



Gunnison City Corp.

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FAX COVER SHEET

TO: Utah State Archives

NUMBER: 801-531-3854

DATE: 9/12/2016

FROM: Gunnison City
Janell Braithwaite, City Recorder

TOTAL PAGES INCLUDING COVER SHEET: 9

I have attached a copy of Gunnison City's updated GRAMA Ordinance. This should get us up to date! Please let me know if you have any further questions.

Thanks,

If you have received this fax in error-please contact our office

**GUNNISON CITY
ORDINANCE NO. 2016-6**

RECORDS ACCESS AND MANAGEMENT UPDATED

AN ORDINANCE OF GUNNISON CITY, UTAH, REPEALING AND RE-ENACTING CHAPTER 2.110 OF THE MUNICIPAL CODE RELATING TO CITY RECORDS AND ACCESS TO CONFORM WITH CHANGES MADE IN STATE LAW; MAKE TECHNICAL CHANGES; SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Gunnison City, Utah, (hereafter "City") is a municipal corporation, duly organized and existing under the laws of the State of Utah;

WHEREAS, *Utah Code Annotated* § 63G-2-101, et seq, is known as the "Government Records Access and Management Act" (hereafter "GRAMA");

WHEREAS, in recent sessions of the Utah State Legislature have made changes to the GRAMA rendering the City's ordinance to be out of compliance with state law;

WHEREAS, the City desires to bring its implementation of GRAMA into compliance;

NOW, THEREFORE, be it ordained by the City Council of Gunnison, Utah as follows:

- Section 1:** **Repealer.** Chapter 2.110 of the *Gunnison Municipal Code* is hereby repealed. Any ordinance or portion of the municipal code inconsistent with this Ordinance is hereby repealed and any reference thereto is hereby vacated.
- Section 2:** **Re-enactment.** Chapter 2.110 of the *Gunnison Municipal Code* is hereby adopted to read as follows:

**Chapter 3.60
Records Access and Management**

Sections:

- 3.60.010 **Purpose.**
- 3.60.020 **Definitions.**
- 3.60.030 **Right to Inspect and Receive Copies of Public Records.**
- 3.60.040 **Subpoenas and Discovery.**
- 3.60.050 **Access Requests.**
- 3.60.060 **Response to Requests.**
- 3.60.070 **Fees.**
- 3.60.080 **Classification of Records.**
- 3.60.090 **Private Records.**
- 3.60.100 **Controlled Records.**
- 3.60.110 **Protected Records.**

3.60.120	Disclosure of Private or Controlled Records for Research Purposes.
3.60.130	Sharing Records with Governmental Entities.
3.60.140	Other Permitted Disclosures.
3.60.150	Segregation of Records.
3.60.160	Confidentiality Claims.
3.60.170	Records Management.
3.60.180	Disposal of Records.
3.60.190	Ownership and disposition of Records.
3.60.200	Records Format.
3.60.210	Intellectual Property.
3.60.220	Data on Individuals.
3.60.230	Amendments and Changes to Records.
3.60.240	Denials.
3.60.250	Appeals.
3.60.260	Records Ombudsman.
3.60.270	Court Action for the Confidential Treatment of Records.
3.60.280	Remedies.

3.60.010 Purpose.

It is the purpose and intent of the city council in enacting this chapter to establish policies, guidelines and procedures for retention, maintenance, and access for the records of the city in accordance with the Government Records Access and Management Act (hereafter referred to as "GRAMA"), Title 63G, Chapter 2 of the Utah Code Annotated. The city shall comply with the provisions of this chapter and GRAMA along with other governing laws for record management.

3.60.020 Definitions.

In general, the definitions used in GRAMA may apply in the interpretation and application of this chapter, except as they may be modified herein to provide further definition and understanding in the application of this chapter. As used in this chapter, the following definitions apply:

1. "Department head or director" shall refer to the official responsible for the management and supervision of any municipal office or department having custody of the record requested.
2. "City" mean Gunnison City, Utah.
3. "City record" means a record in the custody of the city that may or may not be subject to GRAMA.
4. "Computer software program" means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, or other source material explaining how to operate the software program. "Software" does not include the original data or record which is manipulated by the software.
5. "Custodial agent" means a third party that is a custodian of city records by virtue of investigation, litigation, audit, or another situation.
6. "Dispose" means to destroy, or render irretrievable a record or the information contained in it by any physical, electronic, or other means, including deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.
7. "Record officer" means the City Recorder or designee.
8. "Record provider" means a third party entrusted with city records who is authorized to respond to records requests.

3.60.030 Right to Inspect and Receive Copies of Public Records.

1. Inspect. Every person has the right to see, review, examine and take a copy of all public records, upon request, of the city during normal working hours upon payment of the applicable fees.
2. Request. Any request to inspect or receive a city record must be made in writing as provided in 3.60.050.
3. Public Record. All city records are a public record, unless otherwise expressly provided by GRAMA. "Public Record" does not include:
 - a. Records classified as "private," "controlled," or "protected" in accordance with GRAMA and the policies and procedures established in this chapter.
 - b. Records where access is restricted pursuant to court rule, state statute, federal statute, or federal regulation, including records that access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
4. No Record. The city has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.
5. Custodial Records. When a city record is held by a custodial agent such as in an investigation, litigation, audit, or another situation, the record shall not be considered a record of the custodial agent for the purposes of this chapter. This does not include shared records.
6. Americans with Disabilities Act. Reasonable accommodation regarding access to city records will be provided to persons with disabilities in accordance with applicable law.
7. City Officials. Each department head, or authorized designee, is entitled to access all records pertaining to their department notwithstanding classification or designation. No department head shall release any record to a third party not affiliated with city government without first receiving authorization from the records officer. Elected officials are entitled to access all records of the city, except where limited by state law such as BCI or other similar records. No elected official is designated as a records officer. No elected official is authorized to release any city records to a third party not affiliated with city government without a records request approved by the records officer. There is no criminal penalty for a violation of this paragraph.

3.60.040 Subpoenas and Discovery.

Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under this chapter. Compliance with civil, criminal, administrative and legislative discovery shall be governed by the applicable statutes and rules of procedure, not by this chapter.

3.60.050 Access Requests.

All record requests shall be directed to the records officer. All records requests shall meet the requirements of *Utah Code Annotated* §63G-2-204.

3.60.060 Response to Requests.

1. Response. The city may respond to a request for a record by approving the request and providing the records, denying the request and providing a notice of denial, or other appropriate response.
2. Statute. All records requests shall be processed in accordance with *Utah Code Annotated* §63G-2-204.
3. Extraordinary Circumstances. The records officer may delay responses for extraordinary

circumstances as determined by the records officer in accordance with Utah Code Annotated §63G-2-204.

3.60.070 Fees.

The city desires to recover the costs incurred for responding to records requests and as allowed in accordance with Utah Code Annotated §63G-2-203. The record officer shall recover all fees authorized by statute and copy fees. The city shall require that past owing fees be paid before responding to another request from a party who has not paid for a prior request. Fees may be waived for another governmental entity, media, education, outreach, or public purpose.

3.60.080 Classification and Designation of Records.

1. Classification. Municipal records will be classified by the records officer who determines whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Utah Code §63G-2-201(3)(b).
2. Designation. The records officer may designate a record series under Utah Code §63G-2-103 based on the records officers overall familiarity with a record series or based on a review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.
3. Timing. The city may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested. The city may update the classification of a record series or information within a record at any time.
4. Multi-classification. If more than one provision of GRAMA and this chapter could govern the classification of a record, the city shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

3.60.090 Private Records.

Private records shall be those city records classified as "private," in accordance with Utah Code Annotated §63G-2-302, and as classified and defined in rules and regulations established pursuant to this chapter.

3.60.100 Controlled Records.

Controlled records shall be those city records classified as "controlled," in accordance with Utah Code Annotated §63G-2-304, and as classified and defined in rules and regulations established pursuant to this chapter.

3.60.110 Protected Records.

Protected records shall be those city records classified as "protected," in accordance with Utah Code Annotated §63G-2-305, and as classified and defined in the rules and regulations established pursuant to this chapter.

3.60.120 Disclosure of Private or Controlled Records for Research Purposes.

The records officer may disclose or authorize disclosure of private or controlled records for bona fide or

"sponsored research" purposes as defined by state law and in accordance with Utah Code Annotated §63G-2-202(8).

3.60.130 Shared Records.

Any shared record with another governmental entity or other record provider shall be in accordance with Utah Code Annotated §63G-2-206. A shared record is subject to a record request made to the shared party as provided in this chapter.

3.60.140 Other Permitted Disclosures.

In accordance with Utah Code Annotated §63G-2-201(5)(b), the records officer may, at its discretion, disclose records that are private or protected if the city administrator, or designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweigh the interest favoring restriction of access.

3.60.150 Segregation of Records.

In accordance with Utah Code Annotated §63G-2-308, the records officer may segregate or redact information if a record request contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect. The records officer may also deny the request as provided in state law where appropriate.

3.60.160 Confidentiality Claims.

1. **Written Claim Required.** Any person who provides to the city a record that the person believes should be protected under Utah Code Annotated §63G-2-309 or other applicable statute shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.
2. **Review.** The claimant shall be notified by the city if a record subject to a claim under this subsection is classified public or if the city determines that the record should be released under section 3.60.140.
3. **Confidential.** Except as otherwise provided by court order, the city may not disclose records claimed to be protected under this subsection until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal unless the claimant, after notice, has waived the claim by not appealing or intervening before the appeals body.

3.60.170 Records Management.

1. **Retention.** All city records shall be managed by the records retention schedule published by the governing state agency. For those records not covered under the records retention schedule provided by the state, the records officer shall contact the governing state agency for direction or otherwise.
2. **Policies.** The mayor may issue or promulgate rules or policies by executive order to effectively implement this chapter consistent with GRAMA. The records officer shall forward a copy of any rule or policy promulgated under this chapter within thirty (30) days after its effective date in accordance with Utah Code Annotated §63G-2-701(2).
3. **State Records.** Implementation of GRAMA by the city and its records officer shall be in accordance with Utah Code Annotated §63G-2-701, and the records officer shall provide to the state archives all retention schedules and all designations applied to record series maintained by

the city, including a statement explaining the purposes for which record series designated private or controlled are collected and used by the city.

3.60.180 Disposal of Records.

1. Disposal. The records officer shall dispose of all city records that are disposable by the applicable retention schedule absent any pending records requests.
2. Limitations. No city record disposable by the retention schedule that is subject of litigation or audit shall be disposed of until the litigation, a records request, or audit has been completed or resolved.

3.60.190 Ownership and Disposition of Records.

1. Ownership. All records are under the ownership of the state in accordance with Utah Code §63A-12-105, except as otherwise provided by law. All records of the city shall remain in the custody of the city unless otherwise provided by law or in this chapter. If the City desires to relinquish control over any records, obsolete records, those records must be turned over to state archives in accordance with 63A-12-102. Nothing in this part shall be construed to limit the ability of the city to destroy or dispose of records in accordance with the applicable retention schedule.
2. Delivery. Record custodial agents at the expiration of their service to or employment with the city shall deliver custody and control of all records kept or received by them the records officer.
3. Other Entity Records. All records which belong to any agency, authority, or other entity created by the city, including any special district where the city has supervisory authority, shall be fully and completely managed and under the custody of the city under this chapter.
4. Replevin. The city attorney, the state, or their designee, may replevin any city records that are not adequately safeguarded.

3.60.200 Records Format.

1. Format. The city retains and reserves to itself the right to use any type of non-verbal or non-written formats for the storage, retention and retrieval of city records, including but not limited to audio tapes, video tapes, micro-forms, and any type of computer; data processing, imaging, or electronic information storage or processing equipment or systems, which are not prohibited by state statute.
2. Access. Members of the public shall have the right to have access to records, in accordance with GRAMA and this chapter, contained in non-written formats or data processing systems. The method of access to such public records shall be as determined by head of the department maintaining the records, considering all of the circumstances. Access may include but is not limited to the following:
 - a. By using a computer terminal or other viewing or listening device to retrieve data directly from the terminal screen or device; provided, however, that due regard shall be exercised to ensure that any non-public records will not be accessed, retrieved or displayed on the device and that records are not erased or damaged; or,
 - b. By providing paper or "hard" copies of records printouts or by providing other means of electronic storage containing the non-written format or data processing system records.
 - c. The city shall only provide city records to the public in the format used by the city.

3.60.210 Intellectual Property.

Intellectual property or computer software programs are not considered a record. Such property and

programs shall not be subject to disclosure under this chapter, including copyrighted software and other copyrighted materials which have been purchased by or licensed to the city, and software and other materials or property which have been copyrighted by the city. Nothing in this chapter shall be construed to limit or impair the rights or protection granted to the city under federal copyrighted or patent law as a result of its ownership of an intellectual property right.

3.60.220 Data on Individuals.

63G-2-601 Rights of individuals on whom data is maintained shall be provided in accordance with Utah Code Annotated §63G-2-601, and the city's records officer is to provide a classification statement and notice as provided in state law.

3.60.230 Amendments and Changes to Records.

Records of the city may be amended or corrected as needed, except where it is provided by law or determined by a city official that a record must be maintained in its original form to protect the public interest and to preserve the integrity of the record system. In case of dispute in amending or changing a record the final determination shall be made by the city attorney who may consult with the governing state agency.

3.60.240 Denials.

In accordance with Utah Code Annotated §63G-2-205, if the records officer denies a records request in whole or part, a notice of denial shall be provided in accordance with state law to the requester either in person or by sending the notice. Any denied record being sought shall be maintained until the appeal period for the denial expires or the retention schedule provides, whichever is longer.

3.60.250 Appeals.

1. Chief Administrative Officer. The city administrator is the chief administrative officer for the purposes of GRAMA appeals, and all appeals to the city administrator shall be governed in accordance with Utah Code Annotated §63G-2-401 and §63G-2-402.
2. State Records Committee. All appeals from the city administrator shall be made directly to the state records committee and shall be governed in accordance with Utah Code Annotated §63G-2-403. A requester may opt to bypass the state records committee and in favor of the district court.
3. Judicial. A petition for judicial review of any order or decision of the state records committee shall be governed in accordance with Utah Code Annotated §63G-2-404.

3.60.260 Records Ombudsman.

The city or records officer may utilize the state records ombudsman at any time to facilitate resolution of any matter or assist within the scope of that office.

3.60.270 Court Action for the Confidential Treatment of Records.

Notwithstanding the provisions regarding classifications and right of access contained in this chapter, the city attorney reserves the right to request a court to restrict access to a city record in accordance with Utah Code Annotated §63G-2-405 for the confidential treatment of records for which no exemption applies.

3.60.280 Remedies.

The remedies for violations of this chapter are the same as for violations of GRAMA and are set forth in Title 63G, Chapter 2, Part 8 of the Utah Code Annotated.

Section 3: **Effective date.** This Ordinance shall be effective immediately upon posting or publication after final passage.

PASSED AND ADOPTED by the City Council on this 7th day of September, 2016.

Bruce A. Blackham
BRUCE A. BLACKHAM, Mayor

ATTEST:

Janelle Braithwaite
JANELLE BRAITHWAITE, City Recorder



RECORDED this 7th day of September, 2016.
PUBLISHED OR POSTED this 15 day of September, 2016.

Municipal Council
Roll Call Vote Tally:

	Yes	No
Mr. Andersen	<u>X</u>	
Mr. Carlisle	<u>X</u>	
Mr. Donaldson	<u>X</u>	
Mr. Hill	<u>X</u>	
Mr. Jensen	<u>X</u>	

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

In accordance with Utah Code Annotated §10-3-713, 1953 as amended, I, the City Recorder of Gunnison, City, Utah, hereby certify that foregoing Ordinance was duly passed and published or posted at:
1) Gunnison City Hall, 2) Sandpete Messenger and 3) Gunnison Post Office on the above referenced dates.

Janelle Braithwaite DATE: 9-15-2016
JANELLE BRAITHWAITE, City Recorder

CERTIFICATE OF MAILING

In accordance with Utah Code Annotated §63G-2-701, I, the City Recorder of Gunnison City, Utah hereby certify that I mailed a true and correct copy of this Ordinance within thirty (30) days of passage and approval to the Utah Division of Archives and Records Service, 346 S. Rio Grande, Salt Lake City, Utah 84101-1106.

Janelle Braithwaite DATE: 9-15-2016
JANELLE BRAITHWAITE, City Recorder