

Village of Avoca – Records Retention and the Audio Recording of Board Meetings

Purpose: Records Retention – Audio Recording of Board Meetings						Policy #32	
Effective: January 1, 2024				Author: Eric R. Tyner			
Approved by Board:	Mayor: <i>ERT</i>	Trustee: <i>MJR</i>	Trustee: <i>WJG</i>	Trustee: <i>AJH</i>	Trustee:	Filed: <i>12-15-23</i>	Clerk: <i>CH</i>

I. Purpose:

The purpose of this policy is to establish a schedule for the retention of official records and documents produced during the normal course of business for the Village of Avoca. These records, which are produced and are necessary to operate a municipality, are to be handled as outlined below. All records and documents produced during the normal course of business shall be handled by the Village Clerk in accordance with a records retention policy. (See N.Y. Comp. Codes R. & Regs. tit. 8, § 185.2(2)).

II. Policy:

The policies and procedures specified in this policy apply to all Village of Avoca's records and documents, produced by the various sub-divisions of the municipality, to include all written documents or records, computer generated information, or any electronic data that is generated and used for official Village of Avoca business regardless of location. Compliance with this policy is mandatory for all employees, of the Village of Avoca.

II. Definitions:

A. Avoca Village Board of Trustees

1. The Board of Trustees is the legislative body of a village. The Board of Trustees is comprised of the Mayor and four Trustees.
2. The general powers of the Board of Trustees are set forth in Village Law § 4-412, which provides that: In addition to any other powers conferred upon villages, the Board of Trustees of a village shall have management of village property and finances, may take all measures and do all acts, by local law, not inconsistent with the provisions of the constitution, and not inconsistent with a general law except as authorized by the municipal home rule.
3. The Board of Trustees may create or abolish by resolution offices, boards, agencies and commissions and delegate to said offices, boards, agencies and commissions so much of its powers, duties and functions as it shall deem necessary for effectuating or administering the Board of Trustees duties and functions. This extremely broad grant of power enables the Board of Trustees to

adopt a wide range of local laws to address village concerns if the action is not inconsistent with the constitution or certain State laws.

4. Trustees do not possess any inherent authority to supervise or direct the work of subordinate village officers or employees. The responsibility and power to supervise all subordinate village officers and employees is vested in the Village Mayor.

B. Village Mayor:

1. The Village Mayor is the Chief Executive Officer (CEO) of the Village of Avoca
2. Village Law § 4-400 empowers the Mayor to:

- a. Preside at the meetings of the Board of Trustees within the parameters of the rules of procedure adopted by a majority vote of the Board of Trustees.
- b. Pursuant to Village Law § 4-400, the Mayor can appoint one of the Trustees to serve as Deputy Mayor, who serves in the Mayor's absence or inability to serve. This appointment is not subject to Board approval and the Deputy Mayor is vested with all the powers of the Mayor in his / her absence.
- c. The Mayor, with the approval of the Board of Trustees, appoints individuals to fill vacancies in both elected and appointed offices when the vacancy occurs before the expiration of the official's term of office, to include the event if the Village Clerk / Treasurer position is vacated for any reason.
- d. The Mayor shall enforce and prosecute all violations of the laws, rules, and regulations of the Village of Avoca and oversee any disciplinary action to be taken on any Village of Avoca employee or appointed official, to include the Village of Avoca Village Clerk / Treasurer. The Mayor shall notify the Board of Trustees immediately of any employment enforcement action taken for any violations of rules and regulation by an employee.
- e. The Mayor shall be the supervising authority of the Village of Avoca Village Clerk / Treasurer and in the absence of the Village Clerk / Treasurer, the Deputy Clerk for the Village of Avoca. The Mayor shall have supervisory authority over the Village of Avoca Village Clerk / Treasurer for village projects approved by the Board of Trustees and being conducted by the Village Clerk's Office.
- f. The Mayor, as acting CEO of the Village of Avoca, shall ensure all duties of the Village Clerk / Treasurer are carried out on a weekly basis.

C. Village Clerk / Treasurer:

1. The Village of Avoca Village Clerk / Treasurer shall be any person who is appointed to the job description for the Village of Avoca for the Village Clerk / Treasurer position as outlined below.

2. The Village Clerk / Treasurer is here after considered to be a confidential position for the Village of Avoca and will be a salaried position with specific wage compensation and benefits. The provisions of the confidential duties and requirement for the Village Clerk / Treasurer are outlined below in this agreement.
3. In the Public Officer's Law, the position of Village Clerk / Treasurer for the Village of Avoca is considered to be an official of the Village of Avoca. While there is some discretion across New York State if appointed officials exist in villages across the State and some villages treat these positions as public employees, the Village of Avoca considers this position as the Office of Village Clerk.
4. The Village Clerk shall be the official of the Village of Avoca tasked with the Retention of Records as outlined in this policy and shall ensure records are retained as prescribed by law. In the event of a records retention violation, the Village Clerk shall immediately notify the Mayor who will address the issue and make the appropriate notification to the Board of Trustees.

D. New York State Definitions

1. In no event, shall the definitions as outlined above override over any New York State legal definition for any position (employees or officials) for the Village of Avoca and in the event of any conflict in terms, the New York State definition will take precedence.

IV. Records Retention

A. Application to Officials and Employees

All elected officials, employees, or appointed officials of the Village of Avoca must obey local, state, and federal laws, including laws on copyright, intellectual property, and notification laws. The Village of Avoca is required to protect and secure various types of information as defined in the Federal Trade Commission Identity Theft Act Red Flag Legislation ("FTC Act"), the Criminal Justice Information Services Security Policy and through contractual obligations related to merchant services (credit card acceptance). The Village of Avoca must abide by the New York State Technology Law § 208, which requires notifying any users of a loss of confidentiality of private information.

B. Schedule for Retention

As stated above, the retention of official records and documents will be handled by the Village Clerk in accordance with a records retention policy, as outlined in N.Y. Comp. Codes R. & Regs. tit. 8, § 185.2(2)). By the Village of Avoca Resolution 2023-4, the Village of Avoca has hereby adopted the records retention policy schedule promulgated by the State of New York. As this document is 422 pages in length (as it covers all types of government entities) it will be linked to this policy as the RETENTION AND DISPOSITION SCHEDULE FOR NEW YORK GOVERNMENT RECORDS, REV. 04/2023 (nysed.gov)

C. Records Retention Overview

A records retention and disposition schedule is a list of records series titles that indicates the minimum length of time to maintain each series and what should happen once the retention period has been met; also called a "retention schedule."

The State Archives has authority over the retention and disposition of local government and state agency records. It issues retention schedules for both types of governments.

The Archives' retention schedules generally apply to records regardless of the format or media in which they exist, including electronic records. Records being used for audits or legal actions must be kept until the audit is satisfied or the legal action ends, even if their minimum retention period has passed.

Through the appraisal process, the Archives has identified some records as having long-term historical or research value. Within the local government retention schedules, historical records, records generated before 1910, are designated as "permanent" and must be retained by the local government. State agencies' retention schedules indicate that historical records must be transferred to the State Archives following the Procedures for Transferring Records to the New York State Archives.

D. Retaining Records

Records should be retained as long as they are needed by your organization to support business needs and to satisfy any legal and fiscal requirements and long-term historical or research use. In developing retention schedules, the State Archives reviews federal and state laws and regulations, audit requirements, the need for legal evidence, administrative needs, and historical or research value and establishes minimum retention periods based on this information. Records that are the subject of a legal action or audit must be retained for the entire period of the action or audit even if their retention period has passed.

E. Disposing of Records

Disposition is the final action in the records lifecycle and occurs when a record satisfies its retention period as noted on a retention schedule. Disposition means the disposal of a record by:

- (1) Destruction, or
- (2) Transfer to an archival repository, or
- (3) transfer to another government or organization.

