

CODE ORDINANCE

Requested by: Clerk
Introduced: July 10, 2006
Public Hearing: July 24, 2006
Defeated: July 24, 2006
Vote: Menard, Metiva & O'Neil in favor; Ewing opposed; Cox and Straub absent
Reconsidered: July 24, 2006
Postponed on July 24, 2006 to August 14, 2006
Adopted: August 14, 2006
Vote: Cox, Ewing, Menard, Metiva, O'Neil in favor; Straub opposed

**CITY OF WASILLA
ORDINANCE SERIAL NO. 06-33**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WMC CHAPTER 2.48, CITY RECORDS, TO PROVIDE FOR PUBLIC ACCESS TO CITY RECORDS, AND REPEALING WMC 2.48.030 – 2.48.090 CONCERNING MANAGEMENT OF CITY RECORDS.

* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

* **Section 2. Amendment of section.** WMC 2.48.010, City record defined, is amended as follows:

2.48.010 **Definitions** [CITY RECORD DEFINED].

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

"City agency" means 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, 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. [ALL PAPERS,

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

CORRESPONDENCE, MEMORANDA, ACCOUNTS, REPORTS, MAPS, PLANS, PHOTOGRAPHS, SOUND AND VIDEO RECORDINGS, FILES, MICROFILM, MAGNETIC OR PAPER TAPE, PUNCHED CARD, OR OTHER DOCUMENTS], REGARDLESS OF PHYSICAL FORM OR CHARACTERISTIC, WHICH HAVE BEEN OR SHALL BE CREATED, RECEIVED, FILED OR RECORDED BY ANY CITY OFFICE OR DEPARTMENT OR ITS LAWFUL SUCCESSOR, OR OFFICIALS THEREOF IN PURSUANCE OF LAW OR ORDINANCE OR IN THE CONDUCT, TRANSACTION OR PERFORMANCE OF ANY BUSINESS, DUTY OR FUNCTION OF PUBLIC BUSINESS, WHETHER OR NOT CONFIDENTIAL OR RESTRICTED IN USE, ARE DECLARED TO BE RECORDS OF THE CITY, AND SHALL BE CREATED, MAINTAINED AND DISPOSED OF IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER OR PROCEDURES AUTHORIZED BY IT OR IN NO OTHER MANNER. LIBRARY AND MUSEUM MATERIALS ACQUIRED SOLELY FOR REFERENCE, EXHIBIT OR DISPLAY AND STOCKS OF PUBLICATIONS SHALL NOT CONSTITUTE RECORDS FOR PURPOSES OF THIS CHAPTER.]

“Confidential information” means information whose disclosure is restricted by a city, state or federal statute, ordinance, regulation, rule or judicial decision.

“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.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

* **Section 3. Amendment of section.** WMC 2.48.020, City records declared public property, is amended as follows:

2.48.020 City records declared public property.

A. All city records [AS DEFINED IN SECTION 2.48.010] are [DECLARED TO BE] property of the city. [NO CITY OFFICIAL OR EMPLOYEE HAS, BY VIRTUE OF HIS OR HER POSITION, ANY PERSONAL OR PROPERTY RIGHT TO SUCH RECORDS EVEN THOUGH HE OR SHE MAY HAVE DEVELOPED OR COMPILED THEM. THE UNAUTHORIZED DESTRUCTION, REMOVAL FROM FILES, OR USE OF SUCH RECORDS IS PROHIBITED.] **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 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.**

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

* **Section 4. Adoption of section.** WMC 2.48.100, Policy of the city, is adopted to read as follows:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

2.48.100 Policy of the city.

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 Sections 2.48.110 through 2.48.150 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. Sections 2.48.100 through 2.48.150 shall be construed to require disclosure of all city records except those specifically exempted under Sections 2.48.120 and 2.48.130.

* **Section 5. Adoption of section.** WMC 2.48.110, City records subject to inspection and copying, is adopted to read as follows:

2.48.110 City records subject to inspection and copying.

A. Except as provided in Sections 2.48.120 and 2.48.130 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 that is applicable under Section 2.48.150.

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

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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.

* **Section 6. Adoption of section.** WMC 2.48.120, Exceptions to inspection and copying of city records, is adopted to read as follows:

2.48.120 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 3.90.020.**
- 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;**

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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 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.

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.

* Section 7. Adoption of section. WMC 2.48.130, City records related to litigation, is adopted to read as follows:

2.48.130 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.

* Section 8. Adoption of section. WMC 2.48.140, Request for city records; Response by city agency, is adopted to read as follows:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

2.48.140 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. Where required under Section 2.48.150, 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 requestor to inspect the city record, and provide the requestor 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 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 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 provide a copy of the record as requested; or

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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 10 business day period established under B of this section for a period not to exceed 10 additional business days by providing notice to the requester within the initial 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.

* Section 9. Adoption of section. WMC 2.48.150, Fees for city record requests, is adopted to read as follows:

2.48.150 Fees for city record requests.

A. The mayor 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 requestor 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.

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* **Section 10. Repeal of sections.** WMC 2.48.030 Duties Of Records Manager, 2.48.040 Responsibilities of City Department Heads, 2.48.050 Responsibilities Of Records Officers, 2.48.060 City Offices To Use Records Schedules, 2.48.070 Development Of Records Retention And Disposition Schedules, 2.48.080 Preservation Of Permanent Records, 2.48.090 Noncurrent Records Not To Be Maintained In Offices Files, are repealed in their entirety as follows:

[2.48.030 DUTIES OF RECORDS MANAGER.

THE RECORDS MANAGER SHALL HAVE THE FOLLOWING DUTIES, AND OTHERS AS ASSIGNED BY THE MAYOR; HOWEVER DUTIES ASSIGNED SHALL BE LIMITED TO RECORDS MANAGEMENT ACTIVITIES.

- A. PLAN, FORMULATE AND PRESCRIBE BASIC FILES MANAGEMENT AND RECORDS DISPOSITION POLICIES, SYSTEMS, STANDARDS AND PROCEDURES;
- B. PREPARE RECORDS RETENTION AND DISPOSITION SCHEDULES IN COOPERATION WITH DEPARTMENT HEADS FOR ALL CITY OFFICES AND DEPARTMENTS, DEFINE AND IDENTIFY VITAL AND PERMANENT RECORDS, AND ESTABLISH RETENTION PERIODS FOR ALL RECORDS. RETENTION PERIODS SHALL BE NO SHORTER THAN DESIRED BY THE ORIGINATING OFFICE, BUT SHALL BE AS LONG AS DEEMED NECESSARY BY EITHER THE RECORDS MANAGER, THE CITY ATTORNEY, OR THE MAYOR;
- C. REVIEW SCHEDULES ANNUALLY AND UPDATE OR AMEND AS NEEDED;
- D. COORDINATE THE CITYWIDE FILES MANAGEMENT AND RECORDS DISPOSITION PROGRAMS AND REPORT ANNUALLY TO THE MAYOR ON PROGRAM EFFECTIVENESS IN EACH CITY DEPARTMENT;

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- E. PROVIDE RECORDS MANAGEMENT ADVICE AND ASSISTANCE TO ALL CITY OFFICES AND DEPARTMENTS, BY PREPARATION OF MANUALS OF PROCEDURES AND POLICIES AND BY ON-SITE CONSULTATION;
- F. DEVELOP, DISSEMINATE AND COORDINATE FILES MAINTENANCE AND RECORDS DISPOSITION PROCEDURES, INCLUDING BUT NOT LIMITED TO THOSE PRESCRIBED BY THIS CHAPTER, TO MEET THE CURRENT AND LONG-TERM INFORMATION NEEDS OF THE CITY;
- G. TRAIN DEPARTMENTAL RECORDS OFFICERS AND OTHER PERSONNEL IN THE FUNDAMENTALS OF RECORDS MANAGEMENT AND THEIR DUTIES IN THE RECORDS MANAGEMENT PROGRAM;
- H. CARRY OUT AT THE PROPER TIME ACTIONS SUCH AS MICROPHOTOGRAPHY, DESTRUCTION AND TRANSFERS THAT ARE REQUIRED BY RECORDS SCHEDULES;
- I. DESIGN AND MANAGE THE OPERATIONS OF A RECORDS CENTER FOR THE LOW COST STORAGE OF INACTIVE RECORDS AND AS A FACILITY FOR A CENTRALIZED MICROGRAPHIC PROGRAM;
- J. ESTABLISH AND MONITOR COMPLIANCE WITH STANDARDS FOR FILING AND STORAGE EQUIPMENT AND SUPPLIES IN ALL CITY OFFICES AND DEPARTMENTS, AND REPORT TO THE MAYOR FAILURE OF AN OFFICER OR DEPARTMENT TO COMPLY WITH STANDARDS. KEEP CAREFUL RECORDS OF SAVINGS IN EQUIPMENT, SUPPLIES, AND STAFF COSTS REALIZED BY EACH DEPARTMENT OF THE CITY THROUGH IMPLEMENTATION OF THE RECORDS MANAGEMENT PROGRAM. REPORT ANNUALLY SUCH COST SAVINGS TO THE

