

# CHAPTER 11

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This chapter regulates the making and changing of Village Ordinances and how these ordinances are made available to the public.

### 11.01 RULES OF CONSTRUCTION

In the construction of this code of general ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the ordinances:

- (1) WISCONSIN STATUTES. The term "Wisconsin Statutes" or "Wis. Stat.", wherever used in this code, shall mean the Wisconsin Statutes as published in the most recent bound volume and any amendments thereto.
- (2) GENDER: SINGULAR AND PLURAL. Every word in this code and in any ordinance imparting the masculine gender may extend and be applied to females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided that these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.
- (3) PERSON. The word "person" extends and applies to natural persons, firms, corporations, limited liability companies and partnerships, associations, partnerships or other bodies politic and all entities of any kind capable of being sued unless plainly inapplicable.
- (4) ACTS BY AGENTS. When a provision requires an act to be done which by law may be done by an agent as by the principle, such requisition shall be construed to include all such acts when done by an authorized agent.

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### 11.02 CONFLICT OF CODE PROVISIONS

If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.

### 11.03 SEPARABILITY OF CODE PROVISIONS

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The President and Village Board hereby declare that they would have passed this and each section, subsection, sentence, clauses, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional.

### 11.04 DOCUMENTS INCORPORATED BY REFERENCE

Whenever in this Code any standard, code, rule, regulation or other written or printed matter, other than the Wisconsin Statutes or other sections of this Code, are adopted by reference, they shall be deemed incorporated in this Code as if fully set forth herein and the Clerk/Treasurer is hereby directed and required to file, deposit and keep in his office a copy of the code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with care by any person at reasonable times upon advance notice subject to such orders or regulations which the Clerk/Treasurer may prescribe for their preservation.

### 11.05 PENALTY PROVISIONS

- (1) GENERAL PENALTY. Except as provided in Subsec. 2 of this Section, whenever so provided in this Code, any person who shall violate any of the provisions of this Code, shall upon conviction of such violation, be subject to a penalty which shall be as follows:
  - (A) First Offense, Penalty. Any person who shall violate any provision of this Code subject to a penalty shall, upon conviction thereof, forfeit not less than five dollars (\$5.00) nor more than five hundred (\$500.00), together with the court costs, the penalty assessment imposed by Wis. Stat. § 165.87, the jail assessment imposed by Wis. Stat. § 53.46, the automation fee imposed by Wis. Stat. § 814.635, and in default of payment of such forfeiture and costs of prosecution, shall be imprisoned in the county jail until said forfeiture and costs are paid, but not exceeding ninety (90) days.
  - (B) Second Offense, Penalty. Any person found guilty of violating any ordinance or part of an ordinance of this Code who shall previously have been convicted of a violation of the same ordinance shall, upon conviction thereof, forfeit not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1000.00) for each offense, together with the court costs, the penalty assessment imposed by Wis. Stat. § 165.87, the jail assessment imposed by Wis. Stat. § 53.46, the automation fee imposed by Wis. Stat. § 814.635 and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until said forfeiture and costs of prosecution are paid, but not to exceed six (6) months.
- (2) PENALTY FOR MINORS. In the event proceedings are commenced against children aged sixteen (16) or older for violations of Ch. 7 of this Code, or children fourteen (14) years of age or older for other violations of this Code except Ch. 7, the provisions of Wis. Stat. §§ 48.17(2), 48.237, 48.37, 48.343 and 48.344, shall be applicable.

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- (3) CONTINUED VIOLATIONS. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the Village from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
- (4) EXECUTION AGAINST DEFENDANT'S PROPERTY. Whenever any person fails to pay any forfeiture and court costs, the penalty assessment imposed by Wis. Stat. § 165.87, the jail assessment imposed by Wis. Stat. § 53.46, and the automation fee imposed by Wis. Stat. § 814.635, upon the order of the court for violation of any ordinance of the Village, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for said forfeiture, costs and assessments.

### 11.06 EFFECT OF REPEALS

The repeal or amendment of any section or provision of this Code or any other ordinance or resolution of the Board shall not:

- (1) By implication be deemed to revive any ordinance not in force or existing at the time at which such repeal or amendment takes effect.
- (2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the Village.
- (3) Affect any offense committed or penalty or forfeiture incurred previous to the time when any ordinance shall be repealed or amended, except that when any forfeiture or penalty shall have been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.
- (4) Affect any prosecution for any offense or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid shall be repealed or amended, but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinances, and such prosecution shall proceed, in all respects, as if such ordinance or ordinances had not been repealed, except that all such proceedings had after the time this Code shall take effect, shall be conducted according to the provisions of this Code, and shall be, in all respects, subject to the provisions of this Code.

### 11.07 MUNICIPAL CODE

These ordinances shall be known as the "Municipal Code of Rock Springs, Wisconsin" and shall take effect from and after passage and publication as provided in Wis. Stat. § 66.035. All references thereto shall be cited by section number (Example: Sec. 10.07, Municipal Code of Rock Springs, Wisconsin).

As each ordinance or resolution affecting this Code becomes effective, the Clerk/Treasurer shall enter the ordinance into this Code. The Clerk/Treasurer shall further record in the Code the ordinance number and date of adoption of new ordinances and this data shall be forwarded to the Village Attorney. The Village Attorney shall make no substantive changes to such ordinances and resolutions, but may renumber, rearrange and edit them without first submitting them to the Board; and such rearranging, renumbering and editing shall not affect the validity of such ordinances and resolutions or the provisions of this Code affected thereby.

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### 11.08 PUBLIC RECORD

"Public 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.

### 11.09 PUBLIC ACCESS TO RECORDS

Except as provided below, any person has the right to inspect a record and to make or receive a copy of any record as provided in Wis. Stat. § 19.35(1). The records will be available for inspection and copying upon at least forty-eight (48) hours' advance notice of intent to inspect or copy.

- (1) 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 provisions of a separate room for inspection, copying or abstracting of records.
- (2) The Village 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.

### 11.10 COPY AND LOCATING FEES

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 Clerk/Treasurer, shall be charged. Said cost shall not exceed the actual, necessary and direct costs to the Village of reproduction, and such charges shall be prominently displayed and made available for inspection by the authority at its 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 fifty dollars (\$50.00), in which case the actual cost shall be determined by the Clerk/Treasurer and be billed to the requester.
- (6) The Clerk/Treasurer shall estimate the cost of all applicable fees and may require a cash deposit adequate to assure payment if such estimate exceeds five dollars (\$5.00).
- (7) The Clerk/Treasurer 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.

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- (8) Elected and appointed officials of the Village shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.

### **11.11 ACCESS PROCEDURES**

- (1) A request to inspect or copy a record shall be made to the Clerk/Treasurer. 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 Sec. 11.10 Subsec.(6) 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.
- (2) The Clerk/Treasurer, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the Clerk/Treasurer'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 for 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.
- (3) A request for a record may be denied as provided 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 five (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 the 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.

### **11.12 EXEMPT RECORDS**

As provided by Wis. Stat. § 19.36, the following records are exempt from inspection under this section:

- (1) Records specifically exempted from disclosure by State or Federal law or authorized to be exempted from disclosure by State law.
- (2) Any record relating to investigative information obtained for law enforcement purposes if Federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state.
- (3) Computer programs, although the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection.
- (4) A record or any portion of a record containing information qualifying as a common law trade secret.

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- (5) As provided by Wis. Stat. § 43.30, public library circulation records are exempt from inspection.

### **11.13 DISCRETIONARY DENIAL OF ACCESS**

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 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) 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 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.

### **11.14 PARTIAL DISCLOSURE**

If a record contains information that may be made public and information that may not be made public, the custodian of the record shall strike 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 non disclosure of the exempt material, the entire record shall be withheld from disclosure.

### **11.15 DESTRUCTION OF FINANCIAL RECORDS**

- (1) Village officers may destroy the follow non-utility records which are considered obsolete after completion of an audit by state auditors or an auditor licensed under Ch. 442, Wis. Stat., but not less than seven (7) years after payment or receipt of any sum involved in the particular transaction unless a shorter period has been fixed or will in the future be fixed by the committee on public records, pursuant to Wis. Stat. § 16.61(3)(e), and then after such shorter period:
  - (A) Bank statements, deposit books, slips and stubs

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- (B) Bonds and coupons after maturity
- (C) Cancelled checks, duplicates and check stubs
- (D) License and permit applications, stubs and duplicates
- (E) Payrolls and other time and employment records of personnel included under the Wisconsin Retirement Fund
- (F) Receipt forms
- (G) Special assessment records
- (H) Vouchers, requisitions, purchase orders and all other supporting documents pertaining thereto

### **11.16 DESTRUCTION OF UTILITY RECORDS**

- (1) Village officers may destroy the following utility records which are considered obsolete after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Ch. 442, Wis. Stat. subject to State Public Service Commission regulations, but not less than seven (7) years after the record was effective unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stat. § 16.61(3)(e), and then after such a shorter period, except that water, receipts of current billings and customers' ledgers may be destroyed after two (2) years:
- (A) Water stubs and receipts of current billings.
  - (B) Customer's ledgers.
  - (C) Vouchers and supporting documents pertaining to charges not included in plant accounts.
  - (D) Other utility records after seven (7) years with the written approval of the State Public Service Commission.
  - (E) Contracts.
  - (F) Excavation permits.
  - (G) Inspection records.

### **11.17 DESTRUCTION OF OTHER RECORDS**

- (1) Village officers may destroy the following records which are considered obsolete, but not less than seven (7) years after the record was effective, unless another period has been set by statute, or by the State Public Records Board pursuant to Wis. Stat. § 16.61(3)(e), and then after such a shorter period:
- (A) Assessment rolls and related records, including Board of Review Minutes.
  - (B) Contracts and papers relating thereto.
  - (C) Correspondence and communications.
  - (D) Financial reports other than annual financial reports.
  - (E) Insurance policies.
  - (F) Oaths of office.
  - (G) Reports of boards, commissions, committees and officials duplicated in the Board minutes.
  - (H) Resolutions and petitions.
  - (J) Voter record cards.

### **11.18 NOTICE REQUIRED**

Unless notice is waived by the State Historical Society, at least sixty (60) days' notice shall be given the State Historical Society prior to the destruction of any record as provided in Wis. Stat. § 19.21(4)(a).

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### 11.19 TAPE RECORDINGS

Any tape recording of a governmental meeting of the Village may be destroyed, erased or reused no sooner than ninety (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.

### 11.20 LIMITATION

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.

### 11.21 PRESERVATION THROUGH MICROFILM

Any Village officer or the head of any department or division of the Village government may keep and preserve public records in his possession by means of microfilm or other photographic reproduction method. Such records shall meet the standards for photographic reproduction set for in Wis. Stat. § 16.61(7)(a) and (b), and shall be considered original records for all purposes. 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.