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ORDINANCE NO. 92-33

AN ORDINANCE ENACTING SECTION 3-603 OF THE CODE OF REVISED ORDINANCES OF WASHINGTON CITY; ESTABLISHING CITY POLICIES REGARDING THE MAINTENANCE AND PRESERVATION OF ACCURATE PUBLIC RECORDS; PROVIDING FOR ACCESS TO RECORDS BY MEMBERS OF THE PUBLIC AND IN ACCORDANCE WITH STATE STATUTE; SETTING OUT RESPONSE TIME REQUIREMENTS AND FEES FOR PUBLIC RECORD ACCESS REQUESTS; CREATING THE OFFICE OF CITY ARCHIVES AND RECORDS SERVICES; AND ESTABLISHING OTHER PROCEDURES REGARDING THE STORAGE OF AND ACCESS TO GOVERNMENTAL RECORDS HELD BY THE CITY

The City Council of Washington, Utah, ordains as follows:

SECTION I. Section 3-603 of the Code of Revised Ordinances of Washington City, (1978, as amended), is hereby enacted to read as follows:

Section 3-603. The City Council of Washington City, Utah, finds the following:

A. It is in the best interests of Washington City and the citizens thereof, and essential for the administration of City government, to maintain and preserve accurate governmental records; to provide ready access to records which are defined by law as open to the public; to maintain the security of records which are defined by law as non-public; and to ensure the preservation of vital and historically valuable records.

B. As the records of Washington City government agencies are a resource containing information which (1) allows government programs to function; (2) provides officials with a basis for making decisions and ensuring continuity with past operations; and (3) permits citizens to research and document matters of personal and community importance; this resource must be systematically and efficiently managed.

C. It is the policy of the City that all governmental records, which are defined by applicable Utah statutory and case law as public records, shall be made available to citizens as set forth in this ordinance.

D. The City recognizes a public policy interest in allowing the government to restrict access to certain records, as specified in the Act and this Chapter, for the public good.

Section 3-603-1. PURPOSE.

In enacting this chapter, it is the purpose and intent of the City Council to provide, in accordance with the Government Records Access and Management Act (hereinafter referred to as "the Act"), Chapter 2 of Title 63 of the Utah Code Annotated (1953), an ordinance acknowledging and complying with the Act and providing for its application in the City. City agencies shall comply with the provisions of this ordinance and with the Act and shall also comply with other federal and state statutory and regulatory record-keeping requirements.

Section 3-603-2. 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. "Agency" shall refer to any office, department, division, section, staff office, board, committee or other division of Washington City government, any public or private entity or person which contracts with the City to provide goods or services directly to the City, or any private non-profit entity that receives funds from the City.

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 defined as controlled under the provisions of this ordinance and in accordance with the provisions of the Act.

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

F. "Designate" or "designation" means to give an initial or primary classification to a record or record series indicating the likely classification that a majority of such records or record series would be given if classified.

G. "Dispose" means to destroy, or render irretrievable or illegible, a record of 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.

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

I. "Private" records shall refer to those records classified as private under the provisions of this ordinance and of the Act.

J. "Protected" records shall refer to those records classified as protected under the provisions of this ordinance and the Act.

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

L. 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 by an officer or employee of the City;

(e) Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of City libraries open to the public, regardless of physical form or characteristics of the material;

(f) 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

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

Section 3-603-3. RIGHT TO INSPECT AND RECEIVE COPIES OF 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 designated as "public" under the provisions of this Chapter, the Act and policies and procedures developed hereunder.

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 and ordinance 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 Chapter. The record shall be considered a record of the agency or agencies which usually keeps or maintains that record and any requests for access to such records shall be directed to that agency or agencies, rather than the custodial agency, pursuant to procedures established by the City. Only when records have been formally filed for permanent archival retention shall City Archives be responsible for responding to records requests.

**Section 3-603-4. ACCESS TO PUBLIC, PRIVATE, CONTROLLED AND PROTECTED DOCUMENTS.**

A. Public records shall be those City records as defined in the Act, §63-2-301 (U.C.A., 1953, as amended) as public. Public records shall be made available to any person. All City records are considered public unless they are expressly classified otherwise in accordance with policies and procedures established by this Chapter or are made non-public by the Act or 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 classified and defined in procedures established pursuant to this Chapter and in accordance with the Act. Private records shall be made available to the following persons:

(1) the subject of the record, (2) the parent or legal guardian of an unemancipated minor who is the subject of a record, (3) the legal guardian of an incapacitated individual who is the subject of the record, (4) any person who has a power of attorney from the subject of the record, (5) any person who has a notarized release dated not more than 90 days prior to the request from the subject of the record or his legal representative, or (6) any person possessed of and serving a legislative subpoena or a court order issued by a court of competent jurisdiction in accordance with the Act.

