



**Parks and Trails Advisory Board  
Meeting Minutes - Approved  
Monday, March 4, 2024**

**I. Call to order**

The New Albany Parks and Trails Advisory Board held a regular meeting on March 4, 2024 at the New Albany Village Hall. Chair Stribick called the meeting to order at 6:00 p.m. and asked to hear the roll.

**II. Roll call**

Those answering roll call:

Mr. Stribick	present
Ms. Steelman	present
Ms. Bhat	present
Mr. Heuerman	present
Ms. Segnini	present
Ms. Stoughton	absent
Ms. Schaper	absent
Council Member Fellows	absent

Having five voting members present, the board had a quorum to transact business.

Staff members present: Law Director Albrecht, Planner II Christian, Planning Manager Mayer, Deputy Clerk Madriguera.

**III. Action on minutes: October 2, 2023**

Chair Stribick asked if there were any additions or corrections to the October 2, 2023 meeting minutes.

Hearing none, Board Member Steelman moved to approve the October 2, 2023 minutes. Board Member Segnini seconded the motion.

Chair Stribick asked if there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Ms. Steelman yes, Ms. Segnini yes, Ms. Bhat yes, Mr. Heuerman yes, Mr. Stribick yes. Having five votes, the motion passed and the October 2, 2023 meeting minutes were approved as submitted.

**IV. Additions or corrections to agenda**

Chair Stribick asked if there were any additions or corrections to the agenda.

Planning Manager Mayer answered that there were not.

Chair Stribick noted that there was no one present to address the board, so administration of the oath was unnecessary.

**V. Hearing of visitors for items not on tonight's agenda**

Chair Stribick noted there were no visitors present.

**VI. Cases: None.**

**VII. Other business**

Chair Stribick opened the Annual Organizational Meeting.

**1. Annual Organizational Meeting**

- Swear in new members.  
Chair Stribick noted there were no new members to swear in.
- Elections.  
Board Member Steelman asked whether the board needed a secretary. She continued that in the past the main duty was compiling the minutes, but now staff provides the minutes.

Planning Manager Mayer responded that the clerical secretary functions, such as taking the minutes are performed by the city staff. He clarified that the other duty for a board member who is elected secretary would be to serve as chairperson of a meeting in the event the chairperson and the vice-chairperson were unable to attend.

Board Member Steelman proposed that the same chairperson, vice-chairperson, and secretary continue to serve.

Board Member Bhat declined to continue as secretary.

Board Member Segnini indicated that she was willing to serve as secretary.

Board Member Bhat nominated Board Member Segnini to be the secretary of the New Albany Parks and Trails Advisory Board. Board Member Steelman seconded the motion.

Upon roll call: Ms. Bhat yes, Ms. Steelman yes, Ms. Segnini yes, Mr. Heuerman yes, Mr. Stribick yes. Having five yes votes Board Member Segnini was elected secretary of the New Albany Parks and Trails Advisory Board.

Board Member Heuerman nominated the current chairperson Mr. Stribick, and the current vice-chairperson Ms. Steelman, to continue as chairperson and vice-chairperson. Board Member Segnini seconded the motion.

Upon roll call: Mr. Heuerman yes, Ms. Segnini yes, Ms. Bhat yes, Ms. Steelman yes, Mr. Stribick yes. Having five votes, Mr. Stribick was elected chairperson and Ms. Steelman was elected vice-chairperson of the New Albany Parks and Trails Advisory Board.

- Establish date, time, and location for 2024 regular meetings.

Board Member Steelman moved that, as recommended by staff, the 2024 regular meeting should be held on the first Monday of each month at 6:00 p.m., in the New Albany Village Hall. Chair Stribick seconded the motion.

Upon roll call: Ms. Steelman yes, Mr. Stribick yes, Mr. Heurman yes, Ms. Bhat yes, Ms. Segnini yes. Having five yes votes, the motion passed and the board agreed that, as recommended by staff, their 2024 regular meetings would occur on the first Monday of the month at 6:00 p.m. in the New Albany Village Hall.

## **2. Cheat Sheet/Sample Agenda.**

Planning Manager Mayer then explained the PTAB Sample Agenda/Cheat Sheet that had been distributed to each of the board members. He further stated that it could be sent to the board electronically as well.

Chair Stribick thanked Planning Manager Mayer for his explanation and asked him to briefly describe the PTAB's scope of authority.

Planning Manager Mayer explained that the PTAB reviews parkland appropriateness location quantity and design of parkland and open spaces. Additionally, every five or so years the PTAB will make recommendations to City Council for primary corridors and circulation routes should be. The PTAB also helps to create the city's parks plan.

Board Member Bhat thanked Planning Manager Mayer for his explanation and requested that case staff reports include a bigger picture of the location. And further that the site plan indicate directional orientation, and the location of any easements, wetlands, or protected areas.

Planning Manager Mayer agreed that those items could be included going forward.

Board Member Bhat then asked for a discussion of the procedure for voting on motions.

Planning Manager Mayer explained the process of moving, seconding, and discussing an item of business. He further stated that in the event a board member votes no on an item of business, the New Albany City Code requires that board member to state the reason(s) for their no vote.

## **3. Annual Trail Update/Parks Framework Plan Implementation Update**

Planner II Christian delivered the staff report. He provided an update of the development of Taylor Farm Park which is under active construction. He also explained that the playground in the Windsor subdivision will be transitioning to city maintenance this year and that there would be improvements to that playground.

Board Member Segnini asked how the restroom building at Taylor Farm Park would work, noting that it was a public area.

Planner II Christian explained that the building will be secured by city staff each day. Planner II Christian also explained that the city is currently working on additional connectivity to Taylor Farm Park.

Board Member Bhat asked whether the board would be involved in the update to the Windsor playground.

Planner II Christian responded that board members were welcome to attend meeting regarding the update, but the PTAB would not be reviewing applications related to Taylor Farm or the Windsor playground. The PTAB reviews parks proposed by private developers.

Planner II Christian asked for further questions.

Hearing none, Planning Manager Mayer turned the meeting over to Law Director Albrecht to review the Boards and Commission Rules and Regulations.

#### **4. Boards and Commissions Rules and Regulations**

Law Director Albrecht encouraged the board to review their orientation information and said that the orientation materials could be redistributed.

Law Director Albrecht advised the board on the Open Meetings and Ohio's Sunshine Laws. He specifically cautioned the board not to use the Reply All feature to respond to emails because emails such responses could be construed as meetings. He encouraged the board members to take care not to discuss matters pending before the board outside of a public meeting, and assured them that staff was always available to answer any questions or concerns regarding pending matters.

Chair Stribick asked what a quorum was for the PTAB.

Planning Manager Mayer responded that a quorum was four voting members.

Chair Stribick remarked that if a conversation occurred between fewer members than a quorum, that it was not a meeting.

Law Director Albrecht responded that while a conversation at Bob Evans between a couple of members may not violate the law, board members should take care to refrain from round-robin communication, and the best practice was that all conversations regarding pending matters occur at the board meeting.

Chair Stribick asked for comments or questions. Hearing none, he polled members for comment. Hearing none, he thanked the board and staff.

### **VIII. Adjournment**

Having no further business, Board Member Steelman moved to adjourn the March 4, 2024 New Albany Parks and Trails Advisory Board meeting at 6:42 p.m. Board Member Bhat seconded the motion.

