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1 WHEREAS, as of 2022, the City will benefit from streamlining
2 responsibilities regarding records management; and

3 WHEREAS, as of 2022, there are conflicting definitions of common public
4 records terms in our ordinances.

5 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:

7 SECTION 1. ROA 1994, Chapter 2, Article 6, Part 4 is repealed in its entirety.

8 SECTION 2. ROA 1994, Chapter 2, Article 7, Part 6 is hereby amended as
9 follows and its sections and subsections are to be renumbered accordingly:
10 § 2-7-6-2 FINDINGS.

11 The New Mexico Inspection of Public Records Act, Section 14-2-1 et seq.,
12 NMSA 1978, provides that some classes of records are not subject to public
13 inspection "as otherwise provided by law." Federal law expresses a policy in
14 favor of protecting the privacy of individuals in their social security numbers.
15 5 U.S.C. § 522a(b). City department heads, other employees and officials have
16 a legitimate and reasonable expectation of privacy in their social security
17 numbers. The legitimate and reasonable expectation of privacy that City
18 employees have in their social security numbers, outweighs the interest in the
19 public in the disclosure of such information. City employees other than
20 department heads and officials have a legitimate expectation of privacy in
21 their home addresses and home telephone numbers in order to protect such
22 information from use for illegal purposes. The legitimate and reasonable
23 expectation of privacy that City employees have in their social security
24 numbers, home addresses and home telephone numbers outweighs the
25 interest in the public in the disclosure of such information. In light of the
26 Congressional policy favoring nondisclosure of social security numbers and
27 the constitutional right to privacy in one's home address and home telephone
28 numbers, the City is justified in enacting legislation codifying such
29 protections for its public employees and officials. [New Mexico state law
30 expresses a policy in favor of protecting individuals from non-consensual
31 distribution of sensitive images of their person. See NMSA 1978, § 30-37A-1.
32 Individuals have a legitimate and reasonable expectation that to the extent
33 sensitive images are evidence in a criminal case or otherwise in the

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1 possession of the City, those images will be exempt from disclosure in
2 response to public records requests from the general public. New Mexico
3 state law expresses a policy in favor of government bodies protecting
4 sensitive information technology infrastructure and cybercrime is becoming a
5 growing concern. See NMSA 1978, § 30-45-4. The City has a legitimate need to
6 protect its information technology infrastructure and systems from intrusion
7 and compromise.]

8 § 2-7-6-3 PROCESSING PUBLIC RECORDS REQUESTS

9 [(A)The Office of the City Clerk shall be the records custodian for the purpose
10 of processing of requests for public records and shall establish a program for
11 the application of efficient and economical management methods to the
12 processing of requests for public records under the New Mexico Inspection of
13 Public Records Act.]

14 [(B)]The City Clerk shall [~~coordinate the receipt of~~] [receive and process]
15 requests to inspect public records, and oversee compliance with the Act by
16 the agency records custodian to assure that the public is provided proper and
17 reasonable opportunities to inspect public records and reasonable facilities to
18 make or furnish copies of the public records during usual city business hours.

19 ~~[(A) For purposes of §§ 2-7-6-1 et seq., the definition of "public record" shall~~
20 ~~be the definition of "public record" found in [the Inspection of Public Records~~
21 ~~Act] [§ 2-6-4-3 ROA 1994.]~~

22 [(B)] [(C)] All city employees, elected officials and any person who is a party
23 under a contract with the city or a subcontractor under a subcontract with a
24 party under a contract with the city shall provide public records to the agency
25 records custodian and the City Clerk in response to any request to inspect
26 public records.

27 [(D) The City Clerk shall establish a fee schedule for public records annually
28 as provided by law. The fee schedule shall include procedures and guidelines
29 for determining when such fees should be waived or reduced.]

30 § 2-7-6-4 AGENCY RECORDS CUSTODIAN AND PROCEDURES.

31 Each department of the city, the City Council, and each board, commission,
32 committee subject to the Public Boards, Commissions and Committees
33 Ordinance (the "Agencies") shall designate at least one person to be the

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1 agency records custodian for said agency who shall cooperate and coordinate
2 with the City Clerk to respond to requests to inspect public records. Each
3 agency shall provide the City Clerk with the names, telephone, e-mail and
4 mailing addresses for the agency records custodian or custodians. Boards,
5 commissions and committees may designate city staff assigned to the board,
6 commission or committee as their agency records custodian. The City Clerk
7 shall post the information about each agency record custodian on the City
8 Clerk's web site to assure accessibility to the agency records custodian by the
9 public and the press. ~~[(A) If an agency does not have possession of the~~
10 ~~records requested, or cannot respond to the written request without~~
11 ~~consultation with another agency, the agency records custodian shall~~
12 ~~promptly forward the request to the appropriate agency and notify the City~~
13 ~~Clerk that the agency does not have all or part of the requested records and~~
14 ~~whether or not it has located the records at another agency. Agencies~~
15 ~~receiving request to inspect records for records for which the agency is not~~
16 ~~the custodian shall not require the requesting party to write a new request to~~
17 ~~another agency of the city. Rather, that request shall be forwarded to any~~
18 ~~known custodian and the City Clerk, and the time to respond shall begin to run~~
19 ~~upon receipt of such request by such other agency. Upon forwarding the~~
20 ~~request to another agency, the agency records custodian shall so notify the~~
21 ~~requestor in writing and state the reason for the absence of the records~~
22 ~~sought and the location where the custodian believes the records may be~~
23 ~~found.~~
24 ~~(B) The City Clerk or agency records custodian shall respond to oral~~
25 ~~requests for non-exempt city records immediately, if such records are~~
26 ~~determined to be public records and are readily available, or as soon as~~
27 ~~practicable under the circumstances, provided that if the City Clerk or agency~~
28 ~~records custodian is uncertain of the nature or scope of the request, he/she~~
29 ~~may require that the requesting party reduce the request to writing. The City~~
30 ~~Clerk and/or agency records custodian may ask the requesting party to clarify~~
31 ~~any oral or written request.~~
32 ~~(C) If a written request seeks an unusually voluminous amount of public~~
33 ~~records, is excessively burdensome or broad, or where other unusual~~

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1 ~~circumstances exist, the records custodian shall notify the requestor in~~
2 ~~writing within 15 days of receipt of a request that additional time will be~~
3 ~~necessary to respond. The custodian shall then respond to the request within~~
4 ~~a reasonable period of time under the circumstances and may schedule~~
5 ~~multiple inspection sessions, when appropriate. When possible, the agency~~
6 ~~records custodian shall obtain a written agreement from the requesting party~~
7 ~~as to the schedule for inspection.~~

8 ~~(D) After a review of a public records inspection request, should the agency~~
9 ~~records custodian find that disclosure of the city records should be denied in~~
10 ~~whole or part, the records custodian shall submit that finding to the City~~
11 ~~Attorney, who will make an independent determination whether the disclosure~~
12 ~~of the city records should be denied in whole or in part. If the City Attorney~~
13 ~~determines that the city records sought are exempt from disclosure, the City~~
14 ~~Attorney shall notify the agency records custodian of the determination and~~
15 ~~the records custodian shall provide the requestor with a written explanation of~~
16 ~~the denial. The written denial shall: (a) describe the records sought; (b) set~~
17 ~~forth the names and titles or positions of each person responsible for the~~
18 ~~denial; and (c) be delivered or mailed to the person requesting the records~~
19 ~~within 15 days after the request for inspection was received. In the instance of~~
20 ~~requests for voluminous records resulting in multiple inspections, the denial~~
21 ~~may be as to each increment of records being produced for inspection.~~

22 ~~(E) No inspection of records shall be allowed that, if disclosed, would~~
23 ~~facilitate unauthorized access to an agency's electronic information systems~~
24 ~~or clearly jeopardize or compromise information security. Record inspection~~
25 ~~and copying shall be accomplished in a manner that does not allow the~~
26 ~~requesting party to access the computer system where the integrity of the~~
27 ~~information of the computer would be jeopardized.]~~

28 § 2-7-6-5 PROCESS.

29 The City Clerk shall establish a procedure for responding to requests to
30 inspect public records which complies with the requirements of state law as
31 set forth in the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA
32 1978 as currently enacted or hereinafter amended.

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1 ~~[(A)]~~ The social security numbers, home addresses and home telephone
2 numbers of city employees are ~~[not public records within the meaning of the~~
3 ~~New Mexico Inspection of Public Records Act]~~ [confidential and exempt from
4 inspection], and shall not be disclosed to any person, except with the express,
5 written consent of the employee or official. The social security numbers of
6 City department heads and officials are ~~[not public record]~~ [confidential and
7 exempt from inspection] and shall not be disclosed to any person except with
8 the express written consent of that person. Home addresses and home
9 telephone numbers of city officials and department heads are public record.
10 [(B) No inspection of records shall be allowed that, if disclosed, would
11 facilitate unauthorized access to an agency's electronic information systems
12 or clearly jeopardize or compromise information security. Record inspection
13 and copying shall be accomplished in a manner that does not allow the
14 requesting party to access the computer system where the integrity of the
15 information of the computer would be jeopardized.
16 (C) "images, photographs, videos or other likenesses depicting or simulating
17 an intimate act or depicting any portion of a person's genitals, or of a woman's
18 breast below the top of the areola, that is either uncovered or visible through
19 less-than-fully opaque clothing, which images may reasonably be considered
20 to be private, intimate or inappropriate for distribution are exempt from
21 disclosure.]
22 ~~[\$ 2-7-6-6 ARCHIVES.~~
23 ~~There shall be established an archiving system which shall be accessible to~~
24 ~~the public through requests to the City Clerk who shall be responsible for the~~
25 ~~office of the archives.]~~
26 SECTION 3. ROA 1994, Chapter 2, Article 7, Part 7 is repealed in its entirety
27 and subsequent chapters parts should be renumbered accordingly.
28 SECTION 4. A new Part is added to ROA 1994, Chapter 2, Article 7:
29 [PART 9: CITY CLERK
30 § 2-7-9-1 Policy
31 The City Council recognizes its responsibility to encourage the modernization
32 and development of business methods in City government which result in
33 efficiency and improvement of service. The Council also recognizes its

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1 responsibility to create policies for the retention of records and orderly
2 maintenance of records to mitigate against the harms disaster may inflict on
3 records and procedures processes.

4 **§ 2-7-9-2 DEFINITIONS**

5 (A) Agency: Any City department, board, commission, independent agency, or
6 entity.

7 (B) Public Record: “public records” means all documents, papers, letters,
8 books, maps, tapes, photographs, recordings and other materials, regardless
9 of physical form or characteristics, that are used, created, received,
10 maintained or held by or on behalf of any public body and relate to public
11 business, whether or not the records are required by law to be created or
12 maintained.

13 (C) City Record: all books, papers, maps, photographs or other documentary
14 materials, regardless of physical form or characteristics, made or received by
15 any agency in pursuance of law or in connection with the transaction of public
16 business and preserved, or appropriate for preservation, by the agency or its
17 legitimate successor as evidence of the organization, functions, policies,
18 decisions, procedures, operations or other activities of the government or
19 because of the informational and historical value of data contained therein.
20 Library or museum material of the state library, state institutions and state
21 museums, extra copies of documents preserved only for convenience of
22 reference and stocks of publications and processed documents are not
23 included.

24 **§ 2-7-9-3 PROCESS.**

25 The Clerk is hereby authorized and directed to study the retention and
26 disposal of City government records, papers and instruments of every kind
27 and nature.

28 **§ 2-7-6-4 CORRELATION.**

29 In the performance of this duty, the Clerk is directed to correlate this program
30 where possible with that of the State Commission of Public Records.