C. Controlled records shall be those City records classified as "controlled", as defined in the Act, §63-2-303 (U.C.A., 1953, as amended) and as classified and defined in procedures established in this Chapter and in accordance with the Act. Controlled records shall be made available to (1) a physician, psychologist, or licensed social worker who submits a notarized release dated not more than 90 days prior to the request from the subject of the record and a signed acknowledgment stating he or she will not disclose the controlled information to any person, including the subject of the record; and (2) any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction in accordance with the Act.

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 classified and defined in procedures established in this Chapter and in accordance with the Act. 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 dated not more than 90 days prior to the request 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 of competent jurisdiction in accordance with the Act.

E. Under circumstances set out by the Act, it may be appropriate to disclose non-public records to persons other than those set out in this section. The determination to so release records shall be made in accordance with Section 63-2-201 of the Act.

#### Section 3-603-5. RIGHT OF PRIVACY.

A. The City recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records. The City also recognizes that the Act and Utah case law establish a presumption that governmental records will generally be considered open and public, with certain specific exceptions. In circumstances where more than one provision of the Act could govern the classification of a record, or where a record's public or non-public status is not specifically established by the Act by another statute, by this ordinance, or by policies established or designations made under this ordinance, the public's right to access and the record subject's right of privacy must be compared. In accordance with decisions of the Utah Supreme Court, City records which have not been specifically made public by statute and which refer to named or readily identifiable individuals which deal with matters of a delicate nature which could engender shame or humiliation in the subject of that record, in accordance with accepted standards of social propriety, release of which may constitute a clearly unwarranted invasion of privacy or potential violation of individuals rights to a fair trial, shall generally not be classified as public records and , in accordance with the Act and procedures established in this ordinance. Under circumstances and procedures established by this ordinance, certain items of data may be rendered non-public, although other items of data in the record, or the record itself, may be classified public.

B. The City may, as determined appropriate by the agency director of the agency responding to a request for records, notify the subject of a record that a request for access to the subject's record has been made.

**Section 3-603-6. DUTY TO EVALUATE, DESIGNATE AND CLASSIFY RECORDS.**

All City records and record series, of any format, shall be evaluated, designated, classified and scheduled for retention according to the provisions of the Act and this Chapter. The City may designate or redesignate or classify or reclassify records or data at any time and is not required to classify a particular record or item of data until access thereto is requested. 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 and proposed schedules submitted to the City Records Officer who shall be assisted by a Records Classification and Retention Review Committee consisting of the Records Officer or designee and the agency director of the agency in charge of the record in question, or designee. Assistance may be requested from the City Attorney as needed. Designation, classification and retention scheduling form and guidelines shall be prepared and promulgated by the Records Officer and the Records Policy Administration.

**Section 3-603-7. REQUESTS—TIME FRAME FOR RESPONSE AND EXTRAORDINARY CIRCUMSTANCES.**

A. Under circumstances in which an agency is not able to immediately respond to a records request, the requester shall fill out and present to the agency a written request on forms provided by the City. The date and time of the request shall be noted on the written request form and all times provided under this Chapter shall commence from that time and date.

Requesters of non-public records shall adequately identify themselves and, if applicable, their status when requesting access to non-public records.

B. An agency 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 determined by the Act, by this ordinance, or as may be established by policies and procedures. If a request is denied in whole or in part, the agency shall provide a notice of denial to the requester. The denial notice shall include information regarding the appeals process and such other information as may be required by this Chapter and the Act.

C. 1. An agency shall respond to a written request for a record as soon as reasonably possible, but no later than ten business days after receiving the request or five business days after receiving a request if the requester satisfactorily demonstrates that an expedited response time primarily benefits the public at large, rather than the requester individually. A requester seeking records for publication or broadcast to the general public is presumed to be acting primarily for the benefit of the public at large.

2. The following extraordinary circumstances shall justify an agency's failure to timely respond to a written request for a record and shall extend the time for response thereto to a time reasonably necessary to respond to the request, as determined by the agency director. Extraordinary circumstances include:

(a) The agency, another agency, or 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 agency to review a large number of records or perform extensive research to locate the materials requested;

(c) The agency 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 release of a record involves legal issues that require an agency to seek legal counsel for analysis of applicable laws;

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

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

3. When a record request cannot be responded to in a timely manner, the agency shall notify the requester that it cannot immediately approve or deny the request because of extraordinary circumstances, and provide an estimate of the time required to respond to the request.

