



**STARTING THE
VILLAGE'S
OFFICIAL
YEAR:**

Taking Office

Making Appointments

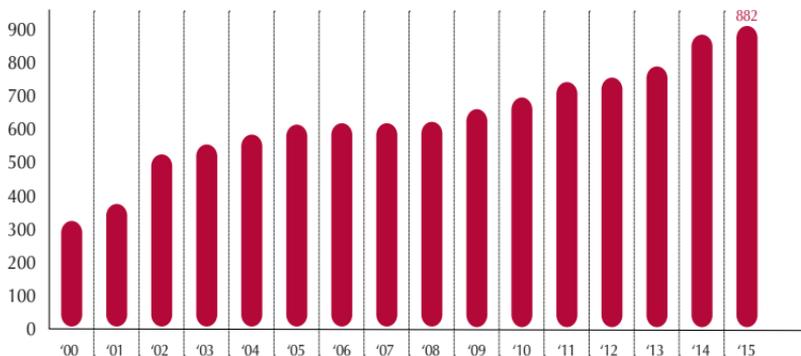
The Organizational Meeting

and More

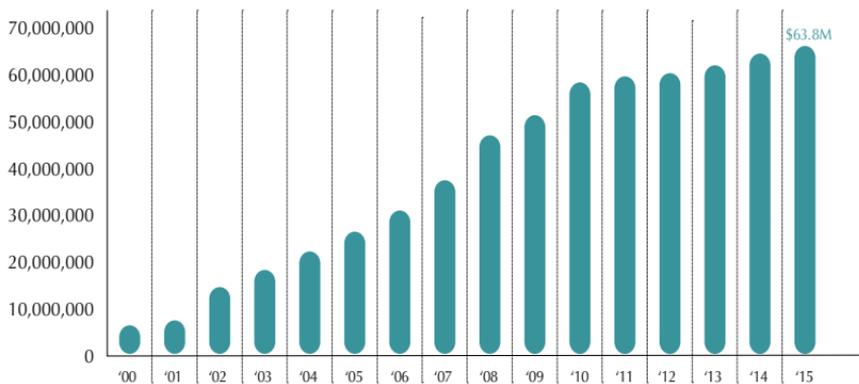
March 2016

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**STARTING THE VILLAGE'S
OFFICIAL YEAR:
TAKING OFFICE, MAKING APPOINTMENTS, THE
ORGANIZATIONAL MEETING AND MORE**

**A project of the
New York State Conference of Mayors
and Municipal Officials**

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To order additional copies contact:
NYS Conference of Mayors
119 Washington Avenue
Albany, NY 12210
(518) 463-1185 • (800) 446-9266
www.nycom.org

March 2016

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IT'S THE VILLAGE'S NEW OFFICIAL YEAR! NOW WHAT?

Welcome to the village's new official year and congratulations to those individuals who are newly elected or re-elected to village office. One of the first responsibilities of newly elected and re-elected village officials is participating in their village's organizational meeting (sometimes referred to as the annual meeting). This handbook is intended to assist village officials with commencing the official year and conducting the organizational meeting.

All of the information in this publication is based on the State statutes which apply to all villages in New York. Note, however, that local officials must refer to their own local laws to determine if their village has superseded the New York State Village Law with respect to any of these matters. In addition, the Villages of Alexander, Carthage, Catskill, Cooperstown, Deposit, Fredonia, Ilion, Mohawk, Ossining, Owego, Port Chester and Waterford still operate under a village charter. Consequently, in these villages, State law applies only to the extent that it is not inconsistent with the village's charter.

WHAT IS THE "OFFICIAL YEAR"?

Pursuant to Village Law § 3-302(1), each village's official year begins at noon on the first Monday of the month following the month in which the village's general election is held:

- For villages that hold their general village elections on the third Tuesday of March, their official year begins at noon on the first Monday in April.
- For villages that hold their general village elections on the third Tuesday of June, their official year begins at noon on the first Monday in July.

- For villages that hold their general village elections on the general election day in November, their official year begins at noon on the first Monday in December.*

The term of each elective and appointive village officer begins at the start of the official year.¹ Village Law § 3-302(3) establishes the default term of office for mayor, trustee, treasurer and clerk as two years, and the term of office of village justice as four years. The term of office of any village office not specified in the Village Law is one year.² If a village creates an office that is not defined in State law, the village should specify the term of office for that position in order to avoid confusion. Villages may extend the terms of office for its elected and appointed officials pursuant to the procedure outlined in Village Law § 3-302.

TAKING OFFICE

Overview

If the village held an election in the month prior to the commencement of the official year, then one of the first orders of business is for the newly elected or the re-elected officials to file their oaths of office with the village clerk. The elected village offices are mayor, trustees and justices.

Regardless of when the organizational meeting is held, the term of office for elected village officials begins at the commencement of the village's official year.

Qualifications

To be eligible to be elected as a village mayor, trustee, or justice, an individual must be 18 years of age or older, a citizen of the

* Note that some of the villages that hold their elections in November have invoked their municipal home rule authority and changed the beginning of their official year to January 1st. Villages considering such a change should consult with their attorney.

United States, and a resident of the village by the day of the election.†

The Oath of Office

Pursuant to Public Officers Law § 10, elected and appointed officials must **file** their oaths of office with the village clerk prior to assuming their office and being able to “enter upon the discharge” of any of their official duties. Elected officials may file their oaths of office any time after the election results are certified, including prior to the commencement of the official year and their term of office.

Elected officials must file their oaths of office within 30 days of the commencement of their term of office. Appointed officials must file their oaths of office within 30 days of being appointed. **If an elected or appointed official fails to file their oath of office within the required 30 days, then, pursuant to Public Officers Law § 30, a vacancy is created in their office.**

The official oath may be administered and filed at the organizational meeting, although elected officials may file their oath of office any time after the election results are certified.

Officials must re-file an oath of office each time they are re-elected or re-appointed. Note, however, that officials who are in the middle of their term of office are not required to file an oath of office each official year.

Within three days of the election, the village clerk must notify the winners that they must file an oath of office and an undertaking (if an undertaking is required) in order to qualify for and to assume their duties of office. The notice must also state where the oath and undertaking must be filed.

† Villages with less than 3,000 residents may adopt resolutions providing that the village justice may reside within the county in which the village is located.

Pursuant to New York State Constitution Article 13, Section 1, the oath of office must read as follows:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.

Many municipalities maintain an oath book containing this oath, which all elected and appointed officials sign. The oath of office is typically administered by the clerk. However, the village mayor may, as the presiding officer of the board of trustees, administer the oath of office to the village trustees. Various other officials, as provided by Public Officers Law § 10, may also administer the oath of office.

The oath of office may be recited orally **for ceremonial purposes**, but a written, signed, acknowledged oath of office must be filed in the office of the village clerk to satisfy the requirements of Public Officers Law §§ 10 and 30. Village justices must also file oaths of office with the county clerk and the Office of Court Administration. Registrars of vital statistics, deputy registrars and sub-registrars must also file their oaths of office with the county clerk.

Official Undertakings

State law requires certain public officials, generally those officials that have custody or control of village money, to execute an undertaking or bond, which is a contract under which a surety agrees to pay a debt if the official who is bound to pay a debt fails to do so. Pursuant to Village Law § 3-306, the treasurer, clerk, village justice, acting village justice, and any other officers and employees the board of trustees requires must execute an undertaking. The board of trustees may determine that the expense of the undertakings will be a village charge.

Because there are no statutory requirements for the amount of the undertaking, the board of trustees must establish the amount.

Generally, the village board obtains the undertaking for the appropriate offices when it purchases other insurance, such as property and liability coverage.³

An undertaking is not required to be filed in order to take office. However, if an officer who is required to file an undertaking with the village clerk fails to do so within 30 days of the beginning of their term if they are an elected official, or within 30 days of being notified of their appointment if they are an appointed official, then their office will be deemed vacant pursuant to Public Officers Law § 30.

THE ORGANIZATIONAL MEETING

The New York State Village Law does not specifically require villages to hold organizational meetings. Regardless, references to an organizational meeting, sometimes also referred to as the annual meeting, appear throughout State statutes. Consequently, State law clearly implies that villages should hold an organizational meeting.

The timing of the organizational meeting is left to the discretion of the village board of trustees, although it may not be held prior to the beginning of the official year. Generally, the organizational meeting is held the first week of the official year, and frequently it is held on the evening of the first Monday of the official year. NYCOM recommends that the organizational meeting be held during the first month of the village's official year.

The Purpose of the Organizational Meeting

The organizational meeting serves many purposes, including swearing in recently elected officials, appointing non-elected officials and establishing the procedures of the board of trustees as well as policies of the village.

Swearing in Elected Officials

Since the term of an elected village official begins at noon on the first Monday of the month following the month when the village holds its elections, newly elected and re-elected officials may file their oaths of office with the village clerk prior to the organizational meeting. If an elected official takes and files their oath of office prior to the organizational meeting, they may still participate in any ceremonial swearing-in of the recently elected officials at the organizational meeting. Note, however, that the ceremonial swearing-in is just that, ceremonial; *it has no legal effect*. Elected officials must file their oaths of office with the village clerk prior to participating in any official village business, including the organizational meeting. This may be accomplished by signing a village's oath book (with the signature acknowledged by the village clerk) or filing a separate written oath that has been properly acknowledged.

Appointing Officials

Overview

After the newly elected and re-elected officers have filed their oaths of office or signed the oath book, the mayor, as the presiding officer of the board of trustees, should call the organizational meeting to order. While there is no statutory mandate as to the order in which business is conducted at such meeting, it is not uncommon for the first order of business to be the filling of those appointive offices for which the term of office has expired.

If the mayor has the power of appointment with respect to a particular office, a trustee does not have the authority to nominate a candidate for appointive village office. As a member of the board of trustees, the mayor may also vote on their appointment. In order for the appointment to be effective, it must be approved by a majority of the board of trustees. The minutes must reflect the mayor's nomination and the board's subsequent vote.

Provided the term of office has expired, the offices available for appointment at the organizational meeting include:

- Clerk;
- Treasurer;
- Clerk-treasurer, if such offices have been combined;
- Assessor or assessors;
- Deputies to any duly established office, such as deputy clerk, deputy treasurer, or deputy clerk-treasurer;
- Acting justice, if the village has established the office of village justice;
- Planning board and zoning board of appeals members;
- Members of any other village board or commission; and
- Any other offices that have been locally established.

It is not necessary to annually reappoint individuals who are serving multi-year terms of office.

Some statutes provide for a different appointment power and make some positions mayor-only appointments or board-only appointments. However, unless provided for differently under State statute or local law, appointments are made by the mayor with board approval.

Some mayoral appointments do not need board approval, such as designation of one of the trustees to serve as deputy mayor and appointments to filling vacancies in elected or appointed positions pursuant to Village Law § 3-312.

Examples of board-only appointments include:

- Registrars and deputy registrars of vital statistics;
- Members of the police department; and
- Election inspectors.⁴

Public Officer or Employee?

Village officials are frequently faced with the question of whether a particular position is a public office, requiring the individual to file an oath of office. Individuals can serve a local government in one of three ways: they can be public officers, employees, or independent contractors. Each type of service is governed by its

own set of rules. Adding confusion to this issue, however, is that some public officers are employees whose employment is governed by civil service rules, while other public officers serve a term of office and are exempt under civil service rules.

To understand this issue fully, one must first understand how a public officer is defined. New York’s courts have described public officers as those governmental positions whose duties involve the exercise of some of the municipality’s sovereign powers. Stated differently, “A position is a public office when it is created by law with duties cast on the incumbent which involve an exercise of some portion of the sovereign power and in the performance of which the public is concerned and which is continuing in its nature and not occasional or intermittent.”⁵

Even courts have had difficulty distinguishing between public officers and those employees who are not public officers. The table below compares the similarities and differences between (a) public officers who serve a term of office, (b) public officers who do not serve a term of office, and (c) employees who are not public officers:

Public Officer Serves a Term of Office	Public Officer Does Not Serve a Term of Office	Employee is Not a Public Officer
<ul style="list-style-type: none"> • Must Be a Citizen of the United States; 	<ul style="list-style-type: none"> • Must Be a Citizen of the United States; 	<ul style="list-style-type: none"> • Is Not Required to Be a Citizen of the United States;
<ul style="list-style-type: none"> • Must Be at Least 18 Years Old; 	<ul style="list-style-type: none"> • Must Be at Least 18 Years Old; 	<ul style="list-style-type: none"> • Must Meet Minimum Age Requirements Under Labor Laws;
<ul style="list-style-type: none"> • Must Be a Resident of the Village, Unless a Local Law Has Expanded the Residency Requirement;⁶ 	<ul style="list-style-type: none"> • Must Be a Resident of the Village, Unless a Local Law Has Expanded the Residency Requirement;⁷ 	<ul style="list-style-type: none"> • Is Not Required to Reside in the Village Unless the Municipality Has Passed a Local Law Requiring Residency;

Public Officer Serves a Term of Office	Public Officer Does Not Serve a Term of Office	Employee is Not a Public Officer
<ul style="list-style-type: none"> • Is Entitled to the Salary as an Emolument of the Office Unless Salary is Tied to Performance Such as Meeting Attendance; 	<ul style="list-style-type: none"> • Compensation is Set by Local Governing Board, Subject to State's Civil Service and Labor Laws and Any Applicable Labor Contract; 	<ul style="list-style-type: none"> • Compensation is Set by Local Governing Board, Subject to State's Civil Service and Labor Laws and Any Applicable Labor Contract;
<ul style="list-style-type: none"> • Is Required to File an Oath of Office Within 30 Days of Appointment; 	<ul style="list-style-type: none"> • Is Required to File an Oath of Office Within 30 Days of Appointment; 	<ul style="list-style-type: none"> • Is Not Required to Take or File an Oath of Office;
<ul style="list-style-type: none"> • Serves a Specific Term of Office (e.g. 1, 2 or 4 Year Term); 	<ul style="list-style-type: none"> • May Have an Employment Contract for a Specific Period or May Be Covered by Civil Service Law Regarding Termination of Service; 	<ul style="list-style-type: none"> • May Have an Employment Contract for a Specific Period or May Be Covered by Civil Service Law Regarding Termination of Service;
<ul style="list-style-type: none"> • May Hold Over in Office After the Expiration of the Term of Office; 	<ul style="list-style-type: none"> • Hold Over in Office is Inapplicable; 	<ul style="list-style-type: none"> • Hold Over in Office is Inapplicable;
<ul style="list-style-type: none"> • May Vacate the Office if One of the Events Identified in Public Officers Law § 30 Occurs; and 	<ul style="list-style-type: none"> • May Vacate the Office if One of the Events Identified in Public Officers Law § 30 Occurs; and 	<ul style="list-style-type: none"> • Is Not Subject to Public Officer's Law § 30; Serves Until Either Voluntarily or Involuntarily Separated From Service; and
<ul style="list-style-type: none"> • May Be Removed From Office During the Term Pursuant to Public Officers Law § 36, Unless a Local Law Providing for the Discipline of a Public Officer Has Been Adopted. 	<ul style="list-style-type: none"> • May Be Removed From Office Pursuant to Public Officers Law § 36, Unless a Local Law Providing for the Discipline of a Public Officer Has Been Adopted. 	<ul style="list-style-type: none"> • Serves at the Pleasure of the Appointing Authority, Subject to the Protections Potentially Provided by Statute (i.e., Civil Service Law) or a Labor Contract.
<ul style="list-style-type: none"> • Examples include: <ul style="list-style-type: none"> - Mayor - Village Trustee - Clerk - Treasurer - Deputy Clerk - Deputy Treasurer - Comptroller/Controller 	<ul style="list-style-type: none"> • Examples include: <ul style="list-style-type: none"> - Police Officer - Code Enforcement Officer - Building Inspector - Parking Enforcement Officer 	<ul style="list-style-type: none"> • Examples include: <ul style="list-style-type: none"> - Department of Public Works Staff - Clerical/Administrative Staff - Justice Court Clerk

Holding Over in Office

If an appointed official's term of office has expired but the mayor has not appointed someone to fill the office or the board of trustees has not approved the mayor's appointment, then the individual who duly entered on the duties of the office holds over and continues to discharge the duties of the office after the expiration of their term until their successor is chosen and qualified. A "hold over" continues to receive the salary of the office and continues to perform all the duties of the office. If the office is abolished, the hold over provisions do not apply.

Even though there is someone holding over in the office, the office is still deemed vacant for purposes of choosing a successor. Therefore, a successor can be chosen at any time, thereby removing the hold over from the position. Employees and independent contractors never hold over their position as they do not serve terms of office. In addition, judicial officers such as the village justice and acting village justice are expressly exempted from the provisions of Public Officers Law § 5 and thus never hold over in office.

The Village Attorney

The village attorney is generally the primary attorney for the village, although each village must refer to its own local laws or resolutions to determine if the position of "village attorney" has been expressly created and, if so, what its duties and responsibilities are. Because the mayor and the board of trustees maintain separate responsibilities, they may have independent interests and needs when seeking legal advice. Consequently, there are three clients which a village attorney may be called on to serve: the village as a corporate entity, the mayor as the chief executive public officer, and the board of trustees as the local legislative body. The relationship of the village attorney with these various clients is directly impacted by the ethical rules that govern lawyers. Additional information regarding the hiring of an attorney to advise and represent the village can be found in **NYCOM's Handbook for Village Officials**, available on the NYCOM website at www.nycom.org for NYCOM members.

ORGANIZATIONAL MEETING BUSINESS

Overview

After newly elected and re-elected officials have filed their oaths of office, completed the ceremonial swearing in, and appointed the non-elected officials, the board of trustees generally turns its attention to the business of adopting policies and taking actions that are performed annually, either as required by State law or as a matter of course.

Designating the Village's Official Newspaper

Designation of an official newspaper is generally effective for one year and is usually accomplished at the organizational meeting. To be designated as a village's official newspaper, a newspaper must have general circulation within the village. The newspaper is not required to be published in the village, but the board of trustees must determine that the newspaper is broadly distributed within the village. A "penny saver" or other publications which are distributed or made available primarily for advertising purposes may not be designated as an official newspaper. If the village does not designate an official newspaper, then each time the village must publish a notice, the resolution authorizing the publication must also specify the particular newspaper in which the notice is to be published.

Villages may designate multiple newspapers as the village's official newspapers; however, NYCOM does not recommend this practice because each time a notice must be published, the village **MUST** publish the notice in each of the village's official newspapers.⁸ The time period for publishing the notice must be satisfied for each newspaper notice. For example, if a statute requires 10 days to elapse between the publication of a hearing notice and holding the hearing, 10 days must elapse between the publication of notices in each of the village's official newspapers.

Establishing a Regular Meeting Schedule

State law does not prescribe the number or frequency of meetings boards of trustees must hold. Rather, the board of trustees decides, by resolution adopted at the organizational meeting, when they will meet. The board may adopt a regular meeting schedule (e.g., the 1st and 3rd Tuesdays of every month or the 2nd Monday of every month).

The only State law that addresses scheduling meetings is the Open Meetings Law, which requires public bodies, such as boards of trustees, to notify the news media and the public at least 72 hours prior to holding any meeting. The notice must include the name of the public body that is meeting as well as the meeting date, time and location. This requirement can be satisfied by providing separate notices to the news media and the public for each meeting. Alternatively, the board may authorize the clerk to notify the news media and the public of all of the meetings that have been regularly scheduled for the upcoming year. A public body is not required to place a legal notice or an advertisement in a newspaper that a meeting will be held at a certain time and place.

NYCOM recommends that villages notify the news media via a letter, fax, or email. In addition to notifying the news media, the public must be notified by posting notices in the village hall and any other location where official notices are normally posted (e.g., local library or community board). Finally, notices of meetings must be posted on the village's website if it has the ability to do so.⁹

If at any time during the year, the time, date or location of any previously noticed meetings is changed, the public body must notify both the news media and the public of the change.

Special Meetings

State law does not provide a procedure for calling or holding special meetings of the village board of trustees. As a result, there is often confusion as to who may call a special meeting.

Consequently, the board of trustees should adopt a resolution setting forth the procedure for calling special meetings. The procedure should include the method for notifying the members of the board. The notice must be reasonably calculated to ensure that all members of the board of trustees receive the notice.

Because an emergency may require the board of trustees to call a special meeting on short notice, the procedure for notifying board members of the special meeting should be flexible (e.g., by email or telephone), without any requirements which might delay the meeting. Thus, requiring notice of a special meeting to be sent by regular mail is not a recommended method for calling special meetings.

Pursuant to the Open Meetings Law, a meeting of a public body may only be held on less than 72-hours notice if there are exigent circumstances that warrant holding a meeting on such short notice. Notice must still be provided to the news media and the public to the extent practicable.

The Next Organizational Meeting

Because State law does not prescribe a date or time for holding the organizational meeting, the board of trustees may wish to establish the date. If a problem arises during the year and some board members will not be able to attend the organizational meeting as scheduled, it can be changed.

Establishing Rules of Procedure

State law does not establish rules of procedure for conducting village board meetings outside of the minimum procedures enumerated under the Open Meetings Law. If the board of trustees determines that operating pursuant to rules of procedure is in its best interest, the organizational meeting is an appropriate time to adopt such rules. If the village board has already adopted rules of procedure for its meetings, the organizational meeting is an appropriate time to review the procedures and amend them. Rules of procedure may be amended at any time. NYCOM does NOT recommend using Robert's Rules of Order because they are

complicated, cumbersome, and overly-formal for small public bodies such as three-, five-, and seven-member boards of trustees.

The Local Code of Ethics

Village boards of trustees are required to adopt a local code of ethics, which sets forth the standards of conduct reasonably expected of a village's officers and employees. Each code of ethics must address the following issues:

- Disclosure of interests in legislation before the local governing body;
- Holding of investments in conflict with official duties;
- Private employment in conflict with official duties;
- Future employment (i.e., a revolving door policy or the ability to appear before boards where a person was instrumental in legislation, etc.); and
- Such other standards relating to the conduct of officers and employees as may be deemed advisable.¹⁰

The code may also regulate or prescribe conduct which is not expressly prohibited by Article 18 of the General Municipal Law, such as nepotism and use of municipal property. However, the local code of ethics may not authorize conduct that is otherwise prohibited by State law.¹¹

The village mayor or manager must insure that a copy of the code of ethics is distributed to each officer and employee of the village.¹² In addition, the village mayor or manager must insure that a copy of General Municipal Law §§ 800 - 809 is posted in each public building under the village's jurisdiction. Failure to either distribute or receive a copy of the local code of ethics does not affect an officer's/employee's duty to comply with the code, nor does it affect the enforcement of provisions of the code.¹³

Additional information regarding laws and rules governing the ethical conduct of local officials can be found in **NYCOM's Living in the Glass House: An Ethics Guide for City and Village**

Officials, available on the NYCOM website at www.nycom.org for NYCOM members.

The Local Procurement Policy

Pursuant to General Municipal Law § 104-b, every municipality must adopt a policy governing the procurement of all goods and services which are not required to be purchased pursuant to the competitive bidding requirements of General Municipal Law § 103. The local policy should take into consideration local circumstances and needs and must be adopted by resolution of the board of trustees. Because the procurement policy must be reviewed annually, it is advisable to include the review of the village's procurement policy as part of the organizational meeting to insure compliance with this requirement.

Other Miscellaneous Policies

In addition to the procurement policy, villages are also required to adopt investment, workplace violence prevention, and sexual harassment prevention policies. There are other numerous policies that the village should have in place, including, but by no means limited to, cell phone use, computer and internet use policies, a fixed assets policy and a vehicle use policy. The organizational meeting is a good time to review these policies, although they may be adopted and amended at any time.

Annual Resolutions

Various matters require board action on an annual basis. To allow the board to approve claims in advance, to allow employees and officers to receive a specific mileage allowance for travel, to allow employees and officers to attend schools and conferences, and to designate depositories, the board must adopt annual resolutions. The board may simply readopt the previous resolutions verbatim if they are deemed sufficient, or the board may adopt new revised resolutions. Although the resolutions may be adopted at any time during the year, it is recommended that they be adopted at the organizational meeting to avoid the

necessity, and sometimes embarrassment, of having to call a special meeting to adopt a resolution for such purpose.

Advance Approval of Claims

Pursuant to Village Law § 5-524(6), the board of trustees may, by resolution, authorize claims for public utility services, postage, freight and express charges to be paid in advance of an audit of claims. An appropriate resolution authorizing advance payment of claims follows:

WHEREAS the board of trustees has determined to authorize payment in advance of audit of claims for public utility services, postage, freight and express charges; and

WHEREAS all such claims must be presented at the next regular meeting for audit; and

WHEREAS the claimant and the officer incurring or approving the claim are jointly and severally liable for any amount the board of trustees disallows.

NOW THEREFORE BE IT RESOLVED:

Section 1. That the board of trustees authorizes payment in advance of audit of claims for public utility services, postage, freight and express charges. All such claims must be presented at the next regular meeting for audit and the claimant and the officer incurring or approving the claims are jointly and severally liable for any amount the board of trustees disallows.

Section 2. That this resolution is effective immediately.

Mileage Allowance

Pursuant to Village Law § 5-524(7), the actual and necessary expenses the officers and employees incur in performing their official duties are a village charge. However, the board of trustees may, in lieu of auditing and allowing a claim for actual and necessary expenses for travel, determine to pay a reasonable mileage allowance for use of personal automobiles in performing

official duties. An appropriate resolution authorizing a mileage allowance follows:

WHEREAS the board of trustees has determined to pay a fixed rate for mileage as reimbursement to village officers and employees who use their personal automobiles while performing their official village duties;

NOW THEREFORE BE IT RESOLVED:

Section 1. That the board of trustees will approve reimbursement to such officers and employees at the rate of _____ per mile.

Section 2. That this resolution is effective immediately.

Attendance at Schools and Conferences

Pursuant to General Municipal Law § 77-b, municipal officials and employees may attend schools, conferences, and seminars conducted for the benefit of the local government. However, attendance is not authorized, nor can reimbursement be applied for, unless the board of trustees approves of the attendance in advance. This would include such meetings as NYCOM's Winter Legislative Meeting, NYCOM's Annual Meeting and Training School, NYCOM's Fall Training School, NYCOM's Public Works Training School, etc. An appropriate resolution authorizing attendance at schools and conferences follows:

WHEREAS there is to be held during the coming official year a) NYCOM's Winter Legislative Meeting, b) NYCOM's Annual Meeting and Training School, c) NYCOM's Fall Training School, d) NYCOM's Public Works Training School, and e) the following county association meetings; and

WHEREAS attendance by certain municipal officials and employees at one or more of these meetings, conferences or schools benefits the municipality;

NOW THEREFORE BE IT RESOLVED:

Section 1. That the following officers and employees are authorized to attend the following schools: _____

Section 2. That this resolution is effective immediately.

Designating Depositories

Pursuant to Village Law § 4-412(3)(2), the board of trustees must designate, by resolution, banks or trust companies in which the treasurer, clerk, receiver, and town receiver who are designated and appointed as village receiver may deposit village moneys received by them. An appropriate resolution designating depositories follows:

WHEREAS the board of trustees has determined that Village Law § 4-412(3)(2) requires the designation of banks or trust companies for the deposit of all village monies;

NOW THEREFORE BE IT RESOLVED:

Section 1. That the board of trustees designates the following institutions as depositories of all moneys received by the village treasurer, clerk, and receiver of taxes. Names of Institutions:

Section 2. That this resolution is effective immediately.

The Standard Work Day and Reporting Resolution

In order for local officials and employees to accrue pension credit, every local government must establish standard work days for hourly and salaried positions, including elected and appointed officials who serve terms of office. Village boards of trustees establish standard work days by adopting two separate resolutions: the Standard Work Day Resolution for Employees (Form RS 2418) and the Standard Work Day and Reporting Resolution for Elected and Appointed Officials (Form RS2417-A). Copies of these forms and detailed information regarding these resolutions and local government pension reporting requirements

can be accessed from the website of the Office of the State Comptroller at www.osc.state.ny.us/retire/employers/ and www.osc.state.ny.us/retire/employers/elected_appointed_officials/.

