

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance No. 435 amending the public records act in Shoreline Municipal Code Chapter 2.35 by updating the RCW references and clarifying procedure, and amending the public records fee schedule in Shoreline Municipal Code Chapter 3.10
DEPARTMENT: City Attorney's Office
PRESENTED BY: Flannary P. Collins, Assistant City Attorney

PROBLEM/ISSUE STATEMENT:

Chapter 42.17 RCW, which previously contained the Public Disclosure Act, also contained laws on other distinct subjects, including campaign financing and lobbying. Effective July 1, 2006, the Washington State Legislature recodified the Public Records Act into its own chapter (Chapter 42.56 RCW), separate from campaign finance and lobbying. Ordinance No. 435 updates the Shoreline Municipal Code to reflect the new RCW references and also updates the outlined public disclosure procedures and fee schedule to reflect actual practice and costs.

FINANCIAL IMPACT:

The ordinance updates the fee schedule to reflect actual costs, but the adjustments are of a minimal monetary amount so any financial impact will be minute.

DISCUSSION:

I. Changes to Chapter 2.35 SMC, *Public Records*

Effective July 1, 2006, the Public Disclosure Act, previously found in Chapter 42.17 RCW (along with campaign financing and lobbyist reporting) was recodified into its own chapter - Chapter 42.56 RCW. The new chapter reorganizes the existing public records disclosure procedures and exemptions, providing a more coherent structure.

In addition to updating the Chapter 42.17 RCW references in the Shoreline Municipal Code to the new Chapter 42.56 RCW references, this ordinance also clarifies the public records disclosure procedure in order to reflect actual practice.

SMC 2.35.030, *Definitions*, is amended to add the definition of "public records officer", meaning the city clerk or designee. WAC 44-14-020 recommends designating a public records officer; the city is following this recommendation by inserting the public records officer into the code.

SMC 2.35.050, *Exemptions*, updates RCW references, and adds exemptions frequently used and "other statute" exemptions. The City is required to maintain a list of "other statute" exemptions. (In addition to the exemptions listed in the public disclosure act, the act recognizes an exemption for records exempt by "other statute." For example, the attorney-client privilege is an "other statute" exemption found in RCW 5.60.060.)

In SMC 2.35.060, *Procedure for inspection and copying*, and SMC 2.35.080, *Decisions on requests*, the recipient and "manager" of public disclosure requests is changed from the city clerk to public records officer. The sections are also changed to permit disclosure requests to be submitted to and handled by departments generally, rather than the department heads. This reflects actual practice, as departments routinely receive and handle public disclosure requests.

SMC 2.35.070, *Reimbursement for copying costs*, notes that the city council establishes the cost for reproduction by ordinance, rather than resolution. The costs are adopted in the public records fee schedule, and are found in SMC 3.01.050.

II. Changes to Chapter 3.01 SMC, *Fee Schedules*

SMC 3.01.050, *Public records*, is amended to clarify different fees for the public records. Most notably, it reduces the fee for CDs from \$3.00 to \$2.00, and indicates photographic slides are charged by the vendor.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 435 amending the public records act in Shoreline Municipal Code Chapter 2.35 by updating the RCW references and clarifying procedure, and amending the public records fee schedule in Shoreline Municipal Code Chapter 3.10.

Approved By:

City Manager 

City Attorney 

ATTACHMENTS

Attachment A: Ordinance No. 435

ORDINANCE NO. 435

**AN ORDINANCE OF THE CITY OF SHORELINE,
WASHINGTON AMENDING THE PUBLIC RECORDS
CHAPTER 2.35 BY UPDATING THE RCW REFERENCES AND
CLARIFYING PROCEDURE, AND AMENDING THE PUBLIC
RECORDS FEE SCHEDULE IN CHAPTER 3.01 OF THE
SHORELINE MUNICIPAL CODE**

WHEREAS, the state legislature recodified the public records act chapter from Chapter 42.17 RCW to Chapter 42.56 RCW; and

WHEREAS, Shoreline Municipal Code 2.34, Public Records, need to be updated to reflect the legislatures recodification; and

WHEREAS, portions of the public records fee schedule need to be updated to accurately reflect the costs incurred by the City for public records materials;

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

Section 1. Amendment. Shoreline Municipal Code Chapter 2.35.010 is amended to read as follows:

2.35.010 Relationship to Public Records Disclosure Act.

This chapter constitutes the city's rules and regulations to carry out and implement the Public Records ~~Disclosure Act~~, Chapter ~~42.56~~ 42.17 RCW. Except as provided in this chapter, Chapter ~~42.56~~ 42.17 RCW shall apply to disclosure of all city public records.

Section 2. Amendment. Shoreline Municipal Code Chapter 2.35.030 is amended to read as follows:

2.35.030 Definitions.

A. "Public record" means any writing, maps or drawings 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. "Public records officer" means the city clerk or designee.

~~B. C.~~ "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.

Amendment. Shoreline Municipal Code Chapter 2.35.040 is amended to read as follows:

2.35.040 Maintenance.

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;
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; and
7. The job classification, pay and tenure of employees hired by the city shall be public information. In addition, unless exempt from disclosure pursuant to RCW 42.56.230 and RCW 42.56.050 ~~42.17.310(1) and (2)~~, records pertaining to an employee's: (a) prior employment history including names of employers, titles or job classifications, and duties and responsibilities; (b) education including names of institutions, dates attended, and degrees obtained; and (c) occupational licensing shall be public information.

Section 3. Amendment. Shoreline Municipal Code Chapter 2.35.050 is amended to read as follows:

2.35.050 Exemptions.

A. All records listed in Chapter 42.56 RCW, as amended, are exempt from public inspection, including but not limited to: ~~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 42.56.050 ~~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 42.56.050 ~~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 42.56.050 ~~42.17.255~~.

4. Credit card numbers, debit card numbers, electronic check numbers, card expiration dates or bank or other financial account numbers except when disclosure is expressly required by or governed by other law.

~~4. 5.~~ 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.~~ 6. Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

~~6-7.~~ 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.

~~7-8.~~ 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.

~~8.~~ 9. 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.~~ 10. 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.~~ 11. Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

~~11.~~ 12. 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.~~ 13. All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

~~13~~ 14. 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~~ 15. 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~~ 16. Client records maintained by the city under any domestic violence program as defined in RCW 70.123.020 or 70.123.075 or rape crisis center as defined in RCW 70.125.030.

~~16~~ 17. Information that identifies a person who, while a city employee:

a. 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

b. Requests his or her identity or any identifying information not be disclosed.

~~17~~ 18. License applications under RCW 9.41.070.

~~18~~ 19. Information revealing the identity of child victims of sexual assault who are under age 18. 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.

20. 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.

21. Names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

22. Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

23. Attorney-client privileged communications under RCW 5.60.060.

24. Abstracts of driving records under RCW 46.52.130(2).

25. 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 nondisclosure 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 King 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 4. Amendment. Shoreline Municipal Code Chapter 2.35.060 is amended to read as follows:

2.35.060 Procedure for inspection or copying.

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

B. The ~~city clerk~~ public records officer 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 42.56.070 ~~42.17.260(9)~~ or other statute or ordinance which exempts or prohibits disclosure of specific information or records to certain persons.

Section 5. Amendment. Shoreline Municipal Code Chapter 2.35.070 is amended to read as follows:

2.35.070 Reimbursement for copying costs.

A. Copies of written records, maps, photographs including slides, audio tape recordings, video tape recordings, and digital recordings 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 ordinance. ~~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 SMC 2.35.010.

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

D. The ~~city clerk~~ public records officer 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~~ public records officer or department head determines such action is in the best interests of the city.

Section 6. Amendment. Shoreline Municipal Code Chapter 2.35.080 is amended to read as follows:

2.35.080 Decision on requests – Procedure for review of decision.

A. Upon receiving an oral or written request to inspect or copy a public record, the ~~city clerk~~ public records officer or the department head shall grant the request unless the ~~city clerk~~ public records officer or department head determines that the record requested ~~is or~~ may be exempt from disclosure in whole or in part, or if the record is not immediately available, in which case the ~~city clerk~~ public records officer or department head shall ~~require request~~ that the ~~requester~~ customer complete a written request for public records form. The public records officer shall document a request in writing when a customer declines to fill out the request form.

B. A department head shall immediately deliver a ~~completed written~~ request for public records form to the ~~city clerk~~ public records officer.

C. Upon receiving a ~~completed written~~ request for records form, the ~~city clerk~~ public records officer 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~~ public records officer 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~~ public records officer may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the city need not respond to the request.

D. If the ~~city clerk~~ public records officer 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~~ public records officer 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~~ public records officer 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

Section 7. Amendment. Shoreline Municipal Code Chapter 3.01.050 is amended to read as follows:

3.01.050 Public records.

	Fee
Publications Copied on the Copier <u>Black and White Photocopies up to 11x17 inches</u> – if more than five pages	\$0.15 per page
<u>Black and White Photocopies Larger than 11x17 inches</u>	\$3.00 per page
Materials Provided on Computer <u>Diskettes</u>	\$1.50 per disk
Publication on CD	\$3.00 \$2.00 per CD
<u>Recording on DVD</u>	\$3.00 per DVD
Video Tapes	\$12.00 per tape
Audio Tapes	\$2.00 per tape
<u>Photos/Slides Photographic Prints and Slides</u>	\$2.00— \$21.00 <u>Cost charged by vendor, depending on size and process</u>
<u>Maps: Tabloid and Letter Size Color Photocopies and GIS Maps up to 11x17 inches</u>	\$1.50 per <u>page map</u>
<u>GIS Maps Larger than 11x17 inches 11 inches by 17 inches</u>	\$1.50 per square foot
<u>Large Copies (24 inches by 36 inches)</u>	\$3.00 per copy
Mylar Sheets	\$5.30 per sheet
Clerk Certification	\$1.00 per document
Custom GIS Mapping and Data Requests	\$75.00 per hour (1 hour minimum)
Financial Fees	
Insufficient funds or a closed account shall be assessed a collection fee	\$25.00

Section 8. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. The ordinance shall take effect and be in full force five days after passage and publication.

PASSED BY THE CITY COUNCIL ON JULY 10, 2006.

Mayor Robert L. Ransom

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication:
Effective Date: