



Board Orientation Manual

A Handbook for Village of Thiensville Board Members

Village of Thiensville
250 Elm Street
Thiensville, WI 53092
262-242-3720
www.village.thiensville.wi.us

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Created By: Dianne S. Robertson,
Administrator

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The Village President, Village Board, Village Administrator and Village staff are pleased that you have become a member of the Village's governing body. Our community relies on the dedication of individuals with pride in their community and the initiative to become involved in the local municipal government process.

As a member of the Village Board, you will be asked to make policy decisions, enact laws, levy taxes, and act for the benefit and best interest of the Village of Thiensville. You will be performing a valuable service by addressing community issues and needs as you represent your constituents. It is a service that is needed and that carries with it great responsibilities, which, hopefully, this manual will help you meet without feeling overwhelmed.

Village officials look forward to your contribution as we all work together to provide efficient municipal services that are responsive to local needs and expectations.

The Village Board appreciates your willingness to work in this capacity and hopes your experience will be stimulating, enjoyable and satisfying. May you be productive in this endeavor.



INTRODUCTION



This handbook has been prepared to help elected officials of the Village of Thiensville in carrying out the duties and responsibilities of public office. It is intended to be used for reference purposes only. This publication is based on state and federal legislation, general local government reference works, other detailed municipal manuals and similar publications dealing with municipal governments that have been published by the League of Wisconsin Municipalities.

In the various sections of this manual, information has been provided on the basic structure of village government, as well as some guidance on conducting board meetings, advice on how to govern the Village of Thiensville effectively, descriptions of how the village is organized, details of what is required for public hearings, and information on creating a budget. In addition, some actions that public officials sometimes do not realize could create criminal liability are listed in the hope that such problems are best avoided through receiving good information.

Finally, the Village Board has established a number of committees, commissions and boards to review village programs, projects and community issues. These groups provide greater community participation and can be a valuable source of information as they make recommendations to the Village Board on specific areas. These bodies are all organized either through village ordinance or state statutes, which also prescribe their duties and authority.

If you have questions regarding your role, authority or area of responsibility within the aspect as a member of the Village Board of the Village of Thiensville, please feel free to direct your questions or concerns to the Village President and do not hesitate also to receive clarification or assistance from the offices of the Village Administrator.

MISSION STATEMENT

To 'Build a Bridge to the Future' by effectively working together with the committees and residents in an effort to provide efficient municipal services that are responsive to local needs and expectations.

GENERAL INFORMATION FOR NEWLY ELECTED BOARD

- According to the village ordinances, the Board meetings are to be held every 1st and 3rd Monday of each month at 6:00 pm. The time may be adjusted as necessary to meet scheduling needs and the time demands of scheduled agenda items. The agenda and packets of backup information will be delivered to your home by the Thiensville Police Department on the Friday evening prior to the scheduled meeting.
- It is the responsibility of each board member to come to the meetings fully prepared. This means that you should be reading through the entire packet of information made available to you. If you have any questions regarding the information please contact Village Hall to research the answer to your question prior to the meeting.
- Each board member has a mail slot at Village Hall. It is the responsibility of each board member to periodically check his or her mailbox. If there are items in the mail slot at the time of compiling meeting packets, the items will be placed in the packet to be delivered to you.
- Each new Board member needs to visit the payroll department in Village Hall to fill out the necessary employment forms such as the W-4, I-9 etc... The Board is paid once a year in March. The annual salary amount is currently \$1,800 per year for Trustee and \$3,600 per year for President.
- Be sure to familiarize yourself with the 'Village of Thiensville Annual Budget' and the 'Personnel Policy Manual', 'Handbook for Wisconsin Municipal Officials', all located in the Village Administrator's Office.
- The Thiensville Village Board conducts their meeting according to 'Roberts Rules of Order'. It is highly recommended that each new Board member attend the Public Official's Workshop that is offered through the Wisconsin League of Municipalities usually in May.

- At times the Board will convene in a closed session. Confidentiality is extremely important and should be strictly adhered to. Items discussed in closed session should not be shared with other persons outside the realm of the Board Room. All closed session documents should be returned to the Village Administrator to be disposed of in a proper manner. Do not leave with closed session documents.

- Board members may be appointed to at least one committee. It is very important that you develop open and regular communication with the appropriate department head, staff and volunteer committee members in order to gather information to help you effectively attend that committee meeting. Take an active interest in what is going on behind the scenes of the departments. But by no means does this suggest that you should boss the employees around. Rather, this means to talk to the employees to find out how you can better support them in their position for the overall benefit to the village. The Village of Thiensville is fortunate enough to have very dedicated, loyal and intelligent employees who are extremely knowledgeable in their employment positions. Be supportive to all employees, they are the ones who make this village operate smoothly on a daily basis.

- Oaths of Office will be taken at the first scheduled meeting after the election. Family and friends are welcome to attend the meeting.

- Welcome to the Thiensville Village Board. I am looking forward to working with each of you as we strive to do what we feel is in the best interest for the Village of Thiensville.

Regards,
Administrator Dianne Robertson

SEATING GUIDELINES FOR BOARD

The seating arrangement of the board members shall be determined by the Village President. The President shall occupy the center seat with the village attorney directly to his/her right and the Village Administrator directly to his/her left.

The Administrator/Clerk Treasurer shall maintain the minutes of the proceedings.

STRUCTURE

Villages in Wisconsin are incorporated municipalities that are created at the request of their inhabitants to perform local services. The Wisconsin Supreme Court has stated that municipalities are "established by law to assist in the civil government of the state and to regulate and administer the internal or local affairs of the territory within their corporate limits." Because municipalities were created by the state, they have been referred to as "creatures of the state." As "creatures of the state," municipalities have no inherent powers and have only the powers given them. Wisconsin villages are fortunate in that they have been granted extensive home rule powers. "Home rule" is the ability of villages to govern themselves in local matters without state interference. Wisconsin municipalities have two sources of home rule authority: (a) Constitutional and (b) statutory or legislative. For more information on home rule, see the Handbook of Wisconsin Municipal Officials located in the Village Administrator's Office.

The municipality of the Village of Thiensville is organized as a Village under Chapter 61 of the Wisconsin State Statutes, which provides for the President/Board form of government. Under this organization, Village government has a legislative branch, belonging exclusively to the Village Board, an executive (or administrative) branch, under the direction of a Village Administrator-Clerk-Treasurer, who is hired by the Village Board, and a judicial branch administered under the direction of the Municipal Court Judge.

LEGISLATIVE BRANCH



The President shall be by virtue of the office of Trustee and presides at all meetings of the Village Board and has a vote as Trustee and the Trustees are also members of the Village Board. The final determination of policy for the Village of Thiensville rests with the Village Board. Electors residing within the legal boundaries of the Village of Thiensville elect the Village Board.

Powers of the Village President

As authorized in Sec 61.24 Stats., the President shall be by virtue of the office of Trustee and presides at all meetings of the Village Board and has a vote as Trustee, signs all ordinances, rules, bylaws, regulations, commissions, and resolutions adopted or authorized by the Board and all orders drawn on the treasury except as provided by s. 66.0607. The Village President shall maintain peace and good order, see that the ordinances are faithfully obeyed, and in case of disturbance, riot or other apparent necessity appoint as many special marshals as the President shall deem necessary, who for the time being shall possess all the powers and rights of constables. The President shall have charge of the Village jail, which the President shall conduct in the manner provided in s 62.09(13)(c); but the President may delegate this duty to any police officer of the Village.

The President shall from time to time, provide the Board such information and recommend such measures as he or she may deem to be advantageous to the Village.

The President's authority is not unlimited. For example, a President cannot unilaterally decide what uses are to be made of Village property and cannot, without prior Board approval, enter into a contract on behalf of the Village. Also, a President cannot, without prior Board approval, expend municipal funds.

The President appoints the Village attorney, members of Boards, Commissions, and Committees, subject to confirmation by the Village Board. The Village Attorney represents the Village Board in all matters in which the Village Board has exclusive or final authority. Most Boards, Committees and Commissions operate in an advisory capacity to the Village Board but they all function under the supervision Village Board and the Village Administrator.

Any two members of the Village Board may call special meetings. An inherent reliance is made by the President on the administrative offices of the Village of Thiensville to carry out the legislative directives of the Village Board. (For more

information see the Wisconsin League of Municipalities handbook The Powers and Duties of Wisconsin Presidents, Wisconsin State Statutes Chapter 61 and the Thiensville Municipal Code Chapter 2-35) located in the Village Administrator's Office.

Powers of Village Board

Villages are governed by a Village Board consisting of Trustees and the President. The Village Board serves as the legislative arm of Village government. Trustees are the individual members of the Village Board. Individual Trustees are not empowered to act on behalf of the Village, and can only exercise power when a quorum of the Board is present. The President is a member of the Board and presides over its meetings and is counted in determining whether a quorum is present.

In contrast to other Village offices, the Wisconsin State Statutes do not provide a list of duties for Trustees, although the Village Board has full legislative (or policy-making) authority. In addition, the Village Board appoints the Village Administrator and all other department heads and employees and confirms appointments recommended by the President. It has authority for the management and control of Village property; management and control of Village finances and roads; the power to act for the government and good order of the Village, for its commercial benefit, and for the health, safety, and welfare of the public. The Board enacts ordinances, resolutions and motions; creates committees, boards and commissions; approves and amends the annual budget; levies taxes, approves the paying of claims made against the Village; grants licenses issued by the Village; and enters into contracts on behalf of the Village. It may carry out its powers by license, regulation, suppression, borrowing of money, taxation, special assessment, appropriation, fine, imprisonment, confiscation, and other necessary and convenient and legal means.

The Village Board does not enjoy executive (or administrative) powers of Village government, which are carried out by the Village Administrator, who serves at the pleasure of the Board.

Appointments by Village Board (Subject to Board Confirmation)

Legislative (Policy-Recommendation or Advisory) Boards:

- Committee of the Whole (Entire Village Board)
- Planning Commission
- Community Development Authority

Administrative (Decision-Making) Boards:

- Historical Preservation Commission
- Telecommunication & IT Oversight Committee
- Weyenberg Library Board
- M-T Bikeway Commission
- Police Disciplinary Oversight Committee
- Board of Review
- Zoning Board of Appeals
- CDBG Housing Rehabilitation Committee
- River Advisory Committee

EXECUTIVE / ADMINISTRATIVE BRANCH

At a time when municipal government had become increasingly more complex, the position of Village Administrator was created in order to provide the Village of Thiensville with a more efficient, economical, coordinated, responsible and responsive municipal government under a system of part-time President and part-time Trustees. Many municipalities have found it expedient to employ full-time administrative personnel to oversee the day-to-day operations of the Village government in accordance with policies and procedures adopted by the elected representatives.

The municipal administrator is not a statutorily created position. It was created by the Village of Thiensville under its home rule authority. To further consolidate the municipal services and create efficiency measures, the offices of Clerk and Treasurer were combined with the office of Village Administrator in the year 2000.

The Village Board appoints the Village Administrator on the basis of merit, who serves for an indefinite term at the pleasure of the Board. The Village Administrator is the head of Village administration, and possesses and exercises executive and administrative powers of Village government. The Village Administrator has no legislative powers. The Village Administrator is removable by a 5/7^{ths} affirmative vote of the entire membership of the Village Board.



Powers of Village Administrator/Clerk/Treasurer

The Village Administrator shall carry out the directives of the President and Village Board that may require administrative implementation and shall promptly report the results obtained and any difficulties encountered. The Village

Administrator shall direct, coordinate, and expedite the activities of all Village departments, except where such authority is vested by Wisconsin State Statutes or Village ordinances and resolutions in boards, commissions or other Village officers.

He or she shall be responsible for the administration of all day-to-day operations of the Village government, including monitoring of Village compliance with Wisconsin State Statutes, regulations, village resolutions and ordinances. The Village Administrator shall prepare a plan of administration, which defines authority and responsibility for all non-statutory positions of the Village and shall establish administrative procedures to increase the effectiveness and efficiency of Village government according to acceptable practices in municipal government and consistent with the directives of the Village Board. The Village Administrator shall serve as an ex-officio member of all boards, committees and commissions of the Village.

The Clerk duties are set forth by statute. Although the duties for village clerks vary somewhat from municipality to municipality, they are in large part the same. Generally speaking, the clerk is entrusted with the care and custody of the corporate seal and all papers and records of the village. The clerk is required to attend governing body meetings and keep a full record of the proceedings. The clerk is responsible for maintaining a minute book, and "ordinance book," and is also required to keep a record of all licenses and permits granted and record all bonds, in appropriate books. The clerk shall draw and sign all orders upon the treasury in the manner provided by Sec 66.0607, Stats., and keep a full account thereof in appropriate books. The clerk shall carefully preserve all receipts filed with the clerk. The clerk shall keep an accurate account with the treasurer and charge the treasurer with all tax lists presented for collection and with all moneys paid into the treasury. The clerk shall keep all records in the clerk's office open to inspection at all reasonable hours. The clerk is authorized to administer oaths and affirmations required by the state. This list of responsibilities of the clerk is not all-inclusive, but summarizes the duties as set forth in Sec. 61.19 and Sec. 62.09(11) of the Wisconsin State Statutes.

The treasurer's duties are set forth in sections 62.09(9)(c) and 61.26 of the Wisconsin State Statutes. Generally speaking, the treasurer is responsible for collecting all village, school, county and state taxes, receiving all moneys belonging to the municipality or which by law are directed to be paid to the treasurer, and paying over the money in the treasurer's hand according to law. The treasurer must deposit municipal funds upon receipt into the public depository designated by the governing body and keep a detailed account in suitable books in such manner as the governing body shall direct. The treasurer shall keep in separate books an account of all fees received. The treasurer must make, at times specified by statute and as required by the governing body, a verified report to the governing body of moneys received and disbursed and of

the condition of the treasury per Sec. 62.09(9)(c) and Sec. 61.26(6) of the Wisconsin State Statutes.

The Village Attorney represents the Village Administrator/Clerk/Treasurer in all areas wherein the Village Administrator/Clerk/Treasurer has exclusive or final authority.

Appointments by Village Board with feedback from the Village Administrator

- Deputy Clerk
- Deputy Treasurer
- Police Chief
- Fire Chief
- Director of Public Works
- Election Officials

Appointments by Village Administrator / Clerk (Not Subject to Board Confirmation)

- Special Voting Deputies



JUDICIAL BRANCH



The Village of Thiensville is served by Mid-Moraine Municipal Court whose offices are located in West Bend. Thiensville Municipal Court is held in the Village Board Room at the Village Hall. This is a court that is formed with municipalities in Ozaukee and Washington Counties. The electors of the Village elect the Municipal Court Judge along with electors of all municipalities who participate. The Village Administrator serves on the board of the Mid-Moraine Municipal Court.

A municipal court is a true court of law and an integral part of the state court system. Municipal courts are also unique in many respects. Some of this uniqueness is revealed by taking a closer look at a municipal court jurisdiction and powers.

The term “jurisdiction” as applied to courts of law, including municipal courts, is used to describe the authority of a court to hear and decide a case or legal issue presented to it. The term encompasses many things, including territorial jurisdiction and subject matter jurisdiction. A municipal court is authorized to hear and decide actions for violations of municipal ordinances of the municipality that operates the court. Sec. 755.045(1), Stats. Since a municipality ordinance is only enforceable within the boundaries of the municipality that enacted the ordinance, the territorial jurisdiction of a municipal court is the same as the geographical boundary of the municipality that operates the court.

The Municipal Court is convened at such times as the judge determines, and it enters judgment or dismisses matters that come before it as the court deems just. Ordinance violations cited by police officers, the building inspector or fire inspector, are all referred to the jurisdiction of the Municipal Court. Most traffic law violations are also matters for the Court’s determination. All judgments entered by the court are reviewable by the Circuit Court if an appeal is brought within twenty days of any judgment.

The Village Attorney represents the Village as Prosecutor in all matters brought before the Municipal Court.

CHAIN OF COMMAND

All individual department heads and staff employees of the Village of Thiensville report to and are responsible to the Village Administrator. The Village Attorney generally reports to the Village Administrator on executive and administrative matters, and to the Board on legislative matters. The Police Chief reports to the Village Administrator on executive and administrative matters and to the President or Village Board on legislative issues. The Library Director reports to the Library Board, but also has a responsibility to keep the Village Administrator and the Mequon City Administrator informed on Library matters.

The members of Boards report to the Chair or President of such Board. All members of all Boards regardless of who appointed them and what function they serve within the Village's governmental structure, are part of the executive branch, making the Village Administrator an appropriate resource and informational source for all Boards and the appropriate final stop for questions and concerns. If a legal concern or need should arise, the boards should vote on whether it needs to seek the services of the Village Attorney, who will then represent the Boards, unless prohibited from doing so due to a conflict of interest.

The Village Board members are responsible to the constituents. If a problem arises the Board member may report to the President or the Board as a whole, or contact the Village Administrator who will conduct a response to the problem through the proper chain of command. The Village Attorney represents the Village Board in all areas wherein the Village Board has exclusive or final authority.

Chain of Command

The chain of command is important to a good Board member. Sometimes the chain of command of an organization can be a little confusing. This simple question/answer illustration of the chain of command might help you:

1. *Who manages the people you serve?* Your direct line staff.
2. *Who manages the direct line staff?* Supervisor / Department Heads.
3. *Who manages supervisors / department heads?* The Administrator.
4. *Who manages the administrator?* The Board.
5. *Who guides the board?* The President.

A good Board member learns to respect this chain of command. For example, if you want to arrange a meeting directly with the people you serve, it would be

best to contact your administrator—who will make arrangements through supervisors and direct line staff.

The Board / Staff Connection

The following examples are true incidents of what the board/staff relationship should not be. This example was NOT in Thiensville.

- One board member got a letter from a staff member complaining about the administrator. He took the letter to the President who promptly called a board meeting to discuss the complaints—without informing the administrator. The board later solicited complaints from other staff members while the administrator was out of the village.
- Another board decided to examine staff personnel files. They simply wanted to understand more about what staff were accomplishing so they would be “assured that the administrator was doing a good job.”

What’s the Board’s Relationship to Staff?

Two simple rules of thumb for Board / Staff relations are:

1. All communication between the staff and board should be channeled through the administrator.
2. Boards do not manage staff, administrators do.

Here are some basic dos and don’ts for individual Board members in your relationship with staff...

- Don’t make commitments to staff. Only the **Full Board** can do that.
- Don’t act as a superior or supervisor to staff (that’s your administrator’s job)
- Do volunteer to help your organization—but in the same capacity and power as any other volunteer.
- Do go through proper channels—your administrator—when volunteering to help or guide staff with internal operations or the functions of day-to-day operating procedures.
- Do show concern for the well-being of staff.
- Do remind staff members, when they contact you, that they should follow the chain of command when they have a problem—and that they should not take their problems directly to the board members.

How Should You Handle Staff Grievances?

QUESTION: “Do staff have a right to appeal grievances to the board?”

ANSWER: Personnel management is the administrator’s job. Unless there’s a policy to the contrary, staff grievances should not go to the board. When the board listens to staff grievances, you may actually be settling one problem and creating a couple of serious new problems:

- Grievances that go to the board give staff mixed signals about who’s in charge. If they can appeal any administrative decision to the board, the administrator’s authority with staff is greatly weakened.
- If the administrator makes a decision on a staff grievance and the board reverses that decision, the relationship between board and the administrator will be strained. The Board/Administrator team must speak with one voice that says “the administrator manages staff.”
- Here are some answers to questions about the board/staff relationship that board members frequently ask.
 - “How can board members know what’s going on if we can’t work with staff?” You can work with staff through the administrator. Ask your administrator to report-or ask him/her to invite staff members to each board meeting to explain their programs and answer your questions.
 - “What part should the board play in hiring staff?” The board hires the best person to administer the organization and then delegates all other staff interviewing to the administrator. The board should not interview or evaluate staff. These are the administrator’s jobs. In Thiensville, after the interviewing of candidates is complete the Administrator makes a recommendation to the Village Board for their final approval and appointment.
 - “Shouldn’t staff have a part in the evaluation of the administrator?” No. The Board hires the administrator and has the responsibility for evaluation. It would be very difficult for staff to remain objective when evaluating their “boss.”

The Board's Relationship to Staff Can Be Tricky

Question: "As board members, a couple of us decided to attend a few staff meetings-mainly to show that we are interested in what goes on in the organization we govern. But we seemed to have stirred up a hornet's nest because the administrator says it's inappropriate for us to get involved directly with staff. Why can't we do this?"

Answer: Nobody ever said that it was easy to be a good board member. Sometimes an issue comes along that reaffirms how hard it really is-like the question of a board member's relationship to staff.

On one hand, you're told you should get more involved because board members are responsible for the organization. But then you're told you shouldn't short-circuit the chain of command by bypassing your administrator when you go directly to staff.

The point is not that board members shouldn't have any relationship to staff. The point is that the staff/board relationship is so sensitive, board members have to be alert to problems, which can quickly grow out of this relationship.

Responsibility Chart for the Administrator and Board

The board team works best when everyone understands who's responsible for what. Some decisions can only be made by the board. Other decisions should be delegated to the administrator. Still others should be joint decisions by both the board and administrator.

Since the appointment of the current Village Administrator the Administrator has been instructed to use the authority of a Village Manager by implementing day to day decisions and reporting to the Village Board.

The most important point for board members to learn is to stand back and give the administrator the opportunity to manage and fulfill the responsibilities of the administrator's role within your organization.

Who's Responsible-The Board or Administrator?

Here are some recommendations for who should be responsible for the various activities and decisions made by your organization...

AREA	BOARD	ADMINISTRATOR
Long-Term goals (more than 1 year)	Approves	Recommends and provides input
Short-Term goals (less than 1 year)	Monitors	Establishes and carries out
Day-To-Day Operations	No Rule	Makes all management decisions
Budget	Approves	Develops and recommends
Capital Purchases	Approves	Prepares Requests
Decisions on building, Renovation, leasing and Expansion	Makes decisions and Assumes responsibility	Recommends (could also sign contracts if given authority)
Supply Purchases	Establishes policy and Budget for supplies	Purchases according to board policy and maintains an adequate audit trail
Major Repairs	Approves	Obtains estimates and prepares recommendation
Minor Repairs	Policy should include amount that can be spent without board approval	Authorizes repairs up to prearranged amount
Emergency Repairs	Works with Administrator	Notifies President and acts with concurrence from President or Board
Cleaning and Maintenance	No Role (oversight only)	Sets up Schedule
Fees	Adopts Policy	Develops Fee Schedule
Billing, Credit and Collections	Adopts Policy	Proposes policy and implements policy
Hiring of Staff	Approves	Recommends all Hiring
Staff Deployment and Assignment	No Role	Establishes
Firing of Staff	No Role	Makes Final Termination Decisions
Staff Grievances	Considers extreme cases	The Grievances stop at the administrator. Extreme cases go to the Board
Personnel Policies	Adopts	Recommends and administers
Staff Salaries	Allocates line item for salaries in budget. Approves annual resolution.	Approves salaries with recommendations from supervisory staff and per union contracts
Staff Evaluation	Evaluates only the Administrator Position	Evaluates all other staff

Board members should be sensitive to public appeals and complaints. But they should also give the administrator a chance to handle the problem first.

The administrator, not board members, is ultimately responsible for correct and timely financial reports. Administrators should also be given the chance to correct problems within the organization. Remember, the board hired an administrator to manage day-to-day activities and to fix things.

How Many Bosses Should Your Administrator Have

“There are seven board members,” an administrator told me recently, “and I feel like I have seven different bosses!” “Board members are always on the phone telling me to do this or do that. One says I should wait to purchase a computer system and have the full board review it first. But another tells me to go ahead and buy it now while the price is right, without waiting for board approval.”

Board members cannot act as individuals. They must speak with one voice so the administrator can have one boss, not seven.

The Administrator is the Manager, Even in a Crisis

Sooner or later your board could find itself in the middle of a crisis, a building fire, a staff scandal, a liability lawsuit. When a crisis strikes, unwanted public attention is sure to follow on its heels. And just as quickly, board members will become the focus of public pressure to get the problem solved. The temptation for board members to take immediate action is strong.

But a crisis shouldn't suddenly change the way your board operates. It is not the time to make new policies in the midst of crisis. It is time to fall back on policies you already have and let them work. Board members should ask themselves, can the board really do anything about this situation by holding a quick meeting to try to make emergency decisions as a group?

What should the board do when a crisis strikes?

- Keep yourself informed from the right source, your village administrator. Of course there will be public pressure on the board to do something about the problem, this just means that the board members need to make sure that they are accurately informed about the issue so they can tell the public what's being done.
- Support your Administrator. Get questions out of the way at board meetings and then back the administrator during the crisis. Tell the administrator you appreciate the work being done to solve the problem and make sure the public sees the support.
- The administrator was hired to manage at all times, not just when things are going well. It doesn't make sense to pull that responsibility away. You need to support the administrator not give him or her more problems.

- Operate as a board not as individuals. Designate one person, probably the administrator or the president, to be the media spokesperson. When you speak to the public, voice the official Board stand, not your own individual opinion. Board members can influence the public and help keep a crisis in hand or under control.

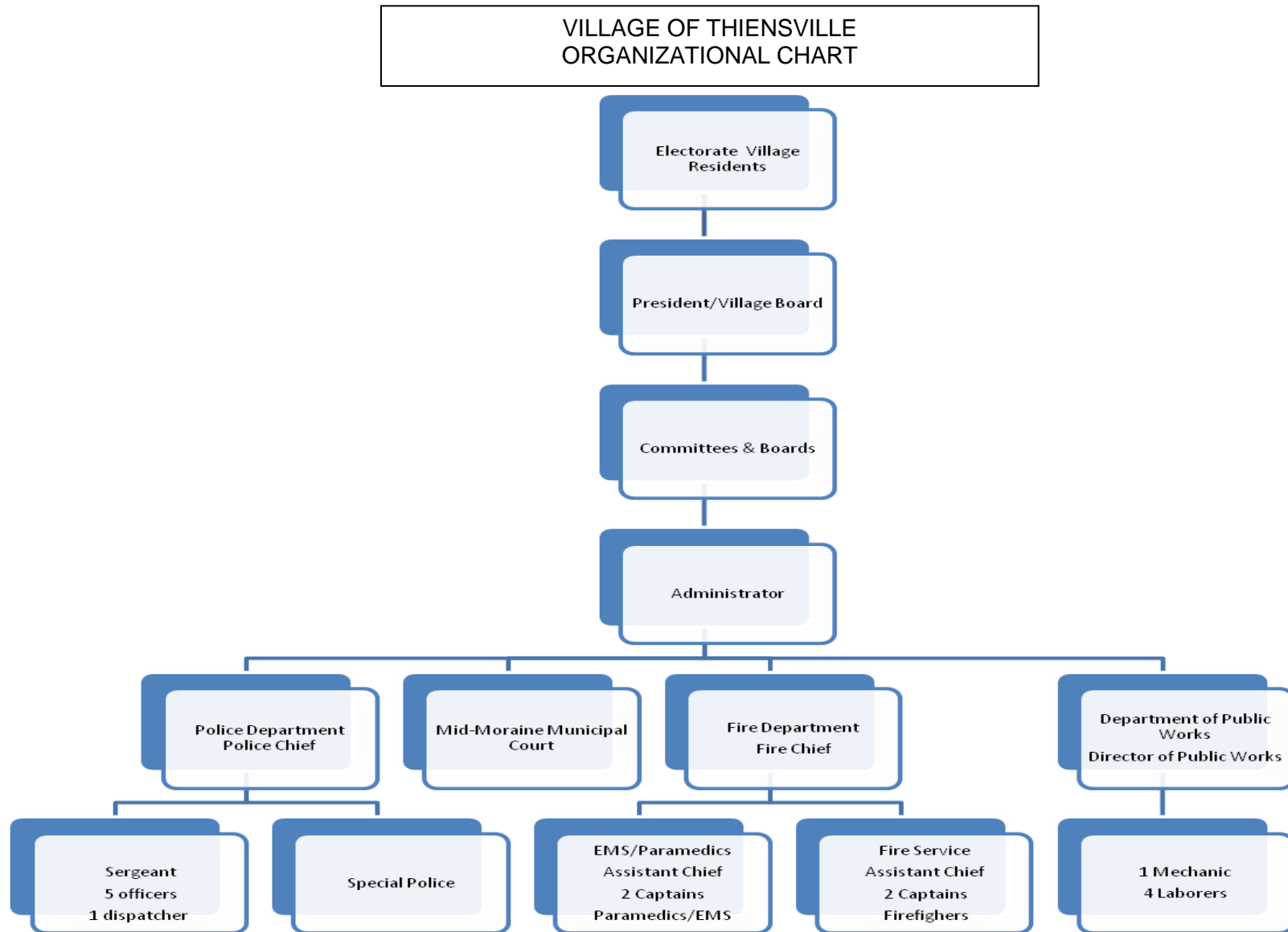
The Golden Rule of the Board/Administrator Team

Support of the administrator is the responsibility of the board. Communication is the responsibility of the Administrator.

Good relations between the Board and the Administrator can break down when you neglect this golden rule. It will help you to remember:

- Board Members support their administrators by letting them know what they want by providing direction.
- Board Members support their administrators by ensuring that money is available to carry out policies.
- Administrators carry out the board's plans, they're the managers of the organization.
- Administrators must provide feedback and recommendation for new actions so the board may know how things are going.

Support and Communication.... they're necessities for every municipality.



GUIDELINES FOR BOARD MEMBERS

Conducting Orderly Meetings

The regular meeting of the Village governing body is the showcase of municipal government. In most communities this meeting is attended by members of the news media and reported in the news sections of the local newspaper. The public will necessarily base its opinion of Village administrative efficiency and legislative sensitivity on the manner in which governing body meetings are conducted.

It therefore behooves the governing body to conduct its meeting in an effective manner in keeping with full and fair consideration of the public business.

Only the barest skeleton of requirements for conduct of Village Board meetings is prescribed by statute. For the most part, the Village President and the governing body itself are responsible for designing and applying rules for the conduct of Board meetings and the accomplishment of other business matters before the governing body.

Orderly meetings require the application of good parliamentary procedures. Efficient administration of the affairs of government by the governing body requires a division of labor for the purpose of sifting and winnowing matters before presentation to the entire body for consideration and action. The former is generally accomplished by the adoption of Board bylaws or rules and the latter by creating of committees of the governing body.

CHARTER REQUIREMENTS

Specific requirements relating to meeting of Village governing bodies are contained in Chapters 61, 62 and 64 of the Wisconsin State Statutes, the charter laws. In addition, the state open meetings law applies to meetings of the municipal governing body as well as to meetings of committees, boards or commission. Sections. 19.81 to 19.98, Stats. Discussed below are the basic statutory requirements for the conduct of Village Board meetings.

Quorum

A majority of all members of the Board constitutes a quorum in villages. The President is counted for quorum purposes.

Regular Meetings

Village boards are required to meet at least once a month, on the third Monday. The Village of Thiensville meets twice a month on the first and third Mondays of the month. More frequent regular meetings may be established by the Board. Following a regular Village election, the new Board begins their term on the third Tuesday in April. Sec. 62.11(2), Stats.

Neither city/village charter laws specify the time of meetings. Regular meeting times and days are established by rule or ordinance in the Village.

All regular meetings must be public meetings and must be noticed under sec. 19.84, Stats., of the open meetings law. Failure to comply with these requirements could subject the offending officers to a forfeiture and actions taken may be voided. Secs. 19.96 and 19.97, Stats.

Special Meetings

In villages, the president may call a special meeting by written notice delivered personally to each board member or left at his or her usual place of abode at least six hours before the special meeting. Sec. 62.11(2), Stats. Board rules may authorize other procedures for call of special meetings. In Thiensville a special meeting may be called at the request of two members of the Board.

Special meetings must also be noticed as required by sec. 19.84, Stats. This provision requires 24 hours' notice of a meeting, although two hours' notice will suffice for "good cause." Sec. 19.84(3), Stats.

Suggested forms for calling special meetings are located in the Village Administrator's Office.

Recording Votes

In villages, an aye and no vote must be recorded on confirmation of appointments or adoption of any measure assessing or levying taxes,

appropriating or disbursing money or creating any liability or charge against the city/village or any city/village fund. Any member of the Board may also require an aye and no vote. Secs. 19.88(2) and 62.11(3)(d), Stats. Except for the election of officers of a governmental body, secret ballots are prohibited under sec. 19.88(i), Stats.

An example of an officer of a governmental body is the Board president. It is important to realize that this is a very narrow exception and to distinguish between officers of the body and officers of the municipality. In other words, a committee may be authorized to select its own chairman and may do so by secret ballot under sec. 19.88(1), Stats. However, elected officers of the municipality cannot be selected by secret ballot. Thus, selecting appointive municipal officers, making committee, commission and board appointments and filling vacancies on the governing body itself cannot be filled by secret ballot. 65 OAG I, viii (1976); League opinion, Governing Bodies #299.

For all types of village government, votes should be recorded when the governing body is acting under a law which requires more than a majority of a quorum.

The Open Meetings Law

Wisconsin law requires all meetings of governmental bodies, including governing bodies, committees, boards and commissions, to be open sessions with certain limited exceptions. In addition, the law requires that public notice be given of every meeting of a governmental body.

Publication of Proceedings

Proceedings of village boards must be published as required by secs. 61.32, 62.11(4) and 64.07(1), Stats. The published proceedings need not include the entire record made by the clerk in the journal but only “the substance of every official action taken by a local governing body at any meeting, regular or special.” Sec. 985.01 (4), Stats. Section 985.01(5), Stats., defines “substance” as:

“ . . .an intelligible abstract or synopsis of the essential elements of the official action taken by a local governing body, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion. . . . ”

Ordinances and resolutions published as required by law need not be reproduced in the minutes, as long as the minutes include a reference to their subject matter and show the votes taken on the legislation. Sec. 985.01(6), Stats. Names of payees and amounts of all approved claims need not be published in detail but may be consolidated according to purpose. Some governing body rules require publication of the full amount of the claim and the name of the payee for payments approved in excess of a stated amount, such as \$200 or \$500.

Proceedings are published in the official newspaper. Secs. 62.11(4)(a) and 985.06, Stats.

Publication of Ordinances

In villages all ordinances must be published after passage. Ordinances are published in summary and take effect the day after publication unless a later date is expressly prescribed by the Board or by law, as in the case of charter ordinances. Secs. 62.11(4)(a) and 66.01, Stats.

There is no general requirement that village resolutions be published in full, although specific statutes may require resolution publication. Mention of the substance of the resolution and motions and votes taken concerning it are included in the published proceedings.

Village ordinances are styled “The Village Board of the Village of Thiensville does ordain as follows:” and countersigned by the village clerk. The President signs all ordinances which the Board approves.

Official Newspapers

Villages are required to designate official newspapers for publication of board proceedings, ordinances and legal notices. The procedures for selecting official newspapers and the legal requirements for newspapers entitled to receive compensation for publishing village notices, etc., are set forth in ch. 985 of the Wisconsin statutes. Because of the detail and complexity of these laws, they will not be reviewed in detail here. The village clerk and attorney should study these statutes and advise the governing body with respect to them.

The Village of Thiensville has designated its official newspaper as the News Graphic.

Voting

No member of an assembly can be compelled to vote. Wrzeski v. City of Madison, 558 F. Supp. 664 (W.D.Wis. 1983). However, casting a vote may subject him or her to prosecution or penalty under state law or local ordinance. See sec. 946.13, Stats., and the discussion entitled “Criminal Restrictions and Other Prohibited Acts.” If a person abstains because of a conflict of interest, that person is not considered present for quorum and voting purposes. See Ballenger v. Door County, 131 Wis.2d 422, 388 N.W.2d 624 (ct. app. 1986).

Determining the required number of votes under special laws is frequently a matter which confronts a governing body. Usually, in these circumstances the entire authorized membership of the council or board must be counted even if some members are absent or their seats vacant. See State ex rel. Cleveland v. Common Council of City of West Allis, 177 Wis. 537, 188 N.W. 601 (1922); League opinion, Governing Bodies #204.

When an exact division of the membership into the required voting fraction is not possible, the next higher number of votes is required. Thus, on a four-member Board a majority vote of all members requires three affirmative votes as does a 2/3 or 3/4 vote. State ex rel. Owen v. McIntosh, 165 Wis. 596, 162 N.W. 670 (1917); League opinion, Governing Bodies #321.

RULES OF PARLIAMENTARY PROCEDURE

Rules of procedure for individual governing bodies vary. However, most common Boards have adopted Robert's Rules of Order Newly Revised, or similar parliamentary rules.

What is Parliamentary Procedure?

It is a set of rules for conduct at meetings, that allows everyone to be heard and to make decisions without confusion.

Why is Parliamentary Procedure Important?

Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. Today, Roberts's Rules of Order newly revised is the basic handbook of operation for most clubs, organizations, and other groups. So it's important that everyone know these basic rules.

Organizations using parliamentary procedure usually follow a fixed order of business. Below is a typical example:

1. Call to Order.
2. Roll Call of Members Present.
3. Approval of Minutes of Last Meeting.
4. Officer Reports
5. Committee Reports
6. Special Orders-Important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New Business.
9. Announcements
10. Adjournment

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to Order.
2. Second Motions.
3. Debate Motions.
4. Vote on Motions.

How are Motions Presented?

1. Obtaining the floor
 - a. Wait until the last speaker is finished.
 - b. Rise and address the Chairman by saying “Mr. Chairman or Mr. President”
 - c. Wait until the Chairman recognizes you.
2. Make Your Motion.
 - a. Speak in a clear and concise manner.
 - b. Always state a motion affirmatively. Say, : I move that we...” rather than, “I move that we do not...”
 - c. Avoid personalities and stay on your subject.
3. Wait for someone to second your motion.
4. Another member will second your motion or the Chairman will call for a second.
5. If there is no second to your motion it is lost.
6. The Chairman states your motion.
 - a. The Chairman will say, “it has been moved and seconded that we...” Thus placing your motion before the membership for consideration and action.
 - b. The membership then either debates your motion, or may move directly to a vote.
 - c. Once your motion is presented to the membership by the chairman it becomes “assembly property”, and cannot be changed by you without the consent of the members.
7. Expanding on Your Motion.
 - a. A time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
 - b. The mover is always allowed to speak first.
 - c. All comments and debate must be directed to the chairman.
 - d. Keep to the time limit for speaking that has been established.
 - e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.

8. Putting the Question to the Membership.
 - a. The Chairman asks, “Are you ready to vote on the question?”
 - b. If there is no more discussion, a vote is taken.
 - c. On a motion to move the previous question may be adapted.

9. Voting on a Motion.

The method to vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

 1. By Voice—The Chairman asks those in favor to say, “aye”, those opposed, “no”. Any member may move for an exact count.
 2. By Roll Call—Each member answers “yes” or “no” as his/her name is called. This method is used when a record of each person’s vote is required.
 3. By General Consent—When a motion is not likely to be opposed, the Chairman says, “If there is no objection...” The membership shows agreement by their silence, however if one member says, “I object”, the item must be put to a vote.
 4. By Division—This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
 5. By Ballot—Members write their vote on a slip of a paper, this method is used when secrecy is desired.

ROBERT'S RULES OF ORDER SIMPLIFIED

A simplified description of Robert's Rules of Order appears in Preparing for Takeoff. Taken from Brian O'Connell's *The Board Member's Book*, it describes the motion; the second; the discussion, debate, and clarification; the vote; and a restatement of the motion. The next level of detail in Robert's Rules involves a situation in which the board may want to make some changes in the original motion before the vote. In the course of the discussion it may become obvious that the motion doesn't quite say what the board now has in mind. The following rules of order depict how a slightly more complicated scenario might unfold:

- The motion.
- The second.
- The chairperson restates the motion.
- Discussion, clarification, and debate.
- Someone moves that the original motion be amended, and another person seconds the idea. (At that point the maker and seconder of the original or main motion will usually agree to the amendment even though a vote on the amendment has not been taken. Technically, once a motion has been made and seconded, it involves the whole assembly, but if no one offers objection to the amendment, no vote is usually taken.)
- If the persons who moved and seconded the original motion do not agree to the amendment or if anyone else voices objection, there is discussion, clarification, and debate on the amendment itself.
- After the group has adequately considered the amendment, the chairperson restates the motion to amend, and the group votes on the amendment.
- Once the amendment has been accepted or rejected, the group returns its attention to the original motion.
- If the amendment passes, the main motion is now known as "the original motion as amended." If the amendment is defeated, the motion is simply the original motion.
- Debate then proceeds on the original motion. It could be amended again, in which case the new amendment would get informal or formal consideration.
- When the amendments have been disposed of, the board votes on the original motion (as amended, if that's the case). Although the amendment process complicates the motion process slightly, it is simply the group's way of deciding whether the original motion needed some changes before it reflected the combined view of what should be done.
- When the motion is brought to a vote, members may abstain from voting. However, those members should explain for the record why they wish to abstain. The most common reason for abstaining is that a potential conflict of interest exists. The inability of a member to reach a decision is generally not an acceptable reason for abstaining.

- If the main motion is defeated, the same basic proposal cannot be brought forward again at the same meeting. This is designed to keep the losers from filibustering by bringing the same motion up again and again. (There is an exception. If one person who was on the winning side of the vote realizes that he or she may have made a mistake, such as misunderstanding what the motion called for, he or she can move for reconsideration, at which point the board decides whether to allow reconsideration.)
- The motion to “table” is often used improperly in an attempt to suppress a measure. You can, however, use this motion in the appropriate manner to your group’s advantage. The group may wish to lay aside discussion and action on a question temporarily until some other question is disposed of. You may do this by moving that the question be “tabled.” By so doing you retain the privilege of resuming consideration of the tabled question at any time.

Policy Guidelines for Board Procedure

- a. To avoid interruptions, members, when recognized, should indicate the course their remarks will follow and perhaps verbally, or otherwise, indicate they have concluded.
- b. Motions on the floor should not be modified by statements such as, “that’s all right” or “I’ll include that change.” Preferably, motions should be prepared in advance and should incorporate suggested changes prior to being made. Changes to a motion should be in the form of amendments.

Adopted from “Conducting Orderly Meetings,” Ralph E. Houseman, The Municipality, Feb. 1972.

- c. Committee chairmen should report committee actions and move adoption of recommendations, regardless of their position on the committee vote. The committee chairman may speak against the action during debate on the subject.
- d. Legislative action should be taken only by ordinance, resolution or bylaw. Unless otherwise specifically required by law, any action may be taken either by resolution or by motion. In matters of urgency, a resolution may be presented verbally in motion form together with instructions for later written preparation of the resolution.
- e. Whenever feasible, any member who intends to offer a resolution should arrange to have it prepared in writing by the municipal attorney and circulated with the agenda in advance of the meeting at which it is to be

offered. Similarly, any member who intends to offer a motion should prepare the motion in writing and arrange to have it circulated with the agenda in advance of the meeting at which it is to be offered.

- f. Members offering motions, resolutions or ordinances should introduce them in the forms shown below:

MAIN MOTION

- 1) I MOVE _____

AMENDMENTS

- 2) I MOVE to amend the motion by inserting ____ between ____ and ____.
- 3) I MOVE to amend the motion by adding ____ after ____.
- 4) I MOVE to amend the motion by striking out ____.
- 5) I MOVE to amend the motion by striking out ____ and inserting ____.
- 6) I MOVE to amend by striking out the motion and substituting the following ____.
- 7) I MOVE that this motion be referred to the ____ committee (commission).

PREVIOUS QUESTION

- 8) I MOVE the previous question (2/3 vote) (stops debate and orders an immediate vote).

RECONSIDER

(In order same day motion is made or at next regular meeting)\

(Mover must have voted with majority)

(Not permitted in committee of the whole)

- 9) I MOVE to reconsider the vote by which ____ was voted. I voted with the majority.

AWARD OF CONTRACTS

- 10) I MOVE that the bid of ____ be approved for award, pending the signing of the contract and furnishing of required bonds, and that the city manager be authorized and directed to sign and the clerk to countersign the contract for and on behalf of the city.

INTRODUCTION OF ORDINANCE (FIRST READING)

- 11) I MOVE the introduction of an ordinance entitled (read from the agenda).

ADOPTION OF ORDINANCE (SECOND READING)

- 12) I MOVE the adoption of an ordinance entitled (read from the agenda).

ADOPTION OF RESOLUTION

- 13) I MOVE the adoption of a resolution entitled (read from the agenda).

CLAIMS

- 14) I MOVE that the (council) accept the recommendation of the (city) attorney and (deny) (pay) the claim of ____ in its entirety.

PLANNING

- 15) I MOVE that the (council) adopt the findings of the planning commission made in Resolution No. ____ and further move the introduction of an ordinance entitled (read from the agenda).
- 16) I MOVE that the (council) disapprove the findings of the planning commission made in Resolution No. ____ and deny the application for change of classification of ____.

PUBLIC HEARINGS

In their conduct of public business, governing bodies find it necessary or desirable to perform investigations into matters of concern to determine the need for legislation and what its nature should be if required. Investigations and hearings into the conduct or affairs of municipal officers are also sometimes undertaken at the direction of the governing body. This chapter describes the general procedures and legal powers and duties of governing bodies or their committees in conducting investigations and administrative reviews.

Public Hearings

One procedure frequently employed in investigating village affairs in preparation for final legislative or administrative action on matters of special concern is the public hearing. Of course, all meetings of the village governmental bodies must be open to the public unless the subject matter falls within one of the exemptions prescribed by the open meetings law, sec. 19.85, Stats. However, public hearings are specifically required by certain state statutes. Some of these are listed in the following table:

STATE STATUTES REQUIRING PUBLIC HEARINGS

Removal of City Officers for Cause. Sec. 17.16.
Disciplinary Actions Against Police and Certain Firefighters. Secs. 61.65(am), 62.13(5) and 62.13(6m).
Amendment of Official Map. Sec. 62.23(6).
Enactment and Amendment of Zoning Ordinance. Sec. 62.23(7).
Enactment of Extraterritorial Zoning Ordinance. Sec. 62.23(7a).
Regulating Construction, Etc., in Fire Districts. Sec. 62.23(9)(b).

Adoption of Budget. Sec. 65.90.
Revocation or Suspension of Mobile Home Park License. Sec. 66.058(2)(d).
Discontinuance of Streets and Alleys. Sec. 66.296.
Establishing Pedestrian Malls. Sec. 66.298.
Removal of Housing Authority Commissioners. Sec. 66.40(8).

Approval of Urban Redevelopment Plans. Sec. 66.406(3).
Approval of Redevelopment Plan in Blighted Area. Sec. 66.43(5)(b)3.
Modification of Development Plans. Sec. 66.43(10).

* This section is from the "Handbook for Wisconsin Municipal Officials" published by the League of Wisconsin Municipalities.

Approval of a Redevelopment Plan Under the Blight Elimination and Slum Clearance Act. Sec. 66.431(6)(b)3.
Modification of Redevelopment Plan. Sec. 66.431(11). Violation of Urban Renewal Orders. Sec. 66.435.
Creation of a Tax Incremental District. Sec. 66.46(4).
Levying Special Assessments. Sec. 66.60(7).
Approval of Business Improvement District's Initial Operating Plan. Sec. 66.608(2)(c).
Levying Special Assessments Under Alternate Procedure. Sec. 66.62(2).
Assessment of Condemnation Benefits. Sec. 66.63(2).
Property Assessment Board of Review. Secs. 70.47 and 70.48.
Enact Airport Approach Protection Ordinances. Sec. 114.136.
Revocation or Suspension of, or Refusal to Renew, Alcohol Licenses. Sec. 125.12.
Enactment of Subdivision Regulations. Sec. 236.45(4).

Except when constitutionally protected rights of specific individuals are involved or when the applicable statute imposes other requirements, public hearings are subject to no special rules of procedure. However, the presiding officer prior to commencement of the hearing should announce those general rules of etiquette and order, which shall govern the hearing. If time limits are to be imposed on appearances at the hearing, this fact should be stated in the notice to the public and also in any notice sent directly to interested persons. This notice procedure will allow those persons desiring to appear whose presentations might exceed their allotted time to prepare written statements or consolidate their presentations with other speakers.

If you, as a member of a governing body, are required to conduct a hearing or review matters relating to individual employees, officers or citizens, you should initially consult with the municipal attorney to determine whether constitutional rights may be involved or if the state or federal statutes or agency regulations impose requirements or restrictions on the conduct of the hearing. Failure to observe constitutional rights of citizens, employees or other persons may result in liability for damages or injury suffered by such persons under 42 U.S.C. sec. 1983. In addition, even where the damage award is nominal, the award of attorneys fees under 42 U.S.C. sec. 1988 to the prevailing plaintiff can be high.

When process is due, the following procedures may be applicable, although in certain cases less formal procedures may be sufficient.

1. A written statement of the reason for the proposed action informing the affected individual of the right to a timely and impartial hearing.
2. A hearing upon request in which:

- (a) The individual may present arguments in person or by an attorney.
 - (b) The individual is given an opportunity to face and question opposing witnesses, including the right to request the presiding officer to subpoena witnesses under secs. 885.01(3) and 885.12, Stats.
- 3. A decision based upon the evidence presented at the hearing and the statement of charges.
 - 4. A brief written statement of the final determination together with a recitation of the reasons for the determination and the facts on which the decision maker relied.

Goldberg v. Kelly, 397 U.W. 254 (1970).

EFFECTIVE GOVERNING

In a democracy the need to evaluate and balance all interests is a challenge and frustration facing most elected officials. City councils and village boards in Wisconsin are no exception to this rule.

Decision-Making

The fundamental job of a governing body member is to make policy decisions for his or her municipality. Unless decisions are based on full, relevant and accurate information and with a clear objective in view, the results are likely to be mediocre at best and meaningless at worst. In fact, in view of the part-time, temporary involvement of most local governing body officials in Wisconsin, the political pressures under which local decisions must be made and the frequent lack of up-to-date, accurate, verifiable information available to these decision-makers, the process has worked surprisingly well.

Decisions of local governing bodies generally fall into three categories: 1) those regarding projects or facilities; 2) those with respect to services, and 3) those relating to the need for regulations affecting the health, safety or welfare of the municipality's residents. See Wright, J. Ward, and Benson, Virginia, "Your Local Economy: Does City Hall Play a Role?", Nation's Cities, September 1972, p. 45.

The process of making decisions with respect to any of these three principal areas of municipal activity can be divided into six stages:

Need. The process whereby it is determined that something needs to be done. Such determination is usually based on an awareness of community conditions.

Solutions. The process of determining which government is responsible, what resources are available, what the scope of responsibility is, and the manner in which an answer to the problem should be formulated.

Projects. The development of plans for specific allocations of resources to specified agencies to undertake given actions for specified purposes.

Approval. The official act by which action is authorized and resources are allocated.

Administration. The action of management in issuing directives, supervising activities, reviewing results, and making required adjustments.

Evaluation. The process of reporting and reviewing, whereby the policy-makers may determine the success or failure of the programs, in whole or in part, in meeting the needs defined in the first stage."

Unfortunately, substantial impediments frequently exist which diminish effective city council or village board involvement in all stages of a decision. These include, among others, the existence of semi-independent agencies financed and/or sanctioned by state and federal largess and laws which may have progressed to the fourth stage of the process before bringing a project to the council or board for consideration and approval. In addition, there may be a large time span over which projects or issues may extend, resulting in numerous changes in the composition of the decision-making body or a change in attitude of the citizenry or even a change in need for the project or service itself which can hamper effective decision-making.

Perhaps, in view of these impediments, governing body officials may have to console themselves with the satisfaction of having made informed and intelligent decisions after thorough study and deliberation even if in retrospect the particular project, service or rule fails to achieve its anticipated goal.

Data Gathering and Technical Assistance

Merely identifying stages in the normal evolution and denouement of a municipal project does not guarantee effective decision-making. Effective decision-making is the result of having sufficient data to provide the basis for making rational choices between alternative courses of action. Effective decision-making also requires a refining, sifting and winnowing of the issues and data, the creation of an atmosphere conducive to making decisions in an unhurried and judicious manner and the weighing of potential consequences of alternative decisions or courses of action. Finally, effective decision-making requires the creation of a local administrative system that will guarantee that decisions made by the governing body will be carried out as intended.

Gathering data or background information is generally the role of governing body members individually and collectively and of municipal departments and administrative heads.

Individually, board members can obtain data and background information on the need for specific projects, services or rules by reading the municipal code and charter and publications such as this; by receiving reports from the administrator, department heads, boards, commissions and committees; by listening to their constituents and to citizens at public hearings; and by observing and viewing conditions in their community.

Collectively, the Board may wish to procure the advice of the municipal attorney; of the consulting engineer on particular issues or projects. Information can also be obtained from state or federal agencies or associations.

Sometimes a special study committee of citizens and/or governing body members may be used to obtain background data on the need and desirability of a particular action by the governing body. In addition, a public hearing may be called for this purpose.

It should be kept in mind that the information gathering process is not in itself the solution. It is merely the initial step. The final decision rests with the members of the governing body, and a problem or need is seldom resolved merely by collecting facts and data. Indeed, it has been suggested that the practice of Congress and the state legislature of separating the public hearing part of the process from the decision-making part leads to more efficient and more effective governing body determinations.

MAKING IT WORK

The types of problems confronted by your board can some times seem so burdensome that you wonder why you ever got involved. Try to keep in mind that the conflicts and problems that you tackle are important to the community you serve. When you work out the problems as a group, you will make healthy decisions. Keep in mind, too, your commitment to the board, your colleagues' commitment, the importance of your contribution, and the importance of making sound decisions.

As your board tries to make the best possible decisions, use the following “rules of thumb” to help you get over the hurdles:

- **Separate the people from the problem.** You and your colleagues aren't questioning each other's good intentions or personal integrity. You are discussing options for making the best possible decisions.
- **Focus on mutual interests and shared goals.** Keep in mind that you do have mutual interests, and that you are all serving the same constituency. Remember what is important!
- **Invent options for mutual gain.** Think about all that has been said throughout the debate. Can the best aspects of everybody's ideas be incorporated and a compromise reached?
- **Be open, honest, and willing to listen.** Don't be afraid to state your concerns. Be honest by revealing what you see as the options and by explaining what you see as suggestions of others.

GUIDELINES FOR BOARD MEMBERS

- Each Board member should work to establish a good relationship with other members. The success or failure of efforts may be dependent upon the degree of cooperation evident among the individual members of the Board.
- Each member should keep in mind these important points:
 - ❖ Show respect for another's viewpoint.
 - ❖ Allow others adequate time to fully present their views before making comments.
 - ❖ Be open and honest.
 - ❖ Make new members welcome and help them become acquainted with their duties.
 - ❖ Strive to minimize polarization and factions among members.
- Each Board member receives public input and citizen participation in Village government by the following means:
 - ❖ **Reviewing Recommendations.** Board members receive information from Committees and the public on matters spanning a wide range of interests and needs. Committee members review and make recommendations to Village Board on matters within their scope of responsibility. They perform as a citizen's advisory arm of Village Board, focusing attention on specific areas of the Village.
 - ❖ **Representing General Interests.** The Board must be careful to represent general interests of the Village, not special interest groups. Board members must work with the Village Administrator. They should not become directly involved in the administration or operation of Village departments, and should not direct the administrative staff to initiate programs, conduct studies or establish official policy without approval of the Village Board as a whole. Members, however, are encouraged to review and comment on relevant department programs as they affect the community.
 - ❖ **Holding Open Meetings.** All meetings of the Board must be open to the public pursuant to the open meetings law. The intent of the law is to ensure actions be taken openly and that deliberations be

conducted openly. Furthermore, the Board must announce a time, place and date for holding any regular or special meetings. (See the section on Open Meetings and Open Records in this Manual. If you have questions or concerns, please contact the Village Administrator.)

