

Sponsor: Councilwoman White  
First Reading: 12/04/17  
Second Reading: 01/02/18  
Third Reading: 01/16/18  
Ord. No.: 012-17

**AN ORDINANCE TO AMEND CHAPTER 2 (“ADMINISTRATION”), ARTICLE VI (“DISCLOSURE OF INFORMATION”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO ELIMINATE PROVISIONS COVERED BY 29 DEL. C. CH. 100, TO REVISE THE FEES THE TOWN CAN CHARGE FOR RESPONDING TO REQUESTS FOR INFORMATION, AND TO MAKE OTHER HOUSEKEEPING CHANGES**

WHEREAS, the State of Delaware encourages public business to be performed in an open manner, and to this end has adopted 29 *Del. C.* Ch. 100, the Delaware Freedom of Information Act, whereby standards are established for municipalities to conduct public business in an open manner;

WHEREAS, the Delaware Freedom of Information Act requires public bodies to “implement and promulgate a policy for addressing requests made under the Freedom of Information Act”;

WHEREAS, the Delaware Freedom of Information Act authorizes a municipal public body to establish the fees charged by the municipality for responding to Freedom of Information Act requests; and

WHEREAS, the Town of Smyrna has adopted an ordinance creating standards for responding to Freedom of Information Act requests, and in the opinion of the Town Council, it is in the best interest of the public health, safety, and welfare for the ordinance to be amended.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Chapter 2 (“Administration”), Article VI (“Disclosure of Information”) of the Town Code of the Town of Smyrna be and hereby is amended as follows:

**Section 1.** Article VI (“Disclosure of Information”) is hereby amended by making insertions as shown by underlining and deletions as shown by ~~strike through~~ as follows:

Sec. 2-221. - Policy.

It is vital to a democratic society that public business be performed in an open and public manner. In accordance with the state Freedom of Information Act, the public has the right to "reasonable access" to public records; however, the Act provides that the town may make reasonable rules and regulations concerning access to "public records."

Sec. 2-222. – Procedure.

Determination of public record. All requests for documentation shall be forwarded to the ~~town manager~~ FOIA Coordinator or his/her designee to determine if the requested documents are a "public record" and fall under the purview of the Freedom of Information Act. "Public record" shall be as defined in 29 Del. C. § 10002, as the same may be amended from time to time and in accordance with any other corresponding provision of law, and may take many forms including, but not limited to, the following:

- (1) Printed, typed, or written material.
- (2) Drawings, plots, plats, and maps.

- (3) Magnetic tapes of recorded oral dialogue.
- (4) Computer-stored information.
- (5) Microfilm.
- (6) Transcripts.
- (7) Published documents.

~~Sec. 2-223. Guidelines for public access to records/reproduction fees.~~

~~These guidelines are intended for the use of department managers, elected officials and town employees and relate to the public examination of public records and the fees to be charged for reproducing said records.~~

~~"Public record" shall mean information of any kind owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.~~

~~Excluded from this definition are:~~

- ~~(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy.~~
- ~~(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature.~~
- ~~(3) Investigatory files compiled for civil or criminal law enforcement purposes including pending investigative files, pretrial and pre-sentence investigative files, pretrial and files where there is no criminal complaint at issue.~~
- ~~(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature.~~
- ~~(5) Intelligence files compiled for law enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security.~~
- ~~(6) Any records specifically exempted from public disclosure by statute of common law.~~
- ~~(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor.~~
- ~~(8) Any records involving labor negotiations or collective bargaining.~~
- ~~(9) Any records pertaining to pending or potential litigation which are not records of any court.~~
- ~~(10) Subject to 29 Del. C. § 10004(f) of this title with respect to release of minutes of executive sessions, any record of discussions held in executive sessions pursuant to subsections 29 Del. C. § 10004(b) and (e).~~
- ~~(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law enforcement officer.~~
- ~~(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used.~~
- ~~(13) Any records in the possession of the department of correction where disclosure is sought by an inmate in the department's custody.~~

~~Sec. 2-224. Sec. 2-223 - Examination of public records.~~

- ~~(a) Protection of original documents is of paramount importance. Custodians shall take every reasonable precaution to ensure documents are not removed or altered.~~

- (b) Examination of original records shall be supervised unless the department manager has provided previous written permission. If supervision is not possible, then copies of documents shall be provided at requester's expense.
- (c) ~~The custodian shall ask for a written request and have the individual state their specific requirements, enclosure (1). The custodian shall retain the request forms as actions taken. These records will be retained in a departmental file. Requests that are denied shall be forwarded to the town manager for review. [Deleted.]~~
- (d) As defined above, public records are open to examination by any citizen of the state during regular business hours of the town office, upon the submission of a Freedom of Information Act request as outlined in 29 Del. C. Ch. 100, as the same may be amended from time to time and in accordance with any other corresponding provision of law. ~~request to any department or employee who has the custodial responsibility of said records.~~
- (e) Reasonable access to said records shall not be denied. If a public record is in active use or in storage at the time it is requested for examination, the citizen shall be so informed and an offer shall be extended to schedule a time as expediently as possible when said records may be examined. Appropriate accommodations shall be provided during said examination.

~~Sec. 2-225. Form of public records.~~

~~Public records take may take many forms and may include, among others:~~

- ~~(1) Printed, typed or written material.
 
