

**ILLINOIS MUNICIPAL LEAGUE  
102<sup>nd</sup> Annual Conference  
September 17-19, 2015  
Hilton Chicago Hotel**

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**THURSDAY, SEPTEMBER 17, 2015  
2:45 P.M. – 5:00 P.M.**

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**UNITED WE STAND/DIVIDED WE FALL:  
HOW TO GOVERN WITH CIVILITY AND  
RESPECT  
QUESTIONS AND ANSWERS**

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**UNITED WE STAND/DIVIDED WE FALL:**  
**HOW TO GOVERN WITH CIVILITY AND RESPECT**

1. What can aldermen do if the mayor denies them the right to place items on the agenda for meetings?

A. The council can adopt or change the ordinances to give them the right to call special meetings and establish the agenda.

2. Can a trustee make and vote on a motion to add an item to a future agenda if the subject is not on the current agenda?

A. A purely technical reading of the Open Meetings Act would not allow an immediate vote on a topic added to an agenda for a discussion. We suspect that the Attorney General would allow a motion, discussion and a vote to place an item on a future agenda because otherwise the flow of public business would be seriously stifled.

3. How would a motion to override the decision of the Chair be in order if it was not shown on the agenda?

A. Certain procedural matters, the need for which would not be known until the meeting occurred, would be allowed to be presented and voted upon because they do not relate to the substance of the actions of the legislative body but, rather, its process and procedures. For example, the Attorney General has offered the opinion that a motion and vote to go into closed session does not need to be on the original posted agenda.

4. Are we required to allow applicants for licenses, zoning changes and permits to speak when motions regarding their requests are acted upon?

A. No. The public must be given an opportunity to address the legislative body at all meetings, but there is currently no rule indicating at what point of the meeting these comments must

be presented. If they are heard at the end of the meeting, the board may have already acted upon the items that these persons wish to address.

5. What can a public body do if a member of the legislative body will not follow procedural rules and actively disrupts the meeting?

A. There is a statutory provision allowing a member to be expelled for breaking the rules, but no more than a single time the same offense. This should not prevent an actual arrest for the general ordinance violation of disturbing the peace.

6. Can council members vote on matters about which they have a personal, financial interest?

A. In some situations. Elected officials often vote upon matters that have the same effect on them as the rest of the public, such as future salaries for elected officials, generic zoning changes and the grant of licenses. Most officials recuse themselves so their vote does not count if the matter specifically relates to them. There are statutory prohibitions to voting on issues related to contacts for goods or services.

7. How can we deal with elected officials who keep interrupting one another at a meeting?

A. The rules of order of the governmental body need to deal with efforts to interrupt debate with matters of personal inquiry and various types of questions. Under most effective rules of order, the presiding officer is allowed to determine whether the attempted interruption will be beneficial to the debate and is more than a delaying or obstructionist effort. Court will almost never attempt to second guess any arguably rational decision of a presiding officer.

8. What are the powers of a Mayor Pro Tem?

A. State law allows a governmental body to choose from among its members a mayor or president pro tem when the president is temporarily unable to carry out the functions of that elective office. A mayor pro tem possesses all of the powers of the mayor, including the power to appoint and remove officers. The actual mayor can attempt to overturn any destructive action once he or she returns.

9. Can a trustee be removed from office if she temporarily moves out of the community?

A. No. The law grants great flexibility to elected officials if circumstances such as the remodeling of a home, its damage by fire, or a marital divorce or separation make it desirable for the official to temporarily move out of the community. The tests are usually some permanent location in the community and a clear desire to return.

10. Does the village president need to file a Freedom of Information Act request to receive pertinent documents relating to the community?

A. No. State law gives the clear right to the mayor to review all pertinent documents of the community at any reasonable time. Even statutory managers, in communities where the Mayor is in the political minority, need to honor this requirement.

11. Are Aldermen entitled to review documents of the community without making a FOIA request?

A. Continuing developing law on the subject gives the right to elected officials to gain access, generally upon written request, for documents that are pertinent to their legislative duties. Obviously, another alternative is to make a FOIA request which provides a relatively short compliance timeline.