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

MAYOR, THE REPORT SHALL INCLUDE THE AMOUNT OF STORAGE SPACE AND EQUIPMENT RELEASED FOR OTHER USES;

K. DEVELOP A CITYWIDE FORMS DESIGN AND CONTROL SYSTEM;

L. ESTABLISH IN COOPERATION WITH OTHER RESPONSIBLE CITY OFFICIALS A DISASTER PLAN FOR EACH CITY OFFICE AND DEPARTMENT TO INSURE MAXIMUM AVAILABILITY OF RECORDS FOR RE-ESTABLISHING OPERATIONS QUICKLY AND WITH MINIMUM DISRUPTION AND EXPENSE;

M. DEVELOP PROCEDURES TO INSURE THE PERMANENT PRESERVATION OF THE HISTORICALLY VALUABLE RECORDS OF THE CITY;

N. PROTECT PRIVACY AND ASSURE AVAILABILITY OF PUBLIC INFORMATION FROM RECORDS STORED IN RECORDS CENTER; BRING TO ATTENTION OF THE MAYOR ANY OFFICE NOT IN COMPLIANCE WITH LAWS OR ORDINANCES REGARDING PUBLIC ACCESS TO INFORMATION OR PROTECTION OF PRIVACY;

O. PREPARE AND SUBMIT ANNUALLY TO THE MAYOR THE BUDGET REQUIREMENTS OF THE RECORDS MANAGEMENT PROGRAM TO ENABLE IT TO FULFILL THE RECORDS MANAGEMENT GOALS OF THE CITY.]

2.48.040 RESPONSIBILITIES OF CITY DEPARTMENT HEADS.

ALL CITY OFFICE AND DEPARTMENT HEADS ARE RESPONSIBLE FOR THE IMPLEMENTATION AND OPERATION OF EFFECTIVE FILES OPERATIONS, RECORDS TRANSFERS AND DISPOSITIONS, AND OTHER ACTIVITIES IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER WITHIN THEIR AREAS OF RESPONSIBILITY. THEY SHALL DESIGNATE RECORDS OFFICERS WITHIN THEIR OFFICES AND PROVIDE THE RECORDS MANAGER THE NAMES OF SUCH

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DESIGNEES AND OF ALL FILE STATIONS AND FILES CUSTODIANS UNDER THEIR SUPERVISION. PERSONS DESIGNATED AS RECORDS OFFICERS SHALL REPORT DIRECTLY TO THE HEAD OF THEIR DEPARTMENT ON MATTERS RELATING TO THE RECORDS MANAGEMENT PROGRAM AND SHOULD HAVE FULL ACCESS TO ALL FILES IN THEIR DEPARTMENT.

2.48.050 RESPONSIBILITIES OF RECORDS OFFICERS.

THE RECORDS OFFICER IN EACH OFFICE AND DEPARTMENT IS RESPONSIBLE FOR PROVIDING COORDINATION BETWEEN THE RECORDS MANAGER AND PERSONNEL IN HIS OR HER OFFICE TO ENSURE THAT PROVISIONS OF THIS CHAPTER ARE COMPLIED WITH. THIS RESPONSIBILITY SHALL INCLUDE OVERSEEING THE APPLICATION OF RECORDS SCHEDULES WITHIN THE OFFICE OR DEPARTMENT.

2.48.060 CITY OFFICES TO USE RECORDS SCHEDULES.

ALL CITY OFFICES AND DEPARTMENTS SHALL ADOPT RECORDS RETENTION AND DISPOSITION SCHEDULES AND DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF RECORDS ONLY ACCORDING TO SUCH SCHEDULES.

2.48.070 DEVELOPMENT OF RECORDS RETENTION AND DISPOSITION SCHEDULES.

A. RETENTION PERIODS TO BE INCLUDED IN RECORDS SCHEDULES SHALL BE SUBMITTED BY THE RECORDS MANAGER TO THE MAYOR AND CITY ATTORNEY, WHO SHALL NOTIFY THE RECORDS MANAGER WITHIN TEN (10) WORKING DAYS OF HIS OR HER APPROVAL OR OF ANY OBJECTION TO A RETENTION PERIOD. AT THE EXPIRATION OF THE TEN (10) DAY PERIOD, IF NO

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

OBJECTION HAS BEEN SUBMITTED, THE RECORDS SCHEDULE SHALL BE ADOPTED AND SHALL HAVE FULL FORCE AS SUFFICIENT AUTHORIZATION FOR RECORDS DESTRUCTION OR OTHER ACTION. IF OBJECTION IS MADE, THE RECORDS MANAGER SHALL DETERMINE A RETENTION PERIOD SATISFACTORY TO THE OFFICE OR DEPARTMENT CONCERNED, TO THE MAYOR AND TO THE CITY ATTORNEY.

