CITY OF WEST BRANCH
WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

1. How do I submit a FOIA request to the City of West Branch?

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City of West Branch must be submitted in writing.
- A request must sufficiently describe a public record so as to enable the City 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 City's website at www.westbranch.com
- Written requests can be made in person by delivery to any City office in person or by mail.
- Requests can also be made by facsimile at 989-345-4390 for both Public Safety records and non-Public Safety records.
- A request may also be submitted by e-mail. To ensure a prompt response, e-mail requests should contain the term "FOIA" or "FOIA Request" in the subject line and be sent to jdantzer@westbranch.com

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 kind of response can I expect to my request?

- Within 5 business days of receipt of a FOIA request the City 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 City will respond to your request in one of the following ways:
    - Grant the request.
    - Issue a written notice denying the request.
    - Grant the request in part and issue a written notice denying in part the request.
    - Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond.
    - Issue a written notice indicating that the public record requested is available at no charge on the City's website.
- If the request is granted, or granted in part, the City 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 City will require a deposit before processing the request.

3. What are the City's fee deposit requirements?

- If the City has made a good faith calculation that the total fee for processing the request exceeds $50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City 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 City of your deposit.

- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City 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 City's possession;
    - the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
    - 90 days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
    - the individual is unable to show proof of prior payment to the City; and
    - the City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

- The City 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 City;
    - the City 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 City.

4. How does the City calculate FOIA processing fees?

- 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 City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

- The Michigan FOIA statute permits the City to assess and collect a fee for six designated processing components. The City may charge for the following costs associated with processing a request:

    - Labor costs associated with searching for, locating and examining a requested public record.
    - Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
    - The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.
    - The cost of duplication or publication, not including labor, of paper copies of public records.
    - Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
    - The cost to mail or send a public record to a requestor.

- Labor Costs
  - All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.
  - Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
  - Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.

- Non-paper Physical Media
  - 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.
  - This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.

- Paper Copies
  - Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.10 per sheet of paper. Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.
  - The City may provide records using double-sided printing, if cost-saving and available.

- Mailing Costs
  - The cost to mail public records will use a reasonably economical and justified means.
  - The City may charge for the least expensive form of postal delivery confirmation.
  - No cost will be made for expedited shipping or insurance unless requested.

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

- The City may waive or reduce the fee associated with a request when City determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.

- The City 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 City 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.

- An affidavit is sworn statement. For your convenience the City has provided an Affidavit of Indigency form for the waiver of FOIA fees on its website.

- The City 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 or an excessive fee?

- Appeal of a Denial of a Public Record

  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 Office of the City 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 10 business days of receiving the appeal the City 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 City Council, you may file a civil action in West Branch County Circuit Court within 180 days after the City'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 City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of $1000.00

- Appeal of an Excessive FOIA Processing Fee

  If you believe that the fee charged by the City 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 Office of the City Council. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

  Within 10 business days after receiving the appeal, the City 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 City Council will respond to the written appeal.

Within 45 days after receiving notice of the City Council's determination of the processing fee appeal, you may commence a civil action in the local 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 City 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?

This is only a summary of the City of West Branch's FOIA Procedures and Guidelines. For more details and information, copies of the City of West Branch's FOIA Procedures and Guidelines are available at no charge at any City office and on the City's website, www.westbranch.com.

CITY OF WEST BRANCH

FREEDOM OF INFORMATION ACT PROCEDURES & GUIDELINES

Preamble: Statement of Principles

It is the policy of the City of West Branch that all persons, except those who are serving a sentence of imprisonment, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The City of West Branch's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City of West Branch acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City of West Branch acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of West Branch will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City of West Branch's policy is to disclose public records consistent with and in compliance with State law.