12. Can elected officials demand to see documents from persons or companies seeking permits, licenses, or benefits from the community?

A. Yes, although person or company can refuse to turn over the information and risk a “no vote.” Some information which is turned over may be exempt from public view under FOIA.

13. Can a Mayor make or second motions?

A. Under most rules of procedure, the presiding officer is not allowed to make or second motions. That remains true in Illinois. Most mayors feel free to actively participate in the debate without relinquishing the chair.

14. When can the mayor vote in a municipality that does not have a statutory manager?

A. In most Illinois municipalities, the mayor may only vote on three occasions (to break a tie, when one half of the aldermen have voted in favor even if no tie, when a greater than majority vote is required). In municipalities with a statutory manager, the mayor votes on all matters where the municipality operates under both Article 4 and Article 5, or where it doesn't elect aldermen or trustees by ward or district. Where the mayor has a limited power to vote, it is up to the mayor to choose whether she will vote in the three permitted instances.

15. Can aldermen block or frustrate a requested special meeting not attending it?

A. Under Illinois law, three aldermen or trustees can call a special meeting. In villages, the attendance of at least four trustees is required to establish a quorum. To make a political point, but not on a regular basis, the methodology of avoiding attendance or walking out of a meeting to destroy the quorum will effectively prevent or end a meeting.

16. Can a trustee be entitled to address the village board for unlimited periods of time and on unlimited occasions associated with the same or different motions?

A. No. So long as the rule is treated fairly, local governments can establish procedural rules limiting the time that an elected official may speak and the number of times that person may address a particular issue.

17. Can an alderman make a motion at each city council meeting to withdraw the business license of a book store that sells sexually explicit, or left- or right-wing, publications?

A. No. The presiding officer has the right to rule out of order an effort by an official, generally for philosophical or political reasons, to attempt to place before the floor for debate a matter that has been previously decided. A renewal of the issue may be in order if new facts become available.

18. Can an elected official be removed from office for missing meetings?

A. State law does allow a public body to make a determination as to whether an official's absences from meetings reflect a resignation from the office. The evidence that the person has actually abandoned the elected office rather than simply being lazy or on vacation needs to be very clear. Under the Federal Civil Rights Act, a person who has been improperly removed from office can sue a community that abuses its removal power.

19. Can a mayor enter into contracts or sign checks without board authority?

A. No. Absent either specific or generic authorization by a city council or village board, a mayor or president has no authority whatever to expend any public funds. The municipality can sue for a return of the money improperly expended.

20. Can a mayor make temporary appointments to vacant appointed positions without council approval?

A. Normally, the mayor must receive confirmation of his appointment of a person to a municipal office. If an appointed office is truly vacated, the mayor is authorized to make a

temporary appointment for the purpose of keeping public business going. Home rule communities can probably limit the duration of temporary appointments.

21. How can elected officials be nicer?

A. Some elected officials learn to govern effectively by attending seminars or workshops dealing with parliamentary procedures and governmental operations, and by better understanding their powers and their role in government. It is helpful if they understand the division of powers and duties and focus upon the general fact that 90% of public issues can be resolved through non-objectionable compromises.

22. Does the mayor have the ability to discuss the city's position in public meetings or in discussion with other governmental leaders?

A. Yes, if the municipality has taken an official position. If a mayor does not have active board cooperation, he should avoid confusing the public or other governments regarding the likely views of the municipality on important issues. The public and other officials will very quickly come to the conclusion that mayor may be speaking only for himself. It is, of course, much better for the mayor to try to establish a consensus first.

23. Can Aldermen direct or assign municipal employees?

A. In a commission form of government, the commissioners are individually charged with carrying out various operational parts of the governmental body. Absent that system, trustees have only those powers that are granted to them by ordinance and do not conflict with the general operational duties of the mayor. Trustees should make their questions and inquiries known to the mayor, the administrator or department heads. Directing street crews to repair particular potholes is not good form.

24. I am the leader of a board majority, with enough votes to override the mayor's veto.

What powers do I have?

