

Introduced by: Mayor Robb  
Introduction Date: March 22, 2016  
Public Hearing: April 12, 2016  
Action: Passed  
Vote: 6-0

## *CITY OF BETHEL, ALASKA*

### **Ordinance #16-10**

#### **AN ORDINANCE BY THE BETHEL CITY COUNCIL REPEALING AND REPLACING BETHEL MUNICIPAL CODE 2.40, ACCESS TO PUBLIC RECORDS**

**SECTION 1. Classification.** This is a Codified Ordinance and shall become part of the Bethel Municipal Code.

**SECTION 2. Amendments.** Bethel Municipal Code Chapter 2.40, Access to Public Records is repealed in its entirety and enacted as follows (old language is stricken):

#### **Chapter 2.40 ACCESS TO PUBLIC RECORDS**

**Sections:**

- ~~2.40.010 — Public records.~~
- ~~2.40.020 — Access and inspection of public records.~~
- ~~2.40.030 — Copies of public records.~~
- ~~2.40.040 — Compilation or creation of records.~~
- ~~2.40.050 — Exemptions for particular records.~~
- ~~2.40.060 — Access to city personnel records.~~
- ~~2.40.080 — Special procedures for obtaining access to city personnel records.~~
- ~~2.40.100 — Appeal of denial of request.~~

~~2.40.010 Public records.~~

~~Except as provided by BMC 2.40.050, or by other provision of municipal, state, or federal law, the books, records, papers, files, accounts, writings, and transactions of the city are public records open to inspection by the public under reasonable rules during regular office hours.~~

~~2.40.020 Access and inspection of public records.~~

~~Public records may be inspected at the place where the records are kept during regular office hours. All city officers and employees shall, consistent with the orderly conduct of city business, make a good faith and diligent effort to respond to requests for inspection of records. If responding to one (1) or more requests for inspection of public records made by the same person within a calendar month are anticipated to require more than four (4) hours of labor to complete, the city may require the person making the request to pay the city's labor costs for the period in excess of four (4) hours actually spent by any city employee in responding to the request. The costs may not exceed the unit cost~~

~~of salary and benefits for employees who are involved in the search. The city clerk is authorized to establish rates and costs for all inspections of public records.~~

~~2.40.030 Copies of public records:~~

- ~~A. Certified Copies. The city clerk shall give, on request and payment of costs, a certified copy of any public record.~~
- ~~B. Photocopies. The city shall give, on request and payment of costs, copies of any public record.~~
- ~~C. Charge for Copies. The charge for copies (whether certified or not) may not exceed the cost to the city, which cost may include all photocopy, clerical and other costs directly related to the provision of the copies. Payment for copies shall be received before making copies. The city clerk is authorized to establish rates and charges for copies of public records. The city clerk may, in his or her discretion, waive charges for incidental copies.~~

~~2.40.040 Compilation or creation of records:~~

~~Nothing in this code shall require the city to create records, compile, summarize, outline or in any other way create information from existing public records.~~

~~2.40.050 Exemptions for particular records:~~

~~The following documents are not public records:~~

- ~~A. Documents which reveal the current or past financial or medical status of any specific individual;~~
- ~~B. Records of vital statistics and adoption proceedings;~~
- ~~C. Records pertaining to juveniles;~~
- ~~D. Records required to be kept confidential by federal, state, or city law, statute, ordinance, regulation or contract;~~
- ~~E. Trade secrets;~~
- ~~F. Patented and/or copyrighted material;~~
- ~~G. Records of engineering, marketing, accounting, or other technical or financial data, which, if released, would provide a competitive advantage to any other persons or business engaged in similar or related activities;~~
- ~~H. Proprietary information which a manufacturer, consultant or provider reasonably expects to be kept privileged or confidential to protect the property interests of persons providing the information or data;~~
- ~~I. Communications between any agency or city employee and the city attorney which contain legal advice or analysis or concern potential, pending or actual litigation. This subsection does not protect from disclosure documents which were public records prior to the commencement of the litigation. Public records which are otherwise subject to disclosure may not be protected from disclosure by submission to the city attorney. Any documents marked "confidential" which are submitted to any agency or city employee from the city attorney's office shall only be produced if the city attorney so authorizes.~~

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~~2.40.060 Access to city personnel records.~~

- ~~A. City personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.~~
- ~~B. The following information or records are 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. Any resume submitted by any person seeking employment with the city for one (1) of the following positions:
    - ~~a. City manager;~~
    - ~~b. Public works director;~~
    - ~~c. Finance director;~~
    - ~~d. Chief of police;~~~~
  - ~~7. Any performance evaluation of the city manager but only to the extent the performance evaluation does not contain any personal information the release of which would be an unwarranted invasion of privacy, or deal with the personal, intimate or otherwise private life of the city manager.~~~~

~~2.40.080 Special procedures for obtaining access to city personnel records.~~

~~All persons who wish copies of city personnel records shall submit their request for this information in writing to the city clerk. Within five (5) working days after receipt of such a request, the city clerk shall give the city employee for whom access to information has been requested a copy of the request. If the employee objects to release of the requested information, the employee shall inform the city clerk of the objection and the reasons for the objection in writing within five (5) working days after receipt of the copy of the request. The city clerk shall then make a decision in writing as to whether the record will be provided and give a copy of the decision to both the affected employee and the person requesting the personnel record. Any person not satisfied with the decision of the city clerk may appeal the clerk's decision to the city council at its next regularly scheduled meeting.~~

~~2.40.100 Appeal of denial of request.~~

~~In the event any person requests to inspect or have copied any document and is not allowed to do so, the person may appeal that decision to the city clerk. If not satisfied with the decision of the city clerk, the person shall be notified within five (5) working days of that decision of their right to appeal to the city council at its next regularly scheduled meeting. The decision of the city council shall be final and binding on the city and the person making the appeal.~~

- 2.40.010 Definitions
- 2.40.020 City records declared public property
- 2.40.030 City records subject to inspection and copying
- 2.40.040 City records related to litigation
- 2.40.050 Exemptions for particular records
- 2.40.060 Response to requests for public record
- 2.40.070 Copying charges for records
- 2.40.080 Denial of request
- 2.40.090 Appeal from denial of a public record
- 2.40.100 Appeal determination

### **2.40.010 Definitions.**

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

- A. "City agency" means any department, division, office, board, commission, or other instrumentality of the city.
- B. "City record" means any book, paper, file, account, writing, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a city agency, or by a private contractor for a city agency, and that are preserved for their informational value or as evidence of the organization or operation of the city agency; "city record" does not include a proprietary software program.
- C. "Confidential information" means information the disclosure of which is restricted by a city, state or federal law, ordinance, regulation, rule or judicial decision.
- D. "Litigation" or "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining city records for the party.
- E. "Proprietary information" means information regarding techniques, methods, strategies, or other unique data in which a valuable property interest may be established or which may be used by one (1) person or entity for a competitive advantage.
- F. "Requester" means a person who makes a request to the city to inspect or obtain a copy of a city record.

### **2.40.020 City records declared public property.**

- A. All city records are the 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;

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3. Disclose, or allow disclosure of, confidential information in a city record;
  4. Except for a city officer or 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 up to and including discharge.
- C. The city may initiate a civil action to recover a city record that unlawfully has been removed from the city's possession, and to obtain a remedy for any violation of the provision of this section.

#### **2.40.030 City records subject to inspection and copying.**

- A. Except as provided in Section 2.40.040 and 2.40.050 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 the payment of any fee.
- 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, at the request of a member of the public.
- C. The city is not required to produce city records for inspection, or to copy city 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 public record.

#### **2.40.040 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, with respect to a person involved in litigation, the records sought shall be disclosed in accordance with the rules of procedure applicable in a court or an administrative adjudication. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining city records for the party.

#### **2.40.050 Exemptions for particular records.**

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

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1. Communications between any agency and the city attorney or other attorney engaged to represent the city which pertain to legal matters in actual or impending litigation. In addition, records privileged under the attorney/client or work-product privileges are included in this exception. However, this subsection does not protect from disclosure documents which were public records prior to the legal situation, and public records which are otherwise subject to disclosure may not be protected from disclosure by mere submission to the attorney.
2. Personnel, payroll or medical files or records, or other files or records that reveal the financial or medical status of any specific individual, the release of which would constitute an unwarranted invasion of privacy. This subsection does not protect from disclosure the following personnel information:
  - a. The names and position titles of all city employees;
  - b. The positions held by city employees;
  - c. Prior positions held by city employees;
  - d. Whether a city employee is in the collective bargaining unit;
  - e. The dates of appointment and separation of a city employee;
  - f. The salary and fringe benefits paid to any city employee. A city employee has the right to examine the employee's own personnel files and may authorize other to examine those files.
3. Information which municipal governments engaged in collective bargaining regularly considers to be privileged or confidential for purposes of successful collective bargaining.
4. Records pertaining to juveniles unless disclosure is authorized by law.
5. Any records which are accorded confidential or privileged status by this code or which are accorded confidential or privileged status under state or federal law.
6. Records or information compiled by 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;

