



AGENDA

President and Board of Trustees
Village of Arlington Heights
Committee-of-the-Whole
Board Room
33 S. Arlington Heights Road,
July 8, 2024
7:00 PM

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL OF MEMBERS

IV. NEW BUSINESS

- A. Discussion of Possible Meeting Agenda Modifications

V. OTHER BUSINESS

VI. PUBLIC COMMENTS

VII. ADJOURNMENT

Any member of the public wishing to speak will be given the opportunity to do so. If the item is on the Agenda, that opportunity will be while that Agenda item is being discussed. Any member of the public wishing to speak on an item not on the Agenda will be given the opportunity during the Other Business portion of the meeting. Please limit comments to three minutes.

Persons with disabilities requiring auxiliary aids or services, such as an American Sign Language interpreter or written materials in accessible formats, should contact Erin Mercado, at 33 S. Arlington Heights Road, Arlington Heights, Illinois 60005, emercado@vah.com or (847)368-5793.



Committee-of-the-Whole
7/8/2024

Item: Discussion of Possible Meeting Agenda Modifications

Department: Village Manager's Office

Discussion of Possible Meeting Agenda Modifications

The Village Attorney has reviewed the Village's current meeting agenda practices and has noted some arcane, unusual, and/or legally unnecessary features of our processes. As Staff is currently replacing our agenda management software, we felt it would be a good time to discuss the Village Attorney's observations to see if the Village Board would like to make any changes. The Village Attorneys observations and recommendations are outlined in the attached memo. This will be a topic of discussion at the July 8th Committee of the Whole Meeting

Staff Recommendation:

Discussion of Possible Meeting Agenda Modifications at the July 8th COW meeting.

ATTACHMENTS:

Description

Agenda Modifications

Type

Agreement

Memorandum

Date: July 3, 2024

To: President Hayes and Board of Trustees
Village Manager Recklaus

From: Village Attorney

Re: Village Board Agenda Procedures and Recommendations

As part of our regular duties as Village Attorney, we advise the Village Board, Village Manager, and Village Staff concerning recommended modifications and updates to Village laws and procedures to align with changing legal requirements and with best practices. In that vein, as discussed in this Memorandum, we have identified five current Village Board meeting practices for which we suggest changes.

I. Categorization of Agenda Items

Section 2-204 of the Village Code sets forth the order of business for Village Board meetings. The Village Code requires certain specific items, including “Old Business,” “Consent Agenda,” “Approval of Bids,” “New Business,” and “Legal”. In practice, Board meeting agendas often contain further division of the “Consent Agenda” to reflect sub-categories: for example, “Consent Approval of Bids,” “Consent New Business,” and “Consent Legal” all appeared within the agenda for the July 1, 2024 meeting.

It is not uncommon for Staff to contact us in advance of a Board meeting to figure out where within the agenda, and these various sub-categories, a particular matter should be placed. Similarly, there have been times when, after removing an item from the Consent Agenda, the Board debated the new agenda location for the removed item.

Under Illinois law, none of this is necessary. The Illinois Open Meetings Act does not impose any organizational restrictions or requirements on units of government; the only relevant requirement is that the agenda “set forth the general subject matter” of each of the items to be considered. 5 ILCS 120/2.02(c). There is no legal meaning or import behind labeling an item as “old” or “new” business, or if it is a “bid” or “legal” item, or something else entirely.

To simplify agenda management and administration, we recommend that the Board eliminate unnecessary categorization of agenda items. We do not have any legal concern with establishing categories (and sub-categories) for agendas – but only if those categories aid in Village governance. We suggest that the Board consider amending its Code and procedures to reflect its desired level of agenda categorization.

II. Removal of Consent Agenda Items by the Public

Section 3.1-40-40 of the Illinois Municipal Code (65 ILCS 5/3.1-40-40) contemplates that municipalities may approve several items on an agenda through a single vote. This is known as

a “consent agenda”. Under state law, a consent agenda may be voted upon with “unanimous consent” of the “corporate authorities.” That is, if all nine members of the Village Board agree that each item on a proposed consent agenda can be voted on at once, then the vote may proceed.

But if even a single Trustee or the Village President do not want a particular item to be part of a consent agenda, then that item must be voted upon separately. This is known as “pulling” an item from the consent agenda. There are no minimum standards for pulling an item, nor does the Board vote on *whether* to pull an item; rather, immediately upon request by any Trustee or the President, the designated item must be pulled and voted on separately.

Section 2-204.b of the Village Code identifies procedures for the consent agenda that are generally consistent with statute. Beyond the statute and Village Code, however, the Village Board has traditionally allowed any member of the public in attendance at a Board meeting to pull an item from the consent agenda. In other words, the public attendees at a meeting have been given the same authority as the elected officials to mandate a separate vote be taken on a designated item.

We recommend ceasing this practice. Illinois law simply does not grant members of the public any ability to dictate the agenda of a Village Board in this fashion, and we do not believe it good practice to allow a single member of the public to interfere with the Board’s meeting by forcing individualized votes. Moreover, this practice is ripe for abuse; there is nothing to stop the public from requiring individual votes on every single item on an agenda. If the purpose of having a consent agenda is efficiency, then this Village practice could lead to significant inefficiencies if abused.

Ending this practice would *not* inhibit public participation with respect to consent agenda items. We encourage the Village’s practice of inviting public comment on the consent agenda before a vote is taken. As part of that comment, we have no concern if a member of the public *requests* that an item be pulled – and whether such a request is made or not, we also have no concern if a member of the Board pulls an item in response to public comment. The proposed adjustments to procedure would retain the public’s ability to express their opinions on agenda topics while preserving the Board’s exclusive legislative authority.

