

**RULES OF PROCEDURE
VILLAGE COUNCIL
VILLAGE OF ESTERO**

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Purpose.

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The purpose of the rules of procedure is to ensure that the public's business is transacted efficiently and effectively and to promote order and cooperation in the deliberation of public policy. These rules are designed to promote thoughtful, fair, and organized debate and action on the part of the Village Council of Estero (Council), and they are designed to protect the rights of the public, the minority, and the individual Members of the Council to be heard and considered.

These rules ~~shall~~will generally govern the proceedings before all other Village of Estero advisory boards. Where reference is made to the Council, Council Members, Mayor or Vice-Mayor; it will apply to each Village Board, its Board Members, its Chair and its Vice-Chair to the extent that it is relevant.

Commented [RP1]: The more recent state convention in statute etc. drafting is to avoid using "shall" because it has two different meanings ("must" and "will"). It shows up in so many places in the current Rules of Procedure, that it will not be changed throughout this document. However, it will be replaced where it is best to indicate that the Council "will" do something.
Council should avoid heaping upon itself mandatory requirements in its Procedures. Although the Procedures state that the failure to follow procedures is not a basis for an appeal, it is likely that a disappointed person may still challenge that due to a plethora of "shalls".

Section 1. Rules of Order and Quorum.

- (a) Except as otherwise required by law or by the Village Charter, or an ordinance or resolution of the Council, all proceedings shall be governed by these rules of order. The Village Attorney shall act as a parliamentarian and shall render opinions on procedures or matters not covered in these rules. In situations where these rules are silent, Robert's Rules of Order shall apply.
- (b) A majority of the Council Members serving constitutes a quorum for the conduct of business at any meeting. Unless a quorum is present, no action may be taken except to adjourn. The Mayor or Vice-Mayor shall preside, as Chair. If both are absent, the present Members shall elect a presiding Council Member. A Member present but disqualified from voting on a question by a state law, or the Village Charter, or an ordinance due to a conflict of interest shall be counted for the purposes of a quorum. Members are required to abide by the ruling of the Chair, subject to appeal by the Council.
- (c) All meetings of the Council shall be noticed as required by law and

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Commented [RP2]: Clarifies that Rules apply to Boards

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Commented [RP3]: The Charter contains some procedures.

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Commented [RP4]: Robert's Rules of Order does not fit all governmental situations. For example, since all members are equal (especially elected officials), it would be incongruous for the Chair to be prohibited from Making or Seconding a Motion. There are other areas where RRO might not apply.

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open to the public.

- (d) Questions of order shall be decided by the Chair without debate, subject to appeal by the Council.
 - 1) An appeal of the ruling of the Chair must be seconded and is subject to debate.
 - 2) The Chair then puts to a vote the question, "Shall the decision of the Chair be over-ruled?" The Chair also votes. A majority vote to overrule overrules the ruling of the Chair, however a minority vote or tie vote sustains the ruling of the Chair.
- (e) If a Member believes the Rules of Procedure are being violated, that Member may interrupt a speaker without being recognized by stating, "Point of order." No motion is required nor is debate allowed. The Chair shall ask the Member to state the point and shall rule on the matter. The ruling is subject to appeal. If the Chair is in doubt, the Chair may put the question to a vote.
- (f) These Rules of Procedure may be suspended for a definite purpose by majority vote.

Commented [RP5]: State law treats all members as equals when it comes to voting, so unless there is a recognized conflict all members present vote on all matters. See 286.011 F.S.

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Section 2. Introduction of Agenda Subjects and Motions.

- (a) The Village Clerk or Village Manager shall read an ordinance or resolution by title only (except where otherwise provided by law).
- (b) Following the introduction of a subject, discussion by the Council is permitted prior to and after the introduction of a motion. The Council Members shall signal their desires to speak by raising a hand. The Chair shall call on each Council Member as seen.
- (c) The Chair ~~shall~~ will recognize those citizens who have filled out a speaker's card prior to a vote on a motion. Such recognition may occur prior to or after a motion is introduced.
- (d) When a motion is proposed and seconded, the Chair will repeat the

Commented [RP6]: It is now more common to have an electronic device for this purpose

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Commented [RP7]: Is this one each motion? Another way is to have speakers fill out a card indicating which agenda item upon which they intend to speak at the beginning of the meeting, not at the time of each motion. Much more streamlined. Of course, for ordinance hearings and quasi-judicial hearings, they must speak at that hearing.

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motion and the names of the Council Members initiating and seconding the motion.

(e) Motions shall be made in the affirmative (i.e. "I move that...be approved" or "I move that...be denied.")

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1) The Member offering the motion will be given the first opportunity to speak to the motion, followed in order by other Members wishing to be heard. Member comments should be as succinct as possible and directed to the Motion. Personal criticisms of other Members or the Public may be ruled out of order.

2) Following comments from each Member who wishes to speak, each Member may again comment. Further comments will be at the discretion of the Chair.

3) When known, the proposer shall be given the opportunity to make the motion with respect to such proposal.

(f) All motions shall be open to amendments.

(g) ~~In all cases-Whenwhere~~ an amendment ~~is~~shall be offered, the amendment ~~shall must~~ be _____ seconded and is debatable. A vote shall be taken on the amendment. If an _____ amendment is adopted by majority vote, debate may continue on the main motion as amended

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(h) A Member may request that the person offering the motion consider an amendment to a motion. If the maker and the person who seconded the motion agree, the motion shall be amended without a vote. The Chair shall state the motion as amended.