D. The failure or inability of an agency to respond to a request for a record within the time frames set out herein, or the agency's denial of such a request, shall give the requester the right to appeal as provided in Section 3-603-9.

E. Any City record which is subject to pending litigation or audit or has been requested in accordance with this ordinance and the Act, that is disposable by approved retention schedule, may not be disposed of until the litigation or audit has been resolved or the request is granted and fulfilled, or 60 days after the request is denied if no appeals are filed, or 60 days after all appeals are completed, pursuant to Section 3-603-9.

F. In response to a request for access, an agency may redesignate or reclassify the record or segregate data in the requested record in accordance with this Chapter and the Act.

Section 3-603-8. FEES

A. An agency may charge a reasonable fee , which shall be established by ordinance or written formal policy, to cover its actual cost of duplicating a record or compiling a record in a form other than that maintained by the agency.

B. An agency may fulfill a record request without charge and is encouraged to do so when it determines that:

1. releasing the record primarily benefits the public rather than a person;
2. the individual requesting the record is the subject of the record; or
3. the requester's rights are directly implicated by the information in the record, and the requester is impecunious.

C. Fee policies adopted under this Chapter shall be consistent with this section.

\* Section 3-603-9. APPEAL

A. 1. Persons aggrieved by the City's classification of a record or by an agency's response to a record request may file a written notice of appeal within 30 days of the grievance, in accordance with policies adopted by the Records Policy Administration. (See Section 3-603-13). The appeal may be made, at the requester's option, to a hearing board convened pursuant to policies adopted by the Records Policy Administration or to the City Council as provided in paragraph B below.

2. A written notice of appeal shall be filed with the director of the involved agency, who shall immediately notify the City Records Officer. The Records Officer shall institute the initial convening of the hearing

board within 10 business days after the date the written notice of appeal is received.

3. The Records Officer shall send a notice of the date and location of the hearing to the requester, members of the hearing board and the director of the involved agency.

B. 1. A requester who is aggrieved by the hearing board decision or who prefers to proceed directly to a hearing before the City Council may file an appeal with the City Council.

2. A City Council review of the appeal shall be initially convened within 30 days following the decision of the hearing board or other appeal request.

3. Notices and staff assistance regarding the City Council hearing shall be provided by the City Records Officer and shall be provided as set out in subsection A. above and in policies and procedures.

4. The appeal of a decision of the City Council may be made to the District Court, in accordance with the Act and the Utah Rules of Civil Procedure.

C. The notice of appeal shall include the appellant's name, mailing address, daytime phone number, the nature and date of the request, attaching a copy of the request form, if available, and the basis and legal authority for the request.

D. The decisions of any hearing board or the City Council regarding access to or classification of records shall be forwarded to the City Records Policy Administrator for corrective action including any reclassification or designation of data or records which may be necessitated by the appellate decision.

Section 3-603-10. ACCESS TO DISABLED PERSONS.

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with policies developed under this Chapter.

Section 3-603-11. REQUEST TO AMEND A RECORD.

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 agency having custody of the records and setting forth, with specificity, the amendment or correction requested and the reason for the change. When an amendment or correction of a government record is made, generally both the original record and the amended or corrected record shall be retained, unless the nature of the record indicates otherwise or as may be provided by policies and procedures adopted under the provisions of this Chapter.

Section 3-603-12. PENALTIES, LIABILITY.

A. A city employee or other person having lawful custody of City records who intentionally refuses to permit access to records in accordance with the Act and this Chapter, or who permits access to non-public records knowing that such access is prohibited, or who intentionally, without authorization or legal authority, disposes of, alters, or removes records or allows other persons to do so in violation of the provisions of the Act, this Chapter, 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 agencies, 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. Other defenses listed in Section 63-2-801 of the Act shall also be available.

Section 3-603-13. DUTIES OF GOVERNMENTAL ENTITIES.

A. There shall be appointed a City Records Officer to oversee and coordinate records access and management and City archives activities. The Records Officer shall make annual reports of records services activities to the City Council.

B. There is hereby created the Government Records Access and Management Policy Administration ("Records Policy Administration"), to be chaired by the City Records Officer. Members of the Records Policy Administration shall include representatives from the City office staff, the City departments, and from the elected offices. The Records Policy Administration shall meet periodically as needed, as determined by the City Records Officer. The minutes and other records of the Records Policy Administration shall be maintained and staff provided by the City office.

