

**CITY OF WARRENSBURG
CITY CLERK**

April 11, 2022

TO: Honorable Mayor and Members of the City Council
City of Warrensburg, Missouri

FROM: Jodi L. Schneider, City Clerk

SUBJECT: An Ordinance Amending Sections 2-59 and 2-64 of the Code of Ordinances Regarding Closed Records and Records Requests

BACKGROUND:

It has come to the City's attention that an unexpected veto occurred on a legislative bill used for changes made to the City's sunshine law ordinance adopted in August of 2021. The attached proposed ordinance has been prepared to effectively repeal those changes enacted then by Ordinance No. 5675.

ISSUE:

Further, as the state legislature considers other changes this year to sunshine law regulations and with multiple changes made to this section of the code in the past ten years, language is proposed to track the most up-to-date version of the state law on closed records to simplify the process.

RECOMMENDATION:

City Clerk recommends passage of the ordinance for amending Sections 2-59 and 2-64 regarding closed records and records requests.

ATTACHMENT:

Proposed Bill/Ordinance
Ordinance No. 5675 adopted August 23, 2021

BILL NO. 89-21

ORDINANCE NO. 5625

AN ORDINANCE AMENDING SECTIONS 2-59 AND 2-64 OF THE CODE OF ORDINANCES REGARDING CLOSED RECORDS AND RECORDS REQUESTS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WARRENSBURG, MISSOURI AS FOLLOWS:

SECTION ONE. Section 2-59 is hereby amended to read as follows:

Sec. 2-59. Closed meeting, records and votes.

- (a) Except to the extent disclosure required by law, the public governmental body or any subunit of the city is authorized to close meetings, records and votes, to the extent they relate to the following:
- (1) Legal actions, causes of action or litigation involving the city and any confidential or privileged communications between the city or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving the city or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of the city as its insured, shall be made public upon final disposition of the matter voted upon the signing by the parties of the settlement agreement, unless prior to a final disposition, the settlement agreement is ordered closed by the court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of RSMo 610.011, however, the amount of any moneys paid by, or on behalf of, the city shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;
 - (2) Leasing, purchasing or sale of real estate by the city where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by the city shall be made public upon execution of the lease, purchase or sale of the real estate;
 - (3) Hiring, firing, disciplining or promoting of particular employees by the city when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by the city to hire, fire, promote or discipline an employee of the city shall be made available with a record of how each member voted to the public within seventy-two (72) hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or

merit of individual employees;

- (4) Any and all other matters as otherwise provided by RSMo Ch. 610 and as the same is amended from time to time, that may be closed;
- (5) Preparation, including any discussions or work product, on behalf of the city or its representatives for negotiations with employee groups;
- (6) Software codes for electronic data processing and documentation thereof;
- (7) Specifications for competitive bidding, until either the specifications are officially approved by the city or the specifications are published for bid;
- (8) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;
- (9) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such;
- (10) Records which are protected from disclosure by law;
- (11) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;
- (12) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;
- (13) Confidential or privileged communications between the city and its auditor, including all auditor work product, however, all final audit reports issued by the auditor are to be considered open records pursuant to this chapter;
- (14) Operational guidelines, policies and specific response plans developed, adopted, or maintained by any public agency, responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Financial records related to the procurement of expenditures relating to operational guidelines, policies or plans purchased with public funds shall be open. When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records.
- (15) Existing or proposed security systems or procedures and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating in infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, including, but not

limited to, software or surveillance companies that secure access to such in buildings, the public disclosure of which would threaten public safety:

- a. Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open;
 - b. When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, all shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;
 - c. Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety (90) days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed;
- (16) Records that identify the configuration of components or the operation of a computer, computer system, company network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file database containing public records. Records related to the procurement of or expenditures to such computer, computer system, computer network, or telecommunications network, including the amount of money paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, telecommunications network shall be open;
- (17) Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body;
- (18) The portion of a record that identifies security systems or access codes or authorization codes for security of real property;
- (19) Email addresses and telephone numbers submitted to the public governmental body by individuals or entities for the sole purpose of receiving electronic or other communications limited to newsletters, notifications, advisories, alerts, and periodic reports;
- (20) Individually identifiable customer usage and billing records for customers of a municipally owned utility unless the records are requested by the customer or authorized for release by the customer, except that a municipally owned utility shall make available to the public the customer's

name, billing address, location, and dates of service provided for any commercial account.

- (b) Except as set forth in subsection (c) below, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question for closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the public governmental body and entered into the minutes.
- (c) When the public governmental body proposes to hold a closed meeting or vote, notice shall be given of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of RSMo 610.021. Such notice shall comply with the procedures set forth in section 2-57 for notice of a public meeting.
- (d) Any meeting or vote closed pursuant to this section shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. No business shall be discussed in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote.
- (e) Nothing in this section shall be construed as to require a closed meeting, record or vote to discuss or act upon any matter.
- (f) Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of RSMo Ch. 610 and this chapter.
- (g) All votes taken in closed session shall be by roll call vote.

SECTION TWO. Section 2-64 is hereby amended to read as follows:

Sec. 2-64. Providing access to or copies of public records.

Should a person authorized by state law to obtain city records request access to, or photocopies of, public records, there is hereby established a search and photocopying fee not to exceed ten cents (\$0.10) per page or such amount as may be set by RSMo Ch. 610 and as the same may be amended, for paper not larger than nine (9) by fourteen (14) inches, with an hourly fee for staff time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required to respond may be charged at actual costs. Fees for providing access to public records maintained on computer facilities, tapes, disks, films, pictures, maps, slides, graphics, illustration, or other media of devices and for paper copies larger than nine (9) by fourteen (14) inches, shall include the actual cost of the copies and staff time not to exceed the average hourly rate of pay for staff required to make the copies. Payment of copying fees may be requested in advance. A request for public records shall be considered withdrawn if the requesting party fails to remit all fees within thirty days of a request for payment of the fees by the public governmental body prior to making of copies. If the same or substantially similar request for public records is made within six

months after expiration of this thirty day period, payment may be requested for the original expired request in addition to any additional allowable fees necessary to fulfill the subsequent request.

SECTION THREE. It is intended that the provisions of Sections One and Two of this ordinance be incorporated into the Code of Ordinances of the City of Warrensburg.

SECTION FOUR. This ordinance shall be in full force and effect from and after its passage.

Read Two Times and Passed by Title this 23rd day of August, 2021.





Scott Holmberg, Mayor



Cindy Gabel, City Clerk