

ORDINANCE NO. 2022-05

AN ORDINANCE ADOPTING REGULATIONS RELATED TO GOVERNMENT RECORDS

WHEREAS Lake Point is authorized to adopt regulations related to government records, consistent with the Utah Government Records Access and Management Act (the “Act”);

WHEREAS the Lake Point City Council desires to establish procedures for requesting records, appealing denials, fees for requests, and other matters related to city records;

NOW, THEREFORE, BE IT ORDAINED by the Lake Point City Council as follows:

Section 1. Purpose and Intent. In enacting this act, the city recognizes the fundamental right of privacy in relation to personal data gathered by the city and the public’s right of access to information the conduct of the public’s business. Therefore, it is the intent of the city to:

- a. Establish fair information practices to prevent abuse of personal information by the city while protecting the public's right of easy and reasonable access to unrestricted public records; and
- b. Provide guidelines of openness to government information and privacy of personal information consistent with nationwide standards;
- c. Establish and maintain an active, continuing program for the economical and efficient management of the city's records as provided in this chapter.

Section 2. Definitions.

- a. “Act” means the Utah Government Records Access and Management Act, Title 63G, Chapter 2, of the Utah Code, as amended.
- b. “Records officer” means the city recorder unless another individual is appointed by the council chair to work in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records. Unless otherwise specified, the records officer, or their designee, shall carry out the city’s obligations under this chapter and the Act.
- c. Other terms used in this chapter shall have the meaning set forth in the Act unless a different meaning is specified or required by the context of the term.

Section 3. Right of Public Access. Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the records request process and the payment of costs and fees set forth in this chapter and the Act.

- a. All records are public unless otherwise expressly provided by this chapter or state or federal law or regulation.

- b. The following records are not public:
 - i. Records that are appropriately classified private, controlled, or protected as allowed and defined by the Act; and
 - ii. Records to which access is restricted pursuant to the Act, court rule, another state statute, federal statute or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
- c. In determining a person's right to access a record, including the right to access a private, controlled, protected, or otherwise non-public or restricted record, the city and the requester shall follow the requirements and regulations set forth in this chapter and the Act.

Section 4. Fees. The city shall charge a fee to cover the city's actual cost of responding to a records request, in accordance with the following requirements:

- a. The fee shall cover the city's actual cost for:
 - i. Compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
 - ii. Staff time for search, retrieval, and other direct administrative costs for complying with a request; and
 - iii. For a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users.
- b. An hourly charge for the cost of staff time in responding to a request shall not exceed the salary of the lowest paid employee who, in the discretion of the records officer, has the necessary skill and training to perform the request.
- c. Costs and fees other than the cost of staff time related to responding to a record request and to providing a record shall be as set by resolution by the city council.
- d. The fee shall not include the following:
 - i. The first 15 minutes of staff time spent responding to a records request, unless the Act allows for such time to be counted;
 - ii. Costs for reviewing a record to determine whether the record is subject to disclosure; or
 - iii. Costs for inspecting a record.

- e. In determining the fee to be charged, the city may consider multiple requests by the same requester within a short period of time as a single request if it appears that the requester is submitting multiple requests primarily to avoid the fees that would be charged if the requests were handled as a single request.
- f. The city may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50 or the requester has not paid fees from previous requests. The city may also charge interest on any unpaid obligation, as set by resolution. Any costs above prepayment will be due prior to requester receiving the record(s). Any prepaid amount in excess of fees due shall be returned to the requester.

Section 5. Fee Waivers.

- a. The city may grant a waiver of fees to fulfill a record request when it determines that:
 - i. Releasing the record primarily benefits the public rather than a person;
 - ii. The individual requesting the record is the subject of the record; or
 - iii. The requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.
- b. Except in extraordinary cases, as determined by the records officer, a fee waiver shall operate to waive only the cost of the first two hours of staff time and the other direct costs to the City involved in responding to a request. Staff time beyond two hours that is required to respond to a request shall be charged as set forth herein regardless of the fee waiver.
- c. The burden of demonstrating the need for a fee waiver shall be on the requester, and a person who believes that there has been an unreasonable denial of a fee waiver by the city may appeal the waiver denial in the same manner as denial of access to a record.

Section 6. Procedures For Access.

- a. The process and timeframes for a person to request access to records and for the city to respond to such requests shall be as set forth in the Act, as modified or added by this ordinance.
- b. A person making a request for a record shall furnish the records officer with a written request containing their name, mailing address, email, daytime telephone number, and a description of the records requested that identifies the records with reasonable specificity.
- c. If person claims the right to access a private, controlled, protected, or otherwise non-public record due to the person's identity or status, the person shall be required to provide information and documentation establishing the person's identity or status. Such information may include copies or proof of government-issued identification, powers of attorney, incumbency certificates, and other appropriate documentation.

- d. A person making a request for a record shall indicate whether they wish to receive records and other information and notices related to their request by email, mail, or some other method.
- e. In response to a request, the city is not required to:
 - i. create a record;
 - ii. compile, format, manipulate, package, summarize, or tailor information;
 - iii. provide a record in a particular format, medium, or program not currently maintained by the governmental entity;
 - iv. fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or
 - v. fill a person's records request if:
 - 1. the record requested is publicly accessible online or included in a public publication or product produced by the city; and
 - 2. the city specifies to the requester where the record is accessible online or provides the requester with the public publication or product and specifies where the record can be found in the public publication or product.
- f. If the city chooses to create a record, compile, format, manipulate, package, summarize, or tailor information, or provide a record in a particular format, medium, or program as requested by a person, the requester shall pay all of the city's actual costs involved with such work and shall not be entitled to any waiver of fees.

Section 7. Public Benefit. In determining whether release of a record primarily benefits the public rather than a person for purposes of this chapter and the Act, the city may consider:

- a. Whether the records relate to issues that impact all city residents, such as utilities or taxes;
- b. Whether the issue has been published or reported in the news in the previous six months;
- c. Whether the issue has been on a public meeting agenda of a Lake Point public body in the previous six months; and
- d. Whether the requester is a member of or affiliated with a media or news outlet or requests a record to obtain information for a story or report for publication or broadcast to the general public.

Section 8. Denials.

- a. If the city denies the records request in whole or part, including if the city denies the request for a fee waiver, the city shall provide a written notice of denial to the requester either in person or by sending the notice to the requester's physical or electronic address, as specified in the request, containing the information and descriptions related to the denial, the records or portions thereof to which access was denied, the legal basis for the denial, the appeals process and deadlines, and other matters required by the Act.
- b. Unless otherwise required by a court or agency of competent jurisdiction, the city may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

Section 9. Records Classification.

- a. The city shall:
 - i. Evaluate all record series that it uses or creates;
 - ii. Designate those record series as provided by this ordinance and the Act;
 - iii. Report the designation of its record series to the state archives.
- b. The city may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series or information until access to the record is requested.
- c. The city may redesignate a record series or reclassify a record or record series, or information within a record at any time.
- d. If more than one provision of this chapter or the Act could govern the classification of a record, the city shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

Section 10. Records Retention. The city council shall establish a retention schedule for each record series. The city shall report all adopted retention schedules to the state archives.

Section 11. Segregation of Records. Notwithstanding any other provision in this chapter, if the city receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the city:

- a. Shall allow access to information in the record that the requester is entitled to inspect under this chapter; and
- b. May deny access to information in the record by segregation, editing, redaction, or other appropriate means if the information is exempt from disclosure to the requester, issuing a notice of denial for the withheld or segregated information.

Section 12. Appeal process:

- a. Any person aggrieved by the city's access or fee waiver determination under this chapter, including a person not a party to the city's proceeding who is an interested party affected by an access determination, may appeal the determination to the council chair by filing a written notice of appeal with the records officer within 30 days after the city sends the notice of denial or the request is considered or deemed to be denied.
- b. If the city claims extraordinary circumstances and specifies the date when the records will be available, and if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the city's claim of extraordinary circumstances or date for compliance within thirty days after notification of a claim of extraordinary circumstances by the city, despite the lack of a "determination" or its equivalent.
- c. A person aggrieved by the city's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within thirty days after receiving the notice of appeal, instead of the timeframes set forth below.
- d. The notice of appeal shall contain the following information:
 - i. The petitioner's name, mailing address and daytime telephone number;
 - ii. The relief sought; and
 - iii. A short statement of facts, reasons, and legal authority in support of the appeal.

Section 13. Appeals Involving Business Confidentiality. If the appeal involves a record that is the subject of a business confidentiality claim under the Act, the records officer shall:

- a. Send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than thirty-five persons, it shall be given as soon as reasonably possible;
- b. Send notice of the business confidentiality claim and the schedule for the city recorder's determination to the requester within three business days after receiving notice of the requester's appeal.
- c. The claimant shall have seven business days after notice is sent by the records officer to submit further support for the claim of business confidentiality.

Section 14. Time for determination of appeal.

- a. The council chair shall make a determination on an appeal within the following period of time:

- i. Within ten business days after the council chair's receipt of the notice of appeal;
 - ii. Within five business days after the council chair's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or
 - iii. Within twelve business days after the city sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.
- b. If the council chair fails to make a determination within the time specified in subsection (a)(i) of this section, the failure shall be considered the equivalent of an order denying the appeal and affirming the access or fee waiver determination.
 - c. The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

Section 15. Determination on Appeal.

- a. In making a determination on an appeal, the council chair:
 - i. May, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private or protected under the Act if the interests favoring access outweigh the interest favoring restriction of access, as set forth by the Act; and
 - ii. Shall include a brief statement of reasons for the determination, including a brief description of the record or portions of the record to which access was ordered or denied, if not already provided, and citations to this chapter, the Act, or other orders, rules, or regulations that govern disclosure of the record that support the determination, provided that such information do not disclose private, controlled protected, or otherwise non-public or restricted information.
- b. The city shall send written notice of the determination on the appeal to all participants. If the council chair affirms the denial in whole or in part, the notice shall include:
- c. A statement that the requester has the right to appeal the denial to the State Records Committee or district court, as set forth by the Act;
- d. The time limits for filing an appeal; and
- e. The name and business address of the executive secretary of the State Records Committee.

Section 16. Request To Amend A Record.

- a. Subject to subsection G of this section, an individual may contest the accuracy of or completeness of any public or non-public record concerning them by requesting that the city amend the record. The request shall contain the following information:
 - i. The requester's name, mailing address, and daytime telephone number; and
 - ii. A brief statement explaining why the city should amend the record.
- b. The city shall issue an order either approving or denying the request to amend no later than thirty days after receipt of the request.
- c. If the city approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A city may not disclose the record until it has amended it.
- d. If the city denies the request it shall:
 - i. Inform the requester in writing; and
 - ii. Provide a brief statement giving its reasons for denying the request.
- e. If the city denies a request to amend a record, and the requester does not appeal the denial or the appeal is denied, the requester may submit a written statement contesting the information in the record. The city shall:
 - i. File the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
 - ii. Disclose the requester's statement along with the information in the record whenever the city discloses the disputed information.
- f. The requester may appeal the denial of the request to amend a record according to the process for appeals of access and fee waiver determinations set forth in this chapter.
- g. This section does not apply to records relating to title to real or personal property, contracts, medical records, judicial case files, or any other records that the city determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.
- h. This section does not affect or alter the right of access to non-public records.

Section 17. Violation; Penalty.

- a. The misuse of, wrongful disclosure of, wrongful receipt of, or wrongful refusal to disclose records in violation of this chapter and the Act shall be a class B misdemeanor, as set forth in section 63G-2-801 of the Act, as amended, which section is expressly adopted by the city by reference.

- b. Enforcement of this chapter, including criminal penalties, civil remedies, and defenses to charges of wrongful conduct shall be as set forth in the Act.
- c. A city employee who intentionally violates any portion of this chapter or the Act may, in addition to any other penalty, be subject to disciplinary action, up to and including termination, according to the terms of the Act and the Utah Municipal Officers' and Employees' Ethics Act, Title 10, Chapter 3, Part 13 of the Utah Code, as amended.

Section 18. This Ordinance shall take effect immediately upon its adoption and publication in accordance with law.

PASSED, APPROVED, AND ADOPTED on the 21st day of December, 2022

Lake Point

By
Chair



ATTEST:


City Recorder

SEAL

Voting:

Daniel Crawford	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Doyle Garrard	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Jonathan Garrard	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Kathleen VonHatten	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Ryan Zumwalt	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>