



REPORT TO CITY COUNCIL

FROM: Steven C. Carter, City Manager

DATE: February 12, 2010

SUBJECT: EXPLANATION OF COUNCIL BILL NO. 2010-017

A. Introduction: This Council Bill amends the Municipal Code to authorize the City Manager to appoint Freedom of Information Act Officers and designate persons who are required to take Open Meetings Act training.

B. Action Requested: The Administration recommends approval of this Council Bill.

C. Prior Council Action:

- CB 92-233, approved August 18, 1992, authorized the City Manager to implement Freedom of Information Act procedures.
- CB 84-107, approved June 19, 1984, adopted procedures pursuant to the Illinois Freedom of Information Act.
- CB 2009-035, approved March 3, 2009 revised the City Council's procedures, pursuant to the Open Meetings Act, for closing meetings.
- A study session was held January 26, 2010 to review changes in the Freedom of Information Act and Open Meetings Act.

D. Background:

1. Freedom of Information Act.

• **Law revised.** The Illinois Freedom of Information Act (FOIA) was originally passed in 1984. The Illinois Legislature approved a substantially revised FOIA, effective January 1, 2010.

• **FOIA Policy.** The public policy in the revised FOIA emphasizes the duty of governments to be open and transparent, and that FOIA requests should receive the highest priority attention. The Act provides that all records are presumed to be open for inspection and copying, and any exemption used to deny a request must be proven by the government by clear and convincing evidence.

- **Open Meetings Act.** The new Act allows appeals of alleged violations of the Open Meetings Act to be brought directly to the Public Access Counselor of the Illinois Attorney General's office.

- **Provisions of New Act.** Some of the major changes of the new law are listed in Attachment 1.

2. City Response to the New Law. Section 2-118 of the Municipal Code currently authorizes the City Manager to adopt the procedures to implement the Illinois Freedom of Information Act.

The new law requires the City Council to appoint one or more FOIA Officers (FOIOs) to handle FOIA requests. The Act also requires the City Council to appoint officials or employees under the Open Meetings Act who must undergo annual training. The City Code amendment adds to the City Manager's authority to implement procedures the authority to designate FOIA Officers and persons under the Open Meetings Act.

One of the main duties of the FOIO is to log requests and insure a prompt response to the request. Because the response times have been shortened, it may be prudent for the City to designate FOIOs for each department that receives frequent requests, plus a City-wide FOIO to handle other requests in order to expedite response. The City Manager is required to notify Council of any policies adopted.

E. Alternatives:

1. Approve the Council Bill which delegates authority to the City Manager to designate Freedom of Information Act Officers and Open Meetings Act persons for each public body of the City.
2. Defeat this Council Bill and provide direction to Staff.

F. Discussion of Alternatives:

Alternative 1 delegates the authority to appoint to the City Manager for each of the City's "public bodies" as required by the new Act. Every Board or Commission as well as the City Council is a public body. Because individual people have to be named as Freedom of Information Act Officers, delegation of that authority to the City Manager would be efficient. The City Manager can act quickly in response to personnel changes and make adjustments based on work assignments and administrative organizational need, which insures that the functions of the FOIO will be performed in a timely way. There are the same advantages for delegating the appointment of the Open Meetings Act designation.

a. Advantages

- FOIOs and Open Meetings Act appointments can be kept current regardless of personnel changes.

- The number and job position with these designated responsibilities can be based on current FOIA demands and department organization.

b. Disadvantages

- Council would not make individual decisions appointing FOIOs and Open Meetings Act persons.

Alternative 2 would be to provide other direction to Staff. Council might suggest, for instance, that appointment of FOIOs and Open Meetings Act designations would require prior approval by the Council.

a. Advantages

- Alternative methods of compliance could be suggested

b. Disadvantages

- Loss of flexibility and timeliness of City Manager appointments

G. Community Input: Local media have publicized changes in the FOIA.

H. Budget Impact: This Council Bill would not add any additional costs other than already required by the revised Act. New requirements, such as the mandate that the City provide a record in the format requested by the requester, may require some new equipment or software. Increased efforts are already underway to provide more information on the City's Website which may serve to fulfill some requirements under the FOIA without additional costs.

I. Staffing Impact: This Council Bill would not add staffing costs not already required by the new Act. The City was already experiencing increases in FOIA requests, causing increased staff time to be devoted to responding to requests, and it is expected that this increase will continue. The strict timetables for response and the need to search more electronic formats are likely to lead to increased staff time. The increased complexity of appeals to the Attorney General's Public Access Counselor will require additional time by the Legal Department to review requests and engage in the extensive review process created by the Act.

Prepared by:

Trisha A. Crowley
Deputy City Attorney

Reviewed by:

Frederick C. Stavins
City Attorney

Attachments:

1. Major Changes P.A. 96-542
2. Code Revision Sheet

j:\leg\word\foia\2009 new act\memo to city council new act.doc