

# Chapter 26

## Public Records

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# Chapter 26

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- 26.04 Access to Records
- 26.05 Enforcement and Penalties
- 26.06 Destruction of Village Records

### 26.01 DECLARATION OF POLICY

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

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### 26.02 GENERAL

#### A. State Statutes Adopted

The provisions of Chapter 19.32 to 19.37 of the Wisconsin State Statutes relating to Public Records are hereby adopted and made a part of this ordinance by reference.

#### B. Definitions:

- (1) Authority: means any of the following having custody of a record: A state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation; any court of law; the assembly or senate; a nonprofit corporation which receives more than fifty percent (50%) of its funds from a county or a municipality, and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the foregoing.
- (2) Record: means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept

by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

- (3) Requester: means any person who requests inspection or copies of a record.

C. Legal Custodian

- (1) The Village Clerk/Treasurer shall be designated as the Legal Custodian of all records of the Village Board and its committees.
- (2) The Village Clerk/Treasurer shall also be designated as the Legal Custodian of all records of the Board of Review, the Assessor, the Plan Commission and the Zoning Board of Appeals.
- (3) The Zoning Administrator, Building Inspector and/or Forester are the Legal Custodians of his or her records and the records of his or her office.
- (4) The Library Board and the Fire Department shall designate in writing a legal custodian to fulfill the duties of this Chapter. The Village Clerk/Treasurer shall be provided the name of the legal custodian.
- (5) The Director of Public Works shall be the Legal Custodian of all records under his authority.
- (6) In the absence of the legal custodian, the Village President shall act as the deputy custodian.

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**26.03 PROCEDURAL INFORMATION**

The Village Board shall adopt and post a notice containing:

- (1) A description of its organization, including at least all departments keeping records under its authority.
- (2) The name, address, title or designation of each Custodian described in Section 26.02 C, and the established times and places at which access to records will be permitted:
  - (a) The Clerk/Treasurer having regular office hours shall permit access to records during regular office hours, which hours shall be included in the notice.

- (b) All other Legal Custodians shall permit access to records under his or her authority as soon as practicable, but no later than five (5) days after written request is received, unless such Custodian shall respond with written objection.
- (3) A Legal Custodian may require written requests from the requester, reasonably describing the documents to be inspected or copied; the Custodian will respond on or before the fifth (5th) day following receipt of such written request.
- (4) The cost per page for reproducing, as amended from time to time, representing the actual, necessary, and direct cost of reproduction.
- (5) A statement that a fee may be imposed for locating documents if the cost to the Village for same exceeds \$50.00.
- (6) A statement that the original record may not be removed from custody.

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## **26.04 ACCESS TO RECORDS**

### **A. Right to Inspection**

- (1) A request is deemed sufficient if it reasonably describes a requested record or requested information.
- (2) A request for a record without a reasonable limitation as to subject matter or length of time represented by the record is not a sufficient request.
- (3) A request may be made orally, but a request must be in writing before a court action to enforce the request is commenced.
- (4) A request may not be refused because the person making the request is unwilling to be identified or is unwilling to state the purpose of the request. A request may not be refused because the request is received by mail, unless prepayment of a fee is required. However, a requester may be required to show acceptable identification whenever the record is kept at a private residence.
- (5) Reasonable restrictions may be placed on the manner of access to an original record if that record is irreplaceable or easily damaged.

**B. Compliance:** A Legal Custodian must "as soon as practicable and without delay" either fill a request or notify the requester of the authority's decision to deny the request in whole or in part. If an authority denies a request, the reasons for the denial must be stated orally or in writing. If the request is made orally, the denial may be made orally unless, within five business days of the oral denial, the requester demands a written statement of the reasons denying the request. Denial of a written request must be in writing. A request must be in writing before a court action to enforce the request is commenced.

C. Record Destruction: No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record until after the request is granted or until at least sixty (60) days after the date that the request is denied.

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## **26.05 ENFORCEMENT AND PENALTIES**

A. Mandamus: A request for a record may be enforced by either, or both, of the following alternatives:

- (1) The requester may bring an action for a writ of mandamus, asking a circuit court to order the authority to release the record.
- (2) The requester may, in writing, request the district attorney of the county where the record is found, or request the Attorney General, to bring an action for a writ of mandamus.

Any civil action for a violation of the open records provisions must be commenced within three (3) years after the cause of action accrues.

B. Penalty: Whoever, with intent to injure or defraud, destroys a public record, is guilty of a Class D felony. A Class D felony is punishable by a fine not to exceed ten thousand dollars (\$10,000.00) or imprisonment not to exceed five (5) years, or both.

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## **26.06 DESTRUCTION OF VILLAGE RECORDS**

The Village Board of Amherst, Wisconsin do ordain as follows:

The Village of Amherst Clerk/Treasurer may destroy the following records of which he/she is the legal custodian and which are considered obsolete, after the completion of any required audit.

