



**CITY OF BURIEN  
AGENDA BILL**

<b>Agenda Subject:</b> Motion to Adopt Proposed Ordinance No. 517, Amending the Burien Municipal Code (BMC) Relating to the Disclosure of Public Records		<b>Meeting Date:</b> September 28, 2009
<b>Department:</b> City Manager	<b>Attachments:</b> <u>Proposed Ordinance</u> No. 517	<b>Fund Source:</b> N/A <b>Activity Cost:</b> N/A <b>Amount Budgeted:</b> N/A <b>Unencumbered Budget Authority:</b> N/A
<b>Contact:</b> Monica Lusk, City Clerk		
<b>Telephone:</b> (206) 248-5517		
<b>Adopted Initiative:</b> Yes No <input checked="" type="checkbox"/>	<b>Initiative Description:</b>	
<b>PURPOSE/REQUIRED ACTION:</b>  The purpose of this agenda item is for Council to consider proposed Ordinance No. 517, amending the City's municipal code relating to the disclosure of public records.		
<b>BACKGROUND (Include prior Council action &amp; discussion):</b>  The proposed changes will amend the City's code to more closely resemble the model rules drafted and adopted by the Attorney General in 2007 at the direction of the State Legislature.  At the August 17 meeting, Council discussed the proposed ordinance and requested that the BMC be more user friendly, name the designated Public Records Officer, and add the five (5) day response to requests to the procedures. The attached ordinance reflects these requests.  At the September 14 meeting, Council requested placing the proposed ordinance on the September 28 agenda for consideration.		
<b>OPTIONS (Including fiscal impacts):</b>  1. Approve proposed Ordinance No. 517. 2. Modify proposed Ordinance No. 517, and approve as amended. 3. Do not approve proposed Ordinance No. 517, resulting in noncompliance with State law.		
<b>Administrative Recommendation:</b> Adopt proposed Ordinance No. 517, amending the BMC relating to the disclosure of public records.		
<b>Committee Recommendation:</b> N/A		
<b>Advisory Board Recommendation:</b> N/A		
<b>Suggested Motion:</b> Move to adopt Ordinance No. 517, Amending the Burien Municipal Code Relating to the Disclosure of Public Records.		
Submitted by: Monica Lusk <b>Administration</b> 		<b>City Manager</b> 
<b>Today's Date:</b> September 22, 2009		<b>File Code:</b> R:/CC/AgendaBill2009/092809cm-6 public records



## DRAFT

## CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 517

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**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,  
RELATING TO PUBLIC RECORDS; AMENDING CHAPTER 2.40 OF  
THE BURIEN MUNICIPAL CODE, PROVIDING FOR  
SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, the State public disclosure laws require the City to adopt and enforce reasonable rules and regulations to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the City while ensuring that the rules and regulations provide for the fullest assistance to inquirers and the most timely possible action on requests for information; and

WHEREAS, the City desires now to update rules and regulations relating to disclosure of public records previously adopted by the City and codified at Chapter 2.40 of the Burien Municipal Code;

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

Section 1. Adoption of New Section 2.40.080 BMC (Relationship to Public Records Act). Chapter 2.40 of the Burien Municipal Code is hereby amended by the addition of a new Section 2.40.080 BMC to read as follows:

**2.40.080 Relationship to Public Records Act.**

This chapter constitutes the City's rules and regulations to carry out and implement the Public Records Act, Chapter 42.56 RCW. Except as otherwise provided in this chapter, Chapter 42.56 RCW, as now or hereafter amended, shall apply to disclosure of all City public records. In the event of a conflict between any section, provision, phrase, or term of Chapter 42.56 RCW and any section, provision, phrase, or term of this Chapter, such section, provision, phrase, or term of Chapter 42.56 RCW shall control to the extent of the conflict.

Section 2. Adoption of New Section 2.40.090 BMC (Definitions). Chapter 2.40 of the Burien Municipal Code is hereby amended by the addition of a new Section 2.40.090 to read as follows:

**2.35.030 Definitions.**

The following terms, phrases, words and their derivations shall have the meanings given herein.

A. "Public record" means any writing, maps or drawings containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the city regardless of physical form or characteristics.

B. "Public records officer" means the city clerk or designee.

C. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

Section 3. Amendment of Section 2.40.100 BMC (Provision of Public Access.) Section 2.40.100 of the Burien Municipal Code is hereby amended (amendments shown in legislative revisions marks) to read as follows:

2.40.100 Provision of Public Access.

(1) Requests for access to public records shall be addressed to and accepted by the public records officer, during City hours of business, by phone, fax, mail, electronic mail or in person. Upon the public records officer receiving a request to inspect a copy of public record, the ~~department~~ public records officer shall grant the request unless ~~it~~ the public records officer determines that the record requested is or may be exempt from disclosure in whole or in part or that uncertainty exists as to whether the record is exempt from disclosure in whole or in part, in which case the ~~department~~ public records officer shall ask that a written request (or written request form) for public records be submitted by the requester.

(2) Any completed written request for public record shall immediately, upon receipt by ~~the department, a City employee,~~ be delivered by or on behalf of the department City employee to ~~the city clerk~~ public records officer.

(3) Upon the public records officer receiving a completed ~~written~~ request for a public record ~~records~~ (or written request form) the ~~city clerk~~ public records officer shall determine whether the public record requested is exempt by law from inspection and copying in whole or in part. The ~~city clerk~~ public records officer shall consult with the city attorney in making such determination.

(4) Within five business days of receiving a public record request, the city must respond by:

(a) Either providing the record;

(b) Acknowledging that the city has received the request and providing a reasonable estimate of

the time the city will require to respond to the request; or

(c) Denying the public record request.

(5) If the ~~city clerk~~ public records officer determines that the document is exempt in part but can be made available after deletion of exempt portions, the request shall be granted; provided, that such exempt portions shall first be deleted.

(6) In acknowledging receipt of a public record request that is unclear, the city may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the agency need not respond to it.

(7) If the ~~city clerk~~ public records officer determines to deny the request, in whole or in part, a written statement of the specific reasons for the denial shall be provided the requester.

Section 4. Repeal and Re-enactment of Section 2.40.110 BMC (Exemptions). Section 2.40.110 of the Burien Municipal Code is hereby repealed in its entirety and re-enacted to read as follows:

#### 2.40.110 Exemptions.

A. The following public records, or applicable portions thereof, are exempt from public disclosure pursuant to the Provisions of Ch. 42.56 RCW:

1. Personal information in files maintained for employees, appointees, or elected officials, to the extent that disclosure would violate their right to privacy, as defined in RCW 42.56.050.
2. Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would be prohibited to such persons by RCW 82.32.330 or violate the taxpayer's right to privacy, as defined in RCW 42.56.050, or result in unfair competitive disadvantage to the taxpayer.
3. Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy, as defined in RCW 42.56.050.
4. Credit card numbers, debit card numbers, electronic check numbers, card expiration dates or bank or other financial account numbers except when disclosure is expressly required by or governed by other law.
5. Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property;

provided, that if at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern.

6. Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

7. Except as provided by Chapter 8.26 RCW, the contents of real estate appraisals made for or by any agency including the city relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

8. Valuable formulae, designs, drawings, and research data obtained by the city within five years of the request for disclosure when disclosure would produce private gain and public loss.

9. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the city in connection with any city action.

10. Records which are relevant to a controversy to which the city is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

11. Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

12. Financial and commercial information and records supplied by businesses during application for loans or program services provided by Chapters 43.160, 43.163, 43.168 and 43.330 RCW.

13. All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

14. The residential addresses and residential telephone numbers of employees or volunteers of the city which are held by the city in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

15. The residential addresses and residential telephone numbers of the customers of a city utility contained in the records or lists held by the city utility of which they are customers.

16. Client records maintained by the city under any domestic violence program as defined in RCW 70.123.020 or 70.123.075 or rape crisis center as defined in RCW 70.125.030.

17. Information that identifies a person who, while a city employee:

a. Seeks advice, under an informal process established by the city, in order to ascertain his or her rights in connection with a possible unfair practice under Chapter 49.60 RCW against the person; and

b. Requests that his or her identity or any identifying information not be disclosed.

18. License applications under RCW 9.41.070.

19. Information revealing the identity of child victims of sexual assault who are under age 18. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

20. A law enforcement authority may not request inspection or copying of records of any person, which belong to a city electrical utility, unless the authority provides the city electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true.

21. Names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

22. Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

23. Attorney-client privileged communications under RCW 5.60.060.

24. Abstracts of driving records under RCW 46.52.130(2).

25. Any other record which is exempt from disclosure under any state law.

B. The exemptions from public disclosure set forth in this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

C. Inspection or copying of any specific records exempt under this section may be permitted if the

King County superior court finds, after a hearing with notice thereof to every person interested and to the city, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

D. Nothing in this section shall affect a positive duty of the city to disclose or a positive duty to withhold information, which duty to disclose or withhold is contained in any other law.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.

CITY OF BURIEN

\_\_\_\_\_  
Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Monica Lusk, Public records officer

Approved as to form:

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Christopher D. Bacha, Interim City Attorney  
Kenyon Disend, PLLC

Filed with the City Clerk: September 3, 2009

Passed by the City Council:

Ordinance No. 517

Date of Publication:

