

Ordinance No. 00422

[City Council meeting minutes of Aug 21 2006](#)

ORDINANCE NO. 422

AN ORDINANCE of the City Council of the City of Lakewood, Washington, Regarding Disclosure of Public Records of the City of Lakewood and Rules for making public records available

WHEREAS, RCW 42.56 requires cities to adopt and enforce reasonable rules and regulations, consistent with the intent of the Public Records Disclosure Act, Chapter 42.56 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 42.56 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 42.56 RCW as stated in RCW 42.56, which provides that "[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 42.56 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; and

WHEREAS, the City Council desires to follow model rules, as prepared by the Washington Attorney General, to establish a culture of cooperation among requestors by standardizing best practices throughout the state.

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

Section 1. That Chapter 1.24 of the Lakewood Municipal Code, be, and the same is hereby amended, adding two new Sections 1.24.045 and 1.24.055, to read as follows:

Chapter 1.24 Public Disclosure

Sections:

1.24.010 Relationship to Public Records Disclosure Act.

1.24.020 Disclosure of Public Records.

1.24.030 Definitions of Public Record and Writing.

1.24.040 Copyright Enforcement.

1.24.045 Public Records Officer.

1.24.050 Maintenance of Records.

1.24.055 Index of Public Records-Findings.

1.24.060 Exemptions.

1.24.070 Procedure for Inspection or Copying.

1.24.080 Reimbursement for Copying Costs.

1.24.090 Decision on Public Records Requests - Procedure for Review of Decision.

1.24.100 Disclosure Prohibited by Other Statutes.

1.24.110 Administrative Rules.

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01.24.010 - Relationship to Public Records Disclosure ActThis ordinance constitutes the City's rules and regulations to carry out and implement the Public Records Disclosure Act, Chapter 42.56~~17~~ RCW. Except as provided in this ordinance, Chapter 42.56~~17~~ RCW shall apply to all City public records. (Ord. 12 ? 1, 1995.)

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01.24.020 - Disclosure of Public RecordsUnless exempt from disclosure under this ordinance, public records shall be available for inspection and copying in accordance with this ordinance. (Ord. 12 ? 2, 1995.)

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01.24.030 - Definitions of Public Records and WritingA. "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, Photostatting, 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. (Ord. 12 ? 3, 1995.)

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01.24.040 - Copyright EnforcementThe 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 requesters a license to use such software so as to make use of all public data. (Ord. 12 ? 4, 1995.)

01.24.045 ? Public Records Officer

The City Clerk or designee shall serve as the City's public records officer for whom members of the public may direct requests for disclosure of public records.

01.24.050 - 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.~~

~~(Ord. 12 ? 5, 1995.)~~

1.24.055 ? Index of Public Records ? Findings.

A. Chapter 42.56 RCW requires all cities and public agencies to maintain and make available a current index of all public records.

B. RCW 42.56 provides that if maintaining such an index would be unduly burdensome, or would interfere with agency operation, a City need not maintain such an index but it must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.

C. The City of Lakewood is comprised of numerous departments, their divisions and subdivisions, which maintain separate databases and/or record keeping systems for the indexing of records and information.

D. Because the City has records which are diverse, complex and stored in multiple locations and in multiple computer systems, formats and/or databases, it is unduly burdensome, if not physically impossible, to maintain a current index of all records.

E. The City of Lakewood will make available for inspection and/or copying all public records, including any indexes that are maintained by the City pursuant to the Public Disclosure Act, Ch. 42.56 RCW and this chapter.

01.24.060 - Exemptions

A. ~~The following~~Any record which is exempt from disclosure under state law 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~~

~~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. (Ord. 12 ? 6, 1995.)

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01.24.070 - 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 42.56~~17.260(5)~~ or other statute or ordinance which exempts or prohibits disclosure of specific information or records to certain persons.

(Ord. 12 ? 7, 1995.)

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01.24.080 - 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 include the actual cost of paper and per page cost for the use of copying equipment, costs directly incident to shipping including postage or delivery charges and the cost of any container or envelope and staff time to copy such public records pursuant to RCW 42.56. 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 1.24.010 of this ordinance.

C. The City may, at its discretion, require the requestor to deposit a sum in an amount not to exceed 10 percent of the estimated cost of providing copies for a request. If the request is made available on a partial or installment basis, the City may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the City is not obligated to fulfill the balance of the request.

D. Failure to Pay required fees. In the event a requestor fails to pay a bill for fees incurred within 30 calendar days, the City shall require the requestor to pay in full the past due amount owed before it will begin processing a new request or a pending request from the delinquent requestor. In addition, the City may require advance payment for any future requests of the full amount of the estimated fee before the City begins to process a new request or a pending request from the requestor. If the City is unable to collect the duplication fees from the requestor, the City may, upon providing thirty (30) calendar days prior written notice to the requestor, destroy the duplication set of records made available to the requestor in order to avoid storage concerns. Although the records are destroyed, the requestor shall still be made responsible for the costs the City incurred in duplicating the records originally requested by the requestor.

~~E.~~ 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.

~~F.~~ 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. (Ord. 12 ? 8, 1995.)

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01.24.090 - 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 requester to clarify what information the requester is requesting. If the requester 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 requester.

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 requester shall be notified by mail of the decision to grant or deny the request. (Ord. 12 ? 9, 1995.)

01.24.100 - 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. (Ord. 12 ? 10, 1995.)

01.24.110 ? Model Rules and Administrative Rules Procedures

The City shall follow the Public Records Act Model Rules on file at the City Clerk's Office for complying with the Public Records Act. The City Manager, upon recommendation of the City Clerk, may issue ~~s-rules~~ administrative procedures for the implementation of this ordinance. (Ord. 12 ? 11, 1995.)

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary. ADOPTED by the City Council this 21st day of August, 2006.

CITY OF LAKEWOOD

Claudia B. Thomas, Mayor

Attest:

Alice M. Bush, MMC, City Clerk
Approved as to Form:

Heidi Ann Wachter, City Attorney