A. Financial records:

- (1) Retain seven (7) years after payment or receipt of any sum involved in the particular transaction.
  - (a) Accounts Receivable invoices and receipts
  - (b) Accounts Payable purchase invoices
  - (c) Payroll records
- (2) Retain seven (7) years and then destroy:
  - (a) Bank Statements
  - (b) Bank Reconciliation's
  - (c) Canceled Order Checks
  - (d) List of Outstanding Checks
  - (e) Check Register
- (3) Retain one (1) year after audit and destroy:
  - (a) Deposit Slips

- (b) Bank Credit/Debit Notices
- (c) Trial Balance Tapes
- (d) Trial Balance
- (4) Retain three (3) years and destroy:
  - (a) Budget worksheets
- (5) Retain fifteen (15) years and destroy:
  - (a) General Journal
  - (b) General Ledger
- (6) Retain Permanently:
  - (a) Final Budget
  - (b) Audit Reports

B. Utility Records

- (1) Water stubs, receipts of current billings and customer's ledgers shall be retained two (2) years and then destroyed.
- (2) All other utility records shall be retained seven (7) years after the record was effective and then destroyed.

C. Assessment and Tax Records

- (1) Retain until superseded:
  - (a) Index to owners
  - (b) Escrow account list
- (2) Retain one (1) year after transfer to Master Property Record Folder:
  - (a) Deeds held by the Assessor
  - (b) Building Permit Applications held by the Assessor.
- (3) Retain two (2) years and destroy:
  - (a) Special assessment preliminary resolution
  - (b) Tax collection blotter
- (4) Retain three (3) years and destroy provided record has been audited:
  - (a) Tax levy certification of the school district clerk
  - (b) Certificates of apportionment
- (5) Retain five (5) years beyond life of structure:
  - (a) Master Property Record Folders
- (6) Retain five (5) years after transfer to the Master Property Record Folders:
  - (a) Wisconsin Real Estate Transfer Returns
- (7) Retain five (5) years and destroy:
  - (a) Notice of increased assessment (if appealed retain seven (7) years after final action by Board of Review)
  - (b) Assessor's final report supplement
  - (c) Assessor's final report
  - (d) Statement of new special assessments
  - (e) Final worksheet for determining allowable levy
  - (f) Explanation of property tax credit certification

- (g) Tax settlement receipt
- (h) Municipal Treasurer's settlement
- (8) Retain six (6) years and destroy provided record has been audited:
  - (a) State shared aid payment notice.
- (9) Retain seven (7) years after final action:
  - (a) Objection to property assessment and supporting documentation
  - (b) Notice of determination by Board of Review
  - (c) Minute book of the Board of Review
  - (d) Board of Review proceedings on tape
- (10) Retain seven (7) years and destroy:
  - (a) Special assessment payment register or until all assessments are collected.
- (11) Retain fifteen (15) years and destroy;
  - (a) Statement of Assessment
  - (b) Final real and personal property assessment roll
- (12) Retain permanently:
  - (a) Plats
  - (b) Certified Surveys
  - (c) Assessors Plats
  - (d) Final Statement of Assessment
  - (e) Special Assessment Final Resolution
  - (f) Final Copy of Statement of Taxes

D. Licenses and Permits

- (1) Retain four (4) years and destroy:
  - (a) State approved building plans
  - (b) Alcohol Beverages license applications and stubs
  - (c) All other licenses and permits
  - (d) Dog license report to the county clerk
- (2) Retain permanently:
  - (a) Building Applications and permits

E. Election Records

- (1) Poll lists: Retain ninety (90) days after the first spring or general election succeeding the election in which the list was created.
- (2) Retain ninety (90) days after the election and destroy:
  - (a) Nomination papers
  - (b) Certificate listing candidates nominated by caucus
  - (c) Election notices
  - (d) Application for absentee ballots
  - (e) Paper ballots
  - (f) Tally sheet
  - (g) Inspectors statement of defective or challenged ballots

- (3) Retain six (6) years and destroy:
  - (a) Campaign records

F. Administration Records

- (1) Retain three (3) years and destroy:
  - (a) Affidavits of publication except for ordinances
- (2) Retain seven (7) years and destroy:
  - (a) State highway aids programs
- (3) Retain Permanently:
  - (a) Annual reports
  - (b) Plan Commission meeting minutes
  - (c) Zoning Board of Appeals meeting minutes
  - (d) Minute book for Village Board meetings
  - (e) Ordinances
    - (1) Affidavits of publication of ordinances are maintained permanently in the ordinance book
  - (f) Resolutions
  - (g) Deeds
  - (h) Opinions of title
  - (i) Abstracts and certificates of title
  - (j) Easements
  - (k) Leases
  - (l) Legal Opinions

G. All Other Records:

- (1) Equipment
  - (a) Retain all records for the life of the equipment and destroy provided record has been audited.
- (2) Bonds
  - (a) Retain seven (7) years after bond issue has expired and destroy:
    - (1) Register
    - (2) Procedure Record
  - (b) Retain seven (7) years after bond issue has expired or following payment of all outstanding bonds/notes/coupons, whichever is later, and destroy
    - (1) Payment Register
    - (2) Certificate of Destruction

H. Notice to Historical Society: Not less than sixty (60) days prior to destruction of any Village records, the Clerk/Treasurer shall give notice to the state and local historical society of such destruction, in accord with section 19.21 (5)(a) of the Wisconsin State Statutes, citing specifically the documents to be destroyed.

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