

**AN ORDINANCE OF THE VILLAGE OF INNSBROOK, MISSOURI,
ADOPTING AN OPEN MEETINGS AND RECORD ORDINANCE AS
REQUIRED UNDER MISSOURI STATE STATUTE CHAPTER 610.**

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF INNSBROOK, MISSOURI, AS FOLLOWS:

SECTION 1. Definitions.

The terms, unless the context otherwise indicates, shall be defined:

CLOSED MEETING, CLOSED RECORD OR CLOSED VOTE: Any meeting, record or vote closed to the public.

COPYING: If requested by a member of the public, copies provided as detailed in Section 610.026, if duplication equipment is available.

PUBLIC BUSINESS: All matters which relate in any way to performance of the Village's functions or the conduct of its business.

PUBLIC GOVERNMENTAL BODY: Any legislative, administrative or governmental entity created by the Constitution or Statutes of this State, orders or ordinances of the Village, judicial entities when operating in an administrative capacity or by executive order, including:

1. Any advisory committee or commission appointed by the Chairman or Board of Trustees.
2. Any department or division of the Village.
3. Any other legislative or administrative governmental deliberative body under the direction of three (3) or more elected or appointed members having rulemaking or quasi-judicial power.
4. Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its Chief Administrative Officer, policy or policy revisions or expenditures of public funds.
5. Any quasi-public governmental body. The term "*quasi-public governmental body*" means any person, corporation or partnership organized or authorized to do business in this State pursuant to the provisions of Chapters 352, 353 or 355, RSMo., or unincorporated association which either:

- a. Has as its primary purpose to enter into contracts with public governmental bodies or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or
- b. Performs a public function, as evidenced by a statutorily or ordinance-based capacity, to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax exempt debt, rights of eminent domain, or the contracting of lease-back agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from the Village, but only to the extent that a meeting, record or vote relates to such appropriation.

PUBLIC MEETING: Any meeting of a public governmental body subject to this Ordinance at which any public business is discussed, decided or public policy formulated, whether such meeting is conducted in person or by means of communication equipment including, but not limited to, conference call, video conference, Internet chat or Internet message board. The term "*public meeting*" shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this Ordinance, but the term shall include a vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one (1) location in order to conduct public business.

PUBLIC RECORD: Any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body. The term "*public record*" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any documents or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record.

PUBLIC VOTE: Any vote, whether conducted in person, by telephone, or by any other electronic means, cast at any public meeting of any public governmental body.

SECTION 2. MEETINGS, RECORDS AND VOTES TO BE PUBLIC -- EXCEPTIONS

All meetings, records and votes are open to the public, except that any meeting, record or vote relating to one (1) or more of the following matters, as well as other materials designated elsewhere in this Ordinance, shall be closed unless the public governmental body votes to make them public:

1. Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public governmental body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of Section 610.011, RSMo., however, the amount of any monies paid by, or on behalf of, the public governmental body shall be disclosed; provided however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record.
2. Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes or vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate.
3. Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two (72) hours of the close of the meeting where such action occurs; provided however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two (72) hour period before such decision is made available to the public. As used in this Subsection, the term "*personal information*" means information relating to the performance or merit of individual employees.
4. Non-judicial mental or physical health proceedings involving an identifiable person, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment.
5. Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again.
6. Welfare cases of identifiable individuals.
7. Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups.

8. Software codes for electronic data processing and documentation thereof.
9. Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid.
10. Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected.
11. Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.
12. Records which are protected from disclosure by law.
13. Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest.
14. Records relating to municipal hotlines established for the reporting of abuse and wrongdoing.
15. Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to this Chapter.
16. Operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Nothing in this exception shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. When seeking to close information pursuant to this exception, the agency shall affirmatively state in writing that disclosure would impair its ability to protect the safety or health of persons, and shall in the same writing state that the public interest in non-disclosure outweighs the public interest in disclosure of the records. This exception shall sunset on December 31, 2012.
17. Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a non-public entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety.
 - a. Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open.

