIANCE

### Independent Auditor's Report

(City Council)  
(City)

We have audited, in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States the financial statements of (*list of opinion units*) of \_\_\_\_\_ as of and for the year ended \_\_\_\_\_, and the related notes to the financial statements, which collectively comprise the \_\_\_\_\_'s basic financial statements, and have issued our report thereon dated \_\_\_\_\_.

The *Minnesota Legal Compliance Audit Guide for Cities*, promulgated by the State Auditor pursuant to Minn. Stat. § 6.65, contains seven categories of compliance to be tested: contracting and bidding, deposits and investments, conflicts of interest, public indebtedness, claims and disbursements, miscellaneous provisions, and tax increment financing. Our audit considered all of the listed categories, <sup>2</sup>except that we did not test for compliance with the provisions for (identify area not tested) because (state reasons for excluding any areas from audit).

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Cities*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

- If legal compliance findings are reported, use the following wording:

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Cities*, except as described in the Schedule of Findings and Questioned Costs as items (*list related finding reference numbers*). However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

The purpose of this report is solely to describe the scope of our testing of compliance and the results of that testing, and not to provide an opinion on compliance. Accordingly, this communication is not suitable for any other purpose.

(Signature)  
(Date)

Auditor's internal control and compliance report based on an audit of financial statements performed in accordance with *Government Auditing Standards* and the *Minnesota Legal Compliance Audit Guide for Cities*. (Note: Eliminate this paragraph from the report.)

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING  
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN  
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN  
ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS***

Independent Auditor's Report

[city council]  
[city]

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of (*list related opinion units*) of \_\_\_\_\_ as of and for the year ended \_\_\_\_\_, and the related notes to the financial statements, which collectively comprise the \_\_\_\_\_'s basic financial statements, and have issued our report thereon dated \_\_\_\_\_.

**Internal Control over Financial Reporting\***

In planning and performing our audit of the financial statements, we considered \_\_\_\_\_'s internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting.

A deficiency in internal control over financial reporting exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the \_\_\_\_\_'s financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention of those charged with governance.



Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

### **Compliance and Other Matters\*\***

As part of obtaining reasonable assurance about whether \_\_\_\_\_'s financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### **Minnesota Legal Compliance**

The *Minnesota Legal Compliance Audit Guide for Cities*, promulgated by the State Auditor pursuant to Minn. Stat. § 6.65, contains seven categories of compliance to be tested: contracting and bidding, deposits and investments, conflicts of interest, public indebtedness, claims and disbursements, miscellaneous provisions, and tax increment financing. Our audit considered all of the listed categories, <sup>3</sup>except that we did not test for compliance with the provisions for (identify area not tested) because (state reasons for excluding any areas from audit).

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Cities*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions. \*\*\*

### **Other Matters**

\_\_\_\_\_’s responses to the internal control and legal compliance findings (*adjust as necessary for what they responded to*) identified in our audit have been included in the [name of report where the responses/corrective action plans are included]. The \_\_\_\_\_’s responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them. **[Leave out if no findings and no responses are included.]**

## Purpose of This Report

The purpose of this report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the \_\_\_\_\_'s internal control over financial reporting and compliance. Accordingly, this communication is not suitable for any other purpose.

(Signature)

(Date)

\*paragraphs to be used when no significant deficiencies or material weaknesses are identified.

- If significant deficiencies, but no material weaknesses are identified, use the following wording:

In planning and performing our audit of the financial statements, we considered \_\_\_\_\_'s internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting.

A deficiency in internal control over financial reporting exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the \_\_\_\_\_'s financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention of those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified. We did identify certain deficiencies (**a deficiency**) in internal control over financial reporting, described in the accompanying Schedule of Findings and Questioned Costs as item (*list item numbers*) that we consider to be significant deficiencies (**a significant deficiency**).

- If material weaknesses are identified, use the following wording:

In planning and performing our audit of the financial statements, we considered \_\_\_\_\_'s internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as described in the accompanying Schedule of Findings and Questioned Costs, we identified certain deficiencies (**a deficiency**) in internal control over financial reporting that we consider to be material weaknesses (a material weakness) and significant deficiencies. **(If no significant deficiencies, adjust last sentence.)**

A deficiency in internal control over financial reporting exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the \_\_\_\_\_'s financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in the accompanying Schedule of Findings and Questioned Costs, as items [*list finding numbers*] to be material weaknesses, and items [*list finding numbers*] to be significant deficiencies. **(If no significant deficiencies, adjust last sentence.)**

**\*\*Paragraph to be used when there are no reportable instances of noncompliance or other matters.**

- If instances of noncompliance are reported, use following wording:

As part of obtaining reasonable assurance about whether \_\_\_\_\_'s financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*, and which are described in the accompanying Schedule of Findings and Questioned Costs as items (*list related finding reference numbers*).

