Ordinance No. 3799

(Amending or Repealing Ordinances)

CFN=1266 – Public Records Requests
Passed – 5/16/2006
Ch. 1.05 KCC – Public Records – State Legislative SSHB 1758 and SHB 1133

Repeals Ords. 3531 & 3588
ORDINANCE NO. 3799

AN ORDINANCE of the city council of the city of Kent, Washington, repealing Chapter 1.05 of the Kent City Code, entitled “Public Records,” and enacting a new Chapter 1.05 entitled “Public Records” in response to the recent amendments and recodification of Washington’s Public Records Act.

RECITALS

A. On March 5, 2002, the Kent City Council adopted Ordinance No. 3588, which established the process, consistent with Washington’s Public Records Act, by which the public could access city records.

B. During the 2005 regular legislative session, state legislators adopted Second Substitute House Bill 1758, which amended the state Public Records Act to allow records to be produced by public agencies on an installment basis, to allow an agency to require a deposit for the cost of photocopying, to require the appointment of a public records officer, and to limit the time within which a dissatisfied requester must file an action seeking court review of an agency’s denial of a request.

C. Also during the 2005 regular legislative session, state legislators adopted Substitute House Bill 1133, which recodified the Public Records Act such that beginning July 1, 2006, the state’s Public Records Act will be codified in chapter 42.56 RCW.
D. Due to the amendments to and recodification of the Public Records Act, and the need to update the city's code, the repeal and reenactment of chapter 1.05 of the Kent City Code is in order.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. – Repealer. Chapter 1.05 of the Kent City Code, entitled “Public Records,” is repealed in its entirety.

SECTION 2. – Adoption. A new chapter 1.05, entitled “Public Records,” is added to the Kent City Code as follows:

CHAPTER 1.05
PUBLIC RECORDS

Sec. 1.05.010. Purpose. The purpose of this chapter is to establish the process for requesting public records and responding to requests for public records as required by Washington's Public Records Act, currently codified in chapter 42.17 RCW, and soon to be recodified in chapter 42.56 RCW. Failure of the city to fully comply with any provision of this chapter shall not result in any liability imposed upon the city other than as provided in the Public Records Act. This chapter shall be posted on the city's website at www.ci.kent.wa.us.

Section 1.05.020. Recodification of RCW – Amendments - Adopted. During the 2005 regular session of the Washington Legislature, the legislature passed Substitute House Bill 1133, chapter 274, Laws of 2005, wherein the provisions of Washington's Public Records Act, codified in chapter 42.17 of the Revised Code of Washington ("RCW"), will be recodified into a new chapter of the RCW, at chapter

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42.56 RCW, effective July 1, 2006. Any recodification or amendment of any provision of the RCW referenced in this chapter is hereby adopted as if specifically set forth herein in full.

Section 1.05.030. Definitions.
A. For the purposes of this chapter, the following terms shall be defined as follows:

1. Public Records Act shall mean that portion of the Revised Code of Washington currently codified in chapter 42.17 RCW relating to the disclosure of public records, and which will be recodified to chapter 42.56 RCW as of July 1, 2006, as currently enacted or hereafter amended.

2. Copies shall mean any duplicated version of any record regardless of the original form of the record.

B. Except as provided in subsection A of this section, all terms used in this chapter shall have the same meaning as set forth in the Public Records Act.

Sec. 1.05.040. Records subject to disclosure. The city need only disclose records or portions of records to the extent required by the Public Records Act and nothing in this chapter shall be interpreted as requiring the disclosure of any record that is not subject to disclosure by the Public Records Act or other applicable law. Records or portions of records may be withheld or redacted to the extent necessary or permissible by law. The city shall not be required to create records or documents in response to a request for public records that do not exist at the time the request is made. A public records request is not continuing in nature, and will not be treated as such even if requested. In the event additional records are created after the date of the requester's original public records request, the requester will be required to submit a new request for the later created records.
Sec. 1.05.050. Index of public records not maintained.

A. In General. The Public Records Act requires all cities and public agencies to maintain and make available a current index of certain public records. However, the Public Records Act also provides that if maintaining such an index would be unduly burdensome, or would interfere with agency operation, a city need not maintain such an index but it must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.

