

AN ORDINANCE TO AMEND SUBCHAPTER IV OF CHAPTER 1  
OF THE GERMANTOWN MUNICIPAL CODE RELATING TO  
RETENTION, ACCESS TO, AND DESTRUCTION OF PUBLIC RECORDS

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WHEREAS, the Village Board previously adopted Subchapter IV of Chapter 1 of the Municipal Code which establishes general rules related to public records with the Village; and

WHEREAS, the Wisconsin Public Records Board has, pursuant to Wisconsin Statute, prepared a record retention schedule for Wisconsin Municipalities; and

WHEREAS, the Village Board wishes to adopt the schedule promulgated by the Public Records Board; and

WHEREAS, the Village Board also wishes to update the remainder of Subchapter IV to reflect better drafting rules and also to modernize the requirements;

NOW, THEREFORE, the Village Board of the Village of Germantown, Wisconsin, do ordain as follows:

SECTION I

Sections 1.47 and 1.48 of the Germantown Municipal Code are hereby repealed in their entirety and Section 1.47 is hereby recreated to read as follows:

1.47 - PUBLIC RECORDS

(1) DEFINITIONS.

(a) “Authority” means any of the following having custody of a Village record: a Village office, elected official, agency, board, commission, committee, department or public body corporate and politic created by constitution, law, ordinance, rule or order, or a formally constituted subunit of the foregoing.

(b) “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 the 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 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.

(d) "Local public office" has the meaning given in Wis. Stat. § 19.42(7w), and also includes any appointive office or position of the Village in which an individual serves as the head of a department, agency, or division of the Village, but does not include any office or position filled by a Village municipal employee, as defined in Wis. Stat. § 111.70(1)(i).

(2) MAINTAINING RECORDS.

(a) Each officer and employee of the Village shall safely keep and preserve all records received from his predecessor or other persons and required by law to be filed, deposited or kept in his office of which are in the lawful possession or control of the officer or employee or his deputies, or to the possession or control of which he may be lawfully entitled as such officer or employee.

(b) Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his successor all records then in his custody and the successor shall receipt therefor to the officer or employee, who shall file said receipt with the Village Clerk. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the Clerk, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(c) Pursuant to Wis. Stat. § 19.21(4)(c), any record required to be kept and preserved under this section may keep and preserve such record through the use of microfilm or another reproductive device, optical imaging or electronic formatting provided that such means meets any applicable standards established under Wis. Stat. §§ 16.61(7) and 16.612. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of State law and this Code.

(3) LEGAL CUSTODIANS.

(a) Each elected official is the legal custodian of his records and the records of his office, but the official may designate an employee of his staff to act as the legal custodian.

(b) Unless otherwise prohibited by law, the Village Clerk or the Clerk's designee shall act as legal custodian for the Village Board and for any committees, commissions, boards or other authorities created by ordinance or resolution of the Village Board. This shall not include the Police and Fire Departments whose custodians shall be the Police Chief and the Fire Chief, respectively.

(c) For every authority not specified in paragraphs (a) or (b) above, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his staff to act as the legal custodian.

(d) Each legal custodian shall name a person to act as legal custodian in his absence or the absence of his designee. This subsection shall not apply to the Village Board.

(e) The designation of a legal custodian does not affect the powers and duties of an authority under this section.

(4) PROCEDURAL INFORMATION. Pursuant to Wis. Stat. § 19.34, and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which the legal custodian from whom and the methods whereby the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records and the costs thereof. The notice shall also separately identify each position of the authority that constitutes a local public office. Each authority shall also prominently display at its offices, for the guidance of the public, a copy of this section. This section does not apply to members of the Village Board.

(5) PUBLIC ACCESS TO RECORDS; FEES.

(a) Except as provided in subsection (7) below, any person has a right to inspect a record and to make or receive a copy of any record as provided in §19.35(1), Wis. Stats.

(b) Records will be available for inspection and copying during all regular office hours.

(c) If regular office hours are not maintained at the location where records are kept, the records will be available for inspection and copying upon at least 48 hours' advance notice of intent to inspect or copy.

(d) A requester shall be permitted to use facilities comparable to those available to Village employees to inspect, copy or abstract a record. This subsection does not authorize or require the purchase or lease of equipment nor does it require the provision of a separate room for inspection, copying or abstracting of records.

(e) The authority may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(f) A requester shall be charged a fee to defray the cost of locating and copying records as follows:

1. A cost per page of photocopying, as determined by the Village Clerk, shall be charged. Said cost shall not exceed the actual, necessary and direct costs to the authority of reproduction, and such charges shall be prominently displayed and made available for inspection by the authority at his office.

2. If the form of a written record does not permit copying, the actual and necessary cost of photographing and photographic processing shall be charged.

3. The actual full cost of providing a copy of other records not in printed form on paper such as films, computer printouts and audio or video tapes shall be charged.

4. If mailing or shipping is necessary, the actual cost thereof shall also be charged.

5. There shall be no charge for locating a record unless the actual cost therefor exceeds \$50.00, in which case the actual cost shall be determined by the authority and billed to the requester.

6. The authority shall estimate the cost of all applicable fees and may require a cash deposit adequate to assure payment if such estimate exceeds \$5.00.

7. The authority may provide copies of a record without charge or at a reduced charge where he determines that waiver or reduction of the fee is in the public interest.

(6) ACCESS PROCEDURES.

(a) A request to inspect or copy a record shall be made to the authority. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Wis. Stat. § 19.37. Except as provided below, no request may be refused

because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail unless prepayment of a fee is required under subsection (5)(f), above. A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or Federal law or regulations so require.

(b) Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. When the legal custodian has doubts as to whether the requested records are exempt from disclosure, in whole or in part, he shall have 3 working days to confer with the Village Attorney prior to making a determination. If the legal custodian, after conferring with the Village Attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his request in a manner which would permit reasonable compliance.

(c) A request for a record may be denied as provided in subsection (7) below. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Wis. Stat. § 19.37(1), or upon application to the Attorney General or a district attorney.

(7) LIMITATIONS ON RIGHT TO ACCESS.

(a) The limitations on access identified in Wis. Stat. § 19.36 are incorporated herein by reference.

(b) In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the Village Attorney, may deny the request, in whole or in part, only if he determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to the following:

1. Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.
2. Records of current deliberations after a quasi-judicial hearing.

3. Records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance or discipline of any Village officer or employee, or the investigation of charges against a Village officer or employee unless such officer or employee consents to such disclosure.

4. Records concerning current strategy for crime detection or prevention.

5. Records of current deliberations or negotiations on the purchase of Village property, investing of Village funds or other Village business whenever competitive or bargaining reasons require nondisclosure.

6. In accordance with, and subject to Wis. Stat. §19.356, financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation or privacy interest of any person referred to in such history or data.

7. Communications between legal counsel for the Village and any officer, agent or employee of the Village when advice is being rendered concerning strategy with respect to current litigation in which the Village or any of its officers, agents or employees is, or is likely, to become involved, or communications which are privileged under Wis. Stat. § 905.03.

(d) If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the Village Attorney prior to releasing any such record and shall follow the guidance of the Village Attorney when separating out the exempt material. If, in the judgment of the custodian and the Village Attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

(8) RETENTION AND DESTRUCTION OF RECORDS.

(a) The Village adopts the General Records Schedule for Wisconsin Municipal and Related Records (the "Wisconsin Municipal Records Schedule" or "WMRS") promulgated by the Wisconsin Public Records Board. A copy of the currently effective Wisconsin Municipal Records Schedule shall be kept on file in the office of the Village Clerk. Unless a different retention period is required by law, any record kept and preserved under this section which is considered obsolete may be

destroyed pursuant to the schedule established in the WMRS. For any obsolete record which is not specifically identified in the WMRS, destruction shall occur not less than 7 years after the record was effective. This section shall supersede any previous records schedules adopted by the Village.

(b) The Wisconsin State Historical Society shall be notified at least 60 days prior to the destruction of any record under Wis. Stat. § 19.21(4)(a), unless the State Historical Society has otherwise waived the notification requirement.

(c) Any tape recording of a governmental meeting of the Village may be destroyed, erased or reused no sooner than 90 days after the minutes of the meeting have been approved and published if the purpose of the recording was to make minutes of the meeting.

(d) Police records, other than investigative records, shall be retained for 7 years. However, unless the records are subject to a pending open records request or in any way relate to a matter pending before a court or quasi-judicial body, the following exceptions apply:

(1) Videotape and audio cassette recordings utilized for purposes related to law enforcement may be destroyed, erased or reused after 120 days.

(2) Recordings made of radio dispatches and telephone calls to and from the dispatch operator may be destroyed, erased or reused after 120 days.

(e) This section shall not be construed to authorize the destruction of any public record after a period less than prescribed by statute or State administrative regulations.

## SECTION II

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

## SECTION III

All ordinances or parts of ordinances contravening the terms of this ordinance are hereby to that extent repealed.

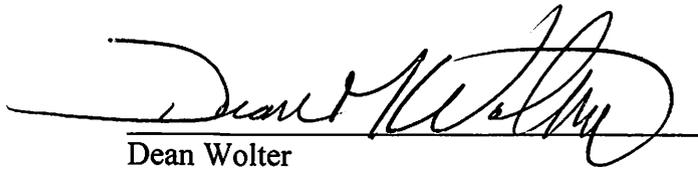
SECTION IV

This ordinance shall take effect and be in full force on upon its passage and the day after publication.

Introduced by: Trustee Braun

Adopted: December 17, 2018

Vote: Ayes: 9 Nays: 0



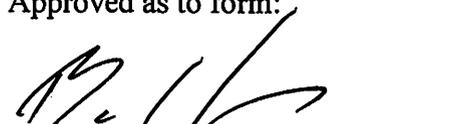
Dean Wolter  
Village President

ATTEST:



Deanna B. Braunschweig  
Village Clerk

Approved as to form:



Brian C. Sajdak, Village Attorney