\*\*\*Paragraph when there are no legal findings.

- If legal compliance findings are reported, use the following wording:

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Cities*, except as described in the Schedule of Findings and Questioned Costs as items (*list related finding reference numbers*). However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

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<sup>1</sup> If the rest of the sentence does not apply, put a period here and continue to the next paragraph.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

**CITY  
MISCELLANEOUS PROVISIONS**

**LEGAL COMPLIANCE AUDIT GUIDE**  
**CITY MISCELLANEOUS PROVISIONS**

Introduction

This checklist, “City Miscellaneous Provisions” must be completed by auditors in the course of each audit of a city. It contains provisions that do not fit squarely into the other checklists.

Minn. Stat. Section	MISCELLANEOUS PROVISIONS			Yes	No	Workpaper Reference
<b>Part I. Provisions Applicable to Political Subdivisions Generally</b>						
§ 13D.01	A. Minnesota Open Meeting Law applies to the city council or other public body and to any committee, subcommittee, board, department, or commission of the city council or other public body.					1. Were all meetings of the city council and of any committee, subcommittee, board, department, or commission of the city council or other public body open to the public?
	2. If a meeting was closed, did the city council state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed?				§§ 13D.05, subd. 1(d), 13D.03	3. Were all closed meetings, except those closed as permitted by the attorney-client privilege, electronically recorded at the expense of the public body?
§§ 345.38-.43	B. Unclaimed Property (Applies to any court, public corporation, public authority or public officer of this state, or a political subdivision.)					If the city's records show unclaimed or uncashed checks or other intangible property held for more than three years (or one year for unpaid compensation); was the property reported and paid or delivered to the state Commissioner of Commerce pursuant to Minn. Stat. §§ 345.41, .43?
§ 465.03	C. Acceptance of Gifts (Applies to any city, county, school district or town.)					1. Was every acceptance of a grant or devise of real or personal property on terms prescribed by the donor made by resolution of the city council adopted by a two-thirds majority of its members and expressing such terms in full?
§ 169.022	D. Traffic Violation Administrative Penalties/Safety Classes (Applies to all political subdivisions, including cities.)					1. If the city has established administrative penalties, has the political subdivision refrained from establishing administrative penalties for traffic regulation, including speeding, DWI, missing plates or tabs, not wearing seatbelts, and other similar state traffic offences <u>or</u>  Was a resolution passed under Minn. Stat. § 169.999 (Administrative Citations for certain traffic Offences), and were the provisions of that section followed?
	2. Has the city <u>not</u> established a safety class option in lieu of issuance or court filing of a state uniform traffic ticket?					

Minn. Stat. Section	MISCELLANEOUS PROVISIONS	Yes	No	Workpaper Reference
§ 471.665, subd. 3	E. Mileage Reimbursement/Automobile allowance (Applies to any county, home rule charter or statutory city, town, or school district.) [Note: The City of St. Paul has additional authority. See Minn. Stat. § 471.665, subd. 2.]			
	If the entity has established an automobile allowance for any officer or employee, is the allowance <u>in lieu of</u> all other mileage reimbursement to that officer or employee?			
§ 43A.17, subd. 9	F. Compensation Limit (Applies to political subdivisions; including cities, counties, towns, metropolitan or regional agencies, or other political subdivisions, but does not include a hospital, clinic, or health maintenance organization owned by such a governmental unit. It also does <u>not</u> apply to school districts.)			
	1. Did the salary and the value of all other forms of compensation of each city employee not exceed 110 percent of the salary of the governor increased by the increase, if any, in the Consumer Price Index as described in Minn. Stat. § 43A.17, subd. 9(b)? [This amount was \$162,245 for 2014, \$165,003 for 2015, and \$165,333 for 2016.]; <u>or</u>			
	2. Has the city obtained an increase in the limit from the Commissioner of Management & Budget?			
§§ 15.17 & 138.17	G. Destruction of Records (Applies to all political subdivisions.)			
	If the entity disposed of government records, did it do so in compliance with a validly adopted records retention schedule or “Application for Authority to Dispose of Records?”			
	H. Public Purpose (Applies to all political subdivisions, including cities.)			
Ops. Atty. Gen. 442a-17, Jan. 17, 1938; 59a-22, Nov. 23, 1966; 270-D, Aug. 12, 1977; 174E, March 24, 1970	1. Did the entity refrain from donating money to people, nonprofit organizations, and charities unless allowed by specific authority?			
	2. Did the entity refrain from paying for Christmas parties and other employee social events?			
	3. Did the entity refrain from paying retroactive bonuses or pay increases unless the bonus or pay increase was paid under a pre-existing agreement or pursuant to collective bargaining?			
§ 471.661	I. Out-of-State Travel Policy (Applies to each city, county, school district, regional agency, or other political subdivision, <u>except</u> a town.)			
	1. Does the city have on record a policy that controls travel outside the state of Minnesota for the applicable elected officials of the relevant unit of government?			
	2. Was the policy initially approved and were subsequent changes, if any, approved by a recorded vote?			





**CITY  
TAX INCREMENT FINANCING**

## LEGAL COMPLIANCE MANUAL

### TAX INCREMENT FINANCING

#### Introduction

Tax increment financing (TIF) is a financing tool created to promote economic development, redevelopment, and housing in areas where it would not otherwise occur. A TIF authority may be a city, county, or an entity created by a city or county, such as a housing and redevelopment authority (HRA) or economic development authority (EDA). The TIF authority creates, and the municipality approves the establishment of, the TIF district. The county auditor certifies a TIF district and determines the original net tax capacity.

The authority captures the property tax revenues generated by the increase in net tax capacity resulting from the new development and uses this increase in property tax revenues, (the tax increments), to finance qualifying expenditures related to the new development. These qualifying expenditures generally relate to acquisition, clean up, and preparation of the site for construction. Each TIF district has a term of years depending on the type of district. Once the costs are paid and the TIF district is decertified, the tax base becomes fully available to the county, city, and school district for financing local services.

The Office of the State Auditor prepares Statements of Position to provide an educational resource to local governments, auditors and the public. Statements of Position on Tax Increment Financing topics are available on the Office of the State Auditor website. See <http://www.auditor.state.mn.us/default.aspx?page=statements>.

Auditors should determine whether any special laws applicable to the municipality or authority affect the general legal standards related to tax increment financing. Special laws are common with TIF, and are found in Table 1 of Minnesota Statutes.

Minn. Stat. Section	TAX INCREMENT FINANCING	Yes	No	Workpaper Reference
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**Part I. Segregation/Tax Increment Revenues**

§ 469.174, subd. 25	<p><b>Note:</b> Tax increment includes:</p> <ol style="list-style-type: none"> <li>1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under section 469.177;</li> <li>2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments received after June 30, 1997;</li> <li>3. Principal and interest received on loans or other advances made by the authority with increments after June 30, 1997;</li> <li>4. Interest or other investment earnings on or from tax or from tax increments received after July 1, 1997; and</li> <li>5. Repayments or return of tax increments made to the authority under agreements for districts for which the request for certification was made after August 1, 1993.</li> </ol>			
§ 469.177, subd. 5	Did the authority segregate tax increment from this district in a special account or accounts on its official books and records, or segregate it as otherwise established by resolution to be held by a trustee for the benefit of bondholders?			

**Part II. Interfund Loans**

§ 469.178, subd. 7	For interfund loans made after July 31, 2001, to finance TIF eligible expenditures, was the loan or advance authorized by resolution before the money was transferred, advanced, or spent, whichever is earliest?			
§ 469.178, subd. 7	Are the terms and conditions for repayment of the loan in writing, and do they include, at a minimum, the principal amount, the interest rate, and the maximum term?			
§ 469.178, subd. 7	Does the interest rate on the loan or advance not exceed the greater of the rates specified under section 270C.40 or 549.09?			
§ 469.178, subd. 7	<b>Note:</b> An authority or municipality may advance or loan money to finance TIF expenditures from "its General Fund or any fund under which it has legal authority to do so."			

**Part III. Four-Year Knock Down Rule**

§ 469.176, subd. 6	<p><b>Note:</b> If, after four years from the date of certification of the original net tax capacity of the district, no demolition, rehabilitation, or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer and water systems, has commenced on a parcel in the district, no additional increment may be taken from that parcel, and the original net tax capacity of that parcel shall be excluded from the original net tax capacity of the district.</p>			
	Did the TIF authority submit to the county auditor, by February 1 of the fifth year following the year in which the parcel was certified, evidence that the required activity has taken place on each parcel in the district?			

Minn. Stat. Section	<b>TAX INCREMENT FINANCING</b>	<b>Yes</b>	<b>No</b>	Workpaper Reference
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<b>Part IV. Decertification</b>
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§ 469.177, subd. 12	A.	Was this TIF district decertified when the earliest of the following times was reached:			
	1.	The statutory maximum duration limit under section 469.176, subdivisions 1b to 1g;			
§ 469.176, subd. 1	2.	the maximum duration limit as provided in the TIF plan;			
§ 469.1763, subd. 4	3.	beginning in the sixth year following certification of a post-1990 TIF district, the outstanding bonds have been defeased and sufficient tax increment revenues have been set aside to pay outstanding bonds and binding contracts entered into before or within five years of the certification of the district; or			
§ 469.177, subd. 12	4.	upon the later of receipt by the county auditor of a written request for decertification from the authority or the decertification date specified in the request?			
	B	Did the authority file a confirmation of decertified TIF district form with its county auditor?			
	C.	Did the authority not receive any tax increment revenues from the county auditor following decertification of the district?			

<b>Part V. Audit Conclusion</b>
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The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to Tax Increment Financing.

Conclusion:
