

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2016-02

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 2 TO CLARIFY CITY LAW REGARDING MANAGEMENT OF PUBLIC DOCUMENTS AND RECORDS AND TO IDENTIFY CITY RECORDS THAT ARE NOT OPEN TO PUBLIC INSPECTION DUE TO PRIVACY CONCERNS

WHEREAS, the City's public records ordinances are general and in need of clarification; and

WHEREAS, state law regarding public records applies to municipalities, and it is therefore appropriate to reflect those laws in the City's code of ordinances and also to supplement those laws with provisions tailored to suit the City's local record keeping policies;

WHEREAS, the City's personnel regulations state that personnel files are confidential and open only to limited members of City staff, including the employee; and

WHEREAS, other categories of records are likewise regarded as confidential and not subject to inspection or production under city, state, or federal law; and

WHEREAS, existing City code is not clear that personnel records and other categories of records are confidential; and

WHEREAS, the City wishes to clarify its laws regarding records retention and production, as well as those documents that are not subject to inspection;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Repeal and Reenactment of Chapter 2.01. Chapter 2.01 of the Dillingham Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 2.01 CITY RECORDS

- 2.01.010 Definitions.
- 2.01.020 Documents requiring assent of the city.
- 2.01.030 City records declared public property.
- 2.01.040 Policy of the city.
- 2.01.050 City Records subject to inspection and copying by public.
- 2.01.060 Exceptions to inspection and copying of city records.
- 2.01.070 City records related to litigation.
- 2.01.080 Request for city records - Response by city agency.
- 2.01.090 Fees for city record requests.
- 2.01.100 Records retention and disposal schedule.
- 2.01.110 Code to be kept on file—Copies furnished.

2.01.010 Definitions.

The following words and phrases, when used in this chapter, shall have the meanings set forth in this section:

“City agency” means the City of Dillingham and any department, division, office, board, commission, or other instrumentality of the city.

“City record” means any book, paper, file, account, writing, including drafts and memorializations of conversations, or other item, regardless of format or physical characteristics, that is developed or received by a city agency, and that is preserved for its informational value or as evidence of the organization or operation of the city agency; “city record” does not include a proprietary software program.

“Confidential information” means information the disclosure of which is restricted by a city, state, or federal statute, ordinance, regulation, rule or judicial decision or by a written agreement between the city and a third party.

“Litigation” or “involved in litigation” means a party to litigation or representing a party to litigation, including obtaining city records for the party.

“Requester” means a person who requests to inspect or obtain a copy of a city record.

2.01.020 Documents requiring assent of the city.

All legal documents requiring the assent of the city shall be:

- A. Approved by the city council;
- B. Signed by the mayor on behalf of the city, or in the mayor’s absence, by the mayor pro tempore; and
- C. Attested to with the seal affixed by the city clerk, or in the absence of the city clerk, by the deputy clerk.

2.01.030 City records declared public property.

- A. All city records are property of the city. Unless otherwise permitted or required by law, no person may:
 - 1. Deface, alter or destroy a city record;
 - 2. Remove a city record from the city’s possession;
 - 3. Disclose confidential information in a city record; or
 - 4. Except for a city employee in the course of performing official duties, inspect or copy confidential information in a city record.
- B. In addition to any other penalty provided by law, violation of subsection A of this section by a city employee may be cause for disciplinary action.

C. The city may initiate a civil action to recover a city record that has been unlawfully removed from the city's possession.

2.01.040 Policy of the city.

A. It is the policy of the city to provide access to city records to serve the interest of the public in being informed about the business and affairs of the city. The purpose of this chapter is to carry out that policy while avoiding unwarranted invasions of personal privacy and recognizing the public interest in confidentiality in limited areas of city affairs. This chapter should be construed to require disclosure of all city records except those specifically exempted by city, state, or federal law.

B. The provisions of this chapter govern all matters pertaining to city records. Any matter pertaining to city records that is not directly addressed herein shall be governed by Alaska statute chapter 40.25.

