

ORDINANCE NO. 5080

AN ORDINANCE of the City Council of the City of Bremerton, Washington, amending Chapter 1.06 of the Bremerton Municipal Code relating to disclosure of public records.

WHEREAS, the City Council desires to modify the provisions of Bremerton Municipal Code Chapter 1.06 in order to be more responsive to changes in the law relating to Public Records; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 1.06 of the Bremerton Municipal Code entitled "Public Records" is hereby amended to read as follows:

**Chapter 1.06
PUBLIC RECORDS**

1.06.010 AUTHORITY AND PURPOSE.

(a) ~~The purpose of this chapter is to establish policies and procedures relating to the indexing, retention and the production of public records from the City of Bremerton as required by Chapter 42.56 RCW. The Washinton State Public Records Act (the Act) requires public agencies such as Bremerton to make nonexempt "public records" available for inspection and copying in accordance with published rules. The Act defines "public records" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.~~

(b) The city clerk is hereby authorized to establish and publish Bremerton Public Records Act Rules to provide the public with full access to public records consistent with the Act.

1.06.020 PUBLIC RECORDS OFFICER.

The City Clerk, or his or her designee, shall be the public records officer for the City and is authorized to establish and implement policies and procedures for responding to requests for public records.

1.06.030 PRODUCTION OF PUBLIC RECORDS — GENERALLY SCOPE OF RULES AUTHORIZED.

As required by law or to the extent deemed necessary or appropriate, the Bremerton Public Records Act rules will contain:

(a) ~~Unless exempt from disclosure pursuant to Chapter 42.56 RCW or other applicable federal or state law, public records shall be available for inspection and copying. The City shall, upon request, make public records 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~~

inspection or disclosure. Failure of the City to fully comply with any provision of this chapter shall not result in any liability imposed upon the City other than that outlined in Chapter 42.56 RCW. A description of Bremerton city services, the public records officer's contact information, the hours and location for inspection of public records and the public records officer's responsibilities under the Public Records Act;

~~(b) The City need only 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. The City is not required to create records or documents in response to a request for public records that do not exist at the time the request is made. The procedure for making, responding to, inspecting and copying records requests; protecting records from damage or disorganization; preventing excess interference with Bremerton's other essential functions; protecting the rights of others; providing "fullest assistance" to requestors and timely action on public records requests;~~

~~(c) For informational purposes, a list of laws in addition to the Act that exempts or prohibits the disclosure of public records held by Bremerton;~~

~~(d) Definitions as necessary or appropriate related to the Act.~~

1.06.040 REQUESTS FOR PUBLIC RECORDS AUTHORITY TO AMEND RULES.

~~(a) Any person wishing to inspect or copy public records may make the request on the City's request form, or by letter, fax, or electronic mail.~~

~~(b) The public records request may be submitted on the public records request form provided by the City or in another written format that contains the following information:~~

~~(1) The date and time of the request;~~

~~(2) The name of the requestor;~~

~~(3) The full address, telephone number and/or e-mail address of the requestor;~~

~~(4) Adequate identification of the public records:~~

~~(i) The title and date of the requested record, if known.~~

~~(ii) The location of the requested record, if known;~~

~~(5) Whether the requestor intends to inspect the records or to obtain a copy of the records, at the cost set forth in BMC 1.06.090.~~

~~(c) Requests for public records shall be submitted to the City Clerk, City of Bremerton, 345 6th Street, Suite 600, Bremerton, Washington 98337 or to a designated City Public Records Coordinator pursuant to subsection (d) of this section. All requests shall comply with subsections (a) and (b) of this section.~~

~~(d) The following departments shall have designated Public Records Coordinators who may receive and/or respond to public record requests directly for the specific records as identified.~~

~~(1) The Police Department for requests to inspect and/or copy a police or incident report.~~

~~(2) The Fire Department for requests to inspect and/or copy a fire report or an aid report.~~

~~(3) The Department of Community Development for requests to inspect and/or copy a planning file.~~

(4) — The Department of Public Works and utilities for requests to inspect and/or copy a public works file.

(e) — The City Clerk may designate other employees as Public Records Coordinators for purposes of this chapter.

(f) — If the record requested is not identified in subsections (d)(1) through (4) of this section, or the requestor is unsure of where to file the request, the request shall be filed with the City Clerk. The City Clerk shall have the authority to amend the Bremerton Public Records Act rules as necessary or appropriate to conform to laws or, as appropriate, to enhance services to the public, protect privacy, and/or increase efficiency in administering the Act to the fullest extent permitted by law.

1.06.050 INITIAL RESPONSE TO REQUEST AUTHORITY TO PUBLISH RULES.

(a) The City shall make an initial response to the request for public records within five (5) business days of receipt of the request. In the event a request for public records is received after 5:00 p.m., the request shall be deemed to have been received on the next business day.

Depending upon the nature of request, the City may respond initially by:

(1) — Producing the record after the payment of applicable fees, if any;

(2) — Acknowledging in writing the City's receipt of the request accompanied by an estimate of the time necessary for further response;

(3) — Denying the request in writing accompanied by an explanation of the basis for the denial;

(4) — Acknowledging in writing that the records responsive to the request are available for inspection or copying, and that pursuant to BMC 1.06.090 a deposit is required for copies; or

(5) — Requesting in writing a clarification of the request.

(b) — In the event that the requestor completes the City's standard public records request form, the City may return a copy of the request to the requestor with an estimation of time necessary to provide a final response to the request. This indication on the form of the estimation of time constitutes and satisfies the City's initial response required within five (5) days of receipt of the public disclosure request. Records provided in response to a public records request shall be those documents of record available for disclosure as of the date of the request. The public records officer shall make the Bremerton Public Records Act rules readily available to the public in electronic and paper mediums.

1.06.060 FINAL RESPONSE TO REQUEST COSTS OF PROVIDING PUBLIC RECORDS.

(a) — A public disclosure request is not continuing in nature. In the event additional records are created after the date of the requestor's original public records request, the requestor will need to submit a new request. If, after the City has informed the requestor that it has provided all available records, and shortly thereafter becomes aware of additional responsive documents existing at the time of the request, it shall promptly make the additional documents available to the requestor for copying and inspection.

(b) — Any records or portions of records disclosed by the City will be provided to the requestor in the same format as they are retained; provided, that any disclosable records

contained on a computer or other electronic or mechanical device shall, at the discretion of the City, be provided in printed form, on disk, or in another format.

(c) — If the requestor specifies a format in which the records should be disclosed, the City will disclose the records in the requested format if: (1) it is determined that disclosable records exist, (2) the City is capable of providing the records in the format requested, (3) the format requested is reasonable and does not require additional staff time or equipment, and (4) the requestor pays all fees required by this chapter.

(d) — Before releasing a record the City may provide notice to a person named in a public record or to whom the record specifically pertains or who otherwise might have an interest in the record to provide said person an opportunity to seek legal action to prevent the release of the record.

(e) — The City's response to the request shall be deemed complete and final upon: (1) requestor's inspection of the records, or (2) in the event photocopies were requested, upon notification to the requestor that the photocopies requested are available for payment and pickup.

~~1.06.070 — INSPECTION OF RECORDS.~~

~~In the event a requestor chooses to inspect records, the City shall notify the requestor once the records which respond 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 thirty (30) calendar days. In the event a requestor fails to contact the City Clerk or applicable Public Records Coordinator, within thirty (30) calendar days of being notified that the records are available for inspection: (1) the records shall be returned to the originating department; and (2) the requester will need to submit a new request for the records and the process will begin anew. If an installment response to a records request is not viewed within thirty (30) calendar days, the City is not obligated to fulfill the balance of the request.~~

~~1.06.080 — OVER THE COUNTER RECORDS.~~

~~Each City department may designate within its own department certain "over the counter" records available to the public for immediate inspection and/or distribution without the requirement of a formal public records request as set forth in this section. In the event a copy 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 shall provide the first fifty (50) pages free of charge. However, if the documents responsive to a request exceed fifty (50) pages, a public disclosure request will then need to be completed and the applicable duplication cost paid for those copies over fifty (50) pages.~~

~~1.06.090 — FEES FOR PRODUCTION OF RECORDS.~~

(a) Fees for Records. The fees for the costs of duplication and production of copies, whether photocopying or other form of duplication, including, but not limited to, electronic copies of records, shall be as established in Chapter 3.01 BMC, Rate Table A. If the requested record is an eight and one-half (8-1/2) by fourteen (14) inch page or smaller, the first fifty (50) pages responsive to a request are free of charge. In addition to these fees, each department may:

(1) Establish fees for records that do not fall into one (1) of the categories set forth in Chapter 3.01 BMC, Rate Table A. The department's fee schedule shall be available for inspection upon request.

(2) — If the request requires customized access to electronic records, the City may charge actual costs of such access, including staff time and other direct costs.

