



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE: By Finance and Personnel
Committee
Re: Recreating Neenah Code § 2-115 – Public
Records and Renaming Neenah Code Article
IV “Finance and Public Records.”

ORDINANCE NO. 2018-15
Introduced: September 19, 2018
Committee/Commission Action:
RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Chapter 2 Article IV is renamed from “Finance” to “Finance and Public Records.”

Section 2. Section 2-115 of the Code of Ordinances of the City of Neenah is repealed and recreated to read as follows:

2-115 PUBLIC RECORDS.

(1) Declaration of Policy A representative government is dependent upon an informed electorate and therefore it is declared to be the public policy of the City of Neenah that all persons are entitled to the greatest possible information regarding the affairs of their government and the official acts of those officers and employees who represent them. Further, providing persons with such information is an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, this ordinance shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest and only in an exceptional case may access be denied. Therefore, the City of Neenah does hereby adopt and incorporate, as though fully set forth herein, the provisions of Wisconsin's Public Records laws, Wis. Stat. §§ 19.31 through 19.39, inclusive of all future amendments and revisions to such sections of the Wisconsin Statutes. The following provisions are intended to supplement, not to replace or to supplant, the Wisconsin Public Records Laws.

(2) Records Custodians.

(a) Designation of Records Custodians and Alternate Custodians. "Custodian" means that officer or department head of the City of Neenah who is designated by the Mayor or by the terms of this ordinance, to keep and preserve public records, or whom is required by law to file, deposit, or keep such public record in his/her office, or is lawfully in possession or lawfully entitled to

possession of public records. The City Clerk is the legal custodian of the records of the Common Council as a body politic and for all Common Council boards, committees and commissions. Each alderperson shall be the custodian of their individual official records, such as their correspondence, memorandums and e-mail. For every Department, the Department Head is the custodian of records for their agency.

(b) Duties. Custodians are vested with full legal power to render decisions and carry out the duties of the City under this ordinance. Each custodian shall establish a procedure for handling records and shall see that all of their employees entrusted with records are informed of these procedures. Prior to providing access to or a copy of any records, the custodian shall review the records to determine that the records are responsive to the request, whether any redactions are required or whether access should be denied as to any record. If a custodian has any question about granting or denying a request to inspect or copy any record, he or she shall consult with the City Attorney.

(c) Public Records Training. Each custodian shall receive training regarding public records laws as soon as practicable upon receiving these duties. Custodians are personally responsible for keeping current with any developments or advancements in records keeping and the Wisconsin Public Records Laws.

(3) Procedural Information

(a) Form of Request. The Wisconsin Public Records Law dictates that certain actions must be taken with regards to oral requests for records and that certain more formal actions are taken in response to written requests for records. However, the state law does not expressly state how to respond to the following methods of communication. Therefore, requests made by the following means shall be responded to as follows:

1. E-mail. A request made by e-mail may be responded to via e-mail or in writing and shall have all of the formalities as though the request was made in writing.

2. Voice-mail. A request made by voice-mail shall be responded to as though it were made orally.

3. Instant Messaging/Text Messaging. A request made in either such manner shall be treated as an oral request.

(b) Treatment of Certain Data As Records. The Wisconsin Public Records Law provides little or no guidance as to whether the raw and perishable data of the following technologies qualify as records that must be maintained. Therefore the Common Council determines the following status of these technologies:

1. E-mail. The data in an e-mail message may constitute a public record and is subject to maintenance as a public record. The data in an e-mail is subject to the same analysis under the public records statutes as an equivalent paper or hard copy record. The Information Services Department is responsible for ensuring that all e-mails are properly preserved for such analysis.

2. Voice-mail. A voice-mail message is not a public record and voice-mail messages do not have to be maintained as public records. These messages are the functional equivalent of phone conversations. Phone conversations clearly are not public records. Additionally, these messages also share many of the attributes of "personal notes" which are not public records either. Finally, these messages cannot be indexed or maintained in any manner that would allow for their easy classification, searching or retrieval.

3. Instant Messaging (IM)/Text Messaging (TM). Except as set forth in this paragraph and in subparagraph (3)(b)9 and 10 hereof, the data involved in IM/TM communications is not subject to maintenance as a public record. IM/TM has all of the attributes of instantaneous exchange of ideas, as does a regular telephone conversation. Furthermore, the data exchange has the same technological issues as to capturing and storage of data that is present with regards to voice-mail with an additional concern - the raw data is often only briefly stored or not stored at all by the third party vendors or hosts that provide these services. Thus, this technology is even closer

to a true telephone conversation than are voice-mails. Therefore, City employees and officials shall refrain from using such services for official communications purposes or for matters that would result in a public record if another format such as email or written communications were employed, unless the employee or official preserves a copy of such communications by either copying them to their email account, downloading the communications to their city computer, making a computer file of the communications or by printing and retaining a copy of such communications.

4. Voice Over the Internet Protocol (VOIP). The City does not monitor nor record the data associated with the conversations that occur over VOIP. Such conversations are the very same real time voice communications as standard telephone conversations that are not public records. The only difference between these communications is the medium employed in transmitting the voice communications from one participant in the conversation to all others involved in the conversation.

5. Audio, Video, Data Transmissions & Communications. Although audio, video, data and radio transmissions and communications may be processed through city computers, the City does not routinely copy the data nor maintain records of such communications. Whenever the City copies, records or maintains copies or recordings of such communications or transmissions, those copies may constitute public records that are subject to records requests and which must be maintained according to the appropriate records retention schedule. The Winnebago County 9-1-1 center is the custodian for police and fire radio communications.

6. Audio/Video Recordings. Unless otherwise provided herein, are public records subject to requests and must be maintained according to the retention schedules published herein.

a. Rewritable Recording Systems. Those systems where the recordings are routinely overwritten by newer recordings, such as in continuous loop videotape or digital video written to a camera's hard drive or memory, such data does not constitute a record unless it is further downloaded, printed or separately preserved to memorialize some event or proceeding. Until such time as these recordings are downloaded, printed or separately preserved, these recordings do not have to be preserved and, as the recording equipment programs/protocols may dictate, can be overwritten, erased or otherwise destroyed. However, if such data is downloaded, printed, or separately preserved it shall be treated as a record and shall be retained in accordance with the retention schedules.

b. Recordings Made for the Purpose of Preparing Minutes of Meetings. In accordance with Wis. Stat. § 19.21(7), any tape recording of a meeting, as defined in Wis. Stat. § 19.82(2), by any city body as defined by Wis. Stat. § 19.82(1), to include each City board, commission and committee, may be destroyed, overwritten, or recorded over no sooner than ninety (90) days after the minutes have been approved and published if the purpose of the recording was to take minutes of the meeting.

7. Electronic Document Files. Where records, as that term is defined in Wis. Stat. § 19.32(2), exist in an electronic format only, such electronic records shall be maintained according to the appropriate retention schedule. Where both hard copy (i.e., paper) and electronic copies of a record exist they shall each be subject to public records requests. However, when the custodian has designated, pursuant to sub. (9) electronic records as the official records, only the electronic copy shall be retained and made available for inspection under the public records laws. Where the custodian has not made such a designation, only the hard copy shall be subject to inspection as a public record and the electronic copies shall be treated and disposed of as draft documents that do not need to be maintained beyond creation of the final hard copy.

8. Electronic logs/Temporary Data Files. These logs and temporary data files provide detailed information about the design and functionality of the city's computer network. These logs are routinely overwritten on a daily basis due to the high volume of traffic that is being logged. Unrestricted access to these logs and files would constitute a breach of system security and leave the system vulnerable to exploitation and hacking. In order to ensure network security, these logs are available to Information System Director's authorized staff only. These determinations apply to the following types of logs and data files:

a. Syslogs for Network Electronic Devices. All logs created by network devices such as firewalls, routers, switches, etc., which are used for monitoring and trending computer network traffic patterns and/or detecting unauthorized network traffic.

b. Network Server Security, Application and Event Logs. These logs are used to monitor activity on city network servers including successful/unsuccessful login attempts, file system access, hardware performance, etc. These logs provide detailed information about city network account ID's, file system structure, and hardware profiles.

c. Network Security Appliance Logs. All logs created by network security devices such as the anti-virus appliance, anti-SPAM appliance, content filtering appliance, etc., which are used to monitor specific types of unauthorized or malicious traffic on the city network. These logs identify specific network traffic patterns and/or protocols that are allowed or disallowed on the city network.

d. Application Logs. These logs are used to monitor activity on various database applications, but do not contain specific audits of database transactions. These logs can contain version information, program variables, and programming logic.

9. Emerging Technologies and Records Retention. As new information technologies emerge the Director of Information Systems shall evaluate these technologies and their benefit to City operations. The Director shall consider whether any of these technologies provide the capacity to archive public records created by these technologies. Whenever it is economically and practically feasible to archive records created by such technologies that archiving shall be incorporated into any deployment of said technologies. Whenever the technologies do not provide for such archiving capabilities the Director of Information Systems shall consider whether the benefits of employing such technologies outweigh the risks that some public records may not be retained by deployment of such technologies. Where such benefits outweigh these risks City employees shall refrain from using such technologies for official communications purposes or for matters that would result in a public record if another format such as email or written communications were employed. In the event that such technologies are used for such communications purposes the employee shall preserve a copy of such communications by either copying them to their email account, downloading the communications to their city computer, making a computer file of the communications or by printing and retaining a copy of such communications. The Director shall also ensure that, as soon as practical and economically feasible, archiving systems are obtained for any information technology that is deployed without an archiving system.

10. Use of Technologies to Avoid Duty to Preserve Public Records Prohibited. No employee shall use or employ any form of communications or information technology with the intent or design to circumvent the records retention requirements of this ordinance. For example, Text Messaging shall not be used in lieu of email to share or create a public record unless the employee complies with the provisions of subparagraph (3)(b)(9), above.

(4) Access to Records; Fees.

(a) Format For Delivery of Records.

1. Same Format as Record Exists & Redacted Records. Except as otherwise provided by law, any requester may receive or inspect a record in the very same format in which the City maintains the record. However, whenever it is necessary to redact or excise portions of a record in order to comply with the Wisconsin Public Records Laws, the redactions shall be made with the assistance of the City Attorney's Office and Information Systems Department. Whenever electronic redaction or excisions cannot be done in a secure manner that preserves such redactions and prevents the viewing of the redacted information then such redactions should be made by hand, not electronically, and the requestor shall only receive a hard copy, not an electronic copy, of the redacted record. A requestor may not be charged for the time necessary to review a record and to redact or excise non-releasable materials.

2. E-mailing Records. When practicable, records may be e-mailed to the requestor. In order to ensure the integrity of City records, any e-mailed document shall be converted to a

secure format prior to sending the document to anyone outside of the City government. There shall not be any reproduction charge for e-mailing records, however, such records may still be subject to payment of a location fee as established in Wis. Stat. § 19.35(3)(c).

(b) Reproduction Fees. To the extent possible, the Director of Information Systems and the Finance Director shall develop a uniform fee schedule for the reproduction of records that shall be used by every department. Such schedule shall include the following provisions and considerations:

1. Fees imposed upon a records requestor may not exceed the actual, necessary and direct costs of reproducing and/or transcribing of the record, unless a fee is otherwise specifically established or authorized by state or federal law.

2. If the record exists in such a format that it cannot be easily reproduced, such as a mock-up of a building, then the custodian may photograph the record and may charge the requestor for the actual, necessary and direct costs of such photographing and photographic processing.

3. The fee schedule for photocopying records shall be:

a. No charge for copying records of which in the normal course of business ten (10) or more copies are made, such as agendas, minutes and reports;

b. Full cost of reproduction for materials such as films, tapes, computer printouts, etc. not otherwise identified in the schedule developed under this subsection. In such cases, the Department Head who is the records custodian, in consultation with the Finance Director, must determine the costs for reproduction of such records. The determination of these costs shall be made by utilizing a practice or factors that are as uniform as practicable across City departments.

c. Other Fees.

i. Location Fee. If the cost of locating a requested record is fifty dollars (\$50) or more, the requester shall pay the full cost, as determined by the department head. Such cost shall not exceed the actual, necessary and direct cost of locating such record. Whenever it is determined that such location costs will exceed fifty dollars (\$50) the requester shall be required to post a deposit with the custodian that is equal to the reasonable good faith estimate of such costs.

ii. Mailing Fee. Custodians shall impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or record that is mailed or shipped to the requester.

d. Fee Waivers. A custodian may provide copies of a record without charge or at a reduced charge where the department head determines in writing that waiver or reduction of the fee is in the public interest. The Common Council has determined that for all requests of twenty-five dollars (\$25.00) or less it is in the public interest to waive reproduction/duplications fees for all non-profit 501(c)3 corporations.

e. Prepayment of Fees. Custodians may require prepayment by a requester of any fee or fees imposed under this Subdivision if the total amount exceeds five dollars (\$5) and a custodian shall require prepayment by a requester of any fee or fees imposed under this subdivision if the total amount exceeds fifty dollars (\$50). If prepayment is required, the custodian shall not process the request until such prepayment has been posted with the custodian.

(5) Special Rules Regarding Reproduction of E-mail Records.

(a) E-mail chains. E-mails are often sent to multiple recipients. A requester will be provided with one copy of such an e-mail and all responses to that e-mail. Unless a requester specifically requests otherwise, they will not be provided with multiple copies of such an e-mail showing receipt by each of the designated e-mail recipients.

(6) Time for Compliance and Procedures.