Upon roll call: Ms. Steelman yes, Ms. Bhat yes, Mr. Heurman yes, Ms. Segnini yes, Mr. Stribick yes. Having five yes votes, the motion passed and the meeting was adjourned.

Submitted by Deputy Clerk Christina Madriguera, Esq.

### **Appendix**

- Board and Commission Orientation Material – Parks and Trails Advisory Board
- Sample Agenda Cheat Sheet
- 24 0304 PTAB Meeting Presentation



**New Albany Parks & Trails Advisory Board Agenda**

Monday, November 6, 2023 6:00 p.m.

Village Hall, 99 W. Main Street, New Albany, Ohio 43054

**I. Call to order**

*[gavel]*

*I'd like to call to order the November 6, 2023 meeting of the New Albany Parks & Trails Advisory Board. Will the clerk please call the roll?*

**II. Roll call**

*[Clerk will call the roll and announce whether there are sufficient voting members present for a quorum. PTAB requires at least 4 voting members.]*

**III. Action on the minutes: March 6, 2023**

*The first item on the agenda is the action on minutes from the March 6, 2023 meeting. Are there any corrections to last month's minutes?*

*Can I have a motion to approve the minutes [with the suggested correction(s)]?*

*Is there a second on the motion?*

*Is there any discussion on the motion?*

*Will the clerk please call the roll?*

*[Clerk will read roll for approval].*

**IV. Additions or corrections to agenda and oath**

*Are there any additions or corrections to the agenda from either staff or board members?*

Swear in all witnesses/applicants/staff whom plan to speak regarding an application on tonight's agenda. "Do you swear to tell the truth and nothing but the truth".

*Ask everyone who wished to address the board please rise and raise your right hand and ask "do you swear to tell the truth and nothing but the truth?"*

**V. Hearing of Visitors for Items Not on Tonight's Agenda**

*Are there any visitors wishing to speak on items not on tonight's agenda?*

**VII. Cases:**

**FDP-87-2023 Final Development Plan - Parkland and Open Space Review**

Review and recommendation regarding the suitability of parkland and open space proposed to be provided as part a 151 lot, age-restricted residential housing development on 63.5+/- acres for the subdivision known as The Courtyards at Haines Creek.

**Applicant: EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.**

*The first case on our agenda is \_\_\_\_\_, can we hear the staff report please?*

*[staff provides a presentation of the application]*

*Can we hear from the applicant please?*

*Are there questions or comments from the board for staff or for the applicant?*

*Are there members of the public who would like to be heard on this application?*

*Would the applicant like to respond to the comments made?*

*Does the applicant agree with the conditions proposed by staff, if any?*

*Motion of Acceptance of staff reports and related documents into the record for FDP-87-2023.*

*Can I have a motion to accept the staff reports and related documents into the record?*

*Is there a second on the motion?*

*Is there any discussion on the motion?*

*Will the clerk please call the roll?*

*Motion of approval for application FDP-87-2023 based on the findings in the staff report with the conditions listed in the staff report, subject to staff approval.*

*Can I have a motion for approval?*

*Is there a second on the motion?*

*Is there any discussion on the motion?*

*Will the clerk please call the roll?*

***[Repeat for each, additional application on the agenda]***

**VI. Other Business**

*Is there any other business to address tonight?*

**VII. Poll Members for Comment**

*Do any board members have any comments or anything else they would like to discuss?*

*[If none, move to adjourn].*

**VIII. Adjournment**

*I move to adjourn the meeting at [time].*

*Do I have a second?*

*Are there any objections? Hearing none, the meeting is adjourned. [gavel].*

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# PARKS AND TRAILS ADVISORY BOARD

March 4, 2024



# Annual Organizational Meeting



# Annual Organizational Meeting

- o Swear in new members
- o Elect Chairperson
- o Elect Vice-Chairperson
- o Elect Secretary
- o Establish date, time, and location for 2024 regular meetings

\*Attendance is defined as in-person presence during the hearing and consideration of applications without a conflict of interest before that commission/board at that meeting. Attendance of all current serving members of the commission/board is encouraged, and three (3) consecutive absences by any member or four (4) absences in any 12-month period shall be considered a forfeiture of the membership to the commission/board. The forfeiture would occur regardless of the reason for the absences. The applicable department designee would then notify the clerk of council so that they can inform council that a new appointment needs to be made.

# Annual Implementation Update: Leisure Trail Master Plan Parks Framework Plan



**NEW  
ALBANY**  
PARKS FRAMEWORK PLAN

**PARKS FRAMEWORK PLAN**

October 5, 2021

# SUMMARY MATRIX

<b>KEY</b>	<i>Expected Timeline</i>	<i>Order of Magnitude Costs</i>
	●●● Short-term (1-2 yrs)	\$ Low cost
	●●● Medium-term (3-4 yrs)	\$\$ Medium cost
	●●● Long-term (5+ yrs)	\$\$\$ High cost

NAME OF PARK	ACRES	RECOMMENDED IMPROVEMENTS	EXPECTED TIMELINE	ORDER OF MAGNITUDE COSTS
<b>NEIGHBORHOOD PLAYGROUNDS</b>				
✓ North of Woods Playground <i>*changes to city maintenance 12.15.2022</i>	0.46	Upgrade existing play equipment, replace play surface, add or replace seating, add or replace picnic tables, add nature play element, improve or add plantings	●●●	\$
✓ James River Playground*	2.27		●●●	
✓ Sumption Drive Playground	1.02		●●●	
Windsor Playground <i>*changes to city maintenance 08.03.2024</i>	1.82		●●●	
<b>NEIGHBORHOOD PARKS</b>				
✓ Byington Park	6.08	Add wooded trails, add picnic shelter, upgrade existing play equipment, add wayfinding signage	●●●	\$\$
✓ Planter's Grove Park*	14.33	Upgrade existing playground per recommendations for Pocket Playgrounds, remove sports courts, maintain abundance of open lawns	●●●	\$
✓ Lambton Park	7.26	Add fishing dock to pond, upgrade existing play equipment, add nature play	●●●	\$
Ratchford Fen's Park	7.93	Add a belvedere, gazebo, and nature play area	●●●	\$\$
<b>PARKLAND PRESERVES</b>				
Tidewater	11.61	Add trails and pathways through the site, add a small parking area, incorporate wayfinding and interpretive signage	●●●	\$\$

**In Design**

NAME OF PARK	ACRES	RECOMMENDED IMPROVEMENTS	EXPECTED TIMELINE	ORDER OF MAGNITUDE COSTS
<b>DESTINATION PARKS</b>				
Rose Run Park	24.78	Continue the Velo Loop, construct New Albany Veteran's Memorial, construct Rose Run III stormwater retention ponds and park space	● ● ●	\$\$\$
Kitzmiller Wetland Park	27.46	Preserve existing wetlands; add trails, boardwalks, and overlooks; add accessible sport courts and playground; build a modern pavilion; build a community skatepark; construct access drive and parking lot	● ● ●	\$\$\$
Taylor Farm	97.94	Construct a traditional pavilion/event center, create an event lawn, build access drive and parking lot, preserve existing wetlands, construct trails and boardwalks, build a small destination playground	● ● ●	\$\$\$

**Active Construction**

# Taylor Farm Park

August 2023



# Taylor Farm Park



**We want to hear from YOU!**

Scan the QR code below or visit this link to take our quick survey:

**[NewAlbanyOhio.org/Windsor-Park](https://NewAlbanyOhio.org/Windsor-Park)**



The City of New Albany plans to update the Windsor neighborhood park in 2024. The purpose of our public outreach campaign is to gain feedback and involve members of the Windsor neighborhood and overall New Albany community in the decision-making process regarding the update.

In addition to completing the survey, please mark your calendars to attend the Windsor Park public workshop on **Tuesday, April 9 from 4 p.m. to 6 p.m. at New Albany Village Hall (99 W. Main Street)** where we will reveal the survey results and you can provide additional input.



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# Boards and Commissions Rules and Regulations

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DEVELOPMENT



**PARKS AND TRAILS ADVISORY**

**CITY OF NEW ALBANY  
BOARDS AND COMMISSIONS MATERIAL**

**I. THE NEW ALBANY PARKS AND TRAILS ADVISORY BOARD – CHARTER, CODE & RULES**

**A. STANDARD RULES OF PROCEDURES FOR BOARDS AND COMMISSIONS – CITY CHARTER § 10.01**

1. Creation of Boards and Commissions. The City shall have a Planning Commission, a Board of Zoning Appeals, a Personnel Appeals Board, and such other boards and commissioners as may be created by Council.
2. General Rules for Boards and Commissions. The following general rules shall govern Boards and Commissions:
  - a) Each board or commission created by Council shall consist of at least three (3) members;
  - b) Compensation, terms, appointments, and removals shall be determined by council unless otherwise provided in this Charter;
  - c) Each member of a board or commission shall be and shall remain an elector of the City during the term of appointment, unless otherwise provided by Council;
  - d) A vacancy occurring during the term of any member of a board or commission shall be filled for the unexpired term in the same manner as the original appointment;
  - e) Each vacancy shall be filled within sixty (60) days;
  - f) Each board and commission shall establish its own rules of order to be approved by Council;
  - g) Members of boards and commission shall serve without compensation unless otherwise provided by council; and
  - h) All meetings of boards and commissions shall be open to the public, except as allowed by the laws of the State of Ohio.

**CHAPTER 139 – PARKS AND TRAILS ADVISORY BOARD**

**A. ORDINANCE § 139.01 – MEMBERSHIP; TERM AND VACANCY**

(a) There is hereby created and established a New Albany Parks and Trails Advisory Board to be composed of six members, which shall be appointed by Council. The New Albany Council Member who is chair of the Council Service Committee shall hold ex officio membership on the Advisory Board. The term of this ex officio member shall depend upon the discretion of Council. The remaining five Advisory Board members shall be appointed for three year terms commencing on January 1, with the exception of those initially appointed, whose terms shall be staggered as follows:

One year term	two members
Two year term	two members
Three year term	one member.

Council shall request from the Board of Education of Plain Local Schools written recommendation for one appointment to the Board. Said recommendation from the School Board shall be received by Council within 30 days of the request in order to be considered for approval.

(b) In the event of a vacancy on the Parks and Trails Advisory Board, Council shall appoint a replacement to fill the un-expired term. If the vacancy is the seat of the member recommended by the Board of Education, Council shall seek a recommendation for that member's replacement.

**B. ORDINANCE § 139.02 – COMPENSATION.**

Members of the Parks and Trails Advisory Board shall serve without compensation.

**C. ORDINANCE § 139.03 – MEETINGS; REPORTING; ABSENCES.**

(a) The Parks and Trails Advisory Board shall meet not less than once each month, or as needed. Minutes of all meetings shall be kept and forwarded to the Liaison Department. The "Liaison Department" shall be the department and staff designated by the Village Administrator to facilitate the Board's activities.

(b) Any member of the Board who has been absent from four consecutive regular meetings during any 12-month period, whether excused or not, is removed from membership.

**D. ORDINANCE § 139.04 – ADVISORY CAPACITY ONLY**

The Parks and Trails Advisory Board shall act solely in an advisory capacity, making recommendations to Council and the Administration.

**E. ORDINANCE § 139.05 – POWERS AND DUTIES.**

The Parks and Trails Advisory Board shall assist the Village in meeting goals related to open space preservation; and acquisition and development of active and passive parks, leisure trails and other leisure time facilities.

The Board shall not become an advocacy forum for any one recreational group or organization. The Board's role shall be that of facilitator for all recreational groups and organizations, in order to assist Council and Administration in efforts to provide suitable physical facilities to serve all leisure time needs and activities.

To meet these objectives, the Parks and Trails Advisory Board shall have the following powers and duties:

(a) Recommend to Council for its approval a master plan for the location, acquisition and development of leisure time facilities and open space preservation, including, but not limited to, capital budgetary needs and recommended priorities; and submit annual recommendations for revisions to the plan.

(b) Study and report to Council and/or the Administration the problems and needs of the Municipality regarding, but not limited to, maintenance and operating budgetary needs for leisure time facilities.

(c) Advise the Administration and Council concerning rules, regulations and policies for operation of leisure time facilities.

(d) Provide to the Administrator recommendations for budgetary and operating programs for public open space and leisure time facilities.

(e) Provide the Planning Commission, prior to its action on each final development plan, or if a final development plan is not required, on each final plat, a recommendation regarding the suitability of park land, or fee in lieu thereof, being provided to the Municipality, Subdivision Standards, Public Areas, of Chapter 1187, Subdivision Regulations and Chapter 1159, Planned Unit Development.

(f) Advise Council on the suitability of accepting donations and bequests of money or property, in trust or otherwise, for parks and leisure time facilities, which may be made from time to time.

(g) Provide liaison to Council by attendance at a Council meeting as required by Council or deemed appropriate by the chairman or the chairman's designate, who shall report on Board activities.

(h) Undertake such other assignments or studies on open space and leisure time facilities as may be requested by the Council and/or Administration.

**F. ORDINANCE § 139.06 – DEPARTMENTAL ASSISTANCE.**

The Parks and Trails Advisory Board may call upon the Administrator, and, through the Administrator, any department of the Municipality to render such assistance to the Board as may reasonably be required.

**CHAPTER 1187 – SUBDIVISION REGULATIONS**

**A. § 1187.02 – REQUIRED IMPROVEMENTS.**

The subdivider or developer of land shall provide and pay the entire cost of improvements to such land as follows:

(a) Street improvements shall consist of grading the right-of-way for full width; construction of curbs or curbed gutters and pavement; construction of draining structures and appurtenances. Two roof drain openings shall be provided in curb for each lot, or shall be machine cored by the builder.

(b) Sanitary sewers, including manholes, services and all appurtenances.

(c) Water distribution system, including mains, services, valves, fire hydrants and all appurtenances.

(d) Concrete sidewalks on both sides of street, except where Leisure Trails are required in accordance with the Village's Strategic Plan or as recommended by the **Parks and Trails Advisory Board**. Sidewalks shall be linked to external trails or sidewalks. Where special circumstances exist for sidewalk construction a fee in-lieu may be considered according to the procedure in Section 1187.18.

(e) Leisure Trails in accordance with the Village's Strategic Plan or as recommended by the **Parks and Trails Advisory Board**. Trails shall be linked to external trails or sidewalks. Where special circumstances exist for trail construction a fee in-lieu may be considered according to the procedure in Section 1187.18.

(f) Storm sewers, including manholes, inlets or catch basins, and all appurtenances, stormwater management features and facilities.

(g) Landscaping, screening and buffering features, if required by these regulations or the Zoning Code.

