

Midway City Council
15 February 2022
Regular Meeting

Ordinance 2022-09 /
Records Requests



**ORDINANCE
2022-09**

**A RESOLUTION AMENDING THE MIDWAY CITY
MUNICIPAL CODE REGARDING RECORDS REQUESTS,
AND RELATED MATTERS.**

WHEREAS, the Midway City Council desires to add language from the Utah Government Records Access and Management Act to the Midway City Municipal Code; and

WHEREAS, the Midway City Council finds that adding such language will clarify and emphasize the procedures for accessing records; and

WHEREAS, the Midway City Council finds that this amendment is in the best interest of the City and the public; and

WHEREAS, the Midway City Council desires to amend the Municipal Code, as set forth herein.

NOW THEREFORE, be it hereby **ORDAINED** by the City Council of Midway City, Utah, as follows:

Chapter 2.13 (Records Access and Management) of the Midway City Municipal Code is amended as attached in Exhibit "A".

This Ordinance shall take effect upon publication as required by law.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
this day of 2022.

Council Member Steve Dougherty _____

Council Member Jeff Drury _____

Council Member Lisa Orme _____

Council Member Kevin Payne

Council Member JC Simonsen

APPROVED:

Celeste Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Brad Wilson, City Recorder

Corbin Gordon, City Attorney

(SEAL)

DRAFT

Exhibit A

2.13.030 Applicability of State Law

Government records access and management in Midway City shall be governed by the current version of the Utah Government Records Access and Management Act, as amended.

2.13.040 Provisions Relating to Records – Disclosure of Records

- (1) (a) Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 2.13.050 and 2.13.060.
 - (b) A right under Subsection (1)(a) does not apply with respect to a record:
 - (i) a copy of which the City has already provided to the person;
 - (ii) that is publicly accessible online or included in a public publication or product produced by the City; or
 - (iii) (A) that is accessible only by a computer or other electronic device owned or controlled by the City;
(B) that is part of an electronic file that also contains a record that is private, controlled, or protected; and
(C) that the City cannot readily segregate from the part of the electronic file that contains a private, controlled, or protected record.
- (2) A record is public unless otherwise expressly provided in this Section.
- (3) The following records are not public:
 - (a) a record that is private, controlled, or protected under Utah Code Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and
 - (b) a record to which access is restricted pursuant to court rule, state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
- (4) The City shall provide a person with a certified copy of a record if:
 - (a) the person requesting the record has a right to inspect it;
 - (b) the person identifies the record with reasonable specificity; and
 - (c) the person pays the lawful fees outlined in Section 2.13.050.
- (5) In response to a request, the City is not required to:
 - (a) create a record;
 - (b) compile, format, manipulate, package, summarize, or tailor information;
 - (c) provide a record in a particular format, medium, or program not currently maintained by the City;
 - (d) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

- (e) fill a person's records request if:
 - (i) the record requested is:
 - (A) publicly accessible online; or
 - (B) included in a public publication or product produced by the City; and
 - (ii) the City:
 - (A) specifies to the person requesting the record where the record is accessible online; or
 - (B) provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product.

- (6) (a) Although not required to do so, the City may, upon request from the person who submitted the records request, compile, format, manipulate, package, summarize, or tailor information or provide a record in a format, medium, or program not currently maintained by the City.
- (b) In determining whether to fulfill a request described in Subsection (6)(a), the City may consider whether it is able to fulfill the request without unreasonably interfering with its duties and responsibilities.
- (c) The City may require a person who makes a request under Subsection (6)(a) to pay the City, in accordance with Section 2.13.050, for providing the information or record as requested.

- (7) (a) The City is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.
- (b) Subsection (7)(a) does not apply to:
 - (i) the first five record requests submitted to the City by or in behalf of an individual described in Subsection (7)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or
 - (ii) a record request that is submitted by an attorney of an individual described in Subsection (7)(a).

- (8) (a) The City may allow a person requesting more than 50 pages of records to copy the records if:
 - (i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
 - (ii) the City provides reasonable safeguards to protect the public from the potential for loss of a public record.
- (b) If the requirements of Subsection (8)(a) are met, the City may:
 - (i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or
 - (ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the City's offices and waive the fees for copying the records.