B. Findings. The city of Kent is comprised of twelve (12) departments, and each department consists of numerous subdivisions. Each individual subdivision of the city performs a unique public service. Each subdivision may also utilize and produce various forms of "writings" as that term is defined in the Public Records Act, and thousands of writings are produced or utilized each day by these subdivisions. These writings may be maintained in several formats, including but not limited to: paper records, computer files, photographs, audio recordings, video recordings, etc. Filing systems vary from division to division due to different paper filing systems and the various computer programs used by each subdivision. Also, subdivisions of the city are physically located at various places within the city. As such, it is unduly burdensome, if not impossible, and would detract from the purpose of providing essential services to the citizens of Kent, to provide a current index of public records.

C. Order. The city orders that it is not required to maintain a current index of public records based upon the findings set forth in subsection C of this section; provided, that the city shall make available for review or copying any indexes that are maintained for city use to the extent not exempt from review or copying.

Sec. 1.05.060. Form and manner of request for public records.

A. All requests for public records shall be made in writing and delivered in person, by mail, or through the city's online public records request form available on the city's
internet web site. Requests delivered by facsimile; electronically, other than those requests submitted through the city’s online public records request form; by telephone; or orally will not be accepted as valid requests for public records.

B. The city will provide a public records request form that may be used by those requesting public records. The public records request may be submitted on the form provided by the city, or in another written format that contains the following information:

1. The date of the request;
2. The name of the requester;
3. The full address of the requester;
4. The telephone number of the requester;
5. A complete description of the requested record;
6. The title and date of the requested record, if known;
7. The location of the requested record, if known; and
8. Whether the requester intends to review the records or to obtain a copy of the records.

Sec. 1.05.070. Submittal of a request for public records — Designation of public records officer.

A. The city’s records administrator shall be the city’s public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the city’s compliance with public records disclosure requirements.

B. Except as set forth in subsection C of this section, all requests for public records shall be submitted to the city’s records administrator located within the city clerk’s office, 220 Fourth Avenue South, Kent, Washington 98032, (253) 856-5725, or his or her designee, or online through the city’s internet website located at www.ci.kent.wa.us.
C. In order to provide for a more efficient response to requests for public records, the city has designated various records coordinators throughout the city as described in subsections (1) through (4) of this subsection who may receive and respond to public record requests directly. If the record requested is not identified in subsections (1) through (4), or the requester is unsure of where to file the request, the request shall be filed with the records administrator located in the city clerk’s office.

1. The records coordinator of the police department may receive and respond to a request to inspect and/or photocopy police reports. The request shall comply with KCC 1.05.060 and shall be delivered to the police department, 232 Fourth Avenue South, Kent, Washington 98032.

2. The records coordinator of the fire department may receive and respond to a request to inspect and/or photocopy fire reports. The request shall comply with KCC 1.05.060 and shall be delivered to Fire Station 74, 24611 116th Avenue Southeast, Kent, Washington 98031.

3. The records coordinator of the community development department may receive and respond to a request to inspect and/or photocopy planning files which the records coordinator, in his or her discretion, determines are readily available and easily accessible to the requester without the expenditure of significant staff time. In the event the records coordinator believes the request cannot be fulfilled without staff impacts, then he or she shall refer the requester to the records administrator located in the city clerk’s office.

4. The records coordinator of the public works department may receive and respond to a request to inspect and/or photocopy public works files which the records coordinator, in his or her own discretion, determines are readily available and accessible to the requester without the expenditure of significant staff time. In the event the records coordinator believes the request cannot be fulfilled without staff impacts, then he or she shall refer the requester to the records administrator located in the city clerk’s office.
D. If the requester submits the request on the form provided by the city, the records administrator, or his or her designee, should indicate on the form the estimation of time necessary to provide a final response to the request. In the event the estimation of time necessary for providing records is not indicated on the form, the estimated time for providing disclosable records shall be twenty-one (21) calendar days. Records provided in response to a public records request shall be those documents of record available for disclosure as of the date of the request.