- ❖ Participating. Election to the Village Board provides an opportunity for genuine public service.

Understanding the role and scope of responsibility of the Board may sometimes appear to be a daunting task with the sometimes conflicting goals of properly representing the Village, being concerned with the entire community, keeping the lines of communication open, being conscious of your relationship to the rest of the Village Board and Village staff, and establishing a good relationship with other members.

But by being open and honest at all times, while being aware that, in the public's eye, you represent the Village you serve, your ultimate contributions to policy decisions should express your sensitivity to the diverse viewpoints held in the Village.

BOARD RELATIONS

1. **Representing the Board.** Board members cannot individually commit the Village to positions without a vote or consent of the Board. Individual Board members should not insert themselves into or position the Board on issues without a Board vote. It is inappropriate to commit to things that the whole Board may not be aware of or approve. Members should refer such matters to the administrative staff for review and later recommendations back to the Board.
2. **Complaints from Citizens.** When individual Board members receive citizen complaints, these should be referred to the Administration staff for investigation and resolution immediately. A vast majority of complaints concerns enforcement issues, which must ultimately be addressed by the staff anyway. Personal Board involvement in enforcement or interpretation of ordinance, policies or laws could subject the Board to later problems. The Administrative staff enforces zoning, ordinances, basic services, personnel matters, etc., and through the separation of duties the Village Board establishes the rules by which the staff function.
3. **More on Handling Complaints.** Do not wait to bring up citizen complaints at Board meetings... these should be handled as quickly and routinely as possible by proper referral to staff. Do not "invite" complaints to be dealt

with at meetings. Board will not appreciate a “staged” show, and the complainant may not appreciate the delay involved.

4. Media Relations. From time to time, the media (particularly the press) will ask for commentary about a Village Board action or position on an issue. To the extent that the Board has taken an action or position, the President will serve as spokesman unless the Village Attorney has been designated by the President. In these situations, the “Board’s” position is to be disclosed, as opposed to individual opinions. Of course, individual opinions are individual opinions and may not express the opinion of the Board as a whole.
5. Approval of Minutes. Board minutes are considered “action minutes”. They convey a brief summary of discussion and action taken on items of business. They do not contain lengthy discourse from testimony given or all of this would be expensive, time consuming, and unnecessary. Spelling and grammar errors should only be brought to the Clerk’s attention outside of the meeting.
6. Ordinance/Resolution Preparation. The Village Administrative staff and/or the Village Attorney prepare all ordinances and resolutions for Board consideration. Board’s concern in review of such legal documents should be whether or not they adequately convey the “substance” desired. The legal format of such instruments, code section numbering, etc. is rightfully within the Village Attorney’s purview...not the Board’s. Ordinance preparation is the Village Attorney’s job. They should not be prepared at the meeting by the Board.
7. Private Disputes. On occasion, individual Village residents or neighborhoods will come forth with problems of a purely private nature. These typically include nuisance complaints, work hours for contractors, boundary line disputes, fence problems, etc. The Village should not get involved. Intercession in such matters will needlessly consume time and taxpayers’ dollars and could potentially expose the Village to liability. If you are not clear whether a reported “problem” is properly within the Village’s jurisdiction, the best thing to do is ask the staff for a determination and ask that they report back to the Board.
8. Policing Problems. It is the Board’s responsibility to police and correct any problems among Board members. Board should not expect the Administration to do this for them.

VILLAGE BOARD/VILLAGE ADMINISTRATOR AND STAFF RELATIONS

1. **Everybody's Equal.** All Board members will receive the same information about a matter... particularly as it relates to business items for your consideration as a body. No one will receive different or "special" information that would tend to put one Boardperson at an advantage over the others. Staff reports, per se, will be prepared for the entire Board to avoid such problems.
2. **Favoritism.** We all know that individual Board members may have more of an interest in some departmental functions than others. However, that should not give cause for staff to show special deference to certain Board members. Every Board member is to be treated equally; no favoritism is to be demonstrated. Be cooperative and responsive, but do not play favorites.
3. **Lobbying Board Members.** Individual Board members are not to be lobbied by Department heads or staff for support of their projects, budget requests, etc. Department heads work for the Village Administrator, and it is he/she that the Department heads or staff must lobby. Their programs must stand on its merits, as opposed to their success in lobbying and lining up Board votes. The Village has a chain of command and must adhere to it.
4. **Board Orders.** As the Municipal Code requires, no Board member is to individually "order" the Village Administrator, Department Heads, and others to do anything. Only a majority of the Board may instruct the Village Administrator to do something.
5. **Use of Resources.** Staff resources are limited. Those resources the Village has are fully devoted to carrying out Board-determined priorities and programs. There are no resources available to pursue individual Board members' special requests. Resources will be used as a matter of establishing a proper relationship with the entire Board. There will be a number of occasions when a Boardperson will call or request information. To the extent that it is available, the information is to be furnished. However, staff is not to launch into a special research effort that could divert limited resources from working on the priorities of the entire Board.
6. **Incomplete Staff Work.** There are always a number of proposals for various projects under consideration and review by staff before presentation to the Village Board for a decision. While these matters are "in process" at the staff level, it is inappropriate for the staff to "consult" with individual Board members on their "preference" for possible recommendations.
7. **Board Member Involvement in Negotiation Meetings.** At any one time, staff can be involved in various meetings with citizens, consultants, prospective

- developers, etc. The subject matter runs the gamut from complaints to researching Board reports, possible development scenarios, and the like. The Village Board hires staff to perform these functions, and they have repeatedly reaffirmed this position. There may be a few situations that would call for meetings where a designated Board member and a staff member would both be involved. These situations will be few, and the entire Board will/should formally authorize this approach. Otherwise, Board intercession in such staff meetings and negotiations is inappropriate.
8. Office Visits. Board members are welcome to frequent Village Hall. Usually, these visits will be for business matters (to ask a question, forward a complaint, etc.). “Social” visits will be made from time to time. These are fine. However, “socializing” is discouraged to the extent that it interferes with staff’s schedule or disrupts normal staff activities and workflow. For the Board members: do not disturb or demand the attention of the entire office staff. Likewise, the administrative staff should not let this happen.
 9. More on Visitations. It is not appropriate for Board members or board/committee member to assume a “staff role” while you are in Village Hall. Staff has a proper role, and elected officials have a proper role. Please do not, as a Board member, answer telephones, work behind the counter, review plans with developers and contractors, respond to inquiries or complaints, or try to operate as a “staffer”.
 10. Village Administrator Contact. The Board member’s primary contact is the Village Administrator. Questions, requests for information, etc. should be made through him/her, not individual Department Heads or other staff people. There are good reasons for this approach: the Village Administrator will then know what is going on, and he/she properly can determine which department(s) should become involved. In addition, it is a good way for the Village Administrator to assess the responsiveness and effectiveness of the departments. A further advantage is that many of the issues addressed in these guidelines will not become problems for the Village Administrator or Board.
 11. Personnel Complaints. As a Board member, you may receive complaints about Village personnel. These complaints, however severe they may or may not seem, should be turned over to the Village to investigate and resolve. In some cases, disciplinary action may be required, and protection of the Village rights and employees’ rights is a paramount consideration in dealing with employee complaints. The Village Administrator is the Village’s Personnel Officer, so please turn over any employee complaint to him/her for internal investigation and disposition.



OPEN MEETINGS AND OPEN RECORDS



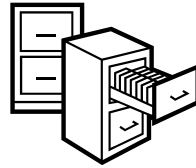
The following information has been included to help guide all Village officials and in their duties to the public in creating an open government and informed electorate. This manual is distributed to provide guidance with respect to compliance with open meetings and open records laws. Both areas of law have been the source of much litigation and opinions of the Attorney General, and therefore, the application of the laws can be quite fact-based and complicated.

Although this was written in 1996, it remains relevant today, with the addition of concerns about electronic mail. Please be aware that e-mail received and sent and instant messaging that pertains to Village and Board business is a public record and a hard copy should be filed with the Village Clerk-Treasurer, or the e-mail should be forwarded or copied to the Village Clerk-Treasurer's e-mail address.

In addition, please be aware that online chats, instant messaging and forwarded e-mails involving other members of the Board are likely to be viewed identically as the use of the telephone, and therefore, the same concerns about conducting meetings by walking quorums that can put the Village and Board members at risk of violating the open meetings law may apply. Please do not construe this as a prohibition of these kinds of communications, however. These comments are provided for the purpose of informing members of the precautions that may be appropriate in certain situations as they arise.

Please review this guidance and if you have any questions, concerns or you wish to review additional information on Open Meetings and Open Records laws, please contact the Village Attorney. Therefore, if you have a question regarding the propriety of a contemplated action or practice with respect to the application of these laws, please do not hesitate to make a request for a legal opinion. In addition, although most "infractions" of the laws and their application may appear minor at the time, the violation of these laws can result in prosecution by the District Attorney, fines of up to \$1,000, and possible other costs and remedies, including under some circumstances, the payment of attorneys fees.

The texts of these laws are laid out in subchapters II and V of chapter 19, General Duties of Public Officials, in the State Statutes. The policies of the laws are frequently the basis for their interpretation by the courts and the Attorney General, because both laws state that their application is to be construed liberally in favor of openness in government and its activities. In addition, because of the strong policy implications stated in the statutes, the spirit of these laws is often looked to during enforcement, rather than simply the letter of the statutes. Thus, upon casual observation, a set of facts may look like they don't fall exactly within the wording of the statutes, but they may, depending on the exact nature of those facts, become a violation when actually litigated or prosecuted.



OPEN RECORDS LAW

The context in which your official duties relate to the open records laws is somewhat limited. Basically, all governmental records are presumed to be open to the public, and access to those records may not lawfully be denied to persons asking for such access, unless the records custodian can show the proper exceptions to the law. Moreover, records are defined very broadly, and they are much more than simply the agendas and meeting minutes of commissions, boards, and the Board.

Fortunately, no member of a commission, committee, or the Village Board needs to concern him or herself with the rules for determining whether records under an open records request need to be turned over to the public. Law assigns the Village Clerk as the official records custodian for all commissions, boards, and the Board. The Village Clerk knows the proper procedures to be followed in determining which records have to be disclosed upon request, and which records may lawfully be denied to the public.

Where all members of commissions, committees, and the Village Board need to be concerned with the open records law is at the front end of the records access question, rather than at the back end. You, as members of these governmental bodies, need to be aware that you may be held responsible for seeing to it that all public records are placed on file with the Village Clerk.

And since public records are not simply written communications generated by the governmental body itself, it would always be a wise practice to have placed on file with the Village Clerk all written communications to you, whether they are letters, reports, or memos. (If, however, these documents were generated by village administration, you can rely on the fact that they are already on file with the Village Clerk, since the Village Clerk is also the record custodian for village administration.) In addition to all written communications, recorded communications also are public records, as are computer files and fax documents.

