

## **ORDINANCE NO.56**

### **AN ORDINANCE FOR PUBLIC ACCESS PROCEDURES**

The Common Council of the City of Fountain City, Wisconsin do ordain as follows:

#### **Article I. Access Procedures.**

(a) A request to inspect or copy a record shall be made to the legal custodian. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Sec. 19.37, Wis. Stats. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail, unless prepayment of a fee is required under Section 3-3-4(f)(6). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require. A request for inspection purposes must be made in advance in order to have records and personnel ready to accommodate the request.

(b) Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. If the legal custodian, after conferring with the City Attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.

(c) A request for a record may be denied as provided in Section 3-3-6. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within five business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that, if the request for the record was made in writing., then the determination is subject to review upon petition for a writ of 'mandamus- -under Sec. 19.37(l), Wis. Stats., or upon application to the attorney general or a district attorney.

## **Article II. Limitations on Right to Access.**

(a) As provided in Sec. 19.36, Wis. Stats., the following records are exempt from inspection under this Chapter.

(1) Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law;

(2) Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state;

(3) Computer programs and files, although the material used as input for a computer program/file or the material produced as a product of the computer program is subject to inspection; and

(4) Pursuant to Sec. 905.08, Wis. Stats., a record or any portion of a record containing information qualifying as a common law trade secret. "Trade secrets" are defined as patented, secret, commercially valuable plans, appliances, formulas, or processes which are used for making, preparing, compounding, treating or processing articles, materials or information which are obtained from a person and which are generally recognized as confidential.

(b) Whenever the assessor, in the performance of the Assessor's duties, requests or obtains income and expense information pursuant to Section 70.47(7)(af), Wis. Stats., or any successor statute thereto, then, such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential basis, except, however, that the information may be revealed to and used by persons: in the discharging of duties imposed by law; in the discharge of duties imposed by office (including, but not limited to, use by the Assessor in performance of official duties of the Assessor's office and used by the Board of review in performance of its official duties); or pursuant to order of a court. Income and expense information provided to the Assessor under Section 70.47(af), unless a court determines that it is inaccurate, is per Section 70.47(7)(af), not subject to the right of inspection and copying under Section 19.35(l), Wis. Stats.

**SEVERABILITY.** The severable sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

(C) In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the City Attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following;

(1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.

(2) Pursuant to Sec. 19.85(l)(a), Wis. Stats., records of current deliberations after a quasi-judicial hearing.

(3) Pursuant to Sec. 19.85(l)(b) and (c), Wis. Stats., records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance, or discipline of any City officer or employee, or the investigation of charges against a City officer or employee, unless such officer or employee consents to such disclosure.

(4) Pursuant to Sec. 19.85(l)(d), Wis. Stats., records concerning current strategy for crime detection or prevention.

(5) Pursuant to Sec. 19.85(l)(e), Wis. Stats., records of current deliberations or negotiations on the purchase of City property, investigating of City funds, or other City business whenever competitive or bargaining reasons require nondisclosure.

(6) Pursuant to Sec. 19.85(l)(f), Wis. Stats., financial, medical, social or personal histories or disciplinary data or specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.

(7) Pursuant to Sec. 19.85(l)(g), Wis, Stats., communications between legal counsel for the City and any officer, agent or employee of the City, when advice is being rendered concerning strategy with respect to current litigation in which the City or any of its officers, agents or employees is or is likely to become involved, or communications which are privileged under Sec. 905.03, Wis. Stats.

(8) Pursuant to Sec. 19.85(l)(h), Wis. Stats., requests for confidential written advice from an ethics board, and records of advice given by such ethics board on such requests.

(D) If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the City Attorney prior to releasing-any such record and shall follow the guidance of the City Attorney when separating out the exempt material. If, in the judgement of the custodian and the City Attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

This Public Access Procedures Ordinance for the City of Fountain City, Wisconsin, shall be in force and effect upon its passage, approval, and publication according to law.

Dated this 13<sup>th</sup> day of December, 2011.

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Karl Hoffmann, Mayor

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Janet LaDuke, Clerk-Treasurer

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This amendment was unanimously passed and adopted at a regular meeting of the Common Council of the City of Fountain City, Wisconsin, on December 13, 2011.

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