(h) Street lighting above public right-of-way which meets minimum illumination specifications approved by the Municipal Engineer. Light standards shall be approved by the Municipality.

(i) Erosion and sedimentation measures and practices.

All phases of the improvement shall be approved by the Municipal Engineer and shall be constructed in accordance with Municipal specifications and standards as approved by the Municipal Engineer.

#### **B. § 1187.15 – SUBDIVISION STANDARDS, PARKLAND DEDICATION**

(a) **Land Dedication**. The basic mandatory land dedication with each plat shall be twenty- four hundred (2,400) square feet per dwelling unit. Such area shall constitute ground, location facilities/equipment (per requirements of division (c) of this section suitable for municipally-owned and operated parks, recreation facilities and open space as reviewed and approved by the **Parks and Trails Advisory Board** and the Planning Commission and approved by the Council. Although encouraged, such land dedication need not be located within the area of such plat. Where a developer owns multiple parcels of development ground within the Municipality, it shall be permissible for such developer to make a park dedication for its current and future development. If such dedication is made, no parks shall be required in future development by such developer, its successors and assigns until such park dedication has been utilized through the

development of dwelling units at a ratio of twenty-four hundred (2,400) square feet of such park dedication per dwelling unit.

## II. OPEN MEETINGS

A. Ohio law requires that meetings of public bodies be open to the public, except to the extent executive sessions are permitted under the Act. R.C. 121.22.

1. The basic purpose of the Ohio open meetings law is to require all public officials to take official actions and conduct all deliberations upon official business only in open meetings, with certain exceptions set forth in the law.
2. The open meetings law is to be liberally construed with these goals in mind.
3. "Meeting" means a (1) prearrange gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.
4. Rules may not prohibit the audio and video recordings of meetings, but they may require recording equipment to be silent, unobtrusive, self-contained and self-powered.
5. Minutes of regular and special meetings of public bodies must be maintained and open for public inspection. However, minutes for authorized executive sessions need only reflect the general subject matter discussed. R.C. 121.22.

a) The Ohio Supreme Court touched on the minutes requirements for executive sessions and regular meetings of a public body in the case of White v. Clinton County Bd. of Commissioners when it stated the following:

When one considers the sensitive nature of the topics examined in executive sessions, it follows from this language that it is only the minutes of an executive session which may be properly limited to "the general subject matter of discussions." The minutes of any other meeting of a public body must contain a more substantial treatment of the items discussed, and certainly should not be limited to a mere recounting of the body's roll call votes.

76 Ohio St.3d 416, 423.

b) Similarly, in the case of Wyse v. Rupp, the court addressed the requirement that minutes of executive sessions only reflect the general subject matter of the discussions. 6th Dist. No. F-94-19, 1995 WL 547784 (Sept. 15, 1995). The basis for this exception, according to the court, is that executive sessions are permitted only when confidential matters are discussed or there is some legitimate need for closed discussions. Thus, there is a need to protect the persons or issues discussed in executive sessions and no records of these discussions need be kept.

B. All public bodies must take all official actions and hold all deliberations in meetings that are open to the public.

C. Although not entirely clear, municipal charter provisions regarding the meetings of municipal bodies probably take precedence over the Ohio open meetings law provisions.

D. Executive Sessions



An executive session is a portion of a meeting from which the public is excluded and at which only such persons as the board may invite are permitted to be present.

#### E. Proper Reasons for Adjourning into Executive Session

Under Ohio Revised Code Section 121.22, a public body can enter into an executive session for one of the following reasons:<sup>1</sup>

1. To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee or official. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office.

If a public body holds an executive session pursuant to this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

2. To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

3. To confer with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.

4. To prepare for, conduct, or review negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment.

5. To discuss matters required to be kept confidential by federal law or regulations or state statutes.

6. To review specialized details of security arrangements if disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.

7. In the case of a county hospital operated pursuant to Chapter 339 of the Revised Code, a joint township hospital operate pursuant to Chapter 513 of the Revised Code, or a municipal hospital operated pursuant to Chapter 749 of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code.

8. To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political

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<sup>1</sup> City Charter § 4.03(E) states that “[a]ll meetings of Council shall be open to the public, except as allowed by the laws of the State of Ohio, and for economic development purposes.”

subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

- a) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715, 725, 1724, or 1728, or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.
- b) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

F. If a public body holds an executive session to consider any of the matters listed in sections (2) to (8) above, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

G. Before a public body can hold an executive session, it must conduct a roll call vote of its members.

1. The motion to go into executive session must state which one or more of the subjects permitted for executive session discussion is to be considered. An executive session may not be held unless such a motion, upon roll call vote, is approved by a majority of a quorum of the board.<sup>2</sup>

2. If the specified purpose is to discuss one of the personnel-related matters stated above (R.C. 121.22(G)(1)), the public body must specify which of the listed purposes it is going into executive session to discuss, i.e. "to discuss the dismissal of an employee." The motion need not name the person who is to be discussed. Beisel v. Monroe County Bd. of Educ., 7th Dist. No. CA-678, 1990 WL 125485 (Aug. 29, 1990); Jones v. Brookfield, 1995 WL 411842 (Trumbull County 1995). It is not sufficient to move for an executive session to discuss "personnel."

H. The motion to go into executive session to discuss any other matter mentioned above must specify the purpose(s) of the executive session, i.e. "to consider the purchase of property." Vermillion Teachers' Ass'n. v. Vermillion Local Sch. Dist. Bd. of Educ., 98 Ohio App.3d 524 (1994). It does not appear that any specific transaction must be referenced in the motion.

I. Although technically any public body can enter into an executive session if the statutory requirements are met, most boards and commissions will only be able to enter into executive session to discuss personnel (i.e. election of chair and vice-chair) and litigation.

J. If, during the executive session, a public body wishes to discuss a matter not described in the original motion, but permitted as a topic of executive sessions, it should return to open session and adopt a second motion to authorize discussion of the new topic.

K. Penalties for Violation of the Open Meetings Act.

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<sup>2</sup> Note that for discussion regarding exception (8), economic development, there must be a unanimous quorum.

1. Court of common pleas may issue an injunction compelling the members of a public body to comply, upon proof of a violation or threatened violation of R.C. 121.22.
2. Attorney fees shall be awarded unless the court determines that a well-informed public official would believe the challenged conduct would not violate the Act, and the conduct serves the underlying public policy asserted as permitting the conduct.

### **EXAMPLES OF FREQUENTLY ASKED OPEN MEETINGS LAW QUESTIONS**

**L. What is a public body?**

Any board, commission, committee, or similar decision-making body of a state agency, institution, or authority, and any legislative authority, board, commission, committee agency, authority, or similar decision-making body of a county, township, municipal corporation, school district or other political subdivision or local public institution, or any subcommittee of a public body, or any committee or subcommittee thereof.

**M. What if the public body does not have final decision-making authority?**

Courts disagree as to whether an ad hoc or advisory committee that lacks final decision-making authority is a public body.

**N. What is an executive session?**

An executive session occurs when members of a public body exclude members of the public from a portion of a public meeting, and they may be held only to discuss limited matters. Only persons invited by the public body to join the executive session may attend, and the public body may permit anyone it chooses to attend.

**O. What is a meeting?**

Before a public body is subject to the requirements of the open meetings act, it must first be having a meeting. A "meeting" is a prearranged gathering of a majority of the members of a public body to discuss or conduct public business. Each of these characteristics must be present, otherwise the gathering is not a "meeting" and is not subject to the open meeting act requirements.

**P. If the members of multiple public bodies meet together, whose meeting is it?**

Where members of a public body gather with representatives of other public bodies, the gathering may be construed to be a separate "meeting" for each public body with a majority attending.

**Q. What if the members of the public body are not "deliberating" or "discussing" public business? Some courts have found that a gathering of the members of a public body is not a meeting where they act only as passive observers in a ministerial fact-gathering capacity or informational session.**

**R. Are email communications considered "meetings"?**

At least one appellate court in Ohio had concluded that “Ohio’s Sunshine Law does not cover emails.” Haverkos v. Northwest Local School District Bd. of Education, 2005-Ohio-3489, 995 N.E.2d 862 (unsolicited email from one board member to two other board members did not violate the Open Meetings Act). The Court noted that during a 2002 revision of the open meetings law, the legislature did not amend the statute to include “electronic communications” in the definition of a “meeting.” According to the Court, this omission indicated the legislature’s intent not to include emails as potential “meetings.”

S. Can a member participate in a meeting by telephone?

No. Teleconferencing is prohibited – a member must be present in person to vote, deliberate, or to be counted in a quorum.

T. Can members of a public body have one-on-one conversations amongst themselves about public business without issuing notice for meeting?

Gatherings of public body members outside the traditional meeting context are difficult to characterize. Standing alone, one-on-one conversations between individual members, either in person or by telephone, do not violate the open meetings act. But a conference call between a majority of the members where public business is discussed is prohibited.

A public body must not, however, circumvent the act by scheduling back-to-back discussions of public business, which, taken together, are attended by a majority of the members. Such round-robin or serial meetings appear to violate the open meetings act.

U. Are work session meetings subject to the open meetings act?

Yes. Work sessions where public business is discussed by a majority of the members of a public body are meetings and must be noticed and open as any other meeting.

V. Where must public meetings be held?

The open meetings act does not specifically address where meetings may be held, however, some case law exists to suggest that meetings must be held in a public meeting place and within the geographical jurisdiction of the public body. Where space in the facility is too limited to accommodate all interested members of the public, closed circuit television may be an acceptable alternative.

W. What are the rights and remedies under the open meetings act? What are the ramifications of violating the open meetings act?

1. Rights. A person is guaranteed the right to attend a public meeting, not the right to be heard at that meeting. A disruptive person waives the right to remain and observe the meeting and may be removed.

Audio and video recording may not be prohibited, but the public body may establish reasonable rules regulating the use of such equipment, such as requiring equipment to be silent, unobtrusive, self-contained, and self-powered to limit interference with the ability of others to hear, see, and participate in the meeting.

Minutes of a public body's meetings are open for public inspection. Public release of information contained in the minutes that has a certain stigma attached to it or would negatively affect the subject of the information is not an invasion of privacy.

## 2. Remedies and Ramifications.

a) Court Action. If a person feels that the open meetings act has been violated, that person may file a court action called an injunction, which, if granted, will compel the members of the public body to comply with the law. Any person may file an injunction to enforce the open meetings act, and the action should be filed in the court of common pleas for the county where the meeting at issue took place within two years of the violation or alleged violation.

To prevail in an injunction action, the filing party must demonstrate the legal elements of irreparable harm and prejudice to the filing party. However, if the filing party proves that the public body violated or threatened to violate the open meetings act, the court will conclusively and irrefutably presume these elements, which relieves the filing party from this responsibility. A "knowing" violation of an injunction may result in the removal from office of one or more members of the public body.

Once the court finds a violation of the open meetings act, it must consider granting the injunction, regardless of the public body's subsequent attempt to cure the violation. Ohio courts have disagreed as to whether an invalid action can ever be cured by rediscussion followed by official action taken in an open session.

Besides an injunction, a person may also file a mandamus action under the public records act to compel the creation of, or access to, meeting minutes. Mandamus is also appropriate to order a public body to give notice of meetings to the person filing the action.

b) Invalidity. A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. Even if the formal action is adopted in an open meeting, if it results from deliberations that occurred in a meeting not open to the public, the action is still invalid, unless the deliberations were on a topic specifically permitted to be conducted in executive session.

c) Fines and Attorney's Fees. If a court issues an injunction, the court shall order the public body to pay a civil forfeiture of \$500.00 to the party that filed the action. In addition, the court shall also award to the filing party all court costs and reasonable attorney's fees. However, the attorney's fees award may be reduced or not awarded at all if the court finds that a well-informed public body reasonably would believe that the body was not violating the open meetings act and that a well-informed public body reasonably would believe that the conduct that was enjoined served the public policy underlying the authority asserted for the conduct.

On the other hand, if the public body wins in court and the court does not issue an injunction, and the court deems the action to have been frivolous, the court shall award to the public body all court costs and reasonable attorney's fees.

### III. LEGISLATIVE VS. ADMINISTRATIVE ACTIONS

City Council and most of its boards and commissions hear applications that can be categorized as either legislative or administrative. The Code, however, does not differentiate between those matters that are administrative (quasi-judicial) as opposed to those matters which are legislative in nature. This distinction is important because the degree of formality required at the hearing is based on whether the matter is legislative or administrative. If a matter is of a legislative nature, there is no requirement that testimony given be under oath or that applicants be permitted to submit evidence, including examining and cross-examining witnesses. In contrast, if a matter is of an administrative nature, there is a requirement that testimony given regarding the matter be under oath and subject to cross-examination. If these requirements are not met, an applicant may have a procedural due process claim against the City and the record on appeal may be expanded.

#### A. Legislative Matters

Legislative hearings involve the formulation of law or policy.<sup>3</sup> A legislative matter has ramifications beyond the immediate parties; it affects the public as a whole.<sup>4</sup> Legislative matters are subject to a formal public hearing. A public hearing must be preceded by formal public notice and "is one where members of the general public may speak and express their views on the question of governmental, political and policy considerations as to whether certain legislation should be adopted."<sup>5</sup> The statements by the public may include generalized statements as to the subjective opinions of the people and desirability of the use. When deciding a matter that is legislative in nature, the municipal body is not required to conduct a formal hearing with sworn testimony and cross-examination of the witnesses.

#### B. Administrative Matters

Administrative matters, unlike legislative matters, are not subject to the process whereby public participation is required.<sup>6</sup> Instead, administrative matters are subject to an adjudication hearing which may be open to the public.

Administrative hearings involve the determination of the rights of a specific person.<sup>7</sup> Decisions at an administrative hearing are based upon evidence. The evidence must be specific, substantial, reliable, and probative.<sup>8</sup> The Ohio Supreme Court has defined this standard as follows:

- (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) "Substantial" evidence is evidence with some weight; it must have importance and value."<sup>9</sup>

In an administrative hearing, testimony must be supported by facts and evidence. While a legislative hearing allows members of the public to express their opinions on questions of governmental, political

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<sup>3</sup> Jacob A Stein, Glenn A. Mitchell & Basil J. Mezines, *Administrative Law* § 25.02 (Matthew Bender 1999).

<sup>4</sup> *Id.*

<sup>5</sup> *In re Rocky Point Plaza Corporation*, 86 Ohio App.3d 486, 491, 621 N.E.2d 566 (10th Dist.1993).

<sup>6</sup> *In re Rocky Point Plaza Corporation*, 86 Ohio App.3d 486, 491, 621 N.E.2d 566 (10th Dist.1993).

