EDWARDSBURG VILLAGE COUNCIL MINUTES

Special Board Meeting

May 27, 2020

The meeting of the Edwardsburg Village Council was called to order at 7:00 pm by President Scott Mackling, those in attendance were Paula Ralph (Clerk), Lisa Withers (Treasurer) and Trustees Debb Martin, Dennis Peak, Terry Bidwell, Jay Penny, Laura Hughes and Kellen VanHulle. The meeting was held via Zoom.

APPROVAL OF AGENDA: Motion made by Bidwell, seconded by VanHulle to approve the agenda. All in favor. Motion carried.

PUBLIC HEARING TRUTH IN TAXATION: Motion by Bidwell, seconded by Hughes to close the special meeting at 7:04 and open the public hearing for Truth in Taxation. All in favor. Motion carried. No public comment. After board discussion, motion by Bidwell, seconded by Hughes to close the public hearing at 7:09 and reopen the special meeting. All in favor. Motion carried.

NEW BUSINESS:

RESOLUTION OF INTENT:

RESOLUTION OF INTENT
Village of Edwardsburg
Cass County, Michigan

WHEREAS, the council of the Village of Edwardsburg in order to maintain the operations of the Village of Edwardsburg, County of Cass, proposes to levy the maximum allowable of 7.6628 operating mills by holding a hearing, which will generate revenues of $178,629.00

WHEREAS, without a hearing due to the Truth in Taxation Rollback, 7.5440 operating mills would be levied, which would generate revenues of $175,860.00

THEREFORE, by passing the resolution of intent additional revenues of $2,769.00 will be generated.

NOW THEREFORE, BE IT RESOLVED, that this Council adopted the resolution and sent copies of the same to County Clerk's Office, Equalization Office, and the Ontwa Township Clerk's Office.

ADOPTED THE 27TH DAY OF MAY, 2020

Paula S. Ralph	Scott Mackling
Village Clerk	Village President

Motion by Bidwell, supported by VanHulle to approve the Resolution of Intent dated May 27, 2020. Roll call vote. All in favor. Motion carried.

RESOLUTION 2020-04:

RESOLUTION 2020-04

VILLAGE OF EDWARDSBURG

CASS COUNTY MICHIGAN

RESOLUTION TO ADOPT VILLAGE OF EDWARDSBURG FOIA POLICY

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: The Edwardsburg Village Council has adopted the following:

SUBJECT: FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES
PURPOSE: To establish and make publicly available procedures and guidelines for use by Village of Edwardsburg regarding requests for public records and the costs and fees incurred when providing copies of public records pursuant to the Michigan Freedom of Information Act ("FOIA"), being MCL 15.231 et. seq., as amended by PA 563 of 2014, effective July 1, 2015

POLICY: It is the public policy of the Village of Edwardsburg that all persons, except those persons incarcerated in state or county correctional facilities, are entitled to full and complete information regarding governmental decision-making, consistent with the Act. The people shall be informed so that they may fully participate in the democratic process.

DEFINITIONS: For purposes of this Policy:
1."Act" means the Michigan Freedom of Information Act, being MCLA 15.231 et. seq.

2. "Field name" means the label or identification of an element of a computer data base that contains a specific item of information and includes, but is not limited to, a subject heading such as a column header, data dictionary, or record layout.

3. "FOIA Coordinator" means the individual designated by the Village to accept and process requests for public records under the Act.

4. "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

5. "Public record" means a writing prepared, owned, used, in the possession of, or retained by the Village of Edwardsburg in the performance of an official function, from the time it is created. Public record does not include computer software.

6. "Software" means a set of statements or instructions that, when incorporated in a machine usable medium, is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

7. "Unusual circumstances" means any one or a combination of the following, but only to the extent necessary for the proper processing of a request:
(a) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(b) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

8. "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

9. "Writing" means handwriting, typewriting, printing, photostatting, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

PROCEDURE FOR RESPONDING TO REQUESTS FOR PUBLIC RECORDS:

1. The Village Clerk, or her designee, is hereby designated the Village's "FOIA Coordinator" with the authority and responsibilities stated in the Act and this Policy.

2. The FOIA Coordinator shall be responsible for accepting and processing written requests for the Village's public records under the Act and shall be responsible for approving a denial under Section 5 of the Act (MCLA 15.235).

3. A person desiring to inspect or receive a copy of a public record may make a written request to the Village's FOIA Coordinator that describes the public record sufficiently to enable the Village to find the public record.

4. A written request made by facsimile, electronic mail, or other electronic transmission is not received by the Village's FOIA Coordinator until one (1) business day after the electronic transmission is made. If a written request is delivered to the Village's spam or junk mail folder however, the request is not deemed to be received until one (1) day after the Village first becomes aware of the written request. The Village shall note both the time a request is delivered to such spam or junk mail folder and the time it became aware of that request.

5. If a verbal request for information is received by a Village employee, and the Village believes the information is available on the Village's website, then the employee receiving such verbal request shall, where practicable and to the best of the employee's knowledge, inform the requestor about the Village's pertinent website address.

6. The Village shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours.

7. Upon providing the Village's FOIA Coordinator with a written request that describes a public record sufficiently to enable the Village to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body, unless the requested public record is exempt from disclosure pursuant to Section 13 of the Act (MCLA 15.243), as amended.

8. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to six months, at the request of the subscriber, and shall be renewable.

9. When the FOIA Coordinator receives a written request for a public record, the FOIA Coordinator (or designee as provided for herein) shall, in not more than five (5) business days after the FOIA Coordinator receives the request, unless a longer time is agreed to in writing by the person making the request, respond to the request by one of the following:
a. Grant the request.
b. Issue a written notice to the requesting person denying the request.
c. Grant the request in part and issue a written notice to the requesting person denying the request in part.
d. Issue a written notice extending for not more than ten business days the period during which the Village shall respond to the request. However, the Village shall not issue more than one notice of extension for a particular request, unless otherwise agreed to in writing by the requesting party.

10. With limited exceptions as provided in FOIA Section 5, failure to respond to a written request as provided for above constitutes the Village's final determination to deny the request.

11. If a public record contains material which is not exempt from disclosure under the Act as well as material which is exempt, the FOIA Coordinator or designee responding to the written request for such public record shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

12. Each Village officer or employee authorized to respond to requests for public records may consult with the Village Attorney's Office, as necessary, prior to responding.

13. A written notice denying a request for a public record in whole or in part is a final determination to deny the request or portion of that request. The written notice shall contain:
a. An explanation of the basis under the Act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
b. A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the Village, if that is the reason for denying the request or a portion of the request.

c. A description of a public record or information on a public record that is separated or deleted if such separation or deletion is made.
d. A full explanation of the requesting person's right to do either of the following:
(i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.
(ii) Seek judicial review of the denial under Section 10 of the Act (MCLA 15.240), by commencing a civil action to compel the Village's disclosure of the public records within 180 days after the Village's final determination to deny a request.
e. Notice of the right to receive attorneys' fees and damages as provided in Section 10 of the Act (MCLA 15.240) if, after judicial review, the Court determines that the Village has not complied with Section 5 of the Act (MCLA 15.235) and orders disclosure of all or a portion of a public record.

14. If the requesting person believes that the fee assessed for the request exceeds the fee permitted under the Act, such person may appeal such fee to the Village Council.

15. Within ten (10) business days after receiving a written appeal, the Village Council shall do one of the following:
a. Reverse the disclosure denial.
b. Issue a written notice to the requesting person upholding the disclosure denial.
c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
d. Under unusual circumstances, issue a notice extending for not more than ten business days the period during which the Village Council shall respond to the written request. The Village Council shall not issue more than one notice of extension for a particular written appeal.

16. The Village Council is not considered to have received a written appeal until its first regularly scheduled meeting after the appeal is filed.

17. If the Village Council fails to respond to a written appeal as provided above, or if it upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action as provided for in Section 10 of the Act.
18. The custodian of a public record subject to disclosure under the Act shall, upon written request, furnish a requesting person a certified copy of a public record.

19. The Act does not require the Village to make a compilation, summary, or report of information, nor does it require the Village to create a new public record.

20. All officers, employees, and agents of the Village shall protect the Village's public records from loss, unauthorized alteration, mutilation, or destruction.

FEES TO BE CHARGED FOR PROVIDING PUBLIC RECORDS:
The Village shall charge a fee, payment of which will be required in advance of delivery, for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record according to the following guidelines:

1. **LABOR**. Fees assessed under this Policy shall be limited to the portion of labor costs directly associated with the search for, examination, and separation of exempt from non-exempt information (redaction) of public records, at the hourly rate of the lowest paid employee capable of performing the work, rounded down to the nearest ¼ hour. Costs directly associated with duplication, copying and transfer of records shall also be invoiced at the hourly rate of the lowest paid employee capable of performing the work, but shall be rounded down to the nearest 1/10 hour.

2. **MAILING**. Costs for mailing shall not exceed the actual cost of postage and materials necessary for delivery in a reasonably economical and justifiable manner.

3. **COPYING**. For paper copies, the actual total incremental cost of duplication (excluding labor) shall be charged, not to exceed 5 cents per sheet. The most economical means available for copying records shall be used, including using double-sided printing, if cost savings are achieved and such double-sided printing is available. For records provided on non-paper physical media, the Village may charge the actual and most reasonably economical cost of computer discs, tapes, and other digital media.

4. **ELECTRONIC RECORDS.** To the extent that the Village is technologically able to provide such records, the requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies.

5. **DOCUMENTS ON THE VILLAGE'S WEBSITE.** If the FOIA Coordinator knows that the documents responsive to all or a portion of a request are available on its website, then the Village shall notify the requestor of the same. To the extent practicable, the Village shall direct the requestor to the website address where the document can be found.

6. **UNREASONABLY HIGH COSTS.** A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the Village because of the nature of the request in the particular instance, and the Village specifically identifies the nature of these unreasonably high costs.

7. **RECORDS PRIMARILY BENEFITING THE GENERAL PUBLIC.** A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge whenever the FOIA Coordinator or designee responding to the written request determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

8. **INDIGENT INDIVIDUALS.** A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request to an individual who is entitled to information under the Act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. An individual is ineligible for this fee reduction if the individual has previously received discounted copies of public records from the Village twice in the same calendar year as the current request; or if the request is made in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request.

9. **GOOD FAITH DEPOSIT.** The Village may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the anticipated authorized fee exceeds $50.00. The deposit shall not exceed 1/2 of the total fee. The estimate for such deposit shall be itemized and shall include a non-binding, best effort estimate of the time frame for the production of the records sought.

10. **FAILURE BY THE VILLAGE TO RESPOND TIMELY.** If the Village fails to respond timely, and such failure is willful and intentional, charges for labor costs shall be reduced by 5% per day up to a maximum reduction of 50%; provided that the request includes language such as "Freedom of Information", "FOIA", "COPY" or a legal citation to the Act within the first 250 words of the written request, front of the envelope containing such request, or subject line of an email making a request via email.

11. **FAILURE BY REQUESTOR TO PAY.** If the Village has granted a request and full payment has not been received the Village may, upon receipt of a second request within 365 days by the same requestor, require a deposit of 100% before beginning a record search, provided that: A) the final fee for the prior request was not more than 105% of the estimated fee; B) the public records made available in the prior request were responsive to that request and are still in the Village's possession; C) the public records were made available timely under the Act; D) 90 days have passed since the Village notified the requestor that the records were available; E) the requestor is unable to show proof of prior payment; and F) the Village prepares a detailed itemization as a basis for the subsequent deposit.

12. The foregoing guidelines do not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

13. Village employees shall use the attached Detailed Itemization form (APPENDIX A) as a guide in calculating the amount of the fee and deposit to be charged.

APPENDIX A
CALCULATION OF FEES AND COSTS
FREEDOM OF INFORMATION ACT (FOIA)
DETAILED ITEMIZATION

1. **LABOR* -** Search, location and examination of records:
Hourly rate _____ x 1.5 (fringe benefit multiplier)
x_____ hours** = _____
REDACTION – Separation of exempt from nonexempt information:
Hourly rate _____ x 1.5 (fringe benefit multiplier)
x_____ hours** = _____
DUPLICATION, COPYING & TRANSFERING RECORDS:
Hourly rate _____ x 1.5 (fringe benefit multiplier)
x_____ hours^ = _____
2. COPYING:
Paper: _____ # of sheets @ $.05 per sheet = _____
Digital Media _____ # of _____ (type) @ _____ each = _____
3. MAILING:
Postage: _____ + Other (specify): _____ = _____

Subtotal $_____

□ Indigency Waiver ($20.00)
□ Waiver under Section 931 of the Mental Health Code ($20.00)
□ Late Response Reduction @5% each day = _____ (max 50%) **$_____**

TOTAL CHARGES: $_____

* Hourly rates reflect the wage of the lowest paid employee capable of performing the work.
** Rounded down to the nearest ¼ hour.
^ Rounded down to the nearest 1/10 hour.

APPENDIX B
VILLAGE OF EDWARDSBURG
WRITTEN PUBLIC SUMMARY OF
FOIA PROCEDURES AND GUIDELINES

1. How do I submit a FOIA request to the Village of Edwardsburg?

○ Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Village of Edwardsburg must be submitted in writing.

○ A request must sufficiently describe a public record so as to enable the Village to find it.

○ No specific form to submit a written request is required. However, a FOIA Request form for your use and convenience is available on the Village's website at www.villageofedwardsburg.org.

○ Written requests can be made in person by delivery to the Village office, by US mail to: FOIA Coordinator, Village Clerk, PO Box 596, Edwardsburg, Michigan 49112; by email to voe_clerk@comcast.net, or by facsimile 269-663-8688.

Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for a public record.

2. What sort of response can I expect to my request?
a. Within five (5) business days of receipt of a FOIA request the Village will issue a response. If a request is received by facsimile or e-mail the request is deemed to have been received on the following business day. The Village will respond to your request in one of the following ways:
i. Grant the request.
ii. Issue a written notice denying the request.
iii. Grant the request in part and issue a written notice denying in part the request.
iv. Issue a notice indicating that due to the nature of the request the Village needs an additional ten (10) business days to respond.
v. Issue a written notice indicating that the public record requested is available at no charge on the Village's website.
b. If the request is granted, or granted in part, the Village will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available. If the cost of processing the request is expected to exceed $50, or if you have not paid for a previously granted request, the Village may require a deposit before processing the request.

3. What are the Village's fee deposit requirements?
○ If the Village has made a good faith calculation that the total fee for processing the request exceeds $50.00, the Village may require that you provide a deposit in the amount of 50% of the total estimated fee. When the Village requests the deposit it will provide you a non-binding best efforts estimate of how long it will take to process the request following receipt by the Village of your deposit.
○ If the Village receives a request from a person who has not paid the Village for copies of public records made in fulfillment of a previously granted written request, the Village will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when all of the following conditions exist:
• the final fee for the prior written request is not more than 105% of the estimated fee;
• the public records made available contained the information sought in the prior written request and remain in the Village 's possession;
• the public records were made available to the individual, subject to payment, within the time frame estimated by the Village to provide the records;
• 90 days have passed since the Village notified the requestor in writing that the public records were available for pickup or mailing;
• the individual is unable to show proof of prior payment to the Village; and
• the Village has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
○ The Village will not require the 100% estimated fee deposit if any of the following apply:
• the person making the request is able to show proof of prior payment in full to the Village;
• the Village is subsequently paid in full for all applicable prior written requests; or
• 365 days have passed since the person made the request for which full payment was not remitted to the Village.

4. How does the Village calculate FOIA processing fees?
a. A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the Village because of the nature of the request in the particular instance and the Village specifically identifies the nature of the unreasonably high costs.
b. The Michigan FOIA statute permits the Village to assess and collect a fee for six (6) designated processing components. The Village may charge for the following costs associated with processing a request:
i. Labor costs associated with searching for, locating and examining a requested public record.

ii. Labor costs associated with a review of a record to separate and delete information that is exempt from disclosure.
iii. The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.
iv. The cost of duplication or publication, not including labor, of paper copies of public records.
v. Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to nonpaper physical media or through the Internet.
vi. The cost to mail or send a public record to a requester.
c. Labor Costs
i. All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
ii. Labor costs will be charged at the hourly wage of the lowest-paid Village employee capable of doing the work in the specific fee category, regardless of who actually performs work.
iii. Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
d. Non-paper Physical Media
i. The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
ii. This cost will only be assessed if the Village has the technological capability necessary to provide the public record in the requested non-paper physical media format.
e. Paper Copies
i. Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.05 per sheet of paper. Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.
ii. The Village may provide records using double-sided printing, if cost-saving and available.
f. Mailing Costs
i. The cost to mail public records will use a reasonably economical and justified means.
ii. The Village may charge for the least expensive form of postal delivery confirmation.
iii. No cost will be made for expedited shipping or insurance unless such special handling is requested.

5. How may I qualify for a reduction of the processing fees?

- The Village may waive or reduce the fee associated with a request when Village determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.
- The Village will waive the first $20.00 of the processing fee for a request if you submit an affidavit stating that you are:
  - indigent and receiving specific public assistance; or
  - if not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.
- You are not eligible to receive the $20.00 waiver if you:
  - have previously received discounted copies of public records from the Village twice during the calendar year; or
  - are requesting information on behalf of other persons who are offering or providing payment to you to make the request.
- The Village will waive the fee for an nonprofit organization which meets all of the following conditions:
  - the organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and

Advocacy for Individuals with Mental Illness Act;

- the request is made directly on behalf of the organization or its clients;
- the request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
- the request is accompanied by documentation of the organization's designation by the State.

6. How may I challenge the denial of a public record request?

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may file an appeal of the denial with the Village Council. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons you are seeking a reversal of the denial.

Within ten (10) business days of receiving the appeal at the next meeting of the Village Commission, a hearing will be scheduled. The Village Council will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the Village Council, you may file a civil action in Cass County Circuit Court within 180 days after the Village 's final determination to deny your request. Should you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the Village acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of $1,000.00.

7. How may I challenge a fee assessed for my request?

If you believe that the fee charged by the Village to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal for a fee reduction to the Village Council. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within ten (10) business days after receiving the appeal, a hearing will be scheduled. Within ten (10) business days of the hearing, the Village Council will respond in writing by:

- waiving the fee;
- reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Village Council will respond to the written appeal.

Within 45 days after receiving notice of the Village Council's determination of the processing fee appeal, you may commence a civil action in Cass County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the Village acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of $500.00.

NEED MORE DETAILS OR INFORMATION?

For more information, the Village of Edwardsburg FOIA Procedures and Guidelines are available at no charge on the Village's website at:
www.villageofedwardsburg.org

ADOPTED THE 27TH DAY OF MAY, 2020

Paula S. Ralph Village Clerk	Scott Mackling Village President

Motion by Bidwell, supported by VanHulle to approve the Resolution 2020-04. Roll call vote. All in favor. Motion carried.

Adjournment: With no objection President Mackling adjourned the meeting at 7:15 p.m.

Respectfully submitted,

Paula S. Ralph, Clerk
Village of Edwardsburg