Although the governing body, whether it is the Board, a commission, or a committee, is the authority responsible for turning over all public records to the records custodian, the individual member in each of these bodies presumed to have the primary responsibility for compliance with the law is the presiding officer of each body. Therefore, if communications that are records come to a governing body as a whole, individual members should look to their chair or president to fulfill the responsibility for filing these records with the Village Clerk. The responsibility becomes an individual one, however, if a record is given to only one member of the body.

The following examples are intended to illustrate how the open records law would apply to you and your duties as a public official or board member:

1. You are stopped on the street by a citizen who wants to talk to you about how a particular item on an upcoming agenda should be decided. To remind yourself of the concerns and the conversation, you jot down some notes for your own personal use. Are these notes a public record that needs to be filed with the Village Clerk? No. Personal notes used only by you are not public records and there is no public right of access to them. However, if you pass along your notes to other members of your body, they then have become public records and need to be filed with the Village Clerk.

2. You are stopped on the street by a citizen who wants to discuss how you should decide a particular item on an upcoming agenda. A few days later, the same person follows up with a letter sent to the entire board, of which you are a member, but you are not the presiding officer. Is the letter a public record? Yes. Do you have to file it with the Village Clerk? No. Does the presiding officer need to file it with the Village Clerk? Yes. Will it hurt anything for you to file it as well? No.

3. You received a letter apparently addressed only to you that is urging you to vote or take action in a particular manner. No agenda has been formally made that encompasses the action being requested, but it is an action you are lawfully empowered to make and it is foreseeable that at some time in the future, you might be discussing the matter. You do not know whether anyone else in your body received the same letter. Is this a public record? Yes. Do you need to do something with the letter? Yes. You have two options. The first is to share the letter with the other members of your body by mailing them copies or by giving them copies at the next meeting of your governmental body. The second option is to file the letter with the Village Clerk. Under the first option, the presiding officer would ultimately be responsible for filing the record. Under the second, you are responsible for filing the record.

4. You are the secretary for a governmental body, and a particularly complicated issue comes before you that you want to carefully write into the minutes of the meeting. You decide that you can write far more detailed and accurate minutes if you tape record the meeting with your own tape recorder. You follow the procedures of having your body approve the minutes and they are placed on file with the Village Clerk. Is the tape also a record that must be filed? Yes. Public records are also tape recordings. It might have been better to request that the Village furnish you with the tape before recording, but the fact that it was a privately owned tape at the time of recording under the circumstances set out above does not change the fact that it has now become a public record. And, unfortunately, erasing the tape would not make it less of a public record. Instead,

erasing the tape would be a violation of the open records law because of unlawful destruction of a public record.

5. Someone calls your home answering machine and leaves a recorded message. Is this a public record? No.

6. Your committee wants to track certain data collected over time on some aspect of village government. Perhaps you are on the Zoning Board of Appeals, and you want to determine the amount of side yard variances that have been granted, and how large was the largest variance, how small was the smallest, and what was the average. Someone volunteers to extract that information from previous meeting minutes and place it in a database. Is the computer file that contains the data a public record? Yes. If the software is compatible with Village software, filing a copy of the file with the Village Clerk is sufficient, unless reports were also generated from the data, which would also have to be filed. If the software were incompatible, filing the hard copies of all manipulations of the data in the database would be necessary to be in compliance.

7. Someone sends you a fax on your company's fax machine relating to your duties to the Village. Is this a public record? Yes.

8. Your governing body meets in a properly noticed and convened closed session. Are the minutes of the closed session a public record that must be filed with the Village Clerk? Yes. Are the minutes of the closed session public information that can be released or talked about by any member of your body? No. It is within the sole lawful authority for the Village Clerk to determine when, and if, the minutes of a closed session may be released to the public. The Village of Thiensville does not take minutes of closed sessions. Motions and votes to go into closed session, to convene into open session and any action in open session are recorded in the minutes.

9. Your committee wants the cable TV people to come and videotape your meeting so members not in attendance can view the meeting at a later date. Is this videotape a public record? Yes. What if the cable TV people record a meeting that has nothing to do with village government? Is this a public record? No.

I hope these examples help to clarify responsibilities under the open records law. One final word of caution, since you are not charged with making the determination of what records are actually released to the public under the law, it would be wise not to assume that all records placed on file are necessarily available as public information. It is the records custodian's responsibility to make that determination, and to make the appropriate information public, if requested. The rules for making these determinations are beyond the scope of this memo.

OPEN MEETINGS LAW

Your individual responsibilities under the open meetings law are more complicated and more varied than those under the open records law. These responsibilities relate to conducting governmental business in the open so that the public knows what is being discussed, deliberated, decided, by whom, when, where and why. The legislature has incorporated the policy of openness into the legislation and has codified the notion that this law, like the open records law, will be liberally construed in favor of openness, rather than in favor of the government's other concerns for efficiency, expediency, or lack of controversy. The court decisions and the Attorney General opinions relating to the open meetings law have stretched the meaning and application of the law beyond the words of the statutes, and the law has been rewritten to broaden its application to more circumstances, rather than fewer.

Put simply, the law requires that all business of governing bodies be conducted at meetings that have been properly noticed to the public and the media, and that the notice sets forth in detail the items of business to be discussed or decided, and when the meeting will occur, and where the meeting will be held, and that the place of the meeting must be reasonably accessible to all members of the public wishing to attend. These meetings are required to be in open session, unless the proper prior notice of a closed session has been posted and stated at the meeting, and unless the legally authorized exception to openness has been met. Penalties for violation of the law can range from prosecution by the District Attorney, fines, and costs, to some other remedies that may include voiding the action taken contrary to the open meetings law, injunctions, declaratory judgments, and possibly attorney's fees.

Unfortunately, the law has been the source of much litigation and many opinions of the Attorney General, so as with the open records law, if you do not believe you know whether a contemplated action or practice would be in violation of the open meetings law, please do not hesitate to ask for a legal opinion, since the law's application is always to individual facts in particular circumstances, and the duty to obey the law is an individual duty of each and every village official who is a member of a board, committee, or the Village Board.

The following examples are intended to illustrate the application of the open meetings law to particular circumstances to help you to decide whether your contemplated actions would be in compliance with the law. However, if you are ever in doubt, please seek a legal opinion.

Public Notice

The presiding officer of your governmental body is the individual presumed under the law to be responsible for complying with public notice requirements for all

meetings. This responsibility has been delegated to the Village Clerk, and the law's applicability to notice requirements, for the most part, is not a concern to the presiding officer and the individual members of these governing bodies.

However, taking action at a meeting that has not been properly noticed is a violation of the open meetings law, and these violations can be found against individual members who took action, even though they did not have any part in posting notice of the meeting. Therefore, it is important that all members of all governing bodies know the requirements of meeting notices.

Following standard procedures for giving public notice is the best defense against violating the open meetings law on the grounds that inadequate public notice has been given. The standard procedure for giving notice of a meeting involves writing the agenda in a manner that lists the time and place of the meeting, and the items of business in enough detail to give the public an idea of what will occur at the meeting. This detail should deal with all of the following, when applicable:

1. Will there be a public hearing?
2. Is there an item of business that will only be discussed, but no decision will be made?
3. Will a decision of some sort be made?
4. If a decision is made, will it be in the form of a recommendation, or an actual, final decision of the body that will not be referred on to another body for a final decision?
5. Is there going to be a closed session, and if so, what is the specific statutory exemption that authorizes such a closed session, and what will the discussion in closed session be about?

The standard procedure for giving this required notice is to do all of the following with the agenda described above:

1. Supply the agenda to the Village Clerk by Friday morning the week before your meeting so it can be published.
2. The agenda is supplied to the News Graphic and CNI Newspapers or other official newspaper of the Village.
3. Post copies of the agenda at Village Hall, the library, and the Post Office at the same time that the agenda is posted at the meeting place.

Unfortunately, circumstances sometimes arise that make it impossible to conduct the business of the government and to comply with the standard procedures for providing notice. The following examples will illustrate what to do under those circumstances.

1. You are the presiding officer of a governmental body and you find out that an emergency item of business needs to be acted upon at your next meeting, but the agenda has already been published and the meeting notices have already been

posted. What do you do? You inform the Village Clerk who will write an amended agenda that must be posted at least 24 hours in advance of the meeting. Copies of the amended agenda are also made available to the public at the start of the meeting.

2. You are the presiding officer and you don't find out about the emergency item until after it is too late to comply with the 24-hour meeting notice requirement, but the item is so urgent, and you can show good cause why it has to be acted upon immediately without another 24-hour delay to post notice of another meeting. What do you do? Under these circumstances, which are probably quite rare, you can still act on the emergency item if you follow the amended agenda procedures listed above, and if the Village Clerk can provide the required notice to the newspapers and to the public a minimum of 2 hours in advance of the meeting.

3. You are the presiding officer and an item of business comes to your body through discussions that may be straying from the agenda. It seems to be logical to pursue the new area of discussion. Do you allow the discussion to continue, even though it does not fit the agenda? In almost all cases, no. It is the presiding officer who will be presumed to be responsible for keeping the discussion and business of the body on track with the public notice and agenda. Even if no real harm comes of the discussion because no immediate decision is being made and the discussion will likely continue at a later meeting with proper notice, it is still possible that the presiding officer may be found to be in violation of the open meetings law. And, if a vote is taken, anyone participating in the decision may also be found to be violating the open meetings law, and the action taken may be voided as well.

However, there is an exception to this rule if it falls within a legitimate emergency that could not wait 24 hours for proper notice as listed under 1 above, and if the presiding officer did not know about the emergency at least 2 hours before the meeting, so the procedures under 2 above could not be followed. The probability of this exception becoming anything but extremely rare is quite small.

4. You are a member of the body and the discussion has obviously strayed from the agenda and the lawful business of your body at the otherwise properly noticed meeting. How do you protect yourself from any allegations that you have participated in a violation of the open meetings law? You call for a point of order and state that the discussion is not proper to pursue at this time, given that it is not public noticed and not on the agenda. If order is not established by the presiding officer after you have taken this step, and if the presiding officer has not established the rare exception that would allow the urgent item to continue to be pursued, then you should not participate by making any motions or seconds on the item, and it would be prudent to abstain from any vote.

5. You are a member of the body that is about to consider whether to go into a previously noticed closed session. You note that the presiding officer has not stated at the meeting the statutory authority allowing a closed session, and the

presiding officer also has not stated with some specificity the subject matter of the contemplated closed session. What do you do prior to a vote on a motion to go into closed session? You point out to the presiding officer that the above stated requirements have not been met, and ask the presiding officer to announce the authority and the reason for the closed session prior to a vote on the motion.

6. You are a member of a body that votes to go into closed session, but no notice has been made, no emergency exception can be shown, and no announcement of the authority and the subject matter has been made. You vote not to go into closed session, but a majority of the members vote to go to closed session. What do you do? You are not lawfully required to leave the meeting to preserve your defense that you have not violated the law. You have established your defense by voting against the closed session, and you can maintain your defense if you do not participate in any decision made in closed session. However, it would be in your interest to state during the open session your reasons for your opposition to the closed session so it can be recorded in the minutes.