- b. When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property and shall in the same writing state that the public interest in non-disclosure outweighs the public interest in disclosure of the records.
 - c. Records that are voluntarily submitted by a non-public entity shall be reviewed by the receiving agency within ninety (90) days of submission to determine if retention of the document is necessary in furtherance of a State security interest. If retention is not necessary, the documents shall be returned to the non-public governmental body or destroyed.
 - d. This exception shall sunset on December 31, 2012.
18. Records that identify the configuration of components or the operation of a computer, computer system, computer network or telecommunications network and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network or telecommunications network, including the amount of monies paid by, or on behalf of, a public governmental body for such computer, computer system, computer network or telecommunications network, shall be open.
19. Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this Section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body.

SECTION 3: ELECTRONIC TRANSMISSIONS -- PUBLIC RECORD -- WHEN

Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format. The provisions of this Section shall only apply to messages sent to two (2) or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exception of Section 610.021, RSMo.

SECTION 4: NOTICES OF MEETINGS

- A. All public governmental bodies shall give notice of the time, date and place of each meeting and its tentative agenda in a manner reasonably calculated to advise the public of the matters to be considered, and if the meeting will be conducted by telephone or other electronic means, the notice of the meeting shall identify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by internet chat, internet message board or other computer link, it shall post a notice of the meeting on its website in addition to its principal office and shall notify the public how to access that meeting. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.
- B. Notice conforming with all of the requirements of Subsection (A) of this Section shall be given at least twenty-four (24) hours, exclusive of weekends and holidays when the Village Hall is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.
- C. The Village shall allow for the recording by audiotape, videotape or other electronic means of any open meeting. The Village may establish guidelines regarding the manner in which such recording is conducted so as to minimize disruption to the meeting. No audio recording of any meeting, record or vote closed pursuant to the provisions of Section 2 of this Ordinance shall be permitted without permission of the Village; any person who violates this provision shall be guilty of an ordinance violation.
- D. Each governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to a specific exception allowed pursuant to Section 2 of this Ordinance hereof. The notice shall be the same as described in Subsection (A) herein.
- E. A formally constituted subunit of a parent governmental body may conduct a meeting without notice during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

SECTION 5: CLOSED MEETINGS -- HOW HELD

- A. Except as set forth in Subsection (D) of Section 4 of this Ordinance, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific Section of this Chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.
- B. Any meeting or vote closed pursuant to Section 2 of this Ordinance shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. Public governmental bodies holding a closed meeting shall close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.

SECTION 6: JOURNALS OF MEETINGS AND RECORDS OF VOTING

- A. Except as provided in Section 2 of this Ordinance, rules authorized pursuant to Article III of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and if a roll call is taken, as to attribute each "yea" and "nay" vote, or abstinence if not voting, to the name of the individual member of the public governmental body. Any votes taken during a closed meeting shall be taken by roll call. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. All votes taken by roll call in meetings of a public governmental body consisting of members who are all elected, shall be cast by members of the public governmental body who are physically present and in attendance at the meeting. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, Internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.
- B. A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body including, but not limited to, a record of any vote taken at such meeting. The minutes shall include the date, time, place, members present, members absent, and a record of votes taken. When a roll call vote is taken, the minutes shall attribute each "yea" and "nay" vote, or abstinence if not voting, to the name of the individual member of the public governmental body.

SECTION 7: ACCESSIBILITY OF MEETINGS

- A. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public and at a time reasonably convenient to the public unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.
- B. When it is necessary to hold a meeting on less than twenty-four (24) hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

SECTION 8: SEGREGATION OF EXEMPT MATERIAL

If a public record contains material which is not exempt from disclosure, as well as material which is exempt from disclosure, the custodian shall separate the exempt and non-exempt material and make the non-exempt material available for examination and copying in accord with the policies provided herein. When designing a public record the custodian shall, to the extent practicable, facilitate a separation of exempt from non-exempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the custodian shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

