

APPROVED MINUTES

VILLAGE OF ANTIOCH BOARD OF TRUSTEES – REGULAR MEETING

Village of Antioch, Lake County, Illinois

Municipal Building: 874 Main Street, Antioch, IL 60002

Call In # 1-312-626-6799

Public Access Code: 592-598-564

<https://us02web.zoom.us/j/592598564>

March 9, 2022

I. CALL TO ORDER

Mayor Gartner called the March 9, 2022 regular meeting of the Board of Trustees to order at 8:32 pm at the Antioch Municipal Building located at 874 Main Street, Antioch, IL and via Zoom.

II. ROLL CALL

Roll call indicated the following Trustees were present: Macek, Pedersen, Bluthardt, Burman and Dominiak. Also present were Mayor Gartner, Attorney Vasselli, Administrator Keim and Clerk Romine. Absent: Trustee Pierce.

III. Absent Trustees Wishing to Attend Remotely

There were no Trustees wishing to attend remotely.

IV. Mayoral Report

Mayor Gartner invited Chief Guttschow to present his acknowledgement of National Women's History Month. Chief Guttschow highlighted contributions the sworn men and women have made in their department, and stated that the Village of Antioch Police Department exceeds the national average by 5% in employing female officers.

1. **Consideration and approval of a Resolution Appointing Timothy Evans to the position of Deputy Local Liquor Control Commissioner** – Mayor Gartner commented on the qualifications of Mr. Evans for the position, and the process he went through during his selection. Mayor Gartner recommended payments be made per hearing or case.

Trustee Bluthardt moved, seconded by Trustee Dominiak, to approve **Resolution No. 22-15** Appointing Timothy Evans to the position of Deputy Local Liquor Control Commissioner. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

Citizens Wishing to Address the Board

Mr. Mike O'Mara, Oakwood Knolls resident, discussed ongoing battles with the school districts regarding the distribution of material available in the library. He commented that they do not agree with the distribution of pornography or pedophilia, and have requested that the school boards remove the materials, which he said have no place in the schools or community. He said even in the public library, the material is only available to adults, but not in the schools. He asked the village for their assistance in helping protect the children in the community.

V. Consent Agenda

Trustee Dominiak moved, seconded by Trustee Bluthardt, to approve the following consent agenda items as presented:

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1. Approval of the February 23, 2022 Regular Meeting Minutes as presented.
2. Approval of a Resolution authorizing the Mayor to execute an Intergovernmental Agreement with the Antioch Township Outlining the Cost Sharing for the Annual Independence Day Celebration on July 4 - Resolution No. 22-16
3. Approval of a Resolution in support of Tax Increment Financing - Resolution No. 22-17

Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

VI. Regular Business

4. Consideration and approval of payment of accounts payable as prepared by staff in the amount of \$1,269,155.64 – Trustee Pedersen moved, seconded by Trustee Dominiak, to approve payment of accounts payable in the amount of \$1,269,155.64. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

5. Consideration and approval of a Resolution authorizing the 2022 Chamber of Commerce Events –Trustee Pedersen moved, seconded by Trustee Dominiak, to **approve Resolution No. 22-18** authorizing the 2022 Chamber of Commerce Events. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

6. Consideration and approval of an Ordinance adding one more Class “A” and “A-1” Restaurant Liquor License for Casa Ruiz located at 934 Main Street and pro-rating fees – Trustee Dominiak moved, seconded by Trustee Bluthardt, to approve **Ordinance No. 22-03-16** adding one more Class “A” and “A-1” Restaurant Liquor License for Casa Ruiz located at 934 Main Street and pro-rating fees, waiving the second reading.

Trustee Dominiak asked when a Trustee should recuse themselves from a vote. Attorney Vasselli replied that they should recuse themselves when there’s a financial or pecuniary interest in the business.

Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

7. Consideration and approval of an ordinance Amending Section 4-2B-10 of the Antioch Village Code Removing the Prohibition Against Video Gaming at the Premises of a Class “C” Liquor License Holder during Expanded Sampling Events - Trustee Bluthardt moved, seconded by Trustee Pedersen, to approve **Ordinance No. 22-03-17** Amending Section 4-2B-10 of the Antioch Village Code Removing the Prohibition Against Video Gaming at the Premises of a Class “C” Liquor License Holder during Expanded Sampling Events, waiving the second reading. Upon roll call, the vote was:

YES: 4: Macek, Pedersen, Bluthardt and Burman.

NO: 1: Dominiak.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

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8. Consideration and approval of an Ordinance Amending Section 4-2C-14 of the Antioch Village Code Decreasing the Minimum Age Limitation for Selling Packaged Alcoholic Liquors in Certain Licensed Premises from the Age of Twenty-One (21) Years of Age to the Age of Eighteen (18) Years – Trustee Macek moved, seconded by Trustee Bluthardt, to approve **Ordinance No. 22-03-18** Amending Section 4-2C-14 of the Antioch Village Code Decreasing the Minimum Age Limitation for Selling Packaged Alcoholic Liquors in Certain Licensed Premises from the Age of Twenty-One (21) Years of Age to the Age of Eighteen (18) Years, waiving the second reading.

Trustee Macek commented on the difficulty hiring employees and thinks this will help them staff. Trustee Pedersen feels comfortable with current safeguards in place. Trustee Dominiak is not comfortable with allowing 18 year-olds that are not old enough to drink to sell alcohol. She commented that all of the high school kids already know where to go to get liquor, and doesn't want kids to feel pressure.

Upon roll call, the vote was:

YES: 4: Macek, Pedersen, Bluthardt and Burman.

NO: 1: Dominiak.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

9. Consideration and approval of a Resolution Supporting the Efforts of the Canadian National Railroad to Improve the North Central Service Corridor with the Installation of Double Track Rail Infrastructure to Enhance Emergency Response and Reduce Vehicle Traffic Delays in the Corridor - Trustee Bluthardt moved, seconded by Trustee Dominiak, to approve **Resolution No. 22-13** Supporting the Efforts of the Canadian National Railroad to Improve the North Central Service Corridor with the Installation of Double Track Rail Infrastructure to Enhance Emergency Response and Reduce Vehicle Traffic Delays in the Corridor. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

10. Consideration and approval of a Resolution Authorizing the Village Administrator to Execute a Contract with Mad Bomber Fireworks Productions to Provide the Annual Fireworks Show for the Village of Antioch in 2022 for the amount of \$35,000 – Trustee Bluthardt moved, seconded by Trustee Burman, to approve **Resolution No. 22-19** Authorizing the Village Administrator to Execute a Contract with Mad Bomber Fireworks Productions to Provide the Annual Fireworks Show for the Village of Antioch in 2022 for the amount of \$35,000. Mayor Gartner clarified that this cost will be shared with the Antioch Township. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

11. Consideration and approval of an Emergency Ordinance ratifying the Mayoral declaration of Emergency relating to Coronavirus - Trustee Burman moved, seconded by Trustee Pedersen, to approve **Ordinance No. 22-03-19** ratifying the Mayoral Declaration of Emergency relating to Coronavirus, waiving the second reading. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

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12. Consideration and approval of the December 14, 2020 Village Board Meeting Minutes as presented - Trustee Pedersen moved, seconded by Trustee Dominiak, to approve the December 14, 2020 Village Board Meeting Minutes as presented.

Attorney Vasselli read aloud the findings of the Attorney General into the record (attached).

Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

VII. Administrator's Report

No report.

VIII. Village Clerk's Report

No report.

IX. Trustee Reports

Trustee Dominiak asked what the next step in the salary study are in terms of implementation. Administrator Keim would like it to come back for more discussion on implementation. Trustee Dominiak thanked the chief for recognition of women in the department and thanked women in the village.

X. EXECUTIVE SESSION – Personnel and Pending Litigation, Lease of Village Property, Collective Bargaining – Property Disposition/Acquisition and Personnel and Consultants –

Trustee Bluthardt moved, seconded by Trustee Dominiak, to enter executive session at 9:05 pm for property disposition. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

Trustee Pedersen moved, seconded by Trustee Dominiak, to exit executive session 9:34 pm with no action taken. Upon roll call, the vote was:

YES: 5: Macek, Pedersen, Bluthardt, Burman and Dominiak.

NO: 0.

ABSENT: 1: Pierce.

THE MOTION CARRIED.

XI. ADJOURNMENT

There being no further discussion, the Village Board of Trustees regular meeting adjourned 9:34 pm.

Respectfully submitted,

Lori K. Romine, RMC/CMC
Village Clerk

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OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 22, 2022

Via electronic mail
The Honorable Scott A. Pierce
Member, Board of Trustees
Village of Antioch
Fc1pierce@ameritech.net

Via electronic mail
The Honorable Scott J. Gartner
Mayor
Village of Antioch
874 Main Street
Antioch, Illinois 60002
sgartner@antioch.il.gov

RE: OMA Request for Review – 2020 PAC 66200

Dear Trustee Pierce and Mayor Gartner:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, the Public Access Bureau concludes that the Village of Antioch (Village) Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2020)) during its December 14, 2020, meeting.

On December 17, 2020, Trustee Scott Pierce submitted a Request for Review alleging that the Board's December 14, 2020, meeting agenda did not adequately identify the general subject matter of the Board's action to find him and two other Village trustees in violation of the Village's Code of Behavior and Conduct for Village Elected and Appointed Officials (Code).¹ On December 30, 2020, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to the allegations, together with copies of the agenda, meeting minutes (draft form, if necessary), and a verbatim recording of the December 14, 2020, meeting, if such a recording existed. On January 26, 2021, the Board

¹Village of Antioch Code of Behavior and Conduct for Village Elected and Appointed Officials, Resolution No. 20-16, passed March 9, 2020.

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submitted a written response and furnished the requested meeting materials. On the same date, this office forwarded a copy of the Board's response to Trustee Pierce with an opportunity to reply; he submitted a reply on January 28, 2021.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2020)) provides that "[a]ny agenda required under this Section shall set forth the **general subject matter of any resolution or ordinance that will be the subject of final action** at the meeting." (Emphasis added.) The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, effective January 1, 2013, adding section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [the public body] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

Item VI.14 of the December 14, 2020, meeting agenda identifies the matter to be considered as "[d]iscussion of retaining independent counsel due to the ethical recusal of the Village Attorney on a matter."² Trustee Pierce stated that the inclusion of this agenda item arose as a result of a complaint filed by a citizen against three trustees, including him, for alleged violation of the Code.³ The draft meeting minutes and the verbatim recording of the meeting document that pursuant to this agenda item, the Mayor⁴ read a statement in which he notified the Board of the formal complaint. Then Mr. Robert Long, the Village attorney, stated that he would

²Village of Antioch, Lake County, Illinois, Village Board of Trustees; Regular Meeting, Agenda Item VI.14 (December 14, 2020).

³Letter from Scott A. Pierce, Village of Antioch, Trustee, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (December 16, 2020) at 1. Although Mr. Pierce did not specifically identify the exact nature of the violation, a review of the draft minutes and verbatim recording of the meeting indicates that the alleged violation was of the Code.

⁴The Mayor at the time of the December 14, 2020, meeting was the Honorable Lawrence Hanson.

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recuse himself from investigating the complaint as it would be inappropriate for him, as Village attorney, to investigate three of its Board members. The agenda item properly identified these discussions.

