ORDINANCE NO. 2017-22

AN ORDINANCE TO RESCIND ORDINANCE 2014-33 AND TO ADOPT A REVISED POLICY FOR PUBLIC RECORDS REQUESTS

WHEREAS, the Charter of the City of Franklin, Article VII, Section 3, establishes the City Recorder as the keeper of the public records of the City; and

WHEREAS, Ordinance 2014-33, adopted by the Board of Mayor and Aldermen established The City of Franklin Guidelines for Access to and Reproduction of Public Records and Schedule of Charges for Reproduction of Public Records ("Guidelines"); and

WHEREAS, the General Assembly of the State of Tennessee has made minor modifications to state law relative to records management policies; and

WHEREAS, the Board of Mayor and Aldermen believe it is in the best interest of the City of Franklin to rescind Ordinance 2014-33 and modify the Guidelines related to the fulfillment of public records requests for Tennessee citizens.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee:

SECTION I. That Ordinance 2014-33 is hereby rescinded.

SECTION II. That the City of Franklin hereby adopts The City of Franklin Guidelines for Access to and Reproduction of Public Records and Schedule of Charges for Reproduction of Public Records, attached as Exhibit A and incorporated as if restated fully herein.

SECTION III. That if a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION IV. That this Ordinance shall repeal any ordinance or parts of any ordinance in conflict herewith, and shall take effect immediately after its passage on second and final reading, the health, safety and welfare of the citizens of Franklin requiring it.

ATTEST:

BY: Eric S. Stuckey
ERIC S. STUCKEY
CITY ADMINISTRATOR

CITY OF FRANKLIN, TENNESSEE:

BY:
DR. KEN MOORE
MAYOR

PASSED FIRST READING June 13, 2017
PASSED SECOND READING June 27, 2017

Approved as to Form:

Kristen L. Corn

Kristen L. Corn, Assistant City Attorney

Law Dept. approved 05.31.17

EXHIBIT A

THE CITY OF FRANKLIN GUIDELINES FOR ACCESS TO AND REPRODUCTION OF PUBLIC RECORDS AND SCHEDULE OF CHARGES FOR REPRODUCTION OF PUBLIC RECORDS

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the City of Franklin is hereby adopted by the Board of Mayor and Aldermen to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that all state, county, and municipal records shall at all times during business hours be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the City of Franklin are presumed to be open for inspection unless otherwise provided by law.

Personnel of the City of Franklin shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy shall be used to hinder access to public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the City of Franklin, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for the City of Franklin or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available for inspection and duplication in the office of the City Recorder. Additionally, this Policy is posted online at www.franklintn.gov. This Policy shall be reviewed periodically as needed.

This Policy shall be applied consistently throughout the various offices, departments, and/or divisions of the City of Franklin.

I. Definitions:

A. Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a public record. *See* Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

B. Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. *See* Tenn. Code Ann. § 10-7-503(a)(1)(A).

C. Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. *See* Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.

D. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee or via online submission, in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

B. Requests for inspection only cannot be required to be made in writing. The PRRC will request a mailing or email address from the requestor for providing any written communication required under the TPRA.

C. Requests for inspection may be made orally or in writing on Form A at the City of Franklin, 109 Third Ave South, Franklin, Tennessee, 37064; by phone at 615-791-3217; by email to **(lanaiib@franklintn.gov);** by fax at 615-790-0469; or by internet portal found at www.franklintn.gov.

D. Requests for copies, or requests for inspection and copies, shall be made in writing on Form A in person or by mail at City of Franklin, 109 Third Ave South, Franklin, Tennessee, 37064; by phone at 615-791-3217; by email to **(lanaiib@franklintn.gov);** or by internet portal found at www.franklintn.gov..

E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternative acceptable form of ID is required as a condition to inspect or receive copies of public records.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC shall review public record requests and make an initial determination of the following:

a. If the requestor provided evidence of Tennessee citizenship;

b. If the records requested are described with sufficient specificity to identify them; and

c. If the City of Franklin is the custodian of the records.

2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

a. Advise the requestor of this Policy and the elections made regarding:

i. Proof of Tennessee citizenship;

ii. Form(s) required for copies;

iii. Fees (and labor threshold and waivers, if applicable); and

iv. Aggregation of multiple or frequent requests.

b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:

i. The requestor is not, or has not presented evidence of being, a Tennessee citizen;

ii. The request lacks specificity;

iii. An exemption makes the record not subject to disclosure under the TPRA;

iv. The City of Franklin is not the custodian of the requested records; or

v. The records do not exist.

c. If appropriate, contact the requestor to see if the request can be narrowed.

d. Forward the records request to the appropriate records custodian in the City of Franklin

3. The designated PRRC(s) is(are):

a. Lanaii Benne, Assistant City Recorder - Records

b. Contact information: City of Franklin, 109 Third Ave. South, Suite 103, Franklin, TN, 37064, or by phone at 615-791-3217, or by email to lanaiib@franklintn.gov.

B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.

2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form which is attached as Form B, based on the form developed by the OORC.

3. If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Section III.A.2.b and may use the Public Records Request Response Form B.

4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records or additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form B to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.

5. If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC.

2. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

IV. Inspection of Records

A. There shall be no charge for inspection of public records

B. The location for inspection of records within the offices of the City of Franklin shall be determined by either the PRRC or the records custodian.

C. When a reasonable basis exists, the PRRC or a records custodian may require an appointment for inspection.

V. Copies of Records

A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

B. Copies will be available for pickup at the City of Franklin, TN.

C. Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service.

D. A requestor will not be allowed to make copies of records with personal equipment. Requestors may purchase storage devices from the city upon which the records will be downloaded.

VI. Fees and Charges and Procedures for Billing and Payment

Fees and charges for copies of public records should not be used to hinder access to public records.

A. Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

B. When fees for copies and labor do not exceed $1.00, the fees may be waived.

C. Fees and charges for copies are as follows:

COPIES – STANDARD SIZES:

Black & White (8 ½ x 11 or 8 ½ x 14) documents	$.15 per page
Color (8 ½ x 11 or 8 ½ x 14) documents	$.50 per page
Certified copies	$.50 per page
Accident reports (8 ½ x 11 or 8 ½ x 14)	$.15 per page

Maps, plats, electronic data, audio discs, video discs and all other materials shall be duplicated at actual costs to the City.

(Duplex copies shall be equivalent to two (2) separate pages)

In the event actual costs of the records custodian are higher than those reflected above or if the requested records are being reproduced on a medium other than standard size paper, the records custodian will compute the actual costs of the reproduction and inform the requestor prior to the charges being incurred. All copying of records must be performed by employees of the City or by an outside vendor designated by the records custodian.

LARGE COPIES:

The terms and conditions of Tennessee Code Annotated 10-7-506 (c) are included herein by reference as fully and completely as though copied herein verbatim. The charge shall be $2.00 per square foot for copies of documents in sizes other than 8 ½ x 11 or 8 ½ x 14 such as maps, plats, or other large format documents. (Paper cost approximately $.21/sp. ft.; ink-$.75-$1.00/ sq. ft.; plotter/GIS system-$.80 - $1.00/sq. ft.)

LABOR COSTS:

After the first hour, the cost of the employee's salary/wages for time spent producing the records will be charged. If participation by more than one employee is required to produce the requested records, the requestor shall not be invoiced for first hour of the highest paid employee. Requests for copies of records may not be broken down to multiple requests for the same information in order to qualify for the first free hour.

DELIVERY OF COPIES:

Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requestor returns to the custodian's office to retrieve the requested records. If the requestor chooses not to return to the custodian's office to retrieve the copies, the records custodian may deliver the copies through the United States Postal Service, and the cost incurred in delivering the copies shall be assessed in addition to any other charge. Additionally, the costs of packing materials and necessary media required shall be added to the total charges.

OUTSIDE VENDOR:

If the records custodian utilizes an outside vendor to produce copies of requested records because the custodian is legitimately unable to produce the copies in the office, the costs assessed by the vendor to the City shall be paid by the requestor in additional to any other allowable charges.

CD-ROM:

Reproduction of an existing CD-ROM shall be $3.00. (This does not apply to uploading information onto a CD-ROM).

DVD:

Reproduction of an existing DVD shall be $5.00. (This does not apply to uploading information on a DVD).

D. Payment is to be made in cash, by personal check, or by credit card payable to the City of Franklin and presented to the records custodian.

E. Payment in advance will be required when costs are estimated to exceed $10.00.

F. Aggregation of Frequent and Multiple Requests

1. The City of Franklin will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).

2. If more than four (4) requests are received by the City within a calendar month:

a. Records requests will be aggregated at the City level.

b. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian will inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

c. Requests for items that are routinely released and readily accessible are exempt from this policy. These records include, but are not necessarily limited to, meeting agendas and approved minutes.

G. Safe Harbor Policy

The Safe Harbor Policy established by the Office of Open Records Counsel is adopted herein by reference as fully and completely as though copied herein verbatim. The City of Franklin is committed to adhering to the Schedule of Reasonable Charges and the Policy for Frequent and Multiple Request as established by the Office of Open Records Counsel. This policy is reviewed annually by the OORC.

a. **Waiver of fees established**. The records custodian is not required to impose charges for copies or duplications of public records. The City of Franklin shall waive fees for a single request totaling less than $1.00.

b. **Frequent Requestor.** When the total number of requests made by a requestor during a calendar month exceeds four (4), the requestor shall be charged a fee

for all labor that is reasonably necessary to produce copies of the requested records. The requestor shall not be entitled to one (1) free hour of labor, and the requestor shall be notified accordingly.

H. Police Department Personnel Records:

The Police Chief shall maintain in his/her office records of undercover investigators containing personally identifying information. All other personnel records of the police department shall be maintained in the office of the records custodian, the Human Resources Department. Requests for personnel records, other than for undercover investigators, shall be made to the records custodian, who shall promptly notify the Police Chief of such request. The Police Chief shall make the final determination as to the release the information requested. In the event that the Police Chief refuses to release the information, he/she shall provide a written explanation of his/her reasons for not releasing the information.

I. Frail Records

If the public records requested are frail due to age or other conditions, and copying of the records will cause damage to the original records, the requesting party may be required to make an appointment for inspection.

J. Best Practices Guidelines for records custodians responding to requests for public records

The PRRC may adopt Best Practices Guidelines to assist records custodian(s) with responding to requests for public records.

PUBLIC RECORDS REQUEST FORM A

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: Lanaii Benne, Assistant City Recorder - Records, City of Franklin, 109 Third Ave. S., Suite 103, Franklin, TN, 37064

From: _____
Name

_____
Address

_____
City, State, Zip Code

_____
Contact Phone number / email

Is the requestor a Tennessee citizen? ❑ Yes ❑ No

Request: ❑ Inspection (The TPRA does not permit fees or require a written request for inspection only.)

❑ Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $ _____? If so, initial here: ___.

Delivery preference: ❑ On-Site Pick-Up ❑ USPS First-Class Mail ❑ Electronic ❑ Other: _____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

_____

_____

_____
Signature of Requestor & Date Submitted

_____
Signature of Public Records Request Coordinator & Date Received

PUBLIC RECORD REQUEST RESPONSE FORM B
City of Franklin
109 Third Ave. S, Suite 103, Franklin, TN 37064

_____ _____
Requestor's Name and Contact Information Date

In response to your records request received on _____, our office is taking the action(s) indicated below:
Date Request Received

☐ The public record(s) responsive to your request will be made available for inspection:
Location: _____
Date & Time: _____

☐ Copies of public record(s) responsive to your request are:
- ☐ Attached
- ☐ Available for pickup at the following location:
_____; or
- ☐ Being delivered via:
☐ USPS First-Class Mail ☐ Electronically☐ Other: _____

☐ Your request is denied on the following grounds:
- ☐ Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
- ☐ No such record(s) exists or this office does not maintain record(s) responsive to your request.
- ☐ No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
- ☐ You are not a Tennessee citizen.
- ☐ You have not paid the estimated copying/production fees.
- ☐ The following state, federal, or other applicable law prohibits disclosure of the requested records:
_____.

☐ It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
- ☐ It has not yet been determined that records responsive to your request exist; or
- ☐ The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____.

If you have any additional questions regarding your record request, please contact Lanaii Benne, Assistant City Recorder - Records.

Sincerely,
Lanaii Y. Benne, MMC, Assistant City Recorder - Records, City of Franklin, 109 Third Ave S., Suite 103, Franklin, Tennessee 37069. lanaiib@franklintn.gov