



**PONTIAC CITY COUNCIL  
FORMAL MEETING**

**April 6, 2017**

**6:00 p.m.**

**180th Session of the 9<sup>th</sup> Council**

*It is this Council's mission "To serve the citizens of Pontiac by committing to help provide an enhanced quality of life for its residents, fostering the vision of a family-friendly community that is a great place to live, work and play."*

Call to order

Invocation

Pledge of Allegiance

Roll Call

Authorization for excused absences for councilmembers

Amendments to and approve of the agenda

Approval of the Minutes

1. March 23, 2017 and March 30, 2017

Deputy Mayor Report or Department Head Reports

Recognition of Elected Officials

Agenda Address

Public Hearing

2. Public Hearing on the IFT application for Denek Contracting.

**AGENDA ITEMS FOR CITY COUNCIL CONSIDERATION**

3. Request for approval of Application of Denek Contracting for an Industrial Facilities Exemption Certificate for a Rehabilitation.
4. Resolution to Amend FOIA Procedures and Guidelines and the public summary for Procedures and Guidelines.

Public Comment

Mayor, Clerk, City Attorney, Council Closing Comments

Adjournment

March 23, 2017

**Official Proceedings  
Pontiac City Council  
178<sup>th</sup> Session of the Ninth Council**

A Regular Meeting of the City Council of Pontiac, Michigan was called to order in City Hall, Thursday, March 23, 2017 at 6:00 P.M. by President Patrice Waterman.

Call to Order at 6:00 p.m.

Roll Call

Members Present: Holland, Pietila, Taylor-Burks, Waterman and Williams.

Members Absent: Carter and Woodward.

Mayor Waterman was present.

Clerk announced a quorum.

**17-85            Excuse Councilpersons Randy Carter and Don Woodward for personal reasons.**

Moved by Councilperson Pietila and supported by Councilperson Taylor-Burks.

Ayes: Holland, Pietila, Taylor-Burks, Waterman and Williams

No: None

**Motion Carried.**

**17-86            Council removed Item #5 (Resolution for the approval for the city of Pontiac solidarity statement) and approved the Agenda.** Moved by Councilperson Pietila and supported by Councilperson Taylor-Burks.

Ayes: Pietila, Taylor-Burks, Waterman, Williams, and Holland

No: None

**Motion Carried.**

**17-87            Journal of March 9, 2017 and March 16, 2017.** Moved by Councilperson Taylor-Burks and supported by Councilperson Pietila.

Ayes: Taylor-Burks, Waterman, Williams, Holland and Pietila

No: None

**Motion Carried.**

Special Presentation – Nick Lomako with Wade Trim

Deputy Mayor or Departmental Head Report – Mayor Waterman and Deputy Mayor Jane Bias-Disessa

Recognition of Elected Officials – Chairman of Library Board Rosie Richardson and School Board Trustee Mike McGuiness

President Patrice Waterman opened up public hearing regarding IFT application for Denek Contracting at 7:15 p.m.

There were 8 individuals who addressed the body during the public hearing.

1. Chuck Johnson, Paddock St. Ask not what the city can do for me, but what I can do for the city. We can't continue to give our tax money away. I am sick and tired of people asking for a tax break. We want our tax dollars to come in as fast as it can. I beg of this council, don't do this!
2. Mike McGuinness, 26 Union St. I don't see a public benefit. There's no security or Capitol improvement. Don't demolish it on tax payer's dime. I am interested in seeing the property in operational mode. It can be an active site, utilize it.
3. Dubrae Newman, 433 Harvey St. He used to live on Edith at the dead in. He said it is a dumping ground. He is all for it to improve and make the neighborhood better.
4. Betty Lewis-Rand, 17 S Jessie St. She passes the building everyday on her way to work. I am all for it if he is going to hire people from Pontiac.
5. Hubert Maxey, 1053 Oxford Rd. He stated he know all about tax abatement. We need tax money from businesses. Money can circulate in from the city when you hire people from the city. We need job training and experience in the city of Pontiac.
6. Gloria Miller, 1167 Featherstone Rd. She's in a little dilemma. He sounds like a man of his word. Tired of abatements. We have to have Pontiac employees. She's all for it if employees come from the city of Pontiac.
7. Tom Denek, Denek Contracting. He stated that he needed plant rehabilitation in order to lock this in. He is not looking for tax abatement. He will pay for everything. His company works all over and need people who can work. He is hiring 15 people, 5 people at a time from the city of Pontiac. He said call him. He will start interviews and hire who ever applies.
8. Heather Cooper, Denek Contracting. She gave out the number to call to apply: 586-781-9670.

President Patrice Waterman closed public hearing at 7:28 p.m.

17-88            **Request Council to schedule a public hearing for a Plant Rehabilitation District for parcels #14-33-435-005, #14-33-435-017 and #14-435-436-042 known as 451 E. Wilson.** Moved by Councilperson Williams and supported by Councilperson Pietila.

Be it Further Resolved, that the Pontiac City Council will schedule a public hearing regarding a Plant Rehabilitation District for parcels #14-33-435-005, #14-33-435-017 and #14-33-436-042 known as 451 E. Wilson St. on Thursday, March 30, 2017 at 6:00 p.m. in the City Council Chambers, located at 47450 Woodward Avenue Pontiac, Michigan 48342.

Ayes: Waterman, Williams, Holland, Pietila and Taylor-Burks

No: None

**Resolution Passed.**

17-89            **Request Resolution approval for the ATPA Grant Contract with Oakland County.** Moved by Councilperson Pietila and supported by Councilperson Holland.

Whereas, the City of Pontiac has been utilizing the Auto Theft Prevention Authority Grant through Oakland County since 2013; and,

Whereas, the County agreement with the Oakland County Sheriff's Office expires on September 30, 2017; and,

Whereas, The County and City may enter into an sub-recipient agreement by which the Oakland County Sheriff's office would continue to assign a full time Sheriff Deputy to the ATPA activities; and,

Whereas, The Oakland County Sheriff's Office agrees to provide reimbursement to the City under the terms and conditions of the Agreement up to 50 percent of the eligible expenditures;

March 23, 2017

Now, Therefore, Be It Resolved that the City Council, upon the recommendation of the Mayor and Finance Director accepts the Oakland County 2017-2018 ATPA Sub-Recipient Agreement with the City of Pontiac and authorizes the Mayor to sign document as presented.

Ayes: Williams, Holland, Pietila, Taylor-Burks and Waterman

No: None

**Resolution Passed.**

17-90      **Request Resolution approval for the tree Trimming Services and Tree & Stump Removal.** Moved by Councilperson Taylor-Burks and supported by Councilperson Holland.

Whereas, the City of Pontiac advertised and received responses to a request for proposals for Tree Trimming and Tree & Stump Removal on January 2, 2017 and publically opened bids; and, Whereas, a bid tabulation was prepared and reviewed by the purchasing agent of the city, and, Whereas, the most experienced and responsible bidder is being recommended for the contract; and, Whereas, the contract will be granted to Seasonal Property Maintenance Inc. The budget has funding for any and all work performed under this contract.

Now, therefore, Be It Resolved that the Pontiac City Council authorizes the Mayor or Deputy Mayor to enter into a contract with; Seasonal property Maintenance Inc. for tree trimming and tree & Stump Removal as budgeted.

Ayes: Holland, Pietila, Taylor-Burks, Waterman and Williams

No: None

**Resolution Passed.**

There were 13 individuals who addressed the body during public comments.

Honorable Mayor Waterman Reported.

Councilman Mark Holland, Councilwoman Doris Taylor-Burks, Councilman Kermit Williams, Council Pro-tem Mary Pietila and Council President Patrice Waterman made closing comments. Deputy Clerk Sheila Grandison and City Attorney Travis Mihelick had no closing comments.

**President Patrice Waterman adjourned the meeting at 9:20 p.m.**

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SHEILA R. GRANDISON  
DEPUTY CITY CLERK

March 30, 2017

**Official Proceedings  
Pontiac City Council  
179<sup>th</sup> Session of the Ninth Council**

A Study Session of the City Council of Pontiac, Michigan was called to order in City Hall, Thursday, March 30, 2017 at 6:00 P.M. by President Patrice Waterman.

Call to Order at 6:00 p.m.

Roll Call

Members Present: Carter, Holland, Taylor-Burks, Waterman, Williams and Woodward.

Members Absent: Pietila.

Mayor Waterman was present.

Clerk announced a quorum.

17-91            **Excuse President Pro-Tem Mary Pietila for personal reasons.** Moved by Councilperson Woodward and supported by Councilperson Taylor-Burks.

Ayes: Holland, Taylor-Burks, Waterman, Williams, Woodward and Carter

No: None

**Motion Carried.**

There were 7 individuals who addressed the body during public comments.

Special Presentation – Water Resource Commission, Title 20 Drain

President Waterman opened up public hearing for the approval of the Plant Rehabilitation District at 7:33 p.m. There were no public comments. President Waterman closed public hearing at 7:34 p.m.

17-92            **Resolution request for approval of the Plant Rehabilitation District.** Moved by Councilperson Williams and supported by Councilperson Taylor-Burks.

Whereas, Thomas E. Denek, Denek Contracting has submitted an application for an Industrial Facilities Tax (IFT) Exemption Certificate to rehabilitate 451 E. Wilson into Denek Contracting Headquarters; and

Whereas, Application has been sent to the Office of the City Clerk for certification; and

Whereas, written notice by certified mail has been given to the owners of all real property within the Proposed Plant Rehabilitation District; and

Whereas, a public hearing on the establishment of the Plant Rehabilitation District has been held before the Pontiac City Council at a regular City Council Meeting held on Thursday, March 30, 2017 at 6:00 p.m. in the evening in the City Council Chambers at Pontiac City Hall, Pontiac, Michigan, and the owners of all real property within the proposed Plant Rehabilitation District and any other resident or non-resident of the City of Pontiac were afforded the opportunity to appear and be heard.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to PA 198 of 1974, as amended, the Pontiac City Council does hereby establish a Plant Rehabilitation District consisting of the following described land:

Land situated in the City of Pontiac, Oakland County, Michigan, to-wit:

PARCEL 1: Lot 243, except the West 390 feet, being also described as the Easterly 560.42 feet of Lot 243, of FERRY FARM ADDITION TO THE CITY OF PONTIAC MICHIGAN, according to the plat thereof as recorded in Liber 5 of Plats, page 45, Oakland County Records.

PARCEL 2: Commencing at the Northeast corner of the East Wilson Avenue Subdivision; as recorded in Liber 21 of Plats, Page 28 of the Oakland County Register of Deeds and the principal place of beginning of parcel herein described; thence bearing North 25 degrees 24 minutes 05 seconds East, a distance of 107.08 feet to a point in the Southerly line of the East Boulevard Subdivision, as recorded in Liber 22 of Plats, Page 6 of the Oakland County Register of Deeds; thence along the Southerly line of said East Boulevard Subdivision, bearing South 63 degrees 31 minutes 28 seconds, a distance of 629.26 feet to a point on the Western right of way line of East Boulevard, said point 60 feet Westerly on the centerline of said East Boulevard; thence along the Western right of way line of said East Boulevard, bearing South 01 degrees 26 minutes 30 seconds East, a distance of 110.02 feet to the point of Intersection with the Northern right of way line of Wilson Avenue; thence along the Northern right of way line of said East Wilson Avenue, bearing North 65 degrees 22 minutes 16 seconds West a distance of 51.17 feet to an angle point; thence continuing along the Northern right of way line of said East Wilson Avenue bearing South 87 degrees 26 minutes 15 Seconds West a distance of 50.41 feet to a point thereon; thence bearing North 62 degrees 05 minutes 29 seconds West a distance of 650.75 feet to the principal place of beginning, said line following the Northerly line of above described Parcel No. 1, being the Northerly line of Lot 243, "FERRY FARMS ADDITION", as recorded in Liber 5 of Plats, page 45, Oakland County Records.

PARCEL 3: Lots 761, 762, 763, and 764, of SUBDIVISION OF THE NORTH ½ OF LOT 246 EXCEPT WEST 150 FEET, S. ½ OF LOT 245 EXCEPT WEST 150 FEET AND EAST 361.5 FEET OF WEST 611.5 FEET OF N ½ OF LOT 245, AND EAST 366.2 FEET OF WEST 516.2 FEET OF LOT 244, OF FERRY FARM ADDITION, CITY OF PONTIAC, OAKLAND CO., MICH, according to the plat thereof as recorded in Liber 18 of Plats, page 16, Oakland County Records.

PARCEL 4: Lot 17, of EAST WILSON AVENUE SUBDIVISION OF WEST 240' OF EAST 800' OF LOT 243 ORIGINAL PLAT OF FERRY FARM ADDITION TO CITY OF PONTIAC, OAKLAND CO., MICHIGAN, according to the plat thereof as recorded in Liber of Plats, page 28, Oakland County Records

Commonly known as: 451 E. Wilson Ave, Pontiac, MI 48341

Tax ID: 14-33-435-017 & 14-33-436-042 & 14-33-435-005

Ayes: Taylor-Burks, Waterman, Williams, Woodward, Carter and Holland

No: None

**Resolution Passed.**

17-93      **Request to set a public hearing for the IFT Application for Denek Contracting.**  
Moved by Councilperson Woodward and supported by Councilperson Williams.

Be it Further Resolved, that the Pontiac City Council will schedule a public hearing to approve the Application for Industrial Facilities Tax Exemption Certificate for Thomas E. Denek, Denek Contracting on Thursday, April 6, 2017 at 6:00 p.m. in the City Council Chambers, located at 47450 Woodward Avenue Pontiac, Michigan 48342.

Ayes: Taylor-Burks, Waterman, Williams, Woodward, Carter and Holland

No: None

**Motion Carried.**

17-94      **Resolution request for approval for the Child Abuse Prevention and Awareness Month.** Moved by Councilperson Williams and supported by Councilperson Taylor-Burks.

March 30, 2017

Whereas, abuse and neglect are suffered by children in our communities, regardless of age, race, gender, or economic situation; and,

Whereas, one in four girls and one in six boys will be sexually abused before the age of 18; and,

Whereas, this reported maltreatment is only a portion of the overall problem threatening our children, for so many cases go unreported, and today's technology has brought with it a new and dangerous form of child endangerment, the online predator; and,

Whereas, the devastating consequences of physical and emotional abuse of our children affects the community as a whole and finding solutions needs to be attended to by the community as a whole; and,

Whereas, the State of Michigan has mandatory reporting by professionals working with children of any suspected abuse and neglect incidences-a major step-but more is needed in the community; and,

Whereas, CARE House of Oakland County works to break the cycle of child abuse and neglect; provides a protective circle of light and hope for a better life; and advocates for the safety and protection of children; and,

Whereas, CARE House of Oakland County partners with community organizations and agencies to offer programs and services aimed at preventing child abuse and neglect, knowing that effective programs succeed because of the involvement and partnerships created among schools, social service agencies, religious and civic organizations, the business community, and law enforcement agencies; and

Therefore Be It Resolved, it is the sentiment of the members of the Pontiac City Council and the Mayor that children deserve to grow and thrive in an environment that nurtures and keeps them safe.

Now, Therefore Be It Resolved, that the Members of Pontiac City Council and the Mayor, do hereby proclaim April as Child Abuse Prevention and Awareness Month in the City of Pontiac, Michigan. We call upon the citizens, community agencies, organizations, and businesses to increase their participation efforts to prevent the abuse of our children, thereby strengthening and protecting the community in which we live.

Ayes: Waterman, Williams, Woodward, Carter, Holland and Taylor-Burks

No: None

**Resolution Passed.**

**President Patrice Waterman adjourned the meeting at 7:40 p.m.**

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SHERIKIA L. HAWKINS  
CITY CLERK

**Resolution Approving Application of Denek Contracting  
For An Industrial Facilities Exemption Certificate  
For A Rehabilitation**

WHEREAS, pursuant to P.A. 198 of 1974, M.C. 207.551 *et seq.*, after a duly noticed public hearing held on March 30, 2017, this City Council by resolution established an industrial rehabilitation (hereinafter the “Plant Rehabilitation District”); and

WHEREAS, Thomas E. Denek, Denek Contracting has filed an application for an Industrial Facilities Exemption Certificate (the “Application”) with respect to rehabilitation of a facility within the Plant Rehabilitation District; and

WHEREAS, before acting on said Application the City held a hearing on April 6, 2017, at Pontiac City Hall in the City of Pontiac, at which hearing the applicant, the Assessor and a representative of the affected taxing units who had been given written notice were afforded an opportunity to be heard on said Application; and

WHEREAS, construction on the property has not begun prior to February 2, 2017, the date of acceptance of the Application for the Industrial Facilities Exemption Certificate; and

WHEREAS, completion of the facility is calculated to and will at the time of issuance of the certificate have the reasonable likelihood to create employment in the City of Pontiac; and

WHEREAS, the City of Pontiac and Denek Contracting have entered into an Industrial Facilities Tax Exemption Certificate Agreement, which is hereby incorporated here; and

WHEREAS, the aggregate SEV of real and personal property exempt from ad valorem taxes within the City of Pontiac, after granting this certificate, will not exceed 5% of an amount equal to the sum of the SEV of the City of Pontiac, plus the SEV of personal and real property thus exempted.

NOW, THEREFORE, BE IT RESOLVED BY the City Council of the City of Pontiac that:

- 1, The City Council finds and determines that the granting of the Industrial Facilities Exemption Certificate, shall not have the effect of substantially impeding the operation of the City of Pontiac or impairing the financial soundness of the taxing unit which levies ad valorem property taxes in the City of Pontiac.
2. The Application from Denek Contracting for an Industrial Facilities Exemption Certificate, with respect to rehabilitation on the parcel of real property, situated within the Plant Rehabilitation District, which was established on March 30, 2017 (whose legal description is attached as exhibit A), is hereby approved.
3. The Industrial Facilities Exemption Certificate when issued shall be and remain in force for a period of Twelve (12) years after completion of improvements, provided that the Industrial Facilities Tax Exemption Certificate Agreement is approved and signed by all parties and is



complied with for the duration of the life of the life of the Industrial Facilities Exemption Certificate.

4. The Mayor is hereby authorized to take any steps in order to enter into and finalize the Industrial Facilities Tax Exemption Certificate Agreement on behalf of the City.

## **Exhibit A**

Land situated in the City of Pontiac, Oakland County, Michigan, to-wit:

PARCEL 1: Lot 243, except the West 390 feet, being also described as the Easterly 560.42 feet of Lot 243, of FERRY FARM ADDITION TO THE CITY OF PONTIAC MICHIGAN, according to the plat thereof as recorded in Liber 5 of Plats, page 45, Oakland County Records.

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Commonly known as: 451 E. Wilson Ave, Pontiac, MI 48341

Tax ID: 14-33-435-017 & 14-33-436-042 & 14-33-435-005

## **INDUSTRIAL FACILITIES TAX EXEMPTION CERTIFICATE AGREEMENT**

This agreement between Denek Contracting (“Denek”) and the City of Pontiac (“City”), is for the purpose of fulfilling the requirements of section 22 of Public Act 198 of 1974, as amended. In consideration of the City’s investment by approving Denek’s application for an Industrial Facilities Tax Exemption Certificate (“certificate”), which Denek filed with the City on or about February 2, 2017, which included a projection of the jobs and economic benefit to be realized as a result of the proposed project for which the exemption is sought, and recognizing that both parties would benefit from this proposed economic development project, Denek and the City hereby agree to the following:

1. Denek shall obtain a Certificate of Occupancy from the City’s Building and Safety Department within 12 months from the date of this Agreement. This includes applying for and receiving any applicable permits and allowing inspectors from the City’s Building and Safety Department as well as the Fire Department to inspect the facility to verify that any demolition, construction or maintenance work performed at the facility has been done with proper permits and in conformance with all applicable City codes and ordinances.
2. For any existing employees, new employees, or contractors that are utilized, Denek shall direct its employees and contractors to the City’s website or City Hall to secure City business licenses, if applicable, and income tax forms or related information sheets that the City provides.
3. Except as otherwise provided herein, Denek shall achieve each and every representation made as part of the application for industrial facilities tax exemption certificate, including but not limited to a \$285,000 investment in the real and personal property at the facility, the creation of 15 or more new jobs in the City, and the relocation of 50 existing jobs to the City of Pontiac. Denek’s Application is incorporated to this Agreement and is attached as Exhibit A.
4. No later than the 10<sup>th</sup> day of January 2018, and each year after that until the certificate expires, Denek shall submit a letter to the City of Pontiac stating:
  - a. The number of new jobs created in the prior calendar year.
  - b. The number of jobs retained in the prior calendar year.
  - c. The number of Pontiac residents who applied for any open jobs, who were hired for any open jobs, and who qualified to retain their employment after their probationary period.
  - d. If the projection of creation or retention of jobs is not reached, an explanation as to why.
  - e. An accounting of the \$285,000 investment and any investments made at the facility, as articulated in the certificate.
  - f. If actual cost differs substantially from projected cost, as articulated in the certificate, an explanation of the difference in costs.

5. If Denek fails to meet the \$285,000 investment amount by January 1, 2022, Denek shall compensate the City in the amount of \$2,850 each year until the full \$285,000 is invested or the certificate expires, whatever occurs first. Provided however, that no such penalty shall be assessed until Denek has had an opportunity to provide an explanation to the City and Council for failing to achieve such investment.
6. If, in any calendar year where any jobs are created by Denek, Denek fails to consider any residents of the City of Pontiac for such newly created job, Denek shall be assessed a penalty of \$2,850 for each year this occurs, until the expiration of the certificate. Provided however, Denek shall not be assessed any penalty if no jobs are created, no applications are submitted by any residents of the City of Pontiac, or any residents who submitted applications are not otherwise qualified for the position(s) created. Further, after an initial consideration of any Pontiac resident, Denek shall not be required to hire or maintain the employment of any individual who does not otherwise qualify for employment or the position(s) created.
7. Denek agrees to remain within the City of Pontiac for the period of the certificate in order to retain the benefits of the certificate, unless permission for relocation is granted by the Pontiac City Council, and/or the present certificate is transferred as approved by the City Council. Approval of a sale of the business within the City or merger with another company within the City will not be unreasonably withheld if the successor agrees to substantially continue the business within the City and continue the terms of this Agreement and the attached certificate.
8. Denek understands that if the job creation and retention benchmarks relative to the certificate project has not been attained or reached as stated in the application, or the investment in the facility has not been completed as described in the application, the City Council has the right to seek revocation of the certificate. However, Denek shall be given the opportunity of explanation for any shortfall prior to revocation request. In the event of such revocation request, the City will not seek recapture of previous taxes abated under the certificate.
9. Nothing in this Agreement waives, forfeits, or prevents the City from seek any other penalty or remedy under Michigan common or statutory law.
10. This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
11. The parties may execute an exchange copies of this agreement via electronic means. This agreement shall be deemed to be fully executed, delivered and effective upon the receipt by the parties of counterpart copies executed by each party regardless of whether transmitted via fax or electronic mail. The parties may execute and deliver manually executed copies subsequent to the execution of the copy sent electronically, however, this agreement shall be deemed to be fully executed upon receipt of the respective copies transmitted electronically, regardless of whether manually executed copies are executed and delivered.

12. Each party acknowledges reading and understanding this entire agreement and no parties relying upon any other representations, written or oral, express or implied, made by any person. Each party has had the opportunity to consult with an attorney regarding this agreement. Each party is duly authorized to execute this agreement, and the representative capacity set forth below. This Agreement can only be altered with the written consent of both parties.

**DENEK CONTRACTING**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**CITY OF PONTIAC**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**CITY OF PONTIAC CITY COUNCIL**

**RESOLUTION TO AMEND FOIA PROCEDURES AND GUIDELINES  
AND THE PUBLIC SUMMARY OF PROCEDURES AND GUIDELINES**

**WHEREAS**, on September 16, 2016, the City implemented its FOIA Procedures and Guidelines; and

**WHEREAS**, from time to time the City undertakes a review of the procedures and guidelines based on changes to the statute and new case law; and

**WHEREAS**, the City desires to update its existing procedures and guidelines as well as its written public summary; and

**WHEREAS**, pursuant to MCL 15.234(4), a public body is required to establish procedures and guidelines to implement Michigan's Freedom of Information Act and shall create a written public summary of the procedures and guidelines.

**NOW THEREFORE, BE IT RESOLVED**, that the attached procedures and guidelines and written public summary are hereby adopted, effective April 10, 2017.

**PASSED AND APPROVED BY THE CITY COUNCIL**, Pontiac, Michigan, this \_\_\_\_\_ day of April, 2017.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

## **City of Pontiac**

### **FOIA Procedures and Guidelines**

#### **Preamble: Statement of Principles**

Consistent with the Michigan Freedom of Information Act (FOIA), MCL 15.231 et seq., it is the policy of the City of Pontiac that all persons, except those who are incarcerated, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees. The people shall be informed so that they may fully participate in the democratic process.

The City of Pontiac's policy with respect to FOIA requests is to comply with state law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City of Pontiac acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Pontiac will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City's policy is to disclose public records consistent with and in compliance with state law.

#### **Section 1: General Policies**

The City Council, acting pursuant to the authority at MCL 15.236, designates the City Clerk as the FOIA Coordinator.

The FOIA Coordinator is responsible for accepting and processing requests for the City's public records and for approving denials of requests for public records. The FOIA Coordinator is authorized to designate other City staff to act on his or her behalf in accepting and processing requests for public records and in approving denials of requests for public records.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with state law and these FOIA Procedures and Guidelines, to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

If a request for a public record is received by facsimile or e-mail, the request is deemed to have been received on the following business day. If a request is sent by e-mail and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note both the date and time the request was delivered to the spam or junk-mail folder, and the date and time the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

The City will make this FOIA Procedures and Guidelines document and the Written Public Summary of FOIA Procedures and Guidelines publicly available without charge.

This FOIA Procedures and Guidelines document and the Written Public Summary of FOIA Procedures and Guidelines will be posted and maintained on the City's website at [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php).

The City will provide free copies of this FOIA Procedures and Guidelines document and the Written Public Summary of FOIA Procedures and Guidelines upon request by visitors at City Hall.

Any subpoena from any court, attorney, or any other person which requests the production of any City record falls outside the scope of this Policy and shall be immediately forwarded to the City Clerk.

## **Section 2: Requesting a Public Record**

A person requesting to inspect, copy, or obtain copies of a public record prepared, owned, used, possessed, or retained by the City of Pontiac must do so in writing. The request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may make a FOIA Request Form available for use by the public.

Written requests for public records may be submitted in person or by mail to the FOIA Coordinator at City Hall. Requests may also be submitted electronically by facsimile or e-mail. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.



A person may request that public records be provided on non-paper physical media, electronically mailed, or otherwise provided to him or her in digital form in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued, or disseminated by the City of Pontiac on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person who makes a verbal, non-written request for information believed to be on the City's website shall be informed of the pertinent website address where practicable and to the best ability of the City employee receiving the request.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **Section 3: Processing a Request**

Unless otherwise agreed to in writing by the person making the request, the City will issue a response within 5 business days of receipt of a FOIA request. If a request is received by facsimile, e-mail, or other electronic transmission, the request is deemed to have been received on the following business day.

The City will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying part of the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website.

The FOIA Coordinator, or such other individuals as he or she may designate, shall have the exclusive authority to deny any FOIA request, either entirely or in part.

#### ***When a request is granted or granted in part:***

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. The FOIA Coordinator will use the City's Cost Itemization Form.

A copy of these FOIA Procedures and Guidelines and the Written Public Summary of FOIA Procedures and Guidelines will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because the FOIA Procedures and Guidelines and the Written Public Summary of FOIA Procedures and Guidelines are maintained on the City's website at [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php), a website link to the documents will be provided in lieu of providing paper copies.

If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the City will require a good-faith deposit before processing the request.

In making the request for a good-faith deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request, as well as a best-efforts estimate of the time frame it will take the City to provide the records to the requestor. The best-efforts estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

***When a request is denied or denied in part:***

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial, which shall provide, in the applicable circumstance:

- An explanation as to why a requested public record, or a portion of that public record, is exempt from disclosure; or
- A certificate that the public record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or redacted from the public record; and
- An explanation of the requesting person's right to submit a written appeal of the denial to the office of the Mayor, or to seek judicial review in the Oakland County Circuit Court; and

- An explanation of the right to receive reasonable attorneys' fees, costs, and disbursements, as well actual or compensatory damages, and punitive damages of \$1,000.00, should they prevail in circuit court.

The Notice of Denial shall be signed by the FOIA Coordinator or his or her designee.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

***Requests to inspect public records:***

If there is a request to inspect public records, the City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation, or destruction and to prevent excessive interference with normal City operations.

***Requests for certified copies:***

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

**Section 4: Fee Deposits**

If the estimated fee (based on a good-faith calculation) to provide the requested public records exceeds \$50.00, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a written request for public records is from a person who has not fully paid the City for copies of public records that were made in fulfillment of that person's previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated fee before beginning to search for a public record for any subsequent written request by that person, when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the City's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;

- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the City; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the City;
- The City is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the City.

#### **Section 5: Calculation of Fees**

Consistent with the authority granted by state statute, it is the intent of the City to charge a fee for a public record search, for the necessary copying of a public record for inspection, and for providing a copy of a public record, so that its general fund and departmental budgets are not unduly burdened by the costs associated with processing FOIA requests.

The following factors shall be used to determine the cost to the City:

- The particular request incurs costs greater than incurred from the typical or usual FOIA request received by the City.
- Volume or size of the public record requested.
- Whether the amount of time spent to search for, examine, review or separate exempt from non-exempt information in the record requested exceeds 15 minutes.
- Whether the public records are from more than one City department or whether various City offices are necessary to respond to the request.

- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The City may charge for the following costs associated with processing a FOIA request:

- Labor costs associated with copying or duplication, which include making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet when asked for by the requestor.
- Labor costs directly associated with searching for, locating, and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information that is exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if the requestor asks the City to make copies.
- The actual cost of computer discs, computer tapes, or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if the requestor asks the City to make copies.
- The actual cost to mail or send a public record to a requestor, including the least-expensive form of postal delivery confirmation, as well as the cost of expedited shipping or insurance when such is asked for by the requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of performing the work in the specific fee category, regardless of who actually performs the work.
- If necessary, the City may use contracted labor to separate and delete exempt information from nonexempt information. The City may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it notes the name of the contracted person or firm on its Detailed

Fee Itemization Form. The hourly rate charged by the contracted person or firm may not exceed 6 times the state minimum hourly wage rate.

- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but the City will not charge more than the actual cost of fringe benefits.
- Overtime wages will not be included in the calculation of labor costs unless specifically agreed to by the requestor. Overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes, or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept media from the requestor.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City will provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost of mailing the public records using a reasonably economical and justifiable means.
- The City may charge for the least expensive form of postal delivery confirmation.
- The City will not charge more for expedited shipping or insurance unless a requestor specifically requests expedited shipping or insurance.

If the FOIA Coordinator does not respond to a written request in a timely manner, the City must do the following:

- 1) Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following apply:
  - a) The late response was willful and intentional; or
  - b) The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, e-mail, or e-mail attachment; or
  - c) The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an e-mail, letter, or facsimile cover page.
- 2) Fully note the charge reduction on the Detailed Fee Itemization Form.

#### **Section 6: Waiver of Fees**

Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records.

The costs of the search for and copying of a public record may be waived or reduced if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

In determining whether the general public is primarily benefitted, the FOIA Coordinator shall consider the following factors, none of which shall be determinative:

- Whether the public record being disclosed serves the public policy purposes as set forth in Section 1 of the FOIA;
- Whether the release primarily serves a private or commercial purpose;
- Whether the release implicates the rights of third persons;
- Whether the waiver of the fee is in the best interest of the City; and
- The manner in which similar requests have been treated.

## **Section 7: Discounted Fees**

### ***Indigence***

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.

An individual is not eligible to receive the waiver if:

- The individual has previously received discounted copies of public records from the City twice during the calendar year; or
- The individual requests information in conjunction with other persons who are offering or providing payment or other remuneration to the individual to make the request. The City may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

The affidavit shall be a sworn statement made under penalty of perjury. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

### ***Nonprofit organization advocating for developmentally disabled or mentally ill individuals***

The FOIA Coordinator will waive the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

- It is made directly on behalf of the organization or its clients;
- It is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and
- It is accompanied by documentation of the designation by the state.



## **Section 8: Appeal of a Denial of a Public Record**

### ***Written Appeal to the Mayor***

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal by filing an appeal of the denial with the Office of the Mayor.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons the requestor is seeking a reversal of the denial. The City FOIA Appeal Form (To Appeal a Denial of Records) may be used.

If a written appeal is not received during a business day, the Mayor is not considered to have received the appeal until the first business day following submission of the appeal.

Within 10 business days of receiving the appeal, the Mayor will respond in writing by:

- Reversing the disclosure denial; or
- Upholding the disclosure denial; or
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records, the Mayor may issue a notice extending the period during which the Mayor will respond to the written appeal by not more than 10 business days. The Mayor shall not issue more than 1 notice of extension for a particular written appeal.

Any exemption to the release of requested public records shall be narrowly construed and the burden shall be upon the FOIA Coordinator to demonstrate that the denial of information is justified and should be upheld.

### ***Civil Action in Oakland County Circuit Court***

Regardless of whether or not a requestor submits an appeal of a denial to the Mayor, he or she may file a civil action in the Oakland County Circuit Court within 180 days after the City's final determination to deny the request.

If the requestor is the prevailing party in the civil action, then he or she shall be awarded reasonable attorneys' fees, costs, and disbursements. "A party prevails in the context of a[] FOIA action when the action was reasonably necessary to compel the disclosure, and the action had a substantial causative effect on the delivery of the information to the plaintiff." *Scharret v. City of Berkley*, 249 Mich App 405, 414; 642 NW2d 685 (2002) (citing *Oakland County Prosecutor v. Department of Corrections*, 222 Mich App 654, 663; 564 NW2d 922 (1997)).

If the requestor or the City prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements to the party prevailing in part.

If the court determines that the City has arbitrarily and capriciously violated FOIA by refusing or delaying in disclosing or providing copies of a public record, the court shall award the requestor punitive damages in the amount of \$1,000.00. In addition, the court shall order the City to pay a civil fine of \$1,000.00 to the general fund of the state treasury.

## **Section 9: Appeal of an Excessive FOIA Processing Fee**

### ***Written Appeal to the Mayor***

If a requestor believes that the fee or good-faith deposit charged by the City to process a FOIA request exceeds the amount permitted by state law or under these Procedures and Guidelines, he or she must first submit a written appeal for a fee reduction to the Office of the Mayor.

The appeal must be in writing, specifically state the word "appeal," and identify how the required fee exceeds the amount permitted by state law or under these Procedures and Guidelines. A City FOIA Appeal Form (To Appeal an Excess Fee) may be used.

If a written appeal is not received during a business day, the Mayor is not considered to have received the appeal until the first business day following submission of the appeal.

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- Waiving the fee; or
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee; or
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending the period during which the Mayor will respond to the written appeal by not more than 10 business days. The Mayor shall not issue more than 1 notice of extension for a particular written appeal.

Where the Mayor reduces or upholds a fee, the determination must include a certification from the Mayor that (1) the statements in the determination are accurate; and (2) the fee amount complies with the City's publicly available procedures and guidelines and Section 4 of the FOIA.

### ***Civil Action in Oakland County Circuit Court***

A civil action for a fee reduction should not be filed in the Oakland County Circuit Court unless **one** of the following applies:

- The Mayor failed to respond to a written appeal as required; or
- The Mayor issued a determination to a written appeal.

After receiving the Mayor's written determination of the appeal, the requestor may commence a civil action for a fee reduction in the Oakland County Circuit Court. The action must be filed within 45 days after receiving the Mayor's written determination.

If a civil action is commenced against the City for a fee reduction, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

If a court determines that the City required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount.

If the requestor prevails in the civil action by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the City has arbitrarily and capriciously violated FOIA by charging an excessive fee, the court shall order the City to pay a civil fine of \$500.00 to the general fund of the state treasury. The court may also award the requestor punitive damages in the amount of \$500.00.

### **Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any state statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt any such administrative rules as he or she may deem necessary to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such

modifications and rules are consistent with state law. The FOIA Coordinator shall inform the City Council of any change to these FOIA Policies and Guidelines.

These FOIA Policies and Guidelines become effective April 10, 2017.

#### **Section 11: Appendix of City of Pontiac FOIA Forms**

- Request for Public Records Form
- Notice to Extend Response Time Form
- Notice of Denial Form
- Detailed Cost Itemization Form
- Appeal of Denial of Records Form
- Appeal of Excess Fee Form

## **City of Pontiac**

### **Public Summary of FOIA Procedures and Guidelines**

It is the public policy of the City of Pontiac that all persons (except those persons incarcerated in state or local correctional facilities) are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.

The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the City's FOIA Procedures and Guidelines. For more details and information, copies of the City's FOIA Procedures and Guidelines are available at no charge at the City Clerk's Office and on the City's website: [www.pontiac.mi.us](http://www.pontiac.mi.us).

#### **1. How do I submit a FOIA request to the City?**

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City must be in writing. A request may be submitted on the City's FOIA Request Form or in any other form of writing (letter, fax, email, etc.).
- A request must sufficiently describe a public record so as to enable the City to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the City in providing a prompt response.
- No specific form to submit a written request is required. However, a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the City's website at [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php), and at the City Clerk's Office.
- Written requests may be delivered to the City Hall in person or by mail: FOIA Coordinator, 47450 Woodward Ave, Pontiac, MI 48342
- Requests may be faxed to: (248) 758-3160. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.

- Requests may be emailed to: foia@pontiac.mi.us. To ensure a prompt response, email requests should contain the term “FOIA” or “FOIA Request” in the subject line.
- Please note that the City is not obligated to create a new public record or make a compilation or summary of information which does not already exist.

## **2. What kind of response to my FOIA request can I expect?**

- Within 5 business days after receiving a FOIA request, the City will issue a response. If a FOIA request is received by fax or email, the request is deemed to have been received on the following business day.
- The City will respond to your FOIA request in one of the following ways:
  - Grant the request; or
  - Issue a written notice denying the request; or
  - Grant the request in part and issue a written notice denying part of the request; or
  - Issue a notice indicating that, due to the nature of your request, the City needs an additional 10 business days to respond; or
  - Issue a written notice indicating that the public record requested is available at no charge on the City’s website
- If the FOIA request is granted, or granted in part, the City will ask you to pay all of the allowable fees associated with responding to the request before the public record is made available to you.
- If the cost of processing the FOIA request is expected to exceed \$50.00, or if you have not paid for a previously granted FOIA request, the City will require a deposit before processing your FOIA request.

## **3. What are the City’s deposit requirements?**

- If the City has made a good-faith calculation that the total fee for processing the FOIA request will exceed \$50.00, the City will require you to provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit, it will provide you with a non-binding, best-efforts estimate of how long it will take to process the request after you have paid your deposit.

- If you have not fully paid the City for copies of public records that were made available to you in fulfillment of a previously granted FOIA request, the City will require you to pay a deposit of 100% of the estimated processing fee for any subsequent FOIA request before the City begins to search for a public record, if **all** of the following conditions exist:
  - The final fee for the prior FOIA request is not more than 105% of the estimated fee; and
  - The public records made available contained the information sought in the prior FOIA request and remain in the City's possession; and
  - The public records were made available to you, subject to payment, within the best-effort time frame estimated by the City to provide the records; and
  - Ninety (90) days have passed since the City notified you in writing that the public records were available for pickup or mailing; and
  - You are unable to show proof of prior payment to the City; and
  - The City has calculated an estimated detailed itemization that is the basis for the current FOIA request's increased fee deposit.
- The City will not require you to make the 100% estimated fee deposit if any of the following apply:
  - You are able to show proof of prior payment in full to the City; or
  - The City is subsequently paid in full for all applicable prior written requests; or
  - Three hundred sixty-five (365) days have passed since you made the request for which full payment was not remitted to the City.

#### **4. How does the City calculate FOIA processing fees?**

The Michigan FOIA statute permits the City to charge for the following costs associated with processing a FOIA request:

- Labor costs associated with copying or duplication, which include making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.

- Labor costs associated with searching for, locating, and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information that is exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The cost of computer discs, computer tapes, or other digital or similar media when you request records on non-paper physical media. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The actual cost to mail or send a public record to you.

Labor Costs will be calculated as follows:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually does the work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but the City will not charge more than the actual cost of fringe benefits.
- Overtime wages will not be included in the calculation of labor costs unless agreed to by you. Overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at an hourly rate not to exceed \$53.40 per hour (i.e., 6 times the state minimum hourly wage, which is currently \$8.90 per hour).



## **Copying and Duplication**

### ***Paper Copies***

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper.
- Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.
- The City will provide records using double-sided printing, if it is cost-saving and available.

### ***Non-paper Copies on Physical Media***

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes, or other digital or similar media, will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- In order to ensure the integrity and security of the City's technological infrastructure, the City will procure any requested non-paper media and will not accept non-paper media from you.

## **Mailing Costs**

The City may charge you for the costs of mailing a public record to you. These costs will be based on the following:

- The actual cost of mailing the record(s), using a reasonably economical and justified means; and
- The least expensive form of postal delivery confirmation.

The City will not charge you more for expedited shipping or insurance, unless you specifically request expedited shipping or insurance.

## **Waiver of Fees**

The costs of searching for and copying a public record may be waived or reduced if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest. The City Council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

## **5. How do I qualify for an indigence discount on the fee?**

The City will waive the first \$20.00 of the processing fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the City twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement made under penalty of perjury.

## **6. Can a nonprofit organization receive a discount on the fee?**

The City will waive the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and the Protection and Advocacy for Individuals with Mental Illness Act, Public Law 99-319, if the request meets all of the following requirements:

- It is made directly on behalf of the organization or its clients; and
- It is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931; and
- It is accompanied by documentation of the designation by the state.

## **7. Can I challenge the denial of my request for a public record?**

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the Mayor by filing a written appeal of the denial with the Office of the Mayor.

The appeal must be in writing, specifically state the word “appeal,” and identify the reason or reasons you are seeking a reversal of the denial. You may use the City FOIA Appeal Form (To Appeal a Denial of Records), which is available on the City’s website: [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php)

Within 10 business days of receiving the appeal, the Mayor will respond in writing by:

- Reversing the disclosure denial; or
- Upholding the disclosure denial; or
- Reversing the disclosure denial in part and upholding the disclosure denial in part; or
- Under unusual circumstances, such as the need to examine or review a voluminous amount of separate and distinct public records, the Mayor may issue a notice extending the period during which the Mayor will respond to the written appeal by not more than 10 business days.

Regardless of whether or not you submit an appeal of a denial to the Mayor, you may file a civil action in the Oakland County Circuit Court within 180 days after the City's final determination to deny your request. If you prevail in the civil action, the court will award you reasonable attorneys' fees, costs, and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court will award you punitive damages in the amount of \$1,000.00.

#### **8. Can I challenge an excessive FOIA processing fee?**

If you believe that the fee or good-faith deposit charged by the City to process your FOIA request exceeds the amount permitted by state law or under the City's FOIA Procedures and Guidelines, you must submit a written appeal for a fee reduction to the Office of the Mayor.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted by state law or under the City's FOIA Procedures and Guidelines. You may use the City FOIA Appeal Form (To Appeal an Excess Fee), which is available at the City Clerk's Office and on the City's website: [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php).

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- Waiving the fee; or
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee; or
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or

- Issuing a notice detailing the reason or reasons for extending the period during which the Mayor will respond to the written appeal by not more than 10 business days.

After receiving the Mayor's written determination of the appeal, you may commence a civil action for a fee reduction in the Oakland County Circuit Court. The action must be filed within 45 days after receiving the Mayor's written determination. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award you all of or an appropriate amount of your reasonable attorneys' fees, costs, and disbursements. If the court determines that the City arbitrarily and capriciously charged an excessive fee, court may also award you punitive damages in the amount of \$500.00.

If you have further questions regarding the City's FOIA policies, you are encouraged to review the City's FOIA Procedures and Guidelines, which are available at the City Clerk's Office and on the City's website: [www.pontiac.mi.us/departments/clerk/index.php](http://www.pontiac.mi.us/departments/clerk/index.php).