Section 1: General Policies

The City Council acting pursuant to the authority at MCL 15.236 designates the City Clerk as the FOIA Coordinator. He or she is authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City's public records and approve denials. The City Council also authorizes the City Clerk, in his or her capacity as FOIA Coordinator, to seek counsel from the City Manager and/or the City Attorney regarding FOIA requests and policy on an "as needed" basis.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the

request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request. The FOIA Coordinator is also authorized to work with City information technology contractors to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request, if the FOIA Coordinator, in his or her sole discretion, deems that such administrative rules are necessary.

In addition, the FOIA Coordinator may, in his or her discretion, implement any other administrative rules he or she deems necessary, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed or retained by City of West Branch must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by facsimile and e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, electronically mailed or other otherwise provided to him or her in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City of West Branch on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be available on the City's website, where practicable and to the best ability of the employee receiving the request, shall be informed of the pertinent website address.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile, e-mail or other electronic transmission, the request is deemed to have been received on the following business day (unless delivered to a City spam or junk-mail folder, in which case the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request). The City will respond to the request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

If the request is granted, or granted in part, the FOIA Coordinator may require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines shall be provided to the requestor with the response to a written request for public records, provided however, that if these Procedures and Guidelines, and its Written Public Summary are maintained on the City's website, then a website link to those documents may be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is $50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If based on a good faith calculation by the City, the cost of processing a FOIA request is expected to exceed $50, or if the requestor has not fully paid for a previously granted request, the City will require a good-faith deposit before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the City Council or seek judicial review in the local Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of $1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

Section 4: Fee Deposits

If the fee estimate is expected to exceed $50.00 based on a good-faith calculation by the City, the requestor may be asked to provide a deposit not exceeding on-half of the total estimated fee.

If a request for public records is from a person who has not fully paid the City for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator may require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person 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 City's possession;
- the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- 90 days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- the individual is unable to show proof of prior payment to the City; and
- the FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased 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 City;

- the City is subsequently paid in full for the applicable prior written request; or
- 365 days have passed since the person made the request for which full payment was not remitted to the City.

Section 5: Calculation of Fees

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 City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

The following factors shall be used to determine an unreasonably high cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual request received by the City. *See Bloch v Davison Community Schools, 2011 Mich App Lexis 771, 2011 WL 1564645*
- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether public records from more than one City department or various City offices is necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs directly associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
- The actual cost of computer discs, computer tapes or other digital or similar media.

- The cost of duplication of publication, not including labor, of paper copies of public records.
- The cost of labor associated with duplication or publication, including making paper copies, making digital copies or transferring digital public records to non-paper physical media or through the Internet or other electronic means.
- The actual cost of mailing or sending a public record.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down[1].
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.[2]
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs until agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.

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[1] The cost of labor directly associated with duplication, publication or transferring records to nonpaper physical media can be charged in time increments of the City's choosing with all partial increments rounded down.
[2] If using contract or outside labor to separate and delete exempt material from non-exempt material, the City will clearly note the name of person or firm who does the work and the total labor cost may not exceed an amount 6 times the state minimum hourly wage.

- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from the requestor

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City may provide records using double-sided printing, if cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless requested.

If the FOIA Coordinator does not respond to a written request in a timely manner, the following shall be required:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if any of the following applies:
    - The late response was willful and intentional.
    - The written request, within the first 250 words of the body of a letter facsimile, e-mail or e-mail attachment conveyed a request for information
    - The written request included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231 et seq or 1976 Public

Act 442 on the front of an envelope or in the subject line of an e-mail, letter or facsimile cover page.

- Fully note the charge reduction in the Detailed Itemization of Costs Form

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because such can be considered as primarily benefitting the general public. The FOIA Coordinator may establish administrative rules setting forth the conditions a requestor must meet so as to "benefit the general public" in order to obtain a waiver of fees.

The FOIA Coordinator will waive the first $20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- indigent and receiving specific public assistance; or
- if not receiving public assistance stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- the requestor has previously received discounted copies of public records from the City twice[3] during the calendar year; or
- the requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

A nonprofit organization designated to by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 200 and the Protection and Advocacy for Individuals with

[3] The FOIA statues require that an indigent requestor is entitled to at least two discounted fees in a calendar year; however the City may permit more than two if it so chooses to do so.

Mental Illness Act, or their successors, if the request meets all of the following requirements:

- is made directly on behalf of the organization or its clients;
- is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, MCL 330.1931;
- is accompanied by documentation of its designation by the State.

Section 7: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may file an appeal of the denial with the City Council.[4] The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the City 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.
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records or the need to collect the requested records from numerous facilities located apart from the office receiving or processing the request, the City Council may issue not more than 1 notice of extension for not more than 10 business days to respond to the appeal

Whether or not a requestor submitted an appeal of a denial to the City Council, he or she may file a civil action in local Circuit Court within 180 days after the City's final determination to deny the request.

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[4] The City Council is not considered to have received a written appeal of either a denial or a fee amount until its first regularly scheduled meeting following the submission of the appeal. It then has 10 business days to respond to the appeal.

If the court determines that the public record is not exempt from disclosure, the court will award the appellant reasonable attorneys' fees, cost and disbursements. If the court determines that the appellant prevails only in part, the court in its discretion may award all or an appropriate portion of reasonable attorneys' fees, costs and disbursements.

If the court determines that the City arbitrarily and capriciously violated the FOIA statutes by refusing or delaying the disclosure of copies of a public record, it may award the appellant punitive damages in the $1,000. The court may also order that the public body pay a civil fine of $1000 to the general fund of the State treasury.

Section 8: Appeal of an Excessive FOIA Processing Fee[5]

If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law, he or she must first submit a written appeal for a fee reduction to the City Council. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the City Council will respond in writing by:

- waive the fee;
- reduce the fee and issue a written determination indicating the specific basis that supports the remaining fee, accompanied by a certification by the City Council that the statements in the determination are accurate and the reduced fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA;
- uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee, accompanied by a certification by the City Council that the statements in the determination are accurate and the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA; or

[5] A public body does not have to provide for administrative fee appeals; if such is the case, the fee appeal is made directly to circuit court within 45 days of receiving notice of the required fee.

- issue a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Council will respond to the written appeal.

Within 45 days after receiving notice of the City Council's determination of a fee appeal, a requestor may commence a civil action in the local Circuit Court for a fee reduction. If a civil action is filed appealing the fee, the City is not obligated to process the request for the public record until the Court resolves the fee dispute.

If the court determines that the City required a fee that exceeds the amount permitted, it shall reduce the fee to a permissible amount. If the appellant in the civil action prevails 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 City has acted arbitrarily and capriciously by charging an excessive fee, the court shall also award the appellant punitive damages in the amount of $500.

Section 9: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change to these Policies and Guidelines.

These FOIA Policies and Guidelines become effective immediately.

Section 9 3/4: Penalty for Violation of the Act[6]

If the court determines in either an appeal of a denial of a public record, or the appeal of an excessive fee, that the public body willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith, then in additional to any another award or sanction, the court may impose a civil fine of not less than $2500 or more than $7500 for each occurrence.

The court is required to consider the budget of the public body and whether the public body has previously been assessed penalties for violations of the FOIA statutes.

Any applicable court ordered civil fines are to be deposited to the general fund of the State treasury.

Section 10: Appendix of City of West Branch FOIA Forms

- Request Form
- Denial Form
- Waiver of Fee Form
- Detailed Itemization of Fees Form
- Appeal Form
- Certification Form

SPECIAL MEETING OF THE WEST BRANCH CITY COUNCIL HELD IN THE COUNCIL CHAMBER OF CITY HALL, 121 NORTH FOURTH STREET, MONDAY, AUGUST 10, 2015.

Mayor William Ehinger called the meeting to order at 6:00 p.m.

Present: Mayor William Ehinger, Council Members Kim Ervans, Jim Hasty, Denise Lawrence, David Lucas, Timothy Schaiberger, and Rusty Showalter.

Absent: None

Other officers present: City Manager Heather Grace, Deputy Clerk/Treasurer Michelle Frechette, and DPW Superintendent Dennis Jameson.

All stood for the Pledge of Allegiance.

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Manager Grace noted there was an addition to the agenda. Brenda Peters addressed Council about the home improvement project that was done to her home through our Housing program which is managed by Bay Area Housing. Mrs. Peters noted that she has worked with Bay Area Housing before on work that was done to her house and is satisfied with the work they do. She is, however, unhappy with the work performed by one of the Contractors. She asked that Council not approve any bids from this contractor in the future. Member Showalter asked if MSHDA had been notified because if they were involved then they can go back on the contractor. Member Ervans asked who hired the contractor. Member Ervans also asked as to what function Bay Area Housing played. Member Showalter noted that Council approved Bay Area Housing to handle the MSHDA rehab loans. Member Hasty noted that she should notify the building department as well if she is not happy with the work. It was the consensus of the Council to try and facilitate the repairs to be done as needed with Bay Area Housing. Manager Grace noted that she has talked with Bay Area Housing about this particular jobs several times and would contact them again to try and come up with a solution. Manager Grace also noted that this particular contractor has been placed on the not recommended contractor list and was told that Bay Area Housing did the same with him.

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MOTION BY LUCAS, SECOND BY SCHAIBERGER, TO APPROVE THE MINUTES AND SUMMARY OF THE REGULAR MEETING HELD JULY 20, 2015,

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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MOTION BY SHOWALTER, SECOND BY LUCAS, TO RECEIVE AND FILE THE MINUTES OF THE OGEMAW FIRE DEPARTMENT BOARD MEETING HELD APRIL 21, 2015 AS WELL AS THE

OGEMAW FIRE DEPARMENT AUDIT, THE JOHN TOLFREE HEALTH SYSTEM CORPORATION AND SUBSIDIARIES AUDIT, AND THE JULY POLICE REPORT.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace read a note received from Carolyn Tolbert stating that every time she has been into City Hall, everyone including Dennis Jameson of the DPW has be helpful, kind, and professional.

Manager Grace also noted that Michigan Municipal League (MML) needed action from the Council on who was going to be the voting delegate and the alternate delegate for this year's annual meeting. Manager Grace asked if anyone other than herself and Member Showalter were planning to attend. Manager Grace also announced that Member Showalter has been chosen to serve on the MML Board of Trustees and therefore it would be better for someone else to be the voting delegate.

MOTION BY SHOWALTER, SECOND BY SCHAIBERGER TO APPOINT HEATHER GRACE AS THE VOTING DELEGATE AND RUSTY SHOWALTER AS ALTERNATE DELEGATE.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Mary Garcia of the Tipsy Bear Bistro approached Council about two separate issues. The first was to allow them to use part of the sidewalk in front of their building to put up a fence to allow for outside seating. The second was to get approval to put up three signs on their building. Manger Grace noted that the sign approval was done through the planning commission and therefore would have to be presented in front of them but the approval to use the sidewalk would need to come from Council. Member Showalter asked about drawings and Mrs. Garcia presented Council with a sketch. Manager Grace noted that they would be required to put a fence of some sort around that area due to the fact that they sell alcohol. She noted that once the fencing is up there could be issues with adverse possession claims and because of this there would have to be some sort of legal arrangement such as the sale or lease of the land. She also noted that MDOT would have to approve it as well because the sidewalk is within the MDOT right-of-way and they have their own permitting process. Member Lucas asked about if the business would have to get approval from MDOT first and it was noted by Manager Grace that it would be up to Council on if they wanted that approval first. Member Ervans raised question as to what the distance of the right away was and concern if the sidewalk was in the right-of-way then all of downtown would be as well and would they have to get approval as well. Member Schaiberger noted that it was only because of the fencing required that they had to get the permit. DPW Superintendent Jameson noted that it was a 99' easement from the center of the road. Member