Public Access

Whether sufficient public access is provided for meetings of governing bodies should usually not be an issue, since most meetings are held either at the Village Hall, library or at another pre-established village-owned or village-controlled building that, under most circumstances, should meet the reasonable access requirements of the law.

However, there are times when meeting where you usually hold your meetings may be a problem under open meetings law. These situations are quite unlikely, but you need to be aware of them. The first situation may be a case where a particularly large amount of public interest is likely and foreseeable by the presiding officer, and this public interest might generate attendance at the meeting that could not be accommodated by the usual meeting place. If such a circumstance is foreseeable, it is fully possible to move the meeting to another, larger location and still comply with the law if it is done no later than two hours prior to the meeting, and proper notice to the public and media has been made, and if the previously noticed meeting location is posted with a notice of the new location.

The second situation where accessibility difficulties may occur is when someone inadvertently neglects to make sure a public entrance to the building where the meeting is occurring is kept unlocked at all times. This may become an issue if the building used is open for other functions at the start of your meeting, but it closes for those functions prior to the end of your meeting, such as the library. The presiding officer should always make sure that the entrance to the building used for the meeting is left unlocked throughout the entire meeting.

Other situations may sometimes arise that you may need to avoid if you wish not to be in violation for participating in an otherwise properly noticed meeting, if it can be

shown that no reasonable access has been provided to the public. One such situation would be moving the normal meeting place to a place located outside the Village of Thiensville. Meeting in a different municipality, or in a different county, would be extremely difficult to justify under the open meetings law reasonable access provisions. There may be some rare, narrow circumstances, such as a retreat, to justify moving the meeting from the Village, but no presiding officer of any governmental body should make such a decision on meeting place without seeking a legal opinion.

In addition, moving the meeting location to a private building or a private home is also very risky business under the reasonable public access requirements of the law. There is an Attorney General opinion that exists on the question of a town board meeting at a private home. The reasoning in that opinion was such that many town boards lack adequate public facilities for meetings, and under those circumstances, if proper notice is made, and if an open invitation to enter the home is extended to all members of the public during all times that the meeting is in session, the meeting would probably not be in violation of the law. However, he went on to state that these meeting places need to be the exception, rather than the rule, and that public policy requires that public meetings be held in publicly controlled buildings whenever possible.

What is a Meeting?

The largest area of litigation and Attorney General opinions center on the question of what constitutes a meeting, which triggers all of the requirements of the open meetings law. The courts and the legislature have dealt with this area of the law and have broadened over time the definition of a meeting to include situations that constitute a meeting that are not intuitively obvious to most casual observers. Therefore, the question of what constitutes a meeting is one that should be uppermost in the minds of all members of governing bodies within the Village, because this area is the most likely area to bring about allegations, whether warranted or not, of village officials violating the open meetings law.

The law presumes that if half of the members of a governing body are present, they are at a meeting, unless it is a purely chance event that they are in the same place at the same time, or unless it is a social gathering and no business of the body is being discussed. However, the legislature has declined to state precisely how many members it takes for their presence to be a meeting. And the courts have found that under the right circumstances, it only takes two members for there to be a meeting. And the courts have found that they do not have to be physically in each other's presence. The telephone can serve as the link that constitutes a meeting.

The courts have found that walking quorums exist. This is the situation where one member talks to another member about their body's business. Then one of those members talks to a third member. Only one of these persons knows that he or she has talked to two others about the item of business. The other two do not know

that all three members have discussed the business. However, this sort of activity can be found to be a walking quorum, and a violation of the open meetings law by all three members.

The courts have also found negative quorums, who constitute a meeting for purposes of open meetings law. A negative quorum exists when members have discussed an item of business and reached a consensus that they will vote against a particular measure, and that they have enough power together to prevent that measure from passing. This negative quorum effect can occur whenever a 2/3 or 3/4 vote of a five-member body is needed and two of the members have discussed the item and reached a consensus to vote against it. The danger of a negative quorum is the most prevalent when certain kinds of decisions are being made by the Board that require a "super" majority for passage, or when disciplinary actions are being brought before any body with disciplinary powers, such as the Police Disciplinary Committee or the Board. And decisions of the Zoning Board of Appeals require more than a simple majority, so negative quorums are a particular hazard for any two members of that body wishing to discuss together the wisdom of voting against a particular item.

Therefore, because of the concepts of walking quorums and negative quorums, the "rule of thumb" that no violation of the law will occur if member A only talks to member B can be dangerous, because member A doesn't know that member B is also going to or already has talked to member C, and even if member B only talks to member A, it may be about an item of business requiring a vote that can be blocked by both A and B voting no to the measure.

And finally, the courts have found that meetings in violation of the open meetings law have occurred even when the members have not spoken to each other. This violation can occur if a quorum of one body attends the meeting of another body simply for the purpose of gathering information to use later in its own decisions.

Conclusion

I hope that this guidance will prove useful as you carry out your duties as an elected or appointed member of a governing body of the Village of Thiensville. Because the law presumes that persons subject to it know the law, and intent to violate the open meetings or open records laws does not have to be shown for it to be enforced, I hope you will accept these comments in the spirit with which they were intended by me. I want all village officials to be informed to the fullest extent possible so they may function in their roles without concern over possible negative repercussions that may result, even though their actions are well intended."

CRIMES AGAINST GOVERNMENT AND IT'S ADMINISTRATION



946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class D felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer's or employee's lawful duty transfers or promises to the officer or employee or on the officer's or employee's behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer's or employee's lawful duty.

History: 1977 c. 173; 1993 a. 486.

Circumstantial evidence supported an inference that the defendant intended to influence a public official's actions. State v. Rosenfeld, 93 Wis. 2d 325, 286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). State v. Sammons, 141 Wis. 2d 833, 417 N.W.2d 190 (Ct. App. 1987).

946.11 Special privileges from public utilities.

(1) Whoever does the following is guilty of a Class E felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from

any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.

(2) In this section:

(a) "Free pass" means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty;

(b) "Privilege" has the meaning designated under s. 11.40;

(c) "Public utility" has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(3) This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than \$300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

History: 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496.

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class E felony:

(1) Intentionally fails or refuses to perform a known mandatory, non-discretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or

(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or

(3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

History: 1977 c. 173; 1993 a. 486.

Sub. (5) prohibits misconduct in public office with constitutional specificity. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person not a public officer may be charged as a party to the crime of official misconduct. State v. Tronca, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. State v. Schmit, 115 Wis. 2d 657, 340 N.W.2d 752 (Ct. App. 1983).

946.13 Private interest in public contract prohibited.

(1) Any public officer or public employee who does any of the following is guilty of a Class E felony:

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

(2) Subsection (1) does not apply to any of the following:

(a) Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than \$15,000 in any year.

- (b) Contracts involving the deposit of public funds in public depositories.
- (c) Contracts involving loans made pursuant to s. 67.12.
- (d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.
- (e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.
- (f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.
- (g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under subch. IX of ch. 71 and s. 91.13, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2% of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined in s. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than \$10,000 per year, merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by

longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7) (a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than \$10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2% of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

History: 1971 c. 40 s. 93; 1973 c. 12 s. 37; 1973 c. 50, 265; 1977 c. 166, 173; 1983 a. 282; 1987 a. 344, 378, 399; 1989 a. 31, 232; 1993 a. 486; 1995 a. 27, 225, 227, 435; 1997 a. 35, 248; 1999 a. 9, 85; 1999 a. 150 s. 672.

Conviction of a county board member for violating sub. (1) by accepting a job as airport manager at a time when he was a member of the county board, which was a cosponsor and co-owner of the airport, was reversed under evidence that he was appointed pursuant to advice and approval of the county corporation counsel. State v. Davis, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense, without the element of corrupt motive. State v. Stoehr, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education may not bid on and contract for the construction of a building project for a vocational-technical district which would entail expenditures exceeding \$2,000 in any year, where availability of federal funds for use on such project is subject to his approval as a member of such board. 60 Atty. Gen. 310.

Discussion of conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

The applicability of this section is discussed. 76 Atty. Gen. 178, 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class E felony.

History: 1977 c. 173.

946.15 Public construction contracts at less than full rate.

(1) Any employer, or any agent or employee of an employer, who induces any person who seeks to be or is employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to give up, waive or return any part of the compensation to which that person is entitled under his or her contract of employment or under the prevailing wage rate determination issued by the department or local governmental unit, or who reduces the hourly basic rate of pay normally paid to an employee for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3) or 229.8275 (3) during a week in which the employee works both on a project on which a prevailing wage rate determination has been issued and on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class E felony.

(2) Any person employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who gives up, waives or

returns to the employer or agent of the employer any part of the compensation to which the employee is entitled under his or her contract of employment or under the prevailing wage determination issued by the department or local governmental unit, or who gives up any part of the compensation to which he or she is normally entitled for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3) or 229.8275 (3) during a week in which the person works part-time on a project on which a prevailing wage rate determination has been issued and part-time on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class C misdemeanor.

(3) Any employer or labor organization, or any agent or employee of an employer or labor organization, who induces any person who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from the person's pay is guilty of a Class E felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

(4) Any person employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who permits any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30.

946.18 Misconduct sections apply to all public officers. Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

History: 1977 c. 278; 1979 c. 110.

Appendix A

MEETING SCHEDULE

Meeting	Date Scheduled	Time
Regular Board Meeting	3 rd Monday of each month Village Hall Board Room	6:00 PM
Committee of the Whole COW	1 st Monday of each month Village Hall Board Room	6:00 PM
Planning Commission	1 st Tuesday after the COW of each month Village Hall Board Room	7:00 PM
Historic Preservation Commission	2 nd Wednesday of each month Village Hall Board Room	7:00PM
Library Board		Called as Needed
Community Development Authority		Called as Needed
Board of Review		Called as Needed
Zoning Board of Appeals		Called as Needed
River Advisory Committee		Called as Needed
M-T Bikeway Commission		Called as Needed
Police Disciplinary Committee		Called as Needed
CDBG Committee		Called as Needed
Telecommunication & IT Oversight Committee		Called as Needed

All agendas shall be posted at Village of Thiensville Village Hall. Meeting times are subject to change, please refer to the posted agenda to ensure prompt attendance.

VILLAGE DIRECTORY

Office Held	Contact Information
President	262-242-3720 vmobley@village.thiensville.wi.us
Village Attorney	262-377-0600 bob.fiend@housemanlaw.com
Village Administrator / Clerk / Treasurer	262-242-3720 drobertson@village.thiensville.wi.us
Police Chief	262-242-2100 _____@village.thiensville.wi.us
Fire Chief	262-242-2100 breiels@village.thiensville.wi.us
Public Works Director	262-242-0180 alafond@village.thiensville.wi.us
Planner	262-242-0180 6954jpc@sbcglobal.net
Deputy Clerk	262-242-3720 sconway@village.thiensville.wi.us
Deputy Treasurer	262-242-3720 bsykora@village.thiensville.wi.us
Library / Director	262-242-2593 bendix@esls.lib.wi.us
M-T Chamber of Commerce	262-512-9358 tina@mtchamber.org
Building / Zoning Inspector	1-800-422-5220 Paul Mortimer
