

ORDINANCE NO. 2020-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING ARTICLE 6, DIVISIONS 1 AND 2 OF CHAPTER 2 OF THE SAN MARCOS CITY CODE TO REVISE AND UPDATE THE CITY'S PUBLIC RECORDS MANAGEMENT PROGRAM; INCLUDING PROCEDURAL PROVISIONS; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. Title 6, Subtitle C, Texas Local Government Code (Local Government Records Act) provides that each municipality in the State must establish by ordinance an active and continuing records management program to be administered by a Records Management Officer.

2. The City of San Marcos desires to amend its current ordinance to ensure the City's Records Management Program is consistent with any updated State laws and take into consideration recent technological advances such as the use of social media.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 2, Article 6, Division 2, Records Management, of the San Marcos City Code is amended as follows (underlining indicates added text, strikethrough indicates deleted text):

SEC. 2.501. DEFINITIONS

In this division:

City records means all documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information recording media, regardless of physical form or characteristic, created or received by the City or any of its officers or employees pursuant to law or in the transaction of public business, whether public access to the records is open or restricted under state law. These shall be created, maintained and disposed of in accordance with this division or procedures authorized by this division and in no other manner.

Department Director ~~head~~ means the officer or employee who is in charge of a department. ~~who, by ordinance, order or administrative policy, is in charge of an administrative unit of the City that creates or receives records.~~

Digital means when used in reference to a record, means the record is maintained in an electronic data format that requires an electronic device to create, store, access, retrieve, or read the record.

Employee means a person employed by the City.

Essential record means any City record necessary to the resumption or continuation of City operations in an emergency or disaster, to the re-creation of the legal and financial status of the City, or to the protection and fulfillment of obligations to the people of the state.

Local Government Records Act means Title 6. Records, Subtitle C. Records Provisions Applying to More Than One Type of Local Government, of the Texas Local Government Code.

Official means the Mayor, a member of the City Council, and a person appointed by the Mayor or the City Council board/commission, task force, or another City body.

Permanent record means any City record for which the retention period on a records control schedule is given as permanent.

Physical record means that the record is maintained in a tangible form, such as paper, photographic film, analog tape, or similar medium.

Record means a local government record of the City, and includes a digital record and/or a physical record.

Records control schedule means a document prepared by or under the authority of the records management officer listing the records maintained by the City, their retention periods and other records disposition information, which the records management program may require.

Records Disposition means the destruction of a City record that has passed its minimum legal retention period and no longer has value to the City.

Records liaison officers means the persons designated under section 2.510.

Records Inventory means the process of locating, identifying and describing in detail the records of a department.

Records Management means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of record control schedules; the management of filing and information retrieval systems; the protection of essential and permanent records; the economical and space-effective storage of inactive records; control over the creation and distribution of forms, reports and correspondence; and the management of micrographics and electronic and other records storage systems.

Records management committee means the committee established in section 2.506.

Records management officer means the person designated in section 2.504.

Records management plan means the plan developed under section 2.507.

Retention Period means the minimum time that must pass after the creation, recording or receipt of a record or the fulfillment of certain actions associated with a record before it is eligible for destruction.

Sec. 2.502. ~~City records declared public property~~ Applicability.

~~All City records as defined in section 2.501 are declared to be City property. No City official or employee has, by virtue of his position, any personal or property right to City records, even though the official or employee may have developed or compiled them. The unauthorized destruction, removal from files or use of these records is prohibited.~~

(a) Each City official and employee shall comply with the City of San Marcos Records Management Program adopted under this chapter and the Texas Local Government Records Act.

(b) This chapter, the records management program, and the records control schedules apply to all records in whatever form the records exist, including all digital records and all physical records.

Sec. 2.503. Policy.

It is the policy of the City to provide for efficient, economical and effective controls over the creation, distribution, organization, maintenance, use and disposition of all City records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act, V.T.C.A., Local Government Code, § 201.001 et seq., and accepted records management practice.

Sec. 2.504. Designation of records management officer.

Pursuant to Texas Local Government Code §203.025, the City Clerk, and successive holders of that office, will serve as the records management officer for the City. Each successive holder of the office shall file ~~his~~ their name with the director and librarian of the state library within 30 days of the initial designation or of taking up the office, as applicable.

Sec. 2.505. Records Management Committee Duties of records management officer.

~~A records management committee consisting of the City manager, City attorney, director of finance, City clerk, and the chief of police is established. The committee shall:~~

~~(1) Assist the records management officer in the development of policies and procedures governing the records management program;~~

~~(2) Review the performance of the program on a regular basis and propose changes and improvements if needed;~~

~~(3) Review and approve records control schedules submitted by the records management officer;~~

~~(4) Give final approval to the destruction of records in accordance with approved records control schedules; and~~

~~(5) Actively support and promote the records management program throughout the City.~~

In addition to other duties assigned in this division, the records management officer will:

(1) Administer the records management program and provide assistance to department directors in its implementation;

(2) Plan, formulate and prescribe records disposition policies, systems, standards and procedures;

(3) In cooperation with department directors, identify essential records and establish a disaster plan for each City office and department to ensure maximum availability of the records in order to reestablish operations quickly and with minimum disruption and expense;

(4) Develop procedures to ensure the permanent preservation of the historically valuable City records;

(5) Establish standards for filing and storage equipment and for recordkeeping supplies;

(6) Provide records management advice and assistance to all City departments by preparation of a manual of procedure and policy and by on-site consultation;

- (7) Monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program and the City's records control schedules are in compliance with state regulations;
- (8) Disseminate to the City Council and department directors information concerning state laws and administrative rules relating to local government records;
- (9) Instruct records liaison officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;
- (10) Direct records liaison officers or other personnel in the conduct of records inventories in preparation for the development of records control schedules as required by state law and this division;
- (11) Ensure that the maintenance, preservation, destruction or other disposition of the City is carried out in accordance with the policies and procedures of the record management program and the requirements of state law;
- (12) Maintain records on the volume of records destroyed under approved records control schedules, the volume of records ~~microfilmed and~~ stored electronically, and the estimated cost and space savings as the result of such disposal or disposition.

Sec. 2.506. Records management committee.

- (a) The members of the records management committee are:
 - (1) City Clerk;
 - (2) City Manager;
 - (3) City Attorney;
 - (4) Director of Finance; and
 - (5) Chief of Police.
- (b) The duties and responsibilities of the committee are to give final approval to the destruction of records in accordance with approved records control schedules, and actively support and promote the records management program throughout the City.

Sec. ~~2.506~~ 2.507. Records management plan.

(a) ~~The records management officer and the records management committee shall develop a records management plan for the City. for submission to the City Council. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the essential City records and to properly preserve those City records that are of historical value. The plan must be designed to enable the records management officer to effectively carry out the duties prescribed by state law and this division.~~

(b) ~~Once approved by the City council, the records management plan is binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees or similar City entities, and records will be created, maintained, stored, microfilmed or disposed of in accordance with the plan. The records management plan shall:~~

- (1) comply with the Texas Local Government Records Act;
- (2) adequately protect the essential records of the City;
- (3) properly preserve those records of the City that are of historical value;
- (4) establish guidelines for the implementation of records control schedules;
- (5) establish training requirements for department records liaison(s);
- (6) provide for the proper maintenance, preservation and storage of the electronic records of the City;
- (7) establish guidelines for the proper destruction of records, including a description of the information that must be maintained in a destruction log;
- (8) contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping;
- (9) establish procedures for transferring records to an electronic or digital format, including guidelines for the disposition of records that have been transferred; and
- (10) establish criteria for the use of the records center serving as the depository of inactive records with continuing value to the City.

~~(c) — State law relating to the duties, other responsibilities or recordkeeping requirements of a department head do not exempt the department head or the records in the department head's care from the application of this division and the records management plan adopted under it and may not be used by the department head as a basis for refusal to participate in the records management program.~~

Sec. 2.507. — Duties of records management officer.

