

ORDINANCE NO. 2013-01

AN ORDINANCE ESTABLISHING FEES TO BE CHARGED TO PERSONS FOR ACCESSING AND/OR COPYING OPEN PUBLIC RECORDS AND REPEALING ALL OTHER OPEN RECORDS REQUEST ORDINANCES.

WHEREAS, the City of Frontenac, Kansas (the "City"), is a duly organized city created and existing under the laws of the State of Kansas; and

WHEREAS, the governing body of the City of Frontenac, Kansas, is desirous of maintaining transparency in all its public meetings and making the same available to members of the public.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FRONTENAC, KANSAS:

Section 1. POLICY.

(a) It is hereby declared to be the policy of the city that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act.

(b) Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated record custodian thereof, or his or her designated representative.

Section 2. RECORD CUSTODIANS.

(a) All city officers and employees appointed or designated as record custodians under this article shall: protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the city; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this city for inspecting and copying open public records.

(b) The official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the Local Freedom of Information Officer that contains basic information about the rights of a requester, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the Kansas Open Records Act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative offices of the city where it is available to members of the public who request public information in person.

Section 3. LOCAL FREEDOM OF INFORMATION OFFICERS.

The Local Freedom of Information Officer shall:

(a) Prepare and provide educational materials and information concerning the Kansas Open Records Act;

(b) be available to assist the city and members of the general public to resolve disputes relating the Kansas Open Records Act;

(c) respond to inquiries relating to the Kansas Open Records Act;

(d) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise made available to the public under the Kansas Open Records Act. In establishing such requirements for the content of the brochure, the Local Freedom of Information Officer shall include plainly written basic information about the rights of a requester, the responsibilities of the city, and the procedures for inspecting and obtaining a copy of public records under the Act.

Section 4. PUBLIC REQUEST FOR ACCESS.

All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the record custodian for each such day at which time any person may request access to an open public record.

Section 5. FACILITIES FOR PUBLIC INSPECTION.

All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring to inspect and/or copy an open public record. The office of the city clerk, being the principal record keeper of the city, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the city clerk except when the requested records are not in that office and are available in another city office.

Section 6. PROCEDURES FOR INSPECTION.

Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the governing body for record inspection and copying, including those procedures established by record custodians as authorized by the governing body. Such procedures shall be posted in each city office keeping and maintaining open public records.

Section 7. APPOINTMENT OF OFFICIAL CUSTODIANS.

The following city officers are hereby appointed as official custodians for purposes of the Kansas Open Records Act and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:

- (a) City Clerk - All public records kept and maintained in the city clerk's office and all other public records not provided for elsewhere in this section.
- (b) City Treasurer - All public records not on file in the office of the city clerk and kept and maintained in the city treasurer's office.
- (c) Chief of Police - All public records not on file in the office of the city clerk and kept and maintained in the city police department.
- (d) Fire Chief - All public records not on file in the office of the city clerk and kept and maintained in the city fire department.
- (e) City Attorney - All public records not on file in the office of the city clerk and kept and maintained in the city attorney's office.
- (f) Clerk of the Municipal Court - All public records not on file in the office of the city clerk and kept and maintained in the municipal court.

Section 8. APPOINTMENT OF LOCAL FREEDOM OF INFORMATION OFFICER. The City Clerk is hereby appointed as the local freedom of information officer and charged with all of the duties as set forth in Section 3.

Section 9. DESIGNATION OF ADDITIONAL RECORD CUSTODIANS.

- (a) Each of the official custodians appointed in Section 6 is hereby authorized to designate any subordinate officers or employees to serve as record custodian. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act.
- (b) Whenever an official custodian shall appoint another person as a record custodian he or she shall notify the city clerk of such designation and the city clerk shall maintain a register of all such designations.

Section 10. REQUESTS TO BE DIRECTED TO CUSTODIANS.

- (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Kansas Open Records Act, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.
- (b) Whenever any city officer or employee appointed or designated as a custodian under this article is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.

Section 11. FEE ADMINISTRATION.

The City Clerk is hereby authorized to provide the Clerk's office, and the office of each record custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee moneys collected to the City Treasurer not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the Clerk-finance officer and Treasurer of the City.

Section 12. INSPECTION FEE.

- (a) Where a request has been made for inspection of any open public record which is readily available to the record custodian, there shall be no inspection fee charged to the requester.
- (b) In all cases not covered by subsection (a), a record inspection fee shall be charged at the rate of \$25.00 per hour per employee engaged in the record search. A minimum charge of \$25.00 shall be charged for each such request.

Section 13. COPYING FEE.

- (a) A fee of .25 per page shall be charged for photocopying public records, such fee to cover the costs of materials and equipment.
- (b) For copying any public records which cannot be reproduced by the City's photocopying equipment, the requester shall be charged the actual cost to the City, including staff time, in reproducing such records.

Section 14. PREPAYMENT OF FEES.

- (a) A record custodian may demand prepayment of the fees established by this article whenever he or she believes this to be in the best interest of the City. The prepayment

amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.

(b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the record custodian, such fees are estimated to exceed \$25.00.

(c) Where prepayment has been demanded by the record custodian, no record shall be made available to the requester until such payment has been made.

Section 15. PAYMENT.

All fees charged under this article shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the City.

Section 16. EXCEPTIONS TO THE OPEN RECORDS ACT.

The Kansas Open Records Act recognizes that certain records contain private or privileged information. The Act lists several exceptions, including but not limited to:

- Personnel records of public employees
- Medical treatment records
- Records protected by attorney/client privilege
- Records closed by the rules of evidence
- Records containing personal information compiled for census purposes
- Notes and preliminary drafts
- Criminal investigation records
- Proprietary business information

A complete list of exemptions can be found in K.S.A. 45-221

The City of Frontenac is only required to provide public records that already exist. There is no requirement for the City to create a record upon request.

Nothing in the Open Records Act supercedes federal law, including the Family Educational Rights and Privacy Act (Buckley Amendment).

If a record is only partially exempted from disclosure, the Record Custodian shall delete the exempted materials and make available the material that is subject to disclosure. Records which are exempt because they pertain to an identifiable individual are subject to disclosure if deletion of the identifying portions of the records is possible.

Public records more than 70-years old are open for inspection without regard to the above-listed exemptions. Disclosure of such records is prohibited only if federal or state law so provides.

Section 17. DELAYED AND/OR DENIED REQUESTS.

All efforts will be made to process requests for public records as soon as it is received; however, some requests may be delayed or denied it:

- More information is needed in order to retrieve the records
- Legal issues must be addressed before the records are released
- The requested records are archived or stored off site

• The volume of records requested is large and will take time to duplicate
Requests may be denied in whole or in part if:

- The requested records do not exist
- The requested records are exempt from disclosure by law
- The request is unclear and more information is needed

If the request is delayed or denied, the requester will receive a written explanation for the delay or denial within three (3) business days,

Permission to inspect or copy public records may be denied if (1) the request “places an unreasonable burden in producing public records” or (2) the custodian of the records “has reason to believe that the requests are intended to disrupt other essential functions of the public agency.” Denial of a person’s inspection or copying request will be explained in writing upon request.

Copies of radio or recording tapes or disks, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices shall not be required to be furnished unless such items or devices were shown or played to a public meeting of the governing body of the City of Frontenac, Kansas or other public body.

The City of Frontenac has determined to make available pursuant to an open records request, the audio/video recordings of City Council meetings. The recordings will be made and maintained by the Frontenac City Clerk.

In the event of equipment failure and/or defect and an audio/video recording is not produced, the minutes will so reflect and an explanation be noted for the same.

Section 18: REPEAL. All other Ordinances and or parts of Ordinances that are in conflict with this Ordinance are hereby repealed.

Section 19: EFFECTIVE DATE.

This Ordinance shall be in force and effective from and after its approval and publication in the official City newspaper.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF FRONTENAC, KANSAS this _____ day of March, 2013.


James Kennedy, Mayor

ATTEST:


Douglas Sellars, City Clerk



(SEAL)