

Village Board
Village of Cottage Grove
Open Meetings, Ethics, Public Records, and Parliamentary Procedures Outline
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1. OPEN MEETINGS LAW.

A. WHAT DOES THE LAW REQUIRE?

All **meetings** of all local **governmental bodies** must be preceded by public notice, publicly held in places reasonably accessible to the public, and open to all citizens at all times unless otherwise expressly allowed by law.

B. WHAT IS A GOVERNMENTAL BODY?

A local agency, board, commission, committee, council, department or public body corporate or politic created by constitution, statute, ordinance, rule or order, or a formally constituted sub-unit of any of the foregoing.

The definition excludes a body or sub-unit formed for or meeting for the purpose of collective bargaining under subchs. IV or V of ch. 111 of the Wisconsin Statutes. However, ratification or approval of a collective bargaining agreement must be done in open session.

C. WHAT IS A MEETING?

(1) *Meeting presumed:* If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for governmental purposes.

(2) *Two-part test:*

a. There is a gathering for the purpose of discussing, deciding or information gathering regarding governmental business;

b. The number of members participating is sufficient to determine the body's course of action. This can be the affirmative power to pass or the negative power to defeat a proposal. For example, a budget amendment requires a 2/3 vote. If three Board members meet to discuss the budget amendment, that would be a meeting because a sufficient

number of trustees are present to determine the Board's course of action.

- (3) *“Walking quorum”*: A walking quorum results when a series of gatherings occur among separate groups or individuals that collectively constitute a number of members sufficient to determine the body's course of action. For instance, if a member of a government body speaks to individual members of a body, that collectively form a majority, about a topic before the body, that would constitute a walking quorum in violation of the Open Meetings Law.
- (4) *Written correspondence*: The Wisconsin Attorney General says that circulation of a paper or hard-copy document, which is a largely one-way flow of information, with any exchanges spread over considerable time with no conversation-like interaction, is probably not a meeting.
- (5) *Email*: The Wisconsin Attorney General says emails may constitute a meeting. Courts are likely to consider (1) the number of participants; (2) the number of communications; (3) the time-frame in which the communications occurred; and (4) the extent of the conversation-like interactions. Beware that emails can be forwarded, and replies can be sent to large groups, depriving the original sender of control over the number and identity of recipients.

According to the Attorney General, inadvertent violations can be reduced if email is used mainly to transmit information one-way, with the originator reminding people not to reply.

Because the law is unclear on email, the Attorney General's office “strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body's realm of authority.”

Any communications sent from staff to the Board for informational purposes will be as a blind carbon copy so that there will not be a “reply all” function.

- (6) *Social Media*: Messages, comments, or social media posts could violate the Open Meetings Law if members of a government body are engaging on the same post or writing comments to each other.

- (7) *Social gathering*: A social or chance gathering that is not intended to avoid the open meeting law is not subject to the open meetings law.

D. WHAT IS ADEQUATE NOTICE?

- (1) The notice must be specific and detailed enough to apprise members of the public and the news media of the subject matter of the meeting. The Attorney General says “the public is entitled to the best notice that can be given at the time the notice is prepared.”
- (2) Public comment periods are specifically authorized, but are limited to receiving and discussing, and not acting.

E. CLOSED SESSION ISSUES.

- (1) There must be a statutory basis to meet in closed session. Wis. Stat. § 19.85(1). Common closed session reasons include:
 - a. Considering employment, promotion, discipline, employee evaluations, or termination of employment.
 - b. Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other public business, whenever competitive or bargaining reasons require a closed session.
 - c. Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- (2) A contemplated closed session must be noticed as such.
- (3) A spontaneous closed session is allowed, but there are limits on when the body may reconvene in open session.
- (4) The Attorney General advises that a governmental body should vote in open session, unless the vote is clearly an integral part of what is authorized to be done in closed session. In other words, would voting in open session undermine the authorized closed session discussion?

2. ETHICS.

- A. Sections 19.59 and 946.13 of the Wisconsin Statutes.
- B. USE OF OFFICE FOR PRIVATE GAIN: Public officials are prohibited from using their offices to obtain anything of substantial value for the private benefit of themselves, their immediate family, or organizations with which they are associated. Wis. Stat. § 19.59(1)(a).

Note that the rule would not apply to actions affecting a whole class of similarly situated interests, in which the official's interest is not significantly greater than other affected interests. Examples: proposed development affecting the neighborhood; special assessment affecting the whole street.

