

STURGEON CITY CODE

CHAPTER 2: SUNSHINE LAW POLICY

Section 2.100 Policy.

The City of Sturgeon desires to conduct its business in a public fashion, and to advise all citizens of the community of meetings of the Board of Aldermen and all committees or boards established by the City. We recognize that records of the City are records that belong to the citizens, and as a general matter should be available to the public as a matter of course. However, there are some times when the Constitutional or privacy rights of individuals would be adversely affected by public disclosure, and times when disclosure of information would adversely affect the City's finances or the conduct of law enforcement efforts. Thus some records need to be closed to the public. This policy is designed to explain to City officials, staff, and to our citizens and to the public at large the ways that we plan to implement the Missouri Open Meetings and Records Act (Chapter 610 of the state statutes.)

(Ord. 690, Sec 1, Approved and Effective March 23, 2009, New)

Section 2.200. Closed Meetings.

Except to the extent otherwise required by code, the Board of Aldermen is authorized to close meetings and votes, to the extent they relate to the following:

1. Legal actions, causes of action or litigation involving the City or any confidential or privileged communications between the Board of Aldermen or its representatives and its Attorneys.
2. Leasing, purchase or sale of real estate by the City where public knowledge of the transaction might adversely affect the legal consideration thereof.
3. Hiring, firing, disciplining or promoting an employee of City. However, any vote on a final decision, when taken by the Board of Aldermen must be made available to the public within seventy-two (72) hours of the close of the meeting where such action occurs; provided, however, that any employee so effected shall be entitled to prompt notice before such decision is made to the public.
4. Preparation, including any discussions on behalf of the City, the Board of Aldermen or its representatives for negotiations with employee groups.
5. Scientific and technological innovations in which the owner has a proprietary interest.

(Ord. 519, Sec. 1, Approved and Effective March 28, 1994.)

Section 2.210. Procedure for Closing Meetings.

1. Except as set forth in Subsection 2 of this Section, no meeting or vote may be closed without an affirmative public vote of a majority of a quorum of the Board of Aldermen. The vote of each member of the Board of Aldermen on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this code shall be announced publicly at an open meeting of the Board of Aldermen and entered into the minutes.

2. The Board of Aldermen proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed under the provisions of this code. Such notice shall comply with the procedures set forth herein for notice of a public meeting.

STURGEON CITY CODE

3. Any closed meeting shall be closed only to the extent necessary for the specific reason announced to justify the closing of the meeting or vote. The Board of Aldermen shall not discuss any business in a closed meeting which does not directly relate to the specific reason announced to justify the closing of the meeting.

(Ord. 519, Sec. 2, Approved and Effective March 28, 1994.)

Section 2.300. Custodian of Records Designated

The City Clerk is hereby designated as the “Custodian of Records” for the City of Sturgeon. Such designation does not mean that the City Clerk will necessarily have all the records in his or her possession, but simply is an indication to whom requests for copies of records and information regarding the City government shall be directed. Certain records that may be protected by federal law (HIPAA, for example) and there may be some dispute as to the Custodian’s right to review such records. Any dispute shall be brought to the attention of the district legal counsel, who shall decide if the Custodian needs to have access to the record.

Requests for records made to persons other than the City Clerk shall not be considered to be requests that are made pursuant to the Missouri Sunshine Law, Chapter 610 of the state statutes. Nonetheless, any official or employee of the City who receives a request is directed to inform the City Clerk of the request in a timely fashion, so that a response may be made to the request.

(Ord. 690, Sec 2, Approved and Effective March 23, 2009, New)

Section 2.310. How Records are Requested

All requests for records, notices, or information shall be in writing, and shall be accompanied by a deposit of the estimated cost of reproducing the requested information. Oral requests, if received by the City Clerk, shall be immediately recorded in written form to document the same. Any request received by the City Clerk shall be initialed by the clerk, with the date and time of receipt noted. (It is from this notation of receipt that the time for a response is calculated.) For the convenience of the public, the Custodian is authorized to prepare a “Disclosure Request Form” upon which a request may be made. Nothing herein, however, shall limit a requesting party to that form or prevent him/her from making a request in a different fashion.