B. WHEN A RECORDS RETENTION AND DISPOSITION SCHEDULE IS ADOPTED, IT SHALL THENCEFORTH CONSTITUTE FULL AUTHORITY TO DESTROY, TRANSFER, MICROPHOTOGRAPH, OR TAKE OTHER ACTIONS, AND THE CITY COUNCIL DIRECTS THAT SUCH ACTION BE TAKEN BY THE RECORDS MANAGER OR UNDER HIS OR HER SUPERVISION. NO FURTHER NOTICE TO THE CITY COUNCIL OR OTHER CITY OFFICE SHALL BE REQUIRED. REVISION OF RETENTION PERIODS SHALL BE SUBMITTED FOR REVIEW TO THE CITY ATTORNEY AND MAYOR IN THE SAME MANNER AS THE ORIGINAL RETENTION PERIODS.

2.48.080 PRESERVATION OF PERMANENT RECORDS.

THE RECORDS MANAGER SHALL DEVELOP PROCEDURES TO INSURE THE PERMANENT PRESERVATION OF THE HISTORICALLY VALUABLE RECORDS OF THE CITY. THE RECORDS MANAGER SHALL PROVIDE HOUSING UNDER ARCHIVAL CONDITIONS FOR SUCH RECORDS IN THE RECORDS CENTER OR IN ANOTHER MUNICIPAL FACILITY AND IN SUCH MANNER THAT THE RECORDS, UNLESS THEIR USE IS RESTRICTED BY LAW OR REGULATION, ARE OPEN TO THE PUBLIC FOR RESEARCH PURPOSES. IN NO CIRCUMSTANCES SHALL THE

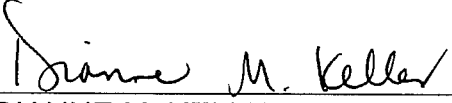
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PERMANENT RECORDS OF THE CITY BE TRANSFERRED TO PRIVATE INDIVIDUALS, TO PRIVATE HISTORICAL SOCIETIES OR MUSEUMS, OR TO PRIVATE COLLEGES OR UNIVERSITIES.

2.48.090 NONCURRENT RECORDS NOT TO BE MAINTAINED IN OFFICE FILES. RECORDS NO LONGER REQUIRED IN THE CONDUCT OF CURRENT BUSINESS BY ANY OFFICE OF THE CITY SHALL BE PROMPTLY TRANSFERRED TO THE RECORDS CENTER OR BE DESTROYED, AT THE TIME SUCH ACTION IS DESIGNATED ON AN APPROVED RECORDS SCHEDULE. SUCH RECORDS SHALL NOT BE MAINTAINED IN CURRENT OFFICE FILES OR EQUIPMENT.]

* **Section 11. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

ADOPTED by the Wasilla City Council on August 14, 2006.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]

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**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RE: ORDINANCE SERIAL NO. 06-33 REGARDING ACCESS TO CITY RECORDS

Agenda of: July 10, 2006

Date: June 28, 2006

Originator: Kristie Smithers, MMC, City Clerk

Route to:	Department	Signature/Date
X	Deputy Administrator Planning, Economic Development, Human Resources	<i>S. Halley</i>
X	City Clerk	<i>K. Smithers</i>

REVIEWED BY MAYOR DIANNE M. KELLER:

Dianne M. Keller

FISCAL IMPACT: yes\$ or no

Funds Available yes no

Account name/number:

Attachments: Proposed Ordinance

SUMMARY STATEMENT:

The city is growing each day, and although we have had few public records requests in the past, we are experiencing a marked increase in requests. I feel the time has come to prepare our city for the growth its experiencing and believe an access to public records ordinance is needed.

We have researched what other municipalities provide in relation to public records access. After working with our City Attorney, Tom Klinkner, I feel we have come up with a solid records ordinance that will assist the public when requesting records and also for staff to follow when fulfilling requests.

Below is a sectional analysis of the code ordinance which will assist you in your review:

Sections 2 and 3. The definition and declaration of records being public property sections of the chapter have been expanded.

Sections 4, 5, 6, 7, 8 and 9. All of these sections are new and are easy to follow.

Section 10. All of the language in this section is repealed in its entirety. Reference to records management duties which is the City Clerk's responsibility is included in Chapter 2 of the code.