

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
NOVEMBER 17, 2009 AGENDA

| SUBJECT: | TYPE: | SUBMITTED BY: |
|--|--|-------------------------------|
| Amendment to Chapters 1 and 2 of the Downers Grove Municipal Code – Public Access Laws | ✓ Resolution Ordinance Motion Discussion Only | April Holden Village Clerk |

SYNOPSIS

Ordinances have been prepared to amend Chapters 1 and 2 of the Municipal Code with respect to the Freedom of Information Act (FOIA) and the Open Meetings Act in an effort to comply with new State legislation which will be effective on January 1, 2010.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2008-2013 identified *Exceptional Municipal Organization*. A supporting objective of this goal is *Village government Trusted and Respected by Residents*.

FISCAL IMPACT

The new FOIA acknowledges that the new mandates may impose additional staffing and equipment costs on public bodies, but states that “providing records in compliance with the requirements of the Act is a primary duty of public bodies to the people of this State and the Act should be construed to this end, fiscal obligations notwithstanding.” The proposed FY10 budget includes funding for the increased costs of complying with the FOIA amendments. Staff will monitor these costs and report any significant findings during the FY10 quarterly reports.

UPDATE & RECOMMENDATION

This item was discussed at the November 10, 2009 workshop. In response to a concern raised during the workshop, staff has revised the gender references in the ordinance language in an effort to maintain consistency throughout. Staff recommends approval on the November 17, 2009 active agenda.

BACKGROUND

Public Act 96-0542, signed into law on August 17, 2009 by Governor Quinn, significantly changes the State’s public access laws, including the Freedom of Information Act (FOIA) and Open Meetings Act, which will substantially impact the Village in complying with FOIA requests. The new law states that it is a fundamental obligation of public bodies to provide public records as expeditiously and efficiently as possible. Under the new law, there is a presumption that all records are open to inspection or copying. In denying a record, the Village will now have the burden of proving by clear and convincing evidence that the disclosure of the record is exempt from the law.

The new law changes the timeline for response to a request from seven business days to five business days. Further, the Village may not charge fees for the first 50 printed pages of a record. Thereafter, actual expenses, not to exceed \$0.15 per page, may be charged for black-and-white copies. The Village is not permitted to charge any more than actual reproduction costs and cannot pass through any administrative fees associated with personnel costs.

In terms of fines and penalties, fines of \$2,500 to \$5,000 per occurrence (depending on the Village’s budget and previous violations) as well as “reasonable attorneys’ fees and costs” can be imposed for non-compliance with the Act, although there is no penalty for a requestor who abuses the FOIA process.

The new law requires the Village to designate employees to receive training on compliance with the Open Meetings Act and further requires the designation and training of a FOIA officer as well as ongoing annual education requirements. The Act shifts all of the response and compliance responsibilities to the designated FOIA officer. Responsibilities will include identifying those records the Village will immediately disclose upon request, establishing a formal system for processing FOIA requests, posting information on our website, and complying with exemption requirements. Denials are no longer appealed to the Village Manager, but instead will be submitted to the Public Access Counselor in the Illinois Attorney General's office in accordance with specific procedures provided under the law.

To comply with the new law, staff has prepared two ordinances. The first amends Freedom of Information procedures to designate the Village Clerk to serve as the Freedom of Information Officer and to establish fees for Village records. A cost analysis of fees, as conducted by the Finance Department, determined a cost of \$0.02 per page for standard copies. Because the administrative cost of processing payments has been determined to outweigh the fee the Village can collect, staff is recommending that no fees be charged for standard copies of records. Color copies would be charged at the actual cost of \$.10 per page. Fees for plats, maps, photographs, CD's, DVD's, etc. will be the actual cost of reproduction.

The second ordinance amends Chapter 2 of the Municipal Code and establishes procedures for the recording of closed sessions pursuant to the Open Meetings Act.

