CHAPTER XXVII
PUBLIC RECORDS AND PROPERTY

27.01 DECLARATION OF POLICY AND INTENT

It is the intent of the City of Kenosha Common Council to enact legislation in compliance with §§19.31 through 19.39 of the Wisconsin Statutes, or any amendments thereto. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of the City of Kenosha that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of our representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information.

27.02 CONSTRUCTION

This Chapter shall be construed in every instance with a presumption of complete public access to governmental records consistent with the conduct of governmental business. The custodian may deny a request for records where the harm to the public interest resulting from disclosure outweighs the public interest in full access to the requested record.

27.03 SCOPE

This Chapter covers all records as hereinafter defined, including those made prior to the existence of this Ordinance and still available to the general public. This Chapter relates to all internal memoranda which may not be otherwise excepted by law as well as to all materials and records as hereinafter defined which may have originated from sources other than the City of Kenosha or its officers or employees and which may not otherwise be excepted by law from disclosure.

27.04 DESTRUCTION OF RECORDS

Destruction of public records shall be accomplished only in accordance with procedures authorized by State Statutes.

27.05 DEFINITIONS

A. Authority. Authority means any of the following having custody of a record: a City office, elected or appointed officials, agency, board, commission, committee, council, department or public body corporation and politic, created by law or Ordinance, rule or order of the City of Kenosha; any quasi-governmental corporation; any court of law; the Common Council; a nonprofit corporation which receives more than fifty (50%) percent of its funds from the City and which provides services related to the public health or safety to the City; or a formally constituted subunit of any of the foregoing.

B. Confidential-Exempt Records. A record is deemed confidential and exempt from disclosure if it falls within the scope of any matter which may properly be discussed in a closed session of any public meeting pursuant to the provisions of §19.85 of the Wisconsin Statutes or has been deemed confidential pursuant to State or Federal law, rule or regulation or has been deemed confidential pursuant to a court order. Records are also confidential and exempt from disclosure where obtained under a pledge of confidentiality which was necessary and given in order to obtain the information contained therein.

C. Legal Custodian. Legal custodian is that person vested by an authority with the full legal power to render decisions and carry out the duties of the authority under this Chapter. No legal custodian shall be responsible for the records of another legal custodian unless he or she has possession of the records of such other custodian. All of the following persons are vested with the full legal power to render decisions and carry out the duties of the authority under this Chapter:

1. In an elective office, the elected official is the legal custodian of his or her records and the records of his or her office unless said elected official has designated an employee of his or her staff to act as the legal custodian.

2. In the case of a committee of elected officials the chairperson is the legal custodian of the records of the committee.

3. In the case of a joint committee of elected officials, the co-chairpersons are the legal custodians of the records of the joint committee.

4. In the case of a board or commission, the chairperson or president of the board or commission shall be the legal custodian of the records of the board or commission.

5. In the case of an agency or department or of a nonprofit corporation receiving more than fifty (50%) percent of its funds from the City and which provides services related to the public health or safety to the City, the agency or department head or highest ranking officer and chief administrative officer shall be the legal custodian of the records of the agency, department or nonprofit corporation.

D. Personal Material. Personal material is any record or part thereof which contains only those communications which are totally unrelated to the affairs of government.

E. Record. Record means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. Record includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. Record does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or request; and published materials in the possession of an authority other than a public library which are available for sale or which are available for inspection at a public library.

F. Requester. Requester means any person who requests inspection or copies of a record.

G. Search. Search means any activity involving the locating of a record undertaken on behalf of a requester.

H. Sufficient Request. A request is 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.

I. Timely Access. Timely Access to records means access to records for purposes of inspection or copying as soon as practicable after the request has been made, taking into consideration the other responsibilities and duties of the legal custodian, personnel limitations, and the nature and quantity of the request. Where access cannot be granted within five (5) business days of the request, the requester shall be so informed in writing along with the date by which the information shall be provided, the reason for the delay, and the requester's right to appeal the delay.

27.06 DEPUTY AND ALTERNATE CUSTODIANS OF PUBLIC RECORDS

A. Deputy Custodians. All legal custodians, with the exception of members of the Common Council, shall designate one or more deputy legal custodians who shall act in the absence of the legal custodian.

