

**CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL**

COUNCIL BILL NO. O-22-46 ENACTMENT NO. 0-2022-044

SPONSORED BY: Tammy Fiebelkorn, by request

1 **ORDINANCE**
2 **REPEALING THE CITY OF ALBUQUERQUE CODE OF ORDINANCE SECTIONS**
3 **2-6-4-1 THROUGH 2-6-4-6, THE “RECORDS ANALYSIS AND DISPOSITION**
4 **COMMITTEE” ORDINANCE AND REPLACING IT WITH A NEW ORDINANCE;**
5 **AMENDING THE EXISTING OPEN RECORDS ORDINANCE SECTIONS 2-7-6-1**
6 **THROUGH SECTION 2-7-6-7, THE “OPEN RECORDS ORDINANCE”;**
7 **REPEALING SECTIONS 2-7-7-1 TO 3.**

8 **WHEREAS, the City is generating more and more records each year; and**
9 **WHEREAS, the City’s ordinance governing retention and disposition of**
10 **records - the Records Retention and Disposition Committee Ordinance - has**
11 **not been reviewed or amended since 1976; and**

12 **WHEREAS, the City of Albuquerque is a public body subject to the**
13 **Inspection of Public Records Act; and**

14 **WHEREAS, the City of Albuquerque receives an increasing number of**
15 **requests each year; and**

16 **WHEREAS, in 2018, the City received approximately seven-thousand**
17 **(7,000) requests for public records and since then the volume of requests for**
18 **public records has increased by ten to thirty percent (10-30%) each year; and**

19 **WHEREAS, in 2022, the City of Albuquerque appears to be on track to**
20 **receive eleven-thousand (11,000) requests for public records, which may be**
21 **more than any other public body in New Mexico; and**

22 **WHEREAS, a growing majority of these requests appear to be submitted by**
23 **commercial entities; and**

24 **WHEREAS, as of 2022, the City of Albuquerque employed at least twelve**
25 **people who worked on a full or part time basis on processing requests for**
26 **public records under IPRA; and**

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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 ROA 1994, Chapter 2, Article 6, Part 4 is repealed in its entirety.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 receive and process requests to inspect public
15 records, and oversee compliance with the Act by the agency records
16 custodian to assure that the public is provided proper and reasonable
17 opportunities to inspect public records and reasonable facilities to make or
18 furnish copies of the public records during usual city business hours.

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

24 (D) The City Clerk shall establish a fee schedule for public records annually as
25 provided by law. The fee schedule shall include procedures and guidelines for
26 determining when such fees should be waived or reduced. During the process
27 of establishing fees, the Clerk shall consider classes of records which could
28 be made available free of charge, classes of data, and quantities of data.

29 § 2-7-6-4 AGENCY RECORDS CUSTODIAN AND PROCEDURES.

30 Each department of the city, the City Council, and each board, commission,
31 committee subject to the Public Boards, Commissions and Committees
32 Ordinance (the "Agencies") shall designate at least one person to be the
33 agency records custodian for said agency who shall cooperate and coordinate

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1 with the City Clerk to respond to requests to inspect public records. Each
2 agency shall provide the City Clerk with the names, telephone, e-mail and
3 mailing addresses for the agency records custodian or custodians. Boards,
4 commissions and committees may designate city staff assigned to the board,
5 commission or committee as their agency records custodian. The City Clerk
6 shall post the information about each agency record custodian on the City
7 Clerk's web site to assure accessibility to the agency records custodian by the
8 public and the press.

9 § 2-7-6-5 PROCESS.

10 The City Clerk shall establish a procedure for responding to requests to
11 inspect public records which complies with the requirements of state law as
12 set forth in the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA
13 1978 as currently enacted or hereinafter amended.

14 (A) The social security numbers, home addresses and home telephone
15 numbers of city employees are confidential and exempt from inspection, and
16 shall not be disclosed to any person, except with the express, written consent
17 of the employee or official. The social security numbers of City department
18 heads and officials are confidential and exempt from inspection and shall not
19 be disclosed to any person except with the express written consent of that
20 person. Home addresses and home telephone numbers of city officials and
21 department heads are public record.

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

28 (C) Images, photographs, videos or other likenesses depicting or simulating
29 an intimate act or depicting any portion of a person's genitals, or of a woman's
30 breast below the top of the areola, that is either uncovered or visible through
31 less-than-fully opaque clothing, which images may reasonably be considered
32 to be private, intimate or inappropriate for distribution are exempt from
33 disclosure.

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1 SECTION 3. ROA 1994, Chapter 2, Article 7, Part 7 is repealed in its entirety
2 and subsequent chapters parts should be renumbered accordingly.

3 SECTION 4. A new Part is added to ROA 1994, Chapter 2, Article 7 :

4 PART 9: CITY CLERK

5 § 2-7-9-1 POLICY.

6 The City Council recognizes its responsibility to encourage the modernization
7 and development of business methods in City government which result in
8 efficiency and improvement of service. The Council also recognizes its
9 responsibility to create policies for the retention of records and orderly
10 maintenance of records to mitigate against the harms disaster may inflict on
11 records and procedures processes.

12 § 2-7-9-2 DEFINITIONS.

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

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

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

32 § 2-7-9-3 PROCESS.

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1 The Clerk is hereby authorized and directed to study the retention and
2 disposal of City government records, papers and instruments of every kind
3 and nature.

4 § 2-7-6-4 CORRELATION.

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

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

8 The City Clerk is authorized to inspect or survey the records of any agency,
9 and to make surveys of records management and records disposal practices
10 in the various agencies, and the Clerk shall be given the full cooperation of
11 officials and employees of the agencies in such inspections and surveys.
12 Records, the use of which is restricted by or pursuant to law or for reasons of
13 security or the public interest, may be inspected or surveyed by the City Clerk,
14 subject to the same restrictions imposed upon employees of the agency
15 holding the records.

16 § 2-7-6-6 ARCHIVES.

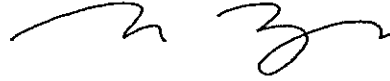
17 There shall be established an Office of the Archives which shall exist within
18 the Office of the City Clerk and the City Clerk shall be responsible for it. The
19 Office of the Archives shall create an archiving system to store and preserve
20 City records.

21 SECTION 5. SEVERABILITY CLAUSE. If any section, paragraph, word or
22 phrase of this ordinance is for any reason held to be invalid, or unenforceable
23 by any court of competent jurisdiction, such decision shall not affect the
24 validity of the remaining provisions of this ordinance. The Council hereby
25 declares that it would have passed this ordinance and each section,
26 paragraph, sentence, clause, word or phrase thereof irrespective of any
27 provision being declared unconstitutional or otherwise invalid.

28 SECTION 6. COMPILATION. Sections 1 through 4 of this ordinance shall
29 amend, be incorporated in, and made part of the Revised Ordinances of
30 Albuquerque, New Mexico, 1994.

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

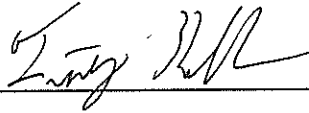
1 PASSED AND ADOPTED THIS 5th DAY OF December, 2022
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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7 _____
8 Isaac Benton, President
9 City Council

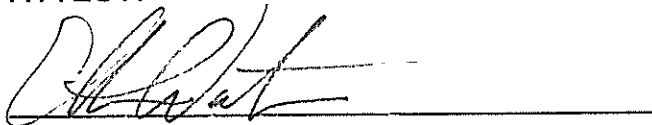
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12 APPROVED THIS 19 DAY OF December, 2022

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15 Bill No. O-22-46

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18 _____
19 Timothy M. Keller, Mayor
20 City of Albuquerque

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24 ATTEST:

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27 Ethan Watson, City Clerk

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