

**CITY OF MILTON
ORDINANCE NO. 1720-08**

AN ORDINANCE OF THE CITY OF MILTON RELATING TO PUBLIC RECORDS; ADOPTING NEW REGULATIONS GOVERNING THE DISCLOSURE OF PUBLIC RECORDS; REPEALING AND REENACTING CHAPTER 2.92 OF THE MILTON MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Public Records Act, Chapter 42.56 of the Revised Code of Washington (Chapter 42.56 RCW), requires cities to adopt rules of procedure consistent with the intent of the Public Records Act, 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, the Public Records Act 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 the Public Records Act to provide citizens with broad access to public records; and

WHEREAS, the City Council desires to update its current public disclosure regulations in order to conform with changes to state law; and

WHEREAS, Chapter 42.56 RCW requires all cities and public agencies to maintain and make available a current index of public records; and

WHEREAS, RCW 42.56.070(4) provides that if maintaining such an index would be unduly burdensome or interfere with 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; and

WHEREAS, the City further desires to ratify its earlier determination of undue burden for maintaining an index of public records;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILTON, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Repeal and reenactment of Chapter 2.92 MMC. Chapter 2.92, Public Records, of the Milton Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

**Chapter 2.92
PUBLIC RECORDS – DISCLOSURE**

CHAPTER 2.92 PUBLIC RECORDS

Sections:

- 2.92.010 Relationship to Public Records Act.**
- 2.92.020 Public Records Officer.**
- 2.92.030 Maintenance of Records.**
- 2.92.040 Index of Public Records – Findings.**
- 2.92.050 Index of Public Records – Order.**
- 2.92.060 Disclosure of Public Records.**
- 2.92.070 Procedure for Inspection or Copying.**
- 2.92.080 Processing Public Records Requests - Review of Decision.**
- 2.92.090 Inspection of Records**
- 2.92.100 Records Subject to Disclosure, Public Records Not Sufficiently Identified**
- 2.92.110 Denial of Request - Appeal**
- 2.92.120 Electronically stored Data and Information**
- 2.92.130 Exemptions**
- 2.92.140 Reimbursement for Copying Costs.**
- 2.92.150 Administrative Rules.**

2.92.010 RELATIONSHIP TO PUBLIC RECORDS ACT.

This chapter constitutes the City's rules and regulations to carry out and implement the Public Records Act, chapter 42.56 RCW.

2.92.020 PUBLIC RECORDS OFFICER.

The City Clerk shall serve as the City's public records officer. Contact information for the City Clerk will be made available to the public in a manner reasonably calculated to provide notice of to whom members of the public may direct requests, such as posting such contact information at City Hall or on the City's internet website.

2.92.030 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 by the City Clerk.

(b) All police records shall be maintained in the Milton Police Department. Access to police records shall be in accordance with the policy established by the Police Department, pursuant to laws including but not limited to chapter 10.97 RCW, Criminal Records Privacy Act, and chapter 13.50 RCW, Keeping and Release of Juvenile Records.

(c) All other such records of the City relating to the specific function or responsibility of a particular department shall be maintained for the use of the department and the general public in the office of the particular department. Such records shall include, but not be limited to: planning policies and goals, and interim and final planning decisions; factual staff reports and studies; factual consultant's reports and studies; scientific reports and studies; and any other factual information derived from tests, studies, reports or surveys, whether conducted by City employees or others.

2.92.040 INDEX OF PUBLIC RECORDS – FINDINGS.

(a) The Public Records Act requires all cities and public agencies to maintain and make available a current index of all public records.

(b) RCW 42.56.070(4) provides that an agency need not maintain such an index if to do so would be unduly burdensome, but it must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome or would interfere with agency operations.

(c) The City is comprised of numerous departments, their divisions and subdivisions, many if not all of which maintain separate databases and/or 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.

2.92.050 INDEX OF PUBLIC RECORDS – ORDER.

Based upon the findings set forth in MMC 2.92.040, and pursuant to RCW 42.56.070(4), the City Council orders the following:

(a) The City is not required to maintain an all-inclusive index of public records due to the undue burden and near-impossibility of maintaining such an index.

(b) The City will make available for inspection and/or copying all public records, including any indexes that are maintained by the City as set forth in MMC 2.92.030, except to the extent that such records are exempt from public disclosure.

