

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 Establishing Procedures for the Recording of Closed Sessions in the Village of Downers Grove, Illinois.

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING PROCEDURES
FOR THE RECORDING OF CLOSED SESSIONS
IN THE VILLAGE OF DOWNERS GROVE, ILLINOIS**

WHEREAS, the Village of Downers Grove is an Illinois municipal corporation under the laws of the State of Illinois; and

WHEREAS, Section 2.06 of the Open Meetings Act, 5 ILCS 120/2.06 requires public entities to audio or video record their closed or executive session meetings; and

WHEREAS, the Illinois General Assembly enacted such legislation to have a mechanism by which to review whether Illinois public entities violated the provisions of the Illinois Open Meetings Act while conducting their closed sessions; and

WHEREAS, the Village Council of the Village of Downers Grove seeks to establish procedures by which the Village can comply with the provisions of the law.

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 2.3. is hereby amended to read as follows:

2.3. Recording of Closed Sessions.

(A) Recording Closed Sessions. The Village of Downers Grove shall keep a verbatim record of all closed or executive session meetings of the corporate authorities of the Village or any subsidiary “public body” as defined by the Illinois Open Meetings Act, 5 ILCS 120/1. The verbatim record shall be in the form of an audio or video recording as determined by the corporate authorities.

(B) Responsibility for Recording Closed Sessions and Maintaining Recordings. The Village Clerk or his/her designee shall be responsible for arranging for the recording of such closed or executive sessions. The Village Clerk, or his/her designee, shall securely maintain the verbatim recordings of all closed sessions of the corporate authorities of the Village and all subsidiary public bodies of the Village.

(C) Closed Session Minutes. In addition to the recordings of the closed and executive session as addressed in this Ordinance, the Village will keep minutes of all closed meetings in accordance with the requirements of the Open Meetings Act, 5 ILCS 120/2.06.

(D) Procedure for Recording. At the beginning of each closed session, those present shall identify themselves by voice for the audio recording. If the meeting is videotaped, those present shall individually appear on camera and identify themselves by voice at the beginning of the closed session. The meeting Chair shall also announce the times the closed session commences and ends at the appropriate points on the recording.

(E) Back-Up Equipment/Procedure for Equipment Malfunction. The Village will maintain sufficient tapes, batteries and equipment for the Village to comply with this Ordinance. The Village Clerk or his/her designee will periodically check the equipment to confirm that it is functioning. In the event that anyone present at a closed session determines that the equipment is not functioning properly, the closed session will be temporarily suspended to attempt to correct any malfunction. In the event that an equipment malfunction cannot be corrected immediately, the closed session will terminate until such time as time as the closed session may proceed with a functioning recording device.

(F) Procedure for Review of Closed Session Minutes and Recordings. Minutes of closed sessions

Recording

shall be reviewed every six months and shall not be released unless the corporate authorities of the Village find that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential. Minutes of closed sessions shall be kept indefinitely.

(G) *Maintenance and Public Release of Recordings and Access to Tapes.* The audio or video tape recordings of closed sessions shall be maintained for 18 months after the closed session and shall not be released to the public unless such release is required by a court order. Members of the corporate authorities may listen to the closed session recordings in the presence of the Village Clerk or his or her designee.

(H) *Procedure for Destruction of Recordings.* The Village Clerk or his or her designee is hereby authorized to destroy the audio and video recordings of those closed sessions for which:

1. The corporate authorities of the Village have approved the minutes of the closed sessions as to accurate content, regardless of whether the minutes have been released for public review;
2. More than 18 months have elapsed since the date of the closed session;
3. There is no court order requiring the preservation of such recording; and
4. The corporate authorities of the Village have not passed a motion requiring the preservation of the verbatim recording of that meeting.

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 from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk