

1 THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

ORDINANCE NO. 799

AN ORDINANCE AMENDING THE WEST JORDAN MUNICIPAL ADMINISTRATIVE CODE
[MUNICIPAL RECORDS ACCESS AND MANAGEMENT]

Whereas, the City Council desires to adopt provisions pertaining to the access and management of municipal records,

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

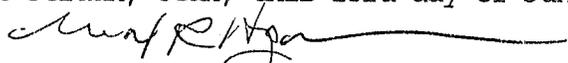
Section 1. Sections 2-11-101 through 2-11-104, inclusively, of the West Jordan Municipal Code, pertaining to "Municipal Records", are hereby repealed.

Section 2. The attached provisions, entitled "Part 11 Municipal Records" and consisting of Sections 2-11-101 through 2-11-114, inclusively, are hereby adopted and incorporated herein as though set forth in their entirety. The provisions so adopted shall hereinafter be designated as Sections 2-11-101 through 2-11-114, inclusively, of the West Jordan Municipal Code.

Section 3. The City Manager shall furnish a copy of this Ordinance to the State Archivist within 30 days of the effective date of the Ordinance.

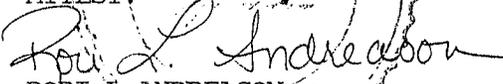
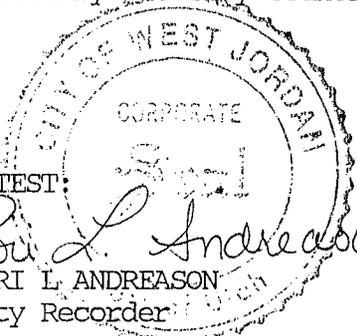
Section 4. This Ordinance shall take effect upon first publication or upon the expiration of twenty days following passage, whichever is earlier.

Passed by the City Council of West Jordan, Utah, this 23rd day of June, 1992.



MAX R HOGAN
Mayor Pro Tempore

ATTEST:

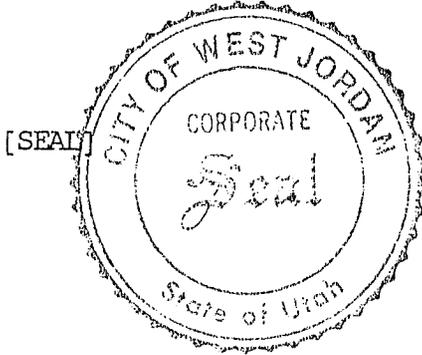

RORI L. ANDREASON
City Recorder

Voting by the City Council	"AYE"	"NAY"
Councilmember Bowcutt	<u>✓</u>	_____
Councilmember Grochocki	<u>✓</u>	_____
Councilmember Harper	<u>✓</u>	_____
Councilmember Hilton	<u>absent</u>	_____
Councilmember Hogan	<u>✓</u>	_____
Councilmember Plouzek	<u>✓</u>	_____
Mayor Miller	<u>absent</u>	_____

CITY RECORDER'S CERTIFICATE OF PUBLICATION

I, Rori L Andreason, City Recorder of the City of West Jordan, Utah, certify that a summary of the foregoing Ordinance was published in **The West Jordan Green Sheet**, a newspaper of general circulation in the community, on the 2nd day of July, 1992.

Rori L. Andreason
RORI L ANDREASON
City Recorder



CHAPTER 11

MUNICIPAL RECORDS

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2-11-101 PURPOSES AND INTENT

This Chapter is enacted for the following purposes:

- (1) to provide standards and guidelines concerning municipal records and information practices, including the classification, designation, access, denials of access and correction requests, segregation, appeals, management, retention and amendment of municipal records;
- (2) to provide standards for the classification and designation of municipal records as public, private or protected, and to require classification of records in accordance with those standards;
- (3) to provide standards for the management and retention of municipal records;
- (4) to establish access criteria, procedures and response times for requests to inspect, obtain copies of or amend municipal records and to establish time limits for appeals of denials of such requests;
- (5) to establish an appeals process for persons aggrieved by classification, designation or access decisions; and
- (6) to comply with the provisions of the Utah Governmental Records Access and Management Act, insofar as such is not in conflict with the Utah Constitution or other provisions of law.

The provisions of this Chapter shall be implemented and interpreted in a manner consisted with those purposes.

2-11-102 DEFINITIONS

(a) The words and phrases used in this Chapter shall have the following definitions attributed to such words and phrases, unless the provisions of this Chapter or the context in which such words or phrases are used indicates

that a contrary meaning is intended:

"Audit" means a systematic examination of financial, management, program and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls or compliance with laws and regulations; or, a systematic examination of program procedures and operations for the purpose of determining their effectiveness, efficiency and compliance with statutes and regulations.

"Chronological logs" means the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

"Classification", "classify" and their derivative forms means determining whether a record series, record or information within a record is public, private, controlled or protected or exempt from disclosure under Utah Code, Section 63-2-201(3)(b).

"Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not mean the original data, including numbers, text, voice, graphics and images; analysis, compilation and other manipulated forms of the original data produced by use of the program; or the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that could be used if the manipulated forms of the original data were to be produced manually.

"Controlled record" means a record containing data on individuals that is controlled as provided in Section 2-11-109.

"Contractor" means any person who contracts with the City to provide goods or services directly to the City; or any private, nonprofit organization that receives funds from the City. "Contractor" does not mean a private provider.

"Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses and any board, rent, housing, lodging, payments in kind and any similar benefit received from the individual's employer.

"Designation", "designate" and their derivative forms means indicating, based on the City's familiarity with a record series or based on the City's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

"Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may

describe the date, time, location and nature of the complaint, the incident or offense; names of victims; the nature or general scope of the agency's initial actions taken in response to the incident; the general nature of any injuries or estimate of damages sustained in the incident; the name, address and other identifying information about any person arrested or charged in connection with the incident; and the identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident. "Initial contact reports" do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified above appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected or exempt from disclosure under Section 63-2-201 of the Utah Code.

"Individual" means a human being.

"Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship or other type of business organization.

"Private provider" means any person who contracts with the City to provide services directly to the public.

"Private record" means a record containing data on individuals that is classified private as provided by Section 2-11-108.

"Protected record" means a record that is classified protected as provided by Section 2-11-107.

"Public record" means a record that has not been appropriately classified private, controlled or protected as provided in Sections 2-11-107, 2-11-108 or 2-11-109.

"Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recording or other documentary materials and electronic data, regardless of physical form or characteristics, prepared, owned, used, received or retained by the City. "Record" does not mean temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working; materials that are legally owned by an individual in his private capacity; materials to which access is limited by the laws of copyright or patent unless the copyright is owned by the City; proprietary software; junk mail or commercial publications received by the City or an official or employee of the City; books and other materials that are catalogued, indexed or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material; daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working; computer programs as defined that are developed or purchased by or for the City for its own use; or notes or internal memoranda prepared as a part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function.

"Record series" means a group of records that may be treated as a unit for purposes of designation, description, management or disposition.

"Records officer" means the City Recorder unless another individual is appointed by the City Manager to work in the care, maintenance, scheduling, designation, classification, disposal and preservation of records.

"Summary data" means statistical records and compilations that contain data derived from private, controlled or protected information but that do not disclose private, controlled or protected information.

(b) As used in this Chapter, the term "records custodian" refers to the Director (or equivalent) of the Department which has physical custody of a municipal record at the time a request for disclosure is made, notwithstanding the fact that another officer or employee may have another copy of such municipal record or be charged with the responsibility of safekeeping the original, official copy of such municipal record.

2-11-103 APPOINTMENT AND DUTIES OF CITY RECORDER

(a) The City Manager, with the advice and consent of the City Council, shall appoint a qualified person to be the City Recorder. The City Manager may, with the advice and consent of the City Council, appoint such Deputy City Recorders as the City Manager deems necessary. Deputy City Recorders shall have all authorities vested in the City Recorder.

(b) Subject to the supervision and control of the City Manager, the City Recorder shall:

(1) record, file, index, make available for public inspection, safe keep and authenticate all official records of the City.

(2) attend all meetings of the City Council and keep a record of the proceedings before the City Council.

(3) post, publish or cause to be posted or published, as required by law, all legal notices, ordinances and resolutions adopted by the City Council.

(4) supervise all municipal elections and keep and maintain all election records and property used in connection therewith.

(5) countersign all contracts made on behalf of the City and formally approved by the City Council and maintain a properly indexed record thereof.

(6) notify the City Manager of the impending expiration of term of office of any member of any board or commission.

(7) be the custodian of the Official Seal of the City.

(8) perform such other duties as are prescribed by state statute, city ordinance or by the City Manager.

Notwithstanding the duties established in subsection (1), above, the City Council recognizes that there are numerous municipal records which are not physically maintained or controlled by the City Recorder. Such records shall continue be maintained by the record custodian, as defined in this Chapter, and access thereto determined in accordance with this Chapter.

2-11-104 PUBLICATION AND PRESERVATION OF CITY ORDINANCES

(a) The City Recorder shall record, in a book used exclusively for that purpose, all ordinances passed by the City Council. The City Recorder shall give each ordinance a number. Immediately following each ordinance, or codification of ordinances, the City Recorder shall make or cause to be made a certificate stating the date of passage and of the date of publication or posting of the ordinance or codification. [Section 10-3-713, Utah Code]

(b) The contents of all municipal ordinances, the dates of passage and the date of publication or posting may be proved by the certification of the City Recorder under the seal of the City. [Section 10-3-714, Utah Code]

2-11-105 RIGHT TO INSPECT AND RECEIVE COPIES OF MUNICIPAL RECORDS

(a) Except as provided in this Chapter, every person during normal working hours has the right to inspect, free of charge, and the right to receive a copy of a municipal record.

(b) All municipal records are classified as "public" unless otherwise expressly provided by statute or by this Chapter. The following municipal records are not public records:

(1) records that are classified as "protected" in accordance with Section 2-11-107 of this Chapter;

(2) records that are classified as "private" in accordance with Section 2-11-108 of this Chapter; and

(3) records to which access is restricted pursuant to court rule, 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) The disclosure of records to which access is governed or limited pursuant to court rule, state statute, federal statute or federal regulations, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation. This Chapter applies to such records insofar as this Chapter is not inconsistent with the statute, rule or regulation.

(d) The record custodian shall, upon request, provide a person with a certified copy of a record classified as "public" if:

(1) the person requesting the record has a right to inspect it;

(2) the person identifies the record with reasonable specificity; and

(3) the person pays the lawful fees.

The record custodian may, at the discretion of the record custodian, disclose a record which is classified as "protected" or "private" if the record custodian determines that there is no interest in restricting access to the record or that the interest favoring access outweighs the interest in favoring restriction of access.

(e) The record custodian is not required to create a record in response to a

request. Upon request, the record custodian shall provide a record in a particular format if:

- (1) the record custodian is able to do so without unreasonably interfering with the record custodian's duties and responsibilities; and
- (2) the requester agrees to pay the record custodian for the additional costs actually incurred in providing the record in the requested format.

Nothing in this section requires the record custodian to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(f) If a person requests copies of more than 50 pages of records from the record custodian and if the records are contained in files that do not contain records that are exempt from disclosure, the record custodian may:

- (1) provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or
- (2) allow the requester to provide his own copying facilities and personnel to make the copies at the record custodian's offices and waive the fees for copying the records.

(g) The record custodian may not use the physical form, electronic or otherwise, in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.

(h) In order to protect the integrity and durability of original records, to prevent the destruction or unreasonable wear upon such records, to prevent fraud and for other good cause shown, the record custodian may substitute a photocopy of the municipal record in the place of the actual original of the municipal record. For purposes of this Chapter, the inspection and copying of a photocopied duplicate of a municipal record shall be deemed to be the inspection and copying of the actual original of such record. In order to prevent fraud or for other good cause shown, the record custodian may mark "copy" or words of similar effect upon appropriate photocopies of municipal records, provided such notations do not substantially affect the legibility of such copy of the municipal record.

(i) An officer or employee of the City shall not be convicted of any criminal offense pertaining to municipal records where such officer or employee relied on or enforced the provisions of this Chapter. It shall be a defense to any action for punitive damages that the officer or employee acted in good faith in enforcing or relying upon the provisions of this Chapter or that the officer or employee enforced the provisions of this Chapter on the advice of legal counsel. [Section 10-3-702, Utah Code.] An officer or employee of the City shall not be convicted of any criminal offense pertaining to municipal records based upon the conduct of another unless such officer or employee, acting with the mental state required for the commission of the offense, directly commits the offense or solicits, requests, commands, encourages or intentionally aids another person to engage in conduct which constitutes an offense pertaining to municipal records. [Section 76-2-202, Utah Code.]

2-11-106 PUBLIC RECORDS

Except to the extent that they contain information expressly permitted to be

treated confidentially under the provisions of this Chapter, the following municipal records are classified to be "public":

- (1) laws, ordinances, resolutions of the City Council, rules of procedure of the City Council, written personnel policies and contracts to which the City is a party;
- (2) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, relevant education, previous employment and similar job qualifications of former and present employees and officers, excluding undercover law enforcement personnel and investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
- (3) final opinions, including concurring and dissenting opinions, and orders that are made by the City Council or any subordinate body or official in an administrative, adjudicative or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private or protected;
- (4) information contained in or compiled from a transcript, minutes or report of the open portions of a meeting of the record custodian as provided by the Open Meetings Act, including the records of all votes of each member of the City Council or other board or commission, except when the ordinance or statute concerning the deliberations of quasi-judicial bodies provides that the vote of the bodies may be secret and not public;
- (5) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are classified as "private" under this Chapter;
- (6) documentation of the compensation that the City pays to a contractor or private provider;
- (7) summary data;
- (8) administrative staff manuals, instructions to staff and statements of policy; and
- (9) records documenting a contractor's or private provider's compliance with the terms of a contract with the City.

2-11-107 PROTECTED RECORDS

(a) The following records are classified to be "protected":

- (1) trade secrets and other proprietary business information if the person submitting the information has simultaneously submitted with the information a written notice to the record custodian that the information is a trade secret or proprietary business information and a request that such information not be publicly disclosed except upon the permission of the submitting person;

(2) commercial information or nonindividual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the record custodian to obtain necessary information in the future;

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(iii) the person submitting the information has submitted with the information a written notice to the record custodian that the information is confidential and should not be disclosed publicly;

(3) commercial or financial information acquired or prepared by the City to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or state economy;

(4) test questions and answers to be used in future license, certification, registration, employment or academic examinations;

(5) records the disclosure of which would impair city procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the city, except that this subsection does not restrict the right of a person to see bids submitted to or by the City after bidding has closed and the bids have been publicly opened;

(6) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired;

(7) records prepared in contemplation of sale, exchange, lease, rental or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property;

(8) records created or maintained for civil, criminal or administrative enforcement purposes or audit purposes or for discipline, licensing, certification or registration purposes, if release of the records:

(i) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification or registration purposes;

(ii) reasonably could be expected to interfere with investigations, audits, disciplinary or enforcement proceedings;

(iii) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(iv) reasonably could be expected to disclose the

identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(v) reasonably could be expected to disclose investigative or audit techniques, procedures, policies or orders not generally known outside of government if disclosure would interfere with investigative, enforcement or audit efforts;

(9) records the disclosure of which would jeopardize the life or safety of an individual;

(10) records the disclosure of which would jeopardize the security of city property, programs or record-keeping systems from damage, theft or other appropriation or use contrary to law or public policy;

(11) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment or probation, that would interfere with the control and supervision of an offender's incarceration, treatment or probation;

(12) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(13) records prepared by or on behalf of the City solely in anticipation of litigation that are not available under the rules of discovery;

(14) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the City concerning litigation;

(15) records of communications between a city officer, official or employee and an attorney representing, retained or employed by the City, if the communications would be privileged;

(16) drafts or other preliminary data, not in final form, intended for further refinement, unless otherwise classified as public;

(17) records concerning the strategy about collective bargaining or pending litigation;

(18) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the the health insurance, liability insurance, workers compensation program, unemployment compensation program, risk management program and other similar programs in which the City participates;

(19) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy or if disclosure is not in the public interest;

(20) records that reveal the location of historic, prehistoric, paleontological, geological or biological resources that if known would jeopardize the security of those resources or of valuable

historic, scientific, educational or cultural information;

(21) records provided by the United States or by a government entity outside the state that are given to the city with requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(22) transcripts, minutes or reports of the closed portion of a meeting of a public body except as provided in the Open and Public Meetings Act;

(23) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(24) memoranda prepared by staff and used in the decision-making process by an administrative law judge, hearing officer or member of any other body charged by law with performing a quasi-judicial function;

(25) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in West Jordan, but only if disclosure would result in actual economic harm to the person or place the City at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(26) materials to which access must be limited for purposes of securing or maintaining the City's proprietary protection of intellectual property rights, including but not limited to patents, copyrights, trade secrets and proprietary information possessed by the City or by others;

(27) the name of a donor or prospective donor to the City and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that the donor in writing requests anonymity and any terms, conditions, restrictions or privileges relating to the donation may not be classified protected by the City under this subsection;

(28) any material or record, whether or not commercially-published, possessed by the City in any format, which is copyrighted or patented when the copying or reproduction would violate the copyright or patent laws protecting such materials;

(29) records which might jeopardize or compromise financial or regulatory activities of the City, such as letters of credit, blank checks, bonds or other negotiable instruments, blank licenses, credit cards and identity cards;

(30) records concerning the commission of a public offense by a personally-identifiable person, when the offense was committed over one year prior to the request for access was made, provided, however that this limitation shall not apply to requests made by the victim of the public offense or someone in privity to the victim (such as an attorney or insurance company) when the information contained in the record is necessary to preserve or

protect the legal rights of the victim and/or to secure restitution for damages resulting from the offense or alleged offense;

(31) judicial records of a criminal conviction which have been expunged or sealed pursuant to order of a court of competent jurisdiction; and

(32) records which would not be the subject of discovery under the rules of civil or criminal procedure in the courts of Utah.

(b) Upon request, the record custodian shall disclose a protected record to:

(1) the person who submitted the record.

(2) any other individual who:

(i) has a power of attorney for all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or

(3) any person to whom the record must be provided pursuant to a court order.

The record custodian may, at the discretion of the record custodian, disclose a record which is classified as "protected" if the record custodian determines that there is no interest in restricting access to the record or that the interest favoring access outweighs the interest favoring restriction of access.

2-11-108 PRIVATE RECORDS

(a) The following municipal records are classified as "private":

(1) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits or the determination of benefit levels;

(2) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data;

(3) records concerning a current or former employee of, or applicant for employment with a governmental entity that would disclose the individual's home address, home telephone number, social security number, insurance coverage, marital status or payroll deductions;

(4) records concerning a current or former employee, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are classified as "public" or "private";

(5) records describing an individual's finances;

(6) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(7) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;

(8) personally-identifiable information concerning the previous payment practices of customers who have received city-provided utility services, provided, however, that this limitation shall not be deemed to restrict the disclosure of current outstanding balance owing on a utilities account made in response to the legitimate inquiry by a title company or other person processing a real estate conveyance.

(9) personally-identifiable information concerning usage of city-provided utility services.

(b) Upon request, the record custodian shall disclose a record which has been classified as "private" to:

- (1) the subject of the record;
- (2) the parent or legal guardian of an unemancipated minor who is the subject of the record;
- (3) the legal guardian of a legally incapacitated individual who is the subject of the record;
- (4) any other individual who:
 - (i) has a power of attorney from the subject of the record; or
 - (ii) submits a notarized release from the subject of the record of his legal representative dated no more than 90 days before the date the request is made; or
- (5) any person to whom the record must be provided pursuant to court order.

The record custodian shall, upon request, disclose the context in which the record is used. The record custodian may, at the discretion of the record custodian, disclose a record that is classified as "private" if the record custodian determines that there is no interest in restricting access to the record or that the interest favoring access outweighs the interest favoring restriction of access.

(c) Upon request, the record custodian shall explain to an individual:

- (1) the reasons the individual is asked to furnish to the City information that could be classified as "private";
- (2) the intended uses of the information; and
- (3) the consequences for refusing to provide the information.

(d) If there is more than one subject of a private record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(e) The City Manager shall file with the State Archivist a statement

explaining the purpose for which record series designated as "private" are collected and used by the City. That statement is a public record. The City may not use private records for purposes other than those given in the statement filed with the State Archivist or for purposes other than those for which another governmental entity could use the record.

2-11-109 CONTROLLED RECORDS

A record is controlled only if:

- (1) the record contains medical, psychiatric or psychological data about an individual;
- (2) the City reasonably believes that:
 - (i) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - (ii) releasing the information would constitute a violation of normal professional practice and medical ethics; and
- (3) the City has properly classified the record.

2-11-110 CLASSIFICATION OF RECORDS

(a) If more than one provision of this Chapter could govern the classification of a municipal record, the record custodian shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

(b) The record custodian shall:

- (1) evaluate all record series that the Department uses or creates;
- (2) designate those record series as provided by this Chapter; and
- (3) report the designations of its record series to the City Manager.

(c) The record custodian 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. The record custodian may redesignate a record series or reclassify a record or record series, or information within a record at any time.

(e) Notwithstanding any other provision in this Chapter, if the record custodian 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 record custodian:

- (1) shall allow access to information in the record that the requester is entitled to inspect under this Chapter; and
- (2) may deny access to information in the record if the information is exempt from disclosure to the requester and may

issue a notice of denial as provided in this Chapter.

2-11-111 REQUESTS FOR DISCLOSURE OF MUNICIPAL RECORDS

(a) A person making a request for access to inspect or to make or receive a copy of a municipal record shall furnish the record custodian with a written request containing his name, mailing address, daytime telephone number (if available) and a description of the record requested that identifies the record with reasonable specificity.

(b) As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the record custodian shall respond to the request by:

- (1) approving the request and by providing the record;
- (2) denying the request;
- (3) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or
- (4) notifying the requester that because of one of the extraordinary circumstances described in subsection (c), the records custodian cannot immediately approve or deny the request.

The notice shall describe the circumstances relied upon and specify the date when the record will be available.

(c) The following circumstances constitute "extraordinary circumstances" that allow the record custodian to delay approval or denial by an additional period of time the record custodian determines that due to the extraordinary circumstances it cannot respond within the time limits provided herein:

- (1) another governmental entity is using the record, in which case the record custodian shall promptly request that the governmental entity currently in possession return the record;
- (2) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
- (3) the request is for a voluminous quantity of records;
- (4) the City is currently processing a large number of records requests;
- (5) the request requires the record custodian to review a large number of records to locate the record requested;
- (6) the decision to release a record involves legal issues that require the record custodian to seek legal counsel for the analysis of statutes, rules, ordinances, regulations or case law;
- (7) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
- (8) segregating information that the requester is entitled to

inspect from information that the requester is not entitled to inspect requires computer programming.

If one of the extraordinary circumstances listed above precludes approval or denial within the time specified in this section, the records custodian shall notify the requester that the record will be available for inspection or copying within ten business days.

(d) If a request for access is submitted to a city officer which does not have custody of the record apparently sought, the officer to whom the request was delivered shall promptly forward the request to the appropriate record custodian. If the request is forwarded promptly, the time limit for response begins when the record is received by the record custodian.

(e) If the record custodian fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records. If the record custodian denies the request in whole or part, the record custodian shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address. The notice of denial shall contain the following information:

(1) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private or protected information or information exempt from disclosure;

(2) citations to the provisions of this Chapter, court rule or order, another state statute, federal statute or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private or protected information or information exempt from disclosure;

(3) a statement that the requester has the right to appeal the denial to the records disclosure review committee; and

(4) the time limits for filing an appeal, and the business address of records disclosure review committee.

(f) Unless otherwise required by a court of competent jurisdiction, the record custodian 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.

(g) A requester aggrieved by the record custodian's access determination under this Chapter may appeal the determination within 30 days to the records access review committee. The records access review committee shall be composed of the City Manager, the City Recorder and the City Attorney. The committee shall have the jurisdiction and power to uphold, overturn or modify the decision of the records custodian concerning the denial of access to a municipal record, the classification of such record, or a request to amend information contained in such record. If the record custodian 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 record custodian's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the record custodian, despite the lack of a "determination" or its equivalent. The notice of appeal shall contain the the petitioner's name, mailing address, daytime telephone number and the relief sought. The petitioner may file a short

statement of facts, reasons and legal authority in support of the appeal. The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality. The committee shall make a determination on the appeal within five business days after the committee's receipt of the notice of appeal. If the committee fails to make a determination within the five business days, the failure shall be considered the equivalent of an order denying the appeal. The committee 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 "protected" in accordance with Section 2-11-107 or as "private" under Section 2-11-108 if the interests favoring access outweigh the interests favoring restriction of access. The committee shall send written notice of the its determination to all participants. If the committee affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to the City Council, the time limits for filing an appeal, and the name and business address of the City Recorder. A person aggrieved by the record custodian'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 30 days after receiving the notice of appeal. If the records access review committee denies a records request, the requester may appeal the denial to the West Jordan City Council, which shall have the power to affirm, affirm in part or overrule the decision of the records committee. A requester may petition for judicial review of the decision of the City Council in the district court as provided in Section 63-2-701(6), Utah Code.

2-11-112 REQUESTS TO AMEND RECORD INFORMATION

(a) An individual may contest the accuracy or completeness of any municipal record concerning him by requesting the record custodian to amend the record. However, this section does not affect the right of access to private or protected records. The request shall contain the requester's name, mailing address, and daytime telephone number and a brief statement explaining why the record custodian should amend the record.

(b) The record custodian shall issue an order either approving or denying the request to amend no later than 30 days after receipt of the request.

(c) If the record custodian approves the request, the record custodian shall correct all of his/her records that contain the same incorrect information as soon as practical. The record custodian may not disclose the record until he/she has amended it. If the record custodian denies the request, the record custodian shall inform the requester in writing and provide a brief statement giving its reasons for denying the request. If the record custodian denies a request to amend a record, the requester may submit a written statement contesting the information in the record. The record custodian shall:

- (1) 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

- (2) disclose the requester's statement along with the information in the record whenever the record custodian discloses the disputed information.

The requester may appeal the denial of the request to amend a record pursuant to the district court.

(d) This section does not apply to records relating to title to real or personal property, judicial case files or any other records that the record custodian determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

2-11-113 ADMINISTRATIVE REGULATIONS

The City Manager may promulgate rules and regulations, not inconsistent with the provisions of this Chapter, concerning the creation, classification, retention, safekeeping and preservation of municipal records; the access to such records; the procedures to be followed by records custodians in responding to requests for access to municipal records; the procedures to be followed by the records access review committee; issues pertaining to coordination with the State of Utah on records management and preservation issues; and such other records management issues as he deems appropriate.

2-11-114 FEES

(a) The record custodian may charge a reasonable fee to cover the City's actual cost of duplicating a record or compiling a record in a form other than that maintained by the City.

(b) The record custodian shall collect the following fees:

For photocopying onto letter-sized paper, \$0.10 per impression

For photocopying onto paper other than letter-sized paper, \$0.25 per impression.

For making blueprint copies, \$2.00 per copy.

For making photocopies of police reports or traffic accident reports, regardless of length, \$5.00 each report.

The City Manager may, by administrative regulation, provide for the assessment and collection of other reasonable fees to cover costs incurred by the City in assembling and/or providing the information in a format or medium as directed by the requester. The City Manager or record custodian may waive the assessment and collection of a fee for copies of municipal records if the request is made for the public disclosure of the records in order to benefit the public or if the fee for such copies would be minimal and the costs of accounting for the receipt of the fee would be prohibitive when compared with the fee.

(c) The record custodian may not charge a fee for:

(1) reviewing a record to determine whether it is subject to disclosure; or

(2) inspecting a record.

(d) All fees received under this section by the record custodian shall be remitted to the City Treasurer and accounted for as required by City policies and the Fiscal Procedures Act. Those funds shall be used to recover the actual costs and expenses incurred by the City in providing the requested record or record series.

(e) The record custodian may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to

exceed \$50, or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

(f) This section does not alter, repeal or reduce fees established by other ordinances, statutes or legislative acts.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

ORDINANCE NO. 813

AN ORDINANCE MAKING TECHNICAL AMENDMENTS
TO THE MUNICIPAL ADMINISTRATIVE CODE
[MUNICIPAL RECORDS ACCESS AND MANAGEMENT]

Whereas, the City Council finds and determines the need to make technical amendments to the Municipal Administrative Code pertaining to the maintenance of and access to municipal records,

Section 1. Section 2-11-101 of West Jordan Municipal Code, is hereby amended to read as follows:

2-11-101 PURPOSES, ~~AND~~ INTENT AND SCOPE

(a) This Chapter is enacted for the following purposes:

(1) To provide standards and guidelines concerning municipal records and information practices, including the classification, designation, access, denials of access and correction requests, segregation, appeals, management, retention and amendment of municipal records.

(2) to provide standards for the classification and designation of municipal records as public, private, controlled or protected, and to require classification of records in accordance with those standards;

(3) to provide standards for the management and retention of municipal records;

(4) to establish access criteria, procedures and response times for requests to inspect, obtain copies of or amend municipal records and to establish time limits for appeals of denials of such requests;

(5) to establish an appeals process for persons aggrieved by classification, designation or access decisions; and

(6) to comply with the provisions of the Utah Governmental Records Access and Management Act, insofar as such is not in conflict with the Utah Constitution or other provisions of law.

(b) The provisions of this Chapter apply to all records created or maintained by the City and its subsidiary organizations, and the officers, agents and employees thereof, including but not limited to the West Jordan City Redevelopment Agency, the West Jordan Municipal Building Authority, dependent special service districts, all boards and committees formally organized pursuant to the Municipal Administrative Code, non-profit organizations or Corporations organized or contracted by the City or its officials, and all other subsidiary organizations.

Section 2. Section 2-11-102 of the West Jordan Municipal Code, is hereby amended to include between the definition of "record" and the definition of "record series" the following:

"Record custodian" means the Director (or equivalent) of the Department which has physical custody of a municipal record at the time a request for disclosure is made, notwithstanding the fact that another office or employee may have another copy of such municipal record or be charged with the responsibility of safekeeping the original, official copy of such municipal record.

Section 3. Subsection 2-11-102(b) of the West Jordan Municipal Code, pertaining to the "records custodian", is hereby repealed. Section 2-11-102 of the West Jordan Municipal Code is hereby amended, by deleting the symbols and letter "(a)".

Section 4. Section 2-11-105(d) of the West Jordan Municipal Code, pertaining to inspection of municipal records, is hereby amended to read as follows:

(d) The record custodian shall, upon request, provide a person with a certified copy of a record classified as "public" or, if the requester is the subject of a record classified as "private" or "protected", if:

- (1) the person requesting the record has a right to inspect it;
- (2) the person identifies the record with reasonable specificity; and
- (3) the person pays the lawful fees.

The record custodian may, at the discretion of the record custodian, disclose a record which is classified as "protected" or "private" if the record custodian determines that there is no interest in restricting access to the record or that the interest favoring access outweighs the interest in favoring restriction of access.

Section 5. Section 2-11-106 of the West Jordan Municipal Code, pertaining to "public records", is hereby amended, by inserting five additional subparagraphs immediately following subparagraph (9), which additional subparagraphs shall be designated as (10) through (14), inclusively, and which shall read as follows:

- (10) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
- (11) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
- (12) final audit reports;
- (13) occupational and professional licenses; and
- (14) business licenses.

Section 6. Subsection 2-11-108(a) of the West Jordan Municipal Code, pertaining to "private records", is hereby amended, by inserting an additional subparagraph immediately following subparagraph (9), which subparagraph shall

be designated as subparagraph (10) and which shall read as follows:

(10) records which would disclose information relating to formal charges or disciplinary actions against a past or present municipal employee if the disciplinary action has been completed, all time periods for administrative appeal have expired and the formal charges were sustained.

