

BOARD OF TRUSTEES WORK SESSION
11004 Carpenter Street, Mokena, Illinois 60448
Monday, November 15, 2021

CALL TO ORDER

Mayor Fleischer called the Board of Trustees work session to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The Board of Trustees recited the Pledge of Allegiance.

ROLL CALL

Clerk Martini called the roll and the following Trustees were present:

Joseph Budzyn
Rob Dauphinais
Debbie Engler
Melissa Fedora

Absent: George Metanias
 Jim Richmond

Also present were: Village Clerk Melissa Martini; Village Administrator John Tomasoski; Assistant Village Administrator Kirk Zoellner; and Village Attorney Carl Buck

Comcast Franchise Agreement

Assistant Village Administrator Kirk Zoellner presented this item, stating that on December 12, 2011, the Village entered into a ten-year franchise agreement (renewal) with Comcast for the construction, operation, and maintenance of its cable system in Mokena. The agreement mirrored the pact negotiated between Comcast and the Mayors Caucus at that time, with the same terms subsequently adopted by Mokena and ten other southwest suburban municipalities located in Will County.

The referenced Village agreement with Comcast is set to expire at the end of the current calendar year.

Along with the nearby communities of Beecher, Frankfort, Lockport, New Lenox, and Lemont, the Village has been seeking to negotiate a new franchise agreement with Comcast over the past several months.

Comcast's proposed terms for the new agreement remain similar to those set forth in the 2011 package, with the following exceptions:

- Citing a 2019 FCC order, a caveat is included (Section 4.6.1) that would allow Comcast (at some point in the future) to charge for "courtesy" services currently being provided free of charge to specific Village facilities. The Village would have to pay market rate for these services or have their value deducted from the 5% fee due under the franchise. These charges are permitted by the FCC order.
- Language has been adjusted slightly in Section 4.7 to bring Comcast in line with the State of Illinois EAS Plan.
- Section 5.2.1 has been added in accordance with the revision to the State statute referenced in Section 5.2.
- A sentence has been added to Section 8.7 requiring an accounting of how PEG capital fees are spent.

New Lenox, Lemont, and Beecher have already signed new agreements with Comcast accepting the above new terms, all having indicated they were unable to negotiate any concessions. Federal and State law governing telecommunications severely limit local municipalities' leverage relative to these types of agreements.

Staff and legal counsel have prepared a draft ordinance authorizing execution of a new franchise agreement. As was the case previously, the ordinance specifically provides for the following:

- Provides for a ten (10) year term, effective at the time the franchise agreement is approved.
- Provides/allows for future competition by being non-exclusive in nature

In conjunction with adopting the previously referenced ordinance, Village staff is recommending the Board approve a new franchise agreement with Comcast. The proposed agreement details the specific terms and conditions Comcast will have to meet. These specific terms and conditions include the following:

- Provides specific terms for the transfer of ownership or control of the system requiring the municipality's prior written permission. Permission is dependent upon the approval of the buyer's technical, legal, and financial qualifications and the buyer's willingness to assume the franchise's existing obligations. Approval cannot be reasonably withheld and must be acted upon within 120 days of application.
- Preserves the Village of Mokena's existing construction, service, operational, and customer service standards and penalty provisions for non-performance.
- Provides for adequate insurance and liability coverage required by the cable provider.
- Provides for the continuation of (a maximum) 5% franchise fee on gross revenues to be paid to the Village.
- Provides for continued support of our local cable access channel for Board meeting broadcasts and other community-based programming.

Village staff feel confident that both the franchise ordinance and the franchise agreement adequately address the Village of Mokena's interests (within the constraints of federal and state telecommunications law). The terms and conditions have been (or are expected to soon be) adopted by five other nearby Will County municipalities, thus resulting in similar arrangements for all communities. Staff and legal counsel are recommending their adoption/approval by the Board.

Discussion:

Trustee Budzyn asked if something could be added to the agreement to further clarify obligations for the repair and restoration of parkways following Comcast's work in Village rights of way. Village Attorney Carl Buck responded that language could probably be added to directly reference Village Code with respect to Comcast's restoration obligations, and that he and staff would work with Comcast to include this language in the agreement.

The Board supported bringing the ordinance and agreement back for formal adoption/approval following staff and legal counsel's final resolution of the referenced language with Comcast.

Sexual Harassment Training

Village Attorney Carl Buck presented the following item:



The Impact of Sexual Harassment

The Illinois General Assembly finds that tolerance of sexual harassment has a detrimental influence in workplaces by creating a hostile environment for employees, reducing productivity, and increasing legal liability.

Sexual Harassment can have lasting effects for individuals, the employer, and the Community – including psychological trauma and stress-induced symptoms for the victim, a hostile work environment for employees, damages reputations, negative publicity, civil liability, and even criminal charges.

Consequently, employers cannot take sexual harassment lightly

Federal Laws

Sexual harassment has been recognized in legislation and court rulings as a form of discrimination and is, therefore, illegal.

Important federal legislation that addresses discrimination includes:

Title VII of the Civil Rights Act of 1964

- Prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion
- Generally applies to employers with 15 or more employees

Equal Pay Act of 1963

- Protects men and women from sex-based wage discrimination in the payment of wages or benefits, who perform substantially equal work in the same establishment

Illinois Laws

Illinois Human Rights Act

- Prohibits sexual harassment in employment, and it is a civil rights violation “[f]or any employer, employee, agent of any employer, employment agency, or labor organization to engage in sexual harassment.” 775 ILCS 5/10-2(D)
- One of the Department’s roles is to investigate “charges” or formal complaints– of discrimination, including allegations of sexual harassment in employment
- A charge must be filed with IDHR within 300 days of the incident

Illinois Workplace Transparency Act

- Expands definitions of discrimination and harassment to prohibit *actual or perceived* discrimination and/or harassment based on IHRA protected characteristics
- Employers are now required to provide annual sexual harassment training

What is Sexual Harassment?

Illinois Human Rights Act defines it as “any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment”

The phrase “working environment” is not limited to a physical location an employee is assigned to perform his or her duties and does not require an employment relationship

Types of Sexual Harassment

The courts have identified two types of measurable behavior in workplace settings, including:

Quid pro quo: “You do something for me, and I’ll do something for you.”

This means that a manager or supervisor may not tell a subordinate that order for them to receive a promotion, raise, preferred assignment, or other type of job benefit to avoid something negative like discipline or an unpleasant assignment the subordinate must do something sexual in return

Hostile environment: “The air at work is full of sexual references and it’s impacting me”

A hostile work environment may occur when unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment

Quid Pro Quo Harassment

Quid pro quo means “this for that.” Something is given or withheld in exchange for something else. Although it is less common than hostile environment harassment, quid pro quo is what most people think of when they hear “sexual harassment.”

Tangible employment action against the victim

Monetary loss or change in job

In quid pro quo harassment, a power imbalance exists between the two parties. One person has the power to grant or deny benefits to the other based on sexual behavior.

EXAMPLE: A supervisor tells a subordinate that he would schedule her on a better shift if she will date him.

Hostile Environment Harassment

In a hostile work environment, the unwanted sexual or gender-based behavior creates an “intimidating, hostile, or offensive” work environment. It can have either the purpose or effect of “substantially interfering” with a person’s employment.

A common example these days is sending offensive emails or text messages— even though some might perceive the content as humorous. This is behavior that could be considered hostile.

Quid Pro Quo and Hostile Environment Similarities

There are some similarities between quid pro quo and hostile environment harassment. They can occur at all levels of an organization, involving administrators, supervisors, co-workers and even contractors.

Both forms of harassment are illegal. Employers must take action to prevent, investigate, and remediate both types of harassment.

