

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 18-0460**

**AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON, AMENDING CHAPTER 1.10 OF THE
KENMORE MUNICIPAL CODE TO UPDATE THE CITY'S
PROCEDURES RELATING TO THE DISCLOSURE OF PUBLIC
RECORDS, AND FIXING AN EFFECTIVE DATE.**

WHEREAS, in 2012, the City last updated its procedures relating to the disclosure of public records, established under Chapter 1.10 of the Kenmore Municipal Code ("KMC"); and

WHEREAS, since the City's last update, the Legislature re-codified the statutory procedures governing the disclosure of public records to Chapter 42.56 RCW, the Public Records Act ("Act") in 2017; and

WHEREAS, the City Council desires to update its procedures by amending the existing Chapter 1.10 KMC, Public Records to be consistent with the Act; and

WHEREAS, state law also requires the City to maintain an index of public records unless it would be unduly burdensome, or interfere with agency operation, and the City Council desires to make such a finding in Chapter 1.10 KMC; and

WHEREAS, state law also allows the City to charge the statutory default copy fees if charging actual fees would be unduly burdensome, or interfere with agency operation, and the City Council desires to make such a finding in Chapter 1.10 KMC; and

WHEREAS, pursuant to RCW 42.56.570, the City has consulted the Model Rules promulgated by the Washington Attorney General's Office when updating Chapter 1.10 KMC; and

WHEREAS, the City will fully comply with the provisions of the Act as they relate to the disclosure of public records;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Chapter 1.10 of the Kenmore Municipal Code, entitled "Public Records", is hereby amended as set for on Exhibit 1, attached hereto and incorporated by this reference.

Section 2. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED by the City Council this 26th day of Feb, 2018




David Baker, Mayor

ATTEST/AUTHENTICATED: .



Kelly Chelin, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

Rod Kaseguma, City Attorney

FILED WITH THE CITY CLERK:	<u>2/26/18</u>
PASSED BY THE CITY COUNCIL:	<u>2/26/18</u>
PUBLISHED:	<u>3/1/18</u>
EFFECTIVE DATE:	<u>3/6/18</u>
ORDINANCE NO. 18-0460	

ORDINANCE NO. 18-0460 EXHIBIT 1

Chapter 1.10

PUBLIC RECORDS

Sections:

1.10.010 Authority and purpose.

1.10.020 Contact information – Public records officer.

1.10.030 Availability of public records.

1.10.040 Processing of public records requests – General.

1.10.050 Processing of public records requests – Electronic records.

1.10.060 Exemptions.

1.10.070 Costs of providing copies of public records.

1.10.080 Retention of records.

1.10.010 Authority and purpose.

A. Public Records Act. The Public Records Act, Chapter 42.56 RCW (“Act”), requires the City to make identifiable, nonexempt public records available for inspection and copying upon request, and to publish rules of procedures to inform the public how access to public records will be accomplished. The Act defines “public record” at RCW 42.56.010(3), which may be amended.

B. Purpose of Rules. The purpose of this chapter is to provide full access to public records and establish procedures for responding to public records disclosure requests. This chapter provides information to persons wishing to request access to public records of the City and establish processes for both requestors and City staff that are designed to assist members of the public in obtaining such access.

C. Full Access. The purpose of the Act is to provide the public full access to information concerning the conduct of government, while balancing individuals’ privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the Act, the City will be guided by the provisions of the Act describing its purposes and interpretation.

1.10.020 Contact information – Public records officer.

A. City Business Office. The City is a municipal corporation of the State of Washington. The City’s business office is located at: 18120 68th Avenue NE, Kenmore, Washington 98028.

B. Public Records Officer. The public records officer for the City shall be the administrative assistant assigned to the city manager’s department and her or his designee. Any person wishing to inspect City public records, or seeking assistance in making such a request, should contact the public records officer at the City:

City of Kenmore

Attention: Public Records Officer

18120 68th Avenue NE

P.O. Box 82607

Kenmore, WA 98028

Phone: 425-398-8900

Fax: 425-481-3236

C. Duties and Designee. The public records officer shall oversee compliance with the Act and this chapter, but other City staff members may also assist in processing requests.

1.10.030 Availability of public records.

A. Business Hours. Public records shall be available for inspection and copying during the City's normal business hours: Monday through Friday, 9:00 a.m. to 5:00 p.m., excluding legal holidays. City public records must be inspected at the address listed in KMC 1.10.020, unless another location is designated for a particular request by the public records officer.

B. Records Index. Due to the small size of City staff, maintaining a central index of the City's records is unduly burdensome, costly, and would interfere with City operations due to the number and complexity of records generated as a result of the wide range of the City's activities. However, the City maintains an index of ordinances and resolutions adopted by the city council, which may be accessed on the City's website online or by requesting them from the public records officer.

