

**RESOLUTION NO. 2016-01**

**A RESOLUTION ADOPTING A NEW OPEN MEETINGS AND RECORDS POLICY AND REPEALING RESOLUTIONS 00-09 AND 2004-07.**

**WHEREAS**, Section 610.028.2 RSMo. requires that the City have a reasonable written policy in compliance with Sections 610.010 to 610.030 RSMo.; and

**WHEREAS**, the City has previously adopted a policy in compliance therewith under Resolutions 00-09 and 2004-07; and

**WHEREAS**, the City Council finds it in the best interest of the public to enact a new, updated policy in compliance with the Open Meetings and Records Law, as amended, and repeal all existing policies enacted thereunder.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF LADUE, MISSOURI, AS FOLLOWS:**

**Section 1.** The Open Meetings and Records Policy, in substantially the form as **Exhibit A** attached hereto and incorporated herein by reference (the “City’s Open Meetings and Records Policy”), is hereby adopted as the City of Ladue’s written policy in compliance with Chapter 610 RSMo. A copy of the City’s Open Meetings and Records Policy shall be open for public inspection by the Custodian of Records of the City.

**Section 2:** Resolution 00-09 and Resolution 2004-07 are hereby repealed.

**Section 3.** This Resolution shall take effect and be in full force from and after its passage by the City Council and approval by the Mayor.

**Adopted by the City Council and approved by the Mayor on this \_\_\_\_ day of March 2016.**

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**Nancy Spewak, Mayor**

**ATTEST:**

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Laura Rider, City Clerk

## Exhibit A

### **CITY OF LADUE, MISSOURI OPEN MEETINGS AND RECORDS POLICY**

The City of Ladue, Missouri hereby adopts for its Open Meetings and Records Policy, the “Sunshine Law”, as set forth in §610.010 through §610.200 of the Revised Statutes of Missouri, as amended from time to time, and the following supplementary definitions and procedures (hereinafter, this “Policy”):

**Section 1. Definitions.** In addition to the definitions set forth in §610.010 RSMo., the following definitions shall apply:

**City**—The City of Ladue, including the City governmental body.

**City governmental body**—Any body, agency, board, council, commission, or committee of the City whether operating in a legislative or administrative capacity, or the municipal court of the City when operating in an administrative capacity, including:

- A. Any committee appointed by or at the direction of any of the above-referenced entities and which is authorized to report to any of those entities; or
- B. Any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the City Council or the City Clerk, policy or policy revisions or expenditures of public funds.

The Custodian of Records of the City shall maintain a list of any such policy advisory committees.

**Custodian of Records**—The City Clerk of the City or his/her designees.

**Section 2. Policy for Open Meetings and Records; Compliance with Missouri Sunshine Law.** It is the policy of the City of Ladue that meetings, records, votes, actions, and deliberations of the City be open to the public unless otherwise provided by law. Except as otherwise provided by law, all public meetings of the City shall be open to the public as set forth in §610.020 RSMo., all public records of the City shall be open to the public for inspection and copying as set forth in §§610.023 through 610.026 RSMo., and all public votes of the City shall be recorded as set forth in §610.015 RSMo. A copy of this Policy and the Sunshine Law shall be kept available for public use, inspection, and examination at the primary office of the City during normal business hours. In the event that any provision of this Policy is determined to conflict with the provisions of the Sunshine Law, this Policy is hereby amended to delete the conflicting provision to the extent of the conflict.

### **Section 3. Meetings, Records and Votes to be Public—Exceptions.**

A. ***Open Records; Exceptions.*** All meetings, records, and votes are open to the public, except that any meeting, record or vote relating to one (1) or more of the matters set out in §610.021 RSMo., as well as other materials designated elsewhere in the Sunshine Law, shall be closed unless the City governmental body votes to make such materials public or a court of competent jurisdiction orders disclosure of such closed record or vote. Before closing a meeting to the public, a majority of a quorum of the City governmental body shall vote to do so in a public vote. The vote of each member of the City governmental body on the question of closing the meeting or vote and the reason for closing the meeting by reference to a specific exception shall be announced at an open meeting of the City governmental body and entered into the minutes.