SECTION 9: CUSTODIAN DESIGNATED -- RESPONSE TO REQUEST FOR ACCESS TO RECORDS

- A. The City Clerk shall be the custodian of records and will be responsible for maintenance and control of all records. The custodian may designate deputy custodians in operating departments of the Village and such other departments or offices as the custodian may determine. Deputy custodians shall conduct matters relating to public records and meetings in accord with the policies enumerated herein.
- B. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian. No public governmental body shall, after August 28, 1998, grant to any person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record unless the granting of such right is necessary to facilitate coordination with, or uniformity among, industry regulators having similar authority.
- C. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third (3rd) business day following the date the request is received by the custodian of records of a public governmental body. If records are requested in a certain format, the public body shall provide the records in the requested

format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three (3) days for reasonable cause.

- D. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third (3rd) business day following the date that the request for the statement is received.

SECTION 10: VIOLATIONS -- REMEDIES, PROCEDURE, PENALTY -- VALIDITY OF ACTIONS BY GOVERNING BODIES IN VIOLATION -- GOVERNMENTAL BODIES MAY SEEK INTERPRETATION OF LAW

- A. The remedies provided by this Section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of this State may seek judicial enforcement of the requirements of Sections 610.010 to 610.026, RSMo. Suits to enforce Sections 610.010 to 610.026, RSMo., shall be brought in the Circuit Court for the County in which the public governmental body has its principal place of business. Upon service of a summons, petition, complaint, counterclaim or cross-claim in a civil action brought to enforce the provisions of Sections 610.010 to 610.027, RSMo., the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption pursuant to Section 610.021, RSMo., or the assertion that the requested record is not a public record until the court directs otherwise.
- B. Once a party seeking judicial enforcement of Sections 610.010 to 610.026, RSMo., demonstrates to the court that the body in question is subject to the requirements of Sections 610.010 to 610.026, RSMo., and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of Sections 610.010 to 610.026, RSMo.
- C. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated Sections 610.010 to 610.026, RSMo., the public governmental body or the member shall be subject to a civil penalty in an amount up to one thousand dollars (\$1,000.00). If the court finds that there is a knowing violation of Sections 610.010 to 610.026, RSMo., the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated Sections 610.010 to 610.026, RSMo., previously.

- D. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has purposely violated Sections 610.010 to 610.026, RSMo., the public governmental body or the member shall be subject to a civil penalty in an amount up to five thousand dollars (\$5,000.00). If the court finds that there was a purposeful violation of Sections 610.010 to 610.026, RSMo., then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated Sections 610.010 to 610.026, RSMo., previously.
- E. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of Sections 610.010 to 610.026, RSMo., a court shall void any action taken in violation of Sections 610.010 to 610.026, RSMo., if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of Sections 610.010 to 610.026, RSMo., outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. Suit for enforcement shall be brought within one (1) year from which the violation is ascertainable and in no event shall it be brought later than two (2) years after the violation. This Subsection shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.
- F. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the Circuit Court of the County of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

SECTION 11: FEES FOR COPYING PUBLIC RECORDS -- LIMITATIONS

- A. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:
1. Fees for copying public records, except those records restricted under Section 32.091, RSMo., shall not exceed ten cents (\$.10) per page for a paper copy not larger than nine (9) by fourteen (14) inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the

fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester.

2. Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or visual items or devices, and for paper copies larger than nine (9) by fourteen (14) inches shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape or other medium used for the duplication. Fees for maps, blueprints or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints or plats. If programming is required beyond the customary and usual level to comply with a request for records or information, the fees for compliance may include the actual cost of such programming.

B. Payment of such copying fees may be requested prior to the making of copies.

SECTION 12. This Ordinance shall be in full force and effect from and after its passage by the Board of Trustees.

Said Bill was passed and approved this 4th day of November, 2009 by the Board of Trustees of the Village of Innsbrook after having been read by title two times prior to passage.

Les Buechele, Chairman
Village of Innsbrook Trustees

ATTEST:

Chris McCormick
Village Administrator/Clerk