City of Henderson
Public Records Policy

I. Purpose.

It is the policy of the City of Henderson, Nevada to respond in an orderly and expeditious manner in accordance with Nevada Revised Statutes 239 et seq., to requests to inspect or receive public records maintained by the City of Henderson. The purpose of this policy is to clarify to the public, how the City will respond to various public records requests in accordance with applicable state law. The City of Henderson recognizes that Nevada Public Records Law (NRS 239.001 -239.330) gives members of the public, including the media the right to inspect and copy certain public records maintained by the City.[1] The City also recognizes that certain records maintained by the City are exempt from public disclosure, or that disclosure may require balancing the right of the public to access the records against individual privacy rights, governmental interests, confidentiality issues and attorney/client privilege. Additionally, when the City receives a request to inspect or copy public records, costs are incurred by the City in responding to the request. The purpose of this Public Records Policy is **(a)** to establish an orderly and consistent procedure for receiving and responding to public records requests from the public and media; **(b)** to establish the basis for a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and **(c)** to inform citizens and members of the media of the procedures and guidelines that apply to public records requests.

[1] The Act requires the City to respond to all public records. The City is not an agency of the federal government, therefore the federal "Freedom of Information Act" (FOIA) does not apply to requests for the City's public records.

II. Definitions.

Nevada Public Records law defines a public record as:

"Information that is created or received pursuant to a law or ordinance, or in connection with the transaction of the official business of any office or department of a local governmental entity, without limitation, all documents, papers, letters, bound ledger volumes, maps, charts, blueprints, drawings, photographs, films, newspapers received pursuant to NRS 247.070, recorded media, financial statements, statistical tabulations and other documentary materials or information, regardless of physical form or characteristic." (NAC 239.101)

"Nonrecord materials" means published materials printed by a governmental printer, worksheets, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a local governmental entity. (NAC 239.051)

III. Policy.

It is the policy of the City to respond to requests to inspect or receive copies of public records maintained by the City in an orderly, consistent and lawful manner. The City shall do one of the following: **(a)** If the requested information is readily available, provide the record for inspection or copying; **(b)** If the City does not have legal custody or control of the requested public record, if known, the City will provide, in writing to the requestor: (1) Notice of that fact; and (2) the name and address of the government entity that has legal custody or control of the public record, if known; **(c)** the date at which time the record will be available for inspection or copying if the City is unable to make the public record available for inspection or copying by the end of the fifth business day after the City received the request; or **(d)** If the City must deny the request because the record or any part thereof is confidential, in writing, the City must inform the requestor of that fact and cite the specific statute or legal authority that makes the record confidential. Please note, the following factors may delay production of records production: the size and complexity of the request, available staff time and resources, and whether legal counsel needs to be consulted prior to disclosing the requested records. Should any of these factors apply to a request, the City will provide notification of the same.

Some public records requests are requests for information that would actually require the creation of a new public record. Public bodies are not obligated under Nevada's Public Records Law to create new public records where none exists in order to respond to requests for information.
A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of the City who has legal custody or control of a public record shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

Nonrecord materials are not considered official public records and are not subject to disclosure under the Nevada Public Records law.

IV. Procedure.

With the exception of records listed in section VI, the following procedures must be followed in submitting and responding to requests to inspect or receive copies of public records maintained by the City:

A. Records Requests by general public. Public records requests may be made via Contact Henderson. Click on Contact Henderson via the City of Henderson webpage (www.cityofhenderson.com) then select "Records Requests" and the appropriate category; then click "Next". Follow the subsequent steps to submit your case. If you are unsure which category to select, please choose "Other." Submitting your request in writing helps to reduce confusion about the information being requested and effectively communicating your request will help ensure a timely response. Requests should identify as specifically as possible the type of record(s), subject matter, approximate date(s), and the desired method of delivery (email, hardcopies, etc.). Additionally, public records requests may be made by calling the City Clerk's Office at (702) 267-1419, or by writing or visiting the City Clerk's Office at City Hall, 240 Water St., Henderson, Nevada.

Records Requests by media. Public records requests from members of the media may be made via Contact Henderson. Click on Contact Henderson via the City of Henderson webpage (www.cityofhenderson.com) then select "Records Requests" and click on the "Media" category; then click "Next". Follow the subsequent steps to submit your case. Submitting your request in writing helps to reduce confusion about the information being requested and effectively communicating your request will help ensure a timely response. Requests should identify as specifically as possible the type of record(s), subject matter, approximate date(s), and the desired method of delivery (email, hardcopies, etc.). Additionally, public records requests may be made by calling the office of Communications and Council Support at (702) 267-2020.

B. Processing a Public Records Request. Upon receipt of a public records request:
   a. Staff shall determine resources required to provide all requested records and prepare an estimate of fees if applicable. Staff shall contact the requestor through the Contact Henderson system prior to five (5) business days. If applicable, the estimate of fees must be provided to the requestor at this time. Depending on the scope and magnitude of the records request, a 50 percent deposit of fees prior to the start of research may be required. If a deposit is required or an estimate of fees is provided, staff shall wait for requestor approval of the fee estimate prior to continuing work. The remainder of fees must be paid before records are delivered. Throughout the process of completing the request and prior to resolving the case, staff shall note all relevant communications with the requestor in the Contact Henderson case.
   b. If staff are unable to provide the records within five days, staff shall provide the requestor with notice of one of the following:
      i. If the department does not have legal custody or control of the requested record, staff shall communicate to the requestor the name and address of the governmental entity that has legal custody or control of the record, if known.
      ii. If the record has been destroyed, staff shall communicate so to the requestor and cite approved records retention schedule.
      iii. If the department is unable to make the record available by the end of the fifth business day after receiving the request, staff shall specify to the requestor a date and time the record will be available.
      iv. If the record or any portion thereof is confidential, and access is denied, staff shall communicate this to the requestor and cite the specific statute or other legal authority that declares the record and/or any portion of the record to be confidential.

V. Fees (HMC 2.47.0825).

The fees for responding to a public records request will be those established in the fee schedule adopted by the City which is in effect at the time the request is submitted. The fees will be reasonably calculated to reimburse the City for its actual costs in making the records available and may include:

A. Charges for the time spent, in excess of thirty (30) minutes, by City staff or any City contractor to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure, to segregate exempt records, to supervise the

requestor's inspection of original documents, to copy records, to certify records as true copies and to send records by special or overnight methods such as express mail or overnight delivery.

B. A per page charge for photocopies of requested records.

C. A per item charge for providing CDs, audiotapes, or other electronic copies of requested records.

The current fee schedule is located on the City's website at http://www.cityofhenderson.com/docs/default-source/city-clerk-docs/city-wide-public-records-and-document-services-general-fee-table08-14.pdf?sfvrsn=2

Staff will prepare an estimate of the charges that will be incurred to respond to a public records request. Prepayment of the estimated charges or a 50 percent deposit may be required. Unless otherwise prohibited by law, the City may, at the City's discretion, furnish copies of requested records without charge or at a reduced fee if the City determines that the waiver or reduction of fees is in the public interest.

VI. Public Records Exempt from Disclosure.

There are types of public records that are exempt from disclosure. A few specific exemptions worth special notice are as follows:

A. **Personal Identifying Information – NRS 239B.030(5a).** Each governmental agency shall ensure that any personal information contained in a document that has been recorded, filed or otherwise submitted to the governmental agency, which the governmental agency continues to hold, is maintained in a confidential manner if the personal information is required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant.

B. **Bids and Proposals under Negotiation or Evaluation – NRS 332.061(2).** Bids which contain a provision that requires negotiation or evaluation may not be disclosed until the bid is recommended for award of a contract. Upon award of the contract, all of the bids, successful or not, with the exception of proprietary/confidential information, are public record and copies shall be made available upon request.

C. **Bids and Proposals Containing Proprietary Information – NRS 332.061(1).** Proprietary information does not constitute public information and is confidential.

D. **Recreation Program Registration – NRS 239.0105.** Records of recreational facility/activity registration where the name, address, and telephone number of the applicant are collected are confidential.

E. **Emergency Action Plans and Infrastructure Records – NRS 239C.210(2).** Records detailing the City's Emergency Response Plans and critical infrastructure are confidential.

F. **Personnel Records –-Donrey v Bradshaw.** All employee personnel records are confidential.

G. **Databases Containing Electronic Mail Addresses or Telephone Numbers – NRS 239B.040.** Electronic mail addresses and/or telephone numbers collected for the purpose of or in the course of communicating with the city may be maintained in a database. This database is confidential in its entirety, is not public record, and it must not be disclosed in its entirety as a single unit; however, the individual electronic mail address or telephone number of a person is not confidential and may be disclosed individually.

H. **Protected Medical Records – HIPAA 45 CFR Part 160 and Part 164.** Medical records collected during medical transports may only be disclosed to the patient or as authorized by the patient. Medical records related to the City of Henderson Self-Funded Health Insurance Plan are also confidential.

I. **Attorney/Client Privileged Records –-RPC 1.6.** A lawyer shall not reveal information relating to representation of a client. Please Note: In order to prevent inadvertent or unauthorized disclosure or access to privileged information, City staff will not disclose any records marked as privileged without first contacting and getting express approval from the City Attorney's office.

J. **Restricted Documents – NRS 239C.220.** Blueprints or plans of schools, places of worship, airports other than an international airport, gaming establishments, governmental buildings or any other building or facility which is likely to be targeted for a terrorist attack are considered "Restricted Documents." The City also classifies Civil Improvement Plans as restricted documents. These plans can only be inspected after supplying: (a) name; (b) a copy of a driver's license or other photographic identification that is issued by a governmental entity; (c) the name of employer, if any; (d) citizenship; and (e) a statement of the purpose for the inspection.

   Individuals must meet one of the following criteria to receive a copy of a restricted document: upon the lawful order of a court of competent jurisdiction; as is reasonably necessary in the case of an act of terrorism or other related emergency; to protect the rights and obligations of a governmental entity or the public; upon the request of a reporter or editorial employee who is employed by or affiliated with a newspaper, press association or commercially operated and federally licensed radio or television station and who uses the restricted document in the course of such employment or affiliation; or upon the request of a registered architect, licensed contractor or a designated employee of any such architect or contractor who uses the restricted document in his or her professional capacity.

K. **Records Detailing Investigations or Relating to Litigation or Potential Litigation –-Donrey v. Bradshaw.** Records involving criminal investigations, litigation or potential litigation are considered confidential.

L. **Local Ethics Committee Opinions – NRS 281A.350(4).** Each request for an opinion submitted to a specialized or local ethics committee, each hearing held to obtain information on which to base an opinion, all deliberations relating to an opinion, each opinion rendered by a committee and any motion relating to the opinion are confidential unless:
   a. The public officer or employee acts in contravention of the opinion; or
   b. The requester discloses the content of the opinion.

M. **Economic Development Initial Contact and Research Records (NRS 268.910)** An organization for economic development formed by one or more cities shall, at the request of a client, keep

confidential any record or other document in its possession concerning the initial contact with and research and planning for that client. If such a request is made, the executive head of the organization shall attach to the file containing the record or document a certificate signed by the executive head stating that a request for confidentiality was made by the client and showing the date of the request.

Except as otherwise provided in NRS 239.0115, records and documents that are confidential pursuant to the above 1 remain confidential until the client:

a. Initiates any process regarding the location of his or her business in a city that formed the organization for economic development which is within the jurisdiction of a governmental entity other than the organization for economic development; or
b. Decides to locate his or her business in a city that formed the organization for economic development.

VII. Copyrighted Material.

If the City maintains public records containing copyrighted material, the City will permit the person making the request to inspect the copyrighted material, and may allow limited copying of such material if allowed under Federal copyright law. The City may require written consent from the copyright holder or an opinion from the person's legal counsel before allowing copying of such materials.