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ORDINANCE ____

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH, ESTABLISHING POLICIES AND PROCEDURES FOR PUBLIC ACCESS TO GOVERNMENTAL RECORDS.

WHEREAS the City Council of Huricane, Utah deems it necessary and desirable to establish policies and procedures to insure adequate, efficient and orderly access by the public to governamental records,

NOW, THEREFORE, BE IT HEREBY ORDAINED that the following policies and procedures, as authorized by the Governmental Records Access and Management Act, be adopted and implemented by the City of Hurricane.

Section 1 - General Purpose.

A. The Hurricane City Council adopts this policy to establish guidelines for open government information recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the City.

Section 2 - City Policy.

A. In adopting this policy, the City recognizes the enactment of Government Records Access and Management Act (Sections 63-2- 101 et. seq.) and the application of that act to the City records (See Appendix I). The purpose of these policies is to conform to Section 63-2-701 which provides that each political subdivision may adopt an ordinance or a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records. The intent of this policy is to provide modifications to the general provision of State law, where allowed, to best meet the public needs, operation, management capabilities and resources of the City.

Section 3 - Compliance with State Law.

A. In adopting the policy, the City recognizes the following sections of the Government Records Access and Management Act apply to the City and adopt by reference these provisions as part of this policy. Any inconsistency or conflict between this policy and the following reference statutes shall be governed by the statute. (See full text of referenced statutes in Appendix I of the policy).

Part 1. General Provisions

§ 63-2-101 Short title

§ 63-2-102 Legislative intent
§ 63-2-103 Definitions
§ 63-2-104 Administrative Procedures Act not applicable
§ 63-2-105 Confidentiality agreements

Part 2 Access to Records

§ 63-2-201 Right to inspect records and receive copies of records
§ 63-2-202 Access to private, controlled and protected documents
§ 63-2-205 Denials
§ 63-2-206 Sharing records

Part 3 Classification

§ 63-2-301 Records that must be disclosed
§ 63-2-302 Private records
§ 63-2-303 Controlled records
§ 63-2-304 Protected records
§ 63-2-305 Procedure to determine classification
§ 63-2-306 Duty to evaluate records and make designations and classifications
§ 63-2-307 Segregation of records
§ 63-2-308 Business confidentiality claims

Part 4 Appeals

Part 5 State Records Committee

Part 6 Accuracy of Records

§ 63-2-601 Rights of individuals on whom data is maintained
§ 63-2-602 Disclosure to subject of records - Context of use
§ 63-2-602 Request to amend

Part 7 Applicability to Political Subdivisions: The Judiciary and the Legislature

§ 63-2-701 Political subdivisions to enact ordinances in compliance with chapter

Part 8 Remedies

§ 63-2-801 Criminal penalties
§ 63-2-802 Injunction - Attorneys' Fees
$ 63-2-803 No liability for certain decisions of a

		governmental entity
	§ 63-2-804	Disciplinary action
Part 9	Archives and Records Service	
	§ 63-2-905	Records declared property of the State - Disposition
	§ 63-2-907	Right to replevin
Part 10	Other	
	§ 63-30-10.6	Attorneys' fees for records request

Section 4 - Definitions

As used in this ordinance, the following definitions shall be applicable.

A. "Act" shall refer to the Government Records Access and Management Act, § 63-2-1, et. seq., Utah Code Annotated 1953, as amended.

B. "City" shall refer to the City of Hurricane, Utah, and the various departments of said City which maintains public records.

C. "Computer software program" means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system and any associated documentation, manuals or other source material explaining how to operate the software program. "Software" does not include the original data or record which is manipulated by the software.

D. "Controlled" records shall be those deemed as controlled under the provisions of the Act.

E. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

F. "Dispose" means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical electronic, or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.

G. "Non-public" records shall refer to those records defined as private, controlled or protected under the provisions of the Act.

H. "Private" records shall refer to those records classified as private under the provisions of the Act.

I. "Protected" records shall refer to those records classified as

protected under the provisions of the Act.

J. "Public" record shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act.

K. (1) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received or retained by the City where all the information in the original is reproducible by some mechanical electronic, photographic or other means.

(2) "Record" does not mean:

(a) Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working,

(b) Materials that are legally owned by an individual in his private capacity;

(c) Materials to which access is limited by the laws of copyright or patent;

(d) Junk mail or commercial publications received by the City or any of its employees;

(e) Personal notes or daily calendars prepared by any City employee for personal use or the personal use of a supervisor or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open meetings Act; or

(f) Proprietary computer software programs as defined in subsection C. above that are developed or purchased by or for the City for its own use.

<u>Section 5</u> -- Public Right to Records

A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the City, of all City governmental records defined as "public" under the provisions of this Policy, upon the payment of the lawful fee and pursuant to the provisions of the Policy and the Act.

B. The City has no obligation to create a record or record series in response to a request from a member of the public if the record requested is not otherwise regularly maintained or kept.

C. When a record is temporarily held by a custodial City agency,

pursuant to that custodial agency's statutory functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Policy. The record shall be considered a record of the City and any requests for access to such records shall be directed to the City, rather than the custodial agency, pursuant to these procedures.

Section 6 - Public, Private, Controlled and Protected Records

A Public records shall be those City records as defined in the Act, § 63-2-301 (U.C.A, 1953, as amended). Public records shall be made available to any person. All City records are considered public unless they are (1) expressly designated classified or defined otherwise by the City in accordance with policies and procedures established by this Policy, (2) are so designated, classified or defined by the Act, or (3) are made non-public by other applicable law.

B. Private records shall be those City records classified as "private", as defined in the Act, § 63-2-302 (U.C.A., 1953, as amended) and as designated, classified or defined in procedures established pursuant to this Policy. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of a minor who is the subject of the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or a notarized release from the subject of the record or his legal representative, or any person possessed of an serving a legislative subpoena or a court order issued by a court of competent jurisdiction.