This included the destruction of microfilm, computer tapes and disks, video tapes and other magnetic media.

Local governments are responsible for preservation of records marked as "permanent" in their retention schedules.

Under limited circumstances, local governments and state agencies may transfer custody of their records to another organization or government through donation, loan, or deposit.

The key is to regularly carry out disposition, as indicated in your retention schedule and as part of your organization's normal business practices, and to document this disposition. Documentation of disposition will protect the Village of Avoca when it is unable to provide properly destroyed records in response to

- (1) Litigation, or
- (2) Audits, or
- (3) Requests under FOIL.

F. Local Government Retention Schedule (LGS-1)

The Retention and Disposition Schedule for New York Local Government Records (LGS-1) consolidates, supersedes and replaces Schedules CO-2, MU-1, MI-1, and ED-1, previously issued by the State Archives. Local governments must adopt LGS-1 prior to utilizing it, even if they adopted and have been using the CO-2, MU-1, MI-1, or ED-1 Schedules.

There are certain types of records, types of entities, or situations where it is inappropriate to use the LGS-1. For a complete and detailed list, refer to Exceptions to Applying Retention Periods Indicated in the adopted schedule.

G. Methods of Destruction

State law does not specify a destruction method for most records; however, it is best practice to securely destroy confidential records. Decisions regarding the method of destruction will be determined by the Board of Trustees. Various methods of destruction for paper and electronic records are authorized by law, but the Village of Avoca shall dispose of official records and documents in the following manner:

1. Shredding of paper documents,
2. Erasure of all digital media from hard drives, thumb drives or other computer systems,
3. The above procedures shall be carried out by the Mayor or his designee and at least one other designed person by the Board of Trustees acting in concert, or by a licensed contractor approved by the Board of Trustees.

V. Board of Trustee's Meetings and Audio Recording of Meetings or Proceedings

A. Application

Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the Freedom of Information law. Minutes shall be made available to the public within two-weeks from the date of such meeting, except that minutes taken pursuant to subdivision two of this section shall be available to the public within one week from the date of the executive session.

If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high-speed internet connection, such minutes shall be posted on the website within two weeks from the date of such meeting, except that minutes taken pursuant to subdivision two of this section shall be available to the public within one week from the date of the executive session.

Unabridged video recordings or unabridged audio recordings or unabridged written transcripts may be deemed to be meeting minutes. Nothing in this section shall require the creation of minutes if the public body would not otherwise take them. (Open Meetings Law 106). Pursuant to law, video or audio recordings of a public meeting DO NOT need to be posted online or otherwise published to the public. The video or audio recordings may be posted online as an alternative to written minutes if so elected and approved by the Board of Trustees.

Under this Recorded Retention Schedule, video or audio recordings of any public meeting shall be retained for a period of at least (4) months after meeting minutes are created from them before being scheduled for destruction. Unless otherwise approved by the Board of Trustees, all audio recordings of monthly Board of Trustee's meetings will be scheduled for destruction no later than (12) months from the time they are created. The exceptions to the (12) month rule for the destruction of all audio recordings will follow the scheduled exemption schedule of destruction as outlined in Retention and Disposition Schedule for New York Local Government Records (LGS-1).

VII. Enforcement

Violations of this policy may result in disciplinary action up to and including termination of employment, revocation of access rights, and/or legal action. The Mayor, in conjunction with the Board of Trustees, of the Village of Avoca reserves the right to monitor all activities with the retention and proper disposition of official records and documents to ensure compliance with this policy.

VIII. Acknowledgment

All village official and employees charged with the retention and destruction of official records and documents for the Village of Avoca must acknowledge that they have read and understand this policy and agree to comply with its provisions.

IX. Effective Date

The schedule being utilized by the Village of Avoca went into effect as of April 1, 2022. This 2022 edition should be used in place of the previous version of LGS-1 (2020). The governing body of the Village of Avoca, the Board of Trustees, has adopted this schedule by VOA Resolution 2023-4 effective the date of the implementation of this Policy and Resolution.