B. ***Additional Closed Records.*** Pursuant to §610.021 of the Sunshine Law, the following records, meetings, and/or votes shall be considered closed records:

1. To allow the fullest cooperation by employees and members of the public in investigation of matters wherein an employee of the City is alleged to have engaged in any form of misconduct, all files, records, and documents relating to investigations of allegations of misconduct by City employees will be considered to be personal information as defined by §610.021(3) of the Sunshine Law and shall be closed records under the custody of the Custodian of Records.
2. All information obtained by the City regarding medical examinations, medical condition or medical history of City employees or job applicants subject to confidentiality under the Health Insurance Portability Accounting Act and other similar federal and state laws, if retained by the City, shall be collected and maintained on separate forms and in separate medical files and shall be treated as closed and confidential records, except that:
  - a) Supervisors and managers may be informed regarding necessary restrictions on the work duties of employees and necessary accommodations;
  - b) First aid and safety personnel may be informed, when appropriate, if the information reflects the existence of a disability which might require emergency treatment; or
  - c) Government officials investigating compliance with State or Federal law pertaining to treatment of persons with disabilities may be allowed access to such records.
3. Based on the reasoning within Attorney General Opinion 95-2001 and *City of Springfield v. Events Publishing Co., LLC*, 951 S.W.2d 366 (Mo. App. 1997), this Policy hereby assumes that persons have a reasonable expectation of privacy as persons having dealings with the City, City records containing information or entries of a personal, confidential, private or proprietary nature, including, but not limited to, income, sales data, financial circumstances, utility account numbers and related personal information obtained within

City bills, household and family relationships, social security numbers, dates of birth, insurance information and other information which reasonable persons generally regard as private and not a customary subject for public discourse. Accordingly, to protect reasonable expectations of privacy on the part of persons having dealings with the City, City records containing the above information, have been provided to the City by one complying with regulations requiring the disclosure of such information, shall be, to the extent authorized by law, redacted from copies of City records disclosed or provided to members of the public other than those persons to whom the information of entries pertain. Persons desiring access to information or entries redacted from such records may file a supplementary written request with the Custodian or Records for disclosure of material to be specified in the request, which request should state:

- a) Whether or not the requesting party has informed persons to whom the requested information pertains of the request; and
- b) All reasons why the requesting party believes disclosure by the City of the specified information is in the public interest.

Such closed records may be opened if the City Council votes to make such closed records public or the City is so ordered by a court of competent jurisdiction.

C. ***Closed Meeting Procedure.*** Before closing a meeting to the public, a majority of a quorum of the City Council (or any other City Governmental Body authorized to close a meeting per the Sunshine Law) shall vote to do so in a public, roll call vote. The vote of each member of the City Council on the question of closing the meeting or vote and the reason for closing the meeting by reference to a specific exemption within §610.021 of the Sunshine Law shall be announced at the open meeting of the City Council and entered into the meetings. Every vote taken in a closed meeting, including any vote taken to adjourn back to open session, shall be a roll call vote.

D. ***Copyright Materials Submitted to the City.*** Subject to the provisions for closed records, a person requesting to inspect and copy public records retained by the City that are or are reasonably believed by the Custodian of Records to be subject to copyright protection may have access to and view those records; *provided* that the requestor may not copy or otherwise reproduce the records *unless*:

1. The requestor has received written authorization from the copyright owner to reproduce the records and has submitted the authorization to the Custodian;
2. The requestor is a law enforcement agency or other federal, state or local governmental authority seeking the records in furtherance of or and pursuant to an ongoing investigation; or,
3. The Custodian is ordered by a court of competent jurisdiction to reproduce the records.

**Section 4. Duty to Preserve Confidentiality.** Every member of the City governmental body who attends a closed meeting of the City governmental body, or who has been supplied with closed record(s), either of which was closed pursuant to the exceptions to the Sunshine Law contained in §610.021 RSMo. (pertaining to “Closed Meetings and Records”), shall have a duty to preserve the confidentiality of any and all information discussed or disclosed in that closed meeting and/or record. Any member found to have breached this duty may be excluded from attending subsequent closed meetings or may be denied access to closed records. A repeated violation of this duty shall be considered cause for removal from the City governmental body. Nothing within this Section shall limit the City’s right to pursue disciplinary or other action pursuant to the City employee manual, ethical requirements or as otherwise provided by law.

**Section 5. Response to Request for Access to Records.**

A. ***Request for Access Form and Procedure.*** All requests for access to public records must be made in writing and addressed to the Custodian of Records, using the Request for Access to Public Records form in substantially the form of Attachment A, attached to and incorporated in this Policy by reference (the “Request Form”). Notwithstanding the above, the Custodian of Records hereby designates the Administrative Assistant of the Ladue Fire Department as the “Custodian of Records” for the Ladue Fire Department and all requests for access to public records created and retained by the Ladue Fire Department shall be addressed and submitted directly to the Administrative Assistant of the Ladue Fire Department. The Request Form shall be made available from the Custodian of Records upon request. To maintain the integrity of official records and compliance with the Sunshine Law, only the Custodian of Records is authorized to receive and respond to requests for inspection and copying of public records subject to Sunshine Law.

B. ***Response Procedure.*** Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third (3rd) business day following the date the request is received by the Custodian of Records. If records are requested in a certain format, the City shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the Custodian of Records shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three (3) days for reasonable cause.

C. ***Access Denied Procedure.*** If a request for access is denied, the Custodian of Records shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third (3rd) business day following the date that the request for the statement is received.

D. ***Original Records.*** Removal of original public records from the City offices or other office of the Custodian of Records without written permission of the Custodian of Records is prohibited.

E. **No Exclusive Access.** The City shall not grant to any person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record unless the granting of such right is necessary to facilitate coordination with, or uniformity among, industry regulators having similar authority.

F. **Law Enforcement Records Procedure.** Law Enforcement Records shall not be subject to the request procedure within this Section 5 nor contained within §610.023 of the Sunshine Law. Law Enforcement Records shall be subject to the definition and procedures contained within §§610.100-610.200 of the Sunshine Law.

**Section 6. Records not Retained by the City.** In accordance with the Municipal Records Retention Schedule established by the Local Records Board and published by the Missouri Secretary of State under the Local Records Preservation Program, the following are not considered records that need to be retained and, therefore, it is the policy of the City not to retain:

1. Drafts, non-final versions of documents and other work product shall not constitute a "*public record*" unless as otherwise required by law.
2. Identical copies of documents maintained in the same file.
3. Extra copies of printed or processed materials (official copies of which are retained by the Custodian of Records).
4. Superseded manuals and other directives (maintained outside the office of record).
5. Materials documenting employee fringe activities (blood donors, charitable funds, social and professional meetings, etc.).
6. Drafts of reports or correspondence.
7. Blank forms.
8. Catalogs, trade journals, and other publications or papers received from government agencies, commercial firms or private institutions that require no action and are not part of a City transaction.
9. Interoffice messages regarding:
  - (a) Employee activities such as holidays, birthdays, etc.;
  - (b) Phone messages; or
  - (c) Invitations and responses to work related events (meetings, etc.).

Nothing in this Policy shall be deemed to require retention of a document not otherwise required by law to be retained nor authorize destruction of any document required to be maintained as

required by the current Municipal Records Retention Schedule established by the Local Records Board and published by the Missouri Secretary of State under the Local Records Preservation Program (incorporated herein by reference and published at the Secretary of State's web page at <http://www.sos.mo.gov/archives/localrecs/schedule/>).

## **Section 7. Access to Closed Records.**

A. ***City Inspection of Closed Records Procedures.*** No person shall be entitled to access any Closed Record except as permitted by this Policy or as may be required by order of a court of competent jurisdiction. All Closed Records shall be subject to inspection and access by the City Council, the Mayor, the City's attorneys, and the Custodian of Records subject to the following qualifications:

1. Lawfully Closed Records pertaining to the job performance or conduct of any of the above-listed individuals shall be further closed to such individuals if the document identifies the individual and the statutory basis for closure on its cover;
2. Medical records may be disclosed only as provided in Section 3 of this Policy; and
3. No person who has declared a conflict of interest preventing that person from acting on a matter shall be entitled to access the Closed Record if the Closed Record contains the information that created such a conflict of interest.

B. ***Employee's Personnel File Procedure.*** Except as provided above, the Custodian of Records may provide a current or former employee of the City access to closed personnel records specifically relating to such current or former employee upon a written request by or authorization from such employee pursuant to the request procedures set forth in Section 5 of this Policy; provided that the Custodian of Records may deny such request when the record is also properly closed for purposes other than protection of employee information pursuant to §610.012(3) or (13) of the Sunshine Law, or the request relates to a pending investigation or dispute.

C. ***City Council Procedure.*** Access to a specific document(s) may be established other than as provided in this Section by an order supported by an affirmative vote of two thirds of the members of the City Council.

D. ***Other Records.*** Records otherwise specifically prohibited from disclosure by law shall be disclosed only as permitted by such law.

## **Section 8. Public record containing exempt and nonexempt materials, nonexempt to be made available—deleted exempt materials to be explained, exception.**

A. ***Exempt Material Procedure.*** If a public record contains both material which is exempt from disclosure as well as material which is not exempt from disclosure, the Custodian of

Records shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying. The Custodian of Records may seek guidance from the City's attorneys when separating such material.

B. ***Exempt Material Described.*** If the separation is readily apparent to a person requesting to inspect or receive copies of the public record, the City shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

#### **Section 9. Fees.**

A. ***Applicable Fees.*** To the fullest extent permitted by law, the Custodian of Records is authorized to impose fees for the City's cost of document search, research, and duplication in complying with records requests for inspection and copying of public records. The maximum fees to be imposed by the Custodian of Records shall be the maximum amount permitted by the Sunshine Law, not to exceed the City's actual cost.

B. ***Prepayment.*** The Custodian of Records may request and receive payment prior to duplicating and/or searching for documents. If actual costs are less than the estimate provided and received by the Custodian of Records, such amount shall be reimbursed to the requester.

C. ***Custodian May Waive Fees; When.*** Upon written request, documents may be furnished without charge or at a reduced charge when the Custodian of Records determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the City and is not primarily in the commercial interest of the requester. Notwithstanding the above, the Custodian of Records shall duplicate/copy up to ten (10) pages of records not larger than 8.5x11 in size, which are responsive to a request for access to public records from a Ladue resident without charging for such duplication costs (note: this waiver does not include costs for any document search or research time that may be required to fulfill a request for access and any duplication required beyond ten (10) pages to fully respond to the request shall be charged as provided for herein).

#### **Section 10. Procedures for Resolving Questions of Public Accessibility.**

A. ***General Procedures.*** A City governmental body or Custodian of Records in doubt about the legality of closing a particular meeting, record or vote, may, subject to approval by the City governmental body, bring suit in the Circuit Court for the County of St. Louis to ascertain the propriety of such action. In addition, subject to approval by the City governmental body, the City governmental body or Custodian of Records may seek a formal opinion of the Attorney General regarding the propriety of such action. In such events, any proposed closed meeting or public access to the record or vote shall be deferred for a reasonable time pending the outcome of the actions so taken.

B. ***Additional Procedures.*** In addition to any other remedies available to the City provided by law, the Custodian of Records may afford all interested parties a reasonable opportunity to seek judicial review of or relief from a proposed disclosure. The Custodian or Records, with the

approval of the City governmental body, may also utilize the procedures for judicial determination and/or opinion solicitation provided by law.

**Section 11. Legal Defense of Members of the City governmental body, When—Persons Reporting Violations Exempt from Liability and Discipline.**

A. **Legal Defense.** The City governmental body may, upon affirmative vote of a majority of its members, provide for the legal defense of any member of the City governmental body or any employee of the City charged with a violation of the Sunshine Law.

B. **Policy Compliance; Exempt from Civil Liability.** Pursuant to §610.028 RSMo. of the Sunshine Law, any employee, officer or member of any City governmental body who complies with this written Policy is not guilty of any violation of the provisions of the Sunshine Law or subject to civil liability for any act arising out of adherence to this written Policy of the City.

C. **Reporting Violation; Exempt from Civil Liability.** To the full extent permitted by law, any member of the City governmental body or any employee of the City who in good faith reports a violation of this Policy or the Sunshine Law shall not be deemed guilty of a violation of the provisions of the Sunshine Law nor be subject to civil liability nor shall such person be demoted, fired, suspended or otherwise disciplined for making such report.

**Section 12. Electronic Mail.**

A. **Electronic Mail Record.** No record shall be deemed to be an open record simply because such record is in the format of electronic mail or other electronic format and shall be subject to all provisions allowing for closure as may be provided by law.