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(i) If a vote of the Council is equally divided, the vote ~~shall~~will be considered to be in the negative and ~~will~~shall not pass.

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Section 3. Voting Requirements.

- (a) ~~All~~actions of the Council shall be by majority vote of the Members present at a public meeting where a quorum is present, except where otherwise provided by law.
- (b) Every Council Member present (whether in person or remotely by phone or electronic means) shall vote on every question except when required ~~or permitted~~ to ~~abstain~~refrain from voting by law.
- (c) Votes may be by voice. Those in favor of a motion shall signify by saying “yes”, and those against shall signify by saying “no”. However, any Member may require a roll call vote on any issue.
- (d) The Chair or any Council Member may call for a roll call vote. The order of the roll call vote ~~will shall~~ be by district number, Vice Chair, with the Chair to cast the last vote. The Clerk ~~willshall~~ reverse the roll call by district number for each alternate vote.
- (e) The vote on every question for each Member ~~willshall~~ be recorded in minutes.
- (f) ~~All~~votes on ordinances ~~will shall~~ be by roll call ~~vote~~.
- (g) When a quorum is present and a Council Member or Council Members are participating by telephone or other electronic means, where they can hear and be heard by persons in Council Chambers, those Council Members participating by phone or other electronic means are considered present, and therefore authorized to participate fully and to vote on motions and all other matters presented to the Village Council.
- (h) Members participating by phone or other electronic means must affirm that they have heard all proceedings with respect to the matter prior to voting.

Commented [RP8]: 286.012 ALLOWS, but does not require not voting in essentially two areas. 1. Appearance of a possible Conflict of Interest. 2. Quasi-judicial hearing where unable to be fair. But, Due Process requires fairness, so member should not vote.

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Section 4. Reconsideration of a Motion.

- (a) During the meeting in which a matter has been voted on, the Council may reopen the matter by a simple ~~majority~~ vote and reconsider its

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decision. The request to re-open the matter must be made by a person that voted in the majority.

(b) After adjournment of the meeting in which the matter was voted on, reconsideration must adhere to the following:

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1) Only Council Members may request reconsideration of an agenda item which has been voted on previously by the Council.

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2) Any Council Member who voted with the majority or was not present for the original vote may ask for reconsideration. Where the matter resulted in a tie vote, any Council Member who voted may request consideration.

3) A request for reconsideration must be transmitted in writing or by email to the Chair no later than ~~48 hours by the close of business~~ two days prior to the next regularly scheduled Council meeting after the item was voted upon.

Commented [RP10]: The City of Naples has a 48 hour deadline. The current language makes it early on Monday. As a practical matter this type of thing often shows up on Monday, but not at 8:30.

4) The Council will first discuss whether to reconsider the item. A majority vote in favor of the reconsideration will place the item on a future regularly scheduled Council meeting agenda as set out below. Failure to receive a majority vote will halt the reconsideration process.

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5) Items approved for reconsideration shall be placed on the next regularly scheduled Council meeting agenda unless the Council specifically votes to set a different schedule for hearing the matter. The Village Clerk shall make a good faith effort to notify all parties who participated by speaking or submitting registration forms or written materials at the first hearing of the date of reconsideration; however, failure of such notification shall not invalidate or otherwise affect such reconsideration.

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(c) General Rules:

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1) A matter may only be reconsidered one time by the Council within any one (1) year period, after the initial vote. After that, any matter or any issues subsumed by it shall require a new agenda submittal, including but not limited to:

- a) A new petition, including filing fees and advisory board hearings where appropriate.
- b) Council action on the matter.
- c) The policy contained herein shall constitute the full and complete reconsideration of a matter by the Council.
- e)d) Reconsideration will not toll or suspend any deadline for appealing or otherwise challenging the original decision, unless Council specifically indicates to the contrary in conjunction with the scheduling of the Reconsideration hearing.

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Commented [RP11]: Usually reconsideration does not toll appeal or certiorari deadlines. Council could determine otherwise. Most deadlines are 30 days after the decision or action. A person wishing to challenge in court would still have to file the action while the Reconsideration process is ongoing.

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Section 5. Types of Motions.

(a) Main Motion:

- 1) Defined as a proposal that certain action be taken or an opinion be expressed by a group.
- 2) The words to use are, "I move..."

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(b) Secondary Motion:

- 1) Motions can be made while the main motion is on the floor and before it has been decided. These are called "secondary motions", and they include subsidiary and privileged motions. ~~Several rules should be remembered.~~

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- a) A secondary motion can be introduced while the main motion is being debated. The secondary motion shall be considered first.

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b)a) The most common is a "motion to amend [the main motion]". The motion must be debated and voted upon before the main motion is further considered.

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e)b) Some secondary motions are not debatable. These include the following: "move to the previous question"; "call the

question”, which takes Members back to the main motion if approved; “recess or adjourn”; “to table”; and “to suspend the rules”. A call for the question requires a second if Members informally do not agree to suspend debate.

d) Debatable secondary motions include: “to amend”; “to refer to committee”; or “to postpone to a time certain”.

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Section 6. Agenda.

- (a) The Village Manager ~~is~~ shall be solely responsible for the preparation of the agenda for meetings of the Council.
- (b) The Village Clerk ~~will~~ shall post ~~or otherwise provide~~ notice containing ~~date, time, and location, and date~~ of Council meetings as required by law.
- (c) ~~All~~ Items on the agenda ~~will~~ shall be accompanied by ~~relevant~~ all ~~supporting~~ documentation. The agenda, agenda memorandum, and supporting information ~~shall~~ will, whenever reasonably possible, be provided to the Council ~~by at~~ noon on the Wednesday preceding —a regular Council meeting, and at least ~~48 hours~~ two days -in advance of any special called or workshop meeting except for emergency meetings. Revised or additional information may be distributed via an agenda supplement at least 24 hours in advance of a meeting, whenever reasonably possible.
- (d) ~~All~~ e Exhibits, including documents, photos, PowerPoint or other electronic media presentations, or other evidence in support of a petition must be submitted to the departmental staff by close of business seven days prior to the hearing. Any amendments to the submittal must be received by the close of business five days before the hearing. Failure to do so is grounds for the Council to determine not to admit the new exhibit into evidence or consider the exhibit or testimony pertaining to it, for the matter to be continued, or for the matter to be remanded to the appropriate advisory board. It is the petitioner’s responsibility to ensure that all exhibits that he or she wants to be considered are in the Council packet prior to the foregoing deadline. Deadlines falling on holidays are extended to the next non-holiday workday.

Commented [RP12]: "All" is an unforgiving word. As a practical matter documentation comes in at various times, sometimes from the public. "Supporting" documentation may be misconstrued to mean that it takes a position supporting the matter.

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(e) The agenda for regular and workshop meetings shall include provisions for a public comment period. ~~Nothing should impede the rights of~~ The public has a right to speak before the Council.

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(f) The agenda will shall include a section for "correspondence and communication" by the Council following the Business Section.

1) A Council Member may request that a subject matter be placed on a future workshop or regular agenda.

2) If ~~two~~ or more members request an item to be placed on a Council meeting agenda, the item will shall be placed on the next available Council agenda, or on a subsequent agenda as deemed appropriate by the Manager.

Commented [RP13]: The norm is 1 less than a quorum, which would be 3.

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3) A Council Member may provide a "position paper", memorandum, or summary to the Village Manager prior to the distribution of the agenda to clarify the purpose and the intent of the subject matter, subject to restrictions in the Sunshine Law including, prohibiting a request for a reply, or for a reply to all.

Commented [RP14]: See litigation Sarasota County v. AG Opinions. The rule is that a council member may circulate a communication stating a position but cannot seek replies. Other council members can state their positions but cannot reply to the first communication.

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4) Council Members may share reports, information, correspondence, or other items they deem necessary for the Council to hear subject to restrictions in the Sunshine Law.

5) Council Members will shall be given an opportunity to respond to any oral or written comments from other Council Members so as to encourage open discussion, subject to restrictions in the Sunshine Law.

(g) The agenda may have a "consent agenda" section for items relating to routine business, reoccurring, or non-controversial business of the Council.

1) The intent of the "consent agenda" is to facilitate the conduct of the Council's business in an efficient, timely, and orderly manner.

2) Should a Council Member desire to discuss any item on the consent agenda, the Member shall request that the item be removed

from the consent agenda. The Council ~~will~~ consider that an item of business separate from the other items on the consent agenda. Any Member of the Council may remove an item from the consent agenda.

- (h) The agenda packet ~~will shall~~ be in electronic format. The Council agenda and packet ~~will shall~~ be posted on the Village's website for public review at least seven (7) days prior to the meeting whenever reasonably possible, or within any shorter time that may be required by law. In addition, the Village Clerk will have at least one (1) hard copy of the agenda packet available for public review before the meeting and at the meeting.

Section 7. Meetings of the Council.

- (a) A schedule of Council regular and workshop meetings for the year shall be adopted by motion prior to January of each year. As required by the Village Charter, at least 12 regular meetings must be scheduled each year. Any changes in the adopted schedule shall be made by motion of the Council.
- (b) The Council may hold special meetings at any time pursuant to the call of the Mayor or majority of Members. Where feasible, at least 24-hours notice shall be provided in writing or email to each Member. The notice shall specify the subject of the special meeting.
- (c) Executive sessions (closed-door meetings or portions of meetings) may be held and shall be limited to those subject matters authorized by law (Florida Statutes) or federal law.
- (d) The Council may recess any regular or special meeting, providing that such recessed meeting shall be to a future day and hour to be specifically provided for in the motion for such recess. The recessed meeting shall not be later than the next regular meeting, and any such recessed meeting shall not be held at any hour or time other than as specified in such resolution.
- (e) Emergency meetings of the Village Council may be called by the

Village Council Rules of Procedure – Adopted May 15, 2017-Amended .2022

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Commented [RP15]: The charter requires at least 12 regular meetings per year. It does not require one in each month.

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Mayor, Village Manager or three (3) Council Members as deemed necessary. The notice shall specify the subject of the emergency meeting.

Commented [RP16]: This is consistent with the norm. Is inconsistent with above. Recommend meeting calls by council members be three, not two.

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- (f) The Village Manager, or his or her designee, may continue or grant one continuance of a published agenda item before the meeting. Further continuances must be considered by the Council.

Section 8. Meeting Minutes.

The Village Clerk or designee shall keep minutes of all public meetings of Council, which shall be a matter of permanent public record and shall be presented to the Council for review and approval. A taped or video recording of the meetings may be made.

Commented [RP17]: Question: Does Council review and approve minutes of ALL boards, commissions and committees, or only minutes of Council? Keeping of minutes is ministerial (but required), so technically, Council has a right to review minutes of advisory boards, etc., but not approve or disapprove.

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Section 9. Public Hearings (Other than Quasi-Judicial).

The purpose of public hearings is to receive input from citizens regarding the issue before the Council.

- (a) The Village Attorney, or the Village Land Use Counsel, where appropriate, or the Village Manager, or his designee, shall will summarize the issue before the Council rather than read the entire staff report, unless otherwise requested by the Council. Ordinances and resolutions will be read into the record by title only.
- (b) The Chair shall remind the members of the public to fill out a speaker's card prior to the start of the public hearing.
- (c) Following the summary explanation, the Public Hearing will open. Speaker's cards shall be required. Failure to fill out and submit the speaker's card prior to the start of the public hearing may result in forfeiture of the right to speak, unless permitted by the Chair or a majority of the Council. Public comments shall be limited to three minutes and one time, unless otherwise determined by the Chair or a majority of the Council.
- (d) When the public comments have concluded, the Chair will close the Public Hearing. Debate may continue until the question is called.

Section 10. Quasi-Judicial Proceedings and Public Hearing.

- (a) ~~Unless otherwise designated by the Chair, T~~he Chair ~~will shall~~ call each item and direct the Village Clerk to administer the oath to the Village staff and to those persons who intend to ~~testify or present evidence participate inat~~ the hearing. At this time all Members shall disclose any ex-parte communications they have had or conflicts of interests that they may have regarding the petition.
- (b) After the introduction of the petition by staff, the Ppetitioner's presentation ~~shallwill~~ occur first. The Council, or the appropriate advisory board, may impose time limits on the petitioner based on staff recommendation. ~~For purposes of these Rules, t~~The petitioner's presentation may not exceed ~~one two (2) hours~~ without the affirmative consent of the Council or such advisory board.
- (c) Staff shall then provide an analysis of the petition and staff report.
- (d) After the Petitioner and staff have made their presentations, the Council ~~shallwill~~ determine which persons, if any, in addition to the Petitioner and the Village staff, shall be considered parties in the matter permitted to present evidence and examine witnesses in support or opposition to the petition.
- (e) Following presentations by the parties, the Chair ~~willshall~~ call for public comment by those who have filled out speaker's cards. Each speaker shall have up to three ~~(3)~~ minutes to present comments on the petition.
- (f) Upon conclusion of public comment, the Petitioner may, before the close of the public hearing, present a brief rebuttal with a time limit to be determined by the ~~Chair Council~~.
- (g) ~~The~~Council ~~members~~ may ask questions of the parties, staff, or public speakers at any time during the hearing. Questions of an informational nature from the parties or public speakers may be asked through the Chair. Direct questions between the parties to their witnesses ~~willshall~~ be permitted. A representative of a party may respectfully ask questions of an adverse witness, which questioning may be reasonably limited by the Chair. ~~Questions must be reasonably relevant to the issues before~~

Commented [RP18]: Two hours is long. Even the U.S. Supreme Court normally allows a half-hour per side. Parkinson's Law says work will fill the time available. Council can and should grant additional time where reasonably needed (to satisfy Due Process)

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Council. In a quasi-judicial proceeding, Council members are not serving in a legislative capacity, but as judges. Therefore, Council members should not formulate or express opinions until all of the testimony and evidence has been presented. Any new ex parte communications must be disclosed on the record prior to a vote.

Commented [RP19]: Procedural Due Process requires the decision-makers to be fair and impartial, not like advocates for a position.

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(h) The Council should introduce a motion, debate the position, and call for the question.

(i) The agenda packet will shall be in electronic format. The Council agenda and packet shall be posted on the Village's website for public review at least seven ~~(7)~~ days prior to the meeting whenever reasonably possible. In addition, the Village Clerk will have at least one ~~(1)~~ hard copy of the agenda packet available for public review before the meeting and at the meetings.

(j) The petitioner ~~shall must~~ provide electronic copies of ~~his or her petitioner's~~ presentation materials and any new evidence to the Village Manager or staff at least seven ~~(7)~~ days prior to the Village Council meeting at which the Petition is to be considered for inclusion with the Council agenda packets. Failure to do so is grounds for the Council to determine not to admit the new exhibit into evidence or consider the exhibit or testimony pertaining to it, for the matter to be continued, or for the matter to be remanded to the appropriate advisory board for reconsideration. It is the ~~P~~petitioner's responsibility to ensure that all exhibits that ~~he or she~~petitioner wants to be considered are provided to the staff for the Council packet prior to the foregoing deadline. Deadlines falling on ~~weekends and~~ holidays are extended to the next non-~~weekend or~~ holiday workday.

Commented [RP20]: Current convention is to not use "his or her"

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(k) Handouts of hard ~~copies~~ of the presentation materials or new evidence provided during the proceeding shall consist of ~~thirteen (13)~~ copies for the Council, staff, and other parties.

Commented [RP21]: The standard in Florida is that any deadline falling on a weekend or holiday is extended to the next workday.

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Commented [RP22]: Are hard copies needed anymore? If so, are 13 copies needed?

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(l) In making its decision, the Council shall consider the evidence in the record, the public's input and any recommendations of the Village staff and appropriate Village Land Use Boards. The Chair, with the advice of the Council's counsel, may rule on any objections to admission of any irrelevant or immaterial evidence, but the public hearing need not conform strictly to the rules of evidence or procedure that govern

judicial proceedings ~~as long as fundamental due process is observed~~.
The Council's decision shall be based on competent substantial evidence in the record of the proceeding, and the applicable law.