C. Each agency of City government shall appoint a Records Representative to assist with and be directly responsible for the implementation of this ordinance. Regular training shall be provided under the direction of the Records Policy Administration to Agency Records Representatives.

D. The Records Policy Administration shall develop and provide records management, maintenance and access standards, policies and procedures, as approved by the City Council, to govern and implement the provisions of the Act and this Chapter. Approval and promulgation of records policies and procedures shall be in accordance with the provisions of this code of ordinances and the Act. Copies of any rule or policy promulgated under this ordinance shall be forwarded by the City Records Officer to the Utah State Division of Archives within thirty (30) days after its effective date. Any agency's

internal policies regarding records management and access shall be consistent with this ordinance and state law.

Section 3-603-14. DISPOSITION OF RECORDS.

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 Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of City records and shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records. Policies and regulations regarding types and formats of papers, inks, electronic media, and other records and information storage media, materials, equipment, procedures and techniques shall be developed and promulgated, subject to the approval of the City Council.

B. All City records which constitute valuable intellectual property shall remain the property of the City unless federal or state legal authority provides otherwise. All other records shall be the property of the State of Utah. 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 of City Archives or other agencies. This prohibition does not include the providing of record copies 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 Records Officer.

D. All records which are in the possession of any City agency shall, upon termination of activities of such agency, be transferred to any successor

agency or to the City Archives, provided that such transfer is consistent with the formal provisions of such termination.

Section 3-603-15.           **CREATION AND DUTY OF CITY ARCHIVES AND RECORDS SERVICES SECTION.**

There is created the City Archives and Records Services Section, to be managed by the City Records Officer. It is the responsibility of the section to receive, store, and preserve City agency records and other materials and to store and to provide reasonable access thereto as may be calculated to accurately and safely maintain City records over the long term in compliance with this Chapter and the Act. Policies and guidelines regarding the nature of records and record series which are to be received and stored by City Archives shall be developed and promulgated by the Records Policy Administration. City Archives shall be considered the formal, official repository of the City records; the central depository for the reports, publications, productions in other media, rules, policies, and regulations of the City, where not otherwise determined by law; and, where appropriate, historical artifacts. Each agency shall be responsible for assisting the City Archives in the collection of such records, depository materials, and artifacts through methods promulgated by the Records Policy Administration.

Section 3-603-16.           **ACCESS TO NON-WRITTEN RECORDS.**

A.     The City retains and reserves to itself the right to use any type of non-verbal or non-written formats for the storage, retention and retrieval of government records, including but not limited to audio tapes, video tapes, micro-forms, and any type of computer, data processing, imaging, or electronic information storage or processing equipment or systems, which are not prohibited by state statute and do not compromise legal requirements for record storage, retrieval, security and maintenance, to store and maintain City

records. All computerized and non-written formal records and data which are designated and classified in accordance with the Act and this Chapter, shall be made available to a requester in accordance with this Chapter and the Act.

B. The methods of access to records in non-written formats or data processing systems shall be as determined appropriate by the agency director of the agency maintaining the records, considering all circumstances. Access may include but not be limited to the following:

1. By using a City computer terminal or other viewing or listening device to retrieve data directly from the terminal screen or device; provided, however, that due regard shall be exercised to ensure that any non-public records will not be accessed, retrieved or displayed on the device and that records are not erased or damaged;

2. By providing paper or "hard" copies of record printouts or by providing magnetic tapes, disks, or other means of electronic storage containing the non-written format or data processing system records; or

3. By the use, where appropriate, of remote terminals which have access to City computer, data processing or electronic information systems pursuant to a formal two-party contract permitting such remote terminal access and provided that due regard shall be exercised to ensure that non-public records will not be available by remote terminal access.

C. Computer software programs are not considered a record. Software programs shall not be subject to disclosure under this Chapter of the Act, including copyrighted software and other copyrighted materials which have been purchased by or licensed to the City and software and other materials which have been copyrighted by the City.

Section 3-603-17. JUSTICE COURT RECORDS.

Records activities of the City Justice Court system shall comply with and be governed by Section 63-2-702 of the Act.

Section 3-603-18. CRIMINAL PENALTY.

Knowing violation of this Chapter is a misdemeanor, punishable as set forth in this code of ordinances.

SECTION II. This ordinance shall become effective immediately upon posting. After adoption and posting, a copy and summary of this ordinance shall be forwarded by the City Records Officer to the Utah State Archives.

PASSED this 12 day of August, 1992.

WASHINGTON CITY

By: Charles L. Jolley  
MAYOR

Attest:

[Signature]  
CITY RECORDER

SA4-92/42738