<sup>7</sup> Jacob A Stein, Glenn A. Mitchell & Basil J. Mezines, *Administrative Law* § 25.02 (Matthew Bender 1999).

<sup>8</sup> *Arcaro Bros. Builders, Inc. v. Zoning Board of Appeals, City of North College Hill*, 138 Ohio App.3d 762, 742 N.E.2d 238 (10th Dist.2000).

<sup>9</sup> *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 589 N.E.2d 1303 (1992).

and policy considerations, adjudicatory hearings are not subject to public comment, but instead, involve the determination of legal rights of specific persons and whether such rights should be granted based upon evidence presented at the hearing.<sup>10</sup> The evidence presented at an administrative hearing should be direct evidence, which is more than speculation or opinion voiced in terms such as "might," "potential," "feels," and "wondered."<sup>11</sup> In sum, while a legislative hearing can include citizen input consisting of subjective and speculative comments and beliefs and desires, any testimony presented at an administrative hearing should be supported by facts.

In conducting an administrative hearing, testimony may be taken by affidavit, deposition or by oral examination.<sup>12</sup> Before testifying, a witness must be sworn to testify the truth.<sup>13</sup> If the testimony is not taken under oath, the testimony has no evidentiary value.<sup>14</sup> However, the omission of administration of the oath of a witness in an administrative hearing is waivable error. In the absence of objection, unsworn testimony is competent evidence.<sup>15</sup> In addition, the witnesses must be subject to cross-examination. As one Court noted, "cross-examination is intended to be a vital part of those adjudicatory hearings."<sup>16</sup>

Cross-examination and testimony under oath are important in the event of an appeal under Chapter 2506 of the Ohio Revised Code. Chapter 2506 of the Ohio Revised Code addresses appeals from orders of administrative officers and agencies. If an appeal is taken in relation to a final order, adjudication, or decisions of an administrative body, the common pleas court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505 of the Revised Code.

Generally, a court, under a Chapter 2506 appeal, is confined to the transcripts of the previous administrative hearing in making its decision as to the merits of the appeal. However, additional testimony and evidence may be submitted if:

(2) The appellant was not permitted to appear and be heard in person, or by his attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:

...

- (b) Offer and examine witnesses and present evidence in support;
- (c) Cross-examine witnesses purporting to refute appellant's position, arguments, and contentions;

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<sup>10</sup> Adelman Real Estate Co. v. Gabanic, 109 Ohio App.3d 689, 672 N.E.2d 1087 (11th Dist.1996).

<sup>11</sup> Id. at 695.

<sup>12</sup> R.C. § 2319.02.

<sup>13</sup> R.C. § 2317.30.

<sup>14</sup> Gibraltar Mausoleum Corp. v. City of Hamilton, 1 Ohio App.3d 107, 439 N.E.2d 922 (1st Dist.1981); In re Rocky Point Plaza Corporation, 86 Ohio App.3d 486, 621 N.E.2d 566 (10th Dist.1993).

<sup>15</sup> Stores Realty Co. v. City of Cleveland Bd. of Bldg. Standards and Bldg. Appeals, 41 Ohio St. 2d 41, 70 Ohio Op. 2d 123, 322 N.E.2d 629 (1975).

<sup>16</sup> Adelman Real Estate Company v. Gabanic, 109 Ohio App.3d 689, 672 N.E.2d 107 (11th Dist.1996).



...  
(3) The testimony adduced was not given under oath.<sup>17</sup>

Thus, under both Ohio case law and the Ohio Revised Code, if the matter is administrative in nature, testimony under oath and cross-examination of witnesses is required.

C. Procedures for Administrative Matters

Permitting the direct cross-examination of witnesses, after administering oaths, most closely resembles a court proceeding, which is what an administrative hearing is typically modeled after. The Mayor or Chairperson can still stop the questioning should it become unreasonable. This method comes closest to ensuring that any appeal will be limited to the transcript from the hearing.

D. Additional Considerations

In addition to the cross-examination and sworn testimony requirements, applicants must be permitted to present evidence and have a verbatim transcript of the proceedings made.

On a final note, it should be reiterated that the main penalty for failing to follow administrative procedures is that an applicant will be able to submit additional evidence at the court hearing when the case is appealed via Ohio Revised Code Chapter 2506. Additionally, it has been held by various courts that the failure to object to the inability to cross-examine witnesses or the absence of sworn testimony waives the defect on appeal.<sup>18</sup>

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<sup>17</sup> R.C. § 2506.03.

<sup>18</sup> Workman v. Franklin County District Board of Health, 10th Dist. No. 00AP-905, 2001 WL 290168 (Mar. 27, 2001); Neague v. Worthington City School District, 122 Ohio App.3d 433, 702 N.E.2d 107 (10th Dist.1997).

#### **IV. ETHICS ISSUES FOR PUBLIC OFFICIALS**

A. As a preliminary matter, if a Board, Commission or Council member has a question regarding ethical issues, the member should feel free to contact the Law Director's office in advance of or at any meeting.

B. The City Charter addresses the issue of ethics for public officials and employees.

1. Section 12.01, entitled Conflicts of Interest; Ethics; Campaign Financing states that "[u]nless otherwise provided in this Charter or by Council, the laws of the State of Ohio pertaining to conflict of interest, criminal misbehavior, ethics, and financial disclosure by municipal officials and employees, campaign financing and other election practices of candidates for municipal office shall apply under this Charter."

2. Ohio law prohibits a public official or employee from:

- Receiving any benefit from a contract entered into by his or her public entity;
- Hiring or securing any contract benefits for her spouse, parents, grandparents, children, grandchildren, or siblings, or any other relative living with him or her;
- Participating in matters where something of value will result for the public official or employee, his or her family, business associates, or others with whom the public servant has a close tie that could impair his or her objectivity.

C. Addressing Conflict of Interest Situations

Abstention.

When any council or board member has a conflict of interest as a result of the member's affiliation with any person or entity coming before the board, that member should abstain from all discussion regarding the matter and abstain from voting upon the matter. The member should in no way participate, formally or informally, in the decisions of the board the member serves.

D. The Ohio Ethics Commission enforces the Ohio Ethics Law.

1. Any information that indicates that a public official or employee may have violated provisions of the Ethics Law can be referred to the ethics agency that has jurisdiction over the public official or employee in question which, in the case of a city employee or official, is the Ohio Ethics Commission. Allegation forms are available from the Ethics Commission to refer information relating to public servants within its authority.

2. When a charge or allegation of unethical conduct is received by the Ethics Commission, its staff will determine whether the alleged misconduct falls within the authority of the Ethics Commission. If so, the Ethics Commission may direct the staff to conduct a confidential investigation into the charge based upon the factual support for the charge and the severity of the alleged unethical conduct.

3. After an investigation, Commission staff may file a formal, sworn complaint before the Ethics Commission. The complaint will allege a specific factual violation of the Ethics Law. The Ethics Commission will then review the complaint and determine whether there is reasonable cause to believe that the facts constitute a violation. If so, the Commission must schedule a hearing for the public official or employee.

4. A citizen may also file a sworn complaint alleging specific personal knowledge of facts and evidence supporting each element of a violation. Most investigations are initiated upon charges received and investigated by the Commission. The Commission may also settle a charge or complaint, including using alternative dispute resolution, referring the matter to a local prosecutor, or closing the matter.