Commented [RP23]: This is the due process standard.

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- (m) Following the hearing, the Council's decision shall be reduced to writing. If a petition is rejected, the Council shall state the reason(s).

Commented [RP24]: This is now required by statute

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Section 11. Public Hearings by Committee, Chair, or Village Manager.

When authorized by law or ordinance, the Council may appoint a special magistrate or committee of its Members, or designate the Chair, one of its Members or the Village Manager to assist in or hold a public hearing for the Council at any time or upon any matter pending before it. The requirements of the Sunshine law shall apply in the same manner as they would apply to the Council. Minutes or reports of hearings held by the special committees, the Chair, or the Village manager shall be filed as public record.

Section 12. Role of Council Members.

In order to prevent any misunderstanding or false impression based on the holding of an office on behalf of the Village, whenever any Council Member, including the Mayor and Vice Mayor, ~~shall speak~~ to the news media or the public with respect to any matter ~~for which that he or she~~ the member is not designated by the Council as the spokesperson or liaison for the Village, ~~he or she shall the member must make it known that -preface any remarks with the statement that the member or she~~ does not speak for the Village with respect ~~to the matter~~

~~thereto~~, and that any comments are ~~the member's his or her~~ own in ~~the member's his or her~~ capacity as a Member of the Council.

Commented [RP25]: Reworded to eliminate "his or her" and antiquated legalese ("thereto")

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Section 13. Role of the Mayor/Vice Mayor.

- (a) The Mayor shall serve as Chair during meetings of the Council in the manner provided in these Rules of Procedure; and
- (b) The Mayor shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance; and

- (c) The Mayor shall also serve as the ceremonial head of the Village. Except as specifically set forth above, or otherwise provided by law there is no inherent or apparent power by virtue of a person holding the office of Mayor or Vice Mayor.
- (d) The Vice Mayor shall serve as Mayor during the absence or disability of the Mayor, and if a vacancy of the Mayor occurs, shall become interim Mayor until the next regularly scheduled election.
- (e) When a liaison is appointed, or when the Council appoints a spokesperson, on any issue, such questions to the Village with respect to such issue shall, where possible, be referred to such liaison or spokesperson. If a liaison or spokesperson has not been appointed by the Council as to an issue, the Mayor (or the Vice Mayor as provided herein) as the ceremonial head of the Village, may serve as the spokesperson for the Village with respect to resolutions, ordinances and policies previously adopted by the Village Council. As is the case with all Council Members, when making statement of the Mayor's personal opinion on matters not yet adopted by the Village Council, the Mayor shall preface those comments as being those of the Mayor and not the Village Council as a whole.
- (f) Subject to the limitations set forth in the preceding paragraphs, concerning ceremonial activities on behalf of the Village, the Mayor is authorized to prepare and sign as Mayor, Proclamations recognizing the opening of new businesses, expansion of existing businesses, special events that provide a public benefit to the citizens of the Village, and other routine non-controversial matters as requested by the Manager. Attendance at business openings or anniversaries, attendance at non-profit organization social functions, such as the Estero Chamber of Commerce, and other similar social or business sponsored events, shall be deemed to be part of the role of the Mayor acting as ceremonial head of the Village.
- (g) In order to give as many Council Members as possible the opportunity for ceremonial roles in the Village government should they desire to so serve, as a general rule of the Council, the election of the Mayor and Vice Mayor pursuant to the terms of the Village Charter may shall be accomplished on a rotational basis, as determined by the Council. Council Members would generally not serve in either such position

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Commented [RP28]: Should not name a private organization in Council Rules. In fact the entire las sentence may be stricken.

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Commented [RP29]: Inconsistent with the above re: lack of inherent power,

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more than once during the limit of their terms in office as set forth in the Charter.

Commented [RP30]: Is this level of detail needed?

Commented [RP31]: This is not set forth in the Charter. Suggest delete (g).

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Section 14. Conduct of Council Members and Meetings.

General Rules:

The Village Charter provides information on the roles and responsibilities of Council Members, the Mayor and the Vice-Mayor. Florida Statutes provide regulation and guidance on ethical issues to ensure that Council Members conduct themselves independently and impartially, not using their office for private gain.

In addition to guidance from Florida Statutes, these Council Rules are designed to describe the manner in which Council Members should treat one another, Village staff, constituents, and others with whom they come into contact while representing the Village. It defines more clearly the behavior, manners, and courtesies that are suitable for various occasions.

Commented [RP32]: The following three paragraphs are good, but really not Rules of Procedure. Suggest delete, or put into a preamble. Or, leave it the way it is.

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The constant and consistent themes through all of these guidelines are dignity and respect. Council Members experience stress in making decisions that impact the lives of the citizens. At times, the impacts on the entire community must be weighed against the impact on only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council Members to do the right thing in even the most difficult situations.

The Village Council is composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve, protect, and enhance the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

Council Members ~~should~~ shall practice civility, professionalism, and decorum in discussions and debate. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council Members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or

disparaging comments. Council Members should conduct themselves in a professional manner at all times, and shall avoid personal comments that could offend other Council Members.

Subject to the foregoing general rules:

(a) The Chair ~~should~~shall:

- 1) Conduct the meeting firmly and courteously while maintaining order at all times.
- 2) Ensure that a Member is recognized before speaking, and permit only one person to speak at a time.
- ~~3) 3)~~ Allow persons not on the Council to speak only at designated times. Apply time limits uniformly.
- ~~4)~~ Rule out of order remarks which involve personalities or may be seen as having an attack motive or may impugn the character of another Member or a member of the Village Staff, or which are not related to the matter before the Council.
- 5) Reject frivolous motions and motions not permitted by the Rules. Require motions to be stated affirmatively and to the point.
- 6) Restate the motion and allow the maker of the motion to speak first. Call for a second for a motion requiring a second, before debate begins.
- 7) Allow a Member additional opportunities to speak on a matter only after all other Members have had an opportunity to speak.
- 8) Allow interruption of a speaker only by consent of the speaker or for permitted reasons (e.g. "Point of order", "point of information, please").
- 9) Recognize citizens wishing to address the Council on the issues before the Council ~~following the debate, but~~ prior to the vote.
- 10) Reject discussion of motions which are not debatable (e.g. adjourn,

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call for the question, continuance, recess, or table).

- 11) Recognize that all Members have equal rights, privileges, and obligations. Remain impartial in the use of authority.
- 12) Call for the question when it appears that Members have concluded debate, or when such debate has become repetitive and non-productive for the required policy discussion.
- 13) Remind the public of the requirement to submit a speaker's card for the "public comment" section of the agenda or for an agenda subject.
- 14) During workshops and informal sessions these rules may not be strictly applied. The Chair shall encourage a free exchange of ideas.

(b) Council Members shouldshall:

- 1) Be recognized by the Chair before speaking. Then, after each Member has had the opportunity to speak, a Member may comment on the subject following a recognition by the Chair. The Chair may elect to have a less formalized speaker order during workshop topics, and a more formalized speaker order depending on the issue and the volume of the information to be discussed.
- 2) When making a motion, speak clearly and concisely so as to avoid any misunderstanding as to the intent of the motion. State the motion affirmatively. State the motion without setting out the reasons and basis for the motion. Those can come as part of the debate.
- 3) Not speak a second time on a subject until all who wish to speak have done so. Confine remarks to the subject of the motion, while avoiding remarks involving personalities.
- 4) Not interrupt a speaker who has the floor without consent, except to present a privileged motion.

- 5) Limit comments to that required to state a position while avoiding repetitiveness or redundancy.
- 6) Not be obligated to state a position or opinion on matters under discussion. Discussion should be intended to add information, persuade colleagues through debate, and state positions.
- 7) Refrain from adding comments or explanations during the voting process. Comments and explanations should be made during discussion before or after the motion, and not during voting procedure.
- 8) At all times act with decorum toward the Members of the Council and the Members of the public attending the meeting. Recognize that people appearing before the Council shall be treated with respect and dignity.
- 9) Refrain from initiating a discussion with citizens during the public comment period except to ask questions or clarify points raised by a citizen. Let public speakers finish before commenting or asking questions. If additional information or response from staff is needed, the Council Member may ask questions following the public comment.
- 10) Recognize that the legislative process involves interaction of competing ideas that resolve themselves by a decision of the Council. That decision may not satisfy all Members, but the will of the majority shall prevail.
- 11) Be prepared and focused. While questions and clarification will occur, many questions can be answered by studying the agenda packet, or with a phone call or visit to the Village staff prior to a meeting. The Council and the public may then focus on the decision-making process at hand in a timely manner.

(c) The public ~~wish~~ shall:

- 1) Be permitted to address the Council during the public comment period on any subject, and on any matter scheduled on the agenda ~~prior to a call for the question.~~

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Commented [RP36]: Again, not necessary to allow public comment on all agenda items. Other local governments have Public comment at the beginning of the meeting. Of course if it is a hearing on an ordinance or a quasi-judicial hearing, the public has a right to speak, but not just prior to a call for the question or the vote.

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- a) Citizens who wish to address the Council on business matters scheduled on the agenda ~~must~~ shall complete and submit a speaker's card prior to the close of the public comment period or the comment period on a public hearing for that agenda item. Registered speakers who have completed a speaker's card will be called to the podium by the Chair.
 - b) Public comment shall be limited to three (3) minutes unless waived by the Chair or by a majority of the Council Members.
- 2) Be permitted to address the Council on any subject matter not scheduled on the agenda during the "public comment" section of the agenda.
- a) Speaker's cards are required.
 - b) Upon being recognized by the Chair, the person shall proceed to the podium and state the person's his or her name and address.
 - c) The Chair ~~shall~~ will allow the person ~~a period of three (3) minutes to present matters of the public interest before the Council unless otherwise waived by the Chair or a majority of the Council Members. Speaker time limits will be extended to approximate time involved with Council dialogue. The Chair or a majority of the Council may waive the time limitation.~~
 - d) Public comment is intended to encourage citizens to speak about issues. The answering of questions will only occur when directed by the Chair. Otherwise, answers will be provided by the staff or Council Members outside of the meeting. Nothing herein shall limit the ability of the Council Members to question public speakers.
 - e) All members of the public who address the Council shall do so without remarks which are deemed by the Chair to be slanderous, involve personalities or may be seen as having a ~~personal~~ attack motive, or which may impugn the character of a Member or a member of the Village staff. Such

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remarks shall be ruled out of order by the Chair.

Section 15. Not Appealable.

- (a) The failure of the Council to adhere strictly to any of the rules contained herein shall not create a cause of action or basis of appeal or challenge of the matter before the Council.

Section 16. Conflict With Charter or Ordinances.

Where these rules conflict with the Village Charter, Code of Ordinances, or Florida Statutes, the Charter, Code of Ordinances, or Florida Statutes shall prevail.

Section 17. Liaisons.

There are many governmental bodies, organizations and entities, ~~such as the Metropolitan Planning Organization and Florida Gulf Coast University,~~ that request the appointment of liaisons from the Village Council to help facilitate communications between those governmental bodies, organizations and entities and the Village of Estero. When such a governmental body, organization or entity makes a request for the appointment of a liaison, all Council Members desiring to serve as the liaison shall so notify the Manager who will provide that information to the Village Council for Council consideration. The Village Council shall appoint the liaison from the Village Council for the period ending on May 1 ~~or as otherwise determined by Council.~~ In a like manner, the Village Council may make appointments of Council Members to serve in a liaison capacity even if the governmental body, organization or entity has not requested the appointment of a liaison. The Village Council may also appoint a liaison or spokesperson on any issue deemed to be of strategic concern to the Village.

On or before May 1 of each year, ~~unless specifically determined otherwise by Council,~~ all liaison or spokesperson appointments shall be reviewed by the Village Council and each such position shall be filled by the Village Council for the next year, with each liaison and spokesperson appointment being effective on the date of such appointment and continuing until a successor appointment is made by the Council. The appointment of a liaison or spokesperson shall in any event serve at the pleasure of the Village Council.

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The role of the liaison or spokesperson is to facilitate communications between

the Village Council and the entity, or with respect to the issue of strategic concern identified by the Council. The liaison is responsible for communicating to the entity, or with respect to such an issue, the official position of the Village Council on all matters, and not to promote the liaison's personal position on issues not yet adopted by the Village Council. However, the liaison or spokesperson may express ~~his or her~~ its personal opinion on matters as long as it is clearly stated that such communication is not the official position of the Village Council and is the personal opinion of the liaison or spokesperson.

The appointment of a liaison or spokesperson does not absolutely prohibit other Council Members from communicating with the entity as long as it is clearly stated that such communication is the personal opinion of the Council Member and does not reflect the official position of the Village Council. However, except in unusual circumstances, Council Members shall normally defer to the appropriate liaison or spokesperson with respect to either communicating with or making comments about the organization to which such liaison or spokesperson was appointed or as to the issue of strategic concern for which such liaison or spokesperson was appointed.

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In situations where a liaison is to vote on behalf of the Village at a meeting of an entity to which ~~he or she is~~ it the liaison, the Council Liaison shall use ~~his or her~~ a reasonable ~~best~~ effort to get direction from the Village Council prior to voting. If prior direction from the Village Council is not feasible, then the Liaison will use ~~it~~ ~~his or her~~ best effort to vote in a manner consistent with the wishes of the Village Council.

Section 18. Policies for vacancies, forfeiture of office and related Charter provisions are incorporated to these rules by reference as Attachment A and Attachment B.

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Attachment A

VILLAGE OF ESTERO—RULES OF PROCEDURE-VACANCIES

Preamble--The Village Charter sets out a series of reasons that an elected Member's office becomes vacant. It also specifies certain procedures that must be followed. It specifies that the Council is the entity that judges these circumstances and qualifications. The Governor also has the power to suspend or remove local elected officials from office. The voters can also remove (recall) under certain circumstances. These procedures are intended to clarify and supplement, but not to be in conflict with, the relevant Charter provisions, the Florida Constitution or general law.

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Vacancies.—A vacancy in the office of council, mayor, or vice mayor shall occur upon the incumbent's death, inability to fulfill the duties of the office, movement of residence outside the district, resignation, appointment to another public office, judicially determined incompetence, removal, or forfeiture of office as described in this subsection. (Village Charter Section 4, paragraph (7)(a)).

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Policy: Death--Upon receipt of notification of death of a member, the clerk will enter the notification into the Village records and notify the Village Manager and Council. The office will be deemed to be vacant immediately upon the date and time of death.

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Policy: Inability to fulfill the duties of the office—

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The duties of a Member in the Village of Estero are set out elsewhere in these Rules of Procedure.

a. **Notification by the Member**--If a Member is unable to fulfill the duties of the office, the Member must notify the Council. The Council will review the notification, and if it concurs, will declare the office vacant.

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b. **Notification by other than the Member**—If the Council is notified by other than the Member that the Member is unable to fulfill the duties of the office, it may notify the Member and give the Member the opportunity to rebut the notification as required in the Charter.

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c. **Notification by Staff or other Council Members**—If the Council is notified by Staff, other Council Members, or upon its own, it will notify the Member

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and give the Member the opportunity to rebut the notification as required in the Charter.

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Policy: Movement of residence outside the district--An elected official must be a bona fide resident and "elector" of the Village and district at all times. (See Charter Sec. 4. (2)(b). To qualify as an elector, the Member must have a residence in the Village and district and must intend that this be the Member's one and only domicile. That is the only place that the Member can vote or hold office. If the Member is no longer an elector within the Village and district.

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If it comes to the attention of the Village that a Member is no longer an elector in the district, Council must investigate, and if found to be correct, declare the office vacant as of the date the Member is no longer an elector in the district.

Resignation—A resignation should be written and transmitted to the Village Manager or Mayor or both. It is effective upon the date specified in the resignation or upon the date it is accepted by the Council. It will be taken up at the next regularly scheduled meeting of Council. If the resignation is due to a lack of qualification as set out in the Charter, it is effective immediately upon receipt by the Village.