A. The powers of a board majority in such an instance can be substantial. The board can enact ordinances which grant that individual or others particular powers and place the executive branch under the close scrutiny. The board can also vote to exercise certain financial powers. These battles can go on for many years.

25. What are the municipal clerk's administrative powers?

A. The clerk is granted some specific statutory and may be granted broader authority by ordinance or by practice. The clerk's administrative authority only extends to deputy clerks. In smaller communities, some clerks function as village administrators with the full knowledge and blessing of the other elected officials.

26. What is the division of power between the mayor and the police chief?

A. In most communities, the mayor selects the police chief. The mayor, and other elected officials, must understand the police chief is a professional and is usually well aware of the important technical rules governing police actions. Sometimes the police chief, at his or her risk, may choose to not follow the specific directions of the mayor because they are improper. This may set up a confrontation with the police chief or the mayor bringing the grievances to the village board.

27. Who does the municipal attorney report to and serve?

A. Municipal attorneys are usually chosen by the mayor, but the attorneys have ethical responsibilities to represent the council. Generally, they report to a designated person such as the administrator or manager. If a veto-proof majority of a board does not have confidence in the

attorney appointed by the mayor, they may choose to select an attorney to serve as legislative counsel to provide advice to the alderman or trustees.

28. While in closed session for the purpose of discussing the purchase of real estate under 2(c)(5), the city manager indicates he also needs to discuss a settlement offer with the council that was made that afternoon in pending litigation. Can the council discuss the settlement offer in closed session?

A. Yes. When the council returns to open session and reconvenes the regular meeting, they must then passes a proper motion to adjourn to executive session for purposes of considering pending litigation pursuant to 2 C (11).

29. A traffic mishap has damaged the village hall. Emergency design work and repairs to the building are needed. Do we have to bid the work?

A. No.

30. The Emerald Ash Borer has damaged several ash trees in the public right of way and they need to be removed. Do we have to include a requirement to pay prevailing wages in the contract to remove them?

A. No.

31. We have an intergovernmental agreement to build a joint storage facility with a neighboring municipality and they have an existing relationship with an architect that we have never used. Can we use that architect?

A. Yes.

32. There is an old gas station that had the tanks removed. We would like to purchase it and prepare it for redevelopment. Will the municipality be responsible for all future damages claims from neighboring properties for pollution or contamination if it buys the property?

A. Probably not.

33. Someone is flying a drone over the Fourth of July Parade. Can our Police Department shoot it down?

A. No. But you can issue a ticket and report it to the FAA.

34. We want to swap parcels of real estate with the park district, do we need to have appraisals done before we exchange the parcels?

A. No.

35. We have a bid opening scheduled for 5 days from now, but we just learned that there is a different product we would like to consider. Do we have to go ahead with the bid opening as scheduled?

A. No (but you must timely issue an addendum and properly handle any bids you do receive).

36. Can we use a design/build method to build our new public works facility?

A. Only if you are a home-rule unit of government.

37. Can we place an annexation agreement on the consent agenda?

A. Yes (but be careful).

38. Who sets the agenda for board meetings?

A. In most municipalities, the board president or the administrator establishes the agenda. In some community, the clerk performs this function, with input from the legislators. The board can establish other fair methods.

39. What if the president will not allow trustees to place items on the agenda for regular board meetings?

A. The board could enact a policy requiring the president to place items on the agenda if board members follow the policy. Or, 3 trustees can call a special meeting, at which they would control the agenda.

40. Can a board limit the period of time that a trustee or president can speak?

A. Yes, as long as the period of time is reasonable and all parties get to participate.

41. How can we prevent a board member from repeatedly revisiting an issue after it has been decided?

A. The board president can rule the member out of order and move to the next item on the agenda. Alternatively, board members can call “point of order” to remind the board president to take control of the meeting and move to the next business item.

42. What can we do about a board member who repeatedly interrupts other members?

A. The board can adopt a rule that members can only speak when recognized by the president, who is the chair of the meeting.

43. What can we do if a board member has taken over debate on a particular agenda item and refuses to let other members speak or give the floor back to the president?