B. Alternate Custodians. City Committees, Boards, Authorities and Commissions herein enumerated, due to lack of a permanent office and staff, shall, except when they are determined to be their own exclusive custodian, have alternate custodians who shall be such City Department Heads as hereinafter specified. Where applicable, the deputy custodians of a Department Head shall also be the deputy custodians for the designating City Committee, Board, Authority or Commission. The alternate custodians shall be as follows:

FINANCE COMMITTEE - City Clerk;
PUBLIC WORKS COMMITTEE - Director of Public Works
PUBLIC SAFETY & WELFARE COMMITTEE - City Clerk;
AIRPORT COMMISSION - Airport Director;
CITY PLAN COMMISSION - Director of City Development;
CIVIL SERVICE COMMISSION - Director of Personnel;
BOARD OF HARBOR COMMISSIONERS - Director of Public Works;
BOARD OF HOUSING APPEALS - Director of Neighborhood Services and Inspections;
BOARD OF WATER COMMISSIONERS - General Manager, Water Utility;
HOUSING AUTHORITY - Executive Director of Housing Authority;
LANDMARKS COMMISSION - Director of City Development;
LEGISLATIVE COMMITTEE - City Administrator;
LIBRARY BOARD - Library Director;
MUSEUM BOARD - Museum Director;
PARK COMMISSION - Director of Public Works;
BOARD OF POLICE & FIRE COMMISSIONERS - Chief of Police;
REDEVELOPMENT AUTHORITY - Director of City Development;
TRANSIT COMMISSION - Director of Transportation;
BOARD OF ZONING APPEALS - Director of Neighborhood Services and Inspections;
BOARD OF CANVASSERS - City Clerk.

27.07 RESPONSIBILITY OF CUSTODIAN

A. Access. It is the responsibility of the custodian to insure timely complete and full access of all records in accordance with this Chapter and Wisconsin Statutes §§19.31 to 19.39. To this end the custodian shall insure that all records as heretofore defined are properly managed, indexed and filed so as to provide for access in accordance with §§19.31 through 19.39 of the Wisconsin Statutes. If, however,

a record of an authority is occasionally taken to a location other than the location where such records are regularly kept, such records may be inspected at such place as they are regularly kept upon one business day's notice. Access need not be provided at the occasional location. In the event access is denied, the legal custodian shall notify the requester of the denial in whole or in part, the reasons therefore, and the right of the requester to appeal.

B. Security. The custodian of public records shall be responsible for establishing a security system to insure the preservation of such records. The custodian shall establish such rules and regulations as deemed necessary and appropriate and not inconsistent with State Statutes to insure that such documents and records in his possession remain in his possession and unaltered or damaged.

C. Editing. The custodian is responsible for editing all such records to insure that no part of the record which is properly confidential is made public.

D. Request for Records Scheduled for Destruction. Records may not be destroyed at any time after the receipt of request for inspection or copying until after the request is granted or until at least sixty (60) days after the date that the request is denied. If an action is commenced under §19.37 of the Wisconsin Statutes, the requested record may not be destroyed until after the order of the Court in relation to such record is issued and the deadline for appealing that order is past, or, if appealed, until after the order of the Court hearing the appeal is issued. If the Court orders the production of any record, and the order is not appealed, the requested record may not be destroyed until after the request for inspection or copying is granted.

27.08 NOTICE AND FORM

Each legal custodian, as defined herein, with the exception of the members of the Common Council, shall permanently display and make available for inspection and copying at its office for the guidance of the public, a notice which, so far as relevant, follows the below provided format. The City Clerk shall provide this notice to requesters on behalf of any Board, Commission or Committee which does not maintain an office.

WISCONSIN PUBLIC RECORDS LAW

_____

_____

(Name of Department, Committee, Commission, Etc.)

1. Under Wisconsin Statutes, §19.35(1), a copy of which may be obtained from the legal custodian, members of the public have certain rights to access to public records. These rights include the right to inspect any record as defined herein, to photocopy said record or obtain a legible or audible copy of any tape or video recording and the right to photograph a record, the form of which does not permit copying. A member of the public need not identify himself or herself or state the purpose of the request in order to inspect or copy a record. A requester may, however, 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. Upon access to or use of information, a requester shall comply with any regulations or restrictions which are specifically prescribed by law. In the process of honoring a request for records, the authority will not create a new record by extracting information from existing records and will not compile the information in a new format.

2. Exceptions. The public's right to access to public records may be limited according to law in certain circumstances where the material is deemed confidential or where the material is not a public record. In addition, the public's right to access is limited pursuant to the provision of §19.36 of the Wisconsin Statutes, a copy of which law may be obtained from the legal custodian, which permits withholding information in certain circumstances relating to the application of other laws, law enforcement records, contractor's records, computer programs and data, and trade secrets.

The provisions of the Wisconsin Public Records Law do not apply to a record which has been or will be promptly published with copies offered for sale or distribution. In addition, the City is not required to create a new record by means of extracting information from existing records and compiling the information in a new format.