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Appoint to another public office—The Florida Constitution's Dual Office-holding provisions prohibit a Member from holding more than one office at a time. It provides that the acceptance of another office, constitutes a resignation from the current office. There are some exceptions. Therefore, prior to acceptance of any appointment to another public agency, board or committee board, the Member should ensure that the appointment does not constitute an "office" under the Dual Office-holding prohibitions. The Florida Attorney General's office has a Dual Office-holding booklet.

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Judicially-determined Incompetence-This is related to inability to fulfill the duties of the office. Florida law sets out reasons and procedures for judicial determination of Incompetence. If a Member is judicially declared to be Incompetent, the Village must follow that determination and declare the office vacant. Determination of appeals of judicial incompetence must be with the Court, not the Council.

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Removal—The Charter provides for suspension and removal. Due process requires a Council hearing. The Governor can also suspend or remove. The people can remove by municipal recall (100.161 Fla. Stats.) for:

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1. Malfesance; 2, Misfeasance; 3, Neglect of duty; 4, Drunkenness; 6, Permanent inability to perform official duties; and 7, Conviction of a felony involving moral turpitude.

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Absence from Meetings. The Charter states that a Member's office may be forfeited if the Member "misses three consecutive regularly scheduled council meetings, unless excused by the council." The Charter is silent upon what constitutes an excusable absence. State law leaves it up to the Council. Following are Council's general guidelines.

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1. Absence vs. attendance. In general, elected officials are required to attend meetings physically, in person. Over the years, the Florida Attorney General has allowed a limited category of exceptions, for "unusual or special circumstances", recognizing that with electronic devices (first the telephone, now videoconferencing) that officials can fully participate remotely, if they cannot attend a meeting for an excusable reason. **If members are allowed to attend remotely, they are considered present for all purposes, and thus, it is not an absence.**

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2. Excuses for Absence. Presumptively Valid Excuses. Unavoidable conflict in schedule, or other excuses, especially where Council is notified in advance (usually at a meeting prior to the proposed absence); illness, especially hospitalization; medical appointments that cannot easily be rescheduled; serious illness or death in family; physical inability to attend, such as involvement in accident or injury; severe weather, such as hurricane, tropical storm, wildfire; riot; unexpected traffic delay, such as for a major accident; unavoidable or sudden conflict in schedule dealing with job or with an organization with which the Member is liaison; other emergency; declared state of emergency applying to Member.

3. Excuses for Absence. Presumptively Non-valid Excuses. Avoidable conflict in schedule; conflict in schedule where Council is not notified in advance (normally at previous meeting); inconvenience, vacation; long-term off-season residence elsewhere; mere preference for non-attendance, including avoidance of subject matter or persons involved in a meeting; avoidance of a vote; laziness; anger.

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Attachment B

VILLAGE OF ESTERO—RULES OF PROCEDURE-CHARTER PROVISIONS-

FILLING OF VACANCIES

VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES.

Section 4. (7)(b) Forfeiture of office.—A member of the council may forfeit the office if the member:

1. Lacks at any time during the term of office any qualification for the office prescribed by this charter or by law;
2. Violates any express prohibition of this charter;
3. Is convicted of a felony or criminal misdemeanor, which felony or misdemeanor involves the office of village council;
4. Is found to have violated any standard of conduct or code of ethics established by law for public officials or has been suspended from office by the Governor, unless subsequently reinstated as provided by law; or
5. Misses three consecutive regularly scheduled council meetings, unless excused by the council,

If any of these events should occur, a hearing shall automatically be conducted at the next regularly scheduled council meeting, and the member may be declared to have forfeited office by majority vote of the council.

(c) Filling of vacancies.—A vacancy on the council, except for the position of mayor, shall be filled as follows:

1. If a vacancy occurs and the remainder of the unexpired term is 28 months or less, the remaining council members shall, within 60 days after the occurrence of such vacancy, by majority vote of the remaining council members, appoint a person from the same district to fill the vacancy for the remainder of the unexpired term.
2. If a vacancy occurs and the remainder of the unexpired term is more than 28 months, the remaining council members shall, within 60 days after the occurrence of such vacancy, by a majority vote of the remaining council members, appoint a person from the same district to fill the vacancy until the next regularly scheduled

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election, at which time the balance of the term for the seat shall be filled pursuant to section 9.

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3. If four or more council vacancies occur at one time, the remaining council members shall, within 60 days after the occurrence of such vacancies, by a majority vote of the remaining council members, appoint a person from the same district to fill such vacancies until the next regularly scheduled village election, at which time the balance of the term for the seats shall be filled pursuant to section 9.

(8) JUDGE OF QUALIFICATIONS.—

(a) The council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a council member's office, including whether good cause for absence has been or may be established. The council shall have the power to set additional written standards of conduct for its members beyond those specified in this charter and may provide for such penalties as it deems appropriate, including forfeiture of office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths, and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the village at least 7 days before the hearing.

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(b) The burden of establishing good cause for absences shall be on the council member in question; however, any council member may, at any time during a duly held meeting, move to establish good cause for his or her absence. A council member whose qualifications are in question or who is otherwise subject to forfeiture of his or her office shall not vote on such matters.

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Policy: In any proceeding where Council is authorized to judge qualifications, to discipline, to suspend, or to remove or declare a Member's office to be vacant, it may have the Village Manager or Village Attorney investigate the facts, refer it to the County Sheriff and State attorney for investigation (where criminal charges are or may be made), engage the services of one or more qualified persons to investigate, and appoint a special magistrate to hear and make recommendations to the Council.

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