2.01.050 City Records subject to inspection and copying by public.

A. Except as provided in DMC 2.01.060, 2.01.070, and chapter 2.60, or by other provisions of city, state, or federal law, a city agency shall make city records open to inspection during regular business hours by any person and provide copies of requested city records, subject to reasonable restrictions regarding the place and manner of inspection and payment of any fee that is applicable under Section 2.01.090.

B. Nothing in this chapter requires the city to create city records, or to compile, summarize, outline or in any other way create information from existing city records in order to respond to a records request by a member of the public.

C. The city is not required to produce city records for inspection, or to copy records, in the exact form or medium in which they are stored; provided, that any alteration of the form or medium of a city record shall not change the substantive content of the information contained in the city record.

2.01.060 Exceptions to inspection and copying of city records.

A. The following city records are not subject to inspection or copying under this chapter:

1. City personnel records that are confidential under Section 2.60.020.
2. Records pertaining to juveniles unless disclosure is authorized by law.
3. Medical and related public health records.
4. Records required to be kept confidential by a federal law or regulation, or by state law or this code.
5. Records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information:
 - a. Could reasonably be expected to interfere with enforcement proceedings;
 - b. Would deprive a person of a right to a fair trial or an impartial adjudication;
 - c. Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

- d. Could reasonably be expected to disclose the identity of a confidential source;
 - e. Would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;
 - f. Would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or
 - g. Could reasonably be expected to endanger the life or physical safety of an individual.
6. City records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature, if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it.
 7. Records or information pertaining to a plan, program or procedures for establishing, maintaining, or restoring security in the city, or to a detailed description or evaluation of systems, facilities, or infrastructure in the city, but only to the extent that the production of the records or information:
 - a. Could reasonably be expected to interfere with the implementation or enforcement of the security plan, program or procedures;
 - b. Would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or
 - c. Could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare.
 8. Bids or proposals solicited for a city procurement, until after a final contract award has been made.
 9. Trade secrets and commercial or financial information whose disclosure would be likely to cause substantial harm to the competitive position of the person from whom the information was obtained. Sales tax returns and information the city has agreed in writing to keep confidential are specifically exempt from inspection and copying under this subsection.
 10. The name, address, or other personal identifying information of a person who has used materials made available to the public by the city library.
 11. Privileged communications between the city and an attorney and privileged attorney work product unless the city has decided to waive the privilege.

2.01.070 City records related to litigation.

A city record that is subject to disclosure and copying under this chapter remains a city record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings involving a city agency, except that, a person involved in litigation must seek the disclosure of such records in accordance with the rules of procedure applicable in a court or an administrative adjudication.

2.01.080 Request for city records - Response by city agency.

- A. A requester shall submit a written request to inspect or obtain a copy of a city record to the city agency that is the custodian of the city record. When required under Section 2.01.090, the request shall be accompanied by the applicable fee.

- B. A city agency that receives a request to inspect or provide a copy of a city record shall respond as follows:
 - 1. If the city record is subject to inspection under this chapter and is readily available, the city agency may permit the requester to inspect the city record, and provide the requester with a copy of the city record, at the time the inspection is made.

 - 2. If the requested city record is subject to inspection under this chapter but either the city record is not immediately available, or staff resources of the city agency are not sufficient to respond to the request when it is made, the city agency shall provide the city record for inspection or provide a copy of the record as requested within ten (10) business days after receiving the request.

 - 3. If the city agency must determine whether the city record is subject to inspection under this chapter, the city agency shall make that determination within ten (10) business days after receiving the request, and at that time either:
 - a. Provide the city record for inspection or provide a copy of the record as requested; or

 - b. State in writing that the city record is not subject to inspection, including a citation to the provision of city, state or federal law that authorizes or requires the withholding of the city record from inspection.

- C. The city agency may extend the initial ten (10) business day period established under subsection B of this section for a period not to exceed ten (10) additional business days by providing notice to the requester within the initial ten (10) business day period. The notice must state the reason for the extension and the date by which the city agency expects to be able to furnish the requested record or to issue a determination that the record is not subject to disclosure.

2.01.090 Fees for city record requests.

- A. The city council from time to time shall establish the standard unit cost of copying city records under this chapter. The fee for copying a city record may not exceed the standard unit cost.

