

Ordinance No. 00012

[\(Council Minutes 95/11/20\)](#)

ORDINANCE NO. 95-12

AN ORDINANCE of the City Council of the City of Lakewood, Washington, Regarding Disclosure of Public Records of the City

WHEREAS, RCW 42.17.290 requires cities to adopt and enforce reasonable rules and regulations, consistent with the intent of the Public Records Disclosure Act, Chapter 42.17 RCW, to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with essential City functions; and

WHEREAS, Chapter 42.17 RCW requires the City to make public records available for inspection and copying, subject to certain exemptions; and

WHEREAS, the City Council supports the policy of Chapter 42.17 RCW as stated in RCW 42.17.251, which provides that

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WHEREAS, Chapter 42.17 RCW requires the City to make public records available for inspection and copying, subject to certain exemptions; and

WHEREAS, the City Council supports the policy of Chapter 42.17 RCW as stated in RCW 42.17.251, which provides that A[t]he people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter [Chapter 42.17 RCW] shall be liberally construed and its exemptions narrowly construed to promote this public policy@; and,

WHEREAS, the City Council desires to make available for inspection and copying all computer data, drawings and data bases, as well as all software and special applications for software developed by City officers and employees in the scope of

their employment; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1. Relationship to Public Records Disclosure Act. This ordinance constitutes the City's rules and regulations to carry out and implement the Public Records Disclosure Act, Chapter 42.17 RCW. Except as provided in this ordinance, Chapter 42.17 RCW shall apply to all City public records.

Section 2. Disclosure of Public Records. Unless exempt from disclosure under this ordinance, public records shall be available for inspection and copying in accordance with this ordinance.

Section 3. Definitions of Public Record and Writing.

A. "Public record" means (1) any writing, (2) any computer data and data bases and computer generated documents, maps and drawings and (3) any software and special applications for software developed by City officers and employees in the scope of their employment, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the City regardless of physical form or characteristics

B. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

Section 4. Copyright Enforcement. The City recognizes that any software and special applications for software developed by City officers and employees in the scope of their employment are owned by the City pursuant to the copyright laws, 17 U.S.C., sections 101 and 201. The City will make available to all requestors a license to use such software so as to make use of all public data.

Section 5. Maintenance of Records.

A. All substantive and procedural rules of general applicability, including but not limited to ordinances and resolutions of the City Council, minutes of the regular meetings of the City Council, and statements of general policy, and all public contracts, deeds, easements and leases shall be indexed and maintained in the office of the City Clerk for the use of the City and of the general public. B. All other records of the City relating to the specific function or responsibility of a particular City department shall be maintained for the use of the department and the general public in the office of the department. The department shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records:

1. Final opinions and orders made in the adjudication of cases;

2. Statements of policy and interpretations of policy which have been adopted by the City;
3. Administrative staff manuals and instructions to staff that affect a member of the public;
4. Planning policies and goals, and interim and final planning decisions;
5. Factual staff reports and studies, factual consultants reports and studies, scientific reports and studies and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and
6. Correspondence, and materials referred to therein, by and with the City relating to any regulatory, supervisory, or enforcement responsibilities of the City, whereby the City determines, opines upon, or is asked to determine or opine upon, the rights of the State, the public, a subdivision of State government, or of any private party.

Section 6. Exemptions.

A. The following shall be exempt from public inspection and copying:

1. Personal information in files maintained for employees, appointees, or elected officials, to the extent that disclosure would violate their right to privacy, as defined in RCW 42.17.255.
2. Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would be prohibited to such persons by RCW 82.32.330 or violate the taxpayer's right to privacy, as defined in RCW 42.17.255, or result in unfair competitive disadvantage to the taxpayer.
3. Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy, as defined in RCW 42.17.255.
4. Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property; provided, that if at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern.

5. Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

6. Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency including the City, relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

7. Valuable formulae, designs, drawings, and research data obtained by the City within five years of the request for disclosure when disclosure would produce private gain and public loss. The exemption of this subsection (7) shall not include software and special applications for software developed by City officers and employees in the scope of their employment.

8. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by the City in connection with any City action.

9. Records which are relevant to a controversy to which the City is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

10. Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

11. Financial and commercial information and records supplied by businesses during application for loans or program services provided by Chapters 43.160, 43.163, 43.168, and 43.330 RCW.

12. All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

13. The residential addresses and residential telephone numbers of employees or volunteers of the City which are held by the City in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

14. The residential addresses and residential telephone numbers of the customers of a City utility contained in the records or lists held by the City utility of which they are customers.

15. Client records maintained by the City under any domestic violence program as defined in RCW 70.123.020 or rape crisis center as defined in RCW 70.125.030.