The gender of the harasser and the victim make no difference.

Offensive or Unwelcome Behaviors

Sexual conduct becomes sexual harassment when the behavior is unwelcome. Behavior may be unwelcome in the sense that the victim did not solicit or invite it, or in the sense that the victim regarded the conduct as undesirable or offensive.

Welcome behavior can quickly become unwelcome behavior. What starts off as welcome behavior (consensual joking) can cross a line.

Consent can be revoke at any time. When someone experiencing sexual harassment behavior says “stop talking to me like this” it must stop. The perpetrator cannot use as a defense “well you started it” or “you were okay with it at first”

Types of Behaviors

Behaviors that can be considered sexual harassment:

- Verbal
- Nonverbal
- Physical

Verbal Sexual Harassment

Examples of verbal sexual harassment include:

- Threats or bribes for unwanted sexual activity
- Sexual or derogatory comments and innuendos
- Sexual jokes or rumors
- Sexually suggestive sounds
- Offensive graffiti
- Spreading rumors
- Letters, notes, telephone calls, and other materials of a sexual nature
- Offensive e-mails, text messages, videos, and posting on social media
- Deliberate touching, leaning over, or cornering



Nonverbal Sexual Harassment

Examples of nonverbal sexual harassment include:

- Ogling or leering
- Pointing or winking
- Sexually suggestive gestures, facial expressions or bodily movement
- Humiliating or degrading images of a sexual nature, including clandestine or altered digital photos or video clips

Physical Sexual Harassment

Physical sexual harassment may involve actions such as:

- Touching, groping, patting, pinching, stroking, squeezing, tickling, or brushing against someone
- Snapping a female's bra
- Pulling down someone's pants or shorts, flipping up or reaching under a skirt

Gender Identity and Sexual Orientation

A person can be the victim of sexual harassment regardless of the victim's general identity or the perpetrator's gender identity

A person can be the victim of sexual harassment regardless of the victim's sexual orientation or the perpetrator's sexual orientation

Working Environment

An employee's "working environment" is not just the physical location where the employee is assigned. An employee's "working environment" may extend to other office locations and remote, off-site, or moving work locations

For example, a "working environment" can include an off-site event

Sexual harassment is not just limited to co-workers and supervisors. Patrons, vendors, and delivery people may come into the work place and interact with employees. Those non-employees can violate sexual harassment laws, rules, and policies, and they can be victims of sexual harassment

Customers/Patrons as Victims

The Illinois Human Rights Act protects customers and patrons from sexual harassment in “places of public accommodation,” such as hotels, stores, museums, hospitals, and restaurants

Employers that are also “places of public accommodation” are responsible for sexual harassment of customers/patrons when perpetrated by their employees or nonemployees

Hostile Work Environment: The Role of Courts

Courts determine whether a work environment is “hostile” or “abusive” by looking at all the circumstances, including the frequency and severity of the conduct, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee’s work performance.

Courts also consider the reaction of a reasonable person in the victim’s position—neither a very prim person nor one for whom “anything goes.”

A single severe incident can itself constitute sexual harassment. For example, groping a staff member can be enough to create a “hostile” or “abusive” environment.

If however, the conduct is less extreme— inappropriate jokes, for example — the courts require the victim to show a pattern of repeated, routine, or generalized harassment

Other Factors Courts Consider

Additionally, courts typically consider the following factors:

- Whether the conduct was verbal, physical, or both
- Whether the alleged harassment was a co-worker or supervisor
- Whether others joined in the harassment
- Whether the harassment was directed at more than one individual

Sexual Harassment Judgments

EEOC remedies for a sexual harassment or sex discrimination complaint may include:

- Job reinstatement
- Back pay and benefits the victim should have earned
- Compensatory damages (paying for out-of-pocket expenses)
- Punitive damages
- Liquidated Damages (in sex-based wage discrimination) equal to the amount of back pay awarded to the victim

Retaliation

Retaliation is an adverse action taken against an employee because he or she complained of harassment or discrimination or participated in an investigation.