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- 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 circumventing of the law;
  - g. Could reasonably be expected to endanger the life or physical safety of an individual;
7. Name, address, telephone number or other identifying information about complainants in actions to enforce building, zoning, environmental, animal protection or other city ordinances or regulations. This subsection does not protect from disclosure the contents of the complaint, so long as the complainant is not identifiable; or the name of the complainant when such disclosure becomes necessary to fair and just disposition of the charge or complaint in enforcement proceedings.
  8. 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.
  9. Records or information pertaining to a plan, program or procedure 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.
  10. Bids submitted in response to a request for bids but only until such times as the bids are publicly opened;
  11. Proposals submitted in response to a request for proposals but only until such time as the City Council has approved or disapproved the recommended candidate.
  12. Trade secrets and commercial or financial information the disclosure of which would be likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

13. Proprietary information which a manufacturer, consultant or provider reasonably requires to be kept privileged or confidential to protect the property interests of persons providing the information or data.
  14. Information obtained by and in the custody of insurance carriers insuring the city and their attorneys and agents regarding possible and pending claims against the city.
  15. Personal information other than name and address given to the city with the legitimate expectation of privacy in conjunction with licenses, permits or other city services.
  16. Draft audit reports and supporting work papers until respective management officials have had the opportunity to review the draft audit findings for accuracy of fact and substance and provide written responses to the auditor. The maximum time allowed for this exemption will not exceed 30 days from the date of the draft audit report. Financial audits are released after council acceptance.
  17. Appraisals used in property negotiations, during such negotiations, unless the city manager determines it is in the best interest of the city to release the information to the other party.
  18. Income tax returns, Social Security numbers, employer identification numbers, and similar personal data, unless release of the information is necessary in litigation or an administrative proceeding.
  19. Any records otherwise subject to disclosure under this chapter if the requester or the requester's principal is in litigation with the city or a city agency in a judicial or administrative forum. Disclosure of any records relevant to that litigation, or reasonably likely to lead to the discovery of relevant evidence, shall be governed by the rules or orders of that forum (to include AS 40.25.122) and not by this chapter.
  20. Any other record and documents specifically exempted from disclosure by federal or state law or other city ordinance.
- B. Nothing in this section shall prevent a council member, or an agent of the city from reviewing information otherwise confidential under this section if that person has a valid city purpose for reviewing the information and if the person agrees to maintain the confidentiality of the information.

#### **2.40.060 Response to requests for public record.**

- A. All municipal officers and employees shall, consistent with the orderly conduct of city business, make a good faith and diligent effort to provide a rapid and intelligible response to request for inspection of records made pursuant to this chapter.

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- B. A requester shall submit a written request to inspect or obtain a copy of a public record to the city agency that is the custodian of the public record.
- C. A city agency that receives a request to inspect or provide a copy of a public 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 request 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, within ten (10) business days after receiving the request the city agency shall make that determination and at that time either:
    - a. Provide the city record for inspection; or
    - b. Provide a copy of the record as requested; or
    - c. State in writing that the city record is not subject to inspection with the following information:
      1. Date;
      2. Item of information requested;
      3. The specific provision of applicable state, federal or city law exempting the request information in whole or in part from disclosure;
      4. The title and signature of the official withholding the information; and
      5. The right of the requestor to appeal the decision pursuant to BMC section 2.04.090 and 2 AAC 96.340 to include the fee for such appeal, however no appeal bond is required;
      6. The right of the requestor to obtain immediate judicial review of the denial by seeking an injunction from the superior court under AS 40.25.125 however, an election not to pursue injunctive remedies in superior court shall have no adverse effects on the rights of the requestor before the public agency;
      7. A copy of 2 AAC 96.335-2AAC 96.350 must be enclosed with the denial.

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D. 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.