We offer two other comments on consent agendas:

- There is no restriction on the *type* of item that may be placed on a consent agenda. From the most mundane to the most complex, anything that requires a Village Board vote may be part of a consent agenda, so long as the whole Board agrees.
- It is legally permissible for a Trustee or the President to cast different votes for different items on a consent agenda. For example, one could “vote nay on item 4 and aye on all other items on the consent agenda.” The purpose of the consent agenda is to take a vote all at once; it does not prohibit a voting member from identifying different votes, in their legislative discretion.

III. Approval of Committee of the Whole Minutes

As in many area municipalities, the Village Board of Arlington Heights sometimes convenes as a “Committee-of-the-Whole”. Section 2-203.b of the Village Code states that the Committee of the Whole is “concerned solely with the formation of policy.” Indeed, city councils and village boards often establish a committee of the whole in order to create space for longer,

free-flowing policy discussions. Whereas the main meeting of a city council or village board is reserved for final decisions and approvals, committee of the whole meetings afford elected officials with a forum for broader policy review and preliminary consideration of a variety of measures.

Under the Open Meetings Act, committees of the whole are *separate* public bodies. Even though they are comprised of the entire elected body, a committee of the whole is *not* the same, legally, as the council or board. For this reason, committee of the whole meetings have separate agendas and notices, and are convened and adjourned separately from the main council or board meeting.

The Village observes all of the requirements for its Committee of the Whole, with one exception: minutes of the Committee of the Whole meetings are approved at Village Board meetings. This is improper under the Open Meetings Act, as each public body must keep and approve its own minutes. Thus, it should be the Committee of the Whole itself that approves its minutes. We recommend that approval of minutes be added to the agendas of Committee of the Whole meetings, and that the Village Board cease approval of the minutes of its Committee of the Whole.

IV. Approval of Contracts.

Almost every Village Board agenda includes the approval of one or more contracts or agreements. Typically, the only materials included in the agenda is a Staff Report, explaining the nature of the proposed contract, identifying the vendor and cost, and bidding history. The “Recommendation” section of the Report usually states only Staff’s recommendation to “award a contract” to the designated vendor for the agreed-upon amount. Sometimes, the Staff Report also recommends that the Board “authorize the Village Manager to execute the necessary documents.”

The current practice carries unnecessary and unacceptable risk. First, the Board is not specifying *what* contract is to be approved, leaving the specific contract documents and terms entirely to the Manager’s discretion (to-wit: what are “the necessary documents,” and who makes this decision?). This risks execution of a contract that is disadvantageous to the Village. Second, there have been several instances in which the Staff Report seeks authorization for “Staff to execute the necessary documents” – which could plausibly authorize *any* Village employee to bind the Village by signing a contract of their choosing.

The best practice is to have all contracts and agreements approved via resolution or ordinance, and to have that document clearly authorize the contract in a form *attached to* the resolution or ordinance. The resolution or ordinance would identify the specific person or persons who are authorized to execute the approved contract – often, in a form that must be substantially the same as what’s attached, and in a final form to be approved by the authorized personnel and the Village Attorney. These procedures better protect the Village by ensuring that all contracts bearing the Village’s name have been properly reviewed and approved by the Board and by the correct Village employees and representatives.

The only downside to this practice is that it will result in the inclusion of significantly more material in agenda packets; some Village contracts consist of dozens, if not hundreds, of pages. We believe that is a small price to pay to minimize contracting risk.

V. Initial Consideration of Zoning and Subdivision Requests

When a request for zoning or subdivision relief is first presented to the Village Board, it usually appears with an agenda title that states the property address and a brief description of the relief sought. After discussion, a Trustee typically makes a “motion to approve” (with or without conditions). If that motion passes, then the formal approval resolution or ordinance is placed on the consent agenda of the subsequent regular Village Board meeting.

This two-step procedure is sensible in that gives the Board the ability to vet a proposal, and to provide full direction to Staff and our office to prepare the approval documents. We recommend retention of this procedure, but with improved verbiage – both on the agendas and at meetings – to clarify what is being voted upon at each instance.

First, we recommend that the agenda title for the first meeting in the sequence state: “Consideration of” the relief requested. Similarly, the Staff Report should include a recommendation that the Board “direct Staff and the Village Attorney to prepare final documents approving the requested relief for consideration at a future Board meeting.” This language will better communicate that the first review by the Board is not final.

Second, we recommend that the agenda title for those final documents include language like “Approval of an ordinance...,” to communicate that it is that action that represents the final vote on the relief. The juxtaposition of this language with the “consideration” language will also help distinguish the two steps in the Village’s process.

Third, the motion at the first meeting should not be “to approve.” The Board is not approving the relief at the first meeting. Rather, the motion should be “to direct Staff and the Village Attorney to prepare final approval documents approving the requested relief for consideration at a future Board meeting.” That is a correct statement of the action being taken.

Finally, we recommend that the Board be careful not to congratulate applicants after the first vote. As noted above, the first vote is (and should be) only procedural. It is legally possible and permissible for the Board to direct the drafting of documents at one meeting, but to reject a draft ordinance at the next (for example, the Board may not agree with the text of the ordinance, or Trustees may have changed their minds). The Village should do what it can to help applicants understand that relief is granted *only* upon approval of the ordinance or resolution.

We look forward to discussing all of these matters, and any other agenda ideas and concerns you have, at the Committee of the Whole meeting on July 8.