- C. OFFERING OR RECEIVING ANYTHING OF VALUE. No person may give and no public official may receive "anything of value" if it could reasonably be expected to influence the local public official's vote, official action or judgment, or could reasonably be considered as a reward for any official action or inaction. Wis. Stat. § 19.59(1)(b).
- D. ABSTAINING FROM OFFICIAL ACTION. The State of Wisconsin Ethics Commission recommends that if an official abstains from a vote, the official should leave that portion of the meeting involving discussion, deliberations, or votes related to the matters. The minutes should reflect the absence of the official.
- E. PRIVATE INTERESTS IN PUBLIC CONTRACTS – CLASS E FELONY.
- (1) A public official may not participate in the making of a contract in his or her official capacity if the official has a direct or indirect financial interest in the contract. Wis. Stat. § 946.13(1)(b).
- (2) A public official may not in his or her private capacity negotiate or bid for or enter into a contract in which the public official has a direct or indirect financial interest if the official is authorized or required by law to participate in his or her capacity as such officer or employee in the making of that contract. Wis. Stat. § 946.13(1)(a). Abstaining from voting does not solve the problem.

Exceptions: \$15,000 in receipts and disbursements or less per year. Other exemptions can apply to bankers, partners in law firms and

persons who own no more than 2% of the stock of the corporation involved.

F. ADVISORY OPINIONS. An official may apply for an advisory ethics opinion from the Village Attorney.

- (1) Requests must be in writing and must provide all the material facts.
- (2) Following an advisory opinion is prima facie evidence of intent to comply with the law.
- (3) An ethics opinion is not public, except:
 - a. With the requester's consent;
 - b. In a redacted form that prevents disclosure of the requester's identity; or
 - c. If the requester makes or purports to make public all or part of the advisory opinion.

3. PARLIAMENTARY PROCEDURE.

A. Sources of law: Village Code (see chapter 94); Robert's Rules of Order, Newly Revised; Wisconsin Open Meetings Law.

B. PARLIAMENTARY PROCEDURE. Rules of deliberation that are intended to ensure fairness to all members of a body, equality among members, and orderly processes.

C. RULES OF COURTESY AND DECORUM.

- (1) One person at a time should have the floor, and every speaker should first be recognized by the presiding officer.
- (2) Someone not recognized should generally not interrupt a speaker. There are a few exceptions. A speaker could be interrupted to make a "point of privilege" (like noting that you cannot hear), to make a "point of order" (relating to something you believe is inappropriate conduct of the meeting), or to make a parliamentary inquiry.

D. MOTIONS.

- (1) A Main Motion should be made and seconded.
- (2) Discussion follows.
- (3) When discussion ends, the chair should call for a vote.
- (4) Additional motions can be made and are ranked. Examples include a motion to amend, to refer, to lay on the table.

E. AGENDA ITEMS.

- (1) Any trustee may move to add an item to an upcoming Board meeting agenda. If the motion receives a second, the item will appear on the next Board meeting agenda.

4. PUBLIC RECORDS LAW.

A. WHAT IS A RECORD?

- (1) “Record” is defined as “any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority” Wis. Stat. § 19.32(2).
- (2) “Record” includes records not required to be maintained if in possession of an officer, but materials must have a sufficient connection with the function of the office to qualify as public record.
 - a. Records include emails from a personal email address or text messages on a personal cell phone if the content of the message is connected to Village business. Trustees are strongly discouraged from using personal email addresses or phones to conduct Village business.
- (3) “Record” does not include personal drafts and notes, personal property, or purely personal emails.

- B. WHAT IS AN AUTHORITY? “Authority” includes “elected officials, local officers, agencies, boards, councils, commissions, committees, departments and any other public body corporate and politic created by constitution, law, ordinance, rule or order or any subunit of the foregoing.” Wis. Stat. § 19.32(1).

C. WHO IS A CUSTODIAN OF RECORDS?

- (1) All elected officials are record custodians. The elected chair of a committee is the record custodian for that committee. Wis. Stat. § 19.33.
- (2) Every authority shall designate in writing one or more positions occupied by an officer or employee of the authority or of the unit of government of which it is part as a legal custodian to fulfill its duties. The Village Clerk, with some exceptions (such as law enforcement records) generally handles records requests and facilitates responses.

D. WHAT ARE THE CUSTODIAN'S DUTIES?

- (1) The legal custodian is responsible for performing all duties imposed by the public records law. The custodian shall safely keep and preserve all property and things received from the officer's predecessor or other persons and required by law to be filed, kept or deposited in the officer's office. Upon expiration of the term of office or when a vacancy occurs, each officer must deliver to his or her successor all such property and things in his or her custody, and the officer's successor shall issue a receipt to the officer which must then be filed in the clerk's office.
- (2) Retain records for the time required by law. (generally seven years, but see the state guidance regarding record retention schedules here: <https://publicrecordsboard.wi.gov/Documents/Municipal%20GRS%20REVISED%206-2020.pdf>)
- (3) Provide access to records as required by law.