However, there is nothing in the wording of Agenda Item IV.14 or in any other agenda item that provided notice to the public that the Board might consider the merits of the underlying complaint and take action on that complaint. The draft meeting minutes and the verbatim recording show that the Board heard statements from the complainant and the trustees, and discussed whether three of the trustees violated the Code. The Board then considered three separate motions and voted to find that each of the three trustees violated the Code.⁵ A member of the public reading the agenda before the Board's December 14, 2020, meeting would not have had advance notice that the Board planned to make a final determination as to whether three of its trustees violated the Code.

The Board argues that section 2.02(c) of OMA requires an agenda set forth the general subject matter only of each "resolution or ordinance that will be the subject of final action at the meeting,"⁶ and that "a mere simple motion by one trustee to call into question the behavior of three of his colleagues" does not constitute "final action."⁷ The Board further argues that the Board did not pass a resolution or ordinance, and that the Village's Ethics Ordinance "requires a formalized process, including a complaint, a formal hearing, and a final finding[.]" but that no such hearing was held.⁸

OMA does not define "final action," and no Illinois court has precisely defined that term. Generally, however, final action can be said to occur when a vote in open session resolves a matter and stands on its own, rather than serving as an interim, non-dispositive step in a broader decision-making process. *Compare Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶74, 77 N.E.3d 625, 637-38 (2017) (vote to approve separation agreement in open session is final action) with *Gosnell*, 179 Ill. App. 3d at 176 (request for mediation was a component of public body's process of reaching final action on a union contract, rather than final action in and of itself.).

⁵The Board provided for this office's confidential review a copy of the draft minutes of the December 14, 2020, meeting. An Assistant Attorney General in the Public Access Bureau reviewed the Village's website, but was not able to locate a copy of the approved minutes from that meeting.

⁶5 ILCS 120/2.02(c) (West 2020).

⁷Letter from Robert J. Long, Village Attorney, to Grace Angelos, Assistant Attorney General (January 26, 2021) at 5-6.

⁸Letter from Robert J. Long, Village Attorney, to Grace Angelos, Assistant Attorney General (January 26, 2021) at 5-6.

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The Board's characterization of the December 14, 2020, meeting downplays the Board's actions that evening. As described above, the Board not only gave lengthy consideration of the citizen complaint, but also heard a motion, accepted a second of that motion, and then took a vote to approve a motion stating that a trustee violated the Code. The Board then repeated that procedure two more times, for the other two trustees. There is no indication that this was a tentative or preliminary consensus—each of these votes appear to have resolved the question of whether each of the trustees violated the Code. To the extent the presentations made during the meeting and the Board's deliberation of those findings prior to its votes did not satisfy the requirement in the Village Code that it hold a "formal hearing," the Board's failure to do so does not mean that its three votes did not constitute "final action" for purposes of OMA. In arguing that its vote was not a "final action," the Board also emphasizes that none of the trustees were censured or otherwise sanctioned as a result of its findings. However, the Code does not require the imposition of sanctions for all findings of violations.⁹ Moreover, a finding that a public official violated the Code is a dispositive step under the Code; the lack of consequence or penalty following that finding does not render the finding any less of a "final action" under OMA.

Under these circumstances, this office concludes that the Board violated section 2.02(c) of OMA in connection with its December 14, 2020, meeting by voting to find three of its trustees in violation of its Code without having listed the general subject matter of those final actions on the meeting agenda. To remedy this violation, this office requests that the Board reconsider and revote on the matter regarding the complaint after providing proper advance notice for those actions, if it wishes to maintain this finding against the three trustees.

Finally, the Public Access Counselor's authority is limited to resolving disputes concerning OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). To the extent Trustee Pierce's Requests for Review alleges violations of laws other than FOIA or OMA, the Public Access Counselor does not have authority to review those allegations.

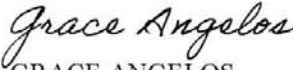
⁹Section 1 of the Code states in pertinent part "[i]f there is deliberate violation of principals and guidelines set out herein, a Public Official **may be subject to sanctions.**" (Emphasis added).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at (312) 814-4467 or the Chicago address listed on the first page if you have any questions.

Very truly yours,


GRACE ANGELOS
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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