ATTACHMENT

An Ordinance Amending Freedom of Information Procedures

ORDINANCE NO. _____

**AN ORDINANCE AMENDING
FREEDOM OF INFORMATION ACT PROCEDURES**

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by shading/underline; deletions by ~~strikeout~~):

Section 1. That Section 1.27 is hereby amended to read as follows:

1.27 Freedom of Information--appointment of officer, requests for inspection or copying of records--procedures; fees.

(a) The Village Clerk and his/her designees shall serve as the Freedom of Information Officers and shall perform such duties as required by law.

(~~a~~b) Persons desiring to inspect or obtain copies of Village records under the Illinois Freedom of Information Act shall ~~complete a request form as provided by the Village and submit the form to the Village Clerk or to the Police Records Information Manager if police department records are sought~~make a written request which shall be submitted to the Freedom of Information Officer.

(~~b~~c) The fee charged for copies of Village records, files, ordinances, documents, or other information retained by the Village, shall be as set forth by statutes of the State of Illinois. Where no statutory fee has been established, the following schedule shall apply:

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|--|---|
| 1. Standard copies (8 1/2" x 11") | \$.0.25/page <u>No charge</u> |
| <u>2. Color copies</u> | <u>\$0.10/page</u> |
| 2. Standard copies (11" x 17") | \$0.35/page |
| 3. Standard microfilm copies | \$0.25/page |
| 4. 11" x 17" microfilm copies | \$0.50 /page |
| 5. 18" x 24" microfilm copies | \$0.50 /page |
| 6. Blueline print of maps, surveys and similar documents | Actual cost of reproduction |
| 7. Blackline print of maps, surveys and other documents exceeding 11" x 17" | \$0.55/lin.ft. |
| 8 <u>3</u> . <u>Plotted</u> <u>Plats or</u> maps | <u>\$0.65/lin.ft.</u> <u>Actual cost of reproduction</u> |
| 9 <u>4</u> . Photographs or <u>video tapes, DVDs or CDs</u> | Actual cost of reproduction |
| 10. Downers Grove Zoning Ordinance | \$13.00/each |
| 11. Downers Grove Municipal Code | \$90.00/each |
| 12. Supplements to Municipal Code | \$16.00/year |
| 13. If the Village uses a copy service to copy requested records | the amount charged the Village by the copy service to make the copies. |
| 14. Zoning Map (24" x 36") black & white | \$1.00 /each |
| 15. Zoning Map (24" x 36") color | \$10.00 /each |
| 16. Street Map (24" x 36") | \$10.00 /each |
| 17. Land Use Map (24" x 36") | \$10.00 /each |
| 18. Digital Orthophoto Map (36" x 36") | \$15.00 /each |
| 19. Contour Map | \$15.00 /each |
| 20. Miscellaneous Maps (11" x 17") | \$5.00 /each |
| 21. Customized size map | \$20.00 - \$25.00/each |

FOIA

~~(c) Decisions to deny, in whole or in part, any request for records under the Freedom of Information Act may be appealed to the Village Manager by filing a written Notice of Appeal within seven working days from the date of receipt. The notice of appeal shall be in writing and shall include a copy of the request, a copy of the denial received, and a statement of any reasons for which the person believes the denial should be reversed and the request granted. The Manager may affirm, reverse or otherwise modify such decisions within seven working days after a complete and proper notice of appeal has been filed. If the decision to deny a request, in whole or in part, is made or affirmed by the Village Manager, such decision may be appealed to the Circuit Court within thirty days. Failure to timely appeal a denial as provided herein to the Manager or the Circuit Court shall render such decision final.~~

~~———— (d) The Village Manager may establish rules and regulations consistent with this ordinance including but not limited to the processing of requests for records and appeals.~~

~~———— (e) A records fee waiver or reduction may be authorized whenever the Village Manager, or the Manager's designee, determines that such waiver or reduction is in the public interest.~~

Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That this ordinance shall be in full force and effect January 1, 2010.

Mayor

Passed:

Published:

Attest: _____

Village Clerk