E. The city recognizes that in limited circumstances, processing a request for public records may result in more of an expense to the city than merely copying and providing the records to the requester. In light of this, each city department may designate within its own department certain “over the counter” records available to the public for immediate inspection without the requirement of a formal public records request as set forth in this section. As an alternative to obtaining over the counter records through the process provided in the remainder of this chapter, a requester may obtain over the counter records pursuant to this subsection. In the event a photocopy of such over the counter records is requested pursuant to this subsection, and if the requested record is an eight and one-half (8-1/2) by fourteen (14) inch page or smaller, the department may provide up to ten (10) pages free of charge. If the requester requests that records be duplicated, and such records exceed ten (10) pages or are records other than a paper record of eight and one-half (8-1/2) by fourteen (14) inches or smaller, a public records request will be required and the applicable duplication cost shall be paid. A requester who obtains over the counter records through this subsection shall not be entitled to the remedies provided pursuant to the Public Records Act.

Sec. 1.05.080. Initial response to request.

A. The city shall make an initial response to the request for public records within five (5) business days of receipt of the request. In the event a request for public records is received after 5:00 p.m., the request shall be deemed to have been
received on the next business day. Depending upon the nature of request, the city may respond initially by:

1. Providing the record, or the disclosable portions of the record, after the payment of applicable fees;

2. Acknowledging the city's receipt of the request accompanied by a reasonable estimate of the time necessary for further response; or

3. Denying the request.

B. In the event the requester completes the city's standard public records request form, the returned copy provided to the requester shall constitute the initial response by the city with the estimation of time necessary for further response. In the event the estimation of time necessary for providing records does not appear on the form, the estimated time for providing disclosable records shall be twenty-one (21) calendar days.

Sec. 1.05.090. Supplemental response to request – Additional time – Clarification.

A. From time to time, the city will need additional time to respond to a request for records in order to locate and assemble records, notify third persons or agencies affected by the request, determine whether any records or portions of records are exempt from disclosure, or determine whether denial should be made to the disclosure of all or a part of the requested records. In the event additional time is needed, the city will take reasonable steps to advise the requester of the additional time necessary.

B. At the time of the city's initial response, or subsequent to the city's initial response, the city may require the requester to clarify his or her request in order to provide the city with information sufficient to allow the city to determine which records are being requested and whether such records relating to the request exist. In the event the requester fails to clarify the request within twenty-one (21) calendar days of
the date the request for clarification is delivered to the requester, the request may be denied.

**Sec. 1.05.100. Disclosure of records - Process.**

A. *Copies of records.* In the event a requester requests copies of records, the records shall be copied pursuant to the terms of this chapter.

B. *Review of records.* In the event a requester chooses to review records, the city shall notify the requester once the records which respond to the request are available for review. The records will be available for review at reasonable dates and times as determined by the records administrator after consultation with the requester. Appointments to review records may be broken into intervals so as to not excessively interfere with the city's provision of other essential services. Records that have been retrieved for review shall be made available to the requester for an initial period of twenty-one (21) calendar days. This period may be extended upon agreement of the records administrator and the requester in order to provide a reasonable amount of time to inspect the records. In the event a requester fails to contact the records administrator to arrange to review the records within twenty-one (21) calendar days of being notified that the records are available for review, the records request shall be deemed satisfied, the records shall be returned to the originating department, and if the requester wishes to review the records, he or she will be required to submit a new request for the records and the process will begin anew.

C. *Partial or installment basis.* If the city determines that records responsive to a public records request are voluminous, the city may make the records available for review or copying on a partial or installment basis as the records are assembled and become available for review or duplication. An installment of records that has been copied shall be made available for retrieval for a period of twenty-one (21) calendar days. An installment of records that has been retrieved for review shall be made available to the requester for an initial period of twenty-one (21) calendar days. This
period may be extended upon agreement of the records administrator and the requester in order to provide a reasonable amount of time to inspect the records. In the event a requester fails to retrieve an installment of copied records, or to contact the records administrator to arrange to review an installment of records within twenty-one (21) calendar days of being notified that the records are available for review, the records request shall be deemed satisfied, the records shall be returned to the originating department, and if the requester wishes to obtain the records, he or she will be required to submit a new request for the records and the process will begin anew.

