

ORDINANCE NO. 3356

AN ORDINANCE OF THE CITY OF LONGVIEW, WASHINGTON AMENDING LMC 2.210 REGARDING PUBLIC RECORDS TO REFLECT RECENT CHANGES IN THE WASHINGTON STATE PUBLIC RECORDS ACT

WHEREAS, recent changes to the Washington Public Records Act, RCW 42.56 (the Act) provide that the City may charge for electronic records; and

WHEREAS, recent changes to the Act, also provide that while the City may ask for clarification of a records request, it must couple that clarification request with an estimated response time; and

WHEREAS, the Act provides that an agency can deny a request for all records of an agency not relating to a particular topic; and

WHEREAS, it is necessary to amend LMC 2.10 to reflect these and other legislative changes.

NOW THEREFORE, the City Council of the City of Longview do ordain as follows:

Section 1. That Chapter 2.10 of the Longview Municipal Code shall be, and is hereby amended to read as follows; provided, manifest and numbering errors shall be corrected prior to publication:

Chapter 2.10
INSPECTION AND COPYING OF PUBLIC RECORDS

Sections:

- 2.10.010 Definitions.**
- 2.10.020 Inspection and copying.**
- 2.10.030 Response to requests for inspection and copying.**
- 2.10.040 Research not to be performed – Public records not sufficiently identified.**
- 2.10.050 Certain public records exempt from inspection and copying – Deletion of exempt portions thereof.**
- 2.10.060 Electronic communication initiated by city council members.**

2.10.070 *Repealed.*

2.10.080 **Costs and expenses for inspection and copying.**

2.10.090 **Findings on order regarding public records index.**

2.10.095 **Order regarding public records index.**

2.10.010 Definitions.

(1) "Nonpublic record" means any writing containing information not relating to the conduct of government, and not relating to the performance of any governmental or proprietary function, retained or in the possession of the city regardless of form or characteristics.

(2) "Public record" means any writing 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 form or characteristics. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

(a) Do not serve in an administrative capacity;

(b) Have not been appointed by the agency to an agency board, commission, or internship; and

(c) Do not have a supervisory role or delegated agency authority.

(3) "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 pictures, 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.

(4) "Bot request" means a request for public records that is or reasonably appears to have been automatically generated by a computer program or script.

(Ord. 3102 § 1, 2009; Ord. 2606 § 1, 1995).

2.10.020 Inspection and copying.

(1) Public records possessed by the city shall be available for inspection and copying between the hours of 7:00 a.m. and 6:00 p.m. daily except for Fridays, Saturdays, Sundays, legal holidays and any other day City Hall is closed for business, unless otherwise agreed by the city clerk, or his/her designee, and the requesting party.

~~(2) All requests to inspect and copy public records shall be in writing, on forms prescribed by the city clerk, No official format is required for making a records request; however, the city may recommend that requestors submit requests using the city's provided webpage, In addition, all public record requests and shall identify the public records sought for such inspection and copying.~~

(3) A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(3) Requests to inspect and copy public records shall be submitted to the city clerk or his/her designee, or to the public records representative of a department of the city. The city clerk shall maintain a list of the public record representatives for each department. The city clerk shall maintain a record of public disclosure requests made to the city. (Ord. 3119 § 2, 2009; Ord. 3102 § 1, 2009; Ord. 2606 § 1, 1995).

2.10.030 Response to requests for inspection and copying.

(1) Responses to requests for inspection and copying of public records shall be made promptly.

(a) A request for public records shall be responded to within five business days of receiving a public record request. The response must be made by (i) providing the record, (ii) acknowledging the city has received the request and providing a reasonable estimate of the time the city will require to respond to the request, (iii) denying the public record request, or (iv) a combination thereof. Additional time required 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 and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, a city representative may ask the requester to clarify what information the requester is seeking. Notwithstanding the need to obtain clarification, the city shall, to the greatest extent possible, a reasonable estimate of the time the city will require to respond to the request if it is not clarified. If the requester fails to clarify the request, and the entire request is unclear, the city need not respond to the request, otherwise the city shall respond to those portions of the request that are

clear. Denials of requests must be accompanied by a written statement of the specific reasons therefor.