2.92.060 DISCLOSURE OF PUBLIC RECORDS.

Unless exempt from disclosure under this chapter or other law, public records shall be available for inspection and copying in accordance with this chapter.

2.92.070 PROCEDURE FOR INSPECTION OR COPYING.

(a) Requests to inspect and copy public records shall be in writing on a form prescribed by the City Clerk and shall identify the public records sought for such inspection and copying. The City Clerk shall create and avail for public use a standard form by which a requester may specify particular public records and provide the requester's relevant contact information. Reasonable assistance as may be necessary to help a requestor locate particular records shall be provided either by the City Clerk or by the City department maintaining the records. PROVIDED, that the provision of such assistance shall not unreasonably disrupt the normal operations of the City Clerk, the department, or the assisting employee.

(b) Requests for public records shall be submitted to the City Clerk at 1000 Laurel Street, Milton, Washington 98354, or his or her designee, or online through the City's web site, except as otherwise provided herein.

(c) Each City department may designate within its own department certain "over the counter" records available to the public for immediate inspection without the requirement of a formal public records request as set forth in this section.

(d) Except to the extent required or authorized by law, 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 chapter 42.56 RCW or other statute or ordinance that exempts or prohibits disclosure of specific information or records to certain persons.

2.92.080 PROCESSING OF RECORDS REQUESTS – REVIEW OF DECISION.

(a) Responses to requests for public records shall be made promptly pursuant to chapter 42.56 RCW. Within five business days of the date of receipt by the City of a 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 request clarification; or
3. Deny the public record request in whole or in part.

(b) Public records may be made available on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for public inspection or copying. 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 requestor to clarify what information the requestor is requesting. If the requestor fails to clarify the request, the City need not further respond to or process the request.

(c) If the City Clerk determines that the document is exempt in part but can be made available after deletion of exempt portions, 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 requestor. PROVIDED, that nothing herein shall be construed as requiring the City to disclose portions of a requested document if the entire document is exempt from disclosure.

(d) In the event the City Clerk denies inspection of all or any part of a request, the City Clerk may seek review by the City Attorney. The City Clerk will notify the requestor by mail of the decision to grant or deny the request.

2.92.090 INSPECTION OF RECORDS.

In the event a requestor chooses to inspect records, the City shall notify the requestor once the records responsive to the request are available for inspection. The records will be available for inspection during customary office hours. Records that have been pulled for inspection shall be made available to the requestor for a period of no more than fourteen (14) calendar days. In the event a requestor fails to contact the City Clerk, or his or her designee, within fourteen (14) calendar days of being notified that the records are available for inspection: 1) the request shall be deemed abandoned; and 2) the records shall be returned to the originating department.

2.92.100 RECORDS SUBJECT TO DISCLOSURE; PUBLIC RECORDS NOT SUFFICIENTLY IDENTIFIED.

The City will disclose records to the extent required by state or federal law and nothing in this policy shall be interpreted as requiring the disclosure of any record that is not subject to disclosure by state or federal law. Generally, any record, or portion thereof, which is exempt from disclosure, will not be disclosed, and information contained in the records may be removed to the extent necessary or permissible by law. Requests for information or for inspection and copying of public records which require City employees to compile information, perform research, require reformatting of data, or which do not otherwise sufficiently identify a record, are not considered a request under the Public Records Act or this Chapter.

2.92.110 DENIAL OF REQUEST – APPEAL.

Denials of all or any portion of a request must be accompanied by a written statement of the specific reasons therefor. In the event that the City Clerk denies a request for public records, the requestor may appeal the denial to the City Attorney. Such review shall be conducted as promptly as reasonably possible and shall constitute final action for the purposes of judicial review.

2.92.120 ELECTRONICALLY-STORED DATA AND INFORMATION.

Public records in the form of information or data which is electronically stored (on the memory of a computer, a diskette, a magnetic tape, a compact disc or in other similar ways) shall be subject to public inspection and copying in the following manner:

(a) Information or data that is publicly available by computer access without submission of a request for inspection and copying, may be inspected and copied by any person or persons having access to computer equipment capable of such inspection and copying. Subject to budget and financial constraints, public access computer equipment may be made available without charge by the City at public locations.