(a) Time. The fulfillment of public records requests is a high priority for the City. Therefore, each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of her/his determination to deny the request in whole or in part and the reasons therefore. If a request may take more than ten (10) business days to process, then the custodian must respond to the requestor within those ten days with an estimate of when such processing shall be completed and an explanation of the reasons supporting that estimate.

(b) City Attorney Consultation Required. Before any custodian may deny access to any records or portion thereof, the custodian must consult with the City Attorney's Office. Such consultation shall occur as soon as practicable after the custodian has assembled and reviewed the requested record. In any response to a requestor, the custodian shall include a statement that he or she consulted the City Attorney's Office regarding the denial of access to any records. Any denial of access made by a custodian without such consultation and statement is not considered a response from the City of Neenah.

(c) Public Records Opt-Out Policy and Procedures. The City shall develop a procedure whereby individuals may inform the City that their safety may be endangered by the release of any otherwise available public records and whereby such individuals may request that such records be maintained as confidential records. The Office of the City Attorney and IS shall work cooperatively to develop the necessary procedures and policies to facilitate such communications and to respond appropriately to such communications.

(7) No Destruction of Records While a Request is Pending or While a Denial of a Request is Being Appealed. No custodian may destroy any record at any time after the receipt of a request for inspection or copying of the record until after the request is granted or until at least sixty (60) days after the date that the request is denied. If any legal action is pending regarding or related to the record, the record may not be destroyed without the express authorization of the City Attorney. No record that is the object of or which has been produced pursuant to a discovery order or a subpoena may be destroyed without the express consent of the City Attorney.

(8) Retention Schedules. The City, in accordance with Wis. Stat. §§ 19.21(4)(b) and 16.61(3)(e), adopts the following records retention schedules:

(a) General Retention Schedule. The City adopts the General Records Schedule approved by the Public Records Board on August 27, 2018 in accordance with the provisions of Wis. Stats. §§ 16.61(3)(e) and 19.21(4) and such records shall be maintained in accordance with the provisions of that schedule.

(b) Police Department Retention Schedule. The City Attorney's Office shall develop and maintain the City of Neenah Police Department's Records Retention Schedule in accordance with the provisions of Wis. Stats. §§ 16.61(3)(e) and 19.21(4) and such records shall be maintained in accordance with the provisions of that schedule. Such schedule must be approved by the Wisconsin Public Records Board.

(c) Records that are Evidence. No record may be destroyed that has been identified as, or that may have value as, evidence in any civil or criminal legal proceeding, labor arbitration or disciplinary action. No record may be destroyed at any time within sixty (60) days of the denial of a request to review the record or any part thereof.

(d) Compliance with Federal or Other Retention Requirements. Notwithstanding the City of Neenah Records Retention Schedule set forth in sub. (8)(a) above, custodians may not destroy any record where any contract, grant, funding conditions, state or federal statute require that such records be maintained for a longer period of time.

(e) Offer of Records to State Historical Society Before Destruction. The City is required to offer all obsolete records to the State Historical Society in accordance with Wis. Stat. § 19.21(4)(a), prior to destruction of those records. The Information Systems Director or any Department Head, may apply to the State Historical Society for a waiver of this requirement as to certain categories

of records under such person's authority that they reasonably believe have little or no significant historical value.

(9) Electronic Formatting or Other Reproduction of Record. Any City officer, or the director of any department of City government may, with the approval of the Director of Information Systems, retain and preserve public records in his/her possession by means of microfilm, or another reproduction method, optical imaging or electronic formatting. Such records shall meet the standards for photographic reproduction set forth in Wis. Stat. §§ 16.61(7)(a) and (b), 2001-2002 Wis. Admin. Code § PR 1 (current through Wis. Admin. Reg. No. 467, Nov. 1994) and Wis. Admin. Code § Adm. 12 (current through Wis. Admin. Reg. 554, Feb. 2002). Such records shall be considered original records for all purposes. Such records shall be preserved along with other files of the department and shall be open to public inspection and copying according to the provisions of state law and of Subsections (1) through (3) of this ordinance. This ordinance does not require that past copies of a record be converted to the new format(s). However, when the decision is made to convert old records to the new format, the original hardcopy of any document or record which has been converted to the new format may be destroyed once the Records Disposition Authorization for that records classification has been approved by the Wisconsin State Public Records Board and only when such destruction is permissible under Subsection (7) of this ordinance.

Section 3. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 4. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Section 4. Rename Article IV. Article IV of the Municipal Code is renamed "Finance and Public Records."

Approved:

Moved by: _____

Dean R. Kaufert, Mayor

Adopted: _____

Attest:

Approved: _____

Published: _____

Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
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