C. Organization of Records. The City shall maintain its records in a reasonably organized manner. The City shall take reasonable actions to protect records from damage and disorganization. A requestor shall not take City public records from the City's office, or from a location designated by the public records officer, without the permission of the public records officer.

D. Records Request – Format. Any person wishing to inspect or copy public records of the City shall make the request in writing on the City's request form or web page. Requests received in person during the City's normal business hours or by email are accepted. The request shall include the following information:

1. Name of requestor;
2. Adequate contact information, including telephone number, a mailing address, e-mail address, etc.;
3. Identification of the public records adequate for the public records officer to locate the records; and
4. The date of the request.

E. Notice of Request. A requestor must provide the City with reasonable notice that the request being made is for public records. If a request is contained in a larger document unrelated to a public records request, the requestor should point out the public records request by labeling the front page of the document as containing a public records request or otherwise calling the request to the attention of the public records officer to facilitate timely response to the request.

A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used or retained by the City is not a valid request for identifiable public records, 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 the City's records.

Pursuant to RCW 42.56.080(3), the City may deny a bot request because responding to multiple bot requests would cause excessive interference with other City essential functions and would be unduly costly and burdensome to the City. A "bot request" means a request for public records that the City reasonably believes was automatically generated by a computer program or script, which is one of multiple requests from a requester to the City within a 24 hour period.

F. Request for Copies. If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or to pay a deposit as required by the City.

G. Other Form. The public records officer may accept, but shall not be required to accept, requests for 3 public records that contain the above information by telephone or in person. If the public records officer accepts such a request, the officer shall confirm receipt of the information and the substance of the request in writing.

H. Purpose of Request. A requestor need not state the purpose of the request. However, in an effort to clarify or prioritize a request and provide responsive documents, the public records officer may inquire about the nature or scope of the request. If the request is for a list of individuals, the public records officer may ask the requestor if they intend to use the records for a commercial purpose. The City is prohibited by statute from disclosing lists of individuals for commercial purposes. RCW 42.56.070(9).

1.10.040 Processing of public records requests – General.

A. Providing Access and Assistance. This chapter identifies how the City will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the City, provide fullest assistance to requestors, and provide the most timely possible action on public records requests. All assistance necessary to help requestors locate particular responsive records shall be provided by the public records officer; provided, that the giving of such assistance does not unreasonably disrupt the daily operations of the City.

B. Order of Processing Requests. The public records officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

C. Acknowledging and Fulfilling Requests. Within five business days of receipt of the request, the public records officer will do one or more of the following:

1. Provide the records available for inspection or copying;
2. Provide an Internet address and link on the City's website to the specific records requested;
3. Acknowledge receipt of the request and provide a reasonable estimate of time the City will require to respond to the request; or

4. Acknowledge receipt of the request and ask requester to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of time the City will require to respond to the request, if it is not clarified; or

5. Deny the request.

D. Clarification. If the request is unclear or does not sufficiently identify the requested records, the City may ask the requestor to clarify what information the requestor is seeking. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available. If the requestor fails to respond to the City's request to clarify, and the entire request is unclear, the City need not respond to it. Otherwise, the City will respond to those portions of a request that are clear.

E. Failure to Respond. If the City does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contact the public records officer to determine the reason for the failure to respond.

F. Third Party Notice. If the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons shall include a copy of the request.

G. Redaction. Some records are exempt from disclosure, in whole or in part. If the City believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

H. Access to and Preserving Records. The City shall promptly provide space to inspect public records. No member of the public may remove public records from the viewing area or disassemble or alter any public record. The requestor shall indicate which records they wish to have copied using a mutually agreed upon nonpermanent method of marking the desired record. If the requestor cannot access the records made available on the City's website, the City must provide copies of the record or allow the requestor to view the records using a City computer designated for the public inspection of records.

I. Consequence of Failure to Review Request. The requestor must claim or review the assembled records within 30 days of the City notification to the requestor that the records are available for inspection or copying. The City will notify the requestor in writing of this requirement, and that the requestor must contact the City to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30-day period or make other arrangements, the City may close the request and refile the assembled records.

J. Copying Request. After inspection is complete, the public records officer shall make the requested copies or arrange for copying.

K. Installments. If the request is for a large number of public records, the public records officer shall provide access for inspection and copying in installments, if the public records officer reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer shall no longer be obligated to fulfill the balance of the request, and shall stop searching for the remaining records and close the request.

L. Completion of Search. When the inspection of the requested records is complete and all requested copies are provided, the public records officer shall indicate that the City has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

M. Closing Request. When the requestor either withdraws the request or fails to fulfill the requestor's obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer shall close the request and indicate to the requestor that the City has closed the request.