Hasty asked to the total number of seating and the size of the area they are looking to do. Mrs. Garcia noted that there would be seating for twenty eight people and the size of the area is 10'X40'. Member Hasty noted that they may want to check with Brent Banning of the Fire Department and make sure that square footage meets the code for square footage required per occupant. Manger Grace also noted that she would recommend they require the owners to have an added liability protection. Member Showalter noted that they should start with MDOT and see what they say. Manager Grace noted that from her initial conversations with MDOT, she did not see any problems with them approving it as long as it didn't affect the flow of traffic in the sidewalks. It was the consensus of the Council to see if MDOT approved it before they spent time and money on coming up with a plan that wouldn't be allowed anyhow.

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Mayor Ehinger commended the DPW on their cleanup of the streets. He raised concern over citizens blowing all of their debris into the streets and if there was an ordinance against that. DPW Superintendent Jameson noted that he has noticed the same thing and asked Council if they would like him to go around and sweep all of the streets again. Superintendent Jameson noted that they hauled away seventeen dump truck loads of branches. He also noted that there were a couple of spots that weren't picked up were because they were branches from trees that were cut down or fell down and their policy in the past has been to not pick those up and that they were the responsibility of the homeowner. They were only picking up branches that fell from the trees that were not cut down or fallen.

Member Lucas noted that he was contacted by several solicitors and not all of them had permits. Manager Grace noted that the Police Department has been checking on solicitors and making them get the appropriate permits. She also noted that the have added a section to the City webpage showing the approved solicitors and peddlers. She further noted that all solicitors are required to carry an approved permit with them to show to people upon request. Manager Grace noted that we are not allowed to discriminate against solicitors and cannot deny approval unless they pose a safety concern to the public. She further noted that the permit process does allow us to gather information and have a responsible party to contact in case troubles arise. Manager Grace noted that they put several warnings and recommendations issued by the Attorney General's Office on the City Facebook page and website.

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Manager Grace noted that Louis Berquist requested to be named to the Recreation Board.

MOTION BY SHOWALTER, SECOND BY SCHAIBERGER TO APPOINT LOUIS BERQUIST TO THE RECREATION BOARD.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Mayor Ehinger noted that there was an opening on the Fire Department Board due to the fact that Robert McGrail sold his home and is no longer a landowner within the City of West Branch.

MOTION BY LAWRENCE, SECOND BY EHINGER TO APPOINT KIM ERVANS TO THE FIRE DEPARTMENT BOARD

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Mayor Ehinger noted that there were requests to have the City allow golf carts. Manager Grace noted that she has been looking into it and there was a Michigan law that was passed that will allow municipalities with less than 30,000 residents to pass ordinances to allow golf carts on the roads. Manager Grace submitted copies of golf cart ordinances from other communities as well as articles with pros and cons for it. She noted that our main issue is that we have the main State trunkline that runs through the center of town and there is not really a safe place to have the golf carts cross. She also noted that Police Chief Walters had some enforcement issues as well as safety issues with allowing them. Member Ervans asked as to how this differed from the ATV ordinance that was passed. It was noted that the ATV ordinance specifically spells out what roads they are allowed on and they are not allowed to cross Houghton Ave. Member Showalter raised concerns over children driving golf carts around town. Member Ervans raised questions if they would be allowed on sidewalks. Member Schaiberger noted that there would be a safety concern because the golf carts do not offer much protection. Member Showalter noted that it was his understanding that owners were not required to carry insurance the same as required by vehicles when they are on the road. Manager Grace noted that you could write in the ordinance to require that. Member Schaiberger noted that they could pass an ordinance with so many requirements that no one will use the carts anyways and then it would just be a waste of time and money.

MOTION BY HASTY, SECOND BY SCHAIBERGER, TO TABLE ANY DECISIONS ON A GOLF CART ORDINANCE TO GATHER MORE INFORMATION.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Showalter

No – None

Motion carried

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Discussion was held on moving the next Council meeting or having it at the regularly scheduled time. It was the consensus of the Council to have the meeting at the regular time on Monday August 17 at 6:00 pm.

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Member Ervans raised concern over the solicitors that have come into the City due to the storm. He noted that we need to do a better job to protect our citizens more. He noted that we are so worried about lawsuits and other Federal laws and not enough about protecting citizens. Member Showalter noted that we are not allowed to discriminate against businesses by not allowing them in here and that it was up to the homeowner not to use them. It was noted by Mayor Ehinger that we do require them to show us approval of a State license in which they have went through some approval processes. Member Ervans noted that he would like to look further into seeing if there is anything that can be done that would allow us to restrict who we give peddlers and solicitors licenses to.

Member Showalter also commended DPW for their cleanup work. He also noted that he was honored to be selected to serve on the MML Board.

Member Schaiberger noted that he agreed with Member Ervans that he would like us to look further into being able to come up ways to restrict who we can give peddlers and solicitors licenses to.

Member Lawrence asked if the City had received any liability insurance information from the people who performed the motorcycle stunts at during Bike Week. Manager Grace noted that we did receive a copy of their insurance. Member Lawrence noted that she has now also been receiving phone calls asking to come over and look at damage done by the storm in order to try and circumvent the permit process. Manager Grace noted that unfortunately there is nothing we can do to stop the phone calls. Member Lucas asked as to what the penalties are and it was noted by Manager Grace that it falls under a civil penalty and they can receive a fine. Member Ervans noted that there are also liability concerns because there is no proof that they have liability insurance and if they get hurt on your land, then you would be responsible for it. Office Beehler also noted that they have received several calls that the solicitors don't take no for an answer and have been harassing people. Manager Grace noted that they are only allowed to go to your front door and not anywhere else on your property without your permission.

Member Hasty noted the solicitors are a pain but this County is based on a free enterprise system and there is nothing we can do to stop them. He asked as how to we are enforcing it. It was noted that the Police Department were checking with anyone they seen and requiring them to get the appropriate permits. Member Hasty also commended the DPW on their cleanup of the storm damage.

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Manager Grace updated Council on the damage done to City property. Manager Grace also noted that the City did experience a problem when a backup battery that transmits information from the Smiley Tower to the pump house went dead and caused rusty colored water to be released. She also noted that we are currently looking into getting quotes for generators for the all City owned buildings that do not currently have them.

Manger Grace updated Council that work on the paving project on South Fifth Street would begin on Tuesday the eleventh.

Manager Grace updated Council that the River Walk project was nominated for a Keep Michigan Beautiful Award. She further noted that it was nominated by the President of the keep Michigan Beautiful Committee after he walked along it on a tour.

Manager Grace noted that the community has started a Children's Museum Committee with the hopes of bringing a children's museum to the downtown or surrounding area. She noted that it has been very well received and the committee is open to anyone. She further noted that the next meeting is August 24 at noon at the City Hall if anyone would like to be involved in it.

Manager Grace noted that they have filled their spots on the Recreation Board and they will be meeting to go over grants that may be available to apply for.

Manger Grace noted that she has been working with Mandi Chasey of the Economic Development Corporation to get the City eligible for a Project Rising Tide Grant Opportunity. Manager Grace further noted that they have eliminated some of the Cities that have applied and they are down to West Branch and Grayling as the two finalists. She noted that the winning City will receive help with Planning and Zoning issues as well as Economic Development at no cost to the City.

Manager Grace noted that she and DPW Superintendent Jameson have had some meetings with the railroad division of MDOT and they have some crossings that they have some safety concerns with and would like to add safety mechanisms. She noted that they would like to put gates that lower and rise at the crossings on Wright St and Fourth St. She further noted that the cost for the installation is paid entirely by MDOT but the City would be responsible for 50% of the upkeep after the installation. She also noted that they would like to put one on the Houghton Ave crossing but they have to come up with a way to put a new driveway in for the Chamber of Commerce because they gates would fall into their current driveway. Manager Grace also noted that MDOT is offering incentives for closures of railroad crossings. She noted that we have two locations that they would like the City to look into. The two are the crossing on N. Seventh and Lindsay and N. Fifth and Houghton.

MOTION BY SCHAIBERGER, SECOND BY SHOWALTER, TO ALLOW MANAGER GRACE TO PURSUE THE MDOT SAFETY RECOMMENDATIONS ON RAILROAD CROSSING CLOSURES.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace noted that MDOT gave her an estimate of $6,000 a year in maintenance if all three railroad gates were installed.

MOTION BY SHOWALTER, SECOND BY SCHAIBERGER, TO ALLOW MANAGER GRACE TO SIGN DOCUMENTS NEEDED TO ALLOW MDOT TO INSTALL THE THREE RAILROAD GATES AS RECOMMENDED.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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MOTION BY SHOWALTER, SECOND BY SCHAIBERGER, TO APPROVE BILLS IN THE AMOUNT OF $42,874.52.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace presented Council with a new FOIA policy that complies with new State laws.

MOTION BY SHOWALTER, SECOND BY LUCAS, TO ADOPT THE NEW FOIA POLICY

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace presented Council with an updated Park and Recreation ordinance to deal with some issues they have been having at the parks. As required, Manager Grace read the changes to the ordinance.

MOTION BY SHOWALTER, SECOND BY EHINGER, TO ADOPT THE AMENDMENTS TO THE PARKS AND RECREATION ORDINANCE WITH THE CHANGE TO SECTION 93.18, THE GRANTING OF PERMITS, TO READ THE CITY MANAGER WOULD APPROVE THE PERMITS NOT CITY COUNCIL.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace presented Council with a new firework ordinance due to the fact that the existing ordinance is no longer in compliance with the State law. As required, Manager Grace read the ordinance.

MOTION BY SCHAIBERGER, SECOND BY EHINGER, TO ADOPT THE NEW FIREWORKS ORDINANCE.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace presented Council with a new noise ordinance.

MOTION BY LUCAS, SECOND BY SCHAIBERGER, TO TABLE THE DECISION ON THE NOISE ORDINANCE TO GATHER MORE INFORMAION.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace noted that the State Boundary Commission had requested to withdraw a petition. She further noted that they had their discussions on it with Clerk/Treasurer Dantzer who was not at the meeting and recommended tabling the decision until he was present.

MOTION BY SCHAIBERGER, SECOND BY LUCAS, TO TABLE THE DECISION ON THE WITHDRAWL OF THE STATE BOUNDARY COMMISSION PETITION UNTIL CLERK/TREASURER DANTZER IS PRESENT TO ANSWER ANY QUESTIONS.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace noted the Ogemaw Hills Free Methodist Church requested to hold a "Picnic in the Park." day. Member Showalter noted that it is a public park so he didn't see any problem with allowing them to use it and if they wanted to reserve a pavilion then they follow the rules already set up. Manager Grace noted that they would be bringing in bouncy houses, dunk tanks, etc. and wanted to make sure it is ok to drive into the park to set those up. It was the consensus of the Council to allow Manager Grace to approve it administratively.

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Manager Grace noted that they had a request to have an Earleen Fox Memorial 5k Walk/Run in which they use all the money raised to fund a scholarship to go towards students who are entering the medical field. Member Showalter asked if they submitted a route and was informed that they did not submit a route with their request.

MOTION BY SHOWALTER, SECOND BY SCHABERGER, TO TABLE THE DECISION ON THE EARLEEN FOX MEMORIAL 5K WALK/RUN UNTIL A ROUTE HAS BEEN SUBMITTED.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Mayor Ehinger noted that they had a request from the last meeting that was tabled that would allow for forgiveness of a bill for lawn mowing. Member Schaiberger noted that he would like to recuse himself from voting because the issue had to deal with a family matter.