31 **§ 2-7-6-5 INSPECTION AND SURVEY OF RECORDS.**

32 The City Clerk is authorized to inspect or survey the records of any agency,
33 and to make surveys of records management and records disposal practices

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1 in the various agencies, and the Clerk shall be given the full cooperation of
2 officials and employees of the agencies in such inspections and surveys.
3 Records, the use of which is restricted by or pursuant to law or for reasons of
4 security or the public interest, may be inspected or surveyed by the City Clerk,
5 subject to the same restrictions imposed upon employees of the agency
6 holding the records.

7 **§ 2-7-6-6 ARCHIVES.**

8 There shall be established an Office of the Archives which shall exist within
9 the Office of the City Clerk and the City Clerk shall be responsible for it. The
10 Office of the Archives shall create an archiving system to store and preserve
11 City records.]

12 **SECTION 5. SEVERABILITY CLAUSE.** If any section, paragraph, word or
13 phrase of this ordinance is for any reason held to be invalid, or unenforceable
14 by any court of competent jurisdiction, such decision shall not affect the
15 validity of the remaining provisions of this ordinance. The Council hereby
16 declares that it would have passed this ordinance and each section,
17 paragraph, sentence, clause, word or phrase thereof irrespective of any
18 provision being declared unconstitutional or otherwise invalid.

19 **SECTION 6. COMPILATION.** Section 2 through 4 of this ordinance shall amend,
20 be incorporated in, and made part of the Revised Ordinances of Albuquerque,
21 New Mexico, 1994.

22 **SECTION 7. EFFECTIVE DATE.** This ordinance shall take effect five (5) days
23 after publication by title and general summary.

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CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

September 26, 2022

TO: Isaac Benton, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, consisting of stylized initials 'TK'.

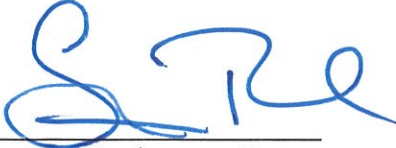
SUBJECT: Clean up of Records Management and Processing

The City's Ordinances regarding records management and processing of requests for public records have not been updated in some time. This ordinance repeals the City's Records Analysis and Disposal Committee ordinance and transfers those functions to the Clerk's Office. The City Clerk convened this committee several years ago and it adopted the State's Functional Records Retention & Disposition Schedule. This appears to be the only time this committee has ever met since it was created in 1976 and the Clerk's Office Records Center can handle most, if not all, functions regarding records management in consultation with the State Archives.

The City's Open Records and Database Ordinance are also in need of revision. In 2016, the City purchased NextRequest, an online software platform for processing requests for public records. This ordinance removes numerous outdated provisions that are no longer necessary following the City's adoption of NextRequest. The ordinance also creates some additional protections for crime victims, creates an annual process for the establishment of fees, and mandates the creation of a process for a waiver of fees.

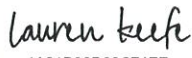
Clean up of ordinances regarding records management and records processing

Approved:



Lawrence Rael Date
Chief Administrative Officer

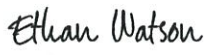
Approved as to Legal Form:

DocuSigned by:
 9/26/2022 | 4:14 PM MDT

1A21D96D32C74EE...
Lauren Keefe Date
City Attorney

DS
AT

Recommended:

DocuSigned by:
 9/26/2022 | 1:52 PM PDT

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Ethan Watson, City Clerk Date

Cover Analysis

- 1. What is it?** An Ordinance to update the City's Ordinances governing City Records.
- 2. What will this piece of legislation do?** This legislation will update various ordinances regarding records management to reflect current practices and trends.
- 3. Why is this project needed?** To further transparency in local governance.
- 4. How much will it cost and what is the funding source?** N/A
- 5. Is there a revenue source associated with this contract? If so, what level of income is projected?** N/A
- 6. What will happen if the project is not approved?** City Ordinances will continue to contain outdated provisions which do not reflect current or best practices.
- 7. Is this service already provided by another entity?** No.