N. Later Discovered Records. If, after the City has informed the requestor that it has provided all available records, the City becomes aware of additional public records existing at the time of the request that are responsive to the request, it shall promptly inform the requestor of the additional public records and make them available for inspection on an expedited basis.

O. Consequence of Disclosing Record in Error. The City and its officials and employees are not liable for loss or damage based on release of a public record if the City official or employee acted in good faith in attempting to comply with the Act.

P. No Duty to Create Records. The City is not obligated to create a new record to satisfy a records request; however, the City may, in its discretion, create such a new record to fulfill the request where it may be easier for the City to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request.

Q. No Duty to Supplement Responses. The City is not obligated to hold current records requests open to respond to requests for City public records that may be created in the future. If a public record is created or comes into the possession of the City after a request is received by the City, it is not responsive to the request and will not be provided. A new request must be made to obtain later-created public records.

1.10.050 Processing of public records requests – Electronic records.

A. Processing Electronic Records. The process for requesting electronic public records is the same as for requesting paper public records.

B. Format. When a requestor requests records in an electronic format, the public records officer shall provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the City and is generally commercially available, or in a format that is reasonably translatable from the format in which the City keeps the record. Redacted records may be produced in paper form.

1.10.060 Exemptions.

A. Exemptions Listed for Informational Purposes. The Act provides that a number of categories of public records are exempt from public inspection and copying. In addition, the Act provides that certain public records may be exempt from disclosure if any other statute or law exempts or prohibits disclosure. For informational purposes only, the City has set forth a list of exemptions below. This list is not inclusive or exhaustive of all exemptions under the Act or other statutes. The City's failure to list an exemption below shall not affect the efficacy of any exemption. RCW 42.56.070(2).

Requestors should be aware that the following exemptions may restrict the availability of inspection or copying of some public records, or portions thereof:

1. Personal Information. Personal information in files maintained for employees and appointed or elected officials of the City to the extent disclosure would violate their right to privacy; and financial information including credit card numbers, debit card numbers, social security numbers, electronic check numbers, card expiration dates, and bank or other financial account numbers. RCW 42.56.230.

2. Employment and Licensing. Applications for public employment and related materials submitted with respect to an applicant; examination information (test questions, scoring keys and other data used to administer a license, employment or academic examination); and personal contact information in files maintained for City employees or volunteers, and their dependents (address, telephone number, e-mail address, social security number, emergency contacts and date of birth). RCW 42.56.250.

3. Real Estate Appraisals. Real estate appraisals made for or by the City relative to the acquisition or sale of property until the project is abandoned or sold, except disclosure may not be denied for more than three years after the appraisal. RCW 42.56.260.

4. Financial, Commercial and Proprietary Information. Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by the City within five years of the request for disclosure when disclosure would produce private gain and public loss. RCW 42.56.270.

5. Preliminary Drafts, Notes, Recommendations and Interagency Memorandums. Records in which opinions are expressed or policies formulated or recommended, except if the opinion or policy is implemented or the record is publicly cited in connection with City action. RCW 42.56.280.

6. Work Product. 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 superior courts. RCW 42.56.290.

7. Public Utilities Information. Records filed with the Utilities and Transportation Commission or Attorney General under RCW 80.04.095; and records containing the addresses, telephone numbers, electronic contact information and customer-specific utility usage and certain billing information of City customers. RCW 42.56.330.

8. Security. Records assembled or prepared to prevent, mitigate or respond to terrorist acts, the disclosure of which would have a substantial likelihood of threatening public safety; specific and unique vulnerability assessments or emergency response plans and records containing information regarding the infrastructure and security of computer and telecommunications networks, consisting of passwords, security access codes and programs and access codes for secure software applications. RCW 42.56.420.

9. Attorney-Client Privileged Information. Records reflecting communications transmitted in confidence between the City and its attorney for the purposes of legal advice. RCW 5.60.060(2)(a).

10. Medical Records. Medical records in employee personnel files. Chapter 70.02 RCW.

11. Trade Secrets. Records containing trade secrets of businesses the City regulates. Chapter 19.108 RCW.

12. Other statutes which exempt or prohibit disclosure of specific information or records. RCW 42.56.070(1).

1.10.070 Costs of providing copies of public records.

A. Inspection. There is no fee for inspecting public records.

B. Actual Copy Costs. Pursuant to RCW 42.56.120(2)(b), the City has not calculated the actual costs it charges for providing public records because to do so would be unduly burdensome for the following reasons: (i) The City does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a study would interfere with other essential City functions; and, (iii) through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120(2)(b) and (c), (3) and (4).

C. Statutory Default Fees. The City shall charge for copies of public records in accordance with the statutory default fees set forth in RCW 42.56.120(2)(b) and (c), and as set forth in Attachment 1 - PRA Fee Schedule, attached hereto and incorporated by reference, which shall include the following:

1. The City shall charge for customized services in accordance with RCW 42.56.120(3), and shall comply with the procedures set forth therein to charge for customized services.

