

MEMORANDUM

TO: MAYOR AND COUNCIL MEMBERS

FROM: THOMAS F. KLINKNER

**RE: CODE AMENDMENTS REGARDING PUBLIC RECORDS
MANAGEMENT**

CLIENT: CITY OF HOMER

FILE NO.: 506,742.206

DATE: MAY 26, 2011

The following explains the amendments to HCC 2.04.010 and HCC 2.08.010 in Ordinance 11-21. To aid review of this ordinance, I also have attached an unmarked copy of what HCC 2.04.010 and 2.08.010 will look like if the amendments are adopted. Those amendments have the following general purposes:

- Organize and clarify the two code sections.
- Make the terms and structure of the two code sections more consistent with state statutes governing records management.
- Identify more clearly the categories of City records for records management purposes, particularly in response to the increase in the use of electronic communications since these code sections were enacted in 1984.

The following explains in detail the amendments that appear in Ordinance 11-21.

1. HCC 2.04.010. This section defines terms that are used in HCC 2.08.010, which governs the management of City records. In addition to the marked changes in the ordinance, the defined terms have been arranged in alphabetical order for the reader's convenience.

Definition and Categorization of Records. The definitions in HCC 2.04.010 categorize City records, and this categorization provides the structure for the City's records management program. These definitions are revised to clarify that structure.

City records flow through the following categories from creation to either destruction or long-term preservation.

- The City employee who creates or acquires a document (paper or electronic) first must determine whether it is a “record” subject to the City’s records management program. Under the definition of “record” in HCC 2.04.010(g) a document is a record if it is “developed or received under law or in connection with the transaction of official business and appropriate for preservation as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of its informational value.” This language is derived from a state statute governing records management by state agencies and municipalities, AS 40.21.150. In contrast to the present definition of “record” in HCC 2.04.010, which could be interpreted to include all recorded information in any form that comes into the City’s possession, the revised definition clarifies that a document must have the described content to be a “record” subject to the City’s records management program.
- The revised definition of “record” also contains three specific exceptions:
 - The first exception, for documents in the City’s library and museum collections, reflects that those documents are managed under other systems that are specifically designed for that purpose.
 - The other two exceptions, for “reference documents” and “transitory documents,” recognize that many documents are created in the ordinary course of City business to carry out specific, short-term tasks, and have no lasting informational value, either because their content is incorporated in more permanent documents, or because they pertain to transitory matters. Additional definitions, discussed below, describe these exceptions in greater detail.
 - The quantity of documents that pertain to transitory matters has increased dramatically with the widespread use of email. For example, nowadays a City employee is likely to use an email message to invite a coworker to lunch, where in the past she would have done so with a telephone call. The deletion of that lunch invitation email by either the sender or the recipient clearly should not be considered the unauthorized destruction of a City record—it simply recognizes the transitory value of the information in the email.
- A City record that is in active use by a City department is an “active record” under the control of the department and subject to the oversight of a department records liaison.
- Once a record is no longer in active use by a City department, it is transferred to the custody of the City Clerk as an “inactive record” and held for archival preservation or eventual destruction.

- Inactive records that are “vital records,” or have “historic value” or “legal value” are retained for archival preservation. Additional definitions, discussed below, describe these categories of records in greater detail.
- Inactive records that are not “vital records” and that do not have “historic value” or “legal value” are scheduled for eventual destruction under a retention schedule adopted by the Council.

Transitory and Reference Documents. These two new defined terms establish categories of documents that are excluded from the City’s records management program, because the time and resources that would be required to manage these documents as City records is disproportionate to their relatively slight informational value. These terms express concepts that underlie similar terms in the Municipality of Anchorage’s records management ordinance.

- “Reference document” means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes without limitation, notes, calculations, and working papers. Once their content has been incorporated into a final work product, these working-level documents cease to have long-term informational value, so their management as City records is not warranted.
- “Transitory document” means a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests. Documents of this type serve only a short-term procedural function and have minimal long-term informational value, so their management as City records is not warranted.

Records that Are “Vital” or that Have “Historic Value” or “Legal Value.” These terms describe records that the City will preserve indefinitely, rather than destroy under a retention schedule approved by the Council. HCC 2.04.010 currently includes a definition of each of these terms; Ordinance 11-21 amends these definitions to clarify them.

Electronic Records. This definition is added to describe records that are stored in an electronic or magnetic storage medium. HCC 2.08.010(d) currently refers to “computerized records,” but the term is not defined—and it does not describe accurately this category of records, which are not necessarily stored on a computer.

2. HCC 2.08.010. This code section describes the steps in the management of City records from creation to either destruction or long-term preservation, using the defined terms in HCC 2.04.010 that are discussed above. Specific changes to HCC 2.08.010 are explained below.

- HCC 2.08.010(a) describes the City Clerk's role as records manager. A sentence regarding the securing of original signature documents that currently appears in HCC 2.08.010(b) is moved to this subsection, because it also pertains to the City Clerk's duties.
- HCC 2.08.010(b) provides for the appointment of departmental records liaisons. The amendment clarifies that the departmental records liaison is responsible for the organization and safekeeping of the department's active records, rather than the custody of those records.
- HCC 2.08.010(d) is amended to replace the term "computerized records" with the term "electronic records" for the reasons discussed above.
- HCC 2.08.010(e). Language regarding the City Clerk's review and updating of record series is moved from subsection (g) to this subsection, because it also pertains to the City Clerk's records management functions.
- HCC 2.08.010(f). This subsection's description of the transfer of inactive records to storage is clarified.
- HCC 2.08.010(g). "Destruction" is added to the heading of this subsection to make the heading more descriptive of the subsection's content. As described above, language regarding the City Clerk's review and updating of record series is moved to HCC 2.08.010(e). The first sentence of former HCC 2.08.010(h) is deleted because it duplicates the authorization for a records retention schedule in HCC 2.08.010(g), and the remainder of former HCC 2.08.010(h) is combined in this subsection because it also pertains to the subjects of records retention and destruction. Language from former HCC 2.08.010(h) regarding the retention of vital records and records having historic or legal value is simplified and clarified. Language from former HCC 2.08.010(h) regarding the City Clerk's maintenance of a log of destroyed record series also is simplified and clarified.
- HCC 2.08.010(h). Former HCC 2.08.010(i) is re-lettered, and rewritten to be consistent with the provisions for public records certification in AS 40.25.120(b).
- HCC 2.08.010(i). Former HCC 2.08.010(j) is re-lettered, and changed to refer to HCC Chapter 1.80 which provides in detail for public inspection of City records.

cc: Walt Wrede
Jo Johnson

2.04.010 Definitions. When used in this chapter, the following words shall have the meanings respectively ascribed to them in this section:

a. "Active records" means records that are in active use by a department in the transaction of official business.

b. "Electronic records" means records that are stored in an electronic or magnetic storage medium, and that are retrieved or read by a computer or other electronic device.

c. "Historic value" means the value of a record for use at a later date in reconstructing a general history of the development and government of the City.

d. "Inactive records" means records that have been transferred from departmental active records files to central storage for retention until their scheduled destruction.

e. "Legal value" means the value of a record for use as evidence in pending or threatened litigation or to document a legal relationship or event, including without limitation property and commercial transactions and legislative and judicial actions of the Homer City Council.

f. "Micromedia" means the filming media application meaning microfilm, microfiche, aperture or other recognized standard records film method.

g. "Record" means recorded information in any form, including without limitation any document, paper, book, letter, photograph, microfilm, map, drawing, chart, card, magnetic media or computer printout, developed or received under law or in connection with the transaction of official business and appropriate for preservation as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of its informational value. The term "record" does not include:

1. Library and museum material developed or acquired and preserved solely for reference, historical or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stocks of publications and processed documents.

2. Reference documents.

3. Transitory documents.

h. "Record series" means a group of identical or related records which are normally used and filed as a unit and whose functional similarities permit their evaluation as a unit for retention scheduling purposes. Each record series shall be segregated according to the year of acquisition.

i. "Reference document" means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes without limitation, notes, calculations, and working papers.

j. "Transitory document" means a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests.

k. "Vital records" means records that are necessary to assure continuance of essential governmental operations to protect the legal and financial operation of the City in the event of disaster or catastrophic loss of the City records.

2.08.010 Management of public records. a. Records' Manager. The City Clerk is the Records' Manager for the City. The City Clerk shall develop, maintain and coordinate the operations of the City's records management system. The City Clerk also shall provide for the physical security of all original signature documents classified as vital, or as having legal or historic value.

b. Department records' liaison. Each department head shall appoint a department records liaison. The department records liaison shall be responsible for the organization and safekeeping of all active records in the department.

c. Records inventory. The City Clerk shall take and maintain an inventory of City records. The inventory shall be reviewed and revised annually, and shall set forth each record series being developed, used, stored or scheduled for disposal by the City.

d. Electronic records. The City Clerk shall cause electronic records to be inventoried, stored and destroyed in the same manner and at the same time as if the records were maintained in written, printed or photographic form.

e. Records classification and procedure. The City Clerk shall develop and provide each department with a records classification and procedures manual. The City Clerk shall review and update record series annually with each department records liaison to ensure that all active record series are adequately described, to provide for necessary changes, additions and deletions to the records classification and procedures manual, and to ensure compliance with state and federal law.

f. Inactive records storage. The City Clerk shall provide for and manage an inactive records storage center and shall develop a schedule for the annual relocation of inactive records to the storage center. Wherever possible, only one copy of each inactive record in a record series, and of duplicate inactive record series of two or more departments, shall be retained.

g. Records retention and destruction. The Council shall adopt by resolution a schedule setting forth minimum times for the retention of particular types of record series. The City Clerk annually shall provide for the destruction of record series whose retention periods have expired, after removing from each such record series for permanent preservation any records that are vital, or that have continuing historic or legal value. Not less than thirty days before destroying a record series, the City Clerk shall circulate to each department head for comment a detailed list of all record series to be destroyed, and the department head shall recommend to the City Clerk which records in those record series may be vital or of continuing historic or legal value. The City Clerk shall maintain a permanent log of all record series which have been destroyed, and shall report to the City Council by March 31st of each year all record series to be removed from active departmental files to the inactive records storage center, and all record series destroyed during the preceding year.

i. Records certification. The City Clerk or department records liaison having custody of a record that is open to public inspection under HCC Chapter 1.80 shall, upon request and payment of the fee therefor established by Council resolution provide a certified copy of the record, and the certified copy shall in all cases be evidence of the original.

j. Public inspection. Public inspection of records is governed by HCC Chapter 1.80.

k. Micromedia. The Clerk shall have the authority to provide for use of Micromedia; i.e. film, fiche, aperture or other appropriate application as determined to be the best suited for filming of the document. Records considered to be vital, or of historic or legal value shall be duplicated on Micromedia and deposited with the state archivist or in a secure, bonded vault physically removed from the City Administration Building.