3. The undersigned legal custodian is responsible for insurance compliance with §§19.31 through 19.39 of the Wisconsin Statutes and with this Chapter so as to insure that the public may obtain information and access to records in his or her custody for purposes of inspection or copying. The legal custodian may make such reasonable rules not inconsistent with State Statutes as deemed necessary to insure that records are not stolen, misplaced or damaged. The legal custodian for this office has established the following rules: (e.g., specificity, public handling, use, time requirements, cost estimates, prepayment, removal, excess costs, nonpayment on account, and reasonable limitations as to subject matter or length of time represented by the record):

_____
_____
_____
_____

4. The legal custodian for this office is _____; and in the event of the absence of the legal custodian, the deputy legal custodian(s) (is/ are)_____, _____.

5. Records for the above listed authority may be obtained in the following location: _____.

6. Records may be obtained during working days, which are normally Monday through Friday, between the hours of 8:00 A.M. and 4:30 P.M., unless otherwise specifically authorized by law.

7. Because the above listed authority does not maintain regular office hours at the location where records are kept, access is permitted to records:

a. Upon at least forty-eight (48) hours written or oral notice of intent to inspect or copy a record.

b. During the following two (2) consecutive hours on the following day of each week: _____. Twenty-four hours advance written or oral notice to inspect or copy a record is required.

8. Facilities. Some facilities which are available to the employees of the above listed authority will be made available to the public to obtain information and access and to make requests for records or obtaining copies of records, inspecting such records and abstracting of records. The above listed authority is not required to purchase or lease photocopying, duplicating, photographic, video, sound duplicating or other equipment or to provide a separate room for such inspection or copying of records.

9. Fee Schedule. Twenty-five ($.25) cents per page may be collected by the legal custodian to cover the copying of records. Where copies of photographs, audio or video tapes or other records not on standard sizes of paper and subject to photocopying upon existing equipment, the costs therefor shall be the actual, direct and necessary expense of the copying thereof. In the event it is necessary to search for a record, the following costs are hereby imposed: The hourly wage rate, plus fringe benefits, of the employee performing a record search where said cost equals or exceeds Fifty ($50) Dollars.

10. Denials and Appeals. In the event that you are denied access to records, in whole or in part, you are entitled to know the reason for the denial. If a request is made orally, the decision to deny access may be made orally unless a demand for the written statement of the reasons for the denial is made within five (5) business days of the oral denial.

Every written denial of a request by a custodian shall inform the person making the request that if the request for the record was made in writing, then the requester may bring an action for a writ of mandamus under §19.37(1) of the Wisconsin Statutes asking a Court to order the release of the record and/or the requester may request the Kenosha County District Attorney or the Wisconsin Attorney General to bring an action for a writ of mandamus asking a Court to order release of the record to the requester.

You may seek advice from the Wisconsin Attorney General as to the applicability of the Wisconsin Public Records Law under any circumstances. The Attorney General may be contacted at the State Capitol, Madison, Wisconsin 53702.

Costs, fees and damages may be awarded where there is a violation of the Public Records and Property Law in accordance with Wisconsin Statutes §19.37(2), (3) and (4).

11. Stolen, Concealed, Misplaced, Damaged or Altered Records. In the event that any record inspected or copied is taken without permission, intentionally concealed, damaged or improperly altered by a member of the public, he or she may be guilty of a Class D Felony pursuant to Wisconsin Statutes §946.72(1). In the event that a member of the public negligently misplaces or damages such record, he or she may be held liable for all consequent damages including costs of replacement.

_____
Legal Custodian

_____
Deputy Legal Custodian

27.085 CONFIDENTIALITY OF INCOME AND EXPENSE INFORMATION

Whenever the Assessor, in the performance of his/her duties, requests and obtains income and expense information pursuant to Section 70.47(7)(af), Wisconsin Statutes, 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 said information may be revealed to and used by persons in the discharge of the 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 an order of a court. Income and expense information provided to the Assessor under Section 70.47(7)(af), Wisconsin Statutes, unless a court determines that it is inaccurate, is, per Section 70.47(7)(af), Wisconsin Statutes, not subject to the right of inspection and copying under Section 19.35(1), Wisconsin Statutes.

27.09 ENFORCEMENT

Enforcement of this Ordinance and costs, fees damages and penalties awarded in conjunction with enforcement of this Ordinance shall be limited exclusively to those provisions made in Wisconsin Statutes §19.37(1) to (4).

27.10 AMENDMENTS AND REPEAL

Amendments to §§19.31 through 19.39 of the Wisconsin Statutes shall be incorporated by reference as of the time that such amendment to said State Statutes take effect.

27.11 SEVERABILITY

If any provision of this Chapter is invalid or unconstitutional, or in conflict with the Wisconsin Statutes, said provision shall not affect the provisions or application of this Chapter which can be given effect without the invalid or unconstitutional provision.