D. Format of records. Any records or portions of records disclosed by the city will be provided to the requester in the same format as they are retained; provided, that any disclosable records contained on a computer or other electronic or mechanical device shall, at the discretion of the city, be provided in printed form, on disk, or in another format. If the requester specifies a format in which the records should be disclosed, the city will disclose the records in the requested format if: (1) it is determined that disclosable records exist, (2) the city is capable of providing the records in the format requested, (3) the format requested is reasonable, and (4) the requester pays all costs associated with providing the records in the format requested. The costs associated with providing records in the format requested by the requester shall not be constrained by costs allowed by state law for providing photocopies, as requesting records in a special format shall be deemed an additional service provided by the city that is not constrained by the limitations set forth in state law.

Sec. 1.05.110. Final response to request. The city's response to a request for records shall be deemed complete and final upon: (1) requester's inspection of the records; or (2) in the event copies were requested, upon notification to the requester that the copies requested are available for payment and pick-up; or (3) in the event no records exist which are responsive to the request, upon such notification to the requester.
Sec. 1.05.120. Copying and delivering—Costs.

A. In the event a requester requests copies of records, prior to the disclosure of any public record, copying costs shall be collected. The city’s records administrator shall establish, update, and post applicable copying costs as appropriate. The city clerk shall have the department’s cost schedule available for inspection upon request. If copied records are provided on an installment basis as set forth in KCC 1.05.100, the city may charge the requester for those copying costs as they accrue in making each installment available.

B. The requester shall pay all costs associated with the cost of delivering records.

C. Payment of copying and delivery fees shall be made prior to the disclosure of public records. When required pursuant to KCC 1.05.130, the payment of a deposit shall be made prior to the copying of any records.

Sec. 1.05.130. Deposit for copying. The city may, in its discretion, require the requester to deposit a sum equal to ten (10) percent of the estimated copying cost prior to duplication of the records. In the event a deposit is required, the city will notify the requester of the necessity of the deposit. Any deposit shall be made in accordance with KCC 1.05.140. In the event the actual copying costs are less than the amount deposited by the requester, the city will return the sum in excess of the actual amount to the requester.

Sec. 1.05.140. Payment of required fees. The payment of all costs associated with this chapter shall be made by cash, credit card, money order, or check payable to the city of Kent. Payment shall be made in person at the customer service desk located in the Centennial Center, 400 West Gowse St., Kent, Washington 98032, or by mail to the records administrator, city clerk’s office, 220 Fourth Avenue South, Kent, Washington 98032.
Sec. 1.05.150. Failure to pay required costs. In the event a requester fails to pay for costs incurred within thirty (30) calendar days of notification of those costs, the city shall require the requester to pay in full the past due amount owed, together with any accrued interest, before it will begin processing a new request, a pending request, or a subsequent installment of a request from the delinquent requester. In addition, for any future requests, the city may require advance payment of the full amount of the estimated costs before the city begins to process a new request or a pending request from that requester. Any copied records associated with a request for copies for which payment of copying costs has not been received within thirty (30) calendar days of receiving notice may be destroyed in order to avoid storage costs. The requester shall be responsible for any costs associated with this chapter, and the city may take any steps available by law to collect the outstanding costs.

Sec. 1.05.160. Denial of request – Appeal. In the event the records administrator denies a request, or any portion of a request for public records, the requester shall appeal the denial to the city clerk. In the event no response to the appeal is delivered to the requester within seven (7) calendar days of the city's receipt of the appeal, the denial may be deemed final.

SECTION 3. – Savings. The existing chapter 1.05 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 4. – Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.
SECTION 5. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

[Signature]
Suzette Cooke, Mayor

ATTEST:

[Signature]
Brenda Jacober, City Clerk
Mary Simmons, Deputy City Clerk

APPROVED AS TO FORM:

[Signature]
TOM BRUBAKER, CITY ATTORNEY

PASSED: 16 day of May, 2006.
APPROVED: 16 day of May, 2006.
PUBLISHED: 20 day of May, 2006.

I hereby certify that this is a true copy of Ordinance No. 3799 passed by the city council of the city of Kent, Washington, and approved by the mayor of the city of Kent as hereon indicated.

[Signature]
Brenda Jacober, City Clerk
Mary Simmons, Deputy City Clerk

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