C. Controlled records shall be those City records classified as "controlled", as defined in the Act, § 63-2-303 (U.C.A., 9153, as amended) and as designated, classified, or defined in procedures established in the Policy. Controlled records shall be made available to a physician, psychologist or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.

D. Protected records shall be those City records classified as "protected", as defined in the Act, § 63-2-304 (U.C.A., 1953, as amended) and as designated, classified or defined in procedures established in this Policy. Protected records shall be made available to the person who submitted the information in the record, to a person who has power of attorney or notarized release from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge or competent jurisdiction.

Section 7 - Privacy Rights

A. The City recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.

B. The City may, as determined appropriate by the City Manager/Recorder, notify the subject of a record that a request for access to the subject's record has been made.

C. The City may require that the requester of records provide a written release, notarized within thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

Section 8 - Designation, Classification and Retention

A. All City records and records series of any format, shall be designated, classified and scheduled for retention according to the provisions of the Act and this Policy. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation classification and scheduling for retention shall be conducted under the supervision of the City Manager/Recorder.

Section 9 - Procedures for Records Request

A. Under circumstances in which the City is not able to immediately respond to a records request, the requester shall fill out and present to the City a written request on forms provided by the City. The written request shall include the name, address and daytime phone number of the requester, the date and time of the request, and a reasonably specific description of the records sought. The time as noted on the request shall govern all time frames provided under this Policy. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.

B. The City may respond to a request for a record by approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures.

C. (1) In most circumstances and excepting the eventualities set out below, the City shall respond to a written request for a public record within ten business days after that request.

(2) Extraordinary circumstances shall justify the City's failure to respond to a written request for a public record within ten business days and shall extend the time for response thereto that time reasonably necessary to respond to the request, as determined by the City Manager/Recorder. Extraordinary circumstances shall include but not be limited to the following:

(a) Some other governmental entity is currently and actively using the record requested;

(b) The record requested is for either a voluminous quantity of records or requires the City to review a large number of records or perform extensive research to locate the materials requested;

(c) The City is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work;

(d) The request involves an analysis of legal issues to determine the proper response to the request;

(e) The request involves extensive editing to separate public data in a record from that which is not public; or

(f) Providing the information requested requires computer programming or other format manipulation.

(3) When a record request cannot be responded to within ten (10) days, the City Manager/Recorder shall give the requester an estimate of the time required to respond to the request.

D. The failure or inability of the City to respond to a request for a record within the time frames set out herein or the City's denial of such a request, shall give the requester the right to appeal as provided in Section 11.

Section 10 - Fees

A. Applicable fees for the processing of information requests under this Policy shall generally be set at actual cost or as otherwise established by policies adopted under this Policy. The City will charge the following fees for requests relating to the Government Records Access and Management Act:

1. Reviewing a record to determine whether it is subject to disclosure.....No Charge

2. Inspection of record by requesting person.....No Charge

3. Copy Fees.....25 cents per page (for City prepared copies)

4. Computer Disk.....Actual Cost (including overhead and time of district staff in preparation of information request)

5. Other Forms .....Actual Cost(same as #4)

6. Miscellaneous Fees.....Actual Cost(same as #4)

Section 11 - Appeal Process

A. Any person aggrieved by the City's denial or claim of

extraordinary circumstances may appeal the determination within 30 days after notice of the City's action to the City manager/recorder by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

B. If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual the City Manager/Recorder shall send a notice of the requester's appeal to the affected person.

C. The City Manager/Recorder shall make a determination on the appeal within 30 days after receipt of the appeal. During this 30 day period the City Manager/Recorder may schedule an informal hearing or request any additional information deemed necessary to make a determination. The City Manager/Recorder shall send written notice to all participants providing the reasons for the City Manager/Recorder's determination.

D. In addition, if the City Manager/Recorder affirms the denial in whole or in part, the denial shall include a statement that the requester has a right to appeal the denial to the City Council within thirty days at the next scheduled meeting.

E. The person may file a written notice of appeal to the City Council to be heard at the next scheduled meeting of the council. If there is no meeting scheduled in the next thirty days the City Council shall schedule a meeting for the purpose of hearing the appeal. The final decision of City Council shall be by majority vote of a quorum of the Council. The Council shall prepare a written decision outlining their final determination and reasons for the final determination.

F. If the City Counicl affirms the denial in whole or in part, the person may petition for judicial review in district court as provided in Section 63-2-404. U.C.A.

Section 12 - Reasonable Accommodation

A. Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disabilities Act upon request of the applicant.

Section 13 - Records Amendments

A. Government records held by the City may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the City or agency having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided

otherwise by the Act or other State or Federal law.

Section 14 - Penalties

A. City employees who knowingly refuse to permit access to records in accordance with the Act and this Policy, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records or allow other persons to do so in violation of the provisions of the Act, this Policy or other law or regulation may be subject to criminal prosecution and disciplinary action including termination.

B. In accordance with the Act neither the City nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

Section 15 - Records Maintenance

A. Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve City records safely and accurately over the long term. The City Recorder shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of City records. He/she shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records.

B. All City records shall remain the property of the City unless federal or state legal authority provides otherwise. Property rights to City records may not be permanently transferred from the City to any private individual or entity, including those legally disposable obsolete City records. This prohibition does not include the providing of copies of City records otherwise produced for release or distribution under this chapter.

C. Custodians of any City records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the City Manager/Recorder.

CITY OF HURRICANE

By: Dell C. Stout
Dell Stout, Mayor

Attest: Clark R Fawcett
Clark Fawcett, Manager/Recorder