(Ord. 690, Sec 3, Approved and Effective March 23, 2009, New)

Section 2.320. Response Desired to be Noted on Request

The requesting party shall indicate on the request the manner in which a response is desired. In absence of instructions to the contrary, it will be assumed that the requesting party wants to receive a response in the same form as the original request. (Examples: if someone stops by City Hall and requests copies of documents, it will be assumed that the requesting party will stop by City Hall later to pick up the documents. But if someone mails a request to the City Hall, it will be assumed that a mailed response is desired. If the request comes by e-mail, the City’s response will also be via e-mail – although the City will maintain a paper copy of both the request and the response in its files).

(Ord. 690, Sec 4, Approved and Effective March 23, 2009, New)

Section 2.330 Response Within 3 Business Days

The custodian of records shall respond to the request within 3 business days of its receipt. A “business day” is a day when the City Hall is open for the conduct of City business during its normal business hours. While it is desirable that the entire transaction be completed within 3 business days, there may be circumstances where clarification or explanation of the request is necessary, or where it may be necessary to provide only part of the requested information while searches are made to find copies of other documents requested.

STURGEON CITY CODE

(Ord. 690, Sec 5, Approved and Effective March 23, 2009, New)

Section 2.340 When Custodian Not Available

Any request directed to anyone other than the Custodian will be forwarded to the Custodian (as provided in Section 2.310 above). If the Custodian is absent due to illness, temporary duty elsewhere, or vacation, the request shall not be deemed to have been delivered until the Custodian returns to work at City Hall. It will be assumed that the person making a records request consents to any delay caused because the Custodian is not available, unless the requesting party makes clear that an immediate response is required. In the temporary absence of the Custodian, the Mayor shall assume temporarily the responsibilities of the Custodian, when the requesting party so demands.

(Ord. 690, Sec 6, Approved and Effective March 23, 2009, New)

Section 2.350 Documentation of Response

The custodian of records shall document the response provided either by:

1. Making an extra copy of the response and attaching it to the original request,
2. Noting on the request what documents were provided, or
3. Keeping a copy of any letter or note requesting additional information in order to process the request.

(Ord. 690, Sec 7, Approved and Effective March 23, 2009, New)

Section 2.360 Request for Searches

Some court decisions seems to say that the Missouri Sunshine Law does NOT require local governments to engage for searches, to participate in what are described as “fishing expeditions.” On the other hand, the policy behind the law seems to encourage public examination of district records and the district needs to bend-over-backward to attempt to assist the public. A request for copies of “all documents” or “every document” of a particular sort involves a request to search through every record of the City in order for the City to certify that it has provided “all” or “every” document. Such searches are expensive. Similarly, a request for records compiled in a format differing from the format in which the records are customarily retained is a request for a search and compilation, and can be expensive. As a general rule, the Custodian of Records is not expected to engage in extensive searches or compilations. Any search request that will require more than 15 minutes of the Custodian’s time will be refused without a substantial advance deposit for the estimated time required to search for and/or compile the records.

(Ord. 690, Sec 8, Approved and Effective March 23, 2009, New)

Section 2.370 Fees for Retrieval and Copies

1. Fees for search, retrieval, accompanying, and returning to their proper storage of any and all documents shall be:
 - a. For a search of 15 minutes or less....no retrieval fee.
 - b. For a search, retrieval, accompanying, and return of documents requiring more than 15 minutes.....(For current rates see Chapter 25 - Deposits, Fees & Charges, Section 25.110) for each period of 15 minutes or less, including the first 15 minute period.

STURGEON CITY CODE

- c. For expert assistance retrieving or formatting electronic information...actual costs incurred.
2. Fees for copies of documents shall be:
 - a. For copies that can be made on any machine available to the District or its officials....(For current rates see Chapter 25 - Deposits, Fees & Charges, Section 25.110) per side of a page (black and white) or (For current rates see Chapter 25 - Deposits, Fees & Charges, Section 25.110) per side of a page for color copies
 - b. For copies that must be made elsewhere...the actual charges imposed for making the copies (including any sales taxes) as well as the fee provided above for search, retrieval, accompanying and returning to proper storage.
3. For delivery of copies:
 - a. Actual costs incurred for postage, messenger service, etc.

(Ord. 690, Sec 9, Approved and Effective March 23, 2009, New)

Section 2.380 Inspection of Records

To reduce the cost to both the requesting party and the City, the Custodian of Records may permit a physical inspection of the records by the requesting party to help specify what documents are needed. The Custodian may impose such security as is deemed appropriate to guarantee that no record is removed from the City files. The requesting party shall pay the cost of that security at the rate provided in Section 2.370 (1).

(Ord. 690, Sec 10, Approved and Effective March 23, 2009, New)

Section 2.390 Waiver of Fees

The Custodian of Records is empowered to waive the collection of any of the fees totaling less than \$5 provided in Section 2.370 above to any citizen of the City requesting documents from the City, or to any representative of news media that routinely sends a reporter to cover meetings of the City Board of Aldermen. No person or organization shall receive more than 3 such waivers in any 12 month period.

(Ord. 690, Sec 11, Approved and Effective March 23, 2009, New)

Section 2.400 Unpaid Fees for Sunshine Law Requests

The City will not comply with any request for records from any individual who has an outstanding bill for documents that have previously been provided. The only response from the District will be to indicate that:

1. The new request has been received,
2. There is an outstanding balance,
3. Before the new request can be processed the outstanding balance must be paid as well as a deposit for the estimated costs of the newest request be paid in advance.

(Ord. 690, Sec 12, Approved and Effective March 23, 2009, New)

STURGEON CITY CODE

Section 2.410 Closed Records and Votes

All records of the City which are permitted to be closed records by reason of the Sunshine Law, or by any other statute of Missouri, or by any statute or regulation of the United States government shall be maintained as closed records. No such closed record shall be released to any person who is not a part of the City government, except that the City's Auditor may see such records as are reasonably necessary to prepare an audit report as requested by the City and the City's Attorney may see such records as are reasonably necessary to represent the City. Requests that closed records be opened to public inspection will be considered on a case-by-case basis by the City's Board of Aldermen.

(Ord. 690, Sec 13, Approved and Effective March 23, 2009, New)

Section 2.420 Subpoenas for Closed Records

No subpoena for a closed record shall be honored. All such subpoenas shall be referred to the City Attorney for a response, and for a motion to quash the subpoena. The only exception to this requirement that will be recognized is a subpoena from a grand jury.

(Ord. 690, Sec 14, Approved and Effective March 23, 2009, New)

Section 2.430 Expectations of Privacy

The Missouri Supreme Court (in the case of *Hyde v. City of Columbia*) has made clear that some records which are classified as "Open" for Sunshine Law purposes are nonetheless not to be disclosed because the individual to whom the record refers may have a "reasonable expectation of privacy" concerning that information which must be protected because of the US Constitution. Thus an individual may request disclosure of information which another person might think should be kept closed. When the City or its Attorney becomes aware of a request for records that might be subject to a "reasonable expectation of privacy" the following procedures will be followed:

1. Instead of simply releasing the presumed "open records," the City will notify all parties of the request for disclosure. Anyone who believes that his Constitutional rights might be infringed by disclosure shall be given 10 days to register an objection and/or to sue the City.
2. At the end of the 10 day period, if no objections have been registered and if the City Attorney believes that risk of disclosure is minimal, the request for disclosure shall be honored. If at the end of the 10 day period an objection has been made to the proposed disclosure or if the City and its Attorney are uncomfortable with such disclosure, the City will seek guidance from a court (naming all possible persons having a possible claim of privacy and the requesting party as defendants) and shall comply with a final decision of a court (after all periods for appeal or rehearing having expired) within 3 business days of the decision becoming final.

(Ord. 690, Sec 15, Approved and Effective March 23, 2009, New)

Section 2.440 Public Notice Board

The Custodian of Records shall establish a fixed place where all public notices and agenda will be posted. This notice board should be in a place that is accessible to members of the public at times when the City Hall is open and (if possible) should be lighted and available for public inspection even at times when the City Hall is closed. This notice board should have the notion "PUBLIC NOTICES" printed in letters at least four inches in height at the top of said board. A window or glass door at the entrance to the City Hall may be used as the notice board, provided such notices are placed in such a fashion that they can be read by persons on the outside of the City Hall.

(Ord. 690, Sec 16, Approved and Effective March 23, 2009, New)

STURGEON CITY CODE

Section 2.450 Standing Request for Meeting Notices/Packets

Although the Missouri Statute does not require the District to do so, we will maintain a list of all persons who request notice of “all meeting” of the Board and its committees. Such requests may include simply a request for the notice and tentative agenda, or may include a request for the preparatory packet also. A deposit shall be posted in advance when such a request is made, and such request shall be honored as long as the deposit continues to cover the costs.

(Ord. 690, Sec 17, Approved and Effective March 23, 2009, New)

Section 2.460 Abusive Records Request

A second request for the same record by the same person or organization, or a request for voluminous records where the requesting party isn’t willing to discuss what records are desired (such as a request for “all checks written” since the district was organized in 1947, and the requesting party refuses what information should be provided first or to discuss a deposit of fees) shall be considered an abusive request and will not be honored.

(Ord. 690, Sec 18, Approved and Effective March 23, 2009, New)

Section 2.470 Meetings via Electronic Devices

Any meeting initiated by the City or its Board members (except those having a purely social purpose) is presumptively public. If any District Board member must attend such meeting via electronic means (speaker phone, web camera, internet instant messaging, etc. – or even via a method not yet invented) the members of the public who desire to attend such meeting will be allowed to do so at the District Offices, where the electronic communication will be shared with members of the public at the same time they are shared with members of the Board.

City officials, employees and volunteers are reminded that court decisions in other states have held that serial e-mail messages, or instant messaging, or other electronic communications directed at *all* or a *majority* of the members of a Board or committee have been held to constitute a “meeting” with accompanying notice, agenda, and public participation requirements. City officials, employees and volunteers should avoid using these communication tools for decision making exchanges. (And, of course, all officials should remember to copy the Custodian of Records with all messages.)

(Ord. 690, Sec 19, Approved and Effective March 23, 2009, New)

Section 2.480 E-mails and Electronic Records

The City recognizes that all electronic records *that belong to the City* are public records and available to the public, unless closed for a specific reason. As a general rule, all e-mails are retained in the City’s computers until overwritten by that computer, including all “deleted” e-mails. The retrieval of those e-mails, however, is not something that is routinely done by the City. Any retrieval of e-mails or other electronic records may require the services of a computer expert. Request for the retrieval of stored e-mails or other electronic records may require the requesting party to provide an advance deposit for the services of such an expert.

1. Employees and Officers of the City and volunteers serving on City boards or committees are, however, allowed to use District Internet facilities for personal purposes, provided they do not access pornographic, obscene, racist, or extremist web sites using City equipment. Records of Internet site visits are not public records, but may be used by the District for disciplinary purposes.

2. E-mails which are directed (either addressed to, or by copy sent to) a majority of the members of the City’s Board of Aldermen are presumptively public records and will be disclosed, unless a specific reason for

STURGEON CITY CODE

nondisclosure exists. All parties sending such e-mails are directed to include a copy of such e-mail to the Custodian of Records so it may be maintained as part of the City's files.

3. E-mails or other communications which are directed (either addressed to, or by copy sent to) a City employee are presumptively public records and will be disclosed, unless a specific reason for nondisclosure exists. However E-mails which are initiated by a City employee which are directed (either addressed to, or by copy sent to) persons not employed by the City may be either public records or private records depending upon their content.