16. Information that identifies a person who, while a City employee: (i) seeks advice, under an informal process established by the City, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

17. License applications under RCW 9.41.070.

18. Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

19. A law enforcement authority may not request inspection or copying of records of any person, which belong to a City electrical utility, unless the authority provides the City electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true.

20. Any other record which is exempt from disclosure under any state law.

B. The exemptions from public disclosure set forth in this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the non-disclosure of statistical information not descriptive of any readily identifiable person or persons.

C. Inspection or copying of any specific records exempt under this section may be permitted if the Pierce County Superior Court finds, after a hearing with notice thereof to every person interested and to the City, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

D. Nothing in this section shall affect a positive duty of the City to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

Section 7. Procedure for Inspection or Copying.

A. Persons wishing to inspect or copy City records shall first make such request to the City Clerk or the department head of the City department which maintains the requested records. If the requestor does not know which department maintains the records, the request shall be made to the City Clerk. The City Clerk shall direct the requestor to the appropriate department. All assistance necessary to help the requestor locate the particular record shall be provided promptly either by the City Clerk or by the particular department maintaining the records. The provision of such assistance shall not unreasonably disrupt the normal operations of the City Clerk, the department, or the assisting employee.

B. The City Clerk or other City employee shall not distinguish among persons requesting records. Persons requesting records shall not be required to provide information as to the purpose for the request, except to establish whether the inspection or copying would violate RCW 42.17.260(5) or other statute or ordinance which exempts or prohibits disclosure of specific information or records to certain persons.

Section 8. Reimbursement for Copying Costs.

A. Copies of written records, maps, photographs including slides, audio tape recordings, video tape recordings and diskettes shall be made and provided by the City upon request and payment of the actual cost of reproducing the same, which cost shall be established by City Council resolution.

B. Labor and mailing costs shall be included in the cost of reproduction. The costs of reproduction provided for by resolution shall include, but not be limited to, the following records: street maps, zoning maps, zoning codes, ordinances, public meeting minutes, resolutions, verbatim transcripts, deeds, contracts, and other records of the character contemplated in Section 1 of this ordinance.

C. Where the request is for a certified copy, there shall be an additional charge in the amount established by City Council resolution to cover the additional expense and time required for certification.

D. The City Clerk or a department head may provide copies of City records at no charge to individuals or government agencies doing business with the City, if the City Clerk or department head determines such action is in the best interests of the City.

Section 9. Decision on Public Records Requests - Procedure for Review of Decision.

A. Upon receiving an oral or written request to inspect or copy a public record, the City Clerk or the department head shall grant the request unless the City Clerk or department head determines that the record requested is or may be exempt from disclosure in whole or in part, in which case the City Clerk or department head shall require that the requestor complete a written request for public records form.

B. A department head shall immediately deliver a completed written request for public records form to the City Clerk.

C. Upon receiving a completed written request for records form, the City Clerk shall determine whether the requested record is exempt by law from inspection and copying in whole or in part. Within five business days of the date of receipt by the City of the written request for a record, the City Clerk shall:

1. Provide the record; or

2. Acknowledge that the City has received the request and provide a reasonable estimate of the time the City will require to respond to the request; or

3. Deny the public record request.

Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt. If a public records request is unclear, the City Clerk may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the City need not respond to the request.

D. If the City Clerk determines that the document is exempt in part but can be made available after deletion of exempt portions, or after deletion of portions which would violate personal privacy or vital governmental interests, the request shall be granted; provided, that such exempt portions shall first be deleted. If the City Clerk determines to deny the request, in whole or in part, a written statement of the specific reasons for the denial shall be provided to the requestor.

E. A decision by the City Clerk denying inspection shall be reviewed by the City Attorney. Such review shall be deemed complete at the end of the second business day following the denial of inspection and shall constitute final City action for the purposes of judicial review. The requestor shall be notified by mail of the decision to grant or deny the request.

Section 10. Disclosure Prohibited by Other Statutes. The City shall not be required by this ordinance to permit public inspection and copying of any record to the extent public disclosure of the record is prohibited, restricted or limited by any state or federal statute or regulation including, but not limited to, Chapter 10.97 RCW, the Washington State Criminal Records Privacy Act, Chapter 13.50 RCW, relating to release of records by juvenile justice or care agencies, or Chapter 46.52 RCW, relating to accident reports and abandoned vehicles.

Section 11. Administrative Rules. The City Manager, upon recommendation of the City Clerk, may issue rules for the implementation of this ordinance.

Section 12. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 13. Effective Date. This ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary and on February 28, 1996, provided that this Ordinance shall be in effect in the interim period of time prior to February 28, 1996.

ADOPTED by the City Council this 20th day of November, 1995

/S/ Bill Harrison

Mayor

Attest:

/S/ Alice M. Bush

City Clerk

Approved as to Form:

/S/ Daniel B. Heid

City Attorney

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