CONDUCTING MEETINGS

Open Meetings Law Requirements

The Open Meetings Law requires that the news media and public must have at least 72-hours notice prior to the holding of any regularly scheduled meeting.

This can be accomplished by notifying the public and the news media of each specified meeting. Alternatively, the board may authorize the clerk to send a single letter to the news media, with a corresponding public posting of a notice indicating the schedule of the regular board meetings, as adopted by the board of trustees at the organizational meeting.

This notice to both the news media and the public should state the dates of the meetings, the place of the meetings, and the times at which the meetings will be held.

A public body is *not required to place a legal notice or an advertisement in a newspaper* that a meeting will be held at a certain time and place. A public body must merely give notice to the news media and post the notice in a designated public location, as well as on their website (if the body has the capability to do so).

The Board's Rules of Procedure

State law does not establish meeting procedures for village boards of trustees, or any public body for that matter. Rather, State law only provides that the mayor presides at meetings and that a majority of the board constitutes a quorum for the transaction of business.¹⁴

State law requires the presence of a quorum of the legislative body to conduct public business. A quorum is a majority of the

total legally authorized membership of the body, regardless of vacancies or absences. Although a quorum is required to conduct a meeting, a majority vote of the total legally authorized membership of the body is still required to pass most measures.

If there are no formal, adopted rules, then the board of trustees generally operates under the authority of the presiding officer or develops its own rules as the need arises.

If the board determines that operating pursuant to rules of procedure - its own or those of a recognized authority - is in its best interest, the organizational meeting is an appropriate time to adopt or update such rules. Written rules minimize the potential for confusion and controversy.

Although NYCOM does not recommend their use, many villages have chosen to operate under Robert's Rules of Order. Any village board of trustees that wishes to operate under Robert's Rules of Order should adopt a resolution that expressly designates Robert's Rules of Order as governing meetings of the board of trustees.

Rules of procedure should at a minimum contain provisions on the following topics if not already provided for elsewhere:

- Regular meetings, when and where located, cancellation of;
- Special meetings, who may call them, when and how notice must be given to board members;
- Agendas - who prepares them, who can change them and when;
- Minutes - what must be included beyond Open Meetings Law requirements;
- Order of Business;
- General parliamentary rules on motions, seconds, debate etc.;
- Rules for use of recording equipment; and
- Adjournment.

APPENDIX A

Sample Meeting Procedures

The following are sample rules of procedure for a village board of trustees. They are meant only as a guideline and should be tailored to serve the specific needs of each village. A village board of trustees may wish to make its rules of procedure more extensive, but at the very least should address the topics in the sample.

Resolution Adopting Rules of Procedure for the Board of Trustees
of the Village of _____.

Whereas, Village Law § 4-412 provides that the Board of Trustees may determine its own rules of procedure;

Now, Therefore Be It Resolved, the following rules of procedure are adopted pursuant to Village Law § 4-412:

1. **REGULAR MEETINGS:** The Board of Trustees' Regular Meetings are held on the 3rd Tuesday of each month, commencing at 7 p.m. in the village hall boardroom.
2. **SPECIAL MEETINGS:** Special meetings of the Board of Trustees are all Board meetings other than Regular Meetings. A Special Meeting may be called by the Mayor or any Trustee upon notice to the entire Board. Notice must be given to each member of the Board of Trustees by telephone, in person, or email at least 24 hours in advance of the meeting unless an emergency requires the meeting to be held on less than 24-hours notice.
3. **QUORUM:** A quorum of the Board must be physically present to conduct business. A quorum of the five-member Board of Trustees is three, regardless of vacancies.
4. **EXECUTIVE SESSIONS:** Executive sessions must be held in accordance with NYS Public Officers Law § 105. All executive sessions must be entered into by a motion made from a properly noticed and conducted open meeting.

5. **AGENDAS:** The agenda is to be prepared by the Clerk at the direction of the Mayor. The Mayor or any Trustee may have an item placed on the agenda. When possible, items for the agenda must be provided to the Clerk in writing or via email at least 24 hours before the meeting's start time. The agenda must be prepared by noon on the day of the meeting. However, items may be placed on the agenda at any time. If necessary, a supplemental agenda may be distributed at the beginning of the meeting.
6. **VOTING:** Pursuant to the New York State Village Law and General Construction Law, each member of the Board has one vote. The Mayor may vote on any matter but must vote in case of a tie. A majority of the totally authorized voting power is necessary to pass a matter unless otherwise specified by State law. A vote upon any question must be taken by ayes and noes, and the names of the members present and their votes must be entered in the minutes.
7. **GENERAL RULES OF PROCEDURE:**
 - a) The Mayor presides at the meeting. In the Mayor's absence, the Deputy Mayor presides at meetings of the Board. The presiding officer may debate, move and take any action that may be taken by other members of the Board. Board members are not required to rise, but must be recognized by the presiding officer before making motions and speaking.
 - b) Every motion must be seconded before being put to a vote; all motions must be recorded in their entirety in the Board's minutes.
 - c) Once recognized, a member may not be interrupted when speaking unless it is to call him/her to order. If a member is called to order, they must stop speaking until the question of order is determined, and, if in order, they must be permitted to proceed. There is no limit to the number of times a member may speak on a question. Motions to close or limit debate may be entertained and require a two-thirds vote to pass.

8. GUIDELINES FOR PUBLIC COMMENT:

- The public may speak only during the Public Comment period of the meeting or at such other time as a majority of the Board allows.
- Speakers must step to the front of the room.
- Speakers must give their name, address and organization, if any.
- Speakers must be recognized by the presiding officer.
- Speakers must limit their remarks to five minutes on a given topic.
- Speakers may not yield any remaining time they may have to another speaker.
- Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.
- All remarks must be addressed to the Board as a body and not to any member thereof.
- Speakers must observe the commonly accepted rules of courtesy, decorum, dignity and good taste.
- Interested parties or their representatives may address the Board by written communications.

9. MINUTES:

- a) The Clerk is responsible for taking the minutes of the Board. Minutes must consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. Minutes must be taken at executive session of any action that is taken by formal vote. Executive session minutes must consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the NYS Freedom of Information Law (FOIL).
- b) Minutes must also include the following:
 - Name of the Board;

- Date, place and time of meeting;
 - Notation of the presence or absence of Board members and time of arrival or departure if different from time of call to order and adjournment;
 - Name and title of other village officials and employees present and the approximate number of attendees;
 - Record of communications presented to the Board;
 - Record of reports made by Board or other village personnel; and
 - Time of adjournment; and signature of Clerk or person who took the minutes if not the Clerk.
- c) Minutes should not contain a summary of the discussion leading to action taken or include verbatim comments unless a majority of the Board resolves to have the Clerk do so.
- d) The Clerk is responsible for creating a draft of the minutes within the timeframe provided for under the New York State Open Meetings Law. The Board of Trustees approves the minutes at the next board meeting. Amendments to the Clerk's minutes require approval of the Board of Trustee by a majority vote.

10. ORDER OF BUSINESS OF THE BOARD OF TRUSTEES:

- a) Call to order;
- b) Roll call;
- c) Approval of minutes of previous meeting;
- d) Report of officers and committees (list);
- e) Public comment period;
- f) Old business;
- g) New business;
- h) Appropriations;
- i) Auditing; and
- j) Adjournment.

11. GUIDELINES FOR USE OF RECORDING EQUIPMENT: All members of the public and all public officials are allowed to tape or video record public meetings. Recording is not allowed during executive sessions. Recording should be done in a manner which does not interfere with the meeting. The mayor

may determine whether the recording is being done in an intrusive manner taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the village board, size of the equipment, and the ability of the public to participate in the meeting. If the recording is determined to be intrusive and interferes with the meeting, the mayor may direct that the recording be stopped or undertaken in a different manner or location.

12. ADJOURNMENT: Meetings may be adjourned by motion.

13. AMENDMENTS TO THE RULES OF PROCEDURE: The foregoing procedures may be amended from time to time by a majority vote of the Board.

ENDNOTES

¹ Note that Village Law § 3-302(2) provides in part that the term of office for any officer appointed at any time other than the start of the official year commences at the time of his or her appointment. This provision of law occasionally creates confusion. As a general rule, an appointed public officer's term of office should coincide with the mayor's term of office. Villages that have appointed public officers whose terms of office commence at a time other than the beginning of the village's official year may wish to consult with their attorney about modifying the commencement of the term so that the appointed officer's term begins at the same time as the mayor's term of office.

² Village Law § 3-302(4).

³ Public Officers Law § 30(h).

⁴ See Public Health Law § 4121, Village Law § 8-800, and Election Law § 15-116.

⁵ Smith v. Jansen, 85 Misc. 2d 81, 83 (Sup. Ct. 1975).

⁶ See Public Officers Law § 3 and Village Law § 3-300.

⁷ See Public Officers Law § 3 and Village Law § 3-300.

⁸ General Construction Law § 60.

⁹ Public Officers Law § 105(5).

¹⁰ N.Y. General Municipal Law § 806.

¹¹ N.Y. General Municipal Law § 806(1)(a).

¹² N.Y. General Municipal Law § 806(2).

¹³ N.Y. General Municipal Law § 807.

¹⁴ See Village Law § 4-400 and General Construction Law § 41.



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Contact Loren Pratt

Phone: 315-727-1031

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