- (9) The City may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this Section.
- (10) The City shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:
 - (a) the person making the request requests or states a preference for an electronic copy;
 - (b) the City currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
 - (c) the electronic copy of the record:
 - (i) does not disclose other records that are exempt from disclosure; or
 - (ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

2.13.050 Fees

- (1) The City may charge a reasonable fee to cover its actual cost of providing a record. This fee shall be approved by the Mayor.
- (2) (a) When the City compiles a record in a form other than that normally maintained by the City, the actual costs under this Section may include the following:
 - (i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
 - (ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and
 - (iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).
- (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee in the department from which the records are requested who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.
- (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.
- (3) The City may fulfill a record request without charge if it determines that:
 - (a) releasing the record primarily benefits the public rather than a person;
 - (b) the individual requesting the record is the subject of the record, or the parent or legal guardian of the subject of the record; or
 - (c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.
- (4) The City may not charge a fee for:

- (a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or
 - (b) inspecting a record.
- (5) (a) A person who believes that there has been an unreasonable denial of a fee waiver may appeal the denial.
- (b) The adjudicative body hearing the appeal:
- (i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and
 - (ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.
- (6) (a) The City may require payment of past fees and future estimated fees before beginning to process a request if:
- (i) fees are expected to exceed \$50; or
 - (ii) the requester has not paid fees from previous requests.
- (b) Any prepaid amount in excess of fees due shall be returned to the requester.

2.13.060 Record Request – Response – Time for Responding

- (1) (a) A person making a request for a record shall submit to the City a written request containing:
- (i) the person's:
 - (A) name;
 - (B) mailing address;
 - (C) email address, if the person has an email address and is willing to accept communications by email relating to the person's records request; and
 - (D) daytime telephone number; and
 - (ii) a description of the record requested that identifies the record with reasonable specificity.
- (2) After receiving a request for a record, the City shall:
- (a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and
 - (b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:
 - (i) approve the request and provide a copy of the record;
 - (ii) deny the request in accordance with the procedures and requirements of Section 2.13.070;

- (iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
 - (iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (4), it cannot immediately approve or deny the request, and include with the notice:
 - (A) a description of the circumstances that constitute the extraordinary circumstances; and
 - (B) the date when the records will be available, consistent with the requirements of Subsection (5).
- (3) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.
- (4) The following circumstances constitute "extraordinary circumstances" that allow the City to delay approval or denial by an additional period of time as specified in Subsection (5) if the City determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (2):
- (a) another governmental entity is using the record, in which case the City shall promptly request that the governmental entity currently in possession return the record;
 - (b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
 - (c) (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or
 - (ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;
 - (d) the City is currently processing a large number of records requests;
 - (e) the request requires the City to review a large number of records to locate the records requested;
 - (f) the decision to release a record involves legal issues that require the City to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;
 - (g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
 - (h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.
- (5) If one of the extraordinary circumstances listed in Subsection (4) precludes approval or denial within the time specified in Subsection (2), the following time limits apply to the extraordinary circumstances:
- (a) for claims under Subsection (4)(a), the governmental entity currently in possession of the record shall return the record to the City within five business days of the request for the return unless returning the record would impair the holder's work;
 - (b) for claims under Subsection (4)(b), the City shall notify the requester when the record is available for inspection and copying;

- (c) for claims under Subsections (4)(c), (d), and (e), the City shall:
 - (i) disclose the records that it has located which the requester is entitled to inspect;
 - (ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;
 - (iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and
 - (iv) for any person that does not establish a right to an expedited response as authorized by Subsection (2), the City may choose to:
 - (A) require the person to provide for copying of the records; or
 - (B) treat a request for multiple records as separate record requests, and respond sequentially to each request;
 - (d) for claims under Subsection (4)(f), the City shall either approve or deny the request within five business days after the response time specified for the original request has expired;
 - (e) for claims under Subsection (4)(g), the City shall fulfill the request within 15 business days from the date of the original request; or
 - (f) for claims under Subsection (4)(h), the City shall complete its programming and disclose the requested records as soon as reasonably possible.
- (6) If the City fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

2.13.070 Denials

- (1) If the City denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- (2) The notice of denial shall contain the following information:
 - (a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information;
 - (b) citations to court rule or order, state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information;
 - (c) a statement that the requester has the right to appeal the denial to the City Mayor; and
 - (d) the time limits for filing an appeal, and the name and business address of the City Mayor.
- (3) Unless otherwise required by a court or agency of competent jurisdiction, the City may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process.