A. A board member might move to “call the question,” which will bring the item to a vote. There must have been a motion and second on the floor to approve the item before this procedural tactic will work. If the board members are not ready to vote, one could call “point of order” to remind the president to take control of the meeting.

44. What can a board do if a member breaches the confidentiality of the closed session and passes data on to other parties including the “other side” on issues discussed in closed session?

A. Not much, although the board can censure that individual by a motion or resolution. It can file an injunction lawsuit and can report the action, if properly documented, to the local state's attorney.

45. Can a member of the public demand an answer to a question from a board member or staff member during public comment?

A. No. Members of the public have the right to address members of the public body, but they have no right to interrogate them or library staff members, and the PAC agreed in recent non-binding opinions.

46. Are citizens allowed to speak about every issue at the time it comes before the board?

A. No. The time for citizens' questions and comments can be limited as long as the rule is fairly implemented and the board has adopted a written policy for public comment.

47. Can a public body's rules on public comment specify that most comments are fine, but any comments that are negative or critical of the public body should be submitted in writing to the president or a staff member during regular office hours?

A. No. A recent case clarified that public comment rules are not reasonable when they attempt to regulate the content of the speech.

48. Can a public body remove a member of the public from a meeting for being disruptive?

A. Yes. The Attorney General found no violation of the OMA where a public body removed a member of the public for disruptive behavior for a meeting. Similarly, the AG found no violation where a member of the public body interrupted a member of the public during public comment.

49. Does the Open Meetings Act require a public body to adopt rules for public comment?

A. Maybe. The Attorney General has said yes, in a number of non-binding opinions. In fact, the PAC has stated that even subsidiary bodies must establish rules of their own.

50. Who is responsible for the minutes?

A. The clerk is generally responsible for preparing the minutes; however, it is the board who approves the minutes.

51. What if the board will not approve a board member's requested changes to the minutes?

A. The minutes are subject to approval by a majority of the board; therefore, there is nothing a trustee in the minority can do to force the majority to include his or her changes. The board member could submit a letter of disagreement and ask that it be made part of the record.

52. We have an insane blogger that comes to our meetings and then writes untrue or slanted articles about them. Can we ban this person from our meetings?

A. No.

53. One of our trustees just called and told us he cannot make our meeting tonight because he is out of town on business. He wants to phone into the meeting to participate? Can he?

A. Yes, if you have adopted an ordinance permitting electronic participation. If he were on vacation, he could not participate because that is not a permissible reason.

54. The boy scouts showed up at our meeting. They want to lead us in the Pledge of Allegiance and then tell us about a community service project they are doing. These things are not listed on our agenda. Can they do this?

A. Yes. You can add things to the agenda as long as there is no final action taken. If they propose a project and want funding for it, that would have to be acted on at the next meeting.

55. We want to give our Council members credit cards for City-related expenses. Is this legal?

A. It is legal, but not advisable.

56. A disgruntled former employee has now started a local cable television show. He runs around our meetings with his camera trying to tape us from the worst angles. Can we stop him?

A. You cannot ban him from recording your meetings, but you can adopt reasonable rules regarding the recording of meetings.

57. Our meetings routinely last until midnight. Can we have a time limit to our meetings? How can we shorten them?

A. You can establish a standard ending time for meetings. The Illinois Municipal Handbook has a list of tools to run effective meetings. These include use of a consent agenda, effective use of committees and other tips.

58. We only have one meeting over the summer, and we have bills that we receive between meetings that have to be paid before our meeting. Can we authorize our mayor or administrator to pay them between meetings?

A. Yes. You can adopt a resolution for the routine payment of bills for certain utilities, etc. Be sure you establish a dollar cap for the expenditures, and ratify them at your meeting.

59. Our mayor is very powerful. This means we have a “strong mayor” form of government, right?

A. It is unlikely that you have a strong mayor form of government. Very few of these types of municipalities exist in Illinois.

60. If we have a manager, do we have the statutory manager form of government?

A. It depends. Some municipalities call their administrators “managers,” but they are not statutory managers. Statutory managers have appointment powers and other powers that administrators do not have.