#### **2.40.070 Copying charges for records.**

- A. The council 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. A deposit or prepayment for the record may be required in advance of the search and the fee for the record must be paid in full before the record is disclosed.
- C. If the personnel time required to provide city records for one requester or the agent of a 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 disclosed.
- D. A city agency may reduce or waive a fee when the city agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A city agency may waive a fee of \$5.00 or less if the fee is less than the cost to the city agency to arrange for payment.

#### **2.40.080 Denial of request.**

- A. A request for a public record that complies with this section may be denied only if:
  - 1. The record is not known to exist after the public agency makes a diligent search for it;
  - 2. The record is not in the public agency's possession, and after a diligent search the public agency does not know where the record is to be found;
  - 3. The record has been destroyed in accordance with the city's records retention schedule;
  - 4. Nondisclosure of the record is authorized by a federal, state or city law;

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5. The record is believed to be in the agency's possession but has not yet been located, in which case the agency shall proceed under Subsection D of this section.
- B. A request may be denied only by an agency employee whom denial authority has been delegated by the public agency head. An initial denial of a written request must be in writing as provided in Section 2.40.060C(3)(b).
- C. A denial of a written request for a public record is considered to be issued at the time the denial is delivered to the United States Postal Service for mailing.
- D. If a written request is denied because a record has not yet been located and the record is believed to exist in the City's possession, the agency responsible for maintaining the record shall continue to search until the record is located or until it appears that the record does not exist or is not in the city's possession. An agency employee shall periodically inform the requestor of its progress in searching for the requested information.
- E. A record that is subject of a public records request that has been denied shall not be destroyed or transferred from the city's custody until at least 60 business days after the denial of the record is issued, or if there is an administrative or judicial appeal or other legal action pending at the end of the 60 business day period, until the requestor has exhausted those actions.

#### **2.40.090 Delegation of authority.**

The delegated authority to review and determine appeals of agency decisions on the denial of public requests for information is provided to the city clerk. In the event the city clerk is unable to review and determine an appeal due to a conflict of interest or other just cause, the city clerk may delegate the authority to a hearing officer.

#### **2.40.0100 Appeal from denial of a public record.**

- A. *Appeal of Agency Decision.* In the event a person is denied access to requested information, the person may submit a written appeal to the city clerk within 60 business days from the issuance of the denial. The written appeal must include:
- a. Name, address and contact number for the person filing the appeal;
  - b. Name, address and contact number for the attorney of record representing the appellant (if applicable);
  - c. A description of the record requested;
  - d. The name of the agency employee issuing the denial;
  - e. The date of the denial;

- f. A statement clearly identifying the decision being appealed and the basis for the appeal.
- B. *Appeal of Agency, Failure to respond.* In an appeal from the failure of an agency to respond to the records request within the appropriate time limit, the appeal must include:
  - a. Name, address and contact number for the person filing the appeal;
  - b. Name, address and contact number for the attorney of record representing the appellant (if applicable);
  - c. A description of the record requested;
  - d. The agency to which the request was directed;
  - e. The date the request was made to the agency.
- C. The period to appeal begins upon the issuance of the denial, or if no denial is issued, the expiration of the time period within which the agency should have responded.
- D. *Conflict of Interest – City Clerk.* In the event the city clerk is unable to review and or determine an appeal due to a conflict of interest or other just cause, the city clerk shall notify the party filing the appeal and shall offer the party an opportunity to have the matter reviewed by a hearing officer. Such notification shall be made within ten business days from the filing of the appeal.

#### **2.40.100 Appeal determination.**

- A. Within ten business days after the close of the record on appeal, the city clerk, or hearing officer, shall issue a written determination stating which of the records that are the subject of the appeal will be disclosed and which records will not be disclosed. The written determination must include:
  - a. A brief statement for the denial to include the specific statute, regulation or court decision that is the basis for the denial;
  - b. Notice that this determination is the final agency decision and that, as provided by AS 40.25.124, the requester may obtain judicial review of the denial by appealing the denial to the superior court.
- B. The city clerk or hearing officer, may extend the 10 business day period not to exceed 30 business days upon the written request from the requestor, or by sending a written notice to the requestor within the initial 10 business day time period.

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**SECTION 3. Effective Date.** This ordinance shall become effective August 1, 2016 upon passage by the Bethel City Council.

**ENACTED THIS 12<sup>th</sup> DAY OF APRIL 2016, BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.**



Richard Robb, Mayor

ATTEST:



Lori Strickler, City Clerk