Mayor Ehinger had questions as to who the actual owner of the land was. Manager Grace noted that the owner of the land was Gretchen Gerth. Mayor Ehinger noted that the owner of the land would then be responsible for the land and not the renter. He also noted that if you forgive one, then you would be setting a precedent that you would have to forgive others. It was noted that the invoice was addressed to Gretchen Gerth and not in the name of the renter; however, it was the renter who responded to the note and requested the forgiveness. Member Ervans asked if it had been maintained since and Manager Grace noted that as far as she knew they have been taking care of it. Member Lucas asked what the charge was and it was noted that the charge was $150 as per the new ordinance passed by Council.

MOTION BY SCHAIBERGER, SECOND BY SHOWALTER, TO ALLOW COUNCIL MEMBER SCHAIBERGER TO RECUSE HIMSELF FROM VOTING DUE TO THE ISSUE INVOLVING A FAMILY MEMBER.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

Member Lawrence noted that even though Gretchen Gerth doesn't live there she would be receiving homestead taxes on it and therefore responsible for whatever happened to the property. Member Showalter noted that in our letter to the renter let them know it is being billed to the property owner and if the property owner had any issues, then they could address it with Council.

MOTION BY LAWRENCE, SECOND BY ERVANS TO DENY THE FORGIVENESS OF THE MOWING CHARGE AT 128 N. VALLEY ST.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Showalter

No – None

Abstain - Schaiberger

Motion carried

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Manager Grace noted that at the last meeting Council had authorized her to look into what was needed to put the old police department building up for sale. She noted that she would have to have a legal property description with all of the correct easements noted. She further noted that she has had talks with May and Associates and they submitted a quote for $950 to gather all of the information needed and write up the new descriptions as needed. Member Lucas noted that we can't sell it without doing it.

MOTION BY LUCAS, SECOND BY SHOWALTER, TO ALLOW MANAGER GRACE TO PROCEED WITH THE REQUIEREMENTS NEEDED TO PUT THE OLD POLICE DEPARTMENT UP FOR SALE.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace opened bids for the asphalt project on Houghton Ave. She noted that only one bid received was from Hodgins Asphalt at a total of $62,790.00.

MOTION BY ERVANS, SECOND BY SCHAIBERGER, TO AWARD THE BID FOR ASHPHALT WORK ON HOUGHTON AVE. TO HODGINS ASPHALT

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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Manager Grace opened bids for the sidewalk project on the corner of N. First and Houghton Ave. and noted that we received a bid from Jones Concrete for $2,800.00 and a bid from Finished Concrete for $2,390.00.

MOTION BY SHOWALTER, SECOND BY SCHAIBERGER, TO AWARD THE BID FOR SIDEWALK WORK ON THE CORNER OF NORTH FIRST AND HOUGHTON TO FINISHED CONCRETE.

Yes – Ehinger, Hasty, Schaiberger, Showalter

No – Ervans, Lawrence, Lucas

Motion carried

Manager Grace opened bids for sidewalk work on Griffin Rd. and noted that we received a bid from Jones Concrete for $49,027 and we received a bid from Finished Concrete for $45,925.00. Member Lucas asked if it was required to complete the project. Manager Grace noted that this was the project that the IDC was going to help fund because some of the sidewalk work was in the industrial park. She further noted that the IDC made their offer contingent upon the City's approval. Manager Grace also noted that they may want to look into an asphalt trail similar to the river walk instead of a cement sidewalk in order to try and save money. She also noted that they could try for a grant if we were able to connect it to the Riverwalk.

MOTION BY ERVANS, SECOND BY SCHAIBERGER, TO NOT APPROVE BIDS ON THE GRIFFIN RD SIDEWALKS IN ORDER TO GET BIDS ON ASHPALT SIDEWALKS.

Yes – Ehinger, Ervans, Hasty, Lawrence, Lucas, Schaiberger, Showalter

No – None

Motion carried

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DPW Superintendent Jameson thanked Council for the kind words on the cleanup process

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Mayor Ehinger adjourned the meeting at 8:15 pm.

William Ehinger, Mayor

John Dantzer, Clerk