2. Pursuant to RCW 42.56.130, the City may charge other copy fees authorized by statutes located outside of chapter 42.56 RCW.

3. The City may enter into an alternate fee agreement with a requester under RCW 42.56.120(4), and shall comply with the procedures set forth therein for such agreements.

4. Standard Copies. The charge for standard (eight-and-one-half-inch by 11-inch, eight-and-one-half-inch by 14-inch, and eleven inch by 17-inch) photocopies and printed copies of electronic public records (when requested by the requestor) shall be \$0.15 per page. If the number of pages is 6 or less, the City will waive this fee. For example, a request for 7 pages to be copies will cost \$1.05.

5. Scanned Copies. The charge for scanned copies (eight-and-one-half-inch by 11-inch, eight-and-one-half-inch by 14-inch, and eleven inch by 17-inch) shall be \$0.10 per page. If the number of pages is 10 or less, the City will waive this fee. For example, a request for 11 pages to be scanned will cost \$1.10.

6. Electronic Copies. Uploading/attaching electronic files to digital storage media/devices(s), a cloud-based data storage service, or emails is charged at five cents (\$.05) per each four files. If the number of files is 80 or less, then City will waive this fee. For example, a requester for eighty-four files

will cost \$1.05. Transmission of public records in an electronic format is charged at ten cents (\$.10) per gigabyte.

7. Nonstandard Copies. The City will periodically update and post a fee schedule for the copying of other nonstandard public records or those in other formats or media.

8. Off-Site Vendor Copying, Data Compilations or Customized Electronic Access Services. If the City determines that the request requires the use of information technology expertise or equipment for data compilations, customized electronic access, or copying public records in nonstandard formats, including but not limited to photographs, blueprints, plat maps, or tape recordings, the requestor shall pay the actual costs of such duplication. If the public records officer determines it is reasonable to send a request to an off-site vendor for copying, the City may: (1) arrange for the requestor to pay the vendor directly for copies made; or (2) charge the requestor the actual amount charged by the off-site vendor to the City for the copies made.

9. Deposit. Before beginning to make the copies, the public records officer may require a deposit of 10 percent of the estimated fees when the fee estimate for an installment or an entire request exceeds twenty-five dollars (\$25.00). The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The City shall not charge sales tax when it makes copies of public records, unless required by law to do so.

10. 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.

11. Facsimile/Mail. The City shall also charge actual costs of long distance facsimile transmission and/or mailing, including postage and the cost of the shipping container.

12. Certified Copies. Where the request is for a certified copy of public records, an additional charge of \$5.00 may be applied to cover the additional expense and time required for certification.

D. Payment Methods. The requestor shall pay for copies of public records by credit card, cash, check, or money order payable to the City.

E. City staff is directed to update the City's Fee Resolution (Resolution #18-306) to be consistent with Attachment 1 - Public Records Fee Schedule. If there are any conflicts between this Ordinance and Attachment 1 – Public Records Fee Schedule, and the City's Fee Resolution (Resolution #18-306) then this Ordinance shall prevail.

1.10.080 Retention of records.

The City shall retain its records in accordance with retention schedules approved by the State Local Records Committee. Public records may not be destroyed per retention schedule if a public records request or actual or anticipated litigation is pending.

KMC CHAPTER 1.10 PUBLIC RECORDS - ATTACHMENT 1 – PUBLIC RECORDS FEE SCHEDULE

Type	2018 Fee
Public Records Requests	
Review of requested records	No charge
Standard size black-and-white photocopies (Standard sizes include 8-1/2" x 11", 8-1/2" x 14" and 11" x 17")	15 cents per page for 7 pages or more (charge includes first 6 pages); for example: 7 pages = \$1.05 Fee waived for 6 pages or less.
Scanned copies (converting a record from paper copy to an electronic format)	10 cents per page for 11 pages or more (charge includes first 10 pages); for example: 11 pages = \$1.10 Fee waived for 10 pages or less.
Uploading/attaching electronic files to digital storage media/device(s), a cloud-based data storage or service, or emails (CD, DVD, thumb drive, email, or cloud service). If number of files is 80 or less, fee is waived. For example, 84 files will cost \$1.05.	5 cents for each 4 electronic files or attachments
Transmission of public records in an electronic format	10 cents per gigabyte
<ul style="list-style-type: none"> • Oversized documents such as building plans, maps, blueprints • Large copy jobs. <p>Outside vendors can be used for unusual formats or large quantities.</p>	Actual cost charge by outside vendor.
Records copied to CD or DVD	\$1.00 per CD or DVD
Records copied to thumb/flash drive	Actual cost of supplies
Mailing envelopes or packaging and postage	Actual cost supplies and postage

↑ Copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request.