- B. If the city personnel time required to produce city records for one requester in a calendar month exceeds five person-hours, the requester shall pay the city agency for the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay a deposit to the city agency before the search is performed and shall pay the fee in full before the records are provided to the requester.

2.01.100 Records retention and disposal schedule.

- A. The city clerk shall prepare a schedule of records specifying which records are to be:
 - 1. Retained permanently;

2. Destroyed; or
3. Disposed of routinely in the regular course of public business.

B. The record retention schedule shall be adopted by resolution of the council. The records retention schedule shall list, with sufficient detail for identification, records without legal or administrative value or historical interest to be destroyed and periodically disposed of by the city. Records to be destroyed shall be certified by the city clerk as having no legal or administrative value or historical interest.

C. The city council, by resolution, may authorize the disposal and method of disposal of the records listed in the record retention schedule found by the council to be without legal or administrative value or historical interest, including advance authorization to dispose of routine records. Upon disposal, the city clerk shall file a descriptive list of the records disposed and method of disposal with the department from which the records were drawn and with the permanent city records.

D. Each department head shall be held responsible for the preservation of all public records under his jurisdiction and shall provide for a system of filing. No public records, reports, correspondence or other data relative to the business of any department shall be destroyed or removed permanently from the files without the knowledge and approval of the city clerk in accordance with the schedule prepared by the city manager.

2.01.110 Code to be kept on file—Copies furnished.

This code with amendments is on file with the city clerk and shall be made available at no more than cost to the public for inspection on request. A copy of this code shall be furnished to the courts as needed or requested.

Section 2. Amendment of Chapter 2.60. Chapter 2.60 of the Dillingham Municipal Code is hereby amended by the addition of a new Section 2.60.020 to read as follows:

2.60.020 Personnel records and files.

Personnel records containing information about employees will be maintained as set forth herein. Access to personnel files is authorized only as delineated below.

A. Personnel Records. Personnel records are those documents which reflect an individual's status during the period of his or her employment and include, but are not limited to, employment applications, prior employment, performance appraisals, disciplinary actions, personnel action forms, and tax withholding and benefits information. The city shall maintain a file containing the personnel records of each employee. Medical records shall be maintained in a separate file but are considered part of the personnel records. A supervisor may also establish and maintain a file for individual employees for use during the performance evaluation process.

B. Access to Personnel Records.

1. Employees shall have access to their own personnel records during normal office hours within a reasonable period of time following the employee's request to review the employee's personnel records. A personnel file may be inspected by the employee's department head, the city manager, and any other city employee or agent authorized by the manager. Access to employee personnel files by other persons shall be governed by subsection (D) of this section.

2. Review of any personnel files shall be conducted in the presence of the personnel record keeper. No document shall be removed from a personnel file without prior written approval from the manager and notice to the employee.
3. Employees may comment in writing on any document placed in their personnel files.

C. Confidentiality Policy Regarding Personnel Records. State and federal law generally provide that most city documents are public records available for inspection by members of the public. However, city, state, and federal law recognize that personal information contained in a personnel file is confidential unless a member of the public's need to review it outweighs an employee's right to privacy in the information. Therefore, all records maintained by a city agency of any employee shall be confidential to the extent that the record includes an analysis, evaluation or critique of an employee's performance, or if the disclosure of the records is likely to reveal personal information about an employee or his dependents, such as telephone numbers and addresses, or otherwise constitute an unwarranted invasion of privacy. However, the City Manager may authorize municipal employees, agents, and contractors to review confidential records and may make such records of a compelling public interest available to others upon order of a court of competent jurisdiction.

D. Access to City Personnel Records. The following information or records are generally available for public inspection, in accordance with the procedures established by this chapter:

1. The names and position titles of all city employees;
2. The position held by any city employee;
3. Prior positions held by any city employee;
4. The dates of hire and separation of a city employee;
5. The compensation authorized for a city employee;
6. Time sheets; and
7. Other information that the City Manager determines does not contain any personal information the release of which would be an unwarranted invasion of privacy, or concern the personal, intimate or otherwise private life of the employee or the employee's family.