(3) — Send the project to a commercial copying center and bill the requestor for the amount charged by the vendor. The City may arrange with the requestor for him or her to pay the vendor directly.

(4) — Charge actual costs of mailing or other means of delivery. The City may not charge sales tax on the costs of copies made by the City.

(b) — Deposit and Installments. Payment of the fees for the costs of duplication of records shall be made prior to the delivery of public records to the requestor. In the event that it is estimated that the copying fees applicable to a particular records request exceeds twenty five dollars (\$25.00), the City, at its discretion, may require the requestor to deposit a sum equal to ten (10) percent of the estimated cost prior to copying of the records. The City may also require the payment of the remainder of the copying fees before providing all the records, or the payment of the fees of an installment before providing an installment. If an installment response to a records request is not claimed or reviewed within thirty (30) calendar days, the City is not obligated to fulfill the balance of the request.

(c) — Payment. All payments shall be made by cash, money order, or check payable to the City of Bremerton. Payment shall be made in person to the City Clerk or applicable department Public Records Coordinator or at the customer service desk located at City Clerk's office. Payments may also be made by mail to the City Clerk, City of Bremerton, 345 6th Street, Suite 600, Bremerton, Washington 98337.

(d) — Costs Waived. The City Clerk, or Public Records Coordinator, has the discretion to waive copying charges for administrative convenience.

1.06.070100 RETENTION OF PUBLIC RECORDS INTERPRETATION OF RULES.

(a) — The City hereby adopts, as the City's record schedule, the "General Records Retention Schedule for all Local Government Agencies" adopted by the Washington State Local Records Committee dated January 2005, as currently enacted and as hereinafter amended.

(b) — Retention of electronic records shall be pursuant to City Policy No. 2-20-06 entitled "Electronic Records Retention" as currently enacted and as hereinafter amended. The Act and the rules will be liberally construed consistent with the Act's intent and case law, including in favor of disclosure as provided by law.

1.06.080 REVIEW OF DENIAL OF REQUEST.

The Bremerton Public Records Act rules shall provide for obtaining internal administrative review of denials, in whole or part, of public records requests.

1.06.090110 INDEX OF PUBLIC RECORDS SOPT OUT OF INDEX OF RECORDS.

(a) Findings.

(1) RCW 42.56.070 requires all cities and public agencies to maintain and make available a current index of all public records.

(2) RCW 42.56.070(4)(a) provides that if maintaining such an index would be unduly burdensome, or would interfere with agency operation, a City need not maintain such an

index but it must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.

(3) The City of Bremerton is comprised of departments, their divisions and subdivisions, which maintain separate databases and/or record-keeping systems for the indexing of records and information.

(4) Because the City has records which are diverse, complex and stored in multiple locations and in multiple computer systems and databases, it is unduly burdensome, if not physically impossible, to maintain a central index of records.

(5) The City of Bremerton will make available for inspection and/or copying all nonexempt public records, including any indexes that are maintained by the City pursuant to the Public Disclosure Act, Chapter 42.56 RCW.

(b) Order Regarding Public Records. Based upon the findings set forth in subsection (a) of this section, and pursuant to RCW 42.56.070(4)(a), the City Council orders the following:

(1) The City of Bremerton is not required to maintain a current index of public records due to findings of the City Council that the requirement is unduly burdensome and such a list is nearly impossible to create and/or maintain; and

(2) Pursuant to Chapter 42.56 RCW, the City of Bremerton shall make available for public inspection and/or copying all public records and any indexes of public records maintained by the City to the extent not exempt from inspection and/or copying pursuant to Chapter 42.56 RCW or other applicable law.

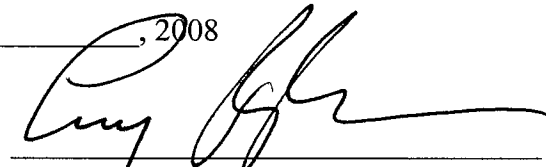
SECTION 2. Severability. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall take effect and be in force ten (10) days from and after its passage, approval and publication as provided by law.

PASSED by the City Council the 20th day of May, 2009


CECIL McCONNELL, Council President

Approved this 29th day of May, 2008


CARY BOZEMAN, Mayor

ATTEST:


CAROL ETGEN, City Clerk

APPROVED AS TO FORM:

 For
ROGER A. LUBOVICH, City Attorney

PUBLISHED the 29th day of May, 2009
EFFECTIVE the 8th day of June, 2009
ORDINANCE NO. 5080

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