5. If the Commission schedules a hearing, the public official or employee has an opportunity to defend himself against the complaint. He may be represented by a lawyer, examine the evidence against him and present evidence and witnesses. He may also question witnesses and those accusing him of misconduct. These hearings are closed to the public.

6. After a hearing, the Commission decides by a preponderance of the evidence whether the facts stated in the complaint are true and therefore constitute a violation of the Ethics Law.

a) If the Commission finds that a violation has occurred, the findings are turned over to the appropriate prosecuting authority for criminal prosecution. The referral will remain confidential unless the prosecutor fails to act on the referral within 90 days. If the prosecutor fails to take any action with respect to the referral, the Commission may make the referral public.

b) If the Commission finds that a violation of the law is not supported by the evidence, the complaint will be dismissed. The matter must remain confidential unless the person charged with the violation requests that it be made public

#### E. Penalties for Violation of the Ohio Ethics Law.

1. Violations of the conflict of interest sections of the ethics law, R.C. sections 102.03, 102.04 and 102.07, are first-degree misdemeanor criminal offenses, punishable by a fine of up to \$1000 and/or a maximum of six months in jail.

2. Violations of the provisions regarding an unlawful interest in a public contract, R.C. 2921.42(A)(1) and 2921.42(A)(2) are fourth-degree felony criminal offenses, punishable by a fine of up to \$5000 and/or a maximum of eighteen months in prison. See R.C. sections 2921.42(E); 2929.14; 2929.18.

3. Violations of the provisions regarding soliciting or receiving improper compensation are first-degree misdemeanor criminal offenses, punishable by a fine of up to \$1000 and/or a maximum of six months in jail. See R.C. sections 2921.43(D); 2929.21.

4. In addition, a public servant who is convicted of a violation of R.C. 2921.43 is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction. See R.C. 2921.43(E).

## V. PARLIAMENTARY PROCEDURES – CHAPTER 159

### A. ORDINANCE § 159.01 – PREAMBLE.

1. The Commission/Board is established in accordance with the authority of the New Albany Charter and/or ordinances passed by the New Albany Village Council. No provision or section of these rules which conflicts with, or restricts those rights provided by the Constitution of the United States, the Ohio Constitution or the New Albany Charter shall have any force or effect.

These rules and regulations shall control the conduct of all New Albany Commission/Board meetings. The latest revised edition of *Robert's Rules of Order* shall control where no provision is made in these rules and regulations. Technical violations of these rules or parliamentary procedure shall not invalidate Board/Commission actions.

These rules and regulations may be temporarily suspended in whole or in part at any meeting of the Commission/Board by a two-thirds vote of those members in attendance, provided a quorum exists.

### B. ORDINANCE § 159.02 – MEETINGS.

1. Organizational Meeting/Officers. An organizational meeting shall be held annually in March for the purpose of:

- a) Swearing in all members;
- b) Electing from its current membership a chairperson, vice-chairperson and secretary;
- c) To establish the date, time and place of a regular meeting; and
- d) To conduct such other business as shall come before the Commission/Board.

Should the office of chairperson, vice-chairperson or secretary become vacant, the Commission/Board shall elect a successor from its membership within the next two regular meetings when all Commission/Board members are present. The Commission/Board may elect an interim officer, if necessary.

2. Regular and Special Meetings. The Commission/Board shall hold regular meetings as established by subsection (a) hereof. Special meetings, informal reviews and work sessions may be called as needed by the chairperson, provided written notice is given to all members at least seventy-two (72) hours prior thereto, which notice shall set forth the time, place and purpose of the meeting.

The regular meeting schedule of the Commission/Board shall be provided to the Village Council Clerk or applicable department designee immediately after the organizational meeting. The regular meeting schedule shall be posted at the Village Administrative offices and the New Albany Village website. Notice of the time, place and purpose of any special meeting, shall be provided (written or personal contact), at least twenty-four (24) hours in advance to each member of

the Commission/Board. The same shall be posted, in accordance with Ohio R.C. Chapter 121, in the Village Administrative office and the New Albany Village website as soon as practical.

Pursuant to Section 10.01 of the New Albany Village Charter and Ohio R.C. Chapter 121, except as otherwise authorized by the laws of the State of Ohio, all meetings of the Commission/Board shall be open to the public.

3. Quorum. A majority of the members of the Commission/Board shall constitute a quorum for the transaction of business.

4. Attendance of Members. Attendance of all current serving members of the Commission/Board is encouraged, and three consecutive absences by any member or four absences in any year shall be considered a forfeiture of the membership to the Commission/Board. The forfeiture would occur regardless of the reason for the absences. Attendance would be defined as presence during the hearing and consideration of all applications without a conflict of interest before that Commission/Board at that meeting. The applicable department designee would then notify the Clerk of Council so that she can inform Council that a new appointment needs to be made.

5. Attendance of Staff. The Village Administrator or designee shall determine, in conjunction with the chairperson, whether Village Staff representatives or employees are necessary to provide support and guidance to the Commission/Board at the meetings. The appointed staff representative or employee shall provide professional and clerical assistance as needed and shall prepare a report prior to hearing as required by the Commission/Board.

The Village Attorney may attend meetings upon a request of the chairperson to the Village Administrator or designee, or as deemed necessary solely by the Administrator, for purposes of providing guidance and advice on legal issues which may arise.

6. Attendance of Applicant. The applicant, or person empowered to act on behalf of the applicant with authority to bind the applicant to conditions, shall be notified and invited to attend meetings at which the applicant's case is to be heard or discussed. The Commission/Board may dismiss without a hearing, or take action on an application before it at which the applicant or applicant's representative is not present at the time the matter is called pursuant to the agenda and order of business.

**C. ORDINANCE § 159.03 – POWERS AND DUTIES OF CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY.**

Nothing in these rules shall deprive the chairperson, vice-chairperson or secretary of their duties and obligations as a voting member of the Commission/Board.

1. Chairperson. The chairperson shall preside over the Commission/Board and control the conduct and order of meetings, and sign on behalf of the Commission/Board all recommendations, approvals and other official actions arising from matters coming before the Commission/Board.

2. Vice-Chairperson. The vice-chairperson shall preside over the Commission/Board and carry out the duties of the chairperson in the absence of the chairperson.

3. Secretary. The secretary or when a staff/consultant clerk is not provided shall prepare the minutes of each meeting/work session of the Commission/Board. Minutes shall contain sufficient facts and information of the meeting to properly inform the public of matters discussed and action taken, which may include a complete restatement of all motions and recording of votes, complete statement of the conditions or recommendations made on any action, and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records for each meeting/work session shall be filed in the Clerk of Council's office or in the applicable liaison department promptly after each meeting/work session. The "liaison department" shall be the department and staff designated by the Village Administrator to facilitate the Board's activities.

**D. ORDINANCE § 159.04 – ORDER AND CONDUCT OF MEETINGS.**

1. Agenda. Staff shall prepare and distribute an agenda for each meeting which shall be available to each member for pick-up at the Village Hall during business hours at least forty-eight (48) hours prior to each regular meeting of the Commission/Board, or five (5) days for the Board of Zoning Appeals, and twenty-four (24) hours prior to any special meeting.

The agenda for all meetings shall contain:

- a) A listing, by descriptive words and case number, if any, of each public hearing to be considered.
- b) A listing, by descriptive words and case number, if any, of each appeal to be considered.
- c) A listing of any other item of known business.

2. Order of Business. The presiding officer shall conduct Commission/Board meetings in the order outlined in the agenda, which order shall be as follows:

- a) Call meeting to order.
- b) Roll Call.
- c) Approve minutes of prior meeting.
- d) Additions or corrections to agenda.
- e) Hearing of Visitors.
- f) Acceptance of staff reports and related documents into the record.
- g) Public Hearings, including presentation of staff report and recommendations.
- h) Other Business.

- i) Poll members for comment.
- j) Adjournment.

**E. ORDINANCE § 159.05 – PROCEDURE FOR PUBLIC HEARINGS.**

1. Hearings Informal. All hearings conducted by the Commission/Board, with the exception of the Board of Zoning Appeals, Board of Construction Appeals, and the Personnel Appeals Board are intended to be informal. Strict rules of evidence shall not apply and procedures may vary as necessary to help insure the applicant a fair hearing. The purpose of a hearing is to bring out sufficient information to permit the Commission/Board to arrive at a just decision.
2. Procedures for Public Hearings. All hearings shall be conducted in the following manner:
  - a) The presiding officer shall call each case set for hearing separately.
  - b) The presiding officer, or a designated Commission/Board member or Village staff representative or employee, shall briefly describe the background of the item(s) under consideration pursuant to the application and the particular relief sought by the applicant.
  - c) At hearings before the Board of Zoning Appeals, Personnel Appeals Board, or at any other board or commission where such board or commission is acting in a quasi-judicial capacity, any person who intends to present evidence in favor of or against the matter under consideration shall be administered the following oath by the presiding officer:

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"
  - d) The applicant shall make an initial presentation, not to exceed fifteen (15) minutes, of evidence which may include oral testimony, affidavits, maps, drawings or photographs, and any other documents or material relevant to the purpose of the hearing. Applicants shall be expected to present evidence sufficient for the Commission/Board to grant the particular relief requested.
  - e) Other persons in attendance may offer similar counter-testimony if it is relevant to the issue at hand. All persons presenting evidence or speaking against the application shall identify themselves by name and address. The chairperson may set time limitations for speakers, which collectively shall not exceed twenty (20) minutes.
  - f) The applicant shall be given five (5) minutes to rebut evidence offered in opposition to the applicant's case and to give a final presentation to the Commission/Board.
  - g) After the presentation of evidence and opinions by the applicant and others in attendance, the Commission/Board may ask questions of any person in attendance that may assist them.

- h) In all instances where the Commission/Board seeks to impose reasonable conditions and/or restrictions upon an application and such conditions/restrictions are permitted by law, the presiding officer shall inquire of the applicant or their designee as to whether or not said conditions and/or restrictions are acceptable. Should the condition and/or restriction not be acceptable by the applicant, or their designee, the application, as originally submitted, shall be voted upon by the Commission/Board.

**F. ORDINANCE § 159.06 – ACTIONS.**

1. Form. All decisions, findings or recommendations by the Commission/Board shall be in written entry form.
2. Consideration of Application by Commission/Board. After receiving the application, staff report and any additional information and testimony at the meeting, the Commission/Board shall make its findings, which action shall be final except as provided in subsection (c) hereof. The Commission/Board may table an application if there is insufficient time in which to review new information, or with the consent of the applicant or its designee.
3. Reconsideration of Commission/Board Action. The Commission/Board may reconsider any action it has taken upon its own motion for good cause shown.

Any action denying or disapproving an application, other than one involving an incomplete application, may be reconsidered no later than the second regular meeting after the original action from which reconsideration is being requested was taken, only if the applicant or its designee clearly demonstrates one of the following:

- a) Circumstances affecting the subject property or item under consideration have substantially changed; or
- b) New information is available that could not with reasonable diligence have been presented at a previous hearing.

**G. ORDINANCE § 159.07 – VOTING.**

A simple majority vote of a quorum of the Commission/Board is required to take action on any issue. Voting shall ordinarily be by voice vote, provided however that a roll call vote shall be required if requested by any voting member present. A member voting "no" shall indicate their reasons for dissent.

**H. ORDINANCE § 159.08 – APPLICATIONS.**

Submittal requirements and fees are as outlined in the Zoning Code, the Codified Ordinances of the Village, and policies set by the administration. Applications not deemed to be complete in accordance with the Zoning Code, Village Codified Ordinances and administrative policies or for which all fees have not been paid in full shall not be considered.



An applicant may, in writing or during a meeting, withdraw an application at any time or may request to table or postpone further action. Such requests shall require approval by a majority of the Commission/Board members in attendance at the meeting. If the request is made verbally during a meeting, the applicant shall submit the request in writing to the liaison department within seven (7) days.

**I. ORDINANCE § 159.10 – EX PARTE CONTACT.**

1. Commission and Board members should avoid ex-parte contact with the applicant or representative. However, if the Village Administrator or his designee deems that such contacts are reasonable and necessary, any such contacts and communications shall take place with a staff member present. If the applicant persists in offering ex-parte contact except in the circumstances under which the Village Administrator has authorized such contact, the member should report these contacts.

## **VI. LIABILITY ISSUES FOR PUBLIC OFFICIALS**

A. Generally, a political subdivision is not liable for damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

B. A political subdivision is liable for damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

1. Political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

2. Except as otherwise provided in R.C. 3746.24, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

3. Except as otherwise provided in R.C. 3746.24, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility.

C. Defenses and Immunities of a Political Subdivision or its Employees

1. In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

- a) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

- b) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

- c) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or

enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

d) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123 of the Revised Code in connection with the community service or community work for or in the political subdivision.

e) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

f) In addition to any immunity or defense referred to above, the employee is immune from liability unless one of the following applies:

(1) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(2) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(3) Liability is expressly imposed upon the employee by a section of the Revised Code.<sup>19</sup>

#### D. Statute of Limitations<sup>20</sup>

An action against a political subdivision must be brought within two years after the cause of action accrues, or within any applicable shorter period of time for bringing the action provided by the Revised Code. The statute of limitations does not begin to run on a minor who has a claim against a political subdivision until the minor reaches the age of 18.

#### E. Damages<sup>21</sup>

1. Punitive or exemplary damages shall not be awarded.

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<sup>19</sup> R.C. § 2744.03.

<sup>20</sup> R.C. § 2744.04.

<sup>21</sup> R.C. § 2744.05.

2. Damage rewards against political subdivisions are reduced by the amount of benefits received by the plaintiff from insurance or other sources.

F. Political Subdivision Defense of Employees<sup>22</sup>

1. A political subdivision shall provide for the defense of an employee when an employee is sued for an act or omission of the employee in connection with a governmental or proprietary function if the act or omission occurred while the employee was acting in good faith and not manifestly outside the scope of his employment.

2. Generally, a political subdivision shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee for damages for injury, death, or loss to persons or property caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of his employment or official responsibilities.

3. A political subdivision may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death, or loss to persons or property caused by an act or omission in connection with a governmental or proprietary function.

G. Sovereign Immunity Law Does Not Apply To:

1. Civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability;

2. Civil actions by an employee, or the collective bargaining representative of an employee, against his political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;

3. Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of his employment;

4. Civil actions by sureties, and the rights of sureties, under fidelity or surety bonds;

5. Civil claims based upon alleged violations of the constitution or statutes of the United States, except that the provisions of R.C. 2744.07 shall apply to such claims or related civil actions.

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<sup>22</sup> R.C. § 2744.07.