

CITY OF WILDWOOD, MISSOURI

CITY COUNCIL POLICY ON

WAIVING FEES FOR REQUESTS FOR PUBLIC RECORDS

WHEREAS, Section 115.240(c) of the Code of Ordinances of the City of Wildwood (the “City Code”) provides, in pertinent part, as follows:

[The City Clerk] shall, whenever required, furnish the Mayor, **Council** or any committee of the Council, copies of any books, accounts, records, vouchers or documents in his/her office or any information relating to the business of the City; and shall permit the Mayor, any **member of the Council**, any interested City Officer or other person to examine any books, papers or documents of public record in his/her office. (emphasis added); and

WHEREAS, The provisions of Section 115.240(c) of the City Code make a clear distinction between the copies of records that must be made available to the City Council (as a body) relating to the business of the City, and those public records that may be examined in the office of the City Clerk by any individual member of the City Council, consistent with the procedures for access to public records set forth in Chapter 115 of the City Code and Chapter 610, RSMo; and

WHEREAS, Section 130.080 of the City Code, provides, in pertinent part, as follows:

To the fullest extent permitted by law, the custodian [of records] is authorized to impose fees for the City's cost of document search, research and duplication in complying with records requests. The maximum fees to be imposed by the custodian shall be the maximum amount permitted by the Missouri Sunshine Law, not to exceed the City's cost; and

WHEREAS, the City Code is silent as to the waiver of fees for records requests, and

WHEREAS, the Missouri Open Records Law (the “Sunshine Law”), provides that:

Documents may be furnished without charge or at a reduced charge **when the public governmental body determines** that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester.

Section 610.026.1(1), RSMo., (emphasis added); and

WHEREAS, the City Council, as the public governmental body of the City of Wildwood (the “City”), has the sole authority to waive fees for records requests when it determines it is in the public interest because it is likely to contribute significantly to public understanding of the

operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

WHEREAS, Section 125.060(A)(8) of the City Code provides that City employees and officials shall not use “City-owned vehicles, equipment, materials or property for personal convenience or profit;” and

WHEREAS, the City Council finds and determines that every request for public records requires an expenditure of City resources (i.e., personnel time, equipment and supplies) that are paid for by public funds; and

WHEREAS, it is the position of the City Council, that public records are resources of the City created, retained and managed through the use of public funds, and the waiver of fees for records requests should not be to the benefit of the personal convenience or profit of the Council Member making the request.

A. PURPOSE

The purpose of this policy is to provide guidance to City Administration on responding to requests for public records made by members of the City Council consistent with the provisions of the City Charter and City Code.

B. DEFINITIONS

Unless otherwise indicated, all terms used herein shall have the same meaning as set forth in the City Code or Section 610.010, RSMo.

C. RECORDS REQUESTS BY COUNCIL MEMBERS

Except as expressly set forth herein, requests for public records made by a member of the City Council shall be responded to consistent with the policy for open meetings and records set forth in Chapter 130 of the City Code and Chapter 610, RSMo.

D. WAIVER OF FEES

Notwithstanding the provisions of Section C of this Policy to the contrary, records may be provided to members of the City Council, without fee, as set forth herein:

1. Requests for records without fee shall be submitted to the City Clerk, in writing, and shall contain, the following:
 - a. The specific records, or series of records, sought; and
 - b. The agenda and agenda item of the City Council or Standing Committee of the City Council to which the records sought pertain (the “Agenda Item”);
2. The City Clerk shall provide the public records sought without fee if the City Clerk determines that:

- a. The public records sought have not been previously made available to the City Council and are not publicly available in the City Code or on the City's website;
 - b. The public records sought are likely to contribute significantly to the City Council's, or Standing Committee thereof, understanding or analysis of the agenda item referenced in the request;
 - c. Responding to the request for public records without fee will not be unduly burdensome upon City administrative personnel and resources, taking into consideration the scope of the request, the cost to the City to provide the records, the time it will take the City administrative personnel to respond to the request, the number of records responsive to the request, and the timeliness of the request in relation to the date upon which the Agenda Item will be considered; and
 - d. The request for public records is not likely to violate the policies set forth in Sections 115.240, 125.060 or 130.080 of the City Code.
3. Should the City Clerk determine that the request for public records without fee should be fulfilled, consistent with this Policy, the written request and copies of all records provided in response to the request shall be made available to the Mayor and each member of the City Council.
4. Should the City Clerk be in doubt as to the appropriateness of providing public records without fee, pursuant to this policy, the City Clerk shall notify the Council Member, in writing, of the City Clerk's doubts as to the appropriateness of providing public records without fee, pursuant to this policy, the cost of responding to the records request, and stating that payment of the costs for duplicating public records must be made prior to the making of copies, consistent with Chapter 130 of the City Code and Chapter 610, RSMo.
 - a. By way of example, records that are inappropriate to provide without fee include, but are not limited to, the following:
 - i. Requests for emails of named City officials, officers or employees;
 - ii. Closed Records;
 - iii. Compiled lists that contain names, addresses, email addresses or phone numbers of residents; or
 - iv. Any request, the cost of which is anticipated to exceed Fifty Dollars (\$50.00).
5. The Council Member that made the request for public records without fee may, within seven (7) days from the date of the notification from the City Clerk, submit to the City Clerk a petition requesting that the City Council consider the request for public records without fee. Such petition shall include a statement explaining why the fee for responding to the records request should be waived, specifically identifying how such public records contribute significantly to the City Council's, or Standing Committee thereof, understanding or analysis of the agenda item referenced in the request. The City Clerk shall forward the petition to the Mayor and ask that the petition be placed on an agenda of a regular meeting of the City Council for consideration and action by the City Council.

The City Council may approve a request for public records without fee upon an affirmative vote of a simple majority of the Council Members, exclusive of the Council Member that made the request who shall not vote.

- a. Notwithstanding the foregoing, a Council Member may withdraw their request for public records without fee at any time prior to posting notice of the Regular Meeting of the City Council pursuant to the requirements of Section 610.020, RSMo.

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