

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
CITY OF WALHALLA)

ORDINANCE 2021-30

ESTABLISHING A POLICY OF THE CITY OF WALHALLA REGARDING THE HANDLING OF REQUESTS FOR PUBLIC RECORDS UNDER THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT, AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City Council of the City of Walhalla (the "**Council**"), the governing body of the City of Walhalla, South Carolina (the "**City**"), recognizes the findings of the General Assembly of South Carolina that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy; and

WHEREAS, in order to ensure that the City conducts public business in an open and public manner, it shall be the policy of the City to comply with both the letter and the spirit of the Freedom of Information Act ("**FOIA**"), as codified at §§ 30-4-10 *et seq.* of the Code of Laws of South Carolina 1976, as amended.

WHEREAS, the Council has determined that a formal City policy regarding the submission and processing of requests for access to public records under FOIA, including a form to be used for the submission of requests and a certification of fulfilment of said requests (respectively, the "**FOIA Policy**," the "**Request Form**," and the "**Certification**"), attached hereto as **Exhibit A**, should be amended to provide the public and City employees with clear requirements and practices that will permit the City to operate in an open and public manner.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Walhalla, as set forth below:

Section 1. Pursuant to the findings above, the Council hereby adopts its Policy Regarding Requests for Public Records Under the Freedom of Information Act (the "**Policy**"), a copy of which is attached hereto.

Section 2. In adopting the Policy, the Council has determined that the "Fee Schedule for Staff Time and Copies" included in the Policy is an accurate reflection of the actual cost of searching for and making copies of records. The schedule has been initially approved by the terms of this ordinance, but may be updated in the reasonable discretion of the Council by subsequent ordinance or by the approval of its annual budget ordinance.

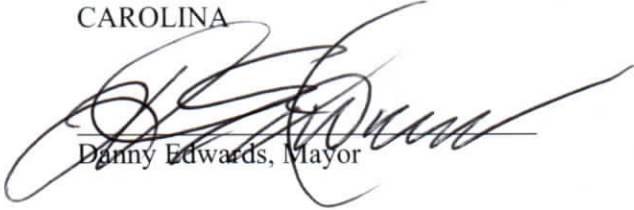
Section 3. In approving this Ordinance and the Policy, the Council expressly adopts any and all exemptions, restrictions and limitations from disclosure contained within FOIA as may be amended from time to time, and any additional exemptions, restrictions or limitations from disclosure that may be provided for now or in the future under South Carolina or Federal law.

Section 4. The Policy is effective immediately upon the second reading and adoption of this Ordinance.

DONE AND ADOPTED ON THE 21 TH DAY OF Dec 2021.

CITY OF WALHALLA, SOUTH
CAROLINA

(SEAL)



Danny Edwards, Mayor

ATTEST:



Timothy B. Burton, City Administrator

Introduced MR. PACE

First Reading DEC 7, 2021

Second Reading, Public Hearing,
& Adoption DEC 21, 2021

EXHIBIT A
FOIA POLICY AND REQUEST FORM

CITY OF WALHALLA, SOUTH CAROLINA

**POLICY REGARDING REQUESTS FOR PUBLIC RECORDS
UNDER THE FREEDOM OF INFORMATION ACT**

Policy Statement: The City Council (the "**Council**") of the City of Walhalla, South Carolina (the "**City**") recognizes the findings of the General Assembly of South Carolina that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. In order to ensure that the City conducts public business in an open and public manner, it shall be the policy of the City to comply with both the letter and the spirit of the South Carolina Freedom of Information Act ("**FOIA**"), as codified at Sections 30-4-10 *et seq.* of the Code of Laws of South Carolina 1976, as amended, in regards to the processing of requests for access to public records (this "**Policy**").

Making a FOIA Request: All requests for public documents pursuant to FOIA, except for those described below, must be made *in writing* and submitted either (i) in person at the Walhalla City Hall, 206 North Church Street, Walhalla, SC 29691; (ii) by mail to City of Walhalla, Attn: City Administrator, P.O. Box 1099, Walhalla, SC 29691; or (iii) by electronic mail. Ideally, requests shall be made using the FOIA Request Form (the "**Request Form**") provided by the City and made available to the public, a copy of which is attached hereto. Requests made by letter or in some other written form shall contain substantially the same information provided for on the Request Form. If a request is submitted by fax, the requesting individual may be instructed to submit the request using one of the approved methods set forth in this Policy. In order to ensure the most accurate and prompt response, requests should be as detailed, specific, and descriptive as possible. With the exception of the records detailed below, a minimum charge of \$3.00 is applied to all FOIA requests to compensate the City for the cost of the staff time and materials necessary to respond to even the most minimal request.

Requests to inspect the following public records need not be in writing provided the requestor appears at the appropriate City office in-person and within normal City business hours:

1. Minutes of all public meetings of the City for the preceding (6) six months;
2. Reports from the preceding fourteen (14) days which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed (with the exception of records regarding juveniles);
3. Documents identifying persons confined in any jail, detention center, or prison for the preceding (3) three months (with the exception of records regarding juveniles); and
4. Documents produced by the City or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding (6) six months.

Processing FOIA Requests: Where any City employee receives any written request for public records, the request should immediately be stamped with the date of receipt and delivered to the City Administrator. The City Administrator should evaluate FOIA requests based upon the statutory requirements of FOIA with regards to any applicable exemptions, federal restrictions on disclosure, or limitations on the commercial use of data. However, the presumption in evaluating FOIA requests should be in favor of disclosing the requested records. Where an exemption to FOIA could possibly permit the City Administrator to decide

not to disclose the requested records, the City Administrator should consult with an attorney (as retained by the City) to determine if the exemption applies and whether the City should decline to disclose the records based upon the exemption.

Initial Response Deadlines: The City Administrator must respond to all FOIA requests within the time frames outlined below:

<u>Document Age</u>	<u>Response time</u>
Less than 24 months old	Within 10 business days
More than 24 months old	Within 20 business days

It shall be the policy of the City to respond to FOIA requests as quickly as possible. Where possible, the response to the request should include the requested records. Otherwise, the response should either inform the requestor that the requested records will be made available, along with the means of obtaining them and any additional costs that will be charged for making the records available, or it should inform the requestor that the requested records fall under an exemption to FOIA and will not be disclosed. The initial response shall constitute the final determination of the City as to whether records are available and subject in whole to an exemption under FOIA, but will not constitute a final opinion as to whether portions of the requested documents are subject to redaction under a FOIA exemption.

Production Deadlines: For all granted requests, the City shall furnish the records within the time frames outlined below, as measured from the date of initial or response or, where applicable, the payment of a deposit.

<u>Document Age</u>	<u>Production time</u>
Less than 24 months old	30 calendar days
More than 24 months old	35 calendar days

The response and production deadlines may be extended by written mutual consent, and the requesting party may not unreasonably withhold such consent. The City shall not create new records, nor summarize existing records. Requested records shall be released in the format most convenient to the City. The City may, in its discretion, create electronic records where they do not otherwise exist.

Records Exempt From Disclosure: The City adopts as a part of this Policy any and all exemptions, restrictions or limitations contained within FOIA, as FOIA may be amended from time to time, along with any other exemptions, restrictions or limitations that may be provided for now or in the future under South Carolina or federal law. As previously stated herein, The City Administrator, consulting with an attorney (as applicable), shall determine whether an exemption to the disclosure requirements of FOIA applies. Where an exemption, restriction, or limitation applies, the City Administrator should decide whether to deny disclosure based upon the application of the available exemption, restriction, or limitation. Where records contain certain information exempt from disclosure but which otherwise fall outside of an exemption, restriction or limitation, the exempted information shall be redacted and requested records shall otherwise be disclosed. The City may request for a hearing before the Circuit Court of Oconee County to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it receives a request but is unable to make a good faith determination as to whether the information is exempt from disclosure.

Failure to Comply: In addition to penalties available under FOIA, willful disregard of, or violation of, this Policy by any employee or other person who is subject to it, may constitute insubordination and be grounds for disciplinary action up to and including termination of employment.

Costs for Processing FOIA Requests: The Council, pursuant to Section 30-4-30 of the Code of Laws of South Carolina, as amended, has established the fee schedule below, which has been made available as part of the City's schedule of fees and charges published as an appendix to the City's Code of Ordinances. The charges set forth therein are no greater than, and in some instances may be less than, the actual cost to the City of searching for and making copies of requested public records. In general, costs for staff time necessary to respond to a FOIA request shall not exceed the prorated hourly salary of the lowest cost employee of the City who, based upon the advice of the City Administrator, has the training necessary to fulfill the request. Costs shall not be charged for time spent examining records to determine whether they may be disclosed. Charges for copies of records will not exceed the standard commercial rate. Additionally, copy charges do not apply to electronic copies; however, the City may charge a fee for cost of staff time to transfer the document to electronic format and the actual cost to the City for electronic media. Where it is anticipated that the staff time necessary to comply with a request may exceed five hours, the requestor may be required to pay a deposit of one quarter of the estimated costs of complying with the request before staff will begin searching for or making copies of the requested records. Requesting party shall pay the full amount due prior to delivery of records.

Prohibition on Commercial Solicitation Use: Knowingly obtaining or using personal information obtained from the City for commercial solicitation is strictly prohibited. The measure employed by the City to ensure that no record is used for commercial solicitation purposes shall be to deny requests for records under FOIA where the only reasonably perceptible use for the requested records by the requesting party is commercial solicitation. Upon denial of a request by the City, the requesting party is to be notified that it has the burden to demonstrate a purpose for which the requested records may be used that is not commercial solicitation. All responsive communications provided by the City shall include a Certification of FOIA Fulfillment ("***Certification***"), a copy of which is attached hereto. The Certification will be signed by the City staff person charged with providing requested records and will include the following statement:

Pursuant to § 30-2-50 of the Code of Laws of South Carolina, 1976, as amended, you are prohibited from knowingly using public records obtained from the City of Walhalla for commercial solicitation. Violation of this law is punishable by law as a misdemeanor, resulting in up to a year in prison or a fine not to exceed \$500.

Fee Schedule for Staff Time and Copies

Fees shall be as shown in the current approved budget document "Appendix A".

**City of Walhalla, South Carolina
206 North Church Street, Walhalla, SC
Phone: (864) 638-4343**

FREEDOM OF INFORMATION ACT REQUEST FORM

The City of Walhalla, South Carolina (the "City") has adopted its "Policy Regarding Requests for Public Records Under the Freedom of Information Act" (the "Policy"). Pursuant to the Policy, requests for information made under the Freedom of Information Act, now codified at §§ 30-4-10 *et seq.* of the Code of Laws of South Carolina, 1976, as amended (the "FOIA") shall be made using this form. This form must be signed and submitted either: (i) in person at the Walhalla City Hall, 206 N. Church St., Walhalla, SC 29691; (ii) by mail to City of Walhalla, Attn: City Administrator, P.O. Box 1099, Walhalla, SC 29691; or (iii) by electronic mail. *A minimum fee of \$3.00 for staff time required to respond to the request must be included.* Additional fees may also be required. No faxed requests will be accepted.

NAME: _____ DATE OF REQUEST: _____
 ADDRESS: _____
 CITY: _____ STATE: _____ ZIP: _____
 PHONE NUMBER: _____ EMAIL: _____

I, the undersigned, agree to pay the charges set by the fee schedule below for the services and copies I have requested.

SIGNATURE: _____

INFORMATION REQUESTED (please be as specific as possible and attach additional pages if needed): _____

Section 30-4-30(b) of FOIA, authorizes the City, as a public body, to charge and collect fees for the actual costs of responding to requests for public information. Under the Policy, the City has duly adopted the fee schedule set forth below for copies and for staff time in searching for and providing requested information. *A minimum fee of \$3.00 for all FOIA requests must be submitted along with this form.* An additional deposit is required for requests that are anticipated to require greater than (5) five hours of staff time.

PURSUANT TO § 30-2-50 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, YOU ARE PROHIBITED FROM KNOWINGLY USING PUBLIC RECORDS OBTAINED FROM THE CITY OF WALHALLA FOR COMMERCIAL SOLICITATION. VIOLATION OF THIS LAW IS PUNISHABLE BY LAW AS A MISDEMEANOR, RESULTING IN UP TO A YEAR IN PRISON OR A FINE NOT TO EXCEED \$500. MY FILING OF THIS REQUEST CONSTITUTES ACKNOWLEDGMENT OF THIS PROHIBITION.

Fee Schedule for Staff Time and Copies

Description	Charge
Minimum charge to pay costs for responding to all FOIA requests	\$3.00 (paid upon receipt of records)
Charge per page for hard copy of records	\$0.20 per copy
Charge for staff time to search, retrieve, or redact records	\$20.00 per hour, per employee
Charge for other media used to provide records	Actual cost of media to City
Deposit for anticipated or apparent staff time exceeding 5 hours	¼ of estimated costs

FOR CITY USE ONLY

DEPARTMENT SUBJECT TO REQUEST: _____ RECEIVED BY: _____
 REQUEST ASSIGNED TO: _____ DATE OF COMPLETION: _____
 DATE OF ASSIGNMENT: _____ FEE FOR SERVICES: _____
 DATE RESPONSE DUE: _____ METHOD OF PAYMENT: _____

**CERTIFICATION OF FOIA FULFILLMENT
FOR THE CITY OF WALHALLA, SOUTH CAROLINA**

PURSUANT TO §§ 30-2-50 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, YOU ARE PROHIBITED FROM KNOWINGLY OBTAINING OR USING INFORMATION OBTAINED FROM THE CITY OF WALHALLA FOR COMMERCIAL SOLICITATION. VIOLATION OF THIS PROHIBITION IS PUNISHABLE BY LAW AS A MISDEMEANOR, RESULTING IN UP TO A YEAR IN PRISON OR A FINE NOT TO EXCEED \$500.

REQUESTOR NAME: _____

DATE OF REQUEST: _____

DATE OF RESPONSE: _____

I, _____, the undersigned employee of the City of Walhalla, South Carolina, certify that I have processed your request for access to public records pursuant to the Freedom of Information Act ("FOIA"), as codified at §§ 30-4-10 et seq. of the Code of Laws of South Carolina 1976, as amended, and am making available to you via {[U.S. Mail], [E-mail], [in-person delivery]} (circle one) the requested records contained herein.

City of Walhalla, South Carolina