B. **Electronic Mail Records Not Required to Be Retained.** In accordance with the Municipal Records Retention Schedule established by the Local Records Board, the following are not considered records that need to be retained and, therefore, it is the policy of the City that the following shall not be required to be retained:

1. General City email correspondence regarding routine business activities (e.g. transmittal messages read or received messages, or response to routine questions).
2. Listserv messages, other than those posted in an official capacity (unless the messages are relied upon in the development of management, financial, operating procedures, or other policy matters).
3. Email messages, which, although having an official context, are not part of a City transaction.
4. Any email that is not created or received in the course of routine or official municipal business (e.g., personal email).
5. Any electronic correspondence that has been “deleted” by the Custodian or other City

employee or official, although theoretically or actually remaining stored on a City computer's hard drive, are not records retained by or of any public Governmental Body and thus are not "public records" as that term is used in the Sunshine Law and shall not be considered "retained" for purposes of this Policy.

6. In lieu of retaining each email record in a series (sometimes called a "chain" or "thread"), the Custodian may retain only the "response" email record if that response contains the original email text and any attachments as well as the origin of the email including date and time (i.e., the response contains all the information contained in the original email record).

**Section 13. City will provide information by electronic services when possible, electronic services defined—division of data processing may be consulted.**

A. *Electronic Services Provisions.* Access to any City public record kept in an electronic format will, whenever feasible, be provided to members of the public in an electronic format. The City will attempt to make information available in usable electronic formats to the greatest extent feasible. The activities authorized pursuant to this Section 13 may not take priority over the primary responsibilities of the City. For purposes of this Section 13, the term "electronic services" means on-line access or access via other electronic means to an electronic file or data base.

B. *Contract Terms.* The City shall include in a contract for electronic services provisions that:

1. Protect the security and integrity of the information system of the City; and
2. Limit the liability of the City.

*Attachment A*

*City of Ladue, Missouri*

**Request for Access to Public Records Form**  
*(please type or print)*

**This Form is provided pursuant to the City of Ladue's Open Meetings and Records Policy. A copy of the Policy can be obtained upon request. Completion of the Form will expedite the City's response to your request for access to public records under §610.023 R.S.Mo. Thank you for your cooperation and your interest.**

Name of Person Making Request:

Date of Request:

\_\_\_\_\_

\_\_\_\_\_

Contact Information of Person Making Request:

Address:

Telephone/Email:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Home: ( ) \_\_\_\_\_ - \_\_\_\_\_  
Work: ( ) \_\_\_\_\_ - \_\_\_\_\_  
Mobile: ( ) \_\_\_\_\_ - \_\_\_\_\_  
Email: \_\_\_\_\_ @ \_\_\_\_\_

Public Record(s) Requested (attach additional sheet(s) if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check all that apply:

- Please let me know in advance of any search or copying if the fees will exceed \$ \_\_\_\_\_.  
[Insert amount you are willing to pay without additional information about the documents]
- If portions of the requested records are closed, please segregate the closed portions and provide me with the rest of the records.
- I request to view the records but do not want copies.
- I request that the records responsive to my request be copied and sent to me at the following address: \_\_\_\_\_.  
[Payment of fees is required before mailing of responsive records]

Signature of Person Making Request

\_\_\_\_\_

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FOR CITY STAFF USE ONLY

To Be Completed by Custodian of Records or Designee

Request No. \_\_\_\_\_

Date Request Received \_\_\_\_\_

Search, Research, and Duplication Staff Costs

<u>Staff</u>	<u>Rate</u> (per hour)	<u>Time Expended</u> (1/10 of Hr.)	<u>Totals</u>
Custodian/City Clerk	\$ _____	x _____ hrs.	= \$ _____
Programming Staff (Records in electronic format)	\$ _____	x _____ hrs.	= \$ _____
Specialized Duplication or Programming Staff (actual compensation) (Map, plats, blueprints, photos, etc. or programming beyond usual and customary level)			\$ _____
		TOTAL STAFF COSTS	\$ _____ (a)
	No. of pages duplicated <sup>1</sup> _____	x \$0._____/page =	\$ _____
	Cost of specialized duplication/programming media =		\$ _____
		TOTAL DUPLICATION COSTS	\$ _____ (b)
	TOTAL ACTUAL COST FOR DOCUMENT SEARCH AND DUPLICATION (a + b)		\$ _____

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<sup>1</sup> If the request for access to public records is from a Ladue resident, the first ten (10) pages shall be duplicated at no charge to the resident per Section 9.C of the City's Open Meetings and Records Policy.