4. E-mails that discuss in any way the finances of the City are presumptively public records and will be disclosed, unless a specific reason for nondisclosure exists.

5. All other e-mails are presumptively private property and do not belong to the City but to the person who created the same. These e-mails will not be released to the public without permission of the owner thereof.

(Ord. 690, Sec 20, Approved and Effective March 23, 2009, New)

Section 2.490 Records Discussing District Operations, on Private Equipment

It is recognized that many employees, volunteers, and officers of this City have their own privately owned cell phones, computers, and other electronic equipment that is available for the preparation and sending of, and for the receipt of, communications relating to City operations. The use of such private equipment for City operations is discouraged. THE CITY WILL NOT PROVIDE A LEGAL DEFENSE, NOR WILL IT INDEMNIFY ANY EMPLOYEE, VOLUNTEER, OR OFFICER who chooses to utilize private equipment for the conduct of public business. Any City employee, volunteer, or officer who receives an electronic communication on private equipment is directed to:

1. Forward a copy of the communication to the Custodian of Records so it may be kept in the official records of the City, and

2. Respond to the communication either using City equipment if doing so is convenient, or respond using the private equipment and send a copy of the response to the Custodian of Records for retention by the City. Any employee, volunteer, or officer who initiates an electronic communication on private equipment is directed to send a copy of all communications (including all responses) to the Custodian of Records for document retention purposes.

(Ord. 690, Sec 21, Approved and Effective March 23, 2009, New)

Section 2.500 Normal Meeting Place, Time, and Date

Except as provided below, regular meetings of the City's Board of Aldermen shall be held on the fourth Monday of each month at the City Hall located at 303 Station Drive, in Sturgeon, Missouri. Regular meetings of the City's Board of Aldermen shall not be held on the fourth Monday of a month when the fourth Monday is a designated holiday day under the provisions of Section 3.040 of the Sturgeon City Code, in which case the regular monthly meeting of the Board of Aldermen for that month shall instead be held on the next business day after the fourth Monday of such month that is not a designated holiday day, at the City Hall. Further, regular meetings of the City's Board of Aldermen shall not be held on the fourth Monday of December when the fourth Monday of December is Christmas Eve, in which case the regular monthly meeting of the Board of Aldermen for that month of December in that case shall instead be held on the day after Christmas Day, being December 26th, at the City Hall. Each regular meeting of the Board of Aldermen shall begin at 7:00 p.m.

(Ord. 779, Sec 1, Approved and Effective November 26, 2012, Amended; 757, Sec 1, Approved and Effective November 28, 2011, Amended; Ord. 690, Sec 22, Approved and Effective March 23, 2009, New)

Section 2.510 Meetings Initiated by Others

STURGEON CITY CODE

From time to time, members of the Board of Aldermen and other City employees may be invited to attend meetings held by others (Chamber of Commerce, County government, employee or citizen groups, etc.) At such meetings government business may be discussed. The City will try to give notice of all these invitations, and we believe these meetings are generally required by law to be open to the public. However, we have no control over the facilities at which the meetings are held. If we know in advance that the meeting is to be private, our Board members will not participate in the meeting. However, if we attend the meeting and it turns out that a member of the public is excluded, we are unable to solve that problem, and suggest that the public look to the group that initiated the meeting for any redress.

STURGEON CITY CODE

(Ord. 690, Sec 23, Approved and Effective March 23, 2009, New)

Section 2.520 Penalty for Disclosure of Closed Records

Any person employed or working for the City, or who has been entrusted with a record that is marked to indicate that it is “confidential” or a “closed record,” or who knows or should have known that a record is closed, or who has been invited to participate in a closed meeting who nonetheless discloses any closed record, or any information about the contents of any closed meeting to any person shall be guilty of an offense under the codes of the City, and upon conviction therefor may be punished as provided by law. Any such person who is employed or working for the City may also be subject to the termination of their employment as a result of such disclosure. Any such person who is an elected official may also be subject to impeachment from their office as a result of such disclosure.

(Ord. 690, Sec 24, Approved and Effective March 23, 2009, New)