(b) If the request for identifiable public records is granted, the requesting party shall be provided with necessary assistance in performing the inspection, and copying equipment shall be made available or assistance in copying, except when and to the extent that such would unreasonably disrupt the operations of the city. Such copying equipment shall include that which is possessed by the city to either copy such public records on the same format (i.e., printed or written to be photocopied, electronic tape to electronic tape, computer stored information to a mass data storage device such as a diskette or USB drive (to protect the city's computer system the requesting party shall only be allowed to use a mass data storage device provided by the city to the requesting party; the city shall provide such device at the same cost as to the city)) or converted to a readable format (i.e., computer stored information printed on paper), at the option of the requester or if there is no choice because such records must be redacted prior to release to the requesting party and such cannot be done electronically.

(c) If the city does not possess equipment to copy the requested public records in a manner or format sought by the requester, and if such equipment is available commercially, the person responding to such request shall determine the cost of such copying and notify the requester that the city does not possess the equipment to make the requested copies and the estimated cost of commercial copying.

(d) If the request for public records encompasses a large set of documents and/or it will take time to locate the requested records, the records may be provided to the requesting party on a partial or installment basis. The city shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

(e) The city shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW [42.56.070](#)(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons.

(f) The city may deny a bot request that is one of multiple requests from the requestor to the city within a twenty-four hour period, if in the determination of the

city manager or his designee responding to the multiple requests would cause excessive interference with other essential functions of the city.

(2) Requests for inspection and copying of identifiable public records, received by mail, shall be honored if doing so does not require an excessive amount of research or retrieval time of city employees, does not excessively interfere with essential governmental functions, and if payment therefor is made in advance.

(3) Whenever a request for inspection and copying has been denied in whole or in part, the requester may present the matter to the city attorney for review; such review shall be conducted as promptly as reasonably possible, and shall constitute final action for the purposes of judicial review. (Ord. 3102 § 1, 2009; Ord. 2774 § 1, 2000; Ord. 2606 § 1, 1995).

2.10.040 Research not to be performed – Public records not sufficiently identified.

Written requests for inspection and copying of public records shall not be honored if such requests require city employees to compile information, perform research, require reformatting of data, if the public records sought by the requester are not sufficiently identified, or if the information requested to be inspected and copied consists of nonpublic records. (Ord. 3102 § 1, 2009; Ord. 2606 § 1, 1995).

2.10.050 Certain public records exempt from inspection and copying – Deletion of exempt portions thereof.

Public records described in RCW [42.56.210](#) (Certain personal and other records exempt), [42.56.230](#) (Personal information), [42.56.240](#) (Investigative, law enforcement, and crime victims), [42.56.250](#) (Employment and licensing), [42.56.260](#) (Real estate appraisals), [42.56.270](#) (Financial, commercial, and proprietary information), [42.56.280](#) (Preliminary drafts, notes, recommendations, intra-agency memorandums), [42.56.290](#) (Agency party to controversy), [42.56.300](#) (Archaeological sites), [42.56.310](#) (Library records), [42.56.320](#) (Educational information), [42.56.330](#) (Public utilities and transportation), [42.56.390](#) (Emergency or transitional housing), [42.56.420](#) (Security), [42.56.430](#) (Fish and wildlife), [42.56.460](#) (Fireworks), as now effective or as subsequently revised, and any other public records exempt from public inspection and copying by the laws of the state of Washington shall not be available for public inspection and copying; provided, however, when exempt portions of public records can be erased, excised or deleted, the remainder thereof shall be open to public inspection and copying. (Ord. 3102 § 1, 2009; Ord. 3005 § 1, 2007; Ord. 2606 § 1, 1995).

2.10.060 Electronic communication initiated by city council members.

Electronic communications (e-mail) initiated by members of the city council and simultaneously directed to three or more other members of the city council are declared to be public records and subject to public inspection and copying. Such electronic communication shall be maintained in accordance with the laws of the state of Washington. (Ord. 3102 § 1, 2009; Ord. 2606 § 1, 1995).

2.10.070 Electronically stored data and information.

Repealed by Ord. 3102. (Ord. 2606 § 1, 1995).

2.10.080 Costs and expenses for inspection and copying.

The city, finds that calculating the actual costs it charges for providing records would be unduly burdensome and therefore adopts the following charges for copying public records:

~~(1) The city shall impose no charge for the services of city employees who assist in inspection and copying of public records; provided, however, that if a city employee performs research other than information and/or data retrieval contemplated under Chapter [42.56](#) RCW, a charge equal to the hourly wages of such employee shall be paid by the person requesting the performance of such research.~~

~~(2) Copies of printed material shall be charged at the rate of \$0.15 per page if performed on city possessed copying equipment. If the response to any single request is more than 50 pages (eight and one-half inches by 11 inches or larger) the city may require the copies be performed by a commercial copy-maker at the expense of the requester. The city will arrange for such copies to be made; however, payment to the city by the requester shall be made in advance. If it is necessary to have copies made commercially due to size or configuration of the information sought to be copied, the requester shall pay the city in advance the cost thereof.~~

~~(3) The cost of video tapes or reproductions, magnetic tapes, diskettes, photographs, pictures, mass data storage devices and/or other communication media materials necessary to make copies of public records shall be at the cost of the requester, payable in advance before copies are made.~~

(1) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of city equipment to photocopy public records;

(2) Ten cents per page for public records scanned into an electronic format or for the use of city equipment to scan the records;

(3) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(4) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of city equipment to send the records electronically. The city shall take reasonable steps to provide the records in the most efficient manner available to the city in its normal operations; and

(5) The actual cost of any digital storage media or device provided by the city, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(6) The charges in this section may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(7) The city may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under this section when the city reasonably estimates and documents that the costs allowed under this section are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments.

(8) The city shall not impose copying charges under this section for access to or downloading of records that the city routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the city provide copies of such records through other means.

(9) A requestor may ask the city to provide, and if requested the city shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(10) In addition to the charge imposed for providing copies of public records and for the use by any person of city equipment copying costs, the city may include a customized service charge. A customized service charge may only be imposed if the city estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the city for other city purposes.

(a) The customized service charge may reimburse the city up to the actual cost of providing the services in this subsection.

(b) The city may not assess a customized service charge unless the city has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(c) The city may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If the city makes a request 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. The city may waive any charge assessed for a request pursuant to city rules and regulations. The city may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

(11) The city shall impose no charge for the services of city employees who assist in inspection and copying of public records; provided, however the city may include a customized service charge. A customized service charge may only be imposed if the city estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the city for other city purposes.

(Ord. 3102 § 1, 2009; Ord. 2606 § 1, 1995).

2.10.090 Findings on order regarding public records index.

(1) The Revised Code of Washington ("RCW") requires all cities and public agencies to maintain and make available a current index of all public records.

(2) The RCW also states that if maintaining such an agency operation, a city must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.

(3) When such an order is made, all indexes maintained by that city must be made available to provide identifying information on those records which are available for inspection and/or copying.

(4) The city of Longview is comprised of 14 departments, their divisions and subdivisions, which maintain separate databases and/or record-keeping systems for the indexing of records and information.

(5) Because the city has records which are diverse, complex and stored in multiple locations and in multiple computer systems and databases, it is unduly burdensome, if not physically impossible, to maintain a central index of records.

(6) The city will fully comply with the provisions of the RCW as they relate to the Public Disclosure Act, under Chapter [42.56](#) RCW. (Ord. 3102 § 1, 2009; Ord. 3006 § 1, 2007).

2.10.095 Order regarding public records index.

Based upon the findings set forth in LMC [2.10.090](#), and pursuant to RCW [42.56.070](#)(4)(a), the city council orders the following:

(1) The city of Longview is not required to maintain an all-inclusive index of public records, due to findings of the city council that the requirement is unduly burdensome and such a list is nearly impossible to create and/or maintain.

(2) The city of Longview shall make available all public records and any indexes created for internal use upon request by any citizen. Said indexes shall be maintained and released in order to obtain those records which are public and not protected by the exemption portion of the statutes, namely Chapter [42.56](#) RCW. (Ord. 3102 § 1, 2009; Ord. 3006 § 1, 2007)

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance and the same shall remain in full force and effect. The City of Longview hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3. That nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 4. That the City of Longview City Clerk is hereby ordered and directed to cause this Ordinance to be published.

Section 5. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. This Ordinance shall be in full force and effect from and after thirty (30) days from the date of its passage and publication as provided by law. Requests for public records submitted prior to the effective date shall be subject to the provisions of this ordinance, and associated fees, at the time such records are produced.

Passed by the City Council this ____ day of _____, 2017.

Approved by the Mayor this ____ day of _____, 2017.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

James McNamara
City Attorney

Published: _____