

CITY OF MANITOU SPRINGS PUBLIC RECORDS POLICY

1. PURPOSE:

The policy of the City of Manitou Springs (the "City") is that the decision-making process is a matter of public business and may not be conducted in secret. All public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law. However, computer-generated communication systems are frequently used by employees for the purposes of documenting and/or sending personal or private messages, or messages not intended to be viewed by the public. The City desires to implement a policy that will serve the public's right to access public records, while identifying to employees the inherent difficulties in ensuring privacy in the use of the City's computer system for personal use.

2. AUTHORITY:

The City enacts this Policy under the following authority: the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.*, as amended ("CORA"); the Colorado Sunshine Law, C.R.S. § 24-6-401, *et seq.*, as amended; the Colorado Criminal Justice Records Act, C.R.S. § 24-72-301, *et seq.*, as amended ("CCJRA"); *Mountain Plains Investment Corp. v. Parker Jordan Metro, Dist.*, 312 P.3d 260 (Colo. App. 2013); *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462 (Colo. App. 2003); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986); and additional appropriate case law..

3. DEFINITIONS:

For purposes of this Policy, the following terms shall have the following meanings:

A. Correspondence: A communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation, communications sent via electronic mail, private courier, U.S. mail, modem or computer.

B. Custodian of Records: The individual who shall be responsible for compiling documents, scheduling appointments for inspection, and for responding to any such public records request. The City Council hereby designates the City Clerk as the Custodian of Records for the purposes of public records requests under CORA and the CCJRA. The City Council further designates that criminal justice records shall be physically maintained by the Manitou Springs Police Department, with the exception of Manitou Springs Police Department personnel files, which shall be physically maintained by the City Clerk. The physical location of the records shall not alter the designation of the City Clerk as the official Custodian of Records for purposes of responding to public records requests under CORA and the CCJRA.

C. Electronic Mail ("E-mail"): An electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. E-mail includes electronic messages that are transmitted through a local, regional or global computer network.

D. Work Product: All advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to: (a) Notes and memoranda that relate to or serve as background information for such decisions; and (b) Preliminary drafts and discussion copies of documents that express a decision by an elected official. "Work product" also includes a request by a City official for the preparation of such opinion or deliberative materials. For example, if the City Administrator requests in writing that staff prepare material to assist the City Council in a decision-making process, the written request shall also be considered "work product."

4. PROTECTED RECORDS:

Certain records are protected under law from public inspection under the CORA. These records fall into the following categories:

- Personnel files
- Ongoing investigations by law enforcement authorities
- Victim/witness information
- Social security numbers
- Juvenile criminal records
- Work product
- Correspondence sent to or received from the City's legal counsel
- Individual medical, mental health, sociological and scholastic achievement data
- Letters of reference
- Trade secrets
- Confidential commercial or financial data
- Names, addresses, telephone numbers, and personal financial information of past or present users of public utilities, facilities, or recreational or cultural services
- Records of sexual harassment complaints and investigations
- Library records and contributions
- Addresses and telephone numbers of students in any public elementary or secondary school

Records may also be protected under law from public inspection under the CCJRA. Records that are exempt from the CORA and the CCJRA might still be accessible to other forms of inspection, such as subpoena.

5. E-MAIL:

A. The City's e-mail system is provided by the City to facilitate City work and is intended for business-related communications, including uses related to City-sponsored events and activities. The City recognizes that occasional personal use will occur, and such use is permitted as long as it does not interrupt the normal flow of City business. However, any improper use, as determined by the City, is prohibited and may result in: suspension or loss of e-mail access; disciplinary action up to and including termination of employment; and/or legal action.

B. E-mail correspondence of City employees and elected officials may be a public record under the CORA and therefore may be subject to public inspection. Exceptions to inspection may include e-mail which is covered by the attorney-client privilege, work product privilege or other privilege recognized by Colorado law. Most routine e-mail, however, will likely be considered public information. Employees and elected officials should have no expectation of privacy when using the City's e-mail system. All electronic communications sent or received on the City's e-mail system, regardless of the subject matter or e-mail address used, are City property and may be subject to disclosure under the CORA. The City reserves the right at any time, to monitor, access, view, use, copy and/or disclose all such e-mail messages.

C. E-mail users are responsible for safeguarding their passwords and may not disclose their passwords to others. However, the use of a password does not prevent the City from monitoring, accessing, viewing, using, copying or disclosing any e-mail messages sent or received on the Town's e-mail system.

D. City employees may not access the computer account of another unless granted permission to do so by that user. This restriction does not apply to system administrators and others who are authorized to access the systems for legitimate business purposes.

E. Improper use of e-mail includes, but is not limited to:

1. Language which is offensive, obscene, or in poor taste, including jokes or messages which create an intimidating, hostile or offensive work environment;

2. Messages or information which conflict with the City's policies against discrimination or harassment in the workplace;

3. Messages or information which advertise or promote a business, political candidate, political or religious cause;

4. References or messages which give offense on the basis of race, color, religion, national origin, citizenship, ancestry, marital status, sex, disability, age, veteran's status or sexual orientation;

5. Frivolous use which interrupts the normal flow of City business, such as playing games, conducting betting pools, and chain letters;

6. Messages which violate any law; and

7. Messages urging electors to vote in favor of any statewide ballot issue, local ballot issue, referred measure, or recall, pursuant to C.R.S. § 1-45-117.

F. City employees and elected officials are expected to use common sense and good judgment in all official communications and to avoid any communication that is disrespectful, offensive, or threatening to others. Violation of this policy may result in any or all of the following: suspension or loss of e-mail access; disciplinary action up to and including termination of employment; and legal action.

G. E-mail is retained on the City's server for a designated period of time, so employees and elected officials should not assume that any e-mail that they personally delete is thereby deleted from the City's server. The City will retain, archive, or purge, as the City deems appropriate, any incoming or outgoing e-mail to or from any City employee.

H. Pursuant to the Colorado Sunshine Law, a meeting of three or more members of the City Council at which any public business is discussed or at which any formal action may be taken is a public meeting. The term "discussion" as used in the Colorado Sunshine Law implies live, responsive communication between elected officials. Therefore, it is the City's policy that the mere receipt or transmission of e-mail in other than a live, communicative discussion format shall not constitute a public meeting and shall not be subject to the requirements of the Colorado Sunshine Law. For example, the receipt by one or more elected officials of e-mail sent earlier in the day or week by another elected official concerning public business shall not constitute a "public meeting." The e-mail may, however, constitute a public record otherwise subject to disclosure pursuant to the CORA and this Policy.

6. RETENTION OF DOCUMENTS:

All public records other than e-mail shall be retained in accordance with the guidelines established by the Colorado State Archives. At the request of the City Attorney, the Custodian of Records may retain certain records after the retention period expires.

7. INSPECTION:

A. **General.** Public records shall be open for inspection by any person at reasonable times, subject to the exceptions found in CORA and the CCJRA. All public records shall be inspected at the City Hall or at the offices of the City Attorney.

B. **Request Required.** A request to inspect public records must be written, and sufficiently specific in scope to enable the Custodian of Records to identify the information desired. Requests for inspection of e-mail shall include the sender's name, the recipient's name and the approximate date and time of the transmission. If the Custodian of Records receives a request to inspect public records that is ambiguous or lacks sufficient specificity to enable the Custodian of Records to locate the records, the Custodian of Records shall, within three (3) working days, notify the requesting party in writing of the deficiencies in the request. Any clarified request shall be considered a new request for purposes of this Policy, the CORA, and the CCJRA.

C. Review and Response. Upon receipt of a request for inspection of public records under CORA, the Custodian of Records shall review the request and determine whether the requested records are voluminous, in active use, or otherwise not readily available. If so, the Custodian of Records, within three (3) business days, shall notify the requesting party in writing that the documents will be produced for inspection within seven (7) additional business days, pursuant to C.R.S. § 24-72-203(3). The notice shall state the reason(s) why the requested records are not readily available and shall ask the requesting party to schedule an appointment for inspection of the requested records. Notwithstanding the foregoing, based on the case of *Citizens Progressive Alliance v. Southwestern Water Conservation District*, 97 P.3d 308 (Colo. App. 2004), if it is physically impossible for the Custodian of Records to comply with a request for public records within the time periods established by CORA, the Custodian of Records shall comply with the request as soon as physically possible. Upon receipt of a request for inspection of public records under the CCJRA, the Custodian of Records shall review the request and respond in accordance with the CCJRA.

D. City Attorney. Any of the notices required herein may be issued by the City Attorney in lieu of the Custodian of Records. By written notice, the City Attorney may further require that any requesting party contact the City Attorney rather than the Custodian of Records.

8. FEES:

A. Copies, Printouts, Photographs and Other Material. Pursuant to C.R.S. § 24-72-205(5)(a), the City shall charge a fee not to exceed twenty-five cents (\$0.25) per standard page for any copy of a public record or a fee not to exceed the actual cost of providing a copy, printout or photograph of a public record which is in a format other than a standard page. For purposes of this Policy, a black and white copy made on a single sheet of letter or legal sized white paper shall constitute a "standard page." The City shall charge a fee of \$17.00 per recording for audio recordings, and eighty three dollars (\$83.00) per recording for 911 recordings. This fee shall apply to requests pursuant to CORA or the CCJRA.

B. Research and Retrieval Time. Pursuant to C.R.S. § 24-72-205(6)(a), the first hour of research and retrieval time shall be free of charge; however, the City reserves the right to charge a fee of thirty dollars (\$30.00) per hour for any additional staff time, including attorney review time, devoted to researching and retrieving the requested information. Anyone submitting a request for electronically stored public records shall remit a deposit equal to the estimated costs for the search and for the material (if copies of material rather than just an inspection are requested) before any such search commences. For requests under the CCJRA, pursuant to C.R.S. § 24-72-306(1), the City shall charge a fee of thirty dollars (\$30.00) per hour for the search and retrieval of criminal justice records.