Adverse action includes:

- Demotion
- Discipline
- Termination
- Salary Reduction
- Negative performance review
- Change in job duties or shift assignment

Retaliation (cont.)

Anti-discrimination laws prohibit employers from taking adverse action against employees for asserting their rights

- Under IHRA, it is a civil rights violation to retaliate against someone who "has opposed that which he or she reasonably and in good faith believes to be unlawful...sexual harassment in employment..." 775 ILCS 5/6 -101(A)
- IL Whistleblower Act

When an employee complains of sexual harassment to a supervisor, administrator, others at the business, or to a government agency, action cannot be taken against the employee that the employee may view as punishment or retaliation

Retaliation (cont.)

To succeed in a retaliation claim, an employee must prove the following:

1. That he or she engaged in a protected activity, such as complaining of sexual harassment
2. That he or she suffered an adverse employment action, such as demotion or termination
3. That the protected activity and adverse action are linked

Reporting Sexual Harassment

The choice of how to report an allegation of sexual harassment is a personal one, and these options are not mutually exclusive. You may pursue one or more of the following reporting options:

Call the State of Illinois Sexual Harassment & Discrimination Helpline
1-877-236-7703 or
visit www.Illinois.gov/SexualHarassment

Helpline representatives can help callers navigate their numerous reporting options and share additional information related to counseling, legal assistance, and frequently asked questions

Report the Incident to your supervisor, department head, or Village Administrator

Reporting Sexual Harassment(cont)

File a Charge with the Illinois Department of Human Rights

To File a charge Call or visit 1800-662-3942 or www.Illinois.gov/DHR

IDHR Offices Locations:

Chicago Office: 312-814-6200 | 866740-3953 (TTY), 100 W Randolph St, Suite 1100, Chicago, IL 60601

Springfield Office: 217-785-5100 | 866740-3953 (TTY), 535 W. Jefferson, 1 Floor, Intake Unit, Springfield, IL 62702

Marion Office: 618-993-7463 | 217740-3953 (TTY), 2309 W Main St, Marion, IL 62959

Reporting to IDHR

The IDHR is a state agency responsible for enforcing the Illinois Human Rights Act

- Complainants (victims) may file a charge at any time within 300 days of the incident(s)
- To start the process, submit a Complainant Information Sheet to IDHR
- After the IDHR completes its investigation, the Complainant
 1. May file a lawsuit in civil court, or
 2. May file a complaint with the Illinois Human Rights Commission if the IDHR found “substantial evidence” of a violation

Reporting Sexual Harassment(ont)

U.S. EEOC

To file a charge, call or visit online:

1-800-669-4000 | www.EEOC.GOV

1-800-669-6820 (TTY for Deaf/Hard of Hearing callers only)

1-844-234-5122 (ASL Video Phone for Deaf/Hard of Hearing callers only)

U.S. EEOC Offices Serving Illinois

- **Chicago District Office.** JCK Federal Building, 230 S. Dearborn St., Chicago, IL 60604
- **St. Louis District Office.** Robert A. Young Federal Building, 1222 Spruce St., Rm. 8.100, St. Louis, MO 63103

Reporting to EEOC

The United States Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964, the federal law that makes it illegal to engage in sexual harassment or retaliation

- Complainants (victims) may file a charge at any time within 300 days of the incident(s)
- The EEOC has jurisdiction to investigate employers who have 15 or more employees
- To start the process, call the EEOC or visit their website

Remedies under EEOC

After the EEOC completes its investigation:

1. The Complainant may file a lawsuit in federal court
2. The EEOC may help parties reach a settlement through an informal process if the EEOC finds "reasonable cause" to believe discrimination occurred

False Reports

Allegations of sexual harassment are very serious, and employees should not knowingly bring false accusations of harassment.

If it is determined that an employee has made an allegation of harassment that he or she knows is false, disciplinary action, up to and including discharge, may result for the employee who made the false, or bad faith allegations

Employer Liability

Manager/Supervisor Harassment. Employers are strictly liable for sexual harassment perpetrated by its members of management regardless of whether the employer knew of the harassment.

Co-Worker & Nonemployee Harassment. Employers are liable for sexual harassment perpetrated by an employee (co-worker) or nonemployees (vendors) only if the employer knew or reasonably should have known of the harassment and failed to take prompt corrective action.

Village Policy

1. If you are comfortable, communicate directly with the offender and express your objection and that the conduct is unwelcome and offensive
2. Document each incident of alleged harassment, including the date, time, place, what was said or done, and the surrounding circumstances.
3. Immediately bring the matter to the attention your supervisor or department head. If the supervisor/department head is the source of the problem, or condones the problem, contact the next level of supervisor, or if none, the Village Administrator. If the Administrator is the source of the problem, contact the Village President. If the Village President is the source, contact the Administrator.
4. The Village will investigate the complaint as promptly and thoroughly as possible. All complaints will be kept confidential to the extent possible.

Investigation

The Village, being notified of a sexual harassment complaint, will do the following:

- A. Immediately respond to a complaint of sexual harassment and initiate an inquiry or investigation. The Village will provide a third -party ombudsperson to assist if needed.
- B. Interview the complainant (victim) and take reasonable action to protect the victim from retaliation or experiencing further harassment
- C. Interview all relevant witnesses
- D. Interview the alleged perpetrator of the sexual harassment
- E. Document the investigation results and maintain the file as an employment record
- F. Take corrective action as appropriate, including and up to termination

Action Steps to develop a NoTolerance Culture for Sexual Harassment

- Educate yourself and others on the signs of harassment
- Speak up to harassers or speak to a supervisor or department head
- Listen, cooperate in the investigations, and remain confidential to protect the parties involved and yourself
- Review Personnel Policy Manual regarding Sexual Harassment Policy

Takeaways

- Review the Harassment Policy in the employee handbook
- Remember that intentions do not matter if a person feels harassed
- Different people have different reactions to the same behavior and different interpretations
- Harassment can be from an employee or non-employee

Going Forward

- If you encounter any form of sexual harassment from anyone, the problem should be brought to your supervisor
- All complaints will be kept strictly confidential to the extent possible
- Any questions concerning sexual harassment should be directed to the Village Administrator
- Right to contact Illinois Department of Human Rights, James R. Thompson Center, 100 West Randolph Street, Suite 10-100, Chicago, Illinois 60601

QUESTIONS?

Discussion:

There were no additional comments from the Village Board. The Village Board thanked Village Attorney Carl Buck for the presentation and training.

Staff Reports

Village Administrator John Tomaso expanded upon his written staff report update on recreational and medical marijuana. He also highlighted what changes have taken place in the state since the Board last discussed recreational marijuana in the fall of 2019.

Mayor Fleischer suggested a future discussion regarding the Village's logo and the Police Department's current patch. He provided the Board his initial thoughts on this topic.

EXECUTIVE SESSION

Trustee Engler made a motion to enter executive session at 7:05 p.m. to discuss litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting pursuant to 5 ILCS 120/2(c)(11). Trustee Fedora seconded.

AYES: (4) Budzyn, Dauphinais, Engler, Fedora,

NAYS: (0)

Absent: (2) Metanias, Richmond

Motion carried

RECONVENE WORK SESSION

Trustee Engler made a motion to adjourn the executive session and reconvene the work session at 7:28 p.m. Trustee Fedora seconded.

AYES: (4) Budzyn, Dauphinais, Engler, Fedora,

NAYS: (0)

Absent: (2) Metanias, Richmond

Motion carried

There being no further business to bring before the Mayor and Board of Trustees, Mayor Fleischer adjourned the work session at 7:29 p.m.