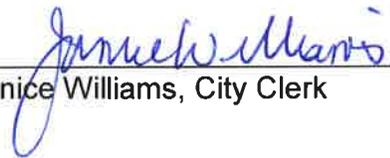
Section 3. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

March 3, 2016.


Alice Ruby, Mayor
[SEAL]

ATTEST:


Janice Williams, City Clerk

City of Dillingham Information Memorandum

Agenda of: March 3, 2016

Attachment to:

Ordinance No. 2016-02 / Resolution No. _____

Subject:

Amend Title 2 to clarify City law regarding management of public documents and records and to identify city records that are not open to public inspection due to privacy concerns

City Manager: Recommend Approval

Signature: Rose Koera

Fiscal Note: Yes No

Funds Available: Yes No

Other Attachments:

- copy of Personnel Regulations regarding Personnel Records 1.20

Summary Statement:

This ordinance was introduced at the February 4, 2016 Council Meeting. The purpose of this ordinance is to provide clear guidance for staff and management in managing public records by incorporating state law into the City's Municipal Code.

This code amendment has been vetted through the Code Review Committee and is being recommended for adoption by the Council.

An advertisement for a Public Hearing on Ordinance No. 2016-02 is scheduled to be placed in the February 25, 2016 edition of the Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing, which is scheduled for March 3, 2016.

Attachment to: 2016-02 / Resolution No. _____
Ordinance No. _____

Summary Statement continued:

Route to	Department Head	Date
X	Finance Director	3/8/16
X	City Clerk	3/3/16

I. INTRODUCTIONS AND GENERAL PROVISIONS

1.00. **AUTHORITY** The City Manager shall regulate the personnel functions and shall have the authority to appoint personnel, and formulate and enforce regulations concerning personnel, pursuant to title 2, Chapter 2.21, of the Dillingham Municipal Code.

1.05. **PURPOSE** It is the general purpose of these regulations to establish uniform policies and procedures and a systematic approach to guide and improve the quality of personnel administration.

1.10. **SCOPE OF POLICIES** These regulations shall apply to all non-elected employees of the City except where these policies contradict specific provisions of a negotiated contract. Also, the Chief of Police and the Fire Chief for the City of Dillingham may recommend and enforce, with the approval of the City Manager, separate personnel policies and procedures for their respective employees. Such Police and Fire policies and procedures shall be in addition to the personnel policies.

1.15. **PERSONNEL FUNCTIONS** The personnel functions shall be managed by the City Manager or his/her designee. Central files pertaining to personnel matters including benefits, forms, and records shall be maintained. The City Manager may delegate these personnel functions to a Personnel Officer or to department heads, except those prescribed in Chapter Seven, Employee Discipline and Grievance Procedure.

1.20. **PERSONNEL RECORDS** For each employee, two files will be kept. One file shall be maintained in the central personnel files. This file shall include: employee applications, reports of results of employee investigations, reports of work performance, progress and disciplinary actions, personnel actions and so forth. The file shall also include a copy of the job descriptions for all positions the employee has held, and current and past salary data. A second file will be maintained in the Finance Department which will contain only such data as may be necessary to perform the functions of the payroll technician. Such data may include pension data and Personnel Action Forms showing pay and promotion/demotion information, etc. Personnel files are confidential as defined in Title 2 of the Dillingham Municipal Code and open only to the City Manager, the employee, the department or agency head, the personnel record keeper and the payroll technician who must handle the records for processing. Files are not to be open to the public or other employees. Files will be open to the City Council only in the case of an appeal by the employee concerning a dismissal or suspension, and the file will be open only to those persons entitled to be present at the appeal, as specified in Section 7.85, Appeal Procedures.

1.22. **REFERENCE REQUESTS** When the City receives requests for references on a terminated employee, such requests must be handled by the City Manager or his/her designee. Only the following information may be provided without the former employee's written permission: date of hire, position(s) held, rate of pay, and date of termination.

1.23. **CONTACTS WITH CITY ATTORNEY OR THE MEDIA** It is the policy of the City that all contacts with the City Attorney or media personnel must be handled through the City Manager or his designee.