Section 7. Subsection 2-11-108(c) of the West Jordan Municipal Code is hereby amended to read as follows:

(c) Upon request, the record custodian shall explain to an individual:

- (1) the reasons the individual is asked to furnish to the City information that could be classified as "private" or "controlled";
- (2) the intended uses of the information; ~~and~~
- (3) the consequences for refusing to provide the information; and
- (4) the context in which the record is used by the City.

Section 8. The first paragraph of Subsection 2-11-111(c) of the West Jordan Municipal Code is hereby amended to read as follows:

(c) The following circumstances constitute "extraordinary circumstances that allow the record custodian to delay approval or denial by an additional period of time if the record custodian determines that due to extraordinary circumstances he the record custodian cannot respond within the time limits provided herein:

Section 9. The last paragraph of Subsection 2-11-111(c) of the West Jordan Municipal Code is hereby amended to read as follows:

If one of the extraordinary circumstances listed above precludes approval or denial within the time specified in this section, the records custodian shall notify the requester that when the record will be available for inspection or copying within ten business days.

Section 10. Subsection 2-11-111(d) of the West Jordan Municipal Code is hereby amended to read as follows:

(d) If a request for access is submitted to a city officer which does not have custody of the record apparently sought, the officer to whom the request was delivered shall promptly forward the request to the appropriate record custodian. ~~If the request is forwarded promptly, the~~ The time limit for response begins when the record is received by the appropriate record custodian.

Section 11. Subparagraph (3) of Subsection 2-11-111(e) is hereby amended to read as follows:

(3) a statement that the requester has the right to appeal the denial to the records ~~disclosure~~ access review committee; and

Section 12. Subsection 2-11-111(g) of the West Jordan Municipal Code is hereby

amended to read as follows:

(g) A requester aggrieved by the record custodian's access determination under this Chapter may appeal the determination within 30 days to the records access review committee by filing a written notice of appeal with the City Recorder. The records access review committee shall be composed of the City Manager, the City Recorder and the City Attorney. The committee shall have the jurisdiction and power to uphold, overturn or modify the decision of the records custodian concerning the denial of access to a municipal record, the classification of such record, or a request to amend information contained in such record.

(h) If the record custodian 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 record custodian's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the record custodian, despite the lack of a "determination" or its equivalent.

(1) The notice of appeal shall contain the petitioner's name, mailing address, daytime telephone number and the relief sought. The petitioner may file a short statement of facts, reasons and legal authority in support of the appeal.

(2) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(3) The committee shall make a determination on the appeal within five business days after the committee's receipt of the notice of appeal. If the committee fails to make a determination within the five business days, the failure shall be considered the equivalent of an order denying the appeal.

(4) The committee 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 "protected" in accordance with Section 2-11-107 or as "private" under Section 2-11-108 if the interests favoring access outweigh the interests favoring restriction of access.

(5) The committee shall within 5 business days send written notice of its determination to all participants. If the committee affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to the City Council, the time limits for filing an appeal, and the name and business address of the City Recorder.

(6) A person aggrieved by the record custodian'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 30 days after receiving the notice of appeal.

(7) If the records access review committee denies a records request, the requester may appeal the denial to the West Jordan City Council, which shall have the power to affirm, affirm in part or overrule the decision of the records committee. The appeal must be filed with the City Recorder within 30 days after the denial. The City Council shall decide the appeal within 30 days of the filing of the notice of appeal.

(8) A requester may petition for judicial review of the decision of the City Council in district court as provided in Section 63-2-701(6), Utah Code.

Section 13. Subsection 2-11-114(b) of the West Jordan Municipal Code, is hereby amended to read as follows:

(b) The record custodian shall collect the following fees:

For photocopying onto letter-sized paper, \$0.10 per impression.

For photocopying onto paper other than letter-sized paper, \$0.25 per impression.

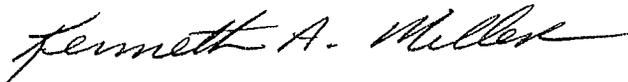
For making blueprint copies, \$2.00 per copy.

For making photocopies of police reports or traffic accident reports, regardless of length, \$5.00 each report.

The City Manager may, by administrative regulation, provide for the assessment and collection of other reasonable fees to cover costs incurred by the City in assembling and/or providing the information in a format or medium as directed by the requester. The City Manager or record custodian may waive the assessment and collection of a fee for copies of municipal records if the request is made for the public disclosure of the records in order to benefit the public, ~~or~~ if the fee for such copies would be minimal and the costs of accounting for the receipt of the fee would be prohibitive when compared with the fee, or if the individual requesting the record is the subject of the record.

Section 14. This Ordinance shall take effect upon publication or upon expiration of twenty days following passage, whichever is earlier.

Passed by the West Jordan City Council this 17th day of November, 1992.



KENNETH A MILLER
Mayor