(b) Information or data that is not publicly available by computer access without submission of a request for inspection and copying, but which constitutes public records and is stored, contained or available as data or information within the memory or storage facilities of computer or electronic equipment, is subject to inspection and copying only with the cooperative services of City employees familiar with the operation of equipment that permits such inspection and copying to occur. When public records are adequately identified by the requester, a City employee designated by the City Clerk or other appropriate department director shall examine the information to determine if it contains exempt records. If such examination reveals any data or information that is exempt from public inspection and copying, the requested public record shall be printed on paper or transferred to a diskette or similar medium with the exempt portions thereof deleted. If the examination reveals no exempt information, the person requesting inspection and copying, at his or her option, may either view the information on a computer screen, have the information transferred to a diskette or other compatible storage medium, or ask that the information be printed on paper. Provided, however, that the viewing of such information on a computer screen shall not be permitted except where the computer is operated by a City employee and where diverting such City employee from his or her regular duties in order to operate such computer to permit such viewing would not cause excessive interference with essential functions of the City.

2.92.130 - EXEMPTIONS.

The City adopts by reference the exemptions from public disclosure contained in chapter 42.56 RCW, including any future amendments thereto or recodification thereof, along with any other exemption or exception to the Public Records Act provided by law, including but not limited to those exemptions set forth in Appendix C to "Public Records Act for Washington Cities and Counties,"

Municipal Research and Services Center, Report No. 61, May 2007, as may be amended from time to time, a copy of which shall be maintained in the office of the City Clerk.

2.92.140 – REIMBURSEMENT OF COPYING COSTS.

(a) The City shall impose no charge for the services of City employees who assist in retrieval, inspection and copying of public records. Nothing herein shall be construed to apply to charges for accident reports pursuant to RCW 46.52.085.

(b) Except for incidental copying, copies of printed material shall be charged at the rate established within the City's rates and fees resolution/ordinance if performed on City-possessed copying equipment. In the event a photocopy of such "over the counter" records is requested, and if the requested record is an eight and one-half (8-1/2) by fourteen (14) inch page or smaller, the department may provide the first fifty (50) pages free of charge. However, if the photocopies exceed fifty (50) pages, a public disclosure request will then need to be completed and the applicable duplication cost paid.

(c) In response to any request for inspection and copying, materials containing substantial pages to be copied may be required to 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.

(d) The City may charge all costs directly incident to shipping such public records, including, but not limited to, the cost of postage or delivery charges and the cost of any container or envelope pursuant to RCW 42.56.070(7).

(e) 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 records are 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 paid for or reviewed within twenty days after the City provides notice of availability of the installment, the City is not obligated to fulfill the balance of the request.

(f) The cost of video tapes or reproductions, magnetic tapes, diskettes, photographs, pictures, color photo copies, and other communication media material necessary to make copies of public records shall be at the cost of the requester, payable in advance before copies are made.

(g) Prior to providing copies of any public record, any and all duplication and delivery fees shall be collected by the City. The City Clerk shall establish, update and post applicable duplication fees as appropriate. Each department and the City Clerk shall have the duplication fee schedule available for public inspection upon request. All media necessary for copying will be

provided by the City at the requestor's cost provided media will be used.

2.92.150 – MODEL RULES AND ADMINISTRATIVE PROCEDURES.

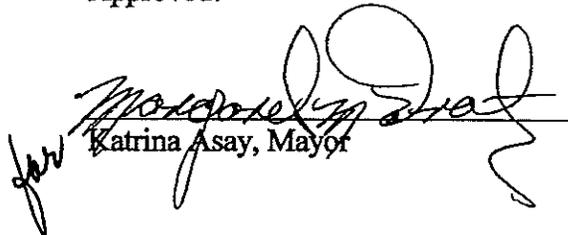
The City may, in its discretion, follow the Public Records Act Model Rules on file at the City Clerk's Office. The Mayor, upon recommendation of the City Clerk, may issue additional administrative procedures for the implementation of this chapter.

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 take effect five (5) days after publication of a summary consisting of the title.

PASSED AND APPROVED by the City Council of the City of Milton, Washington, at a regularly scheduled meeting this 16th day of June, 2008.

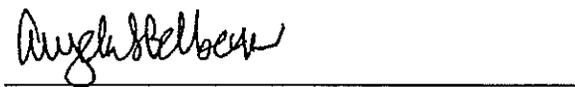
Approved:

for 
Katrina Asay, Mayor

Attest/Authenticated:


Barbara J. Fortier, Deputy City Clerk

Approved as to form:

for 
Phil A. Olbrechts, City Attorney

Date of Publication: June 19, 2008

Effective Date: June 24, 2008