RESCHEDULED STUDY SESSION
WINNETKA VILLAGE COUNCIL
510 Green Bay Road
Winnetka, Illinois 60093
Tuesday, May 24, 2011
7:30 p.m.

Emails regarding any agenda item are welcomed. Please email lrosenthal@winnetka.org, and your email will be relayed to the Council members. Emails for the Tuesday Council meeting must be received by Monday at 4:00 PM. Any email may be subject to disclosure under the Freedom of Information Act.

AGENDA

1) Call to Order.
2) Village Council Orientation.....(Handbook distributed separately)
3) Executive Session pursuant to Section 2(c)(1) and 2(c)(2) of the Open Meetings Act (personnel matter and collective bargaining)
4) Adjournment

NOTICE

All agenda materials are available at www.villageofwinnetka.org *(click Council and then Current Agenda)*, the Reference Desk at the Winnetka Library, or in the Manager's Office at Village Hall (2nd floor).

Videos of the Regular Village Council meetings are televised on Channel 10, Mondays, Wednesdays, and Fridays at 7:00 p.m. Videos of the meeting may also be viewed on the Internet via a link on the Village's web site: www.villageofwinnetka.org.

The Village of Winnetka, in compliance with the Americans with Disabilities Act, requests that all persons with disabilities, who require certain accommodations to allow them to observe and/or participate in this meeting or have questions about the accessibility of the meeting or facilities, contact the Village ADA Coordinator – Liz Rosenthal, at 510 Green Bay Road, Winnetka, Illinois 60093, (Telephone (847) 716-3540; T.D.D. (847) 501-6041).

Village of Winnetka and The Village Council

How Winnetka Government Works

Duties, Responsibilities and Ethical Considerations

Source of Powers

Home Rule

- Powers from Article VII, §6 of the Illinois Constitution of 1970
- No need to rely on statutory sources

Form of Government

Council – Manager

- One of three statutory forms
  - Council-Manager
  - Commission
  - Strong Mayor
- Powers vested in
  - Village Council
  - Village Manager

Who and What is the Council?

- **Who:**
  - Village President
  - Village Trustees
- **What:**
  - The Corporate Authority

Village Council

Defines public policy

- Legislative
  - Enacts laws
  - Establishes fines
- Financial
  - Levies taxes
  - Establishes budget
  - Authorizes expenditures
  - Enters into contracts

Village Council

Appointment of Village Officials

- By Village President with approval of Trustees
  - Village Manager
  - Village Attorney
  - Members of boards and commissions
- By Council
  - Village Clerk
  - Village Treasurer

Village Manager

Implements policy

- Reports directly to Council
- Village's chief administrative officer
- Responsible for management and operation of all departments
- Appoints department heads, Budget Officer and Village Prosecutor
- Determines departmental organization and staffing

Policy Statements

- Require action of the Council
- Hierarchy of Policy (in order)
  - Village Code (“MC” Ordinances)
  - General Ordinances (“M” Ordinances)
  - Resolutions
  - Motions

Policy-making Process

- Identify issues
- Study
- Formulate policy
- Vote
- Implement

Policy-making Process

- Identify issues
  - Community
  - Village professional staff
  - Council members
  - News reports
  - Other sources

Policy-making Process

- Information gathering
  - Sources
    - Village Staff – Manager and Department Heads (in-house professional “consultants”)
    - Advisory bodies
    - Retained consultants
    - Public
    - Other sources

Policy-making Process

- Information gathering (*cont'd*)
  - Components
    - Fact gathering
    - Recommendations
  - Methods
    - Research
    - Discussion
    - Public meetings
    - Public hearings

Policy-making Process

- Formulate policy
  - Substance
  - Form
- Vote
- Implement

Advisory Bodies

- Plan Commission
- Zoning Board of Appeals
- Design Review Board
- Landmark Preservation Commission
- Business Community Development Commission
- Environmental and Forestry Commission

Council's Relationship with Advisory Bodies

- Advisory bodies help shape policy
- Council shapes the advisory bodies through the appointment power
- Advisory bodies can't bind Council or the Village

Council's Relationship with Advisory Bodies

- How much authority should advisory bodies have?
- Council decides, depending on
  - Expertise of the members
  - Nature of the issue
  - State of the record
- In general:
  - More deference to fact-finding
  - Less deference to policy recommendation

Decision-Making Bodies

- Powers delegated by State Legislature
  - Board of Fire and Police Commissioners
  - Firefighters Pension Board
  - Police Pension Board
  - Foreign Fire Insurance Board
- Powers delegated by Council
  - Zoning Board of Appeals

Ethical Issues

- Finding your “voice”
- Avoiding conflicts of interest

For whom do Council members speak?

- Council constituency is the Village as a whole.
- Council members speak for yourselves, individually when:
  - discussing issues before a vote
  - disagreeing with a majority vote
  - opining on political issues
- Council members speak for the Village when
  - in agreement with a Council decision
  - representing the Village as a liaison

Conflicts of Interest

- **All Village officials must avoid actual conflicts of interest and anything that gives the appearance of being a conflict of interest.**
- **At best, a conflict of interest can taint the procedures.**
- **Some conflicts can nullify Council actions, even if the person with the conflict does not participate in the decision.**
- **Some conflicts can give rise to criminal liability.**

How do conflicts of interest arise?

Answer:

- Actual conflicts of interest arise when an official has a legally recognized personal interest in the business before the body.
- Apparent conflicts of interest arise when personal circumstances make it appear that the official is not impartial.

What are some examples of a conflict of interest?

Answer:

An actual conflict of interest generally requires some sort of monetary interest, *e.g.*:

- Interest in a contract
- Owning a business that is doing business with the Village

Are any conflicts defined by law?

Answer:

Yes. Illinois Municipal Code §3.1-55-10 prohibits Village officials from:

- Having a contract, work or business with the Village
- Selling anything, including services or work, if payment will be made with Village funds
- Purchasing any real or personal property from the Village
- Purchasing any property sold for unpaid taxes

Effect of Section 3.1-55-10

- Applies to all Village officials, including the Village Manager, Village Treasurer, Village Clerk and Village Attorney
- Violation of Section 3.1-55-10 is a Class 4 Felony
- Conviction creates an immediate vacancy in office
- Conflict cannot be cured by disclosure or recusal

Exceptions to Section 3.1-55-10

- Limited exceptions to prohibited interests in work or business
  - Ownership through a mutual fund
  - Nationally traded stock
  - Interest ≤ 1% of stock
- Some smaller contracts allowed, subject to specific conditions
- All statutory conditions must be present

What is <u>not</u> a conflict of interest?

- Having strong opinions
- Having professional expertise or a passion for the subject matter
- Being friends with someone who appears before the Council
- Having a past business relationship with someone who now does business with the Village

How can we avoid conflicts of interest?

- Be vigilant
  - Watch contract awards for relationship to your business dealings or investments
  - Watch requests from individuals and groups for apparent conflicts
- Seek advice
  - From the Village Attorney
  - From the Finance Director
- Be conservative

How should we deal with a conflict of interest?

Answer:

- **Disclose:** All conflicts, actual or apparent, should be disclosed.
- **Recuse:** For actual conflicts of interest, a member must recuse himself or herself from participating in both the discussion and vote.
- **Abstain:** For apparent conflicts, abstaining from the vote is sufficient.
- **Disqualify:** Statutory conflicts can't be cured by abstention or recusal and disqualify the whole Council from proceeding.

The Open Meetings Act

Compliance Guide:
Questions and Answers

What does the Act require?

Answer:

- Public meetings
- Public decisions
- Public notice
- Public record
- Public attendance
- Public participation

Who must comply?

Answer:

- Village Council
- Every board
- Every commission
- Every committee
- Every subcommittee

What is a meeting?

Answer:

- An in-person or electronic gathering
- Of a majority of a quorum of a public body
- At which the business of the public body is discussed

What this means:

- Meetings can occur
  - at any place
  - at any time
  - in any form
- Key factors:
  - number of participants
  - subject of the discussion
  - contemporaneous communication

Are there different types of meetings?

Answer:

Meetings are categorized in two ways:

- by the manner in which they are scheduled
- by whether or not the public can attend

What are the basic types of meetings?

Answer:

Three types:

- Regular
- Special
- Emergency

Regular Meetings

- Regular business meeting
- Held at times specified in the annual Open Meetings notice
- Usually held on a specific day of the week, rather than on a specific date of the month
- Agenda can be amended during the meeting

Emergency Meetings

- Must address a bona fide emergency
  - An unanticipated event
  - Requiring action before a routine notice can be given
- Discussion and actions are limited to the specific emergency matter

Special Meetings

- Any meeting that is not a regularly scheduled meeting or an emergency meeting
- Notice = Agenda
- Discussion and actions are limited to the matters in the posted notice

Is notice required for all meetings?

Answer:

Yes.

If a gathering is a “meeting” under the Open Meetings Act, the public body must give advance notice to the public.

Notice Requirements

Regular Meetings

- Annual Schedule
- Amended Schedule
- Agenda
  - Posting required for all meetings
  - Must be posted at least 48 hours before the meeting
  - May include “other business”

Notice requirements

Special Meetings

- At least 48 hours before the meeting
- Notice given by posting the agenda
- Agenda may not be amended

Notice requirements

Emergency Meetings

- At the earliest opportunity before the meeting
- Registered media get the same notice as the public body
- Agenda limited to the subject of the declared emergency

Can a meeting be closed to the public?

Answer:

Yes, but only if

- the topic is a permitted exception to the open meeting requirement;
- the statutory procedure for closing the meeting is followed; and
- all final actions are taken in open session

What can be discussed in closed sessions?

Answer:

- Most common permitted topics:
  - Personnel matters - §2(c)(1)
  - Collective bargaining - §2(c)(2)
  - Appointment or removal of public officials - §2(c)(3)
  - Litigation (pending or probable) - §2(c)(11)
  - Some aspects of the purchase, sale or lease of real estate – §2(c)(5) and (6)
  - Security procedures - §2(c)(8)

Who can hold a closed (executive) session?

Answer:

- Any public body, if the topic is permitted, but especially:
  - Village Council
  - Board of Fire and Police Commissioners
  - Some hearing bodies
  - Closed sessions are rare for others
- Advice: Check with the Village Attorney first

Must meetings be recorded?

Answer:
Sometimes

- Open sessions need not be recorded
- All closed sessions must be recorded
  - Audio or video format
  - Subject to court review if a violation is claimed
  - Not subject to FOIA
  - Can’t be used in other lawsuits
  - Must be retained for 18 months

When are minutes required?

Answer:

Always

- for every meeting
- of every public body
- whether the meeting is open or closed to the public

How detailed should the minutes be?

Answer:

- Must meet minimum requirements set by the Open Meetings Act
- A verbatim transcript is not required
- A verbatim transcript is not recommended for meetings

What goes into the minutes?

Answer:

- Date, time and place of the meeting
- Presence or absence of each member of the public body
- **“**A summary of discussion on all matters proposed, deliberated, or decided”
- A record of all votes taken

Minutes in Brief

Robert's Rules says:

- **Minutes are a record of**
  - **what is done**
  - **<u>not</u> what is said**

Must minutes include statements "read into the record"?

Answer:

No

- it changes minutes into a transcript
- it records what is said by one person, not what is done by the body
- it gives undue weight to the speaker
- it leaves an unclear record for the future

Must minutes include documents submitted "for the record"?

Answer:

No

- it changes minutes into an evidentiary record
- it doesn't record what the body did
- it gives the document undue weight
- it leaves an unclear record for the future

Is the public entitled to participate in the meeting?

Answer:

Sometimes

- Public is entitled to <u>attend</u> all meetings
- Public participation is a part of all hearings
- In all other instances, public participation is up to the public body

Can public participation be limited?

Answer:

Yes

Public body can set ground rules

- Topics
- Comment, not debate
- Length of time
- Number of times
- Direct comments only to public body

Are there penalties for violating the Open Meetings Act ?

Answer:

Yes

- Civil suits can be filed by anyone
- State's Attorney can prosecute
  - Class C misdemeanor
  - Jail term of 30 days to 1 year
- Court can nullify actions

Summary

Open Meetings Act requires:

- Public meetings
- Public decisions
- Public notice
- Public record
- Public attendance

Council Communications

Protecting the Village
and
Working in the Sunshine

Red-Flag Communications

- Confidential discussions
- Communications from the Manager or Village Attorney
- E-mails
- Communications from constituents
- Sharing information

Warning Signs

- Liability concerns
- Confidentiality concerns
- Freedom of Information Act concerns
- Open Meetings act concerns

Liability concerns

- Potential litigation and electronic discovery
- “Litigation hold”
  - Every Village official and employee will be required to retain all e-mails
  - Personal computers and personal e-mail accounts are subject to search in the course of discovery.

Liability concerns (cont'd)

- E-mail communications do not go away, even if they are deleted.
- Statements in e-mails can be used to build a case for liability on the part of the Village.

Worst Case Scenario

- E-mails = Admissions of liability
- Deleting e-mails = Destruction of evidence
- Deleting e-mails = Violation of the Local Records Act.

Confidentiality concerns

- Executive session leaks.
- No Council member or Village employee has the authority to disclose confidential information without the approval of the Council as a whole.

Attorney-Client Privilege

- Limited
- Belongs to the Village, not individuals
- Only the client can waive it
- CC: Village Attorney – doesn't make a communication privileged
- Village Attorney has an ethical obligation to maintain the confidentiality of her communications with the Council and Council members.

FOIA Concerns

- E-mail = “records” under FOIA.
- If you don’t want people to see it, don’t write it

Open Meetings Act Concerns

- E-mail strings between 3 or more Council members that discuss Village business = “meeting” under the Open Meetings Act
- E-mail strings <u>may</u> be a “meeting”
- E-mail string <u>is</u> a meeting if a downstream recipient adds his or her comments along the way.
- Invalid actions
- Class C misdemeanor.

Final Thoughts

- **Pick up the phone!**
- **The “E” in E-mail stands for “evidentiary” and “eternal.”**