  - a. Drawings, plots, plats and maps.
  - b. Magnetic tapes of recorded oral dialogue.
  - c. Computer stored information.~~
- ~~(2) Microfilm.~~
- ~~(3) Transcripts.~~
- ~~(4) Published documents.~~

~~Sec. 2-226. Sec. 2-224. - Fees for copying public records.~~

- (a) *Printed, typed or written material.* The cost per page for paper copies of public records up to 11" × 17" in size shall be \$.25 each for up to and including 100 copies and \$.10 each for all copies in excess of 100 copies or actual cost, whichever is more. The minimum fee of \$1.00 shall be charged per request. Two-sided copies shall be counted as two copies.
- (b) *Drawings, plots, plats and maps.* To the extent that town equipment permits the reproduction of said document the fees for each single copy shall be as follows:  
Plots/plats/maps no larger than 11" × 17": \$3.00.  
The town does not have the capability to copy documents larger than 11" × 17". Arrangements can be made for such copies with the town engineer with applicant paying the expense.
- (c) *Magnetic tapes of recorded oral disclosure.* If requested, individuals may listen to recorded oral dialogue. Proper supervision must be ensured in order to protect the material from damage or loss. No tapes will be copied for or by staff or other persons without the written authorization of the town manager. If transcripts are requested, then the procedures listed in subsection (e) shall be followed, or actual cost, whichever is more.
- (d) *Computer tapes of stored information.* The fee to produce computer generated paper copies of computer-stored information shall be based on the amount of machine operating time necessary to produce the copy and shall be calculated at the rate of \$60.00 per hour. The minimum charge shall be \$15.00 or actual cost, whichever is more.  
If computer programming is required, the fee shall be calculated at the rate of \$60.00 per hour and the minimum charge shall be \$60.00. The fee for computer programming is separate from and in addition to the charge for machine operating time.

If computer-stored information is requested to be transferred to floppy diskettes, the customer must supply them in either 3½", 5¼" or 8" magnetic tape sizes. The fee shall be calculated at \$60.00 per hour. The minimum charge shall be \$15.00 or actual cost, whichever is more.

- (e) *Transcripts.* If magnetic tapes are available, a typed verbatim transcript of meetings and/or hearings will be made upon written request. The cost of one copy of a transcript shall be at the rate of \$1.00 per typed page (double spaced) plus the hourly rate of pay of the employee or court reporter preparing the transcript multiplied by the time necessary to complete the transcript. Additional copies may be purchased at the rates charged for printed, typed or written material (see subsection (a) above) or actual cost, whichever is more.
- (f) *Published documents.* From time to time a flat document fee is established for the purchase of certain publications of the town. Examples are the zoning ordinance, subdivision regulations, building code and supplement, etc. The cost for copies of portions of such documents shall be as stated in subsection (a) above. The cost of purchase of the complete publication shall be in accordance with the fee established at the time of publication or actual cost, whichever is more.
- (g) *Preparation fees.* In addition to fees as listed in subsections (a) through (f), there shall be a ~~research and~~ preparation fee charged. This fee shall be based on the hourly wage plus benefits ~~(with a one-hour minimum)~~ of the employee who prepares the information, which fee shall be billed in increments of one-tenth of an hour. Prior to fulfilling a FOIA request, the Town shall provide the requestor with a good faith estimate of the preparation fees that will be incurred to fulfill a FOIA request, which fee, in addition to the fees listed in subsections (a) through (f), shall be paid to the Town prior to the FOIA request being fulfilled. If the actual preparation fees are less than the good faith estimate paid by the requestor, the Town shall reimburse the requestor for the excess amount paid. If the actual preparation fees are greater than the good faith estimate paid by the requestor, the requestor shall be required to pay the additional costs associated with fulfilling the request.
- (h) *Legal research and review fees.* ~~In addition to the fees as listed in subsections (a) through (g), there shall be a legal research and review fee charged, as appropriate, to recover the cost of legal time of the town's attorney and/or legal staff who researches or reviews the information if necessary to respond to the FOIA request. No fee shall be charged by the Town for legal research and review associated with responding to a FOIA request.~~
- (i) *Exceptions.* No cost shall be charged for material which has been exempted by town directive.

Whenever the fee to be charged for reproducing copies of public records has been established by a court order or a town ordinance or a written opinion of the Delaware Office of the Attorney General, such order or ordinance or opinion shall take precedence over the fees established by this policy.

Where a reciprocal agreement has been reached between the town and non-town end-user to share information, said agreement shall govern the cost of reproduction. There shall be no charge for providing copies of public records to declared candidates for town public office.

~~See 2-227. Sec. 2-225.~~ - Freedom of Information Act request form.

Requests for public documents shall be made in accordance with the requirements set forth in 29 Del. C. Ch. 100, as the same may be amended from time to time and in accordance with any other corresponding provision of law. ~~on such forms as approved by the town manager and provided by the town.~~

~~This form is provided for your convenience and to assist the staff in meeting your request for information retained by the town. Your request will be reviewed upon submission and we will provide assistance in the most expeditious manner.~~

**Section 2. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

**Section 3. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Town Council.

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SYNOPSIS

This ordinance amends Chapter 2 ("Administration"), Article VI ("Disclosure of Information") to update the Town's ordinance governing FOIA requests to eliminate provisions that are controlled by 29 Del. C. Ch. 100 and to improve the structure of Article VI. This ordinance removes a provision authorizing the Town to charge for legal fees incurred in conjunction with FOIA requests. This ordinance eliminates the one hour minimum preparation fee that the Town charges for responding to FOIA requests and authorizes the Town to charge preparation fees in increments of one-tenth of an hour without a minimum fee. This ordinance makes other housekeeping changes to Article VI.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
Council Secretary

\_\_\_\_\_  
Mayor

This shall certify that the title and synopsis of this Ordinance was published in the "Smyrna/Clayton Sun Times" on \_\_\_\_\_, 20\_\_ and posted at the Town Hall on \_\_\_\_\_, 20\_\_.

So Certifies:

\_\_\_\_\_  
Town Clerk