~~In addition to other duties assigned in this division, the records management officer will:~~

- ~~(1) — Administer the records management program and provide assistance to department heads in its implementation;~~
- ~~(2) — Plan, formulate and prescribe records disposition policies, systems, standards and procedures;~~
- ~~(3) — In cooperation with department heads, identify essential records and establish a disaster plan for each City office and department to ensure maximum availability of the records in order to reestablish operations quickly and with minimum disruption and expense;~~
- ~~(4) — Develop procedures to ensure the permanent preservation of the historically valuable City records;~~
- ~~(5) — Establish standards for filing and storage equipment and for recordkeeping supplies;~~
- ~~(6) — Provide records management advice and assistance to all City departments by preparation of a manual of procedure and policy and by on-site consultation;~~
- ~~(7) — Monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program and the City's records control schedules are in compliance with state regulations;~~
- ~~(8) — Disseminate to the City council and department heads information concerning state laws and administrative rules relating to local government records;~~
- ~~(9) — Instruct records liaison officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;~~

- ~~(10) Direct records liaison officers or other personnel in the conduct of records inventories in preparation for the development of records control schedules as required by state law and this division;~~
- ~~(11) Ensure that the maintenance, preservation, microfilming, destruction or other disposition of the City is carried out in accordance with the policies and procedures of the record management program and the requirements of state law;~~
- ~~(12) Maintain records on the volume of records destroyed under approved records control schedules, the volume of records microfilmed and stored electronically, and the estimated cost and space savings as the result of such disposal or disposition.~~

Sec. 2.508. Duties of city councilmembers.

(a) Members of the City Council shall comply with all requirements of this ordinance as well as state law governing the management of City records.

(b) Members of the City Council shall respond promptly to requests for information received by the City pursuant to the Texas Public Information Act by providing any records requested that are in their possession. Any responsive information shall be delivered to the City's Clerk's Office for processing. Information that is subject to disclosure under the Texas Public Information Act may include text messages, emails, and social media posts related to City business even if the device that contains the information belongs to the individual member of City Council and not the City.

Sec. 2.508 2.509. Duties of and responsibilities department heads directors.

In addition to other duties assigned in this division, department heads directors will:

- ~~(1) Cooperate with the records management officer in carrying out the policies and procedures established in the City for the efficient and economical management of records and in carrying out the requirements of this division; Cooperate with the records management officer in carrying out the policy and procedures established for the City of San Marcos. A department director may not refuse to comply with the requirements of this chapter based on a City ordinance or policy relating to a duty, recordkeeping requirement, or other responsibility as a director.~~
- ~~(2) Adequately document the transaction of government business and the services, programs and duties for which they and their staffs are~~

~~responsible; and~~ Assign a records liaison officer(s) to serve as the point of contact for the records management program. A department director may serve as the department's records liaison officer.

- ~~(3) Maintain the records in their care and carry out their preservation, microfilming, destruction or other disposition only in accordance with the policies and procedures of the City records management program and the requirements of this division. Ensure that transactions of City business are properly documented (including services, programs and duties for which the department director and his/her staff are responsible).~~
- ~~(4) Review and sign destruction authorization forms for records that have met retention requirements.~~
- ~~(5) Ensure that department staff follows the retention, storage and destruction requirements outlined in the Records Management Procedures.~~
- ~~(6) Ensure that the department's record liaison officer(s) have sufficient time and resources to implement the records management program.~~
- ~~(7) Comply with this chapter for records created by a City board, commission and any special task force for which the department provides support.~~

Sec. ~~2.509~~ 2.510. Duties of Records liaison officer(s)–~~Designated~~.

~~Each department head will designate a staff member to serve as records liaison officer for the implementation of the records management program in the department. If the records management officer determines that, in the best interests of the records management program, more than one records liaison officer should be designated for a department, the department head will designate the number of records liaison officers specified by the records management officer. Persons designated as records liaison officers will be thoroughly familiar with all the records created and maintained by the department and have full access to all records of the City maintained by the department. If the person designated as records liaison officer resigns, retires, is dismissed or is removed by action of the department head, the department head will promptly designate another person to fill the vacancy. A department head may serve as records liaison officer for his department.~~

- ~~(a) Each records liaison officer(s) shall:~~
- ~~(1) be designated by the department director to implement the records management program in the department.~~

- (2) should be thoroughly familiar with, and have full access to, all records created and maintained by the department;
- (3) cooperate with the records management officer to implement the records management program in the department;
- (4) distribute information about the records management program to department staff;
- (5) ensure that the creation, storage, retention, destruction, disposition, security, and accessibility of the department's records are in compliance with the department's records management program and state law;
- (6) conducts or supervises the creation of record inventories for the department for the departmental records control schedule;
- (7) implement and review the department records control schedule to ensure that records are retained for the approved retention period;
- (8) responsible for transferring a physical record that is no longer required for the conduct of department business to the records center;
- (9) identify essential records of the department and establish, implement, and maintain a records disaster recovery plan; and
- (10) complete training(s) required by the records management program.

~~Sec. 2.510. Same Duties and responsibilities.~~

~~In addition to other duties assigned in this division, records liaison officers will:~~

- ~~(1) Conduct or supervise the conduct of inventories of the records of the department in preparation for the development of records control schedules;~~
- ~~(2) In cooperation with the records management officer, coordinate and implement the policies and procedures of the records management program in their departments; and~~
- ~~(3) Disseminate information to department staff concerning the records management program.~~

Sec. 2.511. Records control schedules —~~Development; approval; filing with state.~~

(a) ~~The records management officer, in cooperation with department directors heads and records liaison officer(s), will prepare records control schedules on a department-by-department basis, that describe and establish the retention periods for all City records created or received by each department. listing all records created or received by each department and the retention period for each record. Records control schedules will also contain other information regarding the disposition of City records as the records management plan may require.~~

(b) ~~Each records control schedule shall be monitored as needed by the records management program administrator officer on a regular basis to ensure that it is in compliance with records retention schedules issued by the state and that it continues to reflect the recordkeeping procedures and needs of the department and the records management program of the City. Records control schedules will also contain other information regarding the disposition of City records as the records management plan may require. Every City record identified on a records control schedule, or any amendment to the schedule, or in any request for destruction of a record shall be specifically described.~~

(c) ~~Before its adoption, a records control schedule or amended schedule for a department must be approved by the department head and the members of the records management committee. Any records control schedule, amendment to a schedule, or request for destruction of a record that contains general terms such as “miscellaneous” and “various” to describe any record identified in such a document will not be submitted to the records management officer for consideration.~~

(d) ~~Before its adoption, a records control schedule must be submitted to and accepted for filing by the director and librarian of the state library. If a schedule is not accepted for filing, the schedule shall be amended to make it acceptable for filing. The records management officer shall submit the records control schedules to the director and librarian. Each records control schedule shall be monitored and amended as needed by the records management officer on a regular basis to ensure that the schedule is in compliance with records retention schedules issued by the state and that the schedule continues to reflect the record keeping procedures and needs of the department and the records management program of the City.~~

(e) ~~Before its adoption, a records control schedule or amended schedule for a department must be approved by the department director.~~

(f) ~~A records control schedule shall be submitted by the records management officer to, and accepted for filing by, the director and the librarian of the Texas State Library, as provided by state law, before the schedule may be implemented.~~

**Sec. 2.512. ~~Implementation; destruction of records under schedule~~
Destruction or disposition of records.**

(a) ~~Appropriate records control schedules issued by the Texas State Library and Archives Commission shall be adopted by the records management officer for use in the City, as provided by law. Any destruction of records of the City will be in accordance with these schedules and the Local Government Records Act. The records liaison officer shall notify the records management officer when a City record is eligible for destruction.~~

(b) ~~A records control schedule for a department which has been approved and adopted under section 2.506, or 2.512(a), shall be implemented by department heads and records liaison officers according to the policies and procedures of the records management plan. Before a City record is destroyed under an approved records control schedule, the records management program administrator must obtain authorization for the destruction from the records management committee, unless the approved schedule specifies that the record may be destroyed without additional review or authority of the records management committee.~~

(c) ~~A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department head requests in writing to the records management committee that the record be retained for an additional period. A City record whose retention period has expired on an approved records control schedule must be destroyed unless:~~

- (1) a request for the record is pending under the Texas Public Information Act, Tex. Government Code Chapter 552;
- (2) the record is pertinent to pending litigation or audit; or
- (3) a department director requests the City Clerk in writing and states the reason that the record be retained for an additional period, and the request is approved in writing by the City Clerk; or
- (4) The records management officer determines that the record must be held pending review for historical value.

(d) ~~Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained by the records management officer from the records management committee. A City record that is obsolete or that has not been identified on an approved records control schedule may be destroyed if:~~

- (1) its destruction has been approved in the same manner as a record destroyed under an approved schedule and
- (2) the records management officer has submitted to and received back from the director and librarian of the state library an approved destruction authorization request.

~~Sec. 2.513. -- Destruction of unscheduled records.~~

~~A City record that has not been listed on an approved records control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the records management officer has submitted to and received back from the director and librarian of the state library an approved destruction authorization request.~~

Sec. 2.51413. Records center.

~~A records center, developed pursuant to the plan required by section 2.506, shall be under the direct control and supervision of the City clerk. Policies and procedures regulating the operations and use of the records center shall be contained in the records management plan developed under section 2.506. The records management officer will provide a facility for storage of inactive City records. The department that creates and maintains a record is the records custodian of that record and remains the custodian after the record is transferred to the records center for storage. The records management officer is responsible for developing procedures to ensure proper transfer and disposition.~~

- (1) If a record is no longer needed in the transaction of current business the record liaison officer(s) and the records management officer will begin the paperwork to transfer the records to the records center.
- (2) If the retention period has expired, the proper steps should be taken to destroy the records provided by this chapter. the records liaison officer(s) shall begin the destruction process under Section 2.512.

Sec. 2.51415. Micrographics and electronic record retention programs. Management of digital records.

~~Unless a micrographics or electronic retention program in a department is specifically exempted by the City council, all microfilming or scanning for electronic retention of records will be centralized and under the direct supervision of the records management officer. The records management plan will establish policies and procedures for the microfilming or electronic retention of City records, including policies to ensure that all the microfilming or electronic retention of City records is done in accordance with standards and procedures for the microfilming or electronic retention of local government records established in rules of the state~~

~~library and archives commission. The plan will also establish criteria for determining the eligibility of records for microfilming or electronic retention and protocols for ensuring that a microfilming program that is exempted from the centralized operations is, nevertheless, subject to periodic review by the records management officer as to cost effectiveness, administrative efficiency and compliance with commission rules.~~The creation, maintenance, preservation, electronic document imaging, and storage of digital records, including the conversion of a physical record to a digital record, must comply with the records management plan, state law and the administrative rules of the Texas State Library and Archives Commission. The records management officer will review departmental plan for information technology systems and services for assistance in potential technology solutions to ensure that the systems and services create, store, manage, protect, preserve, destroy, and provide access to records in compliance with the records management program.

Sec 2.515. Ownership of records.

(a) Every City record is the property of the City. No City official or employee has, by virtue of their position, any personal or property right to City records, even though the official or employee may have developed or compiled them. Any record created or received by a City official or employee that relates to City business is a City record whether it is maintained on a device owned by the City or on a personal device.

(b) The unauthorized alteration, destruction, removal from files or use of these records is prohibited. A City record shall not be sold, loaned, given away or destroyed property.

(c) A City official or employee shall, at the end of the official's term or appointment or employee's employment, must deliver to the City all records in their possession.

(d) City contractor/vendor responsibilities:

(1) The City contractor/vendor will maintain any City records in compliance with this chapter.

(2) If a City contractor/vendor receives or creates a record due to fulfilling a contract, the record is the property of the City.

(3) The City contractor will comply in delivering the record in any media or format to the City at no cost when the contract is completed or terminated and/or if requested by the authorized City employee.

(4) The contractor may not dispose or destroy a record that is City property.

Sec.2.516. Criminal offense.

Pursuant to Texas Local Government Code §202.008, an officer or employee of the City commits a Class A misdemeanor if the officer or employee knowingly or intentionally violates the Texas Local Government Records Act or the rules adopted under the act by the Texas State Library and Archives, by destroying or alienating a local government record in contravention of the act or by intentionally failure to deliver records to a successor in office. A Class A misdemeanor is punishable by a fine of up to \$4,000 and up to one year in county jail.

Secs. 2.516~~7~~ - 2.540. - Reserved.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this Ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolution or parts of ordinances and resolutions in conflict with this Ordinance are repealed.

SECTION 5. This ordinance shall become effective upon adoption.

PASSED AND APPROVED ON FIRST READING on May 5, 2020.

PASSED, APPROVED and ADOPTED on May 19, 2020.

Jane Hughson
Mayor

Attest:

Approved:

Tammy K. Cook
Interim City Clerk

Michael J. Cosentino
City Attorney